

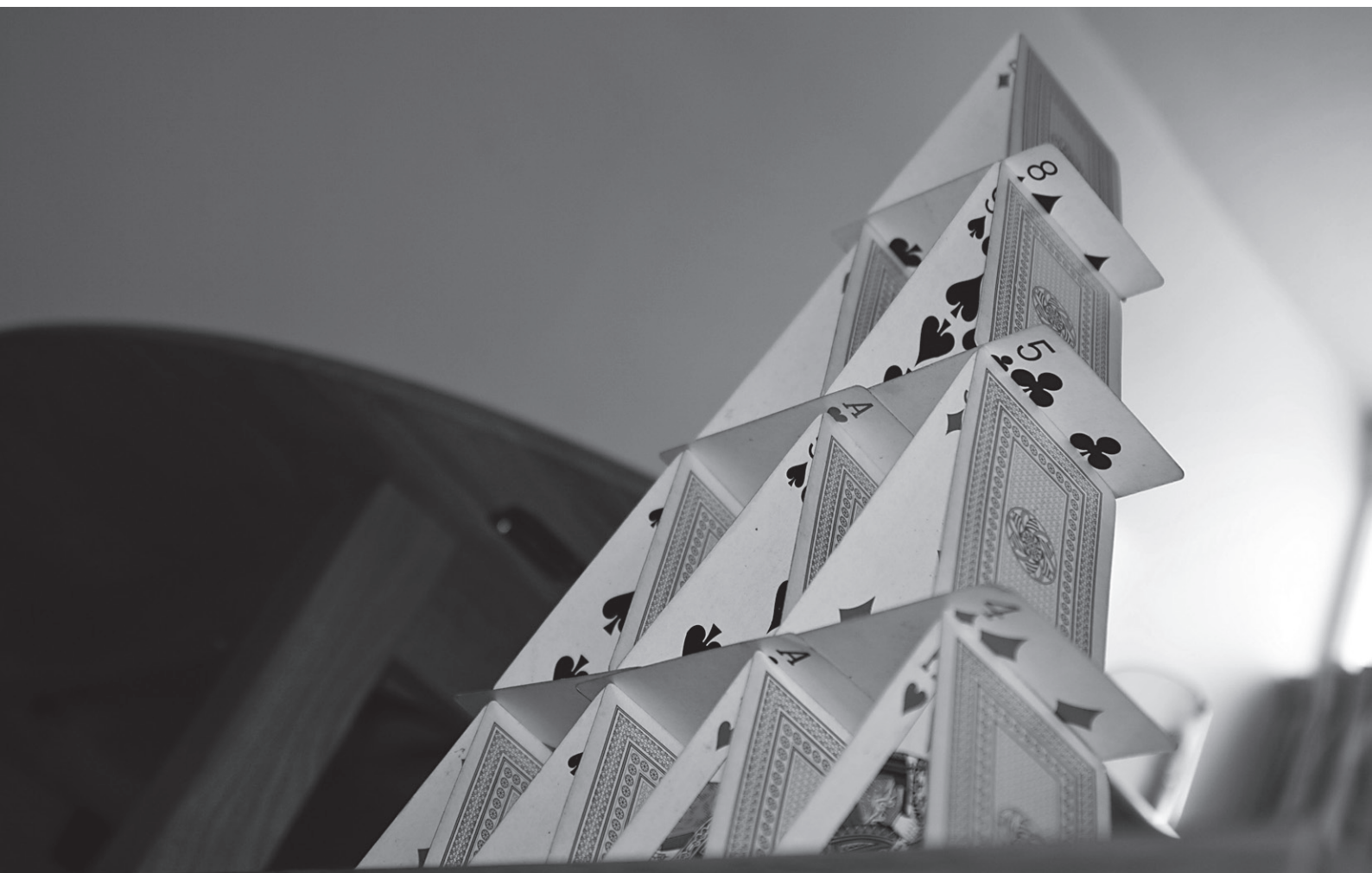
PUTIN'S REACTIVE REFORMS

146

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KREMLIN TO CHANGE THE RULES OF THE GAME

