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## Clinging to Democracy: Assessing the Russian Legislative-Executive Relationship Under Boris Yeltsin's Constitution

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# NOTES

## **Clinging to Democracy: Assessing the Russian Legislative-Executive Relationship Under Boris Yeltsin's Constitution**

### ABSTRACT

*The 1993 Constitution of the Russian Federation has received harsh criticism as a document that confers strong powers upon the executive at the expense of a much weaker legislature. Such a disparity is understandable, as the Constitution was conceived out of the violent confrontation between President Boris Yeltsin and the rebellious communist-nationalist Duma in October 1993. Following the adoption of the Constitution in December 1993, many observers predicted a return to dictatorship in Russia.*

*Yet in practice, despite much heavy-handedness on the part of the president during the Yeltsin administration, the 1993 Constitution and the institutions it created have survived remarkably intact. The various governmental actors largely have followed the procedures of the Constitution, and perhaps most importantly, Yeltsin never employed the most striking provision at his disposal—dissolution of the legislature.*

*Nevertheless, critics and supporters alike have reason to be concerned with the current Russian Constitution. While under a generally pro-democratic and pro-Western Yeltsin, constitutional abuses were few, a different result could easily have resulted under a more vigorous executive.*

*This Note assesses the state of the Russian Constitution, as the country's leadership is handed over from the erratic yet familiar Boris Yeltsin to the firm yet enigmatic ex-KGB colonel Vladimir Putin. Beginning with a brief description of historical factors that affect the current Russian Constitution and Russian attitudes to the concept of the rule of law, this Note then examines the principal constitutional provisions at issue here, namely those concerning the relationship between the executive and the legislature. The Note then analyzes this relationship as it has developed in practice, particularly*

*highlighting the two major confrontations of 1998. Lastly, this Note suggests avenues for constitutional amendment, in order to protect against executive excesses that may be more likely under a leader such as Putin, whose commitment to democracy and the rule of law remains questionable.*

#### TABLE OF CONTENTS

I.	INTRODUCTION .....	646
II.	FROM AUTHORITARIANISM TO DEMOCRACY .....	648
	A. <i>Foundations of the Russian State</i> .....	649
	B. <i>Toward a More Enlightened System</i> .....	651
	C. <i>The Soviet Experience</i> .....	653
	D. <i>Gorbachev's Reforms</i> .....	655
	E. <i>The Battle for a New Russian Constitution</i> .....	658
III.	EXECUTIVE AND LEGISLATIVE POWERS IN THE NEW RUSSIAN CONSTITUTION .....	661
	A. <i>Basic Structure</i> .....	661
	B. <i>Powers of the Executive</i> .....	662
	C. <i>Powers of the Legislature</i> .....	663
IV.	CHECKS AND BALANCES IN ACTION: THE PRESIDENT VERSUS PARLIAMENT, 1994-1999 .....	665
	A. <i>Uneasy Cooperation: 1994-1997</i> .....	666
	1. <i>Budget Battles</i> .....	667
	2. <i>Legislation</i> .....	668
	3. <i>The First Chechen War</i> .....	670
	B. <i>The March-April 1998 Crisis</i> .....	671
	C. <i>The August-September 1998 Crisis: The High-Water Mark of the Duma</i> .....	677
	D. <i>1999: The Duma Retreats</i> .....	680
V.	PROSPECTS FOR THE FUTURE .....	685
VI.	CONCLUSION .....	689

#### I. INTRODUCTION

Since the adoption of the Russian Constitution<sup>1</sup> in December 1993, many observers have noted its flawed attempt at separation

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1. KONSTITUTSIYA ROSSISKOI FEDERATSII (1993) [hereinafter KONST. RF].

of powers between the legislative and executive branches.<sup>2</sup> Although Russia's new leaders purport to be creating a democratic system, the vastly stronger powers delegated to the president at the expense of the legislature belie the principles behind such claims. Indeed, some have predicted that in such a system the president would abuse those powers, returning the country to a dictatorship.<sup>3</sup>

Yet despite this decided imbalance of powers among the three branches, Russia's government and Constitution have survived relatively intact during its first six years as a constitutional republic, even through economic collapse in 1998. Former President Boris Yeltsin, despite periodic economic and political crises, neither employed his power to dissolve the Duma nor declared a state of emergency.<sup>4</sup> Meanwhile, the legislature has survived three national elections, and despite its anti-reformist rhetoric, has passed much civil and commercial legislation.<sup>5</sup> In short, the executive and legislative branches have coexisted in relative peace<sup>6</sup> and have even shown brief signs of compromise and conciliation.

This Note will explain the legislative-executive relationship in the context of Russia's turbulent history of authoritarianism,

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2. See, e.g., Michelle Lynn McClure, *An Analysis of the New Russian Constitution*, 4 J. INT'L L. & Prac. 601 (1995); Lee Kendall Metcalf, *Presidential Power in the Russian Constitution*, 6 J. TRANSNAT'L L. & POL'Y 125 (1996); Amy J. Weisman, *Separation of Powers in Post-Communist Government: A Constitutional Case Study of the Russian Federation*, 10 AM. U.J. INT'L L. & POL'Y 1365 (1995).

3. See Weisman, *supra* note 2, at 1397 (stating that "[e]ndowing a single person with such a disproportionate amount of control over the Federation not only diverges from the Constitution's stated dedication to the separation of powers, it may well lead to a retreat into autocratic rule in Russia").

4. See *infra* Part IV.

5. See, e.g., *Grazhdanskiy Kodeks RF (Civil Code)*, *Sobr. Zakonod. RF*, 1994, No. 32, Item 3301; *Federal'nyi Zakon o Aktsionernykh Kompaniyakh [Federal Law on Joint Stock Companies]*, *Ross. Gazeta* Dec. 26, 1995; *Federal'nyi Zakon o Torgovlye Tsennyykh Bumagax [Federal Law on the Securities Market]*, *Sobr. Zakonod. RF*, 1996, No. 17, Item 1918. See generally WILLIAM G. FRENKEL, *COMMERCIAL LAW OF RUSSIA: A LEGAL TREATISE* (1997) (analyzing developments in commercial legislation in Russia). Robert Sharlet notes in particular the successes of the first Duma of 1994-1996, which passed 328 bills, of which 236 were signed into law by the president. See Robert Sharlet, *Transitional Constitutionalism: Politics and Law in the Second Russian Republic*, 14 WIS. INT'L L.J. 495, 509 (1996). Moreover, most of the legislative output "was *de novo* for Russia or replacements for rejected or superseded laws," as opposed to being generated (as most legislation is) from within laws already enacted. *Id.* at 510. Nevertheless, much work remains to be done, particularly in significant areas such as property law, contract law, and reform of the tax code.

6. Certainly, there has been no repetition of the 1993 shelling of the parliament building. Yeltsin ended a violent showdown with the Soviet-era legislature by ordering tanks to shell the parliament building in which nationalist and communist legislators who refused to obey the president's decree dissolving the parliament were holding out. See *infra* notes 80-82 and accompanying text.

offering both seeds of hope for the future of the new Constitution and suggestions for reform. While on paper the Constitution appears to allow the president much room for abuse, in practice he has been relatively restrained in his actions, and ultimately, the legislature has briefly even managed to wrest significant concessions from the president without resorting to force.<sup>7</sup> Nevertheless, there is reason to be cautious in measuring the success of the Constitution—with a more vigorous executive, a contrary result could easily have obtained. The accession of former Committee for State Security (KGB) colonel Vladimir Putin to the presidency raises serious questions about the future of Russia's fledgling constitutional institutions.<sup>8</sup>

Part II will examine the roots of the Russian Constitution, from both a long-term historical perspective, as well as in light of Russia's transition from communism, appreciating the progress the country has made given its essentially embryonic legal and constitutional consciousness. Part III will describe the distribution of powers at issue, focusing on the president's ability to dissolve the Duma and to declare a state of emergency and the Duma's inability to impeach the president. Part IV will analyze how the different branches have employed those powers in their dealings with one another, particularly in the context of their two showdowns in April and September of 1998. Part V will offer some thoughts on the future of the Constitution, suggesting that although the branches may be able to coexist in their current form, the potential for abuse and the need for amendments remain.

## II. FROM AUTHORITARIANISM TO DEMOCRACY

An examination of Russia's prospects as a constitutional republic with an effective legislative-executive relationship must first consider Russia's long history of authoritarianism. This history has shaped Russians' perspectives toward law and the

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7. See *infra* Part IV.C.

8. See David Hoffman, *Putin Steps Out of the Shadows*, WASH. POST, Jan. 30, 2000, at A1. Putin's KGB career consisted of spying on foreigners in Leningrad in the 1970s and in working to steal Western technology while in East Germany in the 1980s. See *id.* Although he has voiced support for free market economics and democratic institutions, he has been slow to condemn some of the violent excesses of the state and the security service for which he worked. See *id.* Meanwhile his execution of the 1999-2000 Chechen War raises questions about his commitment to democracy, human rights, a free press, and close ties with the West. See *id.*; *Putin the Great Unknown*, ECONOMIST, Jan. 8, 2000, at 19; *Vladimir Putin, Russia's Post Cold-Warrior*, ECONOMIST, Jan. 8, 2000, at 51.

rule of law.<sup>9</sup> For much of the country's existence, the absence of the rule of law and legitimate legal institutions have been the norm, thereby making the current transition to a governmental system based on law and the separation of powers all the more difficult.<sup>10</sup>

### A. *Foundations of the Russian State*

Russia owes much of its stunted legal growth to centuries of occupation by the Mongols and general geographic isolation from the ideas of the West. The Mongols, who ruled Russia from the thirteenth to the fifteenth century, laid the foundations of the Russian autocratic state.<sup>11</sup> The influence of Byzantium<sup>12</sup>—with its concept of the unity of church and state—also created fertile ground for tsarist autocracy, from Ivan the Terrible through Nicholas II.<sup>13</sup> The Russian Orthodox religion, which emphasizes conformity and unity, has similarly affected Russian legal institutions.<sup>14</sup> As a result of these influences, by the seventeenth

9. See John P. Willerton & Aleksei A. Shulus, *Constructing a New Political Process; The Hegemonic Presidency and the Legislature*, 28 J. MARSHALL L. REV. 787, 790-91 (1995) ("A strong executive with power concentrated in a small governing elite, characterizes all former Russians political systems . . . [Ministries and representative bodies] never constrained the chief executive. The executive ignored and even dissolved such representative bodies when necessary.").

10. See Molly Warner Lien, *Red Star Trek: Seeking a Role for Constitutional Law in Soviet Disunion*, 30 STAN. J. INT'L L. 41, 48 (1994) ("This Russian 'tradition' of unrestricted government power contributes to the present difficulties in establishing a law-based state.").

11. See GORDON B. SMITH, *REFORMING THE RUSSIAN LEGAL SYSTEM* 4 (1996); Lein, *supra* note 10, at 49-51 (describing the influence of autocratic Mongol rule on the creation of the Russian state).

12. Prince Vladimir of Kievan Russia brought Christianity to Russia from Byzantium in 988. See NICHOLAS V. RIASANOVSKY, *A HISTORY OF RUSSIA* 33-36 (4th ed. 1984). Moreover, as Riasanovsky notes,

Russian allegiance to Byzantium determined or helped to determine much of the subsequent history of the country. It meant that Russia remained outside the Roman Catholic Church, and this in turn not only deprived Russia of what the church itself had to offer, but also contributed in a major way to the relative isolation of Russia from the rest of Europe and its Latin civilization. It helped notably to inspire Russian suspicions of the West . . . .

*Id.* at 36.

13. See SMITH, *supra* note 11, at 5.

14. See ROBERT AHDIEH, *RUSSIA'S CONSTITUTIONAL REVOLUTION: LEGAL CONSCIOUSNESS AND THE TRANSITION TO DEMOCRACY, 1985-1996*, 115-16 (1997). Commenting on the influence of religion on Russian deliberative bodies, Ahdieh writes that

[o]rthodoxy has traditionally viewed compromise through a moral and religious construct antithetical to modern political dialogue. In the opinion

century, Russia possessed

a complex and cumbersome array of customs, legal traditions, tsarist decrees, clerical rulings, and administrative decisions. The judicial system was rudimentary, the legal profession non-existent, and the powers of the tsar and state unconstrained by law, the church, or the landed nobility, not to mention the masses.<sup>15</sup>

Although in the eighteenth century Peter the Great attempted sweeping reforms to bring Russia to the advanced level of the West, most of the legal reforms he realized were "largely concerned with strengthening the power of the state, and thereby enhancing his own power over the regional nobility."<sup>16</sup> Moreover, the law became an instrument of the autocracy, rather than a check on the tsar's power.<sup>17</sup> The autocratic power of the tsar was "absolute and unrestrained."<sup>18</sup> In such a system, in which the tsar was resolved to retain all legislative, executive, and judicial powers, Western legal values had little chance of flourishing. Essentially, the Enlightenment had little effect on Russian legal development.<sup>19</sup>

Russia has thus shown a "fundamental ambivalence" toward the law throughout its history.<sup>20</sup> On the one hand, there is a desire to protect justice and order in the state; on the other, there is fierce resistance to any reforms that would lessen the power of the monarch.<sup>21</sup> This tension pervades the Russian legal culture as much today as it did in centuries past.

of the church, to compromise was to "sell out the truth," to concede to falsehood and thus to evil—a deed no faithful believer could accept . . . In the realm of politics, this conception helps explain the absence of any sense of a loyal opposition in Russian or Soviet mentality. Such a notion, in the Russian view, is an oxymoron.

*Id.* at 116.

15. SMITH, *supra* note 11, at 5.

16. *Id.* at 7; see also Lien, *supra* note 10, at 52-54 (describing Peter the Great's legal reforms). As Lien explains, "Peter needed absolute power to achieve his goal of making the Russian Empire a dominant world force. To accept a system of enforceable legal rights would have been anathema." Lien, *supra* note 10, at 52-53.

