

The Unrule of Law in the Making: the Politics of Informal Institution Building in Russia

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'INFORMAL INSTITUTIONALISATION' (O'Donnell, 1996), or the prevalence of informal rules and norms over the formal institutions of political regimes (Merkel & Croissant, 2000), is a typical outcome of various post-authoritarian transitions (Helmke & Levitsky, 2003), including post-Soviet ones. The dominance of informal institutions which create obstacles to the rule of law is a major distinction between Russia (and other post-Soviet regimes) and most Eastern European countries (Gel'man, 2003). But what are the origins, formation mechanisms and development trends of Russia's informal political institutions? Because answering these questions requires the collective efforts of the international and interdisciplinary academic community, this article is focused only on specific aspects. The article is divided into four sections. First, I examine existing structural explanations for the dominance of informal institutions in Russian politics. Second, I present a procedural model of informal institutionalisation in emerging political regimes. Third, I analyse the politics of informal institution building in Russia, using the case of institutions of electoral governance as an example. Finally, the effects of informal institutions on political regime dynamics in Russia will be considered.

Informal institutions: features, genesis and evolution

The rule of law (or lack thereof) in any given polity depends primarily upon the dominance of one of two types of institutions. The term 'institutions' is understood here as 'the rules of the game in society or ... humanly devised constraints that shape human interaction', including constraints on major actors and their strategies within a polity (North, 1990, p. 3). These rules include a set of universal (formal) and/or particularistic (informal) norms and sanctions,¹ which together provide incentives for certain types of behaviour. Taking a neo-institutionalist perspective the rule of law could be defined as dominance of formal institutions in the political arena. O'Donnell defines the major principles of the rule of law as follows:

1. All laws should be prospective, open and clear;
2. Laws should be relatively stable;
3. The making of particular laws ... must be guided by open, stable, clear, and general rules;
4. The independence of the judiciary must be guaranteed;
5. The principles of natural justice must

be observed (i.e. open and fair hearing and absence of bias); 6. The courts should have review powers ... to ensure conformity to the rule of law; 7. The courts should be easily accessible; 8. The discretion of crime preventing agencies should not be allowed to pervert the law. (O'Donnell, 1999, p. 317)

This list fits the framework of Western democracies (at least in theory), but not the existing rules of the game in Russia and other post-Soviet regimes. Following O'Donnell (1999), the dominance of informal institutions can be defined as 'the unrule of law'. Some Western scholars consider this dominance as somewhat anomalous, in spite of definitions such as 'defective democracies' (Merkel & Croissant, 2000) and other descriptive 'adjectives' with negative connotations (Collier & Levitsky, 1997). Based on normative democratic theory, these views fail, however, to explain the nature and substance of the dominance of informal institutions, despite their increasing importance for analysis of post-authoritarian political regimes (Helmke & Levitsky, 2003).

The Weberian typology of legitimacy (Weber, 1970) serves as a more useful tool for analysing informal institutions. The dominance of formal institutions is associated with rational-legal legitimacy, while that of informal institutions is a feature of either traditional or charismatic rule. In the case of traditional rule, its impact on informal institutions is related to the 'legacy of the past', which is embedded in culture and contributes to path dependency that poses limits on institutional changes (North, 1990, p. 93). Inherited informal institutions live at the expense of formal ones by occupying or penetrating them (Lauth, 2000, p. 26). In the case of charismatic rule, by contrast, the impact on informal institutions is indirect. It causes discontinuous institutional changes (North, 1990, p. 89), so that the new institutions have no roots in the institutional environment and lack self-enforcement mechanisms. For example, a revolutionary 'breakdown' may lead to the decline of rule enforcement because of reduced or total lack of state capacity. In these circumstances informal institutions fill the void, at least for a while, until the process of charisma routinisation cultivates new formal institutions. In weak states in the Third World today this interregnum may well be long-lasting.

Both 'the legacy of the past' and revolutionary 'breakdown' constitute structural determinants for the dominance of informal institutions. I shall argue, however, that these determinants do not suffice to explain the genesis and dynamics of the informal institutions in contemporary Russian politics.

'Legacy of the past': once and forever?

Informal institutions are associated with traditions, customs and cultural backgrounds (North, 1990, p. 6). Their roots and the consequences for the unrule of law are thought to be the rudiments of traditional societies. Within the typology of informal institutions elaborated by Lauth, for example, three types (kinship, nepotism and clientelistic parties) are connected with the 'legacy' of traditions, while two other types (mafia and autocratic cliques) are regarded as by-products of contemporary societies (Lauth, 2000, p. 28). As Lauth notes, the latter are more dangerous threats to democracy than the former (Lauth, 2000, p. 34). In post-Soviet countries the role of 'legacy' is

associated with the old communist regimes, which degenerated into ‘neo-traditionalism’ (Jowitt, 1992). Some scholars have even considered the entirety of Russian history to constitute a tradition of anti-modernism (Pipes, 1977) or looked on its post-communist period as a degradation into an ‘anti-modern’ society (Rose, 2001). These interpretations, however, are heavily coloured by ideological biases (for criticism see Volkov, 2002, pp. 17–18).

The arbitrary rule and repressive practices of the Russian state ‘from above’ were combated by defensive reactions ‘from below’ in the form of clientelism (Afanas’ev, 2000) and/or *blat* (Ledeneva, 1998) à la ‘weapons of the weak’ in South-East Asia (Scott, 1985). Post-Soviet developments have not changed this situation significantly: informal institutions cannot be rearranged quickly. Moreover, in the post-Soviet environment informal institutions were a valuable survival resource for individuals during the multiple crises of the 1990s, enabling people to resist the arbitrary rule of the new regimes. Thus one may say that the ‘legacy of the past’ has been indispensable and that the dominance of informal institutions is likely to continue indefinitely in Russia’s political regime.

