

AT THE HARRIMAN INSTITUTE

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Declaring Mother's Day in Russia: Laws and Decrees in a Super-Presidential System

“The decree power vested in the Russian President is extreme,” stated Thomas Remington, Goodrich C. White Professor of Political Science at Emory University, who spoke at the Harriman Institute on January 28, 2011. Remington plans to write a book about the relationship between decree-making and law-making in Russia—a relationship that embodies the balance of power between the executive and legislative branches. “We tend to see strong presidential power as dangerous for democracy because it invites confrontation with the legislative assembly,” Remington said. He argued that perhaps strong presidential power is not the cause, but a symptom of the failure to establish democracy in Russia.

“Certainly it’s the case that among post-Soviet regimes, Russia stands out for the unrestricted scope of decree power granted to the president,” asserted Remington. The only limitations on the president’s decree-making power prohibit him from passing decrees that contradict either the constitution or existing law—a decree can be passed at any time and the parliament does not possess the direct power to nullify it. “There is no ‘sunset clause,’ no expiration to presidential decrees.”

However, the parliament can indirectly nullify a decree by passing a law. “Once parliament has passed a law and the president has signed it, that law has the last word.” In addition, the constitution specifies a number of matters that can only be defined by federal law (the electoral system, the organization of the judiciary, the organization of sub-national governmental bodies, land reform and state taxation, for instance). As a result, decrees have a more provisional nature than laws. “As quickly as a president can adopt a decree, the same president or a successor can nullify it.” Laws, on the other hand, are permanent. “A law can trump a decree, but a decree cannot trump a law.”

Remington reasoned that when dealing with this type of decree power, a president must rely on two “strategic premises.” First, they have to

consider what he referred to as “policy space”—“If the president is distant in policy terms from the median member of the legislature, he is more likely to use decree power to establish policy because it follows that he doesn’t like what parliament is likely to accomplish on its own.” This is why we have seen a decrease in decree making during the Putin/Medvedev years, when the parliament has been closely allied with the executive branch. “The number of decrees is not much larger than the number of US Executive orders,” Remington said.

The second “strategic premise” for the president is urgency—bills take a long time to push through, while decrees can be rushed, “in some cases they can be prepared in the matter of a couple of days,” said Remington. “If time is important, then a president, by virtue of being able to act more quickly than the legislature in almost all cases, may prefer to act with his decree power,” he elucidated. “One of the considerations here is: Will the opposition mobilize against a presidential action if he doesn’t move with decree? If he waits for the law, the parliament may be influenced by the opposition and trump the president.”

To illustrate the role of laws and decrees in the tug-of-war between the legislative and executive branches in Russia, Remington recounted the struggle over establishing Mother’s Day as a national holiday in 1997. Traditionally the head of state establishes national holidays by decree, but in this case the Duma decided to create this holiday by passing a law. The politicians behind the bill (which was pushed through by the Communist Party) argued that instituting Mother’s Day by law, “would raise the recognition of motherhood to a higher level.” President Yeltsin vetoed the bill, and then decreed it, “his objection was that it was up to the president to declare a holiday.” This fight was not about the substance of the initiative, but “over which branch of government would claim credit for instituting the holiday. It was another fight between Yeltsin and the Communists in the Duma,” asserted Remington.

“By comparison with other presidential systems, Russia’s constitution grants the president exceptionally broad decree-making power.” Remington explained that the broad decree-making power in Russia originated with Yeltsin, who had received temporary emergency decree-making power from congress in the 1990s. The power was supposed to last one year, but the president ignored the expiration and continued to issue decrees. In 1993 he dissolved the parliament and created a new constitution, which called for permanent presidential decree-making power. “Yeltsin’s version of the constitution established an extremely powerful presidency.”

Remington argued that although it might look like it, this “powerful presidency” is not the reason for the collapse of democracy in Russia. “The evidence points to the fact that it isn’t ‘presidentialism’ that induces democratic breakdown, but polarization and weakness of civil society that make it likely that presidentialism will be adopted in the first place.”

Reported by Masha Udensiva-Brenner