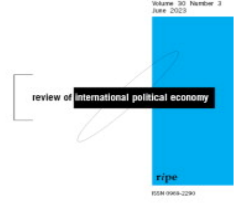

Review of International Political Economy

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/rrip20

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To cite this article: Nikhil Kalyanpur (2023): An illiberal economic order: commitment mechanisms become tools of authoritarian coercion, Review of International Political Economy, DOI: 10.1080/09692290.2023.2211280

To link to this article: https://doi.org/10.1080/09692290.2023.2211280

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REVIEW OF INTERNATIONAL POLITICAL ECONOMY
https://doi.org/10.1080/09692290.2023.2211280

RESEARCH ARTICLE

OPEN ACCESS

An illiberal economic order: commitment mechanisms become tools of authoritarian coercion

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ABSTRACT

Globalization did not negate state power. It changed the toolkit. We expected the norms and incentives of the liberal economic order to push regimes in places like China and Russia to democratize. Instead, authoritarianism appears to be thriving. This article argues that authoritarians have learned how to take advantage of the institutions underpinning globalization for their own illiberal ends. They use courts in major economic powers to negate the effects of international institutions and to target their political competition. They subvert our expectations by repurposing the basic premises of liberalism – predictability and openness. The article demonstrates these claims by examining how the institutions of multiple international economic regimes, which were designed as constraints, have been turned into offensive tools. The findings illustrate that International Political Economy (IPE) scholars need to begin analyzing how governments learned these tactics and whether we can reconcile the contradictions they exploit.

KEYWORDS

International order; global governance; illiberalism; economic coercion; transnational law; statecraft

Introduction

Authoritarianism and economic coercion were supposed to decline. The institutions of the liberal economic order were going to create the incentives for dictatorial regimes to abide by the principles nominally espoused by the United States (Deudney & Ikenberry, 1999; Slaughter, 2005). The gains from free trade and open capital flows would just be too high. Openness and connection would further foment the spread of liberal ideas, socializing elites and publics alike (Goodman & Jinks, 2013; Johnston, 2003). With the past decade of Chinese economic growth, Russia's resurgence, and the gridlock of the international economic architecture, those hopes have faded (Drezner, 2022; Walter, 2021).

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What went wrong? I argue authoritarian regimes adapted to the international economic order, subverting its ends through its means. While some have tried to takeover major aspects of global economic governance (De Graaff et al., 2020), or set up their own initiatives as substitutes (Cooley & Nexon, 2020), liberalism's institutions have paradoxically allowed authoritarians to thrive. They learned how to use the institutions that make globalization possible, the ones that set out to create constraints on their behavior, for their own domestic political ends. They are not simply defending themselves against liberalism, they are using its global rules as an offensive strategy to fortify illiberalism at home.

Convergence, through globalization, was then a hubristic expectation (Wright, 2017, pp. 1–20). IPE scholars are actively reckoning with the economic failures of the liberal international order (Lake et al., 2021; Walter, 2021), but we've treated authoritarian states as reactionary or revisionist, rather than resourceful.[1] I build on the emerging scholarship on transnational authoritarian governance, which focuses on how governments have effectively managed the global mobility of their populations alongside the sponsorship of fellow authoritarian allies (Glasius, 2018; Tansey, 2016; Tsourapas, 2021), placing it in dialogue with debates on global economic governance. More specifically, I argue that the commitment devices that form the bedrock for economic integration can be turned into coercive tools.

To illustrate these dynamics, I examine how globally integrated authoritarian regimes have interacted with major components of the global economic order, contrasting how we expected the order to work with how it's exploited. I start by looking at the use of domestic norms to counter the effects of the international investment regime. Second, I examine the use of liberal jurisdictional rules that support the trade regime to target domestic political opposition. Finally, I analyze how authoritarians can use courts necessary for global finance to shift the sites of geopolitical conflicts.

IPE scholars have largely missed out on these dynamics because we conceptualize the international economic order in excessively narrow terms. While we've substantially expanded our understanding of the range of actors that construct order (Avant et al., 2010), we need to expand on the range of institutions. Each of the regimes analyzed relies on *domestic* legal systems for enforcement, appeals, and often adjudication of transnational economic relations (Kahraman et al., 2020; Whytock, 2009). They provide the bite that many critics of international institutions assume are lacking. Moreover, the cases discussed illustrate how the courts of major economic powers turn into political intermediaries for authoritarian politics.

