

Recurring Referendums

THE STRUGGLE FOR CONSTITUTIONAL “REFORM” IN KYRGYZSTAN

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With the adoption of its new constitution by referendum on June 27, 2010, Kyrgyzstan made history by becoming only the second state in post-Soviet Eurasia (after Moldova, and not including the Baltics) to adopt a “parliamentary-style” form of government.¹ Equally worth noting is the fact that Kyrgyzstan is the only post-Soviet state to depose two directly-elected presidents within five years via popular mobilization. Not coincidentally, it has also changed its constitution and electoral laws most frequently.

It is reasonable (if not imperative) to ask, then, whether Kyrgyzstan’s recent constitutional changes can effectively address the underlying issues that have precipitated the dual outcomes of political upheaval and institutional instability. My contention is that while the following items are bold steps in the right direction – instituting checks on presidential usurpation of power, transferring authority to the legislative branch, empowering party candidates while limiting single-party dominance – these new measures alone will not resolve any of the country’s core problems. In fact, they may actually serve to exacerbate some of them.

Proximate Causes and Underlying Issues

A critical review of the most frequently cited proximate causes of the events in April 2010 actually reveals the deeper roots of Kyrgyzstan’s latest “revolution,” which is perhaps more aptly described as a series of popular uprisings that began in the northern part of the country (specifically Talas, followed by Naryn and Bishkek) and led to the

¹ While many analysts have declared that the new constitution established a “parliamentary system” in Kyrgyzstan, I deliberately do not use the term here because it does not fully conform to the standard definition of a system of government in which the executive is chosen by, and responsible to, the legislature.

resignation of the incumbent president, Kurmanbek Bakiyev. I will refer to this hereafter as the “April events.”

Disillusionment with Democracy

Some analysts have characterized the April events in Kyrgyzstan as a reflection of popular disillusionment with democracy in general and a widespread rejection of elections as a legitimate mechanism for succession in particular. Certainly, such claims are not unfounded. After all, within less than a year after his election in June 2005 there was good reason to doubt Bakiyev’s commitment to the “liberal democracy” promises of the so-called Tulip Revolution of March 2005. Not only did Bakiyev and his close advisors, which included family members, engage in overt efforts to concentrate power into their own hands, they also actively persecuted political opponents, intimidated journalists, and violated civil liberties. The Bakiyev regime also blatantly manipulated both the December 2007 parliamentary and July 2009 presidential elections through a combination of preventing prominent opposition candidates from running for office and committing electoral fraud. Furthermore, they rigged the October 2007 constitutional referendum that codified an excessive centralization of powers in the presidency and a new system for electing deputies to the national legislature based exclusively on closed party lists, which was designed to guarantee an outright majority for the newly formed pro-presidential party *Ak Jol* (True Path).

At the heart of Kyrgyzstan’s “authoritarian turn” – first under former president Askar Akayev, and then under Bakiyev himself – is an institutional struggle between two branches of government that has its origins in the constitutional debates of the early years of independence. Importantly, Bakiyev did not merely renege on his commitment to “liberal democracy,” he also violated an explicit agreement with the opposition leaders who brought him to power and who sought the transfer of significant political authority to parliament. It is Bakiyev’s failure to de-monopolize power that formed the crux of his subsequent battles with the opposition. For example, this was the primary grievance motivating parliamentarians, former ministers, and civil society activists to form the opposition movement *Za reformy!* (For Reforms!) in the spring of 2006.

However, popular disillusionment is as much about too much democracy as it is about not enough. Simply put, since the adoption of Kyrgyzstan’s first constitution in May 1993, the country has experienced continuous referendums altering the terms codified in this document – nearly one referendum every other year since October 1994. The tendency to rely on hastily organized referendums to amend the constitution has created voter fatigue (particularly as they have come to be increasingly associated with fraudulent results). Moreover, referendums have served to weaken parliament in two respects: 1) indirectly, because going straight to the public circumvents parliament’s role in debating, proposing, and enacting such changes; and 2) directly, because most of these so-called “reforms” reduced the power of the legislative branch vis-à-vis the executive branch. Not surprisingly, the two are related.

