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## Formal-Informal Relations in Azerbaijan

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### Abstract

In the neopatrimonial context, formal institutions cohabit the governance space with informal institutions. Azerbaijan is a good example of how formal institutions such as referendums, elections and the judiciary are used as window dressing behind which patrimonial relationships thrive and proliferate. While written rules act as a façade, they perform useful functions for the regime, allowing the ruler to create the appearance of legality and maintain autocratic control of the system. However, the patrimonial informality (or informalities) that underpin the neopatrimonial system and govern actual behaviour ultimately undermine the formal ‘institutions as constraints’ basis, which is necessary for democracy and the impartial rule of law to take root.

### Formal-Informal Dichotomy

Nearly three decades after the breakup of the Soviet Union, scholars still debate the relative weight of formal vs. informal institutions in post-communist societies. While many post-Soviet states have adopted the formal trappings of Western-style democracy and liberal constitutionalism, there appears to be a discrepancy between formal (written) laws and informal rules that guide the behaviour of actors in practice.

Informal rules seem to be more pronounced in those post-Soviet states where patrimonial-communist legacies have left a deeper imprint on their society. Patrimonial communism denotes the model of a communist one-party regime in Russia and other Soviet republics with a prevalence of pre-communist authoritarian-institutional legacies of personalistic rule and patron-clientelistic practices without a well-developed and professional bureaucratic administration (Kitschelt et al. 1999, 52). Patrimonial communism is contrasted with the bureaucratic-authoritarian type of communist rule in the Czech Republic and in former East Germany (GDR), where the establishment of the [Weberian-style] legal-rational bureaucratic apparatus predated the instalment of communism.

Azerbaijan exhibits the extreme form of the (neo) patrimonial ideal type. Patrimonial and patron-clientelistic relations with roots in both the communist era and pre-communist past permeate all capillaries of political life. Here, the formal bureaucratic structure modelled after the Western-style rule-of-law system and professionalized bureaucratic apparatus from where it was borrowed co-exist with (and possibly complement) the patrimonial rules of the game that prevail. Based on personal authority, rather than legal rationality and the supremacy of impersonal laws, patrimonial rule rests on the ruler’s maintenance of personal loyalty in exchange for particularistic favours to his clients, lieutenants and supporters.

Under (neo)patrimonialism, the formal structure is officially grounded in the principles of rational bureaucracy and legal authority. Legal-rational authority, according to Weber, implies that

“the legitimacy of the power holder to give commands rests upon rules that are rationally established by enactment... Orders are given in the name of the impersonal norm, rather than in the name of a personal authority; and even the giving of a command constitutes obedience toward a norm rather than an arbitrary freedom, favor, or privilege. The ‘official’ is the holder of the power to command; he never exercises this power in his own right; he holds it as a trustee of the impersonal and ‘compulsory institution’” (Weber 1946, 294–295).

However, under neopatrimonialism, legal-rational rule is adhered to only nominally, as in practice, patrimonial logic dominates and supersedes the legal-rational bureaucratic authority structure. Patrimonial relationships are regulated “through individual privileges and bestowals of favor” (Weber 1946, 198). While the neopatrimonial system is constituted by these two domains, the formal constitutional-legal order serves largely as a façade that conceals and embellishes patrimonial relationships that undermine formal institutional constraints and thus are inimical to democratization and judicial independence.

In this respect, neopatrimonialism is akin to the Potemkin village model (Pisano 2018), wherein formal rules and procedures are used *ex post* to confirm and codify informal decisions and agreements made within the elite network *ex ante*.

“A Potemkin village is a simulation: a facade meant to fool the viewer into thinking that he or she is seeing the real thing... [to] describe gaps between external appearances and underlying realities. In the Russian language, the genus

includes species such as *pokazukha* (window-dressing), *imitatsiia* (mimicry...), *feik* (doctored news images or reports)...” (Pisano 2018, 278).

## Evidence

Below, I use constitutional referendums, parliamentary elections and judicial independence (or the lack thereof) from Azerbaijan’s recent past to illustrate the interplay of formal-informal institutions in the country. It seems that Azerbaijani leaders appear to value formal institutions for their property to create a sense of conformity with constitutionalism, yet they in fact violate the impersonal nature of formal ‘institutions as constraints’. Rules are amended or circumvented by the incumbent leader in pursuit of his interests in preservation and the concentration of power as well as the succession of the presidential office within the ruling family. However, formal institutions are not mere window dressing or a showy façade to disguise the realities of patrimonial relationships; they perform important instrumental functions for the regime. Constitutions that bestow most powers upon the presidency define the locus of the ruler on the institutional map and the degree of power concentration in the executive; they enable the ruler to exercise autocratic control of the state apparatus and legitimize his and his elite network’s grip on power.