The examples of "lawfare"—the use of domestic legal tools for geopolitical ends—further suggest a need to update our understanding of the relationship between globalization and state power (Ferguson, 2022). Even as great powers increasingly weaponize economic flows (McDowell, 2021), we too frequently fall back on 'modernization' or 'race to the bottom' like narratives for the effects of integration on authoritarian regimes. Their options for control and coercion have not downsized. They have evolved with globalization. One actor's credible commitment is another's coercive apparatus.

The most remarkable aspect of this statecraft is that it is all perfectly legal and fits within the parameters of the international liberal order. It relies on taking advantage of norms of openness and equality to meet goals that the order

nominally seeks to counter. The findings then compliment studies that view the current failures of the economic order as rooted in its initial successes (Farrell & Newman, 2021; Hale et al., 2013). International institutions can create levelled expectations that harness liberal growth models, but the rules can be exploited *via* its foundational principles, undermining the sustainability of the system.

Norm perversion in the investment regime

Investor-state dispute settlement was supposed to deter expropriation and increase FDI through outsourcing authority

Foreign direct investment would spur economic development. That economic development, à la modernization theory, would lead to democratization. The issue was that emerging markets lacked the institutions necessary to solve the obsolescing bargain of long-term investment—once the money was in place or the factories built, governments could expropriate the multinational corporation (MNC). Proponents of the liberal international economic order, particularly the World Bank, promoted the spread of Bilateral Investment Treaties (BITs) to resolve the dilemma (St John, 2018). MNCs would be given the ability to sue their host governments *via* international arbitration venues, the Investor State Dispute Settlement (ISDS) mechanism, if they were expropriated. The risk of major international legal disputes—both directly in terms of damages and the signals it would send to potential investors—were supposed to curtail governments from illiberal action (Chilton, 2016).

IPE scholars have spent considerable effort seeking to understand why some countries are more integrated into the investment regime and whether it actually promotes FDI or even constrains government action (Wellhausen, 2016). A meta-analysis of 74 studies indicates that, on average, investment treaties have had no significant effect on economic flows (Brada et al., 2021). Nonetheless, several scholars argue that authoritarian regimes have the most to gain from BITs (Arias et al., 2018). After all, they have the weakest institutions, and so MNCs ought to require the most assurances. They also tend to have economies with large state presences and industries with high fixed costs, which makes ISDS optionality more important (Bauerle Danzman, 2016).

Authoritarian governments counter ISDS accountability by exploiting the gap between international norms and domestic practices

While BITs could act as constraints on authoritarians, they've learned how to exploit the mismatch between international liberal norms and their own illiberal domestic principles to counter the investment regime. Corruption and bribery are generally considered frequent features of business in weakly institutionalized environments (Montinola & Jackman, 2002). Its prevalence often helps dictators bolster their rule by rewarding their allies with lucrative contracts or kickbacks (Haber et al., 2003). Authoritarian governments are increasingly using the presence of corruption or bribery in a deal to overturn arbitration cases against them. They can leverage the tainted economic environments they foster to take advantage of at least three different international liberal principles.

First, they can appeal to the clean hands doctrine "according to which a claimant's involvement in activity illegal under either municipal or international law may bar the claim" (Menaker, 2010, pp. 70–71). Since bribery and corruption would run afoul of international law, tribunals can be forced to reject a case when the state can illustrate such actions were undertaken to facilitate the initial investment driving the dispute. We've seen this strategy successfully employed by the likes of Bulgaria[2] and Kenya[3]. Second, when rendering an award, a tribunal must consider transnational public policy. The latter is explicitly supposed to promote anti-corruption efforts. Awarding an investor that only has a claim based on a deal involving bribery would counter such notions, as the arbitrators in *Wena Hotels Ltd. v. Egypt* noted when ruling in favor of the authoritarian government (Menaker, 2010, p. 73). Egypt won despite its state-owned enterprise admitting participation in a violent attack on the claimant's luxury properties in Luxor and Cairo that were at the center of the $60 million claim.[4]

Finally, and most audaciously, some authoritarian governments can argue that the corrupt transaction forming the basis of a claim contradicts their domestic rules (Llamzon, 2014; Menaker, 2010). Even if the rules are not enforced, dozens of kleptocratic regimes have passed domestic anti-bribery rules (Bukovansky, 2006). Because ISDS cases cannot occur if they run counter to a host state's domestic laws, authoritarian governments can rely on their often window-dressing regulations to force arbitrators to decline cases. We notoriously saw this in *Metal-Tech Ltd. v. The Republic of Uzbekistan* (Miles, 2016, p. 495). The proceedings revealed that the Israeli company had given Uygur Sultanov USD $4 million as consulting fees to initiate a joint venture. Sultanov was the Uzbek Prime Minister's brother and did not appear to do any consulting. The tribunal agreed with Uzbekistan's lawyers—it did not have jurisdiction because of how the deal originated, or rather, how many business deals in authoritarian regimes are struck. BITs might then create an illiberal set of incentives—behaving like a mob boss, by extorting your potential partners, should decrease the chances you'll be held accountable.