Overreliance on referendums as a tool for engineering constitutional reform from above has also contributed to pervasive institutional instability in Kyrgyzstan. For example, in the country's short history, only once (2000) has the parliament been elected according to the same rules as the election that preceded it (1995), making it difficult for politicians to predict which factors (other than perhaps "buying" their seat) would improve their chance at success. Rather, the electoral rules helped convince most candidates that being a member of a political party was not one of these factors. The 2000 rules, for example, allocated only a fraction of 105 seats through proportional representation and disadvantaged smaller parties by increasing the size of the electoral district in which each candidate had to compete. Subsequent rules, introduced by referendum in February 2003, eliminated proportional representation altogether and further enlarged the electoral districts. Even the 2007 electoral law, which theoretically should have promoted party development by introducing a closed party list system for all 75 seats in parliament, had the opposite effect in practice because it also mandated that parties clear relatively high thresholds to gain seats (i.e., 5 percent in every *oblast* plus the cities of Bishkek and Osh in addition to 5 percent nationwide, and based on all eligible voters rather than just votes cast). One clear consequence of these rules has been a strong disincentive for politicians to join political parties, let alone invest in party development as a strategy for electoral success – a topic the subsequent section addresses in greater detail.

Weakness of the State, not Strength of the Opposition

Another common view of the April events is that they should be attributed to the chronic weakness of the state in Kyrgyzstan rather than the strength of its opposition. Again, there is some validity to this. The reason that the process unfolded as quickly as it did is clearly a function of the state's inability to respond effectively, either administratively or militarily, to both the grievances motivating the popular uprisings that precipitated Bakiyev's ouster and the uprisings themselves. Also, the opposition is undeniably fragmented. One indication of this is the sheer number of political parties; over 100 attempted to register for the 2007 parliamentary elections. The only thing that seems to have united the 14 leaders of the provisional government that assumed office after Bakiyev resigned is that at some point in their political careers they all became his opponents (though most, in fact, started as his allies and/or members of his government).

At the same time, the opposition has exhibited a certain resilience under both Akayev and Bakiyev. Despite Akayev's repeated assaults on legislative power by referendum between 1994 and 2003, parliament continued to assert its role as a law-making and oversight body. Prominent opposition leaders also continued to pressure Bakiyev in 2006 and 2007 to honor his inaugural pledge to support constitutional reform limiting executive power vis-à-vis the legislature. More importantly, Kyrgyzstan has managed to maintain a fairly robust civil society, and its population is still willing to take to the streets to demand good governance. Even as the opposition grew increasingly silent after 2007, local nongovernmental organizations continued to not

only criticize the government openly but also more effectively address issues of local concern, such as poverty alleviation and access to clean drinking water.

When it comes to the weakness of the opposition, then, the real issue is not its degree of fragmentation but lack of depth. More concretely, the key problem is that political parties with a large core membership and a sustained popular support base are nonexistent. Aside from perhaps the Communists, parties in Kyrgyzstan are associated with a few key leaders rather than a specific program of action. They are anemic organizations; even those few parties that have persisted since the early 1990s (like *Asaba* and *Erkin Kyrgyzstan*) are hardly visible except just prior to national elections, and they rarely win more than a handful of seats.

As noted above, part of the reason that political parties are so feeble is that the electoral system has heretofore provided politicians with a strong disincentive for engaging in party development. The chronic weakness of political parties in Kyrgyzstan, however, can also be linked to the increasingly zero-sum nature of political competition. As power has become concentrated in the executive branch, winning a seat in the legislature as a means to gain access to decision-making authority (let alone promoting a particular policy agenda) has become less appealing. Rather, it is a means to gain access to resources via presidential patronage. The repeated attempts to build a pro-presidential party (or “party of power”) in Kyrgyzstan, first under Akayev and then under Bakiyev, should have come as no surprise. This has been a common pattern across post-Soviet Eurasia, which is dominated by strong presidents and weak legislatures. What is surprising (and, indeed, heartening) is that both Akayev and Bakiyev failed. They did so largely due to the relative strength of civil society.

Endemic Poverty and Corruption

The April 2010 events have also been directly attributed to the abysmally low standards of living and rampant “state theft” that has come to characterize Kyrgyzstan, despite its initial promise as the frontrunner in Central Asia for adopting political and economic reform in the early 1990s. According to this view, desperate citizens of the country took to the streets because they were fed up with the government’s continued failure to eradicate endemic poverty and corruption.

This view obviously has some merit. By most accounts, the Bakiyev regime displayed a greater degree of hubris and greed than its predecessor, enabling the presidential family to amass enormous personal wealth at public expense. More specifically, the protests that eventually led to Bakiyev’s resignation were spurred at least partly by a precipitous increase in electricity prices (alongside heating and water) that resulted from Bakiyev’s continued efforts to exploit Kyrgyzstan’s hydroelectricity sector for his own benefit and that of his relatives. The most recent privatization of *Severelektro*, the energy distribution system that serves most of northern Kyrgyzstan, to a company whose new owner is allegedly a business associate of Bakiyev’s son, Maxim, is a case in point. The company was sold with the understanding that tariff increases would follow.