From the unruly of law perspective, deeply embedded informal institutions in Russia have undermined the demand for law among the consumers of this public good (both individuals and organisations). This is the major theoretical argument of Hendley, who argues that mistrust between society and the state and the pervasive environment of patron–client relationships make any attempts to build a rule of law ‘from above’ inefficient if cultural orientations ‘from below’ are not altered (Hendley, 1997, 2001). Empirical evidence about the demand for law in Russia is, however, at least mixed. First, mass surveys demonstrate that the attitudes of Russian citizens toward the rule of law are close to those of citizens not only in Eastern but also in Western Europe (Gibson, 2002). Second, the use of law suits against the state in Russia has spread among retired people—the social group with the lowest status and who were socialised in the period of arbitrary rule (Cashu & Orenstein, 2001). In other words, formal institutions, rather than informal ones, serve in this respect as a ‘weapon of the weak’. Third, as Frye shows, Russian business regards lawsuits as efficient, although only in conflicts among entrepreneurs (Frye, 2002). Assessment of the efficiency of Russian courts among businessmen is rather negative, however, when entrepreneurs engage in conflicts with the state. If this is so, it appears to be the result of the insufficient supply of law, rather than a lack of demand for it.

Despite contradictory empirical evidence, the culturalist explanation for the unruly of law is methodologically vulnerable. The logic of the ‘legacy of the past’ is insensitive to differing degrees of influence of formal and informal institutions in various policy areas and/or in various parts of the post-Soviet world. The arguments of ‘legacy’ are not enough to explain these differences. Why do formal institutions matter in some cases, while in others they do not? In addition, the culturalist explanation provides no clues about the dynamics of institutional changes. If ‘the legacy of the past’, once established, matters forever, lazy scholars might repeat the same banal interpretations (Dobry, 2000, p. 14) without considering a progression beyond such a legacy as a part of the academic and policy agenda. In sum, the culturalist explanation for the unruly of law and the dominance of informal institutions falls into the ‘residual category’ trap (Lane, 1992). That is, while post-Soviet

countries cannot achieve the rule of law because of their 'wrong' culture, there is little chance of the 'right' culture emerging because of the lack of the rule of law. This 'residual category' problem might be added to several 'grand theories' that claim to explain everything while usually explaining almost nothing. This is also true of the state-oriented research perspective.

What kind of state is being brought back in?

After the seminal essay by Skocpol (1985), state autonomy and state capacity (Skocpol, 1985, p. 9) are considered as some of the most important explanatory variables in the analysis of political changes, including the emergence of the rule of law (or lack thereof). The statement by Linz & Stepan that 'without a state, no modern democracy is possible' (Linz & Stepan, 1996, p. 17) is fully applicable to the rule of law, as one of the 'arenas' of democratic consolidation (Linz & Stepan, 1996, pp. 7–15), which cannot be achieved under a weak state. The decline of state capacity is therefore a most obvious reason for the unrule of law in Russia (Holmes, 1997; Bova, 1999).

The decline of formal institutions and their replacement by informal institutions had been launched by the late-Soviet period, due to the technical incapacity of centralised economic planning (Naishul', 1991) and a dramatic increase in control costs, leading to a weakening of accountability of the low-level bureaucracy (Solnick, 1998). The breakdown of the communist regime and the subsequent collapse of the Soviet Union fueled these processes to a large degree; the crisis of state capacity became an unintended consequence of democratisation (Bova, 1999). Under these circumstances informal institutions filled the gap and produced arbitrary rule. The evidence of the fragmentation of the Russian state in the 1990s in both vertical and horizontal dimensions is clear. It includes various phenomena, such as 'state capture' by economic interest groups (Hellman, 1998), spontaneous state devolution from the federal centre to regional fiefdoms (Stoner-Weiss, 1999), displacement of monetary policy by barter surrogates (Woodruff, 1999), the criminal business of private protection (Volkov, 2002) and the like. As a result of the weakness of the state, informal institutions help to minimise transaction costs. Political and economic actors follow these rules because they can adjust to rapid changes of formal institutions and overcome uncertainty. Thus the 'legacy of the past' is viewed here not only as an obstacle to the rule of law (though the latter is impossible anyway owing to the state weakness) but also as an important resource of risk aversion. When the state is unable to enforce formal institutions, the dominance of informal institutions is a great help to actors' survival and a possible source of development, for example, in formation of business networks during the process of privatisation (Stark, 1996).

In the 2000s, however, the Russian state partially restored its capacity. Soon after, agents of 'state capture' became peripheralised or integrated into the new framework of formal institutions. 'Oligarchs' lost their control over the political agenda and were placed in subordinate positions within the state-led corporatism (Zudin, 2001). Regional bosses lost their leverage of power and became dependent upon the federal centre (Hyde, 2001) and large nation-wide companies (Zubarevich, 2002); criminal 'violent entrepreneurs' were either legalised or marginalised (Volkov, 2002). In

Skocpol's words, the state is being brought back in, while informal institutions gradually move out of its central place in politics.

