

Chapter 5: Constitutional foundations of the post-communist Russian economy and the role of the state

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Highlights

- The legal basis of the market economy in Russia is the 1993 Constitution and the 1995 Civil Code.
- Both documents have been amended since being originally introduced to reflect political changes in the country.
- In most instances, the original strong protections have been watered down to make room for political decisions.
- The changes in Russia's legal regime regarding the market economy have thus allowed for much more room for state intervention than was desired by reformers in the early 1990s.

I. Introduction

The transition from communism to capitalism with the fall of the Soviet Union at the end of 1991 was accomplished via a multi-faceted approach involving the change of legal norms, institutional orderings and functions (Hartwell 2013), and, of course, personalities in power. Of these, the most basic and fundamental was the reorientation in the authorising framework for the newly independent Russian Federation, away from one guarding communist tenets and towards one which facilitated a market economy. In particular, the shift in the Russian Constitution and in the institutions charged with enforcing its provisions (including the executive, legislative, and judicial branches) created a sea change in economic relations within Russia, legalising natural rights which, for decades, had been officially illegal under the Soviet legal framework.

However, the Constitution also had a goal to set the rules of the federal system, defining the rights and responsibilities of republics, territories, and regions ('subjects' of the federation) against the prerogatives of the federal government. This construction of a new series of political institutions, with new relationships among each other, created a parallel structure for the development of the market economy, one which was meant to support such an evolution but one also with the potential to intrude and/or retard this development. Indeed, while the Constitution outlined a broad set of principles related to the market economy and what was 'allowed' within the borders of the Russian Federation, in many ways it offered an idealised version of economic outcomes. As in every other country, the Constitution represented a starting point for discussion in defining the actual parameters of the role of the state in the economy, a point which would then be hashed out in the political arena and could shift over time due to changing political currents. In the case of Russia, and for most of its post-communist experience, this struggle between the economic foundation of the Constitution and the political apparatus it spawned has resulted in a move away from these economic ideals and towards a subordination under political realities.

This chapter will examine this tension in the Russian post-communist experience, analysing the main provisions of the Constitution and other important legislation related to the market economy

(such as the Civil Code) that determine the shape of the economic system in Russia and how it affects its implementation in practice. Specifically, we will focus on the role of the state as envisioned in the legal framework of Russia and how this has evolved since the Russian Federation became independent at the end of 1991. Which is a more accurate representation of the extent of state involvement in the Russian economy: is it the Constitution? Is it the supporting legislation and the institutional structure which the Constitution laid out? Or has it been the political imperatives of the Russian government and the personalities which have been in charge?

II. The move towards legalising the market economy: promises and problems

The Constitution and the Civil Code

The Russian legal framework writ large consists of several authorising pieces of legislation, including, most prominently, the Constitution of 1993 (*Konstitutsiya Rossiyskoy Federatsii, Prinyata vsenarodnym golosovaniyem 12 Dekabrya 1993*). The Constitution is the supreme law throughout the territory of Russia, supplemented by Federal Constitutional Laws (FCL) adopted on constitutional issues, decrees of the President, and decisions of state authorities. As noted above, the Constitution also sets out the structure of the Russian government, dividing authority across the executive, legislative, and judicial branches, with Chapter 5 outlining the legislative bodies of the Russian Federation; similar to democracies elsewhere around the world, the legislative framework which was created under the Constitution's aegis is primarily determined by the legislative branch (the State Duma), although (especially under President Vladimir Putin) this has not precluded close coordination between the legislative and executive branches (and, to some extent, the judiciary as well). As can be expected from a document which is primarily political, the overall purpose of the Constitution is to elucidate basic principles but more concisely to lay out the functions and structure of the Russian state.

It is crucial to note, however, that the 1993 Constitution was conceived during a protracted political struggle in Russia, specifically between President Boris Yeltsin and the legislative branch, centred on one of the most important issues about the structure of the Russian state: the distribution of power across the various branches. The legal reality of the validity of the Constitution of the Russian Soviet Federative Socialist Republic (RSFSR) after 1991 – and the ambiguities attached to the lack of an immediate replacement – inhibited necessary measures to move forward, in both the political and economic sphere. In particular, despite the reality of the Soviet Union having highly centralised power (and in particular in the executive), the Constitution from 1977 on paper at least had a much more balanced delegation of authority between the legislative and the executive branch (Osakwe 1979). This constraint on the democratically elected administration of Boris Yeltsin (and the uncertainty regarding what could be done) was found to be intolerable from the point of view of the executive, and many times in 1992, the Yeltsin administration simply set aside the Soviet Constitution and acted in unilateral ways (Kubicek 1994). The infighting between Yeltsin and the Congress of Peoples' Deputies and Supreme Council came to a head with Yeltsin's 'presidential coup' in 1993, culminating in the shelling of the White House and a victory in the constitutional referendum of 12 December 1993 (Roeder 1994). The result of these events was the enhancement of the power of the Presidency and the executive in the Russian political system, a reality which was enshrined in the 1993 Constitution and (as we will see) would have ramifications for the future of the market economy.