One of the common critiques of ISDS is that states do not have formal recourse (Wellhausen, 2016)—governments can't file their own counterclaims. The examples above indicate how authoritarian regimes have found a workaround. They can get claims against them ruled out by leveraging the mismatch between the illiberal operations of their domestic business environments and the expectations of liberal economic order. That is not a foolproof strategy as the burden for establishing corruption is high and has the potential to blowback for the government. But even without traditional recourse, authoritarian regimes have formal avenues to make their opponents pay substantial economic and reputational costs. Though they can't initiate their own claims, they can seek to annul awards through the International Centre for the Settlement of Disputes (ICSID) or appeal arbitration decisions in the domestic courts of major economic powers where the arbitral institutions are based (Schreuer, 2010). Appealing will always have the potential for an award to be overturned. But even if the state loses, there are multiple benefits. They can force their opponents to spend millions more on lawyers and hundreds more hours in court—that threat alone could lead claimants to accept a lower payout.

Moreover, dragging on a case *via* domestic courts also ensures that the state can defer making any payments. The government would be under no obligation

to follow through on the award until the appeals process is complete. Those stakes can be high. For example, in the most infamous ISDS case, Russian shareholders of Yukos won awards worth roughly USD $50 billion against the Russian government (Ganga & Kalyanpur, 2022, pp. 2–3). If the Kremlin paid, they would be directly rewarding individuals that were considered Putin's primary political challengers in the early 2000s. Although the initial award was handed out in 2014, Russia has repeatedly challenged it. They won on the first appeal, but the award was then eventually reinstated in 2020 (Ganga & Kalyanpur, 2022, p. 3). Russia in theory owes $50 billion, but it hasn't paid a cent.

Perpetually appealing awards, dragging on proceedings, and exposing corruption could reduce the likelihood that BITs will benefit authoritarian regimes. But those treaties may not work the way they are supposed to anyway. These legal tactics will, however, deter future claimants from initiating an arbitration—it paints a picture of a state hellbent on avoiding payouts and quick settlements. No corporation wants to deal with such cumbersome litigation (Macaulay, 1963). While these are by no means tactics reserved for dictators, they are substantially more likely to be aggressive defendants—roughly 50% of awards against authoritarians have been challenged either through an ICSID annulment or *via* a domestic court. By contrast, just above 34% of democratic defendants have challenged awards.[5]

Not bowing down to arbitration decisions is particularly important as ISDS is increasingly driven by third party funders. While we do not have exact numbers, we know that outside funders are increasingly involved in footing a claimant's arbitration bill in exchange for a slice of the returns (Dafe & Williams, 2021; Kalyanpur & Newman, 2021). These are funds that were not involved in the investments that are the basis for claims. They are not interested in justice or retribution. They are after the outsized economic returns that the ISDS process can promise. But why would they want to embroil themselves in a fight against an authoritarian regime that has shown a willingness to fight back and avoid payment at all costs? If you are an authoritarian government, the incentives are clear—exploit the mismatch in how you behave and what the international community expects, and then play out every legal path the regime provides you with. That's how to punish your opponents *via* a liberal process. That's how to avoid accountability.

Reputational arbitrage in the trade regime

IPE focuses on how interstate cooperation facilitates international trade, but inter-firm disputes are adjudicated by courts in New York and London

International trade might be liberalism's silver bullet. Increasing economic integration is supposed to reduce conflict by making the costs too high, while trade links are considered the ultimate channel to spread higher labor and environmental standards (Barbieri & Schneider, 1999; Prakash & Potoski, 2006). Even if agreements often have geopolitical motives, there appears to be perpetually positive feedback between increased international trade and democracy—the latter are more likely to sign-up to free trade agreements and the World Trade Organization (WTO) (Mansfield et al., 2002), while scholars and policymakers have consistently espoused faith in trade's effects on democratization.[6]

IPE has broadly focused on the international institutional arrangements buttressing the movement of goods and services across borders. We have plenty of theories on the origins and evolution of free or preferential trade agreements, and we may know more about the WTO's dispute settlement mechanism than any other international legal institution (Johns, 2012). In other words, we know how and why inter-state trade barriers declined. But the core actor in international trade is not government—it's the multinational firm. Although they abide by and benefit from the global rules we tend to focus on, MNCs have their own problems created by cross border economic exchange. Disputes are going to inevitably arise in some transactions and, when parties are from different home states, there is no natural authority for them to turn to. British and American courts usually fill the void (Bookman, 2015; Whytock, 2009).