Contrary to the pessimism of the culturalist approach, a state-oriented research perspective is much more optimistic. In this light, the dominance of informal institutions is just a feature of the protracted transition, seen as a period of 'growing pains'. Yet this positive theoretical picture looks much gloomier in reality. First, even though the dominance of informal institutions might be viewed as a consequence of a weak state, the restoration of the state capacity does not lead to the emergence of the rule of law by default. To the contrary, the return to a strong state could become even worse for the rule of law, if its renewed capacity were to coincide with low autonomy. In this case formal institutions could be transformed into powerful tools of manipulation. Government could selectively use sanctions to reward loyal actors or punish disloyal ones (Paneyakh, 2003). This was the case in Russia, where TV companies lost their independence or closed owing to legal suits and contestants were excluded from electoral races or from privatisation of major companies. These practices of selective use of sanctions demonstrate the effect of the 'dictatorship of law', which is different from the above definition of the rule of law (Gel'man, 2000). Instead of incentives for competition in political and economic markets, the 'dictatorship of law' creates monopolistic 'closed markets' in some regions (Zubarevich, 2002) or sectors of the economy (Bychkova, 2002).

Second, a state-oriented approach is also vulnerable methodologically in its analysis of dynamics of regime change. When 'state' is considered as an independent variable, its rise and decline seem to be a kind of *deus ex machina* or at least a by-product of some macro-processes (as in the case of the breakdown of the Soviet Union). In this respect, state-oriented explanations of the unrule of law in Russia are close to culturalist ones: both of them could be seen in terms of 'residual categories'.

Even though one may look on structural factors as a necessary part of the explanation for the dominance of informal institutions, their impact is far from sufficient. This notion is related to a broader discussion of the role of structure vs. agency in the process of regime change (Mahoney & Snyder, 1999; Dobry, 2000). From this viewpoint both 'legacy' and characteristics of the state are structural constraints or political opportunities for the process of institution building. They pose limits on possible institutional changes, but do not determine them. Instead of structural determinism, a configurative approach is more fruitful for comparative historical analysis of regime changes. It is based on the logic of 'move from necessary conditions to the sufficient ones, from constraining conditions to choice' (Almond, Flanagan & Mundt, 1973, p. 630), which might be plausible for the study of informal institutions.

Thus actor-oriented analysis of the politics of institution building in Russia might be a valuable addition to studies of structural factors in the dominance of informal institutions. This analysis might be based on the framework of historical institutionalism (Steinmo & Thelen, 1992), which is concentrated not on path dependency but on 'critical junctures' of institutional changes and their limits. The 'legacy of the past' is considered here as one but not the only 'point of departure' on the path-contingent chain of interrelated causes and consequences of institution building. Somewhat similar explanatory models have been used in studies of regime change (Karl, 1990),

including post-communist politics (Johnson, 2001; Gel'man, Ryzhenkov & Brie, 2003). As a first step toward such an analysis I shall focus on major factors in the politics of institution building in Russia, and then turn to their impact on the formation and evolution of informal institutions.

Institution building: ideologies, interests, information and changes

The process of institutional changes (institutional choice + institutional effects) can be considered a policy cycle. Before the start of institutional changes the political system can be described as in equilibrium, or 'a state in which no actor, acting individually, can improve his outcome by changing his action. That is, no actor has an incentive to change his action. The equilibrium is a result of this absence of incentives to change' (Coleman, 1994, p. 168). But later, exogenous causes lead to disequilibrium. Actors who have some incentives for institutional changes might choose in favour of the politics of institution building. But structural conditions and the boundaries of possible institutional changes also change simultaneously. Finally, institutional changes meet their limits. Institutional effects, together with the dynamics of political opportunities, affect the constellation of actors and their strategies. Finally, the policy cycle is exhausted when a new equilibrium is achieved within the new framework of political opportunities.

But why did institutional changes of the 1990s and early 2000s in Russia cause a dominance of informal institutions? The most obvious answer is related to the self-interest of institution builders. If 'institutions ... are created to serve the interests of those with the bargaining power to devise new rules' (North, 1990, p. 16), it is no surprise that actors who can impose rules of the game create informal institutions on the basis of their rational actions (Merkel & Croissant, 2000, pp. 17–20). The emergence of the rule of law is based on uncertain constellations of actors' resources and their intention to avert the risk of a zero-sum game (Weingast, 1997, pp. 252–53). Contrary to this, Russia experienced a zero-sum game conflict in October 1993, and its subsequently adopted Constitution established a 'superpresidentialism', typically leading to arbitrary rule (see for example Fish, 2000). Such a critique of presidential government, however, is at least incomplete and insufficient for analysis of regime change in Russia. First, it deals neither with the complicated relationships between presidency and parliament (Smith & Remington, 2001), nor with the contradictions within the executive branch (Huskey, 1999), nor the impact of influential economic interest groups on the politics of institution building (Rutland, 2001). Second, and more important, it is based on the assumption that actors have complete information and can predict all the consequences of institution building. This view is criticised theoretically from the position of 'bounded rationality' (Simon, 1957), which is concentrated on the impact of uncertainty on political actions. The decisive role of uncertainty in post-communist transformations, and especially in Russia (Gel'man, Ryzhenkov & Brie, 2003, pp. 19–32), is a plausible explanation of unintended consequences of institutional changes, which are sometimes contrary to the interests of institution builders.

What else, beyond self-interest, might affect rational actors' motivation for institution building? Actors who have to overcome uncertainty must evaluate imperfect

and incomplete information. While the politics of institution building requires quick decision making, actors need some sort of 'filter' for sorting information. This function is performed by ideology (Hinich & Munger, 1994). Ideology is understood here not as a set of political doctrines but as a cognitive scheme or a 'mental model' (Denzau & North, 1994) of actors' perception of various problems. Ideology is applied to various policy processes, ranging from economic reform (Radaev, 1998, pp. 291–306) to local government reform (Gel'man, Ryzhenkov, Belokurova & Borisova, 2002). The ideology applied plays both positive and normative functions: it helps political actors in the optimisation of necessary information and to compare existing institutions with ideal ones (North, 1981, p. 49).