Sean Roberts

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- Following Vladimir Putin's presidential election victory in March 2012, the Russian political system has undergone significant change. The latest changes affect the way regional elections are conducted.
- However, a number of puzzles remain, not least the intentions of the Putin administration. Alongside liberalising reforms, such as the return of direct elections for regional governors and the easing of party registration requirements, we see new restrictions that close the political field.
- Nonetheless, the events of the past 20 months do reveal a distinct change in the reform process, as the Putin administration reluctantly adjusts to unfavourable political and economic conditions.
- In Putin's first two presidential terms, 2000–2008, reform was 'progressive', aimed at extending the Kremlin's power and authority. The latest changes, in contrast, are 'reactive' and involve an inevitable loss of control over political processes.
- One immediate implication is that political processes will become less predictable, as the Kremlin tries to reorganise its system of governance. But, in the longer-term there is a danger that the use of political reform as a substitute for democratic change will undermine the legitimacy of the entire political system.

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The reform puzzle

On November 4, 2013, Vladimir Putin signed a federal law giving regional administrations greater say over the way regional parliaments are formed. In the past, regional administrations were obliged to use an electoral system that had a minimum 50% ‘party element’ where seats were divided among competing lists of party candidates using proportional representation (PR lists). The remaining seats were then allocated through more ‘personalistic’ Single Member District (SMD) elections, where individual candidates, either party nominated or self-nominated, competed with each other in a majoritarian, first-past-the-post system.

With Putin’s signature, the PR list requirement has now been reduced to 25%, with Moscow and St. Petersburg (cities with the status of federal subjects) free to elect their parliaments purely through SMD elections. These reforms are almost certain to be followed by similar changes to the way the federal parliament – the State Duma – is formed, as the Kremlin prepares to return to the electoral system last used in December 2003. According to Putin, ‘going back’ to this system is one way to ensure equality for all political players, part of the change and modernisation of the political system that is both ‘natural and necessary’.¹

While these changes may seem insignificant in the broader context of Russian politics, they are part of a growing trend of ‘going back’ or undoing earlier reform that has taken on significance over the past 20 months. Vladimir Putin’s March 2012 presidential election victory was quickly followed by the return of direct elections for governors in April 2012 as well as the return of a more fluid party system, as registration procedures were liberalised. This trend can also be seen in the high-level discussion currently underway on reintroducing the ‘against all’ option on ballot papers (abolished in 2006) and the debate on overturning the ban on parties forming electoral blocs (outlawed in 2005) as old themes, and not just an old president, return to centre stage.

One explanation is that we are presently witnessing a process of political liberalisation. In recent months, both Putin and his first deputy chief of staff, Vyacheslav Volodin, have publicly urged governors and United Russia to work with opposition forces, supporting the idea of a domestic political ‘reset’ and a new era of tolerance in the Kremlin. The presence of opposition leader Aleksei Navalny in September’s Moscow mayoral election and his success in overturning his 5-year jail term for embezzlement in October, offer some support for this line.

However, there are plenty of developments that suggest the political system is actually closing rather than opening. Aside from beefing up existing legalisation on demonstrations, libel, internet restrictions and treason, there has also been a coordinated effort to control civil society since Putin’s return to the nation’s highest office. The latest stage of civil society reorganisation has seen the State Duma consider a controversial law requiring volunteer organisations to register with a specially created government body. This accompanies the equally controversial 2012 ‘foreign agent law’ and efforts to control NGOs by restricting foreign funding and offering discretionary state grants to ‘regime friendly’ organisations.