London and New York are not just the centers of the global financial markets—they are also the nodes of the legal regime that makes international trade possible. They occupy that space because of a mix of functional and political logic. Colonialism imbued London as the center of the trading system, and English law dominates international contracts. Both London and New York have built up decades of predictable case law and judiciaries with unrivaled expertise. The two jurisdictions are certainly in competition. But they also have their niches—London dominates shipping, New York much of finance—and we see inevitable geographic patterns in forum selection as we see with literal trade flows (Bookman, 2019).

To have a claim heard in London or New York when parties are not from the country, claimants rely on a couple of key justifications (Nougayrède, 2014, pp. 420–29). Corporations will specify London or New York as the so-called seat of jurisdiction and then usually English or American Law as governing the transaction. Second, if a defendant can be deemed as a resident in a jurisdiction, the courts usually will hear the case. In other words, London and New York courts are the backbone of much of the international trading system. They provide the credible commitments behind the economic flows that were supposed to challenge authoritarian regimes. But the same legal bases that create those commitments can be weaponized.

The rules that facilitate international trade are now used by authoritarian regimes to target political threats

Authoritarian regimes frequently experience intra-elite power struggles (Albertus & Menaldo, 2012). Historically, these battles often ended with losers jailed, expropriated, or just outright assassinated. While such political violence no doubt still occurs, oligarch options have shifted with globalization. At a surface level, they've been empowered as they stash and hide their wealth in tax havens and buy up real estate in safe havens like London and New York (Sharman, 2010). In other words, an oligarch's ability to guard their wealth and effectively flee amid political turmoil has radically improved as a function of global economic integration. But as a British lawyer who has worked with Eastern European oligarchs told me, "The downsides of parking your ass here, in a relatively tolerant, safe place, is that you make yourself a target."[7]

While fleeing to London or New York may save an oligarch in the short term, it just changes the planes of conflict. Once they've moved, governments can initiate

legal cases against them based on the principle of personal jurisdiction. Such a norm is critical in a global economy—if it didn't exist, it would be relatively easy for an individual to steal at home and then run abroad without facing any legal ramifications. Stealing and fraud are often the basis, or arguably guise, under which we see regime insiders or state-owned enterprises initiate cases against fleeing opponents. Starting these cases are often quite straightforward because of, again, the mismatch between domestic norms in authoritarian regimes and those considered illegal in liberal jurisdictions—bribes, kickbacks, and even fraud are often encouraged by dictators for members of their winning coalition. But if there's a fallout and the oligarch flees, those initial rents can quickly be turned into weapons *via* courts in safe havens. The domestic economic environment then lays the foundation for extraterritorial conflict: "Most cases involve some corruption that we were all aware of, but no one did anything about it until there is a reason to remember."[8]

Consider the legal woes of Guo Wengui, or Miles Kwok as he is commonly known in the US. Wengui made his money through cavalier investments in the Chinese real estate market, but eventually found himself in self-exile after the Communist Party's anti-corruption drive (*Financial Times*, 2017a). Wengui would regularly reveal lurid details about corruption at the upper echelons of the CCP from his multimillion-dollar apartment overlooking New York's Central Park. His most controversial claims included accusing Wang Qishan, head of the anti-corruption drive and widely considered the second-most powerful man in China, of having hidden stakes in the mammoth conglomerate HNA (*Financial Times*, 2017c). For his troubles, Wengui has been subject to standard authoritarian coercive tactics like misinformation campaigns and public trials of his close colleagues at home (*Financial Times*, 2017b). But he has also been subject to multiple forms of lawfare through the New York courts, including nine Chinese companies coordinating a lawsuit seeking $30 million dollars for his alleged fraudulent behavior (Ju et al., 2017).