However, an entire body of research on civil wars and revolutions has demonstrated that grievances alone are insufficient to generate mass uprisings, particularly successful ones. Pervasive poverty and corruption in Kyrgyzstan certainly play an important role but not in the way that analyses of the April events often suggest. Counter the conventional wisdom that natural resource-poor states are more likely to democratize because elites have less to gain by capturing the central state apparatus, it is precisely the dearth of resources that has fueled corruption as well as the constant elite infighting that has contributed both to the country's instability and the government's ineptness. It is the fact that there is so little to go around and the stakes are so low – in comparison, for example, to Kyrgyzstan's petroleum-rich neighbors – that its elites have engaged in a "politics of pettiness," struggling to control and then squander the country's paltry resources before they are squandered by someone else.

The "politics of pettiness," moreover, is reinforced by the zero-sum nature of competition in a presidential system. With increasing centralization of executive power, the only way to gain control over and benefit from what little resources the country has becomes either to win (and retain) the presidency or to win (and retain) the favor of the president. The presidency, in turn, becomes the key source of generating and distributing patronage rather than the key arena for making and enforcing sound economic policy. Public goods become privatized accordingly, and the government's operating budget suffers immensely as a result. It is no coincidence that the two potentially largest sources of state revenue – the hydroelectricity sector and, most recently, the U.S. air base at the Manas International Airport – have been the prime targets of corruption under Bakiyev. As both these examples demonstrate, Bakiyev has gone even further than Akayev not just to derive benefit from existing resources but to expand those resources so as to maximize the distribution of benefits to his cronies.

Can the Constitution Deliver?

In order to effectively address Kyrgyzstan's underlying problems, the new constitution must enable its leaders to accomplish three goals:

- 1) firmly establish the locus of power in the legislative branch;
- 2) alleviate political and institutional instability; and
- 3) foster the development of strong political parties.

Although the new constitution represents a vast improvement from its predecessor, it falls short in realizing any of these goals. Moreover, there is a real danger that some of the new constitutional provisions will have unintended consequences that serve to undermine some of these goals.

On the one hand, the new constitution achieves a better balance of power between the executive and legislative branches by substantially reducing presidential power and transferring greater authority to parliament. The president is no longer able to unilaterally appoint heads of administrative bodies that are directly subordinate and accountable to his or her office, including the heads of local state administrations

(*akims*), the secretary of state, and the chairman of the Central Election Commission. The president's ability to influence the legislative process has also been significantly curtailed. For example, he or she is no longer entitled to submit draft laws to parliament, suspend legislation and regulatory acts, or most importantly, call a referendum without the consent of a majority of parliamentary deputies (and 300,000 voters).

On the other hand, despite the lofty description of the new constitution as establishing the first parliamentary democracy in Central Asia, it does not firmly shift the balance of power into the hands of the legislative branch. As corroborated by Ukraine's recent experience, the heart of the problem lies in elevating the status of the prime minister without fully diminishing the powers of the president or clearly enumerating his or her spheres of authority vis-à-vis the president.

Similarly, although the new constitution has the potential to promote political and institutional stability by restricting the use of referendums and making competition less zero-sum, it is also likely to create instability by prohibiting a single party from occupying much more than half the seats in parliament (65 out of 120). While this might block any future attempts to form a "party of power" in Kyrgyzstan, it will also make it difficult for parliamentarians to form a majority and, thus, to elect a prime minister and effectively pass legislation. Some of the other provisions aimed at preventing another presidential usurpation of power are, while well-intentioned, equally shortsighted. Limiting the president to a single term, for example, may have the unintentional effect of exacerbating corruption because the incumbent will have a much shorter time within which to amass personal wealth (and no scheduled elections to hold him or her accountable).

Finally, the new constitution establishes some of the necessary conditions for the development of strong political parties, including a) empowering the legislative branch such that the presidency is not the only political office worthy of competition; b) maintaining an electoral system based on proportional representation (with closed party lists); c) increasing the number of parliamentary seats (from 90 to 120); and d) reducing the threshold requirement to 5 percent of total votes cast. Also, in a move unprecedented in post-Soviet Eurasia, the new constitution virtually eliminates the parliamentary privilege of criminal immunity, which will undoubtedly reduce the number of office seekers who are merely interested in protection from prosecution for illicit business practices (or worse).

And yet, none of these conditions are sufficient to foster party development. In order to sustain themselves, parties must have depth, which means moving beyond charismatic leaders to building strong linkages with their constituents and local civil society groups. In order to do this, however, they must first establish a consensus on which to build these linkages. This, in turn, will require placing a clear policy agenda above an opaque personal one – something party leaders in Kyrgyzstan have not seemed willing or able to do. Constitutional change alone cannot rectify this shortcoming; it takes political elites dedicated to making party competition, not

presidential power or patronage, central to policy determination. Only then will politicians as well as voters have a stake in the electoral success of parties.

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