While interests and ideologies contribute to the rationality of actors' choice of institution building, uncertainty causes an information deficit and undermines rational actions. Since actors during the period of regime change can evaluate possible consequences of institutional choice only *ex post*, uncertainty limits the efficiency of their actions. For example, actors are heavily concentrated *ex ante* on the gathering of (sometimes useless) information about their rivals, rather than on valuable information about the impact of institutions. Thus the policy cycle of institutional changes can be described through an informal model as resulting from interests, ideologies and (deficit of) information:

$$\text{Institutional changes} = \Sigma \{ \text{Interests} + \text{Ideologies} + \text{Information deficit} \}$$

The role of interests, ideologies and information is different at various stages of institution building. During the stage of institutional choice ideologies might be decisive, while interests are either unclear or faced with deficient information (ideologies are not sensitive to the lack of information). As long as actors discover institutional effects, the impact of uncertainty is decreased, although the consequences of institutional changes might cause new uncertainty. The deficit of information matters until the very end of the cycle of institutional changes. Institutional effects lead to relative increases in the impact of interests in comparison with ideologies, while actors can modify or even change their ideologies. Finally, the end of the cycle of institutional changes can become possible when a new balance of actors' ideologies and interests in relation to new political opportunities is reached.

This model can be applied to the analysis of the politics of institutional changes in Russia in the 1990s to early 2000s. The early stages of this process resulted from the zero-sum conflicts of 1991 and 1993, when 'winners' were interested in the formation of new institutions for the sake of legitimisation of the new regime and maintenance of their powerful positions. But high uncertainty led to unintended consequences for institutional changes. For example, the adoption of a mixed electoral system in State Duma elections in 1993 was helpful not for pro-government parties but for the ultra-nationalist LDPR (Gel'man & Golosov, 1999; Moser, 2001). Under these circumstances ideology was a major driving force in institutional choice. Russia's leading ideology of the early 1990s, economic liberalism (Radaev, 1998, pp. 297–301), which was oriented toward minimisation of the role of the state where possible, shaped the direction of the politics of institution building.

Institution building was oriented toward the political dominance of the 'winners' of economic reforms. Actors' interests were focused on the strengthening and deepening

of political innovation. Informal institutions were a useful method to bypass imperfect old and/or new formal institutions. Sometimes they were created intentionally by deliberate omissions or ambiguity within the framework of new formal institutions. The politics of the privatisation of enterprises, loans-for-shares auctions (Wedel, 1998) and bilateral treaties between the federal centre and Russia's regions are typical cases of such mixtures of formal and informal institutions. In fact, the politics of institution building contributed to 'para-constitutional practices' (Riggs, 1988), or informal institutions, which, though not violating formal ones on paper, reversed their effects in practice.²

Actors used the liberal ideological 'filter' as a tool of institutional choice in favour of eliminating state intervention, while considering that state agencies (including but not limited to courts) should merely provide oversight over legal norms and enforce them. The weak state was unable to perform control functions well. Institution builders believed those formal institutions established on paper would operate according to new written norms, while the old unwritten rules would disappear. In fact, however, new formal institutions, designed on paper, were full of loopholes. These gaps were unintentionally filled by informal institutions. For example, when Russian reformers in the early 1990s adopted laws on freedom of speech, they did not take into account issues of property rights in TV, radio and printed media. Soon after, this led to a redistribution of control over media in favour of 'oligarchs', and later in favour of the state (Zasursky, 2001). The other case was the re-establishment of a 'vertical executive' hierarchy instead of conduct of both regional and local elections in the 1990s for the sake of economic reforms. In fact, this preserved the status quo in the political development of Russia's regions (Gel'man, Ryzhenkov & Brie, 2003). Some of the loopholes were closed while some spontaneously created informal institutions were eliminated during the subsequent stages of institution building. Yet some of these informal institutions demonstrated their usefulness to certain actors and became indispensable. Thus the practice of 'deformalisation of rules' (Radaev, 2001) became routinised.

Informal institutions thus occupied a central place in Russian politics both by design and by default. Meanwhile, in the early 2000s all meaningful actors were forced to accept new rules of the game. Even though institutional effects were imperfect, the costs of further institutional changes exceed those of continuity of the status quo (McFaul, 2001, pp. 338–371). These developments contributed to a shift in the strategy of institution building due to actors' changing expectations vis-à-vis new institutions and vis-à-vis each other (Knight, J., 1992, p. 185). Thus the politics of institution building turned from innovation to the preservation of a newly-emerged equilibrium. By that time the level of uncertainty in Russia had decreased, while political actors became interested in more stable rules of the game. Ideologies demonstrated a trend toward a 'conservative shift' (Radaev, 1998, p. 301) and coincided with the dynamics of actors' interests. In sum, the policy cycle of institution building is close to completion and the new uneven balance of formal and informal institutions has a strong chance of being reproduced over time.