17. SMITH, *supra* note 11, at 7.

18. *Id.* at 9. This power was even codified into Russian law. According to Article 1 of the *Svod Zakonov* (Digest of Laws) of 1832, "[t]he All-Russian Emperor is an autocratic and unlimited monarch. Obedience to his supreme power not only from fear but also from conscience is ordained by God Himself." *Id.* at 8.

19. See Louise I. Shelley, *Legal Consciousness and the Pravovoe Gosudarstvo*, in TOWARD THE "RULE OF LAW" IN RUSSIA? 63, 65 (Donald D. Barry ed., 1992) ("[T]he legal values of the enlightenment were not institutionalized in a society where the monarch still sought to keep an absolute grip on power."); see also SMITH, *supra* note 11, at 9-10.

20. SMITH, *supra* note 11, at 11.

21. See *id.* at 11-12.

### B. Toward a More Enlightened System

With the accession of Alexander II to the throne in 1856, and his subsequent freeing of the serfs in 1861, Russia appeared to be moving toward a more liberalized society.<sup>22</sup> The legal reforms of 1864 symbolized this "Golden Age of Russian Law."<sup>23</sup> Two major influences lay behind these reforms, both of which underlie similar legal reforms in the 1980s and 1990s.<sup>24</sup> First, new laws were necessary to facilitate expanding contracts with other European empires.<sup>25</sup> Second, a rising, Western-educated *intelligentsia*, an intellectual and commercial elite, viewed adherence to the rule of law as an essential characteristic of civilized European states.<sup>26</sup> As a result, the 1864 reforms created a modern judicial system, including competent judges and a professional Russian bar with high standards.<sup>27</sup>

The reforms, however, generated backlash from two major elements of society. One was the Slavophiles, who rejected the Western ideals that the reforms represented and chose instead "to preserve the uniqueness of Russian society."<sup>28</sup> The other was the revolutionaries, largely students, for whom the reforms did not go far enough.<sup>29</sup> Their increasingly strident demands created an atmosphere of violence, as the autocracy countered with reactionary crackdowns, which provoked acts of terrorism against the government.<sup>30</sup> This downward spiral of terrorist activities, answered by repression from the regime, eroded what little support existed for a modern, functionary system of rule of law.<sup>31</sup> Consequently, Russians lived under a system of virtual martial

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22. See RICHARD S. WORTMAN, *THE DEVELOPMENT OF A RUSSIAN LEGAL CONSCIOUSNESS* 244-67 (1976) (describing the process and effects of legal reform under Alexander II).

23. See SMITH, *supra* note 11, at 14.

24. See *infra* Parts II.D-E.

25. See SMITH, *supra* note 11, at 14.

26. See *id.*

27. See *id.* at 17.

28. *Id.* at 14. The ideological struggle between the Westernizers, who favored industrialization, secularization, the rule of law, and the rise of a middle class, and the Slavophiles, who supported traditional, idealistic virtues of the Russian peasant commune Orthodoxy, and the autocratic rule of the tsar are echoed loudly in today's debate between free-market economists and communist-nationalists in the State Duma.

29. See *id.* at 18.

30. Indeed, Alexander II himself was killed by a terrorist's bomb in St. Petersburg in 1881. See RIASANOVSKY, *supra* note 12, at 384. His son and successor, Alexander III, was greatly influenced by his father's assassination and subsequently undid most of Alexander II's reforms. See Lien, *supra* note 10, at 60-61.

31. See SMITH, *supra* note 11, at 18.

law for the last thirty-six years of the Romanov dynasty, from Alexander II's death in 1881 to Nicholas II's abdication in 1917.<sup>32</sup> Thus, despite the nineteenth century efforts of legal experts to raise

fundamental issues of citizens' rights and the appropriate role of the state in the enforcement of law. . . . [Russia] never succeeded in transforming an authoritarian society to one based on the rule of law. Consequently, a legal consciousness was never institutionalized among state officials or among the citizenry before the [1917] revolution.<sup>33</sup>

It was in this turbulent, polarized atmosphere that Russia began to experiment with an elected representative governmental body, the State Duma, which Nicholas II created in his "October Manifesto" of 1905, a pseudo-constitution.<sup>34</sup> According to the Manifesto, "no law shall acquire force without the approval of the State Duma and . . . the people's representatives shall have an effective opportunity to participate in supervising the legality of the actions of the authorities whom We have appointed."<sup>35</sup> The Duma, despite its appearance as a striking concession to the people, was in reality a powerless institution—Nicholas dissolved it twice within the first two years of its existence,<sup>36</sup> finally

32. See *id.* at 21.

33. Shelley, *supra* note 19, at 65.

34. See RICHARD PIPES, *THE RUSSIAN REVOLUTION* 42-44, 153-54 (1990). The Manifesto was further articulated and codified in May 1906 with the government's promulgation of the Fundamental Laws. See RIASANOVSKY, *supra* note 12, at 408. Under the Fundamental Laws, the tsar retained huge executive powers, could disband the Duma and call for new elections, veto legislation, and issue decrees in the Duma's absence. See *id.* Meanwhile, the Duma's legislative powers were restricted to certain areas, and it had no input on ministerial appointments save for a questioning period. *Id.* at 409; *cf. infra* Part III (explaining similar powers granted to each branch under the 1993 Russian Constitution).

35. PIPES, *supra* note 34, at 43. One of Nicholas II's predecessors, Alexander I, had actually considered a similar proposal for a constitutional monarchy a century before. See ALEXANDER M. YAKOVLEV, *STRIVING FOR LAW IN A LAWLESS LAND: MEMOIRS OF A RUSSIAN REFORMER* 27 (1996). Alexander's plan would have created an Imperial State Duma—whose members would be elected indirectly through local dumas—and an Imperial State Council, whose members would be appointed by the Tsar. See *id.* The State Council in fact was created in 1810, but the Napoleonic Wars, followed by a reactionary revolt in 1825, quashed any further plans for implementing a representative system. See *id.* at 27-29.

36. See PIPES, *supra* note 34, at 164, 181. The first Duma immediately emerged as a vociferous opponent of the regime, demanding abolition of the upper chamber of the legislature, the power to appoint and dismiss ministers, and amnesty for political prisoners. See *id.* at 163. After the Tsar refused to grant an audience with representatives of the Duma, the Duma passed a no-confidence resolution against the cabinet, as well as a demand that it be allowed to choose a ministry itself. See *id.* at 164. Fearing a peasant uprising, and concerned with the prestige of the government, the Tsar dissolved the Duma just weeks after it first convened. See *id.*

The second Duma, which opened in February 1907, "was even more radical than the first," dominated as it was by socialists and other revolutionaries. *Id.* at 179. Eventually, the prime minister sought to lift the deputies' immunity, so that

reinstating it with a stacked deck of conservatives that supported the monarchy.<sup>37</sup>

The Duma arguably was doomed from the start for two reasons.<sup>38</sup> First, the October Manifesto was extracted from the tsar under duress; therefore, he never felt obligated to respect it.<sup>39</sup> Second, the Manifesto never mentioned the word "constitution," as Nicholas intentionally avoided the use of the term in order to preserve the illusion that he remained an autocrat.<sup>40</sup> As a result, the Duma suffered from lack of legitimacy as its very existence depended, like so much else in Russia, on the whims of the tsar.

Ultimately, the Duma was a victim of Russia's autocratic and Orthodox heritage, which viewed compromise and conciliation as weaknesses, and dissent as anathema.<sup>41</sup> "The government and the opposition alike viewed the Duma not as a vehicle for reaching compromises, but as an arena of combat, and sensible voices, pleading for cooperation, were vilified by both sides."<sup>42</sup>

### C. *The Soviet Experience*

Perhaps more disastrous for Russian legal consciousness than the long history of autocracy were the nearly seventy-five years of communist rule from 1917 to 1991.<sup>43</sup> The 1917 Revolution and the three years of civil war that followed "obliterated respect for legal norms," not only by law enforcers, but by those subject to their authority as well.<sup>44</sup> The Bolsheviks believed the commitment to the rule of law to be a *bourgeois* concept and that legal institutions should wither away along with the state.<sup>45</sup> Meanwhile, Lenin demonstrated the Bolshevik

several of them could be charged with mutiny. *See id.* at 181. The Duma agreed, but only if the government could produce concrete evidence of sedition. *See id.* The Tsar subsequently dissolved the second Duma in June 1907. *See id.*

37. *See id.* at 182.

38. *See id.* at 44.

39. *See id.*

40. *See id.* The tactic would prove problematic. As Pipes indicates, the "absurd concept of a constitutional autocrat . . . would cause no end of trouble in relations between the Crown and the Duma in the years to come." *Id.*

41. *See* AHDIEH, *supra* note 14, at 115-16.

42. PIPES, *supra* note 34, at 51. Louise Shelley's epitaph for the failed Duma is worth remembering when considering the current Russian legislature: "[The pre-Revolutionary Duma] lacked the power, the experience, and the representativeness to make it a force able to enact law successfully in an increasingly unstable society." Shelley, *supra* note 19, at 65.

43. The Stalinist period in particular (1927-1953) was the "antithesis of the rule of law and a period that established a strong and unfortunate legacy for the contemporary period." Shelley, *supra* note 19, at 66.

44. *Id.* at 65.

45. *See id.*

disregard for democratically elected institutions with his forcible dissolution of the Constituent Assembly in February 1918.<sup>46</sup> Until the time of Gorbachev, the Soviet government denounced the very concept of a law-based state: in theory, because it conflicted with Marxist-Leninist doctrine; in practice, because it conflicted with Communist Party authority over the state itself.<sup>47</sup> This is not to say that law was absent from Soviet society; the vast collection of statutes and codes attest to its importance in the Soviet era.<sup>48</sup> Nevertheless, law in the Soviet Union was not, as in the West, a means for society to exercise control over the leadership; rather, it was a means by which the leadership controlled society.<sup>49</sup>

The Communists did adopt a series of constitutions during the Soviet Union's existence.<sup>50</sup> The Soviet concept of a constitution, however, stressed flexibility; it was not a document to which "legislators and administrators would be bound rigidly in building a new socialist Russia."<sup>51</sup> Its permanence was doubtful, as it was subject to changing political views within the leadership.<sup>52</sup> The 1977 Constitution, which required nearly

46. The Constituent Assembly had been elected, as originally scheduled by the Provisional Government, in November 1917, after the Bolsheviks had seized power. See PIPES, *supra* note 34, at 539-40. When the Assembly proved hostile to the Bolsheviks, Lenin forced its dispersal through intimidation tactics. See *id.* at 537-40, 552-55 for a detailed history of the elections and short life of the Constituent Assembly.

47. See Harold J. Berman, *The Rule of Law and the Law-Based State (Rechtsstaat)*, in TOWARD THE "RULE OF LAW" IN RUSSIA?, *supra* note 19, at 43.

48. See Lien, *supra* note 10, at 69-71. Although the Bolsheviks originally opposed the need for laws, they were soon "forced to rely on law themselves as a means of imposing the concept of a worker's state." *Id.* at 69. Within half a decade after the Revolution, the Soviet government adopted a Civil Code, a Code of Civil Procedure, a Criminal Code, a Code of Criminal Procedure, and a Labor Code. See *id.* at 71.

49. See Harold J. Berman, *Comparison of Soviet and American Law*, 34 IND. L.J. 559, 561-63 (1959).

50. Four separate constitutions were adopted, in 1918, 1924, 1936, and 1977. See ARYEH L. UNGER, CONSTITUTIONAL DEVELOPMENT IN THE USSR: A GUIDE TO THE SOVIET CONSTITUTIONS 1 (1982).

51. John N. Hazard, *The Evolution of the Soviet Constitution*, in TOWARD THE "RULE OF LAW" IN RUSSIA?, *supra* note 19, at 93. As Soviet legal reformer Alexander YAKOVLEV explains,

From the Marxist, materialistic point of view, everything is subjective. Ideas are nothing but the expression of the social and economic conditions of a particular subject (a person or a class). Ideas exist specifically to serve one's aims, regardless of any other interests. From this standpoint, a constitution is, first and foremost, nothing but a political tool; therefore, it must serve particular political interests.

YAKOVLEV, *supra* note 35, at 38-39.

52. See *id.*

twenty years of drafting, reflected the ideological ferment released after Stalin's death in 1953.<sup>53</sup>

The Soviet-era constitutions created, on paper, "a network of broadly representative, independent assemblies with supreme legislative, administrative, and supervisory authority at their respective levels."<sup>54</sup> In practice, however, these legislative bodies were little more than ornamental institutions "convened each year to rubber-stamp laws prepared in advance by [Communist Party] authorities."<sup>55</sup> More importantly, it was through the passivity of these "democratic" institutions that Stalin was able to implement his campaign of terror in the 1930s.<sup>56</sup> Thus, until the rise of General Secretary (and later Soviet President) Mikhail Gorbachev in the 1980s, Russians had virtually no exposure either to democratically elected legislative institutions or to the concept of a separation of powers.

#### D. Gorbachev's Reforms

In the late 1980s, the Communist Party began speaking of the concept of the law-based state as a fundamental dimension of the "new thinking" called for by Gorbachev and the Soviet leadership.<sup>57</sup> Such discourse was not wholly genuine, however, as Gorbachev had initiated legal reform less out of concern for building a "legal consciousness" than to further his economic reforms.<sup>58</sup>

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53. See Hazard, *supra* note 51, at 102-03. The 1977 Constitution was a product of the changes in Soviet society since Stalin, distancing the government from the terror of the Stalinist era. See ROBERT SHARLET, *SOVIET CONSTITUTIONAL CRISIS: FROM DE-STALINIZATION TO DISINTEGRATION* 16-21 (1992) (describing the 1977 Constitution as "codifying de-Stalinization"); see also UNGER, *supra* note 50, at 173-79 (1982) (providing a history of the drafting process of the 1977 Constitution).