In short, the Putin administration continues to push a reform agenda, including the reversal of earlier reforms, while giving little indication of what they are trying to achieve. Official records show that the autumn 2012 and spring 2013 State Duma sessions saw more legislative bills introduced for parliamentary consideration than at any time since 2000. The spring 2013 session alone saw Putin personally sign 255 laws into effect – more than in any single session over the past 13 years.² As such, the two puzzles of Russia’s reform over the past 20 months relate to why there has been so much reform and what this reform actually means for Russia’s overall political trajectory. Thus far, the reform ‘balance sheet’ continues to grow, but so too do the conflicting messages of regime liberalisation and regime closure.

1 Putin, V (2012) Poslanie Prezidenta Federal’nomy Sobraniyu, available at: <http://www.kremlin.ru/news/17118> (accessed 13.11.2013).

2 While only a proportion of all laws passed by the State Duma carry implications for the political system, since 2000, the largest number of bills submitted for parliamentary consideration in any single session was in spring 2013 (936), available at: <http://www.duma.gov.ru/legislative/statistics/> (accessed 13 November 2013).

Why all the reform?

The first puzzle – why so much reform? – is a little easier to solve when considered against the backdrop of political development over the past 13 years. Although the State Duma has been particularly active over the past 12 months, it is important to understand that political reform is actually a defining feature of Russia's 'electoral authoritarianism'.

Take the aforementioned party system liberalisation and the ongoing electoral system reform of the past 20 months. The first was achieved by amending the 2001 law 'On Political Parties', reducing membership requirements from 40,000 to 500. But, since 2001, this law has been amended on 32 separate occasions. The second reform has so far reduced the PR list requirement in regional elections and involved amendments to three laws. But in total, these three laws have been amended a combined 243 times in the period 2000–2013, not including the latest changes.

This is an aspect of Russian politics that is typically misunderstood in the West. While some commentators have noted that political institutions in the post-Soviet space seem to acquire a certain 'changeable character', authoritarian regimes are considered to be static, characterised by an absence of power alternation and, thus, political change.³ But this generalisation is not strictly true. Although Russia has embarked on a course of 'authoritarian modernisation' since 2000, aimed at maximising economic development by maintaining the domestic political 'status quo', change in electoral authoritarian regimes, like Russia's, is still there.

The reason is that all electoral authoritarian regimes face an identical set of problems which make change inevitable. First, regimes need to build but also maintain a system of dominant-power politics, and this requires institutional engineering. Second, incumbents in authoritarian regimes, unlike most of their democratic counterparts, face the very real problem of stagnation, exacerbated by the fact that power-holders cannot renew their electoral appeal through time spent in opposition. This relates as much to the ideational aspect of electoral

authoritarianism; of how to present an image of democracy and change to the public in the absence of a significant alternation of power.

The solution is to constantly change the rules of the political game. Many electoral authoritarian regimes achieve this by amending the fundamental law in the shape of the Constitution. For example, in Mexico's electoral authoritarian regime, 1917–88, the Constitution was amended over 400 times in favour of the ruling group.⁴ However, in Russia, so far, the 1993 Constitution has undergone relatively little change.⁵ Instead, the rules of the game are manipulated by amending other important laws which taken together equate to a kind of constitutional change by stealth.

The problem, in terms of analysis, is that the sheer volume of reform complicates any assessment of Russia's overall political trajectory – the second puzzle identified. In addition, most major political reforms in Russia contain elements of both regime liberalisation and regime closure. If a new opportunity for political competition or participation is created through reform, then it is typically accompanied by other changes that establish 'fail safes' designed to maintain or even extend regime control.