These stages in the policy cycles of institution building in Russia were not chronologically consecutive; their dynamics in various areas were quite different. For example, in the case of federal–regional–local relationships the cycle of institution

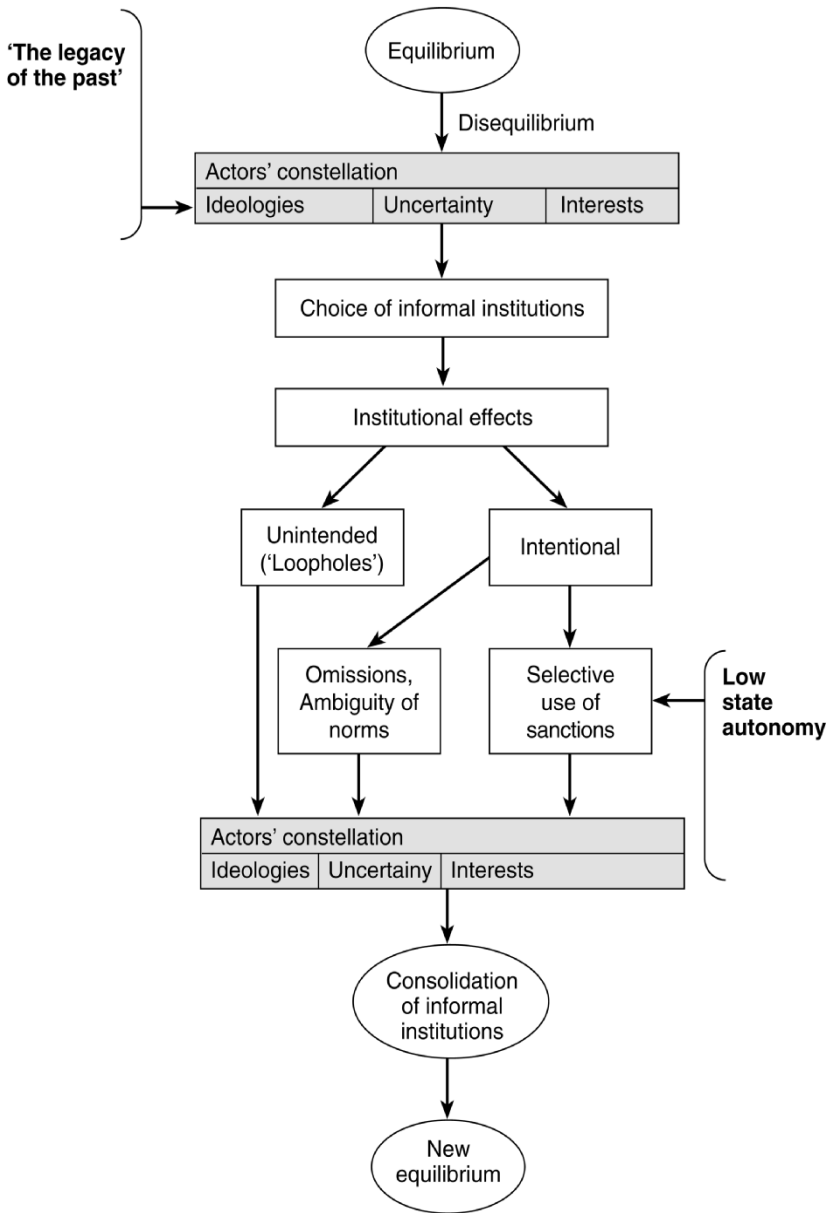


FIGURE 1. The Formation of Informal Institutions as an Outcome of Institution Building.
 Note: Structural factors bold, procedural factors shaded.

building is not completed yet. In the case of president–government–parliament relationships, in contrast, it was finished soon after the 1999–2000 national elections (Smith & Remington, 2001, pp. 148–53). Now I shall turn to an analysis of the emergence of informal institutions during the process of reform of electoral governance in Russia, with special emphasis on the norms of media coverage and

advertising, political finance, and conflict resolution during electoral campaigns. The analysis of institution building in this particular arena, albeit important as such, is used here as a 'crucial case' (Eckstein, 1975) for testing the actor-centred model of the formation of informal institutions, a case that might have broader implications for the study of politics in Russia and beyond.

Crafting rules of the game: free but unfair elections

Although institutions of electoral governance are of crucial importance to the democratic conduct of elections, until very recently their analysis was not at the heart of electoral studies (Mozaffar & Schedler, 2002, p. 6). In this respect elections in Russia, according to the classification elaborated by Elklit & Svensson, fit into the category of 'free but unfair' (Elklit & Svensson, 1997, p. 37). In other words, equal participation of candidates and parties in elections meets simultaneously with unequal access to resources for electoral competition (Gel'man & Golosov, 1999; McFaul, Petrov & Ryabov, 2000). If one left aside some suspicions on electoral fraud (*Moscow Times*, 9 September 2000), the unfairness of Russia's elections includes three major components. (1) One-sided coverage of campaigns in the media, including state-controlled TV and radio; (2) unequal access to political finance, including abuse of public finances for campaign purposes; (3) unfair resolution of electoral disputes, including imposition of sanctions during the campaign and after polling day. All these features of Russia's electoral politics are typical of the 'menu of manipulations' (Schedler, 2002, pp. 104–109) in many non-democratic and semi-democratic regimes. In a broader perspective they may be considered an example of 'fuzzy legality', which includes intentional lack of regulation, sweeping delegation of power (in this area, to electoral commissions and courts), selective enforcement of rules and dead-letter law (Cohn, 2001, p. 474). But in the case of Russia these manipulations and 'fuzzy legality' are not inherited from a 'legacy of the past'; rather, they are a result of the politics of institution building, which causes the effect of 'authoritarian adaptation' of elections (Afanas'ev, 2000, p. 17).

