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Formalism, realism and conservatism in Russian law

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Propositions relating to the dissertation

**FORMALISM, REALISM AND CONSERVATISM
IN RUSSIAN LAW**

by Mikhail Valerievich Antonov

1. The recognition and enforcement of rights in Russian legal culture is mainly justified with reference to communitarian rather than to individual interest. This is reflected both in legal theory and in popular opinion;
2. Russian exceptionalism—in the matters of human rights—can be partly explained by this different attitude to individual and collective interest, as compared with Western legal tradition. Such exceptionalism in contemporary Russian law can be seen as a continuation of pre-revolutionary conservative discourses and of Soviet ideology;
3. The history of the rivalry between Russia and the West in matters of religion, ideology or politics underpins contemporary conservative discourses in Russian law and politics;
4. Prevailing Russian legal theory is based on a combination of formalism and decisionism. This combination theoretically reconciles the formal requirement of legality in the Constitution and factual practices of politicized justice;
5. There is a fit between this dualist legal theory and conservative discourses explaining why a liberal understanding of rights finds scant reflection in Russian courts and, more generally, in the Russian legal mentality despite the formal proclamation of this liberal understanding also found in Russian constitutional law;
6. The tension between formalism and decisionism leads to internal contradictions in theorizing about legal rights. To cope with these contradictions, Russian courts and some Russian legal scholars address metaphysical ideas that justify the value choice being made in favor of collective interests;

7. Examining Russian law through the lenses of a purely political analysis neglects this inner rationality dialectically based on internal contradictions which permeate official discourses about law and informs a number of important court decisions. From a broader perspective, consideration of this inner rationality can shed additional light on the development of Russian law;
8. Legal theory needs a multidisciplinary approach to explain the differences in an understanding of rights in various legal cultures. Such an approach needs to include a positivist account of law, socio-legal analysis, and also an evaluation of values and their impact in law-making and law-application;
9. The term “rights” is an essentially contestable concept in legal theory. Various forms for conceptualizing this term could serve as criteria for distinguishing among different legal traditions (cultures, circles) in comparative law;
10. The problem of the correlation between decisionism and formalism in law is one of those which are central in contemporary legal philosophy. Examining different theoretical solutions of this problem in Russian (Soviet) legal theory can provide for some new clues for reducing some of the confusion about this problem.