54. Frances Foster-Simons, *The Soviet Legislature: Gorbachev's "School of Democracy"*, in *TOWARD THE "RULE OF LAW" IN RUSSIA?*, *supra* note 19, at 115, 116.

55. *Id.*

56. See AHDIEH, *supra* note 14, at 30. As one Russian legal scholar explained, "Stalin became a dictator through constitutional bodies—through the Congress and through the government." *Id.* (interview with Boris Topornin). Indeed, Stalin used legal institutions in general as a means of extending his power. "Stalin discovered that his dictatorial powers could be maintained more effectively with a system of law than without it." Berman, *supra* note 49, at 566.

57. Berman, *supra* note 47, at 43. In essence, Gorbachev sought to end the legal nihilism of the Soviet system. "The ideas of judicial independence, the primacy of constitutional norms, and the concept of the separation of the justice system from the party, once espoused only by human rights activists, became part of the Communist Party program . . ." Shelley, *supra* note 19, at 67.

58. See AHDIEH, *supra* note 14, at 98-99.

Reform, however, focused on the separation of powers and other structural principles of the legal state, not on its cultural underpinnings. Both Gorbachev and Yeltsin after him seemed to hope that constitutionalism

In 1989, Gorbachev revived the Congress of People's Deputies, an elected body that had existed under the 1918 and 1924 Constitutions, but which Stalin had abolished in the 1936 Constitution.<sup>59</sup> The Congress was not truly democratic, as electoral safeguards permitted the Communist Party to retain control of the legislative process.<sup>60</sup> Nevertheless, the new Congress was a representative institution that quickly proved its independence from the regime, as the deputies formed political groupings of their own design, such as Boris Yeltsin's New Moscow Deputies,<sup>61</sup> and passed significant legislation on human rights and freedoms.<sup>62</sup> Despite its significance as a separate deliberative body, the Congress was hampered by structural flaws that made it unwieldy and that ultimately contributed to its lack of effectiveness.<sup>63</sup>

Gorbachev, wary of the deputies' independence, subsequently created the post of President of the Soviet Union—to which he

could be built at the institutional rather than the individual level. They expected newly created institutions to become the focus of people's "faith," until then directed largely at Communist ideology and the state that stood on its shaky foundations. These institutions would serve as a lodestone for new political forces and lay the groundwork for further change. A strengthened legal consciousness might be a collateral effect of these reforms, but it was not their primary focus.

*Id.* at 99. Indeed, Gorbachev's reforms generally consisted of attempts to transplant evolved Western democratic institutions and practices into the primitive economic, political, and legal soil of the Soviet Union.

Hoary concepts such as democracy and markets, which have evolved gradually in the West, have been grasped in the USSR mechanistically at best, in a manner reminiscent of Soviet technology-borrowing during the interwar period. Gorbachev and others have facetiously spoken of these ideas with little apparent awareness of the encrustations of time and tradition, policy and practice, which have shaped their contemporary meaning in the United States and the Western democracies.

Robert Sharlet, *The Path of Constitutional Reform, in PERESTROIKA-ERA POLITICS: THE NEW SOVIET LEGISLATURE AND GORBACHEV'S POLITICAL REFORMS* 22 (Robert T. Huber & Donald R. Kelley eds., 1992).

59. See AHDIEH, *supra* note 14, at 26.

60. See *id.* Of the 2250 seats in the Congress, 750 would be filled by "social organizations," that is, the Communist Party and its ancillaries. *Id.*

61. See *id.* at 27. Meanwhile, the Soviet people witnessed the drama live on television, their first chance to view the workings of government institutions. See *id.*

62. See *id.* at 30-31. Among the laws the Congress passed were "the Law on Press and Other Mass Media (June 1990), the Law on Freedom of Conscience and Religious Organizations (October 1990), and the Law on Public Associations (October 1990)." *Id.* at 31. See also YAKOVLEV, *supra* note 35, at 76-78 (describing legislative successes by the Congress and the Supreme Soviet).

63. For example, its large size (2250 deputies), that it was not bicameral, and its institutional underpinning on revolutionary institutions of the 1924 Constitution all contributed to the Congress' difficulties. See AHDIEH, *supra* note 14, at 31.

was elected in March 1990—in order to balance the legislative power with a strong executive.<sup>64</sup> Consequently, as he began to work constructively with the Congress, a “muted Soviet separation of powers doctrine began to take shape . . .”<sup>65</sup> This cooperation ultimately succumbed to the exigencies of domestic crises, as Gorbachev “persuaded” the legislature to grant him special emergency powers and significant new permanent presidential powers, including the expansion of the authority to issue decrees, in order to combat internal problems.<sup>66</sup> As a result of Gorbachev’s “increasingly arbitrary and controversial decrees,” the reformed Soviet system suggested “nearly unchecked presidential power.”<sup>67</sup>

The final judgment of the Congress of People’s Deputies is therefore mixed. While the period showed the potential for legislative-executive cooperation and separation of powers in Russia, the very existence of the Congress may have been due, as in imperial times, to the whim of the tsar—in this case, Gorbachev’s desire to demonstrate to the West his democratic intentions.<sup>68</sup>

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64. Gorbachev overcame his earlier reservations about a proposed USSR executive presidency after the Congress continued to assert its independence; he therefore supported the executive as “an instrument of rule that . . . would be at once more responsive and powerful.” *Id.* at 29 (quoting Eugene Huskey, *Executive-Legislative Relations*, in *EXECUTIVE POWER AND SOVIET POLITICS: THE RISE AND DECLINE OF THE SOVIET STATE* 98 (Eugene Huskey ed., 1992)). Yet a strong executive was arguably necessary if the legislature was to succeed as a separate branch of power. Alexander Yakovlev, a legal reformer who served in the Congress, contended that the Soviet Union “needed a strong *executive* power to ensure that the laws passed by the Supreme Soviet were implemented . . .” YAKOVLEV, *supra* note 35, at 83.

65. SHARLET, *supra* note 53, at 94; *see also* YAKOVLEV, *supra* note 35, at 85 (“instituting the presidency . . . signified the beginning of the process of separating the executive from the legislative branch of government”).

66. *See* SHARLET, *supra* note 53, at 95.

67. *Id.* In addition to nearly unlimited decree-making powers, Gorbachev obtained the power to dissolve parliament under certain circumstances, the authority to suspend the Constitution, and the authority to impose various degrees of martial law. *See id.* at 99. Indeed, as Sharlet notes, Gorbachev eventually resembled the all-powerful tsar more than a “constitutional leader mindful of the division of power within a constitutional system.” *Id.* at 95.

68. One Soviet legal critic contended that Gorbachev was not truly committed to democracy and public participation, and that the Congress “was ‘merely a facade Gorbachev could show off to the West to help him justify demands for increased foreign aid.’” *See* АНДИЕВ, *supra* note 14, at 31-32 (quoting an interview with August Mishin).

### E. *The Battle for a New Russian Constitution*

Changes at the federal level in the Soviet Union were mirrored at the republic level in Russia.<sup>69</sup> Following constitutional amendments made by the Russian Supreme Soviet<sup>70</sup> in 1989, elections were held in 1990 for seats in the Russian Congress of People's Deputies (RCPD), a parliamentary institution modeled on the federal body.<sup>71</sup> Its primary responsibility was to choose from its members a permanently functioning parliament, the Supreme Soviet.<sup>72</sup> In addition, the RCPD had the power to amend the Constitution, to overturn decisions by the Supreme Soviet, and to appoint the chair and members of a new Constitutional Court.<sup>73</sup>

The RCPD amended the 1978 RSFSR Constitution to create a Russian presidency in 1991—to which Boris Yeltsin was popularly elected shortly thereafter—in an attempt to divide legislative and executive powers into two coequal branches.<sup>74</sup> Although temporarily united against a common foe—the Soviet government—the strong legislature and equally powerful president eventually squabbled once the Soviet Union collapsed at the end of 1991.<sup>75</sup> Neither branch could dissolve the other, and although the president could issue decrees having the force of

69. Russia was one of the 15 republics that constituted the USSR. See ALEXANDER YAKOVLEV & DALE GIBSON, *THE BEAR THAT WOULDN'T DANCE: FAILED ATTEMPTS TO REFORM THE CONSTITUTION OF THE FORMER SOVIET UNION 1* (1992). Its official name was the Russian Soviet Federative Republic (RSFSR). See *id.*

70. Russia, as one of the 15 constituent republics of the Soviet Union, in 1978 had adopted its own constitution, which was virtually identical to the federal version. Constitutions of the republics commonly replicated the Soviet constitution currently in effect. See Jeffrey W. Hahn, *Analyzing Parliamentary Development in Russia*, in *DEMOCRATIZATION IN RUSSIA: THE DEVELOPMENT OF LEGISLATIVE INSTITUTIONS 13* (Jeffrey W. Hahn ed., 1996). Therefore, its legislative and executive bodies mirrored those at the national level, with the Supreme Soviet as the highest institution of state power in the republic. See *id.* at 13, 15.

71. See *id.* at 15; see *supra* Part II.D. The RCPD consisted of 1068 deputies elected to five-year terms.

72. See *id.* In its first session, the RCPD elected Boris Yeltsin as Chairman of the Supreme Soviet. See *id.* at 16.

73. See *id.* at 15.

74. See *id.* at 17. Yeltsin and running mate Aleksandr Rutskoi were elected to a five-year term. The election marked the first time in the nation's 1000-year history that the Russian people were permitted to choose their leader democratically.

75. This is not to say that Yeltsin and the Supreme Soviet were cooperative partners until the fall of the Soviet government. As Chairman of the Supreme Soviet, Yeltsin had been unable to obtain support for his legislative initiatives. See *id.* Later, as President, Yeltsin failed to secure the nomination of Ruslan Khasbulatov to Chairman of the Supreme Soviet until the August 1991 coup changed the political landscape. See *id.* at 17-18.

law,<sup>76</sup> such laws could not contradict the Constitution or laws passed by parliament.<sup>77</sup> Moreover, the Supreme Soviet could overrule a presidential veto by fifty percent majority.<sup>78</sup> Most significantly, however, was that until a new constitution could be drafted, the President and parliament had agreed to operate under the 1978 Constitution, a document reflecting the values of the defunct communist system.<sup>79</sup> The situation meant deadlock and eventual disaster.<sup>80</sup> Acrimonious and finally violent conflict between President and parliament laid the groundwork for a system allowing broad presidential action at the expense of the legislature.<sup>81</sup>

Tensions mounted throughout 1992 as the economic situation grew worse.<sup>82</sup> Yeltsin and the parliament collided in December 1992 over the government's economic reforms, a standoff that resulted in the appointment of Viktor Chernomyrdin as Prime Minister, a candidate the deputies favored.<sup>83</sup> A compromise brokered by the chairman of the Constitutional Court allowed Yeltsin to call a referendum on a new constitution in April 1993, but required the Supreme Soviet to approve the questions.<sup>84</sup> The compromise nearly collapsed in March 1993 when the President and parliament jostled over the renewal of his emergency powers, originally granted in November 1991, with Yeltsin threatening dissolution of the RCPD, then in session, and the parliament calling for impeachment.<sup>85</sup> The parliament ultimately acquiesced to the referendum, from which Yeltsin emerged victorious.<sup>86</sup> Yet the deadlock continued as the two

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76. The Supreme Soviet granted Yeltsin this power through the end of 1992. *See id.*

77. *See id.* at 17.

78. *See id.*

79. *See* SMITH, *supra* note 11, at 86. By 1992, the 1978 Russian Constitution had been amended over 400 times, and "was filled with all the holes and contradictions of a document long ago superannuated institutionally, politically, and economically." AHDIEH, *supra* note 14, at 50-51.

80. *See* Hahn, *supra* note 70, at 17.

81. *See infra* Part III.

82. Yeltsin had freed prices from Soviet controls on January 1, 1992, resulting in 2500% inflation by the end of the year. Meanwhile, the government also ended state subsidies to large, state-run enterprises. *See* Hahn, *supra* note 70, at 18-19.

83. *See id.* at 19. The Supreme Soviet was dominated by old Communist Party elite who favored Chernomyrdin, a former minister of the state gas industry thought to be much more conservative than Yeltsin's candidate, acting Prime Minister Yegor Gaidar, a liberal reformer.

84. *See id.*

85. *See* SMITH, *supra* note 11, at 91-92.

86. More than 62% of Russia's 105.5 million eligible voters participated in the referendum, as 59% of voters expressed confidence in Yeltsin's leadership and 53% approved his socio-economic policies. *See id.* at 93. Meanwhile, only 40%

sides argued over the powers delegated by draft constitutions circulating during the summer of 1993.<sup>87</sup> Thus, the debate between Yeltsin and the Supreme Soviet represented not so much a political battle over reforms, but an institutional struggle over the future distribution of powers under a new constitution.<sup>88</sup>

Buoyed by his success in the referendum and frustrated over the legislature's intransigence toward the draft constitution, Yeltsin forced a final showdown with the Supreme Soviet in September 1993 by issuing a decree dissolving the parliament.<sup>89</sup> When heavily armed communist and nationalist deputies and supporters refused to leave the parliament building, Yeltsin surrounded them with security forces.<sup>90</sup> After parliamentary leaders incited mob violence that resulted in the storming of the Moscow mayor's office building and the state television broadcast center, Yeltsin called in the armed forces, who launched artillery fire on the parliament building.<sup>91</sup>

With the rebellious parliament out of the way, Yeltsin was free to introduce his proposed constitution, which created a governmental system weighted toward the president.<sup>92</sup> Despite the violence and abuse of presidential power, parliamentary elections went forward in December as promised, and voters also approved the new Constitution.<sup>93</sup>

approved of early presidential elections while 74% favored early parliamentary elections. *See id.*

87. *See* Bruce L.R. Smith, *Constitutionalism in the New Russia*, in *LAW AND DEMOCRACY IN THE NEW RUSSIA* 1, 12 (Bruce L.R. Smith & Gennady Danilenko eds., 1993).