Electoral reform in Russia was launched in 1993 when El'tsin dissolved the Russian parliament. His allies insisted on the adoption of a decree on the rules of the 1993 elections to the new legislature, the Russian State Duma. The draft of this decree was designed by a group of liberal politicians, led by Viktor Sheinis. On the basis of the rules for the 1993 elections, in 1994 the State Duma passed the law 'On basic guarantees of electoral rights of citizens of the Russian Federation', which defines the framework of rules for all kinds of elections in Russia. Within this framework, laws on presidential and parliamentary elections were adopted in 1995. Electoral laws as well as some other rules and norms were passed by the Duma in 1994–95 as a result of compromise between parliamentary parties, due to a high degree of party fragmentation and a lack of a stable majority (Gel'man & Golosov, 1999, pp. 47–72; Smith & Remington, 2001, pp. 93–115). During the second convocation of the Duma, in 1996–99, electoral laws were amended to a certain degree. Although the Communists had a near majority of seats, in this policy area they acted more or less in coordinated fashion with the liberal party Yabloko. Finally, in the third convocation of the Duma, in 2001–02, the policy cycle of electoral reforms was logically exhausted. New laws

on political parties, new versions of electoral laws and amendments to some other laws (including media and financial regulations) were easily adopted thanks to the stable pro-government parliamentary majority and firm control of the presidential administration over the politics of institution building.

Yet many aspects of electoral reform were areas of strident discussion among politicians. The politics of institution building for electoral governance was not the major focus of attention of political actors, and disagreements among them, with rare exceptions, did not matter for institutional changes in this area. How did interests, ideologies and information affect institutions of electoral governance in Russia?

News coverage and media campaign

From the very beginning electoral reformers worked to minimise media regulation. According to the electoral rules, all parties and candidates get equal airtime and space for free publicity in state-controlled TV, radio and newspapers. The 1993 rules, however, regulated neither paid advertising nor publicity in non-state media. This institutional choice reflects both the ideology and the interests of reformers. On one hand, liberals considered any media regulation as a threat to the freedom of speech. Russia's 1991 law on media prohibited censorship, although it was full of loopholes regarding economic aspects of media (including those established or financed by the state). On the other hand, El'tsin's allies effectively controlled state TV during the referendum campaign of April 1993, and its coverage was subsequently one-sided. The Supreme Soviet in 1992–93 and left-wing parties in the State Duma in 1994–95 attempted to achieve parity of news coverage on TV through the establishment of supervisory boards, but these moves were discredited and blocked by the pro-El'tsin camp, not to mention such interest groups as the media themselves.

Under conditions of high uncertainty before the 1993 elections, the liberal doctrine of minimal state control was an ideological 'filter' which affected institutional choice for media regulation. Although the interests of the pro-El'tsin camp were also clear, during the 1993 election manipulations of media coverage were limited (Roselle Helvey, 1998). In part, the reason for this was that new rules were created for the legitimisation of political innovations (such as competitive elections and media freedom). The negligible bias of campaign coverage also resulted from predictions of an electoral victory for the pro-El'tsin camp (based on wrong information) (Urban, 1994), so in fact, liberals did not engineer these manipulations out of self-confidence under uncertainty. Unlimited paid TV advertising, however, played a decisive role in the electoral outcome, and LDPR leader Vladimir Zhirinovskiy effectively used these opportunities for his party's electoral success (Hughes, 1994).

In 1994–95 the rules of the media campaign were partly amended. The law on parliamentary elections limited paid advertising in the media, although during the 1995 and 1999 elections this factor in the campaign was relatively negligible because of party fragmentation. A lack of regulation of the media beyond official publicity led to the flourishing of various forms of indirect political advertising. Although loopholes were filled by new norms, an institutional vacuum still resulted from deliberate omissions designed to please the interests of the ruling group, while the impact of ideology decreased.

TV news, rather than direct or indirect advertising, was a major source of information for voters; thus the biased news coverage served as a major tool of manipulation. Yet in 1995 these effects were limited (White, Rose & McAllister, 1997, p. 213), but later on they degenerated into 'information wars'. The European Institute for the Media describes the 1996 presidential campaign TV coverage as 'strident, harsh and one-sided'. The balance of positive estimations of El'tsin and negative estimations of Zyuganov in major TV news programmes was + 492 and - 313 respectively (White, Rose & McAllister, 1997, pp. 251-252). During the 1999 parliamentary elections the Kremlin-backed nation-wide state TV channels ORT and RTR won the 'information war' over the private NTV and some regional-based TV companies (McFaul, Petrov & Ryabov, 2000, pp. 18-20; Oates, 2000). According to some estimates, this 'war' affected the electoral choice of up to 10-20% of Russia's voters in the 1999 State Duma elections (McFaul, Petrov & Ryabov, 2000, p. 209). The evaluation of the 2003 State Duma election campaign in Russia by OCSE observers revealed a similar picture of the media coverage.

After the 1999-2000 elections uncertainty decreased and actors' expectations became more certain. The politics of institution building was reoriented toward the preservation of the status quo. The institutional vacuum in this area turned towards tough regulation. In 2002-03 the Kremlin initiated amendments to the law 'On basic guarantees ...' and the law on media. According to this proposal, virtually any media mention of candidates and/or parties during the campaign (save for official information provided by electoral commissions) will be regarded as advertising and therefore must be counted within the limits of designated airtime/space (either free or paid). The only exception to this rule allowed to the media is coverage of the professional activities of candidates. This would, in fact, give a free hand to incumbents' campaigning. The violation of these rules would lead to various sanctions, including closure of media outlets, while electoral commissions and courts have to decide which information is considered advertising. This caused protest from the media and from liberal parties, and was the subject of a legal suit in the Constitutional Court of the Russian Federation in October 2003. Although, following the Court's decision, the most restrictive regulations were abolished, in fact the electoral law remains an uneven combination of over-regulation and under-regulation of news coverage and media campaigns. This opens possibilities for selective use of sanctions (Paneyakh, 2003) against 'wrong' parties, candidates and media outlets. Needless to say, in most cases during the parliamentary and presidential elections in 2003-04 the Central Electoral Commission (CEC) and the Supreme Court ignored protests by opposition parties and politicians.