A good example can be seen in the form of so-called 'municipal' and 'criminal' filters, which present new barriers to candidates attempting to benefit from the latest reforms opening up the political field. Municipal filters were introduced in 2012, obliging candidates in governor elections to collect a percentage of signatures from municipal deputies in the region in question – a process tightly controlled by the authorities. The criminal filter was the result of an amendment to electoral legislation made in the summer of 2012, placing a lifetime ban on criminals convicted of serious crimes from holding public office. In view of Russia's dependent judicial system,

3 Ryabov, A (2011) *Raspadayushchayasya Obschnost' ili Tselostnyi Region? Pro et Contra*, May/August, 6–18, p. 14.

4 Magaloni, B (2006) *Voting for Autocracy: Hegemonic Party Survival and its Demise in Mexico*, New York: Cambridge University Press, p. 259.

5 Russia's Constitution was amended in 2008, increasing presidential terms from 4 to 6 years and State Duma terms from 4 to 5 years. As of November 2013, the State Duma is considering a further change in merging the country's Supreme Arbitration Court with the Supreme Court, by abolishing the former and transferring its powers to the latter.

this filter also provides the authorities with an opportunity to bar opponents from politics forever, through fabricated court cases.

For this reason, the key to understanding the changes made to the political system over the past 20 months is to move away from the idea that these reforms are pulling Russia towards either more or less democracy. Instead, it is more revealing to consider the motives behind these reforms and what they mean for the power and authority of the Putin administration. Clearly, the Kremlin is making efforts to ‘clean up’ the political field ahead of the next federal-level elections in 2016/2018, and this is a partial explanation for the current reform. But what is also clear is that the return of governor elections, party system liberalisation and the latest and ongoing electoral reform are not in line with previous reforms that helped extend presidential control in Putin’s first two terms of office, 2000–2008. In Putin’s first two presidential terms, 2000–2008, reform was ‘progressive’, aimed at extending the Kremlin’s power and authority. The latest reform, in contrast, is ‘reactive’ with an inevitable loss of control over political processes.

Reactive reform: United Russia and Putin’s popularity

In the early 2000s, the Putin administration was able to ride the resource-led economic boom and utilise favourable domestic and international conditions to build the political regime. In generalised terms, this involved centralising power in a vertical system of governance by taking control of old institutions and creating new ones. Political reform in this early period, 2000–2008, was ‘progressive’ in the sense that it both built and extended presidential power and authority, creating the conditions for favourable, but also predictable outcomes for the Putin administration.

An important new institution and a key element in the Kremlin’s progressive reforms was the United Russia party, created in late 2001. The party of Putin, often dismissed as a powerless appendage to power rather than a real ‘ruling party’, nonetheless played a crucial role in extending presidential control over each of Russia’s 83 federal subjects by establishing its dominance in regional elections and successfully corralling the elites into a single, centralised organisation loyal to the Kremlin. By 2007, the

party had achieved majorities in the State Duma and most regional parliaments and represented the best opportunity for those wishing to embark on a career in politics.

But, early reform of party and electoral laws were crucial for the rise of United Russia and the Kremlin. Aside from tightly limiting the creation of new parties through the strict 2001 law ‘On Political Parties’, changes to the electoral system, notably the increase in PR list elections, served to channel the elites into the Kremlin-controlled United Russia and make them reliant on the party for their electoral and political fortunes.

One reason for this increase in PR list elections was given by Vladimir Putin in his keynote address to the Federal Assembly in April 2007. After recounting the dangers of separatism and the internal threat to Russia’s territorial integrity, he criticised SMD elections because they ‘did not stop influential regional organisations from pushing through their own candidates’.⁶ In short, the increase in PR list elections reduced the influence of regional organisations, such as local economic and political groups, and their ability to get their candidates elected to regional parliaments by giving United Russia, and by extension the Kremlin, greater control over candidate selection. It also guaranteed the strong influence of a national agenda in regional elections, while making them less ‘personalised’, thus limiting the ability of outsiders to mobilise the electorate for their own purposes.