But from the vantage point of 1993, and specifically focused on the economy and its regulation, the Constitution of 1993 was a massive positive change from the previous foundational document from the Soviet Union, the 1977 Constitution of the Union of Soviet Socialist Republics (USSR) and RSFSR. Itself a third revision of the Soviet Constitution (previous versions were approved in 1924 and 1936), the 1977 Constitution of the USSR and RSFSR continued to define economic relations as a function of the collective, recognising ‘social property’ (but not private property) as the basis of the socialist system. By contrast, the Constitution of 1993, as the aggregation of fundamental principles of the Russian Federation, acknowledges the principles (on paper at least) of what is necessary for a successful open market economy, repudiating the ‘*supremacy of the fundamental principles of the socialist state order [democratic centralism, socialist legality, absence of protection of private property...]*’ of the Soviet order (Kalinichenko and Kochenov 2021, p. 342).

Instead, the Constitution of 1993 focused on the basic principles required for a functioning market economy, laid out most clearly in Articles 8 and 9: Article 8 explicitly provides for the free flow of goods, services, and capital within the territory of the Russian Federation, as well as outlining ‘support for competition’ within the framework of economic relations. Perhaps more importantly, Article 9(2) establishes the right of private property ownership, a right further enhanced by Article 35 (which also prohibits takings of private property without a court decision and guarantees the right of inheritance), but with provisions that ownership of land and other natural resources by state and municipal authorities is still allowed. Finally, Article 34 of the Constitution explicitly carves out a space for the private sector, upholding the right of Russian citizens to engage in entrepreneurial activity as long as they are not engaged in activities aimed at monopolisation.

Enforcing the Constitution of 1993 was entrusted to the Constitutional Court of the Russian Federation, a judicial body which actually was founded before the USSR fell (in July 1991) and thus, for two and a half years of its existence was meant to oversee the implementation of the 1977 Constitution. Given its reliance on an antiquated document – and a major part in the power struggle between the executive and the legislative branches after the fall of the Soviet Union – Russian President Boris Yeltsin suspended the Constitutional Court in late 1993, before the new Constitution came into being. Legal experts were intimately involved in making sure that the Court was part of the Constitutional process, in order to avoid legislative changes after the fact, and the Court received impressive powers to issue legally binding interpretations of the Constitution (Trochev 2008). However, being included in the protracted process of the Constitution meant that it was not until 1994 that a new Act authorising the organisational creation of the Court was passed, and the Court itself began operations again only in 1995 (and a further law in 1996 allowed for the creation of courts at the local level).

Following the Constitution in 1995 was a more detail-oriented and legalistic document, the Civil Code of the Russian Federation, replacing the antiquated 1964 Civil Code of the Soviet Union. The new Civil Code laid out the legal basis for protecting the principles that the Constitution affirmed and could be thought of as (in the words of Boris Yeltsin) the ‘economic constitution’ of the country, displaying a shift towards building a distinct legal culture regarding economic activities and enshrining in legal practice and norms the foundations of the market economy. In this regard, the Civil Code went even further than the Constitution in affirming the rights of entrepreneurs, with much of the document carving ‘*out major areas of economic activity to be*

decided by the private parties to a transaction, free from state interference' (Blumenfeld 1996, p. 479). An example of this is Article 209, which explicitly referred to the right of land ownership ('*The owner possesses the rights to hold, to use, and to dispose of his property*'), whereas elsewhere in the document as enacted in 1995 there are stipulations regarding private contracts and prohibitions against state interference stronger than even in some Western countries at the time (Lametti 2005); most importantly, perhaps (and with an eye on the political struggle between the Duma and the President), was the supremacy clause of the Code, which stipulated that legislation or executive decrees could not be used to alter the Code, but instead the actual text of the Code itself needed to be amended. Any legislation which was thus in conflict with the code was null and void unless the Code was changed to allow for it (Blumenfeld 1996).

In many ways, the key attribute of both the Constitution of 1993 and the Civil Code of 1995 was to signify a historic break with the past of modern Russia and lay the foundation for a new market economy. By starting with the basic documents of a legal framework, Russian reformers hoped to break the personal and transactional approach to the law which had dominated under the Soviet Union, where the rule of law did not exist, and laws were applied according to the whims of the Communist Party (Hendley 1997). This 'top-down' approach found favour with international advisors who were eager to build the institutions necessary for Russia's market transition (Boycko and Shleifer 1995) and was also welcomed by Russian policymakers, who saw such enshrinement of principles as a relatively quick way to build acceptance of the market economy. Although many of the basic policies for transition had already been underway by the time the Constitution was approved (see below), it was hoped that the creation of a coherent legal commitment to the market economy would allow for its rapid development. Moreover, by rolling into the legislative changes the institutional foundations for the legal profession and the judiciary in an independent Russian Federation, it was also hoped that the judiciary would become another guarantor of rule of law.