There are both direct and second order gains for a state and its allies to use a foreign court to target their opponents. As the oligarch will be able to flee their home with substantial assets intact, usually *via* offshore accounts, a reputable judgment from London or New York is often the only way for the state to get their hands on that wealth. They'll need to impoverish the oligarch to fully get rid of the political threat as an individual can continue making a government's life difficult while stationed abroad. Funding political parties and operating disinformation campaigns happens beyond borders (You, 2022). Initiating legal cases against the oligarch at home, although serving useful symbolic purposes (Shen-Bayh, 2018), will have little utility in seizing offshore wealth as places like the British Virgin Islands could see the outcome as politically motivated and block the judgment. But a judgment from London or New York can be enforced virtually anywhere in the world (Whytock & Quintanilla, 2011).

Even if the claim fails, initiating a case against a rival will ensure that they drain their offshore war chest on lawyers and legal fees while they can be drowned in depositions and search orders. Early-stage injunctions can be particularly powerful tools. In the UK, if the authoritarian government can initiate a fraud charge, it can leverage the UK government authority to globally freeze the assets of the regime's rival. We associate asset freezes with geopolitical sanctions, but they are usually the first step in any transnational or extraterritorial fraud case in London (Alexander, 1996). Not having access to that wealth, even if it's only for the

duration of the case, is going to harm an opponent's ability to keep challenging the authoritarian regime. At the same time, being embroiled in a contentious fraud case, particularly one in a reputable jurisdiction like the US or the UK, will hinder the ability of the oligarch to raise funds for their business or to mount support for a future challenge. As one lawyer noted about Russian SOE initiated cases, "If the state is involved, they basically want to crush the people."[9]

Moreover, mirroring the logic of extending appeals in the investment regime, going to such great lengths to chase down a rival is going to inevitably diminish future political threats to the authoritarian leader. Potential opponents who have stashed their money abroad could be emboldened to challenge a leader as a function of the individual's global economic integration. But if the state illustrates how they are willing to pay the costs of cutting off such access and make a fleeing challenger's exiled life miserable, even the most disgruntled oligarch is going to think twice about taking actions against the authoritarian leader.

Dozens of cases in the London courts appear to echo the logics described above. Boris Berezovsky found himself on the receiving end of fraud charges by Russian state-owned Aeroflot while embroiled in his own multi-billion dollar battle against recently sanctioned Roman Abramovich (Kahraman et al., 2020, p. 192). Mukhtar Ablyazov was widely considered Nursultan Nazarbayev's major political opponent before he eventually was accused, *via* the London Commercial Court, of stealing billions of dollars from the nationalized BTA Bank (Cooley & Heathershaw, 2017). The claim was worth more than $6 billion—the largest commercial case in British history. More recently, the family members of Angola's previous dictator are accused of stealing from the country's crown jewel, its oil company. The dispute was initiated once a new government came to power (*Financial Times*, 2021). A Djibouti oligarch has even found himself accused of not just fraud, but terrorism, *via* the British judiciary after coming into conflict with the country's ruler (77KBW, 2016) .

The state-owned enterprises or regime insiders initiating these types of cases are behaving perfectly in line with the letter of the law. As a function of opponents having assets or residing in the jurisdiction, they have the right to bring a claim. Everyone is entitled to their day in court and liberalism is not in the business of assuming people's motives. In many instances, the corruption being used as a basis for prosecution likely took place. And yet one lawyer I spoke to described most state-owned entity related cases as organized campaigns of harassment.[10] Our laws are not designed to resolve the contradiction, but another litigator noted that "The same legal instrument in private hands, when deployed by the state, will and should be interpreted in a different way."[11] Because of globalization's legal underpinnings, authoritarian governments have the option to target their political opponents under commercial guise.

Forum shifting in the finance regime

Like the investment and trade regimes, global financial markets rest on the authority of British and American courts

International finance would bring the fear. Global financial integration coupled with declining US interest rates means that emerging markets are borrowing in

sums that would have been unimaginable only a decade ago. Increasing reliance on such foreign funds to fill government coffers was supposed to force many countries to follow a neoliberal agenda—"bond vigilantes" once kept central bankers up at night. One of the most consistent findings in IPE is the democratic advantage in access to credit (Drezner, 2022). The checks and balances, and rule of law, associated with democracies should make them more likely to pay back their debts and therefore give them access to cheaper funding terms (Archer et al., 2007). Much of the research on the democratic advantage begins from the premise that default is top of mind for investors because of the limited international legal architecture around sovereign debt—we do not have a formal sovereign bankruptcy regime. But again, investors gain assurances because of the British and American courts. Debt issued on international capital markets, be it by governments or by private corporations, almost always use London or New York as the seat of jurisdiction in their bond contracts, usually governed by the respective jurisdiction's laws. These courts are not afraid to bite, giving us infamous cases like *Republic of Argentina v. NML Capital, Ltd.* that allow vulture funds to systematically chase and seize state assets (Buchheit & Gulati, 2017).