88. *See id.* According to Smith, this

executive-legislative gridlock of 1992-1993 was created by disputes over which branch would have the right to appoint and remove key officers of government, which would have final budgetary power . . . , and which would control the money supply . . . . Other disputes included how extensive executive discretion would be . . . and who would control the state television stations.

*Id.*

89. *See* Hahn, *supra* note 70, at 20-21. In the decree, Yeltsin promised to hold elections to a new Federal Assembly on December 12, 1993. *See id.* In a television address announcing the decree, Yeltsin declared that Russia was "experiencing a profound crisis of its state structure." AHDIEH, *supra* note 14, at 66 (quoting *Yeltsin's Address on National Television*, official Kremlin international news broadcast, Sept. 21, 1993 available in LEXIS, News Library, Sovnws File).

90. *See* NIKOLAI BIRYUKOV & VICTOR SERGEYEV, *RUSSIAN POLITICS IN TRANSITION* 199 (1997).

91. *See id.* at 190-207 (giving a synopsis of the events of September-October 1993); *see also* DAVID REMNICK, *RESURRECTION* 59-80 (1997) (providing a journalistic account of Yeltsin's showdown with parliament).

92. *See infra* Part III.

93. *See* SMITH, *supra* note 11, at 102. Smith notes, however, that "[o]nly 54.8 percent of registered voters bothered to cast ballots, and, of those, 58.4 percent supported the new constitution." *Id.* Thus, "only about 31 percent of all

### III. EXECUTIVE AND LEGISLATIVE POWERS IN THE NEW RUSSIAN CONSTITUTION

Under Yeltsin's new Constitution, while the president retains broad authority in directing the affairs of the country, the legislature possesses some means, albeit weak, of checking executive power and enacting legislation.<sup>94</sup> Despite increasing public discussion of such concepts as separation of powers and the rule of law, however, centuries-old political traditions such as centralized authority and the circumvention of the law by officials, as well as the violent confrontations of 1993, meant that the new Constitution would imbue the president with strong executive powers.<sup>95</sup>

#### A. Basic Structure

The 1993 Russian Constitution prescribes a governmental system roughly similar to the American model, although its strong presidential powers echo those granted in the French Constitution.<sup>96</sup> It separates the executive, legislative, and judicial powers into three ostensibly coequal branches.<sup>97</sup> The executive is essentially a dual executive, with the president on one hand and the government, led by the prime minister, on the other.<sup>98</sup> The legislative branch is divided into two chambers: the Federation Council (upper house) and the State Duma (lower house).<sup>99</sup>

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eligible voters supported the new constitution." *Id.* Popular support for the Russian Constitution therefore should not be overstated.

94. See *infra* Part III.C.

95. See SHARLET, *supra* note 53, at 98 (indicating that "a number of traditional Russian and Soviet methods of governance remained fundamentally unchanged in spirit [since they were] deeply ingrained in the elite political culture"); see also *supra* Parts II.A-C.

96. See Ninel S. Krylova, *The New Constitution of Russia: Main Principles and Features*, 27 AKRON L. REV. 397, 403-04 (1994). The French Constitution incorporates a mixed presidential-parliamentary regime. See generally La Constitution (Fr.) (1958).

97. See KONST. RF chs. 4, 5, 7.

98. See *id.* arts. 110, 111.

99. See *id.* art. 95(1). The Federation Council includes two representatives "from each constituent entity [autonomous and semi-autonomous republics and regions of the Russian Federation listed in art. 65(1)] of the Russian Federation, one from the legislative and one from the executive State government body." *Id.* art. 95(2). The Duma consists of 450 popularly elected deputies. See *id.* art. 95(3).

### B. Powers of the Executive

Subject to the approval of the Duma, the president has the power to appoint the prime minister and to appoint and remove the chairman of the Central Bank, the treasury.<sup>100</sup> The president may also appoint and remove deputy ministers of the government, all ministers below the position of prime minister, without Duma approval.<sup>101</sup> In addition, the president has the power to appoint and dismiss plenipotentiary representatives<sup>102</sup> and supreme commanders of the armed forces<sup>103</sup> without consulting the Federal Assembly.

If the Duma rejects the president's candidate for prime minister three times, the president must appoint the candidate, dissolve the Duma, and call for new elections.<sup>104</sup> The president may also dissolve the Duma if it passes two no-confidence motions against the government within three months, or if the prime minister raises the issue of confidence in the government before the Duma and the Duma passes a no-confidence motion.<sup>105</sup> The Constitution, however, restricts the president from dissolving the Duma in four circumstances: (1) during the year following the Duma's election;<sup>106</sup> (2) during impeachment proceedings;<sup>107</sup> (3) while a state of emergency or martial law is in effect;<sup>108</sup> or (4) within six months prior to the conclusion of the president's term in office.<sup>109</sup>

As in the U.S. system, the president signs and promulgates federal laws passed by the Assembly.<sup>110</sup> The president also has the power to veto a law within fourteen days of receiving it from the Assembly.<sup>111</sup> In a clear violation of the principle of separation of powers, however, the president also has the authority to submit draft laws to the State Duma.<sup>112</sup> Moreover, the president

100. See *id.* arts. 83(a), (d).

101. See *id.* art. 83(e).

102. See *id.* art. 83(j).

103. See *id.* art. 83(k).

104. See *id.* arts. 111(4), 109(2) (requiring the president to call for new elections within four months after the dissolution).

105. See *id.* art. 117(3). Alternatively, the president may accept the motion and announce the resignation of the government.

106. See *id.* art. 109(3).

107. See *id.* art. 109(4). This includes the period beginning from the time the Duma brings charges against the president until the Federation Council adopts a decision on the issue. See *id.*

108. See *id.* art. 109(5).

109. See *id.*

110. See *id.* art. 84(e).

111. See *id.* art. 107(3).

112. See *id.* art. 84(d).

may issue "edicts and regulations" having the force of law, as long as they do not conflict with the Constitution and federal laws.<sup>113</sup> Thus, the president may circumvent entirely the Federal Assembly and the legislative process.

The president may declare "a state of emergency in the territory of the Russian Federation or in certain parts thereof" and only need notify the Federation Council and the Duma "immediately" afterward.<sup>114</sup> Following such a declaration, the president may dissolve parliament and subsequently issue decrees and other executive directions where implementation is mandatory throughout the Russian Federation.<sup>115</sup>

### C. Powers of the Legislature

Although a distinctly junior partner in the Russian governmental system, the legislature nonetheless possesses certain constitutionally-defined powers that certainly exceed those of the original tsarist-era State Duma.<sup>116</sup> As noted above, the Duma must approve the president's nominee for prime minister.<sup>117</sup> The Duma also must approve the nomination of, and has the power to remove, the chairman of the Central Bank.<sup>118</sup>

The "right of legislative initiative" belongs to both the Federation Council and the Duma, although Article 104 grants this right essentially to every major governmental branch.<sup>119</sup> Thus, the separation of powers is thoroughly diluted; the Federal Assembly does not have a monopoly on legislative power, as the Congress does in the U.S. system.<sup>120</sup> Nevertheless, the Duma ultimately must approve federal laws by majority vote, then submit such laws to the Federation Council for "examination."<sup>121</sup>

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113. *Id.* art. 90.

114. *Id.* art. 88.

115. *See id.* arts. 84(b), 87(2), 90; *see also infra* note 153.

116. *See supra* notes 32-37 and accompanying text.

117. *See* KONST. RF art. 103(1)(a).

118. *See id.* art. 103(1)(c).

119. *Id.* art. 104(1). The president, "the Federation Council, members of the Federation Council, deputies of the State Duma, the Government of the Russian Federation, and legislative" bodies of constituent entities of the Russian Federation all have the power to initiate legislation. *Id.* In addition, the Constitutional Court, the Supreme Court, and the Supreme Arbitration Court may all "initiate legislation on the matters within their respective terms of reference." *Id.*

120. *Cf.* U.S. CONST. art. 1, § 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives").

121. KONST. RF art. 105(1)-(3). If a majority of the Federation Council members vote for the law, or if the law remains unexamined for 14 days, the law will be considered as adopted. *See id.* art. 105(4). If the Council rejects the law, the two chambers "may set up a reconciliatory commission to settle the dispute;"

An adopted federal law must then be submitted to the president for signing and promulgation.<sup>122</sup> If the president vetoes the law, the Duma may override with a two-thirds majority vote, in which case the president must sign and promulgate the law.<sup>123</sup>

The Duma has the power to "decide[] the issue of confidence in the Government of the Russian Federation."<sup>124</sup> Such a resolution needs only a simple majority of the total number of deputies in the Duma.<sup>125</sup> The Duma, however, must be cautious with such votes, for in certain circumstances the president may dissolve the Duma and call for new elections following a no-confidence vote.<sup>126</sup>

Because the president and his advisers were the main authors of the Constitution, its impeachment provisions make removal of the executive from office extremely difficult.<sup>127</sup> Nevertheless, that such provisions for lawful removal of an authority figure even exist in a Russian Constitution signifies a major development in Russian history.

Article 93 states that the president may be impeached "on the basis of charges of high treason or of another grave crime."<sup>128</sup> A special commission set up by the Duma must first issue a resolution on the charges, and then one-third of the deputies must pass an initiative regarding the charges before the Duma may consider bringing charges against the president.<sup>129</sup> The Duma must then approve the charges by a two-thirds majority vote.<sup>130</sup> Following the Duma vote, first the Supreme Court must issue a resolution "on the existence of indications of a crime in the actions of the President," and then the Constitutional Court

the Duma may then reconsider the law. *Id.* Upon reconsideration, if the Duma approves the law by a two-thirds majority, the law will be considered as adopted. *See id.* art. 104(5).

122. *See id.* art. 107(1).

123. *See id.* art. 107(3).

124. *Id.* art. 103(b).

125. *See id.* art. 117(3).

126. *See id.* art. 117(3)-(4); *supra* Part II.B.4.

127. Yeltsin's team . . . [has] construct[ed] a 'presidential vertical' without any checks and balances . . . According to the new constitution, drafted after Yeltsin's crackdown on the parliament and reflecting the president's vast ambitions, not only the legislature, but the Constitutional Court as well, have become mere decorations. Thus, parliament is deprived of the right to form a government, while the process for impeaching the president is so complicated that it becomes virtually impossible.

Lilia Shevtsova, *Parliament and the Political Crisis in Russia*, in *DEMOCRATIZATION IN RUSSIA*, *supra* note 70, at 43.

128. KONST. RF art. 93(1).

129. *See id.* art. 93(2).

130. *See id.*

must confirm that "the established procedure for bringing charges has been observed."<sup>131</sup>

Once these resolutions have been issued, the Federation Council is to consider the charges and can impeach the president by two-thirds majority vote.<sup>132</sup> If the Federation Council fails to adopt its decision within three months after the Duma brings charges, the charges will be "regarded as having been declined."<sup>133</sup> Thus, the Constitution imposes not only lengthy procedural requirements, but also a strict time limit on impeachments, requirements that serve to protect the president from virtually any impeachment attempt. Once impeached, the president is required to "cease . . . exercis[ing] his powers . . . ."<sup>134</sup>

#### IV. CHECKS AND BALANCES IN ACTION: THE PRESIDENT VERSUS PARLIAMENT, 1994-1999

Relations between Yeltsin and the Duma in the six years since the adoption of the 1993 Constitution were characterized by nearly constant bickering, often flaring up into fierce confrontation. Yet each side largely framed its positions within the guidelines of the Constitution; neither engaged in extra-constitutional means to resolve disputes as Yeltsin did in 1993. The two major showdowns between the executive and legislative branches in 1998, centering on the selection of a new prime minister, clearly demonstrate the various weapons each branch can employ to check the other.<sup>135</sup> Ultimately—and surprisingly, given the president's broad authority to act—the Duma emerged from the conflict with the upper hand—although in the end, only temporarily—having secured its preferred candidate over Yeltsin's.<sup>136</sup> That the Duma emerged intact at all was a victory in itself. By challenging the president's authority in such matters, the Duma risked dissolution.<sup>137</sup> Nevertheless, by the summer of 1999, the Duma returned to its former stature as a grudgingly

131. *Id.* art. 93(1).

132. *See id.* art. 93(2).

133. *Id.* art. 93(3).

134. *Id.* art. 92(2). It should be noted that the Constitution does not specifically state that the president is to be "removed" from office following impeachment. *Cf.* U.S. CONST. art. II, § 4 ("The President . . . shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors"). This may be a moot point, as removal from office is probably implied in the words "to cease to exercise his powers." KONST. RF art. 92(2).

135. *See infra* Parts IV.B-C.

136. *See infra* Part IV.C.

137. *See* KONST. RF art. 111(4).

acquiescent body, as it backed down from impeachment and approved a succession of Yeltsin's prime ministers.<sup>138</sup>

An examination of the two stages of the 1998 conflict shows that constitutional imbalances of power on paper may be mitigated or exacerbated by personalities and external events.<sup>139</sup> That is, the Russian Constitution of 1993 is flawed not because of its imperfect separation of powers but because its effectiveness ultimately relies upon the individuals occupying the various offices of state power and much less upon the ideals on which the Constitution is based. Such a document requires amendment—while this situation was tolerable with a generally reformist Yeltsin as president, it could become disastrous with more reactionary or authoritarian leader in power, as Vladimir Putin may prove to be.<sup>140</sup> Meanwhile, those advocating democratic reform in Russia find themselves trapped in a paradox. Support for a traditional democratic separation of powers between the legislative and executive branches in Russia would give the communist-nationalist-dominated Duma an increased role in setting the future of the country, which could well lead to the destruction of any kind of a democratic system in Russia. Yet to enable Russia to advance toward a democratic, capitalist system demands that democrats turn a blind eye to the imbalance of powers granted by the Constitution.