The problem of delay

The specific Articles in the Constitution dealing with private property and entrepreneurship came about as part of the general debates on the Constitution's protections but were also affected by the prevailing economic climate at the time. As noted, the economic transformation of Russia on the basis of private property had begun already in earnest in 1992, even without the foundational laws present. While macroeconomic stabilisation was a prerequisite for transition, the long road to stabilisation was accompanied by a broader programme of privatisation to undercut the power of state-owned enterprises and build up a nascent private sector.

The efficacy of Russia's privatisation programme has been debated vigorously in the economics literature, and will be discussed more in-depth in Chapter 7. Observing the privatization debate in terms of the overall enabling environment for property rights, and especially with regard to legal protection of property rights, for many firms, ownership had been transferred but many of the issues related to the operation and position of these industrial behemoths had not been resolved. More importantly, the legal framework regarding property was still absent and, without a coherent set of legal protections, competition could not flourish to erode the power of these large firms. Political scientist Michael McFaul (1995, p. 210) noted that '*by the summer of 1993, insiders had acquired majority shares in two-thirds of Russia's privatized and privatizing firms...little if any*

restructuring (bankruptcies, downsizing, unbundling) had taken place within enterprises, and few market institutions had been created.' But even though these firms had been moved to private hands, subsidies continued to be a major part of the Russian budget (still at 10.74% of gross domestic product [GDP] by the end of 1993, according to the World Bank – see Freinkman and Haney 1997). More importantly, the lack of explicitly delineated formal property rights meant that informal property rights generated during the late Soviet period at the worker and industrial level made restructuring difficult (Sachs 1992); charges of asset stripping and looting of public investments for private gains were made in firms which were not privatised (Shleifer and Treisman 2005).

The Russian government's inability to generate the legal protections for property rights in the interim between the fall of the USSR and 1993, combined with the misplaced focus on garnering more powers for the executive (while de-prioritising the need to replace the 1977 Constitution), made such sweeping provisions for protecting the market economy in the 1993 Constitution both necessary and somewhat unrealistic. At the time that the Constitution was under formation, interests opposed to reform had already become entrenched and powerful in their opposition to the President, meaning that much of the protections offered were already being eroded in reality (Trochev 2008). Entrenched interests within state-owned enterprises supported keeping firms state-owned, while the existence of opposition in the Duma related to discredited ideologies (above all, the Communists) impeded swift legalisation of fundamental economic institutions from 1992 to 1993. The Communists also found unlikely but willing allies from the oligarchs, the new titans of industry who had started to acquire assets before the USSR fell and who had consolidated their positions afterwards. In an influential paper in 2003, Konstantin Sonin argued that the Russian transition had created a class of the economy (the oligarchs) which actively opposed broad-based property rights. The reasoning was that the oligarchs had achieved a sufficient level of rights to protect their own property (whether through wealth acquisition, rent-seeking, or political activity) and had no need for functioning economic institutions which may threaten their own rent streams (Sonin 2003).

This reality meant that the guiding legislation under these broader principles (the Civil Code) was also incredibly delayed, not being proposed until 1994 and enacted only in 1995; this long delay meant that the small window of reform available to remove many Soviet-era institutions had closed and, instead, the political compromises and obstruction which had occurred in the interim were actually codified.¹ This could be seen most clearly in the lack of progress on broad-based property rights, as the protections offered by the Constitution and Civil Code required a new Land Code to become effective. However, the existing Land Code at the time of the passing of the Constitution '*allowed regions to decide questions of land ownership, and at least 10 regions had land laws that did not recognize private ownership of land as late as 1995*' (Wegren 2012, p. 195). It was not until 2001 – and a new Presidential regime – that a land code was actually passed (see below), and it too was a reflection of this delay.

III. When politics and economics clash: the period after 2000

¹ Polish economist and former Finance Minister Leszek Balcerowicz called this time after a crisis or during a transition, 'extraordinary politics' (Balcerowicz 1995) where there is only a small window to get transformative reforms passed.

The delay between the end of the USSR and the creation of a new set of legislation to govern the transformation was problematic but not fatal for Russia's transition; however, married with the emphasis on increasing executive power, it was to create a myriad of difficulties for the development of economic institutions in the country. The ramifications of this early neglect are still felt today, especially when one considers the relative weight that politics and economics have in the Russian system under President Vladimir Putin.