As with international trade, the legal institutions of the US and the UK provide the credible commitments necessary to make the global bond market function. These courts do not, however, handle money lent from sovereign to sovereign. Instead, we continue to work *via* informal arrangements like the Paris Club handling negotiations. Emerging markets have never had more potential sources of funding and the avenues of statecraft *via* debt should in theory be diminishing (Bunte, 2018). But as we enter a period characterized by more explicit interstate competition, fears around the weaponization of debt are heightening. Russia, in particular, has learned how to combine elements of different facets of the debt regime to ensure greater control over governments it considers as client states.

Russia innovated on existing debt contract structures and exploited British courts to coerce its geopolitical adversary

Viktor Yanukovych is probably most remembered for the private zoo and gold-plated toilets that activists discovered in his former palace. He should be remembered by IPE scholars as the individual who sowed the seeds for a decade of debtcraft by Russia against Ukraine. Yanukovych's government received USD $3 billion from the Russian state in December 2013, partly as a reward for rejecting European Union membership, partly to build up the funds necessary to keep the government in power. That didn't matter because he was soon removed from office *via* the Maidan revolution. Ukraine had received loans from Russia on several occasions in the past, but these funds were needed quickly. The latter was a conventional rationale for why the deal was structured unconventionally (Gelpern, 2014, p. 6). The bonds were issued on the private markets through the Irish Stock Exchange and governed by English law—Russia bought all $3 billion worth and intended to buy even more until the revolution got in the way. The coupon rate was 5%, well below prevailing market rates for Ukraine's other outstanding debts, indicating there were larger geopolitical stakes to the transaction (Hess, 2018, p. 5).

Normally, state-to-state deals take the form of inter-government credit agreements. Russia instead utilized the rules that make the private aspects of the liberal

economic order function. Moving into the private side of the debt markets gave Russia at least two additional advantages. As sovereign debt expert Anna Gelpern (2014, pp. 9–10) explained soon after Russia's invasion of Crimea, structuring the deal as a conventional private contract meant that Russia could sell that debt to whoever they wanted, undercutting the expected buy and hold norm of the government-to-government debt system. Russia could make money on the collusion, or they could sell it to their own proxies. Moreover, the links between these bonds would interact with the rest of Ukraine's outstanding debt contracts. If the Ukrainian government decided not to pay back the Russian state, it could count as a default for the rest of the country's debt and potentially even trigger credit default swap contracts.

While the Yanukovych bond contained plenty of boilerplate, it also shows how coercion can work through even the most boring aspects of the international economic order—contract law. Unlike any of the other outstanding Ukrainian debt, the Yanukovych deal included a clause that allowed Russia to ask for a full repayment of the bond if Ukraine's debt-to-GDP ratio went above 60% (Gelpern, 2014, p. 9). They could trigger the repayment under that condition even if Russia was otherwise still being paid in full and on time. Considering Russia soon invaded Crimea and crippled much of the country's economy, the Kremlin had the means to ensure that target was hit. It also meant that if foreign government creditors or the International Monetary Fund (IMF) got involved in aiding Ukraine, Russia had a fully legal means of inflicting more pain on the country (Weidemaier, 2016, p. 244). They could just call in their bonds early and put the entire economy into default.

The Kremlin bought the bond through the Russian National Wealth fund, which is set up to invest in high grade assets for state pensions. The bond definitely did not meet that criteria given Ukraine's floundering credit rating, which Russia further damaged with the 2014 Crimea invasion (Gelpern, 2014, p. 7). Purchasing the bond *via* the wealth fund ensured that Ukraine's legal recourse was limited—they would need to "pierce the veil" to sue Russia (Hess, 2018, p. 25).