#### A. *Uneasy Cooperation: 1994-1997*

Given the violence surrounding the adoption of the new Constitution<sup>141</sup> and the subsequent election of a Duma dominated by opposition parties, the president in this era was virtually guaranteed a fractious relationship with the legislative branch. Indeed, the Duma almost immediately confronted Yeltsin

138. See *infra* Part IV.D.

139. Lilia Shevtsova, a Russian political analyst at the Carnegie Endowment for International Peace, explains that "[e]verything depends not on checks and balances, but on personalities." Mark Whitehouse & Betsy McKay, *Filling the Void: Yeltsin May Be Ill, But No Consensus Exists on Succession*, WALL ST. J. EUROPE, Oct. 30, 1998, at 1.

140. See Chrystia Freeland, *All Bets Are Off*, Fin. Times (London), Aug. 29, 1998, at 10 (quoting Mikhail Burger, "[I]f Zyuganov or some dangerous madman were to become president under the current constitution, it would be the end of true democracy. But only an outgoing president will agree to weaken the president's constitutional powers, and that is why Yeltsin's role is so crucial."); *Still Most Awkward Partners*, ECONOMIST, May 9, 1998, at 21, 23 ("Yeltsin's decline may well make the main institution of government, the presidency, a force more for instability than for stability. . . . The accession of either [General Alexander Lebed or Moscow Mayor Yuri Luzhkov] would create expectations dangerous enough to be destabilizing in themselves.");

141. See *supra* notes 81-83 and accompanying text.

by granting amnesty both to the coup leaders of the August 1991 plot to overthrow Gorbachev, as well as to the occupants of the parliament building in September-October 1993.<sup>142</sup> Yet despite the arguable unconstitutionality of the act,<sup>143</sup> the president allowed the amnesty and refrained from further provocation of the Duma.<sup>144</sup> By acting in deference to stability and cooperation, the president set a constructive tone for the new Russian constitutional republic.<sup>145</sup>

### 1. Budget Battles

During these first years of the Second Russian Republic, the annual budget debate allowed the president and parliament to demonstrate both confrontation and compromise. Although the 1996 budget was approved by New Year's Day,<sup>146</sup> the 1995 and 1997 budgets passed the Duma's scrutiny in the spring, only after five months of acrimonious haggling.<sup>147</sup> The two sides differed over the extent of governmental spending. The president sought to temper the state's outlays, under pressure from the International Monetary Fund (IMF), while the Duma generally attempted to expand social programs to placate its impoverished electoral power base.<sup>148</sup> Each branch nonetheless engaged in a process of discussion and amendment of spending proposals,

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142. See АНДИЕВ, *supra* note 14, at 121.

143. While Article 103(1)(f) of the Constitution gives parliament the power to grant amnesty, in this case since no trial had yet been held, the Duma's action more closely resembled a pardon, a power granted the president under Article 89(c). See *id.* at 121-22.

144. Yeltsin initially tried to prevent the release of the plotters, causing two political allies to resign in protest, but ultimately accepted the premise that to acquiesce with the Duma would protect the country's stability. See *id.* at 122.

145. See Steven Erlanger, *Yeltsin Denounces Amnesty But Concedes to Parliament*, N.Y. TIMES, Mar. 5, 1994, at A5 (quoting Yeltsin's statement to the Duma, "[t]oday in Russia, democracy means above all stability, order and cooperation").

146. See *Russia Starts New Year With Approved Budget*, MOSCOW TIMES, Jan. 4, 1996. The budget was passed by the Duma on December 6, and by the Federation Council on December 19. See *id.* The debate was nonetheless time consuming; Yeltsin had submitted the draft budget in June 1995, anticipating difficulties in passing a budget after parliamentary elections in December. See Natasha Mileusnic, *Yeltsin Unveils Plans for Early, Austere Budget*, MOSCOW TIMES, June 23, 1995.

147. See Leonid Bershidsky, *President Signs 1995 Budget*, MOSCOW TIMES, Apr. 5, 1995; Christian Lowe, *'97 Budget Passes After Acrimonious Debate*, MOSCOW TIMES, Feb. 13, 1997.

148. See Euan Craik, *Stakes in Duma Budget Debate: Cash or Chaos*, MOSCOW TIMES, Jan. 25, 1995 (describing the relationship between the IMF and the Russian budget debate); Leonid Bershidsky, *Duma Passes Budget With a Sting in the Tail*, MOSCOW TIMES, Jan. 26, 1995 (reporting on the Duma's approval of a version of the government's budget, but which was tied to a minimum wage hike).

facilitated by a "government-parliamentary conciliation commission."<sup>149</sup>

Unfortunately, while the policy debates over the budget would appear to promote democratic discourse in Russia,<sup>150</sup> external realities and the constitutional imbalance of powers both serve to undermine that potential benefit. Duma deputies and Federation Council representatives alike recognize the necessity of passing a workable budget in order to prove to the IMF and to voters that Russia could manage its own finances.<sup>151</sup> Moreover, the economic situation in post-Soviet Russia does not permit the parties to hold the budget hostage for political gain.<sup>152</sup> Other deputies, however, note the ability of the president to circumvent the budget approval process by issuing decrees.<sup>153</sup> As a result, the process appears to be more of a perfunctory exercise in democracy and the rule of law, rather than a means of implementing concrete policies. Nevertheless, that the president and the Duma engage in the process demonstrates a deference to constitutional procedures, and to that end, suggests future institutional stability.

## 2. Legislation

Russia's new Land Code was one of the primary contentious issues dividing the executive and legislative branches, accordingly demonstrating the ability of the president to fill in legislative gaps left by the Duma.<sup>154</sup> In March 1996, while the Duma debated a

149. See *Russia Starts New Year With Approved Budget*, MOSCOW TIMES, Jan. 4, 1996.

150. As Mstislav Afanasyev, deputy director of the government's Economic Reform Center, explained to the *Moscow Times*, "[t]he budget, despite all the squabbling, conflicts and debates around it, is an integrating force . . . . It's a way for all political forces and lobby groups to thrash out their differences in the open, rather than fighting under the rug." Leonid Bershidsky, *Budget: The Duma's Political Football*, MOSCOW TIMES, Jan. 31, 1995.

151. See *id.* The Duma's passage of the budget is "needed to present a solid front to the West, and to persuade international lending institutions that the budget is legitimate." *Id.*

152. In 1997, the Federation Council approved the budget despite grave concerns about its legitimacy, because otherwise the bill would have had to return to the Duma for amendment, requiring several more weeks of debate. See Lowe, *supra* note 147. Practical concerns motivated some deputies: the chairman of one Council committee explained that "[g]iven the temporary absence of the president [who was recovering from heart surgery], and the temporary absence of the budget, there is no sense in adding to the power vacuum." *Id.*

153. During the 1995 debates, one Communist deputy told his colleagues, "[t]here will be no tragedy if we don't pass the budget . . . . The president must take responsibility and sign decrees on financing the economy in the second and third quarter of the year." Bershidsky, *supra* note 147.

154. The new Land Code is intended to reverse the Soviet-era ban on private ownership of agricultural land, thus allowing Russian citizens to buy and sell land

draft of the Land Code, which had already progressed through the first reading of the bill, the President issued a decree allowing private ownership of agricultural land, thereby preempting the legislature's activity.<sup>155</sup> Legislators protested, citing an agreement with the President that the Duma would pass the code by April.<sup>156</sup> Yet Yeltsin's decree was valid under Article 90, which allows the president to issue "edicts and regulations [that do] not conflict with the Constitution . . . and federal laws."<sup>157</sup> Since the Duma had not yet passed a law on the subject of land reform, Yeltsin's decree arguably was not in violation of federal law.<sup>158</sup> Moreover, although Article 76(2) states that land ownership questions must be decided by federal laws, a presidential decree is apparently deemed to have the force of law.<sup>159</sup> The decree would remain valid until the Duma passed legislation overriding it.<sup>160</sup>

The Duma succeeded in passing its own land code in mid-1997, which the President vetoed.<sup>161</sup> Upon the Duma's override of his veto, however, an enraged Yeltsin threatened the Duma, "Let the Duma think about what the president should do in such a case."<sup>162</sup> The stalemate over the Land Code, coupled with the Duma's threatened removal of the President earlier in the year, and the impending 1998 budget battle<sup>163</sup> contributed to an October 1997 showdown between the two branches in which the Duma prepared to pass a no-confidence motion against the

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freely. See Leonid Bershidsky, *Yeltsin Shifts, Signs Sweeping Land Decree*, MOSCOW TIMES, Mar. 8, 1996.

155. See *id.*

156. See *id.*

157. KONST. RF art. 90.

158. See Natasha Mileusnic, *Land Decree Holds Legal Water*, MOSCOW TIMES, Mar. 19, 1996.

159. See *id.* Article 72(1)(j) indicates that land legislation is within the joint jurisdiction of the Russian Federation and its constituent entities. KONST. RF art. 72(1)(j). Article 76(2) then states that laws regarding all issues under such joint jurisdiction must be promulgated in accordance with federal laws. *Id.* art. 76(2). Thus, a presidential land decree is only legal if it has the authority of federal law.

160. As one Russian attorney explained, "[s]trictly speaking, if [the Land Code] is a federal law and adopted after the decree, then it should supercede the latter." *Id.*

161. See Dimitry Zaks, *President Threatens Dismissal of Duma*, MOSCOW TIMES, Sept. 30, 1997.

162. *Id.* Compare Yeltsin's reaction to his later statements during the March-April 1998 crisis, *infra* note 177 and accompanying text.

163. See Zaks, *supra* note 161. Yeltsin's illness in late 1996 and early 1997 had emboldened opposition deputies, who openly called for his resignation. See *id.* Since his return to activity in the spring of 1997, the president had made clear his hostility to the Duma's threats, promising to hit back at the Duma for attempting to force his resignation. *Id.*

government.<sup>164</sup> After a personal appeal from Yeltsin, following threats of dissolution, the deputies backed down and once again, the executive had its way.<sup>165</sup>

### 3. The First Chechen War

The divisive Chechen War of 1994-1996 clearly demonstrated the vast authority that the Constitution confers upon the executive and the ability for the president to transcend that constitutional authority.<sup>166</sup> In sending troops into battle, the President acted without consulting parliament and without declaring either martial law or a state of emergency in the Chechen republic.<sup>167</sup> As Robert Sharlet commented, "In effect, the troops marched under order of the supreme commander and guarantor of the Constitution 'to restore constitutional order' in Chechnya."<sup>168</sup>

Executive excesses were balanced somewhat by a legislature that displayed independence and initiative in confronting the president's aggression in Chechnya. During the war, the Duma

164. See Christian Lowe, *Duma Retreats on No-Confidence Vote*, MOSCOW TIMES, Oct. 16, 1997.

165. See *id.* Yeltsin told the Duma not to put him in a "complicated situation" and guaranteed that "the government will learn lessons from the criticism it has heard about itself." *Id.* Ultimately, the Federation Council refused to back the Duma's veto override, thus leaving the president's 1996 decree as the standing law. See Christian Lowe, *Kremlin Presses in Budget Debate*, MOSCOW TIMES, Oct. 17, 1997.

166. See Sharlet, *supra* note 5, at 514-20. In December 1994, Yeltsin sent Russian troops into the secessionist southern province of Chechnya, which had long resented Moscow and had been a haven for organized crime. See *id.* at 514. What first appeared to be a quick but costly Russian victory eventually became a Chechan rout, as a humiliated Russian military was forced to withdraw in 1996. See *id.* at 514-16.

167. Sharlet describes the constitutional powers at issue:

The Constitution describes the president as 'the guarantor of the Constitution of the Russian Federation.' In that capacity, he is expected to adopt measures 'to safeguard . . . state integrity' [under Art. 80(2)]. The deployment of troops by the president as supreme commander [under Art. 87(1)] within the Russian Federation under either martial law [under Art. 87(2)] or a state of emergency [under Art. 88] requires immediate notification to both houses of the Federal Assembly. A declaration of martial law by the president is justified only in 'the event of aggression' [under Art. 87(2)]. A state of emergency can be declared at a lower threshold unspecified in the Constitution [under Art. 88]. Both regimes, including the 'circumstances' justifying a state of emergency, are defined by 'federal constitutional laws' [under Arts. 87(3), 88].

*Id.* at 516. When Yeltsin acted in December 1994, however, no such federal laws had been enacted. *Id.* at 516-17. Neither did the president seek the Federation Council's confirmation of his decrees on martial law or a state of emergency, as required by Articles 102(b) and 102(c). *Id.* at 517.