As Semyakin (2021, p. 16) noted regarding the body of Russian law, *'property relations are regulated by various laws that are quite contradictory.'* Indeed, there were contradictions within the Constitution (noted above) on private property but, more problematic was a myriad of caveats included in the Civil Code which could then be utilised to infringe on economic rights. For example, in Article 1 of the Civil Code, there is a stipulation that *'civil rights may be restricted on the basis of the Federal Law and only to the extent to which it shall be necessary for the purposes of protecting the foundations of the constitutional system, morality, the health, the rights and the lawful interests of other persons, of providing for the defence of the country and for the state security.'* This broad exception for matters of state security (which is not defined) may then allow for all forms of transgressions by the state, including especially confiscation of property due to legal infractions (Article 243 of the Civil Code). Additional stipulations on expropriation for public needs in the Code and follow-on legislation (including the Land Code of 2001, see below) have also created an expansive allowance for state interference (Kosareva et al. 2018).

Indeed, these caveats and hedges created a hole to allow the state back into the Russian economy, and this has been the case in Russia since 1999, when an ailing President Yeltsin appointed Vladimir Putin as his Prime Minister and then stepped aside at the end of the year, making Putin the President. Although Yeltsin had been associated with liberal economic reforms, he was also forever linked to the financial crisis of 1998 (see Chapter 17). The political atmosphere after the crisis was not favourable for future market-based reforms, and the nomination of Yevgeny Primakov as Prime Minister led to a number of restrictive measures (including on foreign currency) and selected bank bailouts (Vavilov 2010).

Following Yeltsin's resignation, Putin appeared to push forward on some salutary economic reforms, reclaiming the liberal mantle from its post-1998 nadir. During Putin's first term from 2000 to 2004, the government instituted a proportional personal income tax of 13% and pushed through some of the long-delayed legislation needed in the country, including the Land Code in 2001 and a joint stock company law (Desai 2005). Early moves from Putin in the economy also took on the power of the oligarchs (highly unpopular because of 1998), but as a way to remove potential political rivals rather than to demonstrate an explicitly pro-market orientation: the case of businessmen such as Mikhail Khodorkovsky marked a move in Putin's reign away from the rule of law, breaking the economic power of the oligarchs (a popular move in theory) by using questionable means (Goldman 2004).

These initial economic policies by Putin were soon shelved by Putin's second term in favour of a rapid change on the legal front, with three separate series of comprehensive amendments to the Constitution occurring at the end of Putin's second term and during his third and fourth terms. The Constitution had been amended several times before Putin came to power and even during his first

two terms, with changes in 1996, 2001, 2003, 2004, 2005, 2006, and 2007; however, these changes were focused exclusively on Article 65 of the Constitution, i.e., the Article which regulates the structure of the Federation, and most of these changes were just name changes as sub-national territories were changed (Petersen and Levin 2016).

By contrast, the set of Constitutional changes in 2008 was focused on removing constraints to the executive, extending the term of the President to six years (and the Duma's terms to five years) and amending Articles 81 and 96 of the Constitution concerned with these terms. The changes were instituted mainly with an eye on Vladimir Putin's return to power but also signalled an important shift away from the legislative oversight of the Duma, bringing all legislative power within the executive (an argument has been made that the continued legalism of Russia during this period was merely a case of intra-executive rivalries rather than actual legislation, see Noble 2020). In short, the amendments of 2008 were in line with the many earlier changes to the Constitution but signalled a move towards moving beyond merely Article 65 and changing other sections of the Constitution if they stood in the way of greater executive power.

This effect could be seen in the second sweeping set of Constitutional amendments which occurred in 2014, building on the 2008 changes and allowing for massive changes outside of the political system. While the 2014 amendments allowed for the President to appoint 10% of the membership of the Federation Council (the upper house of the Russian Duma, now known as the Senate) directly, the changes in the overall judicial system were more consequential. In particular, the Supreme Arbitrage Court was abolished, removing the institutional mechanism which was utilised exclusively for commercial disputes; this change made the Supreme Court of the Russian Federation the final venue for commercial cases (as well, as of August 2014, the final court for criminal, administrative, and military cases), a substantial institutional reorientation which placed considerable power in the Supreme Court's hands. Unlike previous amendments, these far-reaching changes meant substantive alterations throughout the Constitution, including to Articles 71, 83, 102, 104, and 125 through 129 (Petersen and Levin 2016). Finally, in line with earlier amendments to the Constitution, Article 65 was also altered to include the 'Republic of Crimea' and the 'city of federal importance Sevastopol' into the Russian Federation after their annexation.

The final set of changes, in 2020, have perhaps been the most controversial, as it allowed President Putin to claim a clean slate on his term limits and allowed him to serve for two additional terms (removing the stipulation that a President could not serve more than two terms in a row). The shift in the Federation Council begun in 2014 also continued in 2020, with the creation of up to 30 senate positions appointed by the President and the addition of 'former Presidents' to the Senate. In tandem with this further expansion of Presidential power into the legislature, the Constitutional amendments of 2020 also included economic points explicitly for the first time. Unlike other countries, which keep their constitutions limited to broader economic and political principles, Russia's Constitution now includes a mandate to index pensions to inflation and outlines the floor of the country's minimum wage (i.e., not lower than the subsistence minimum as defined by the Russian Statistical Service). These moves were widely seen as a way to secure popular support for the whole package of amendments.