This makes the latest U-turn in bringing back direct elections for regional governors, party-system liberalisation and the demotion of party-based PR list elections particularly interesting. They represent several major reforms made in a relatively short time frame that serve to decrease rather than increase the Kremlin’s control. As detailed below, while the full implications of these latest reforms are still uncertain at this stage, the drivers behind them are not. Unlike the earlier progressive reforms which were made from a position of strength, the latest ‘reactive’ reforms see the Kremlin reluctantly adjusting to a number of related, negative developments,

6 Putin, V (2007) Poslanie Prezidenta Federal’nomy Sobraniyu, available at: <http://izvestia.ru/news/324196> (accessed 13 November 2013).

including the decline of United Russia, Putin's own popularity issues and deepening economic problems.

The decline of United Russia is clear. Despite fair results in regional elections in October 2012 and September 2013, the party has struggled to recover from the disastrous 2011 State Duma election, when popular anger at the party of 'crooks and thieves' galvanised the protests that shook the country. An opinion poll conducted by the Levada Center in August 2013 showed that 30% of respondents considered United Russia a party of crooks and thieves, compared to 24% in December 2011.⁷ Liberalising party registration requirements and downgrading PR list elections are simply a high-level admission that United Russia is no longer viable, and that the Kremlin is hastily looking for alternatives.

As for Putin's popularity, this issue is now extremely sensitive. Unsurprisingly, recent opinion polls show Putin's popularity simultaneously falling and rising, depending on which indicators we look at and whose opinion polls we believe. Two of the more revealing, recent polls show that the percentage of respondents reporting a favourable opinion of Putin had dropped from 80% in April 2008 (the moment he stepped down as president) to 47% in August 2013, and that most respondents (24%) now think that the main political strategy of the country's leadership is to 'stay in power for as long as possible'.⁸

While Putin's approval ratings retain a certain mysterious quality, there is no question that presidential popularity is essential for the stability of Russia's current centralised, vertical system of governance, but that this same system is now factoring into the decline of 'brand Putin'. In a system where credit for success travels quickly up the chain of command, the flip side of the coin entails disproportionate

blame for failure. For this reason, it is little surprise that Putin is increasingly passing the buck to regional administrations when bad publicity strikes. This was exactly the case in October following Russia's latest race riot in Biryulevo – a district of Moscow – when Putin wasted little time in pointing the finger at local authorities.

While this threat to presidential popularity has always existed in Russia's strongly presidential system, in the period 2000–2008, Putin was shielded from too much bad publicity by the mitigating influence of strong economic growth. Now, economic slowdown in 2013 and poor forecasts for 2014 are challenging the basis of Putin's legitimacy. This problem is compounded by the way the Putin regime raised performance-based expectations among the populace and took on certain social obligations over the past decade in an effort to placate voters. In fact, Putin seemed to acknowledge this in his pre-election essay on social politics in 2012 when he noted that Russians enjoy 'much higher levels of social guarantees' than citizens in countries with similar levels of labour productivity and per capita income.⁹ However, ambitious plans for the 'modernisation' of the military and commitments to deliver on high-profile events, such as the 2014 Sochi Olympics and 2018 football World Cup in 2018, are likely to see expectations rise and resources further stretched.

With questions of legitimacy now occupying centre stage, the only realistic political options open to the Putin administration, beyond a radical shakeup of the entire system of governance, are to cut ties with the party of 'crooks and thieves' and make efforts to spread some collective responsibility for the problems affecting the country. This is exactly what we can see in the return of direct elections for governors and the weakening of United Russia's monopolistic role in the party and electoral system.

Immediate implications

Predicting the effects of the above-mentioned reforms is complicated by a number of factors;

7 Shitayut li Rossiyanе 'Edinuyu Rossiyu' Partiei Zhulikov i Vorov? available at: <http://www.levada.ru/16-09-2013/schitayut-li-rossiyane-edinuyu-rossiyu-partiei-zhulikov-i-vorov> (accessed 13 November 2013).