168. *Id.*

made its first attempts to amend the Constitution to avoid similar future executive actions,<sup>169</sup> initiated a legislative investigation into the crisis, passed its first motion of no-confidence in the government, considered several impeachment motions against the President, and filed petitions in the Constitutional Court for review of the President's actions in Chechnya.<sup>170</sup> In short, the Duma attempted to check the President with whatever limited means were at its disposal. Although the executive holds most of the cards, the legislature nevertheless showed an unwillingness to fold.<sup>171</sup> In one instance, the parliament scored a minor victory over the executive. The Duma voted no-confidence in the government in June 1995 and intended to follow up with a second such vote within two weeks.<sup>172</sup> Instead of taking a hardline stance against the parliament, however, the President fired three of "his most hawkish ministers;" mollified, the Duma backed off.<sup>173</sup>

### B. *The March-April 1998 Crisis*

Yeltsin demonstrated the breadth of his powers on March 23, 1998, when he suddenly fired Prime Minister Viktor Chernomyrdin and his entire thirty-member cabinet.<sup>174</sup> The President acted on the authority granted to him in Article 83 of the Constitution, which gives the executive the power to "appoint . . . Deputy Chairmen of the Government of the Russian Federation and federal ministers and remove them from office."<sup>175</sup> Within a week, Yeltsin had officially nominated Chernomyrdin's successor, Sergei Kiriyenko, an unknown thirty-five-year-old Fuel-and-Oil Minister in the recently

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169. For example, the Duma proposed to increase "the scope of official appointments subject to the Duma's consent, [to] establish[ ] a parliamentary research institute to enhance its ability to control the Government and individual ministries, and [to] broaden[ ] the possibility of a no-confidence motion not only on the Government as a whole, but in individual members of the cabinet as well." *Id.* at 517 n.89.

170. *See id.* at 517-18.

171. *See id.* at 520. Indeed, it could be said that the legislative branch "found its voice in the Chechen crisis," and that as a result, a "system of nascent checks and balances began to emerge between the power branches." *Id.*

172. *See* AHDIEH, *supra* note 14, at 125.

173. *Id.*

174. *See* Richard C. Paddock, *After Firing His Cabinet, Yeltsin Calls for 'New Views,'* L.A. TIMES, Mar. 24, 1998, at A1. The President did not explain his reasons for the dismissal, but noted that "the government must move more aggressively to improve the living conditions of the Russian people." *Id.* Some speculated that Yeltsin especially wanted to sack Chernomyrdin, fearing the prime minister would soon present a challenge to Yeltsin's own power. *See id.*

175. KONST. RF art. 83.

sacked cabinet.<sup>176</sup> In announcing Kiriyenko's nomination, Yeltsin reminded the Duma of his constitutional powers to dissolve the legislative body: "I'm just saying as president, save time, confirm him quickly . . . . If you reject him once, twice, three times, then the fourth time means dissolution."<sup>177</sup> By nominating an arguably unqualified candidate for prime minister<sup>178</sup> and by threatening the Duma with dissolution, Yeltsin appeared to be attempting to manufacture a crisis to force the Duma's dissolution and to affirm for the nation that as president, he was Russia's unopposed leader.<sup>179</sup>

Such action, while provocative, is entirely within the bounds of the Constitution. The Duma could disapprove of Kiriyenko, but only at the risk of committing political suicide.<sup>180</sup> Nonetheless, many in the Duma reacted defiantly to Yeltsin's heavy-handed tactics, with the Communists in particular proclaiming that they would not vote for Kiriyenko.<sup>181</sup>

Despite the discord, both sides displayed the potential for compromise. On April 2, Yeltsin met with Duma leaders at his country residence to discuss Kiriyenko's nomination and opened the door to negotiations over the composition of the future cabinet, which hitherto had not been an option.<sup>182</sup> As a further concession, Yeltsin agreed to postpone the vote on Kiriyenko until

176. See Paddock, *supra* note 174, at A1; Tom Whitehouse, *Duma Dared by Yeltsin to Reject PM*, GUARDIAN (London), Mar. 28, 1998, at 16.

177. Whitehouse, *supra* note 176, at 16. Yeltsin added, "I dare you not to approve [Kiriyenko's candidacy in the Duma]." See Vera Kuznetsova, *Russia Will Have a Very Young Prime Minister*, RUSS. PRESS DIG., Mar. 28, 1998. Actually, Yeltsin misspoke, as the Constitution requires the president to dissolve the Duma after the third negative vote against the prime ministerial nominee. See KONST. RF art. 111(4).

178. See Richard Beeston, *Communists to Reject 'Immature' Yeltsin Nominee*, TIMES (London), Mar. 30, 1998, at 11. Communist leader Gennady Zyuganov voiced this concern in opposing Yeltsin's actions, saying, "[w]e cannot confirm just anyone for the country's second most important post . . . . To trust such an unknown and immature figure would be the height of irresponsibility . . ." *Id.*

179. See Kuznetsova, *supra* note 177 ("Yeltsin's categorical demand that the Duma approve Kiriyenko's candidacy shows that he is really ready to dissolve the Parliament if it does not obey him"); Alan Philips, *Yeltsin Accused of Coercion over Prime Minister*, DAILY TELEGRAPH (London), Mar. 28, 1998, at 15 ("Mr. Yeltsin seems driven to prove to the world that, despite his clearly failing health, he can tighten his grip on power . . . . [B]y having a technocrat as prime minister, [Yeltsin] will be solely in charge of the country").

180. See KONST. RF art. 111(4).

181. See James Meek, *Communists Dash Yeltsin's Plan*, GUARDIAN (London), Apr. 3, 1998, at 15. Nevertheless, many doubted the Communists' resolve should a third vote become necessary. See *id.*

182. See Gleb Cherkasov & Sergei Aksenov, *President Yeltsin Suddenly Agrees To Hold "Round Table" Before Duma Vote on Sergei Kiriyenko as Russia's New Prime Minister*, RUSS. PRESS DIG., Apr. 3, 1998.

after the roundtable meeting scheduled for April 7.<sup>183</sup> Such compromise was especially significant given Yeltsin's earlier refusal to engage in any negotiation with the opposition.<sup>184</sup> Yeltsin thereupon delayed the clash with the Duma on the morning of the vote by revoking his earlier nomination of Kiriienko, but he resubmitted Kiriienko's name the same day.<sup>185</sup> Meanwhile, opposition leaders appeared to seek a compromise by suggesting their willingness to support Kiriienko if he were to reveal his planned cabinet composition or offer ministerial positions to their party members.<sup>186</sup>

The President's conciliatory gestures demonstrated that while the Constitution grants the executive broad power to dissolve the legislative branch, that power does not exist in a vacuum. Certainly, the ability to remove a rival authority from government confers upon the executive a means of exerting substantial pressure upon the legislature to do his bidding; yet even the president must consider the politics of the situation.<sup>187</sup> Indeed, as Communist leaders believed during the April crisis, early parliamentary elections following dissolution would likely result in a Duma even more opposed to Yeltsin.<sup>188</sup> Unfortunately, conciliation was short-lived, as Yeltsin ultimately refused to bow to parliamentary cabinet proposals.

Nevertheless, the president may use the threat of dissolution to great effect against the Duma, without ever having to pull the trigger. Duma deputies enjoy substantial perks—comfortable apartments in Moscow,<sup>189</sup> cut-rate meals, free health care, and

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183. See *id.* The roundtable comprised Yeltsin, Kiriienko, and the speakers of each house of the Federal Assembly. See *id.*

184. See Ivan Rodin, *Communists Found Allies in Presidential Entourage*, RUSS. PRESS DIG., Apr. 4, 1998.

185. See *Yeltsin Avoids Clash on Choice for PM*, INDEPENDENT (London), Apr. 4, 1998, at 16. In a letter to parliament, Yeltsin emphasized that he acted "for the sake of preserving political stability and public accord." *Id.* Revocation and resubmission of Kiriienko's nomination would give the Duma another seven days to consider the vote under Article 111(3). See KONST. RF art. 111(3).

186. See Timothy Heritage, *Yeltsin Brings Duma to the Brink*, BIRMINGHAM POST, Apr. 14, 1998, at 9.

187. Yeltsin dismissed unpopular government ministers following Duma protests on several occasions, for example, Finance Minister Anatoly Chubais, who was criticized for suspicious financial dealings. See Christian Lowe, *Chubais To Lose Finance Ministry*, MOSCOW TIMES, Nov. 20, 1997; see also *infra* notes 201-03 and accompanying text.

188. See Heritage, *supra* note 186, at 9. Not only can the parliamentary opposition pressure the president, but the president's own advisers may counsel their leader into less aggressive tactics, see *id.*, thus suggesting that the new Russian executive, despite broad authority, is less monolithic and more capable of internal dissent than its tsarist or Soviet forebears.

189. Indeed, just to live in Moscow is a benefit to many deputies who hail from the far reaches of the Russian Federation, where the modernity Moscow offers is unknown.

immunity from prosecution—that they would lose should the Duma be dissolved.<sup>190</sup> Given Russia's bleak economic climate since the adoption of the Constitution, many deputies therefore are fearful of losing their jobs.<sup>191</sup> Thus is revealed one of the crucial and most disturbing features of the president's broad power—the ability to bribe the legislature to accept the executive's position. Yeltsin successfully played this card in the April showdown,<sup>192</sup> although in the first two votes on Kiriyenko's nomination many deputies were indignant about Yeltsin's attempts to cajole them and therefore voted against the nomination.<sup>193</sup> By the third and final vote on Kiriyenko, however, the deputies were presented with a stark choice—vote for Yeltsin's nominee or be thrown out onto the street.<sup>194</sup> The Duma approved

190. See Seamus Martin, *Deputies Are Likely to Support Yeltsin's Nominee at a Price*, IRISH TIMES, Apr. 23, 1998, at 16; Richard C. Paddock, *Yeltsin's Pick for Prime Minister Wins Approval*, L.A. TIMES, Apr. 25, 1998, at A1 (describing the various perquisites available to Duma deputies).

191. During the legislative-executive showdown over the land code in October 1997, see *supra* note 164, one independent deputy described the horrified reactions of Communist deputies when it appeared that reformer Grigory Yavlinsky would support their no-confidence motion. See Jonas Bernstein, *A Show of No Confidence*, MOSCOW TIMES, Oct. 17, 1997.

192. Yeltsin told an aide to consider the deputies' "other concerns," that is, housing and other perks they enjoy in Moscow, although any benefits would wait until after Kiriyenko's confirmation. Heritage, *supra* note 186, at 9; see also *A Man Without Qualities*, ECONOMIST, Apr. 18, 1998, at 46 (reporting Yeltsin's order to the "Kremlin official in charge of politicians' perks to 'solve the outstanding problems' of Duma members—but only if they showed 'a constructive approach' in [the] second vote on . . . Kiriyenko. 'They know what it's all about,' said Mr. Yeltsin . . ."). The threatened loss of such perks—and the promise of bonuses—has motivated deputies in prior confrontations with the president. In October 1997, following the Duma's withdrawal of a no-confidence motion, *Pravda* reported that "the President and Government have reportedly thanked the Duma deputies for 'their understanding' by raising their monthly salary to six million rubles and buying modern apartments for 152 deputies at the price of 275 million rubles." Olga Korolyova, *Russian Left Opposition Split by Removal of No-Confidence in Government Motion from State Duma Agenda*, RUSS. PRESS DIG., Oct. 23, 1997.

193. See James Meek, *Duma Plays Russian Roulette*, GUARDIAN (London), Apr. 18, 1998, at 2. A member of the main reformist party, Yabloko, complained that Yeltsin "had tried to humiliate the Duma by suggesting publicly that deputies could be bribed with flats, cars and other perks to support his man." *Id.* According to the deputy, "I'm not against [Kiriyenko]. But the way the president has presented him, the open manner in which he has attempted to bribe the legislature, provokes a sense of having been insulted." *Id.*

194. Yeltsin continued to remind deputies of this choice. An official letter circulated in the Duma two days before the third vote, "inform[ing] members that in the event of dismissal, they would have to vacate their state-provided apartments within three weeks, receive a one-way ticket home and a 10-ton allowance for transporting their belongings." Daniel Williams, *Premier Vote May Seal Russian Legislature's Fate*, WASH. POST, Apr. 23, 1998, at A34. Moreover, in a televised comment, Yeltsin "ordered his staff to take care of the material needs of members of parliament who backed Mr. Kiriyenko." Chrystia Freeland, *And Now for the Hard Part*, FIN. TIMES (London), Apr. 27, 1998, at 16.

Kiriyenko by a wide margin, 251-25,<sup>195</sup> largely as a result of the cowardly maneuver of a secret ballot, which allowed Communist deputies to break ranks with their leadership and vote for Kiriyenko.<sup>196</sup>

While threats to individual deputies' economic welfare affected the votes of many members, political and legal concerns motivated others. A dissolved Duma would leave the president free to issue decrees, thereby passing legislation himself without parliamentary resistance, for up to three months.<sup>197</sup> Some deputies appeared to weigh the effects of standing up to the president's heavy-handed tactics now, against the unfettered executive authority that would result following dissolution of the legislature.<sup>198</sup> The high-mindedness of these deputies is an encouraging sign that the rule of law is slowly taking root in Russia.

The Duma's susceptibility to coercion is damaging to the prospects of constitutionalism and separation of powers for two reasons. First, it allows the president to force his appointees and policies through the legislature, thus relegating the Duma to a

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195. See Paddock, *supra* note 190, at A1. Contrast the final vote with the first two votes in which Kiriyenko lost 143-186 and 115-271, respectively. See Ivan Rodin, *Kiriyenko's Candidacy Rejected by Duma with Hopeful Score*, *RUSS. PRESS DIG.*, Apr. 11, 1998; Meek, *supra* note 193, at 2.

196. See *At the Court of King Boris*, *ECONOMIST*, May 2, 1998, at 47 (explaining that the secret ballot "spare[d] the blushes of defecting deputies.").

197. See KONST. RF art. 109(2). Yeltsin had demonstrated his willingness to fill a legislative void with decrees between the forced dissolution of the Soviet-era parliament in October 1993 and the convening of the first Duma in January 1994. See Thomas de Waal, *Flurry of Yeltsin Decrees Fills Legislative Void*, *MOSCOW TIMES*, Jan. 6, 1994 (reporting that the president had signed 934 edicts between September 21 and December 31, 1993). Although many of those decrees were issued "in an effort to transform the political landscape before the next parliament," *id.*, and prior to the adoption of the current Constitution, Yeltsin in April 1998 was equally likely to decree new electoral procedures for future Dumas, further weakening the legislative branch. See Graham T. Allison, *Showdown in Moscow*, *N.Y. TIMES*, Apr. 23, 1998, at A25 (indicating that the president was considering altering the procedures "to eliminate the party-list proportional representation system now used to elect half the Duma" in an attempt to "crush the national political parties now emerging in Russia's proto-democracy and thereby tame the Parliament").