Perhaps much more consequential than merely enshrining a particular person in power or raising the minimum wage, the amendments of 2020 also expanded the power of the Federation Council

(and, in reality, the President) over the judiciary. A key provision in the amendments was to allow for the Council to propose to the President that specific judges may be removed, while further powers allowed for the Council to remove judges from the highest bodies (i.e., the Supreme and Constitutional Courts) on the recommendation of the President. This violation of the tenets of judicial independence thus meant that judges across the judiciary served at the leisure of the President, and any missteps (as perceived by the Kremlin) could end in removal. This power was indeed used by the Kremlin in the wake of the Constitutional amendments becoming law in July 2020, as by November 2020, two out of seven deputy chairs of the Supreme Court were replaced, the Prosecutor General was replaced, and all three major investigation chiefs in the government (in the Federal Security Service [FSB], the Ministry of Internal Affairs, and the Investigative Committee of the Russian Federation) were also summarily replaced (Noble and Petrov 2021).

Similarly, changes have been made to the Civil Code and other supporting legislation regarding economic relations within the Russian Federation. For example, the Land Code was passed in 2001 and was (in theory) meant to further define the relations of property rights and their protection, as noted in both the Constitution and the Civil Code. However, given the continued opposition to expansive private property rights evidenced by the Duma, the compromise Land Code which was actually enacted only applied to approximately 2% of all of the land within the Russian Federation (Kratzke 2003). As in other countries in the former Soviet Union (principally Ukraine and Kazakhstan), the Land Code prohibited foreigners from owning agricultural land, as well as owning land ‘near state borders’. Further amendments to the Land Code, including an approved change in 2013 and a package introduced in 2014, waded further into the legal definitions of ‘land plots’ but, more importantly, established procedures for expropriation of private land by governmental agencies. With reference to the 2013 amendment, a procedure was introduced for remission of property rights if there was found to be ‘improper utilisation of the land’, a broad category which also covered agricultural land and which detailed more how property rights could be lost than how they would be protected. This ‘land use restriction’ was also the basis of the ‘Far-Eastern Hectare Law (FEHL)’, passed by the Russian government in 2016 to encourage settlement in the Far Eastern regions of the country. Under the FEHL, any Russian citizen could apply for and receive for free one hectare of federal or republican land in these regions, similar to the Homestead Act of 1862 in the United States. However (and despite protests against the giving away of land in the Sakha Republic, the largest republic in terms of territory), the law made it clear that the land rights would be revoked if significant improvements to the land had not been undertaken within five years (Belolyubskaya 2021). In tandem with the political issues presented by the law (including the ability of regions to define their own property rights regimes), the FEHL once again underlined how vast swathes of Russian territory are seen as the property of the state, to give and take away as needed.

The Russian economy under Putin

Much as with the early years of the Constitution, the changes in the legal framework in Russia starting in 2008 merely followed the reality which had developed in the country, where the state had already begun its re-assertion of power over the economy. Richard Sakwa saw this happening already after the first two terms of Putin:

Russia today is characterized by two competing political orders. The first is the constitutional state, regulated by law and enshrining the normative values of the democratic movement of the late Soviet period and contemporary liberal democracies, populated by political parties, parliament, and representative movements and regulated by electoral and associated laws. The second is the administrative regime, which has emerged as a tutelary order standing outside the normative state although not repudiating its principles (Sakwa 2010, p. 185).

Similarly, as Oversloot (2007) presciently noted in a legal article, Putin had used the Russian government from his first and second administration to help re-order Russian society, undercutting the Constitution via other means and expanding the prerogatives of the state *vis a vis* other actors in the country. Given this state of affairs, the Constitutional changes noted above were done to codify the facts on the ground rather than to enable a shift in the balance of power between state and society. In reality, formal changes were only created to make Russia's path to 'superpresidentialism' irrevocable (Fish 2018).

It is important to recognise at this point that, like during the Constitutional crisis of 1993, the changes done under Putin's third and fourth terms as President did not specifically concern the economy and/or the relationship of the state to the economy. Putin has actually appeared to not be overtly concerned with state intervention in the economy as a principle or ideological tenet; however, the emphasis on expanding the power of the executive to become *primus inter pares* has resulted in powers aggregated to the President which can be utilised within the economy as well as within civil society. For example, the move towards direct appointments of regional governors in 2004 was a way to centralise power over regional initiatives within the Kremlin, but it also allowed for a move towards homogeneous policies rather than allowing Russian regions the freedom to experiment. At the same time, given that businesses had expanded into the regions and were able to make inroads in building a viable private sector outside of Moscow in the 1990s, re-centralisation also took away the leverage business had to restrain the powers of the governors (Orttung 2004).

