Yevgeny Prigozhin and Russia's Expanding Prerogative State

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Over the weekend, the world's attention was gripped as a well-equipped Russian private military company led by Evgeny Prigozhin seized control of a key Russian city and military hub, and marched on Moscow.

Russian president Vladimir Putin gave a televised speech, calling Prigozhin a traitor who was "stabbing Russia in the back".

It seemed that a real coup attempt was underway and Putin's leadership was in real jeopardy. But, within 24 hours, it was all over and much of the world was left scratching their heads. Prigozhin had secured a deal for himself and his troops were heading back to their camps.

What happened?

The Prigozhin affair was not a serious coup or attempt to challenge President Vladimir Putin's authority. It was instead Prigozhin's attempt to secure his own position in his ongoing feud with the Minister for Defence, Sergei Shoigu.

Prigozhin's actions reveal a deeper truth about Putin's Russia: the absence of formalised, legal mechanisms for peacefully resolving high-level, intra-elite disputes. As the war in Ukraine drags on, what Ernst Fraenkel called the 'prerogative state' is expanding. This lawless realm of unchecked public power has no rules or institutions that can settle disputes among the Russian elite; these can only be resolved by Putin himself.

Prigozhin's actions therefore were not a challenge to Putin, they were an appeal to get his attention. This expanding prerogative state therefore demands more and more of Russia's aging president. Putin must be everywhere, solving the manifold problems and disputes that keep emerging from the pressures of the war in Ukraine. If he fails to, things can go wrong quickly. The expanding prerogative state therefore poses serious challenges to the stability of the underlying system that Putin created. And it raises important and pressing questions about what will happen to the Russian state when Putin is no longer in power.

Resolving elite disputes

In the 1940s, Ernst Fraenkel wrote an important book about what he called the 'dual state' in Nazi Germany. He described how two states co-existed in Hitler's Germany. The prerogative state, he argued, operated outside of law. Here, the 'governmental system' directed by Hitler and the Nazi Party 'exercises unlimited arbitrariness and violence unchecked by any legal guarantees.' In the 'normative' state, by contrast, courts continue to follow the law in resolving less high-profile cases and controversies.

He explained the co-existence of these two states as an adaptation to the rise of the National Socialist Party. When Hitler or the Party was challenged, the prerogative state would prevail and law would not limit the personal power of those in charge. But, in matters that did not involve the interests of the Nazi Party, the normative state continued to operate.

Why would the Nazis not intervene here as well? They needed the law to structure everyday, commercial affairs and dispute; it is next to impossible to organize a large system of market capitalism where there is no underlying consensus and trust among stakeholders on the predictability of outcomes if these vary from case to case. It would be impossible to have any form of economic growth or exchange if there are no rules for private and intangible property, entrepreneurial freedom, sanctity of contracts, unfair competition, labour employment.

Russia has evolved according to a similar logic. Putin and his supporters use the prerogative state to ensure that they have unchecked, personal power to settle disputes that threaten their power. In fact, ultimately these disputes are determined by the personal intervention of Putin himself.

But, in other disputes that do not make the headlines or impact major political players, legal institutions still function. Political scientist, Professor Peter Solomon, uses Fraenkel's terminology of the dual state to describe a system where politicised cases are handled according to power politics while other less high-profile cases "are handled fairly and expeditiously." Without this normative state in place, the Russian economy would struggle to function.

The Prigozhin affair

The 'Prigozhin affair' grew out of an intensifying intra-elite feud between Prigozhin and the Russian Minister for Defence, Sergei Shoigu.

This kind of elite feuding is highly common in Putin's Russia. In fact, elite splits enhance Putin's power by decreasing the possibility of a strong challenge to his power. This divide and rule style has played a key role in allowing Putin to preserve his power for decades.

For months, Prigozhin knew he could get away with his criticism of the Russian Defence Minister because he was useful to the war effort. His contributions to the war – and particularly the role of his private military company Wagner in the capture of Bakhmut – gave him leverage that guaranteed his safety.