198. Explained the leader of the Agrarian Party faction in the Duma, "I voted for the preservation of the Duma . . . . We should not act like first-graders who took their school bags and went home because of their resentment against the teacher." Paddock, *supra* note 190, at A1. Duma Speaker Gennady Seleznyov, a Communist, indicated he supported Kiriyenko because "[t]he Duma's fate is more important to me than the fate of Kiriyenko." Alan Philips, *Yeltsin Finds Support in Battle over Kiriyenko*, *DAILY TELEGRAPH* (London), Apr. 15, 1998, at 15. Yuri Shchekochikhin, a liberal democrat and former investigative journalist, explained his party's position, "[w]e will not be voting against Kiriyenko. We will be voting against the President. One cannot treat society the way he does. One cannot threaten parliament or try to buy parliament the way he does." Martin, *supra* note 190, at 16.

status little better than the rubber-stamping Supreme Soviet of the Communist era. Even if the Duma had rejected Kiriyenko a third time, Yeltsin would still have been able to appoint him, as well as dissolve the Duma.<sup>199</sup> Indeed, time and again, Yeltsin has brandished threats of dissolution when the Duma has opposed his reforms, creating a troubling precedent.<sup>200</sup> Second, and perhaps equally problematic, is the impression left on the Russian people of the Duma "as a bought, self-obsessed body incapable of wielding its few powers."<sup>201</sup> Institutions founded in law will have little chance of taking root in Russia if an already apathetic electorate views the parliament as hopelessly weak—structurally and morally—and the president as uncompromisingly strong.<sup>202</sup>

Nonetheless, both sides in the dispute acted within the confines of the Constitution, if only because that document allows certain egregious behavior to take place. The Duma framed its objections in constitutional arguments, for example, by appealing to the Constitutional Court to rule whether the president has the right to nominate the same prime ministerial candidate three times.<sup>203</sup> One notable instance of constitutional restraint occurred at the beginning of the crisis, when Yeltsin at first proposed that he himself become acting prime minister until a new candidate could be confirmed.<sup>204</sup> Yeltsin quickly

199. See KONST. RF art. 111(4).

200. See Zaks, *supra* note 161 (quoting Yeltsin's veiled threat after the Duma overrode his veto—"[]et the Duma think about what the president should do in such a case."). In June 1998, faced with the Duma's hesitance to adopt a package of government-sponsored emergency fiscal measures, Yeltsin warned, "[a]ll the laws must be passed before the start of parliamentary recess . . . . And if the package of laws envisioned in the program is not approved, other measures will be taken." Richard C. Paddock, *Yeltsin Issues Deadline for Fiscal Reform*, L.A. TIMES, June 24, 1998, at A6.

201. James Meek, *Duma Does It Yeltsin's Way on New PM*, GUARDIAN (London), Apr. 25, 1998, at 17. The Russian media has added fuel to the fire, as one foreign correspondent noted during the April crisis, "[m]ost of the mass circulation Russian dailies have been carrying articles alleging that the cost of the Duma's support will be \$6000 per deputy in cash, the construction of a parliamentary centre even more luxurious than the current Duma and the procurement of larger apartments for the honourable members." Martin, *supra* note 190, at 16. None of the interviewed deputies, however, "admitted to being offered anything for their votes by Mr. Yeltsin or his associates . . ." *Id.*

202. As *The Economist* commented on the president's coercion of deputies, "[i]t was hard to say whether this approach degraded Mr. Yeltsin or the Duma more . . ." *At the Court of King Boris*, *supra* note 196, at 47.

203. See Martin Nesirky, *Duma Stands Firm in Battle with Yeltsin*, BIRMINGHAM POST, Apr. 16, 1998, at 13. Voting on Kiriyenko was not delayed, however, as the court indicated that it could not decide the issue for two months. See *id.*

204. See Beeston, *supra* note 178, at 11.

backtracked after he was warned of the unconstitutionality of such a maneuver.<sup>205</sup>

C. *The August-September 1998 Crisis:  
The High-Water Mark of the Duma*

Angered by Yeltsin's victory in April, Duma deputies initiated impeachment procedures against the President in May, accusing him of high treason in engineering the breakup of the Soviet Union and in organizing a coup in September 1993.<sup>206</sup> The opposition essentially viewed the President's entire reform program as sufficient grounds for removal from office, claiming that Yeltsin's policies and actions had "led Russia to a social and economic crisis resulting in the destruction of the country's basic industries, a growing stratification of society, the loss [of] national security, a sharp drop in living standards and the extinction of the population."<sup>207</sup> Observers noted that political rather than legal concerns motivated the impeachment proposal, as the Communists were under pressure from constituents to condemn Yeltsin and to show signs of atonement from their "opportunistic behavior" in the vote on Kiriyenko.<sup>208</sup> In June 1998, when the Duma created a special commission to set a procedural framework for impeachment, another potential motive became clear—to shield the Duma from dissolution, as the president may not dissolve the Duma while impeachment proceedings are continuing against him.<sup>209</sup>

The impeachment process was interrupted, but subsequently fueled, by a second clash between Yeltsin and the Duma in August 1998, when the President again sacked the Prime Minister and cabinet and called former Premier Viktor Chernomyrdin back to head the government.<sup>210</sup> Given Russia's economic crisis

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205. *See id.*

206. *See* Ivan Rodin, *Duma Initiates Impeachment Procedure Against President*, RUSS. PRESS DIG., May 21, 1998.

207. *Id.*

208. *Id.* (suggesting that the motion was "simply a response to the demands of striking workers on the eve of the emergency Communist convention scheduled for May 23"); Ivan Rodin, *Impeachment Affair is Being Delayed*, RUSS. PRESS DIG., June 2, 1998 (positing that the impeachment initiative was designed to head off radical attacks on Communist leader Gennady Zyuganov).

209. *See* KONST. RF art 109(4); Tatyana Romanenkova, *Impeachment Commission Starts Its Work*, RUSS. PRESS DIG., June 30, 1998. Indeed, the Communists slowed the impeachment process during the summer, in order that the Duma might address the issue in the fall after its recess, when the deputies could take full advantage of the immunity from dissolution. *See* Sergei Aksyonov, *Impeachment Commission Is Brought Up to Strength*, RUSS. PRESS DIG., June 19, 1998.

210. *See* Kathy Lally, *Yeltsin Fires Entire Cabinet*, BALTIMORE SUN, Aug. 24, 1998, at 1A.

associated with loan defaults and the devaluation of the ruble, the sudden cabinet reshuffle was less mysterious than Yeltsin's similar action in March.<sup>211</sup> The president's broad powers ultimately were outmatched by such economic and political forces, paving the way for possible constitutional amendments redrawing the lines of power among the branches of government.

Duma deputies from across the political spectrum smelled blood and demanded a power-sharing agreement as a condition for Chernomyrdin's approval.<sup>212</sup> The weakened president was forced to negotiate with the Duma. A tentative agreement proposed an eighteen-month truce between president and parliament, during which neither branch would seek to oust the other from power, and would give the prime minister, not the president, the power to appoint cabinet ministers and the Duma the authority to confirm them, in exchange for the Duma's approval of Chernomyrdin as prime minister.<sup>213</sup> The plan collapsed just hours after its creation when the Communists, the dominant party in the Duma, insisted that its terms be incorporated into the Constitution.<sup>214</sup> Many deputies were skeptical of the President's intent to abide by an uncodified pact after Chernomyrdin's approval by the Duma.<sup>215</sup> Yeltsin in turn withdrew his support from the accord, claiming that a constitutional committee would need to convene for at least a year before public discussion of any proposed amendments.<sup>216</sup>

Ironically, the president's strong powers sealed the fate of the compromise. Years of presidential blustering and heavy-handedness stemming from Yeltsin's essentially impregnable position had created such an atmosphere of distrust that the

211. See *id.*

212. See James Meek, *Yeltsin Redraws Political Map*, GUARDIAN (London), Aug. 25, 1998, at 2. Opposition leaders proposed to "enshrine in law a presidential pledge not to interfere in the government's work," and even demanded a "complete change of economic course" in exchange for their support of Chernomyrdin's candidacy. *Id.*

213. See Richard C. Paddock, *Yeltsin and Parliament Still in Flux over Crisis*, L.A. TIMES, Aug. 31, 1998, at A1.

214. See *id.* The Communists demanded harsh new terms to the agreement—Yeltsin's resignation after the new government is formed and the inclusion of 10 ministers in the cabinet from opposition parties, including the interior minister. See *id.*

215. See James Meek, *Russian Deadlock after Yeltsin Backtracks*, GUARDIAN (London), Aug. 31, 1998, at 1. Grigory Yavlinsky, leader of the liberal Yabloko party, condemned the agreement, explaining that "[a]s soon as we vote for Chernomyrdin, this piece of paper will be thrown in the bin." *Id.*

216. See *id.* Adherence to Yeltsin's timetable would mean that no amendments would be enacted before the next presidential election in 2000. See *id.*

Duma could not take the president at his word.<sup>217</sup> Compromise and conciliation has thus proven difficult, if not impossible, on such an uneven playing field.

Following the collapse of the accord, the Duma resoundingly defeated Chernomyrdin's nomination in its first vote, 251-94.<sup>218</sup> Many Duma deputies—especially Communists and other leftist parties—apparently did not fear early elections, anticipating greater success, given citizen unrest fomented by the economic crisis.<sup>219</sup> Thus, political realities emboldened a constitutionally weak parliament and virtually emasculated a supposedly strong president. At least in the current Russian political and economic climate, external events appear to be the most significant check on the executive power.<sup>220</sup> The president's broad authority is thus unlike that which the tsars and the Soviets enjoyed, for the executive under the new Russian Constitution must at some point accede to the will of the people.<sup>221</sup> Unfortunately, the president's need to listen to public opinion may ultimately only arise when civil unrest is imminent. Indeed, even during economic collapse, Yeltsin viewed the parliament as obliged to follow his wishes: "I insist that Chernomyrdin be confirmed as prime minister as soon as possible . . . . He is my candidate and I will insist on it."<sup>222</sup>

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217. Indeed, many parliament leaders dismissed the agreement, "citing numerous past compromises with the Kremlin that had gone ignored." David Filipov, *Leadership Deal Foiled in Russia*, BOSTON GLOBE, Aug. 31, 1998, at A1.

218. See David Filipov, *Duma Votes Down Chernomyrdin*, BOSTON GLOBE, Sept. 1, 1998, at A12. In contrast, the Federation Council indicated its support for Chernomyrdin, 91-17, with 6 abstentions. See *id.* The Council's vote, however, was irrelevant to the appointment process, as only the Duma is responsible for approving the prime minister. See KONST. RF art. 103(1)(a).

219. See Filipov, *supra* note 218, at A12. As one Communist leader declared, "[l]et Yeltsin [dissolve the Duma] and he will see that in three months, the country will get a far more leftist parliament. We are ready for reelection. I don't think Yeltsin is." Richard C. Paddock, *Communist Leader Seeks Military's Support*, L.A. TIMES, Sept. 1, 1998, at A10; see also Mark Franchetti, *Kingmaker Zyuganov Tastes Power*, SUNDAY TIMES (London), Sept. 6, 1998, at 19 ("Yeltsin's popularity is at an all-time low and mass discontent would almost certainly play into the hands of the communists"). Nonetheless, Communist leader Zyuganov called for an agreement to resolve the deadlock, raising the specter of civil unrest should the Duma fail to approve a candidate. See *id.*

220. See, e.g., David McHugh, *President Eyes New Premier Nominees*, MOSCOW TIMES, Sept. 10, 1998 (claiming that "the economic crisis and continuing doubts about [Yeltsin's] health have sapped his prestige and thrown the initiative to the legislative branch").

221. As a result, although the president may brandish threats of dissolution against the Duma, the executive is constrained from sending a rival branch of power home in a way that the tsar was not with regard to the original State Duma in the early 1900s. See *supra* note 36-37 and accompanying text.

222. Tom Whitehouse, *Russia Crisis: Yeltsin and Duma Square Off for Clash*, GUARDIAN (London), Sept. 2, 1998, at 11 (quoting Yeltsin). Asked if he would

The Duma employed the constitutional provisions on prime minister approval<sup>223</sup> in a politically mature fashion in the August-September crisis. By voting against Chernomyrdin's nomination, the Duma opened the door for greater concessions from the president—this time, however, in the form of political gains, not self-interested perquisites.<sup>224</sup> On the eve of the second Duma vote on Chernomyrdin, Yeltsin resubmitted the failed compromise accord, offering to cede certain powers to parliament.<sup>225</sup> Finally, following a second defeat of Chernomyrdin,<sup>226</sup> the president was forced to nominate a new candidate more favorable to the Duma, Foreign Minister Yevgeny Primakov.<sup>227</sup> As a further concession, Yeltsin signed an agreement promising to support constitutional amendments that would expand the Duma's confirmation power to include all cabinet members.<sup>228</sup> The approval process thus actually proved constructive, as a new premier was installed following political bargaining by the warring branches.<sup>229</sup>

#### D. 1999: *The Duma Retreats*

Yeltsin's concessions appeared to mark the beginning of a new era in Russian constitutionalism in which the executive is no longer virtually omnipotent. Where once the president could dominate the opposition in parliament, the economic situation in Russia has chipped away at his authority. Moreover, given the historical Russian attitude that compromise and conciliation signify weakness,<sup>230</sup> the nomination of Primakov may have

dissolve the Duma and call new elections, Yeltsin responded, "[i]f it behaves itself, no." *Id.*

223. See KONST. RF art 111(4).

224. See Richard Beeston, *Duma Plays Russian Roulette with Yeltsin*, *TIMES* (London), Sept. 1, 1998, at 10. In April, the Duma used the protracted power struggle to squeeze out additional perks. See *supra* notes 192-94 and accompanying text.

