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On law in the post-Soviet space

Romeo Kokriatski

9 June 2019

In typical democratic understanding, laws are things a state imposes on a populace, so that the populace has some common basis for conduct and norms, as well as defenses against the excesses of the state itself. Not so in Ukraine, Russia, or Belarus. Or really, most of the post-Soviet space. In fact, one can easily, and correctly, argue that laws in those countries aren't real, or at least they aren't actually laws.

Laws, in the usual democratic understanding, constrain societal behavior (or incentive some sort of behavior) to provide a common ground for society. Laws aren't morals, but they attempt to reflect, accurately or not, the general views of a governed populace. When laws are applied selectively, to some groups but not others, their moral authority is lost, and so is any reason to follow or obey them. This is the case in the post-USSR sphere. Laws are not there to provide a common basis for society to function.

Instead, these laws draw from the bureaucratic Soviet tradition of simply providing a faux-rational explanation for the proletariat to swallow, as well as a defense for the bourgeois

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Retrieved on 13th December 2022 from www.nihilist.li

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elite to hide behind. But if a law can be disregarded by having the right friends and funds, then is it really a law? Or is it simply the diktat of a crime boss to the people in his terrified territory? In the past, law was formed by the rule of 'If you can invent a reason to claim nobility, and you have the swords and men to back it up, what you say goes.'

Of course, the Enlightenment and later, the American revolution explicitly rejected that formulation, leading us to the common democratic understanding above. So we can say that in general, Western society has progressed from 'might makes right'. The USSR, being nominally communist, of course claimed descent from Enlightenment values, and thus the bureaucratic cover of law was set to pretend as if 'might makes right' isn't true, though obviously it was. This wasn't a criminal aberration – bribery was and is literally just the accepted way of running a society. (Unlike in the West, where – at least casual bribery – is typically treated as a scandal and criminal act.) Instead of rule of law, you have rule of nothing. To be fair, it is a bit more pronounced in Ukraine.

The lack of a strongman, a la Lukashenko or Putin, gives the law even less authority, because those in charge of enforcing it usually aren't overly beholden to even their own direct superiors. That is to say, that the so-called laws written in codexes and pronouncements aren't laws at all. A law may state that theft is a crime, but if I bribe the prosecutor with the gains of my theft and my case is dismissed or simply rots in bureaucratic stasis, then the law is mostly just a tax on criminal activity, instead of enforcement of the state's will.

Any argument that appeals to 'law' in Ukraine is immediately fallacious, because the concept, really, doesn't exist. It is nearly trivial to have any charge dismissed, as long as you have the funds to do so. Now of course such criticism can be applied to Western countries as well, but it carries a cachet of immorality, whereas in Ukraine, etc., it's just the way the system is designed to function. There cannot be a reform of rule of law

in Ukraine, because in order to reform something it must exist in the first place.

People always love telling me 'Romeo, that action would be illegal to take.' Says who? A bunch of ex-(and current) mafia jokesters that sit in a fancy building they bribed their way into? Why should I assign them the authority to govern me? At least in the West, politicians are (for better and worse) democratically elected, even if the electorate oftentimes votes against their own interest. But democratic norms being what they are, if I want to live in a democracy, then I have to make my peace with at least some laws applying to me.

My point in all this is to re-iterate: Laws in these countries, and in other countries that lack the concept of 'rule of law', are no more authoritative than the homeless drunkard yelling conspiracy theories under my window at 4 AM. I am free to ignore them at my will, and the consequences for doing so, presuming I can make friends and gain access to the necessary funding (it is surprisingly cheap, actually), are nil.

If, for example, I wanted to walk down the street with a gun in one hand while taking hits from a crack-pipe in the other, the issue isn't the legal charges that could be brought against me – those are almost trivially dismissable, but the fact that I may get my ass beat (if I'm not well known to the local gendarme.) You can see this sort of behavior, for example, in Odessa (though I am exaggerating a bit for effect, I don't recommend trying it unless you're in Truhanov's immediate family, in which case my point is pretty much proven.) So – ignore the laws. They aren't real. Violating a law means nothing. There is no ethical penalty incurred for it.

Though, remember that the system is designed to force a hierarchical class structure, so do keep in mind that if you are going to flagrantly disregard the law, make sure you can scrape enough cash to go to dinner with a district prosecutor's son-in-law.