Russia had Kyiv in a financial stranglehold through the mechanisms used to make our private debt markets function. So when the first bond payment came due in June 2014, as the Crimea invasion took off, Moscow got its money with interest (Hess, 2018, p. 8). Ukraine's economy began breaking at the seams, and despite the poison-pill like stipulations in the bond contracts, it had no choice but to turn to the IMF. Instead of triggering repayments, Moscow exposed the IMF's hypocrisy. Up to this point, Russia had been labeling the Yanukovych deal as private debt. It was issued on private markets and owned by nominally private actors after all. But the Kremlin changed its tune and now began counting the money owed as official sector debt (Hess, 2018, p. 15). Because Ukraine then owed money to a member of the IMF, the country would no longer be eligible for a bailout. In December 2015, the IMF decided it had to go against decades of the organization's policies and politics to save the Ukrainian economy (Hess, 2018, p. 4).

The Kremlin was inevitably furious, but it then switched back to treating the debt like a private market instrument to continue the lawfare. It filed a suit against Ukraine through the English courts, claiming the $3 billion. Ukraine tried to pull

out every legal stop it could, even appealing to the idea of 'odious' debt given the political circumstances driving the original loan to the Yanukovych regime. Those arguments were summarily dismissed by the UK High Court in March 2017. As Maximilian Hess (Hess, 2018, p. 16) summarized, "William Blair's ruling made clear that while Ukraine's defense raised important questions, they were of a political nature, and the case before him was otherwise a standard contractual dispute." But a year later the Court of Appeals ruled that there needed to be an entire trial rule on whether the deal was illegitimate.

A year into the latest Russian invasion of Ukraine, and six years after Judge Blair issued his initial ruling, the Supreme Court finally called for a full trial (Hess, 2023). Although the specifics of the episode are unique, it points toward how authoritarian governments have learned how to exploit the existing order, and Russia has specifically set out an effective road for future debtcraft. We applauded the legalization of international affairs that defines the liberal economic order, but it is just shifting the geopolitical toolkit. That is better than people shooting at each other, but it isn't quite stopping that either.

Agenda

Authoritarian governments exploit international liberal norms and principles to achieve illiberal ends. They've turned the rules that create the backbone for globalization into offensive tools that fortify their control at home. In the investment regime, dictators manipulate the presence of bribery or criminality in a business deal to get cases thrown out. If that fails, they regularly drag on arbitration proceedings *via* domestic courts to avoid payments and deter future claimants. We need those courts in London and New York to make international trade and finance work. But the broad jurisdictional rules allow authoritarian regimes to file cases against their fleeing political opponents, turning legal institutions into transnational tools of repression. Some authoritarian governments are even figuring out how to turn British courts into geopolitical resources by using contract law to fortify and formalize their coercion.

Such weaponization of foreign legal systems fits within a broader trend of authoritarian governments learning to exploit the openness of the international economic order. We regularly see governments exercise various forms of reputation laundering that rely on treating any market exchange as apolitical (Cohen & de Oliveira, 2023)—you cannot turn on a Premier League game without seeing a team sponsored and/or owned by an authoritarian regime. As important recent research has documented (Cooley et al., 2021), we also see management of one's image occur through more surreptitious means that can structure democratic political debates. Anonymized kleptocratic money has become the lifeblood of think-tanks and University research centers (Benner et al., 2018).

But those tactics are primarily image enhancing, defensive acts to ensure better access within the liberal economic order. When we've studied how authoritarian governments use our institutions as offensive tools, the focus is largely on the spreading of dis-or-mis-information to stymie public opinion and to help elect foreign leaders that would benefit the regime (Dukalskis, 2021). The aggressor generally seeks anonymity. Exploiting the credible commitments of the international economic order is distinct because the actions taken are both completely

public—they are occurring in our courts—and directly strike oppositional figures, be they domestic or foreign.

Academic debates on these tactics mainly occur in isolation, but we need to understand the relationship between these different repertoires of extraterritorial authoritarian power. What determines the effectiveness of each individual tactic? What are the conditions under which they are complimentary versus countervailing acts of statecraft? A natural first step in that agenda, which fits with IPE's comparative advantage, would be to clearly theorize and assess the costs governments incur when taking advantage of the institutions that make the international economic order function. That should develop a foundation to assess why some authoritarian governments are forced to take advantage more frequently of the illiberal practice. Since regimes can easily buy the capabilities to execute these coercive acts by hiring the law firms that dominate the transnational legal market, the divergence in behavior is unlikely to be explained by functional logics.