## Referendums

A referendum held in September 2016 approved the amendment to the 1995 constitution that extended the president’s term of office from 5 to 7 years and created new posts of vice-presidents. In the following year, President Ilham Aliyev appointed his wife, Mehriban Aliyeva, a leading figure from the powerful Pashayev group, as First Vice-President. Another approved constitutional amendment granted the president the right to dissolve parliament.

The rivalry between the well-established group led by presidential chief-of-staff Ramiz Mehdiyev (the “old guard”) and the Pashayev group and centred around First Lady Mehriban Aliyeva (née Pashayeva) has been a mainstay of Azerbaijani political life in recent years (Adilgizi 2019). Over the years, the Pashayevs created and expanded a business empire and accumulated power by appointing their own cadres to ministerial positions, where they clashed with Mehdiyev’s “old guard”. The “old guard” comprises senior figures from the 1990s, many hailing from the Nakhchivan province, who were loyal allies of ex-president Heydar Aliyev. When Ilham Aliyev succeeded his father in 2003, he kept these influential politicians from his father’s era to prevent the elite from potentially conspiring against him as he consolidated his personal power. However, although there were no visible disputes, the loyalty of the old guard members to

the president (and especially First Lady Mehriban Aliyeva with her presidential power ambitions) was arguably under suspicion (Safarova 2020).

In October 2019, President Aliyev began a major reshuffling of his government and presidential administration, purging officials and public managers from the older generation. In fact, the reshuffling commenced last summer with the dismissal of the Minister of Internal Affairs, Ramil Usubov, who was an influential figure in the ‘old guard’ group. As a result, a number of prominent figures were demoted from their senior-level posts, notably, Ramiz Mehdiyev, Novruz Mammadov (Presidential Foreign Policy Advisor and former Prime Minister) and Ali Hasanov (Presidential Assistant for Public and Political Affairs). Mehdiyev, a communist-era *apparatchik* and the ‘grey cardinal’ of Azerbaijani domestic political affairs, commanded considerable political power and had extensive business interests. Purges seem to have disproportionately targeted political heavyweights from the Mehdiyev-led ‘old guard’, following the logic of inter-elite rivalry described above.

Speculations abound that the real cause behind the government reshuffling has been economic, as the Azerbaijani economy was hard hit by the oil price slump starting circa 2014. As the size of oil revenues has shrunk, it has become more difficult to accommodate the growing appetites of various rent-seeking groups. Resource rent scarcity has animated and intensified competition between rival ‘*klanlar*’ (the Azerbaijani word for ‘clans’), the term used by media outlets and the public to refer to influential elite networks led by a powerful individual politician or businessperson (an ‘oligarch’), often cemented by family ties, regional affiliations or shared business interests (Guliyev 2012). According to popular rumours, the demotion of the once-powerful ‘old guard’ group (Mehdiyev-Usubov-Hasanov) from the elite network signified the strengthening of the position of the first lady’s Pashayev group and her personal power ambitions to serve as the country’s first female president.

In fact, the use of referendums has become an almost routine practice to bend rules-as-constraints in furthering the ruling elite’s informal power-transfer designs. There have been two other referendums since the adoption of the constitution in 1995, each held in anticipation of a power succession.

In late August 2002, a referendum approved amendments including the elimination of the proportional representation (PR) component of the electoral system (25 deputies were elected through party lists and 100 in single-member constituencies). However, most importantly, the constitutional amendment changed the order of succession in the case of a president’s incapacitation. According to the new rule, if the president resigned before finishing his term, the prime minister would

take over the president's office. [In 2016, the Constitution was amended to put the First Vice President as first in the line of presidential succession.]. It was clear at that time that the constitutional change was motivated by President Heydar Aliyev, whose health deteriorated, to transfer power to his son, Ilham. Ilham Aliyev had already been appointed Prime Minister before the president called for a referendum. The referendum served to clear the way for the dynastic transfer of power (Eurasianet 2003).

Somewhat similarly, another referendum in 2009 approved the abolition of term limits, which allowed Aliyev to run for presidency in 2013. The decision to eliminate term limits aimed to dissuade other elite groups from plotting against the incumbent president, as "it sent an unambiguous signal about regime and elite continuity", while reappointments of most senior minister and officials bolstered their pro-regime loyalty (Ahmadov 2011).