But, in recent weeks, it appeared that he was losing this leverage. In the days before his 'mutiny', Prigozhin found out that his private military company (Wagner) would be absorbed into the Russian military. Rumours were also swirling around that Prigozhin would soon be arrested and put in jail. Seeing his position weakening, Prigozhin – a convicted criminal who served time in prison – understood the logic of the prerogative state. There were no regularised ways of defending his position. The best lawyers in Russia could not save him. Any criminal proceeding against him would be pre-determined and a mere formality before a very long jail sentence.

In the end, the currency of the Russian prerogative state was force and power. He had to flex his power while he still had it. His march on Moscow was therefore not a coup meant to challenge Putin or topple the Russian state. In fact, his public statements carefully avoided criticising Putin. His actions were instead a way to force Putin to recognise and protect Prigozhin.

And they paid off. The Russian army was caught off guard and his forces were able to seize a key Russian city (and military hub) in the south and begin to move toward Moscow. But throughout, all sides avoided serious confrontation; it looked like everyone understood what was happening. Prigozhin got Putin's attention and, ultimately, a deal.

The perils of an expanding prerogative state

The Prigozhin affair shows the changing nature of Russia's dual state.

Although the normative state still operates in Russia today, the war in Ukraine has undoubtedly expanded the Russian prerogative state. This has advantaged Putin and his supporters by allowing them more space to crack down on opposition to the Kremlin. A good example is the failure of a recent challenge to a law that has been used to punish thousands of Russians for criticising the war.

The main complaint—filed by OVD-Info—argued (among other things) that this law unconstitutionally imposed a state ideology in violation of Article 13 of the Russian Constitution. An amicus brief (submitted by Alexander Blankenagel and myself) argued that the law is extremely vague and clearly not 'necessary' to achieving any constitutionally permissible goals as required by Article 55 of the Russian Constitution.

The Russian Constitutional Court dismissed these arguments, tacitly endorsing a significant expansion of the Russian prerogative state. The Court argued that the law was valid because it served a compelling end: the protection of the Russian armed forces and their duty in protecting Russia (as well as 'international peace and security'). The Court did not challenge the

relationship between the law and this end, choosing to take the government's assertions at face value. Furthermore, it completely ignored whether this law was 'necessary' to achieving a legitimate end or if there might be less restrictive means of achieving this end.

This reasoning gives the state a blank check in protecting what it claims to be the 'public interest.' The individual rights provisions in the Constitution—already heavily underenforced before the war—are now irrelevant.

While the expanding prerogative state allows Putin and the Kremlin more room to suppress the opposition, it also generated the Prigozhin affair. In a time of war, elite disputes are more likely and can escalate more quickly. Furthermore, more and more members of the Russian elite themselves are personally enlisting themselves in the war effort. In fact, they are increasingly forming their own private military companies to shore up the military's war effort. For instance, the large natural gas company, Gazprom, is starting its own private security organisation.

In this environment, intra-elite disputes are far more dangerous than they were before.

They are not more dangerous because they are the beginning of the end for Putin, as many are arguing. In fact, intra-elite feuds enhance Putin's power because he is the only one capable of resolving them. Prigozhin's actions therefore appear to have been a very noisy way of getting Putin's attention. So, if anything, it confirms the ongoing personal power of Putin.

But, it does show that the *system* of power that Putin has created is increasingly dysfunctional. A system that requires the aging president's personal management at all times – what many Russians call 'manual control (*ruchnoi kontrol*) — is difficult to sustain when Putin is also overseeing the war. If Putin is distracted and neglects intra-elite feuds, they are left to fester and, as in this case, erupt. If Putin is unable to develop a more effective way of resolving intra-elite disputes (which is next to impossible), he and the Russian state along with him might very well be destroyed by the very war he started. Moreover, a post-Putin Russia looks even more precarious as the Russian prerogative state will be unable to regulate the feuds to replace Putin.

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