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Plus ça change...The Solved Riddle of All Central Asian Constitutions

Part of the Constitutional Developments in Central Asia Series

In his lecture, Professor Scott Newton discusses the constitutions of Central Asian countries and how constitutional reform in these states can be used as a vehicle to explore the importance of constitutionalism. Newton analyzes the constitutional adjustments (rather than “reforms”) made in five Central Asian countries: Uzbekistan, Turkmenistan, Kazakhstan, Tajikistan and Kyrgyzstan and characterizes the resulting political systems. He examines the numerous constitutional amendments that have been made to these countries’ constitutions. While emphasizing the importance of Soviet influence on the charters of these five nations, Newton ends his discussion by offering some solutions to the riddle of Central Asian constitutions.

Despite the serial changes made to the constitutions of these Central Asian countries, there has been a persistent constitutional stasis, according to Newton. He emphasizes three characteristics of the governing institutions. The first is that these constitutions give power to a super-president, in which the presidency is perceived as a meta-branch and remains generally unchecked. Another feature is ineffective jurisprudence, with constitutional courts lacking independence. Newton notes that these courts engage in constitutional laundering, whereby they legalize what would otherwise be unjustifiable. In the same vein, the parliaments of these countries are considered by Newton as simply talking shops, where deliberations take place, but lack contestation. These pocket parliaments are made up of those who are politically aligned with the presidential administration.

Newton goes on to argue that the result of these three characteristics is a particular form of governance defined by Henry Hale as *patronalism*. This type of authority has emerged in the post-Soviet era and has impacted Central Asian countries dramatically. Patronalism is a set of complex networks which operate on a basis of favors bestowed and owed by patrons and clients. They essentially take advantage of the governing networks., Newton believes this government set-up has stemmed from the unique features of Soviet governments. This system culminates in what Newton calls *network constitutionalism*, where the networks themselves do the governing. They do so not in spite of the constitution, but effectively through the constitution.

The womb of all constitutions in Central Asia is the constitution of the USSR, according to Newton. Noting that the Soviet constitution was one of the few examples of radical institutional experimentation in history, Newton identifies some distinct features of Soviet constitutionalism which were formative to the development of Central Asian charters. These include role of the Party as a constitutional guarantor and the original governing network, the transitional character of the entire Soviet political project (true Communism was a goal on the horizon to be reached progressively), and the ethno-territorial federalist system, which created both proto-nations and proto-states.

This structure eventually led to what Newton deems as “constitutional artifacts,” : the Central Asian nation-states are a function of Soviet constitutionalism in the first place. At the same time, the unique oversight role of the Party resulted in a parallel structure to the formal government, a network which held the real source of authority. The constitutions of these five countries in Central Asia were also shaped by the pattern of serial amendments to the Soviet document, according to Newton. The constitutions of the Central Asian countries emerged from the latest stage of these continuous serial amendments, influencing them greatly by setting a precedent of constitutional reform.

Newton discusses particular critiques of legal processes and questions why these are not viewed simultaneously as critiques of constitutional law. While highlighting that the constitution is supposed to be the supreme set of meta-rules, Newton argues that the constitutions of Central Asian countries show a tendency to collapse the distinction between actual rules and these meta-rules.

One solution Newton offers to the riddle of all Central Asian constitutions is to equate constitutions and constitutionalism in these five countries to a costume; that is to say that they have become, “a badge of entry to polite society...which must be donned in order to be taken seriously in the international community.” These costumes allow the countries to take part in the international scene, to receive benefits and to be molded by neoliberal ideals. Thus, the reason for the serial constitutional adjustments is the need to bring the system into conformity with a democratic regulatory ideal. Additionally, those who operate the network constitutionalism don’t merely use the constitution, but rather inhabit it and imbue it with their own intentions—a power suit rather than just a costume. Finally, Newton believes that constitutions act as forms of global performance. Constitutionalism is a self-performance of these emerging states, in that they are part of the way in which the state manifests itself. Professor Newton concludes that constitutional jurisprudence is an essential aspect of this constitutional performance, even if it doesn’t allow for constitutional elaboration.