Campaign financing

The institutions of campaign financing were imported from the US model of political action committees and adapted to local conditions. According to the electoral rules, all parties and candidates must open special bank accounts ('electoral funds') for the accumulation of donations for campaigning. Private and corporate sponsorship was a top priority in funding, while state support was merely symbolic. During the 1995 State Duma elections the limit on electoral funds of parties was \$2,400,000, while the

CEC distributed \$18,000 to each party and the rest of the money came from corporate and private donations (White, Rose & McAllister, 1997, p. 212). This model of campaign financing was different from those in Hungary or the Czech Republic, where state funding was top priority and private funding was limited and corporate donations prohibited altogether (Lewis, 1998). The reasons for this choice have some ideological connotations. As Sheinis put it (interview with author, August 1994), 'It is not quite so bad that some rich people buy votes and come to power. It is state-owned redistribution that does the most harm to Russian democracy' (quoted in Gel'man & Golosov, 1999, p. 53). The ideology coincided with the interests of Russian liberals who desired legitimisation in the new political and economic order and (not without grounds) hoped for financial support from new Russian business.

The model of political finance implemented in electoral law was full of both loopholes and deliberate omissions. It regulated just a small portion of campaign expenses directly related to publicity during the campaign period. But in fact, major electoral activities (including campaign preparation, payment to staff, office costs and the like), though much more important for electoral outcomes, remain unregulated and non-transparent. The institutional vacuum in this area opened up broad opportunities for various informal financial linkages between parties and business or the state (including, for example, selling key positions in party lists).

The problem was that publicity itself was not the only (and not even the major) channel of influence of parties and candidates on voters. While direct bribery of voters was prohibited, indirect bribery, ranging from pre-electoral charity to the delivery of special services to voters, flourished. Furthermore, rules of campaign financing do not affect the arbitrary use of state funds for campaign purposes, typical for incumbents and 'parties of power'. In this case liberals deliberately created an institutional vacuum, even if it was not beneficial to them during the 1993 and 1995 State Duma elections. The impact of informal institutions on political finance, however, was evident in the 1996 presidential election. State resources were openly used for campaign purposes, and the well-known arrest of two of El'tsin's staff carrying \$538,000 in cash out of a government office was just the tip of the iceberg (Gel'man, 1998, pp. 158–159). Indirect bribery of voters, according to Treisman (1998), was one of the decisive factors in the electoral outcome.

Although in 1997 the State Duma adopted some amendments designed to close loopholes for electoral bribery, they have not achieved major success. First, some loopholes were replaced by others. Second, demands for financial transparency were merely populist and ineffective. Candidates in parliamentary and presidential elections must declare their income and wealth, yet in reality their stated incomes often have nothing to do with the real financial situation of these candidates or their parties. Third, electoral commissions in charge of enforcing these norms have insufficient resources for this task. At best, they close their eyes to all violations. In the worst case, electoral commissions and courts used formal institutions of political finance as a weapon of selective sanctions against 'wrong' parties and candidates. Given the fact that most parties and candidates violate rules of political finance, nobody (save for pro-governmental parties and candidates) was protected from arbitrary use of these norms.

Towards the end of the period of uncertainty new institutional changes were

launched. In 2001 the State Duma adopted a new law on political parties, as proposed by President Putin. Under this law parties represented in the Duma receive state funding according to the proportion of votes obtained at parliamentary elections (despite liberals' protest). The state, in its turn, reserved the right to inspect parties' books to ensure proper use of public finance. This provision, however, might be used not as a safeguard of transparency of political finance but rather as a tool of selective sanctions. Although some other rules regarding campaign finance were subject to further amendments (for instance, pre-electoral charity was prohibited), the model remains largely unchanged. One might predict the maintenance of the status quo in the future.

Disputes and sanctions

The imposition of sanctions for violations of electoral law is possible during three stages of the electoral campaign: (1) registration of candidates and party lists; (2) pre-electoral publicity; and (3) official recognition of electoral results. Refusal and/or cancellation of registration, as well as recognition of elections as invalid, could become outcomes of electoral disputes (both among contestants and between them and the state).

Russian electoral reform in this respect has demonstrated the dominance of informal institutions. Yet since 1993 courts, rather than electoral commissions (which were appointed by legislatures and executives and dependent upon them), have played a crucial role in the resolution of disputes. During the 1995 and 1999 parliamentary elections the Supreme Court denounced the refusal of the CEC to register the lists of some opposition parties. But the real problem lies in the unclear criteria for resolution of electoral disputes, while the list of grounds for imposition of sanctions was not exhaustive.

In this area loopholes, omissions and ambiguities resulted purely from interests rather than ideologies. This was essentially true of the recognition of elections as invalid. As Article 32 of the 1994 law 'On basic guarantees ...' put it, 'the election commission shall recognise elections as null and void if violations during polling or identification of voting returns prevent any truthful identification of the free will of voters' (Gel'man & Golosov, 1999, p. 456). During debates on the drafting of the 1994 law, when an exhaustive list of possible violations of laws as grounds for nullification of elections was proposed, the idea was ultimately rejected. As one pro-El'tsin State Duma member suggested, 'we should have an opportunity to denounce presidential elections if Zyuganov or Zhirinovskiy win' (personal communications with author, August 1994). Although this never was the case, it is not difficult to find a reason for invalidation of elections under such an unclear rule. The most notorious case was the mayoral election in Nizhny Novgorod in March 1998. When the outsider populist Andrei Kliment'ev, an entrepreneur with a criminal background, surprisingly won, the election was recognised as invalid because during the campaign he promised to raise pensions and wages; this was considered 'bribery' (Gel'man, Ryzhenkov & Brie, 2003, p. 121). On similar grounds, however, one could denounce the results of any of Russia's elections.