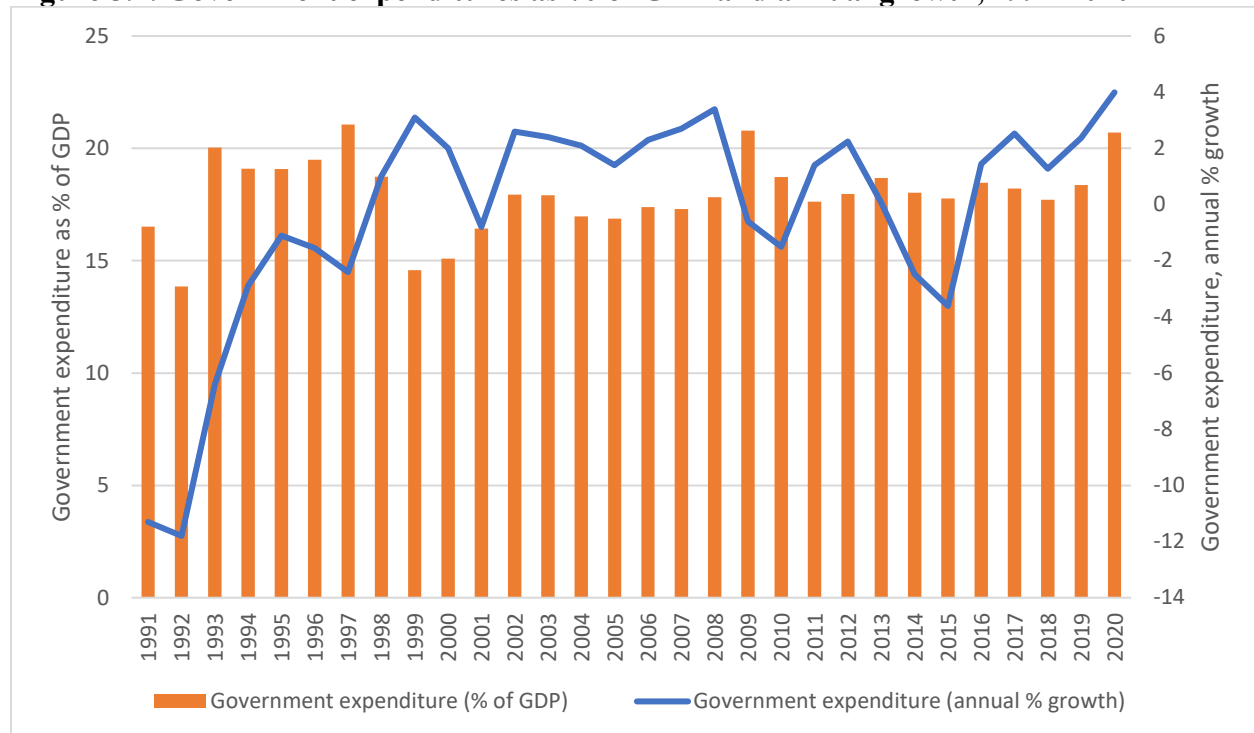
This is precisely what has happened since the interregnum of Dimitry Medvedev as President (with Prime Minister Vladimir Putin) from 2008 to 2012, as the return of Putin to the Presidency in 2012 heralded additional involvement of the state in the economy. Whereas the Constitution and the Civil Code spoke of principles regarding the rights of individuals to engage in entrepreneurship, the Russian government since the global financial crisis (2007-2009) has been more involved in the ways in which the government itself can propel the economy. 'Mega-projects' such as the Sochi Olympics in 2014 allowed for private participation but had goals set exclusively by the government, not only encouraging economic development but built around a narrative of 'Russian greatness' (Mueller 2011). In this manner, the state utilised the levers given to it by successive waves of expansion of executive power to harness the economy (and, by extension, to direct it) in a way which comported with overall political and geopolitical goals.

The results of this approach can be seen in the aggregate economic statistics on the state's role in the economy and also, particularly, in the structure of the economy. Since 2012, and especially since the imposition of sanctions by the West for Russia's annexation of Crimea in 2014 and

continued direct involvement in Ukraine’s Donbas region (see Chapter 15), the Russian economy has become far less diversified and far more controlled by the state. First, the economic downturn in the mid-2010s caused by the decline of the world price of oil and given further impetus by Western sanctions after 2014 did little to spur on diversification of the Russian economy, leaving it heavily dependent upon the energy sector (see Chapters 8, 9, 16, and 17) and, in particular, the energy giants (closely overseen by the political authorities).