Instead, the cases I document and recent analyses by the likes of Cooley and Heathershaw (2017) and Logvinenko (2019), indicate that political economists will need to more effectively examine how intra-elite politics unfold in the presence of global legal and capital markets. This article focuses on how governments leverage the international environment for offensive ends, but private actor toolkits are evolving conterminously. We've seen oligarchs escape their home institutional environment to adjudicate their private commercial conflicts (Sharafutdinova & Dawisha, 2017): Russians sue other Russians and Saudis sue other Saudis in London and New York. Many even use offshore shell companies to act as de jure foreigners in their own country, giving them the option to sue their own sovereigns *via* ISDS. These extraterritorial litigations and arbitrations take advantage of the same rule-set that governments are pointing toward political opposition (Kalyanpur & Thrall, 2021). How does this evolving toolkit influence the prospects of regime (in)stability? Careful empirical work will be necessary to unravel whether such transnational legal options deter calls by private actors for domestic reforms, undercutting dominant theories on the development of liberal institutions. Alternatively, governments may be increasingly comfortable with allowing their elites to diversify their asset portfolios abroad since authoritarians know they can exploit the contradictions embedded in the current economic order. While extraterritorial battles could be seen as learned weapons of last resort, we need to understand how they are shaping conventional oligarch-kleptocrat bargains.

There are also likely to be reverberations for the hosts of the coercion (Cooley & Sharman, 2017). Disputes involving authoritarian-owned enterprises have built up a huge body of case law in issue areas like bankruptcy and fraud. They now act as legal precedent. So rather than the legislature or the citizens of a country updating, for example, English law, exterritorial litigations lead to the politics of a handful of kleptocracies rewriting the rules. Importantly, these effects are not confined within the host jurisdiction. When parties from different countries transnationally litigate in London or New York, these precedents, generated primarily for coercive purposes, may apply. We've known for a long time that the existence of safe havens and offshore sites could change the incentives for elites (Palan, 2002; Sharman, 2011). We know far less about how successfully providing those services changes the way the broader institutions of a safe haven function.

Moreover, how can institutions that are meant to safeguard global principles of independence and equality maintain their credibility in the face of outright subversion?

Herein lies the biggest challenge for both scholars and proponents of international economic integration. The principles that make the order worth studying and worth promoting –openness, predictability, impartiality—are precisely what turn the institutions into such effective tools for manipulation and instrumentalization. Scholars across International Relations are debating how and why it appears the global economic system is coming apart. Most point to shifts in the balance of power; as challengers with rival ideologies gain, we are apparently seeing a reorientation of the system (Lake et al., 2021). Instead, my analysis indicates that the success of the order is what is leading to its unraveling. When we buttressed economic liberalism with liberal political institutions, we unleashed a self-undermining dynamic. It wasn't meant to be this way.

Notes

1. One important exception is scholarship on offshore finance: Stashing wealth abroad can provide institutional protections for authoritarian elites that they lack at home and mechanisms for dictators to obfuscate their corruption (Logvinenko, 2019; Sharafutdinova and Dawisha 2017; J. Sharman, 2010). Dictators now even use access to offshore finance as a way to manage intra-elite relations (Logvinenko, 2019; A. A. Cooley & Heathershaw, 2017).
2. *Plama v. Bulgaria*: Via the Energy Charter Treaty, the Cypriot company's beneficial owners filed a claim worth $146 million accusing the Bulgarian government of using its legal system to prevent the use of the former state-owned enterprises refinery business. For further details, see: https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/133/plama-v-bulgaria
3. *World Duty Free v. Kenyai:* proceedings revealed that the UK incorporated company gained the initial contract to sell duty-free goods by bribing the Kenyan President. For further details see: https://www.iisd.org/itn/en/2018/10/18/world-duty-free-v-kenya/
4. *Wena v. Egypt* (Proceeding on the Jurisdiction). Available at: https://www.italaw.com/cases/1162
5. Based on author's calculations using United Nations Conference on Trade and Development's ISDS data. Regimes are defined based on Boix et al.'s classification.
6. For an outstanding review, see Wright (2017, 11–25)
7. Author Interview with Lawyer1, 2018. Interviews were conducted with solicitors and barristers involved in major commercial litigations in London as part of a broader project on how oligarchs use foreign courts to resolve nominally domestic commercial conflicts.
8. Author interview with Lawyer2, 2018
9. Author interview with Lawyer3, 2018
10. Author Interview with Lawyer4, 2018
11. Author Interview with Lawyer5, 2018

Acknowledgements

Thanks to Daniel Berliner, Milli Lake, Natalya Naqvi, Abraham Newman and Calvin Thrall for their detailed feedback. All errors remain my own.

Disclosure statement

No potential conflict of interest was reported by the author.

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