### *Parliamentary Elections*

On December 5, 2019, President Aliyev decreed the dissolution of the parliament and set a snap election date for February 9, 2020. In a mockery of checks and balances, it was the parliamentary majority that asked the president to dissolve the parliament citing the incompatibility of the current parliamentary composition to the president's ambitious plans to "speed the course of economic reform" (RFE/RL Azerbaijani Service 2019).

Azerbaijan's rubber stamp parliament is dominated by members of the ruling party and their proxies. The decision to hold an early election took everyone by surprise and paved the way for speculations about the implementation of another elite-orchestrated scheme of the dynastic transfer of power, this time from the president to the first lady as discussed above. According to this view, a snap parliamentary vote will cleanse the parliament of 'old guard' holdovers and replace them with MPs who will be loyal to the now omnipotent Pashayev network (BBC Azeri 2019). According to an opposition leader Ali Karimli, the move to dissolve the parliament "is not about any reforms at all, and seeks [instead] to concentrate all power and resources in the hands of the Pashayevs by extending their influence in the legislature" (Agayev 2019).

It is an open secret that there exists a certain informal practice of 'shortlisting' candidates approved by the presidential apparatus. Until recently, it was popularly believed that Ramiz Mehtiyev himself would personally check and pre-select each individual candidate before compiling a list of suitable candidates whose victory would be subsequently confirmed by what would appear to be 'free and fair' parliamentary 'election'. In an authoritarian context, elections are largely a *pro forma*

show to legitimize and cover up what has already been decided before the election takes place. In 1995, during the first parliamentary election campaign, the opposition camp claimed that the list of winning candidates was allegedly predetermined (OSCE/UN 1996). In the November 2015 parliamentary elections, the results were predictable to such an extent that the leader of an opposition bloc, Jamil Hasanli, was able to accurately predict the identity of all but 5 (out of 125) MPs that matched the list of candidates he posted one month prior to election day (BBC Azeri 2015).

### *Judicial Independence*

In discussing different models of courts in authoritarian contexts, Solomon (2015) distinguishes a hybrid model that fits Russia and other post-Soviet states. In these countries, courts are established and appear formally independent, but informal practices ensure that court decisions favour the interests of the governing regime. In post-Soviet authoritarian regimes, courts perform crucial functions of political control and legitimacy. They allow authoritarian leaders to secure legitimacy, to appear to have a normal democratic constitutional system, and "to cultivate good reputations and public relations while retaining control over the administration of justice when needed" (Solomon 2015, 433).

In Azerbaijan, executive interference in court rulings is pervasive; courts generally lack independence and are prone to corruption. According to one assessment, Azerbaijan's criminal justice system "exhibits a high degree of external influence on the judiciary, a certain degree of corruption and an informal policy of punitiveness in relation to dealing with people accused of offences" (Shahbazov and Muradov 2019, 2). The Azerbaijani Bar Association, controlled by the president, disbars arbitrarily independent members—most recently a lawyer named Shahla Humbatova—who are brave enough to defend sensitive cases involving the arrests of human rights activists and political prisoners (CRD 2019).

### **Conclusion**

In this Potemkin village hybrid of formal and informal institutions, informal patrimonial relationships take precedence over formal ones. Formal institutions are largely window dressing, but they are not irrelevant. Formal legality provides a modicum of constitutional legality and democratic legitimacy. They serve the instrumental value for the regime of signalling its conformity with accepted norms of good behaviour and package informal deals and intra-elite power arrangements. The case of Azerbaijan demonstrates how formal institutions are used to confirm informal backstage arrangements *post factum*. Formal compliance with the letter of constitu-

tional order and other formal legal norms acts to cement informal power constellations.

Moreover, informal practices are ubiquitous, and it would be faulty to assume that a dearth or weakness of formal institutions translates into some sort of institutional emptiness or institutional void. In contrast, much of the actual workings of the system are done through

informal rules, norms and practices that are recognized, accepted and practised. They structure the actual relations and expectations of actors, but further research is needed to better understand the multiplicity, structure and mechanics of operation of various informal institutions and practices.

#### *About the Author*

Farid Guliyev is a Postdoctoral Fellow at Justus Liebig University Giessen in Germany. His current research focuses on energy policy, politics and the political economy of development in post-Soviet countries.

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