8 See Rossiyanе o Vladimire Putine, available at: <http://www.levada.ru/27-09-2013/rossiyane-o-vladimire-putine> and Kurs Vladimira Putina v Predstavleniyakh Rossiyan, available at: <http://www.levada.ru/06-11-2013/kurs-vladimira-putina-v-predstavleniyakh-rossiyan> (accessed 13 November 2013).

9 Putin, V (2012) Stroitel'stvo Spravedlivosti. Sotsial'naya Politika dlya Rossii, available at: <http://putin2012.ru/#article-5> (accessed 13 November 2013).

not least the interaction of old reforms with new reforms and planned reforms. This also explains why the Kremlin has postponed the return of SMD for State Duma elections until February 2014 at the earliest. Since 2007, the State Duma has been formed purely on the basis of PR lists, but the bill currently under consideration will see a return to the 2003 electoral system with at least an equal 50-50 split between PR list and SMD. As the Kremlin is also considering returning the 'against all' option to the ballot paper and allowing the creation of party blocs, there is now an unenviable task of calculating the combined effects these changes will have.

A good illustration of the complexity of the current reactive reforms can be seen in some of the 'unintended consequences' starting to emerge. For example, the planned technical reform of elections, including the switch to an automated vote-counting system was recently suspended because the huge increase in the number of registered parties means it is physically impossible to fit them on a single ballot paper that the system can scan. There are also questions surrounding the legality of several reforms, not least the criminal filter. In October 2013, the Constitutional Court ruled that the lifetime ban on holding public office for those convicted of serious crimes was, in fact, unconstitutional.

While unintended consequences are largely unavoidable with so much political reform, there are a number of 'intended' results that have or will shortly become apparent. For example, the return of governor elections and party system liberalisation is providing voters with more choice and this may be enough to channel protestors into more conventional forms of participation. At the same time, the significant increase in the number of smaller parties failing to pass the minimum threshold in parliamentary elections actually favours United Russia when it comes to re-dividing their votes and allocating seats. Likewise, greater use of SMD should boost United Russia's performance in regional parliamentary elections because the more personalised nature of SMD elections means that candidates will not have to directly campaign under the problematic party 'brand', as is the case for PR list elections.

In fact, more personalised election campaigns are another short-term implication of the move away from PR list elections. For some, this is a positive development in its own right. Vladimir Pligin, the

chair of the State Duma's Committee on Constitutional Legislation and State Building, justified the renewed emphasis on SMD by claiming that Russian society wanted more personalisation in politics, clearly seen in September's Moscow mayoral election. This election saw a much reduced role for parties in what was an intense personal contest between the main challenger, Aleksei Navalny, and the incumbent, Sergei Sobyenin. However, the Moscow mayoral election was characterised by low turnout (32%). More importantly, it was also characterised by populist appeals, typically focusing on anti-migrant attitudes.

This is part of the problem for the Kremlin. The positive aspects of the latest reforms are in many ways outweighed by their drawbacks, particularly in the way they serve to increase the overall level of unpredictability in electoral and legislative politics while decreasing the Kremlin's control. These points are particularly apt if we consider the number of actors in the political system, both before and after the reforms of the past 20 months. In the December 2011 State Duma election there were seven parties registered to compete and no SMD element at all. But the next State Duma election scheduled for December 2016 will likely be a different story. As of November 2013, the Russian Ministry of Justice lists 62 parties eligible to compete in elections and a further 76 with steering committees waiting to be registered.

Not only will these new parties and SMD candidates complicate the electoral landscape, they will also create certain intra-party dynamics. For example, so far, the appearance of dozens of new parties has not resulted in mass defections from the more established parties to the new ones, but defections have nonetheless occurred. Moreover, this process could gain momentum if future reforms make newly created parties more attractive, notably with the return of electoral blocs, or if United Russia's slide continues.