The State Duma attempted to close some loopholes, yet the effect on the rule of

law was negligible. The 1994 law 'On basic guarantees ...' permitted the cancellation of registration of candidates/party lists only in the case of anti-constitutional claims, while the 1997 version of the same law contained a broader list of limitations, including sanctions for violations of rules of campaign financing. Some grounds for refusal of registration of candidates/party lists were clarified, and some controversial norms (open to arbitrary use) were revised. The consequences of adopting these amendments were mixed. A quantitative analysis of the courts' and the CEC records on electoral disputes during the 1999 State Duma campaign in single-mandate districts demonstrates that the merit of the cases was not the major predictor of the success of claimants, despite the fact that political bias was relatively insignificant too (Popova, 2004). But most norms were either easily avoidable or provided incentives for selective use of sanctions for real or imagined violations of the law. The practice of many elections in Russia's regions, ranging from Kursk *oblast'* to Ingushetiya, is well known in this respect (see Pribylovsky, 2003). At the same time, to the list of grounds for sanctions were added some doubtful items, such as wrong information on candidates' income and wealth, or the removal of one of three leading candidates from the party list during the 1999 State Duma elections. Later the latter norm was abolished by the Constitutional Court. The threat of selective imposition of sanctions, therefore, was also a part of the 'menu of manipulations' within the framework of 'fuzzy legality'.

The end of the cycle of institutional changes in 2001–03 sets limits on reforms in this area. The most dubious grounds for sanctions were excluded and methods for their imposition revised (for example, registration of candidates and parties could not be cancelled during the last five days of the electoral campaign). Nevertheless, the law on political parties allows broad opportunities for state control over parties, including possibilities to cancel their registration at any time (not only during a campaign). Grounds for the nullification of electoral results were not subject to substantive revisions; this rule still serves as an 'insurance' in case of electoral defeat. Therefore, the question of a possible power shift by electoral means in Russia remains open after more than ten years of electoral reforms.

The dynamics of institutional change in the area of electoral governance outlined above are typical for the model of institution building presented here. The initial choice of institutions during the early stages of reform resulted from actors' interests and ideologies, which played a certain role in further institutional changes. Although legal loopholes were closed (even though partially), legal omissions and ambiguities formed a likely environment for the dominance of informal institutions. As long as informal institutions are useful for preservation of the status quo, they will be preserved or even transformed into a biased set of formal institutions. If informal institutions fail to serve these purposes, they will be replaced by new informal institutions. Structural factors also demonstrate some indirect effects on institution building. The 'legacy of the past' to some degree affected actors' ideologies, while a low degree of state autonomy contributed to policy implementation, especially in the case of the selective use of sanctions. Yet political opportunities impose certain constraints on the politics of institution building, while concrete varieties of reforms result from actors' choices. When the uncertainty of the transition period in Russia is exhausted, actors will have no incentives for institutional changes. This notion poses

questions about the prospects of the dominance of informal institutions, and how stable the new equilibrium will be.

Concluding remarks: 'dictatorship of law' as equilibrium?

What about the prospects of the newly-established informal institutions that emerged on the basis of the model outlined above? If one considers the dominance of informal institutions as an outcome of institution building, the short-term and long-term consequences of institutional effects should be distinguished. In the long term the impact of structural factors is much more salient than the role of actors, with their interests, ideologies and information. But the short-term impact of institutional choice should not be underestimated; newly established institutions could become indispensable, because the costs of changing the status quo might increase over time. The very fact that virtually all of Russia's actors in the early 2000s supported the politics of the 'dictatorship of law'—the restoration of state capacity against the background of the dominance of informal institutions (Gel'man, 2000)—is clear evidence for that. Since institutional changes are generated because of the changing of the distributive effects of institutions or actors' bargaining powers (Knight, J., 1992, p. 145), the preservation of such politics depends upon its impact on the distribution of actors' powers and resources.

In comparative perspective the effects of informal institutions on political regimes are different. An analysis of the politics of institution building in Meiji Japan demonstrated how informal institutions built by Japanese 'oligarchs' failed to establish long-term regime stability (Ramseyer & Rosenbluth, 1996). As Ramseyer & Rosenbluth argue, the maximisation of political rent in Japan led to conflict among élites and inefficiency in the distribution of resources among political actors. But, as Mexican experience suggests, if informal institutions are capable of maintaining elite continuity and resource distribution due to the formation of a ruling 'party of power' (Knight, A., 1992), their dominance could be 'frozen' over decades, as long as previous structural conditions are still relevant (Eisenstadt, 2002).

It is too early to say to what extent informal institutions may contribute to the stability of Russia's political regime or undermine it. But if one focuses exclusively on Russia's domestic political environment (as yet, the international impact on it is relatively negligible), it is unclear what the potential sources of a possible movement toward the rule of law will be. The constellation of political actors, their interests and ideologies, as well as restoration (even though partial) of state capacity in Russia, is unlikely to prompt such a move. Thus 'informal institutionalisation' deserves to be viewed not as a temporary 'defect' of post-Soviet democracy (in the sense of deviation from the 'right' way of development) but rather as a long-term principal feature of Russia's political regime.

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¹ Although varieties of relationships between formal and informal institutions might differ (Pejovich, 1999), the scope of analysis in this article is limited to their mutual jeopardy.

² This is not to say that the impact of informal institutions is necessarily negative. As Riggs put it, in the case of 'divided government' in the USA, para-constitutional practices of informal bargaining between president and legislators, thanks to low party discipline in the Congress, prevent deadlock in decision making (Riggs, 1988).

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