In line with these trends has been an increase in the government’s expenditures in the economy, although this has also been tied to revenues and the world price of oil. As Figure 1 shows, government expenditures shrank after the imposition of sanctions in 2014, but have been on an upward trajectory ever since, remaining within the 18% of GDP range in the post-2014 era. These broad macroeconomic aggregates obscure just how much of a hand the state has in the microeconomics of firms, however, by not including state-run companies and their expenditures. A paper by Abramov et al. (2017) notes that, over 2006 to 2014, the state became involved either directly or indirectly with 52.5% of the Russian economy (with only 47.5% of the economy fully privately owned), while Radygin and Abramov (this volume) show that, as of 2020, the state still comprised 51.1% of GDP in Russia. The International Monetary Fund (IMF) also concurred with these assessments, noting that employment in Russian state organs has grown to 50% of all employment, with a formal footprint of the Russian state of approximately 40% of the economy; more problematic was the fact that both state-owned enterprises were less efficient than their private counterparts *and* the pervasiveness of the government skewed incentives even in sectors where they were not directly involved, leading to high levels of concentration in the private sector as well (Di Bella et al. 2019). With the legal protections provided for state intervention into the economy, the state has enthusiastically utilised these precisely to intervene.

Figure 5.1. Government expenditures as % of GDP and annual growth, 1991-2020

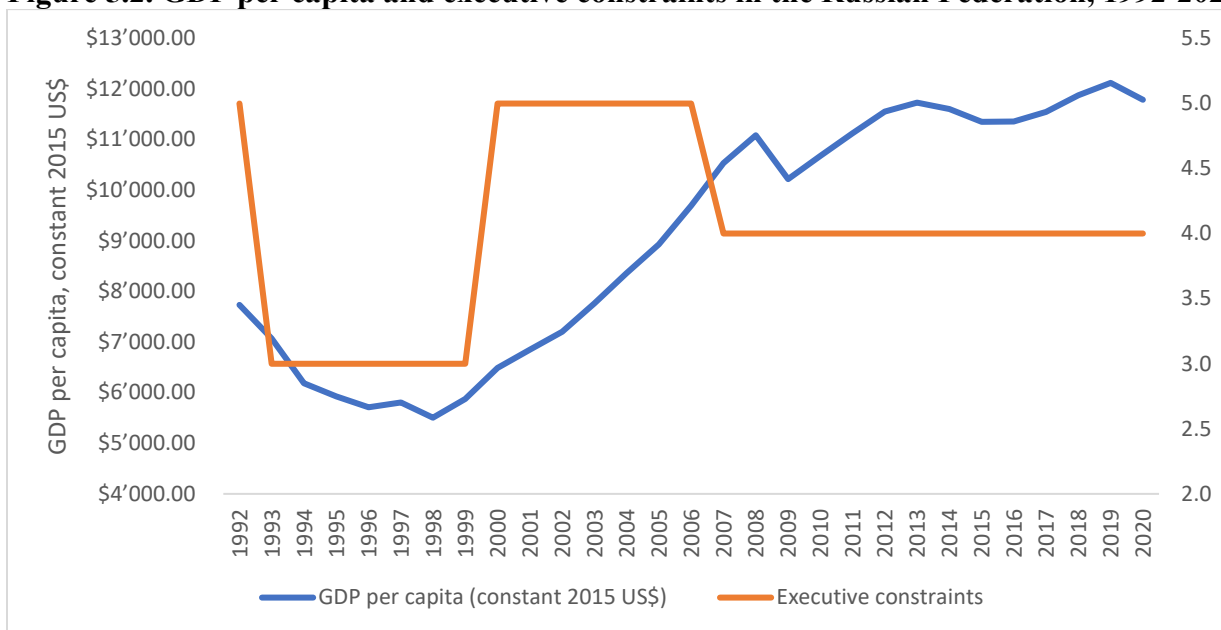


Source: World Bank World Development Indicators

IV. The future of the state in the Russian economy

The reform of the legal regime in post-Soviet Russia was originally predicated on making a break with the recent Soviet past, enshrining the tenets of the new market economy in the foundational documents of the country. However, as this chapter has shown, the development of the market economy could never be divorced from the process of political wrangling after the USSR, and indeed much of the economic development of the Russian Federation has been subsumed under this very wrangling. From early attempts to define the role of the executive in the economy to more recent moves to expand the powers of the President, define national champions, and bring the ‘commanding heights’ of the economy under closer state supervision, there has been a consistent struggle of politics against economics... and a clear victory of politics in this struggle.

Figure 5.2. GDP per capita and executive constraints in the Russian Federation, 1992-2020



Source: GDP per capita comes from the World Development Indicators database, while ‘executive constraints’ comes from the Polity V database (Center for Systemic Peace 2021, available at <https://www.systemicpeace.org/polityproject.html>). Constraints are measured here on a scale of 1 to 7, with lower values indicating lower levels of executive constraints.