There is also the thorny issue of controlling candidates after they are elected to parliament. Although there have been restrictions on deputies switching parliamentary factions since 2006, the experience of legislative politics in Russia shows that deputies elected through SMD are more difficult to control. One reason is that successful SMD candidates typically possess strong name recognition in their

region, making them less reliant on parties for the resources they need to succeed in elections. As a result, parliamentary factions may struggle to maintain voting discipline.

For this reason, it is important that the Kremlin continues to offset any loss of control by finding new ways to regulate political competition. There are growing signs that Putin's All-Russian Popular Front (APF) – a loose coalition of societal organisations created in May 2011 – will add an extra layer of control over SMD elections by acting as an umbrella organisation, incorporating many candidates and newly formed parties into an alternative Kremlin-controlled structure. Although not yet registered as a party, its legal status as a Public Association allows it to perform this task. In another related development, both United Russia and the APF have reminded their members that there are certain ethical and moral standards of behaviour expected of them, in what is likely to be a pretext to expel dissenters in the immediate future.

Longer-term implications

Despite offering some short-term advantages to United Russia, the fact is that party-system liberalisation and ongoing electoral reform deliver a symbolic defeat to Putin's party, which now sees its role in the political system much reduced. It also signals that the Kremlin has acknowledged the limits not only of the party, but also the controlled party system that consolidated in the period 2003–2011.

In fact, the decline of United Russia and the controlled party system carry a number of longer-term implications that reinforce the notion that, unlike Putin's earlier 'progressive reforms' of 2000–2008, the latest 'reactive reforms' carry clear suboptimal outcomes for the Kremlin. In short, party-based competition is more stable, offers the best opportunities to control candidates and reduces the danger of populism because parties are better able to make consistent electoral appeals based on clearly defined programmes. Although many Russian parties are weakly programmatic, the emphasis on SMD, as already noted, will lead to more populism and this could destabilise the political situation in those regions where intra-elite conflict is fierce and where the electoral process often sees competing groups use all means at their disposal to win.

In February 2012, Putin wrote that the main task of the 2000s was the fight against a 'creeping' separatism that saw the merging of regional authorities with criminal and nationalist groups. This problem, according to Putin, has on the whole been resolved.¹⁰ But, by the end of 2013, Putin's assessment seems overly optimistic. September's regional elections in the southern Russian republic of Kalmykiya, for example, saw the use of so-called 'bandit technologies', including physical assaults on opposition activists, questioning the idea that criminal groups and regional administrations are no longer merging their interests.

In addition, nationalism remains a latent threat in some regions. In October 2013, a group of activists attempted to remove the president of Bashkortostan – one of Russia's 21 national republics – for allegedly violating the Bashkir constitution and causing economic loss to the republic. This political challenge, which came from the previous ruling clan, was unsuccessful, but it underscores the danger that certain groups will try to use nationalist appeals to mobilise voters in those regions where identity politics and elite conflict are real problems. How these latest reforms will affect the longer-term intra-elite dynamic in the regions is debatable, but they will weaken the Kremlin's grip on regional politics.

Perhaps a more far-reaching implication is that of the cumulative effect of reform, not just of the past 20 months, but of the past 13 years. Changing the rules of the political game so often will not encourage others to respect them, let alone play by them. This is particularly true when change is not based on some objective calculation of what is good for the country, but only on the expediencies of regime perpetuation. In this sense, there is a real danger that the use of political reform as a substitute for the democratic alternation of power will ultimately undermine the legitimacy of the entire political system.

By the end of 2013, there are indications that the Putin administration will be forced to make more reactive reform and to further adjust the way Russia is ruled. It seems obvious that the longer the present

10 Putin, V (2012) *Demokratiya i Kachestvo Gosudarstva*, available at: <http://putin2012.ru/#article-4> (accessed 13 November 2013).

economic uncertainties continue, the greater the pressure on the Kremlin to loosen the power vertical. In the meantime, it is worth reiterating that the centralising reform of the past 13 years involved little constitutional change. As such, the same process of incremental reform that built the Putin system can just as easily undo it.

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