The growth of executive power has continued unabated due to an issue which has been observed in Russia and elsewhere: legal institutions do not have enough gravitas or heft to be able to protect the market economy or even the rule of law on their own (Hartwell and Urban 2021). Unlike the lawyers and legal experts who believed that the formal recognition of the Constitutional Court in the Constitution of 1993 would guarantee its independence from political turbulence (Trochev 2008), the reality has been that the executive has been able to shape the legal landscape, first by decree, second by erosion of institutional norms, and finally by changing the foundational documents related to the legal sector. In many ways, the gradual changing of norms has forced the judiciary to acquiesce in the expansion of the power of the state and made it unable to push back. Concerning themselves with narrow interpretations of the law and increasingly side-lined as a force for judicial review, the 2020 amendments to the Constitution ‘officially politiciz[ed] and

instrumentaliz[ed] the Court for the president's benefit, marking a significant departure from the previous institutional development' (Grigoriev 2021, p. 21).

What this reality bodes for the future of the state in the Russian economy is not optimistic. There is a wealth of economic evidence on the relationship between executive constraints and economic development, with unconstrained executives correlated highly negatively with growth trajectories (Besley and Mueller 2018). The changes in the legal framework in Russia over the past 30 years have shifted the balance decisively towards fewer executive constraints, and this has already resulted in subpar economic performance for the country; Russia was facing an economic downturn even before the Western sanctions following the annexation of Crimea in 2014 (see Chapter 16), and the rigidity of the state-interventionist model has kept its growth paths low as executive constraints have been lowered (Figure 2).

An additional two points must be noted here with regard to the role of the state in the economy. Political scientists often speak of the issue of 'state capacity' i.e., the ability of a government and/or bureaucracy to be able to implement its preferred policies. The Russian government has consistently shown low state capacity, with overall bureaucratic quality within the Russian government unable to cope with the executive's desires to play a more prominent role in the economy. According to the International Country Risk Guide (ICRG),² a private agency which undertakes risk analysis in many countries globally, the 'bureaucratic quality' of Russia has been rated at a 1 (the lowest score possible) on a scale from 1 to 4 since August 1997 (prior to 1997, Russian bureaucracy scored a 2 on the same scale). Part of this problem may be the reality of a power imbalance within the Russian government when it comes to political versus economic development. Key ministries such as the FSB, the Ministry of Defence, the Ministry of Justice, and the Ministry of Extraordinary Situations have been steadily growing in power since the return of Vladimir Putin as President in 2012 (Veselova 2019) and, subsequently, have been increasing their ability to intervene in the economy; for example, expenditures classified as 'national defence' in the Russian government budget rose from RUB 681.8 billion in 2006 to a peak of RUB 3.775 trillion in 2016 (settling at approximately RUB 3 trillion each year afterwards), a growth of 453%.³ This move towards militarising the economy and its management (Huskey 2010) has meant that the traditional economic policymaking organs of the government (including the Ministry of Finance, the Ministry of Economic Development, and the Central Bank of the Russian Federation) have been treated more as technocratic bodies, charged with ensuring macroeconomic stability, rather than gatekeepers of the private sector.

The second point, somewhat related to state capacity, is the issue of corruption (see Chapter 6). The expansion of the powers of the state has also resulted in a shift away from the informal corruption and crime of the 1990s towards more oppressive formal requirements from the state. Indeed, corruption has manifested itself in several political institutions within the Russian government, including public procurement, where political connections are required to help access funding from the government (Yakovlev and Demidova 2012; Belokrylov 2017). More importantly, the inability of the judicial system to constrain the executive has led to a widespread

² The ICRG is put out by the PRS Group in its International Country Risk Guide Annual Publication. All variable definitions are available at: <https://epub.prsgroup.com/list-of-all-variable-definitions>.

³ Based on numbers from the Ministry of Finance of the Russian Federation (https://minfin.gov.ru/en/statistics/fedbud/?id_65=119255-annual_report_on_execution_of_the_federal_budget_starting_from_january_1_2006).

perception of corruption and derogation of the rule of law, including the pervasiveness of ‘telephone law’, where calls from powerful officials can change the results in a criminal or commercial trial. The weakness of the judiciary and the access to it via corruption have been cited in numerous studies as a hindrance to the economic development of the country (Arslanova 2012). And with the judiciary removed as a barrier to executive power, it appears that businesses need to treat official corruption as yet another cost for them to operate in Russia.

In sum, the Constitutional order in post-Soviet Russia has shifted from a much more laissez-faire demonstration of principles allied with the market economy towards, as the political winds have shifted, a much more interventionist mentality. At every step of the way, the shift in the legal foundations have trailed the executive’s whims, codifying reality rather than setting the framework for a range of outcomes. What happens in a Russia without Vladimir Putin will show if the judiciary and other interested actors – such as businesses and civil society – can claw back the legal foundations of a Russian free market economy, or if the Constitutional basis for the Russian economy will remain dependent on the power of the executive.

QUESTIONS FOR REVIEW

1. Describe, in your own words, the main reason for the new Constitution in 1993.
2. What were the main aspects regarding private property in the 1993 Constitution?
3. What obstacles were there to the Civil Code being passed in an expedient manner?
4. What changes were made to the Constitution in 2008 and 2014?
5. What are the ‘two competing orders’ in the Russian legal system today?

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