225. See Richard Beeston, *Yeltsin's Duma Battle Enters Second Round*, *TIMES* (London), Sept. 4, 1998, at 13. Specifically, Yeltsin offered the Duma the power to approve all candidates for cabinet posts. See *id.*

226. The Duma rejected Chernomyrdin by a vote of 273 to 138, nearly 100 votes short of the amount necessary for confirmation. See Richard C. Paddock, *In 2nd Vote, Yeltsin's Candidate is Rejected*, *L.A. TIMES*, Sept. 8, 1998, at A1.

227. See David Hoffman, *Diplomat Is Named Russian Premier*, *WASH. POST*, Sept. 11, 1998, at A1. The Duma almost immediately confirmed Primakov as Prime Minister, by a vote of 315 to 63. See Richard C. Paddock, *Parliament OKs Primakov for Post of Russia Premier*, *L.A. TIMES*, Sept. 12, 1998, at A1.

228. See Kathy Lally, *Duma Strongly Backs Primakov as Russia's New Prime Minister*, *BALTIMORE SUN*, Sept. 12, 1998, at 15A. According to Article 103, the Duma currently has the power to confirm only the prime minister and central bank chairman. See *id.*

229. See *id.*; Paddock, *supra* note 227, at A1.

230. See AHDIEH, *supra* note 14, at 115-17; see also Anatoly Kostyukov, *Losses and Gains of Compromise Agreement Between President Yeltsin and*

signaled the beginning of a gradual draining, by political agreement or formal constitutional amendment, of many presidential powers to the Duma and even to the government.<sup>231</sup> Finally, Yeltsin's surprise 1999 New Year's Eve resignation perhaps indicates that even the executive is vulnerable.<sup>232</sup> This precedent, however, may have repercussions for future Russian presidents—just as George Washington's example of refusing to seek reelection after two terms guided U.S. presidents for nearly 150 years, Yeltsin's precedent of failing to complete his term in office may affect political calculations between future Russian presidents and Dumas.

In October 1998, following Primakov's approval, the Duma continued the impeachment hearings it had begun over the summer.<sup>233</sup> By February 1999, the parliamentary commission investigating the President's alleged crimes had taken the unprecedented step of presenting its charges for a full vote in the Duma to initiate formal proceedings.<sup>234</sup> Although the chances of removal of the President remained slim because of the constitutional procedure, the Duma's threat of impeachment kept pressure on the executive. With the Duma's powers still limited, impeachment is one of the legislature's sole means of expressing opposition to the president's policies. Accordingly, the Duma has sought to amend the impeachment provisions to the Constitution to make removal of the president easier.<sup>235</sup> Given the parliament's frequent calls for impeachment, however, the Russian executive is unlikely to acquiesce to such an amendment in the near future.<sup>236</sup>

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*Opposition Analyzed by Weekly*, RUSS. PRESS DIG., Oct. 30, 1997 (declaring that "in the opinion of the Russian politicians, a concession is a sign of weakness").

231. "The conflict between the president and parliament will continue to develop. And it won't be in a direction beneficial to Boris Yeltsin. Having conceded once to the opposition, he will be forced to do so again and again, gradually relinquishing power." *WHAT THE PAPERS SAY: Fair Weather as Primakov 'Magic Carpet' Takes Off*, MOSCOW TIMES, Sept. 12, 1998.

232. See Phil Reeves, *Yeltsin Resigns: End of an Era as a Russian Bear Shuffles Off the World Stage*, INDEPENDENT (London), Jan. 1, 2000, at 18.

233. See Chloe Arnold, *State Duma Makes Ken Starr Look Good*, MOSCOW TIMES, Nov. 17, 1998.

234. See *Impeachment Is Planned for March*, RUSS. PRESS DIG., Feb. 16, 1999.

235. See Igor Vandenko, *Duma Intensifies Offensive on Executive Power Branch*, RUSS. PRESS DIG., Sept. 15, 1998 ("Duma deputies also intend to remove the main obstacle in the way of the President's impeachment—the grounds for launching the impeachment procedure."); see also *supra* notes 127-34 and accompanying text.

236. Moreover,

[C]hanging the constitution is a complicated process that requires near-unanimous agreement among legislators and regional leaders. In Russia's fractious political world, such accord is unlikely . . . . Already, different

Yeltsin's increasingly apparent physical infirmities provoked louder cries for his resignation.<sup>237</sup> From September 1998 to Yeltsin's resignation in December 1999, it was the Prime Minister, not the President, who primarily conducted the affairs of state.<sup>238</sup> Meanwhile, the Duma's aggressive impeachment process signaled less regard for presidential authority within the legislature. The strong executive powers in the Constitution would thus appear to be only as strong as the individual holding office.<sup>239</sup> More significantly, with so much power in the hands of the executive branch, a weakened president accordingly diminishes the predictability and relative stability created by the Constitution.<sup>240</sup>

Despite the impeachment process, however, less acrimony and greater conciliation characterized the months following the September showdown. The Duma approved the 1999 budget, despite its tight spending requirements, virtually unanimously and with little debate.<sup>241</sup> In early 1999, Primakov proposed a peace plan among the branches of power, in which the Duma would promise not to force dismissal of the Cabinet through a no-confidence vote, and the President would agree not to dismiss

sides are lobbying for different changes. The Communists want more powers for parliament, while local governors want to secure more authority for their regions.

Mark Whitehouse & Betsy McKay, *Filling the Void: Yeltsin May Be Ill, But No Consensus Exists on Succession*, WALL ST. J. EUR., Oct. 30, 1998, at 1.

237. See Christian Lowe, *Stricken President Cancels Meetings*, MOSCOW TIMES, Oct. 14, 1998; David McHugh, *Zyuganov Fights Kremlin Over Yeltsin's Sickness*, MOSCOW TIMES, Nov. 3, 1998.

238. See *Masterly Inactivity*, ECONOMIST, Oct. 31, 1998, at 55 (reporting that "the president's own men say as much" that Primakov is running the country). While the Constitution allows such temporary delegation of executive powers to the prime minister in the event of the president's incapacitation, KONST. RF art. 92(3), Yeltsin made no formal acknowledgement of a transfer.

239. As Yeltsin remained in ill health, Primakov—and later Putin—assumed greater responsibilities for himself, attacked political allies of the president, and courted a separate power base of his own. In short, Primakov "turned his firepower on the Kremlin [the presidency] itself." Phil Reeves, *Resign? Over His Dead Body*, INDEPENDENT (London), Feb. 11, 1999, at 1.

240. "[T]he presidency . . . has been growing weaker, or at least more erratic, as Mr. Yeltsin's health and morale have failed him." *Still Most Awkward Partners*, ECONOMIST, May 9, 1998, at 23. Indeed, "Yeltsin's decline may well make the main institution of government, the presidency, a force more for instability than for stability." *Id.*

241. See Daniel Williams, *Russian Parliament Finally Approves Tight Budget*, WASH. POST, Feb. 6, 1999, at A22. The Duma approved the budget 308 to 58. Following the vote, Primakov told legislators, "[t]he historic opportunity of accepting the budget shows not only political support for the government but also opens up new scope for our activity." *Id.* The lack of confrontation stood in stark contrast to the budget battles in previous years. See *supra* notes 147-49 and accompanying text.

either the Duma or Primakov and his ministers.<sup>242</sup> In addition, the Duma would drop its impeachment proceedings against Yeltsin.<sup>243</sup> The President, however, dismissed the proposal, although he subsequently agreed to a truce with Primakov, promising not to fire the Prime Minister before the next presidential election.<sup>244</sup> That such peace proposals are even discussed suggests significant flaws in the Constitution. The different branches of power, which are popularly elected, should not have to bargain among themselves in order to remain in office.

Nevertheless, despite rumors and speculation about an impending state of emergency declaration or a cabinet shuffle, the Duma proceeded apace in its quixotic attempt to oust the President, scheduling debate for mid-May.<sup>245</sup> The Duma charged Yeltsin with five offenses: (1) waging the disastrous war in Chechnya in 1994-1996; (2) sending tanks against the rebellious parliament in October 1993; (3) breaking up the Soviet Union in 1991; (4) committing genocide against the Russian people; and (5) destroying the army.<sup>246</sup>

On the eve of the May impeachment debate, however, Yeltsin surprised the Duma and political observers by sacking Primakov.<sup>247</sup> The President's action was yet another in a string of dramatic hirings and firings of cabinet ministers undertaken largely to demonstrate his continuing vigor and relevance to the political process.<sup>248</sup> Yeltsin's maneuver highlighted the prospect of a new constitutional infirmity, not before seen: what happens if the Duma votes down a nominee for prime minister three times—thus requiring its dissolution—while impeachment is proceeding, which *prohibits* dissolution during that time?<sup>249</sup> Fortunately, a crisis was averted, thanks to the Duma's sudden collapse of will. The Duma, despite its fury over the President's insolence, not

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242. See David McHugh, *Proposal Would Only Help Primakov*, MOSCOW TIMES, Jan. 29, 1999.

243. See *id.*

244. See Boris Yeltsin and Yevgeny Primakov *Conclude Non-Aggression Pact*, RUSS. PRESS DIG., Feb. 27, 1999.

245. See Melissa Akin, *Parliament Changes Rules To Make Impeaching Easier*, MOSCOW TIMES, Apr. 22, 1999.

246. See Melissa Akin, *Deputies Postpone Vote To Impeach*, MOSCOW TIMES, Apr. 13, 1999.

247. See David Hoffman, *Yeltsin Dismisses His Prime Minister*, WASH. POST, May 13, 1999, at A1.

248. David Hoffman of *The Washington Post* described Primakov's firing as "only the latest of many instances in which Yeltsin has seemed to function more like a monarch keeping members of his court constantly off guard than a modern-day, policy-oriented president." *Id.*

249. See Catherine Belton, *Yeltsin's Move May Test Constitution*, MOSCOW TIMES, May 13, 1999; see also KONST. RF arts. 109(4), 111(4).

only voted against impeachment,<sup>250</sup> but it also subsequently approved Yeltsin's nominee for prime minister, Interior Minister Sergei Stepashin, by a wide margin.<sup>251</sup> One Communist deputy proved remarkably prescient regarding the Stepashin vote, telling the *Moscow Times* just before the failed impeachment balloting, "We will probably take about 10 minutes in the coming days and just pass his candidacy. It is pretty obvious by now that there is not much else we can do."<sup>252</sup>

As he had done in previous showdowns with the Duma (especially in April 1998), the President may have used economic influence to sway deputies' votes. Many deputies may have feared retaliation from the Kremlin for their impeachment attempt, while still others "were offered jobs or other inducements to support the President."<sup>253</sup> Communist deputies—the main proponents of impeachment—may have been cowed by Kremlin hints that Yeltsin would strike back at them if impeachment passed.<sup>254</sup> At the very least, most lawmakers probably wished to retain the perks and jobs they already possessed and hesitated to

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250. See Michael Wines, *Drive To Impeach Russian President Dies in Parliament*, N.Y. TIMES, May 16, 1999, at 1. The votes on each of the five charges were as follows:

Charge	For	Against
Illegal war against Chechnya	283	43
Genocide against Russian people	238	88
Destroying the Russian army	240	77
Dismantling the Soviet Union	239	78
The October 1993 events	263	60

See *id.* A minimum of 300 votes on a charge was required for passage of that charge.

251. The final vote was 301 to 55. See Richard C. Paddock, *Duma Bows to Yeltsin, OKs Choice for Premier*, L.A. TIMES, May 20, 1999, at A8.

252. Valeria Korchagina, *Parliament To Push Ahead with Impeachment*, MOSCOW TIMES, May 13, 1999. Other deputies echoed the same sentiments following the vote. For example, Communist deputy Svetlana Y. Savitskaya explained that "[o]ur vote for Stepashin doesn't at all mean that we support Stepashin's personality or support Yeltsin's choice. The way we see it, Stepashin happens to be the most acceptable candidate that Yeltsin could have imposed on us." Paddock, *supra* note 251. Stepashin ultimately only lasted until August 1999, when Yeltsin summarily replaced him with ex-KGB colonel Vladimir Putin. See Daniel Williams, *Yeltsin Sacks Another Premier*, WASH. POST, Aug. 10, 1999, at A1. Again, despite grumbling by deputies over the change, the Duma approved Putin in the first vote, albeit by a close margin, 232 to 84, just six votes over the minimum. See Melissa Akin, *Premier Putin Squeaks Past Duma*, MOSCOW TIMES, Aug. 17, 1999. The deputies' job security in the face of potential dissolution probably once again was a factor, "[t]he vote also showed that the deputies decided not to provoke a confrontation with Yeltsin and approved his candidate, rather than run the risk of losing their seats during the election campaign." *Id.*

253. Wines, *supra* note 250. See also Lynn Berry & Valeria Korchagina, *Duma Votes 'No' on Impeachment*, MOSCOW TIMES, May 18, 1999.

254. See Berry & Korchagina, *supra* note 253.

risk them in an impossible bid to remove the President.<sup>255</sup> Nevertheless, as a spokesman for one Communist deputy suggested, "This is a big achievement of the Parliament, that it can speak out against the Government and its actions."<sup>256</sup> Indeed, it would be difficult to conceive of another era in Russian history in which such opposition to the country's leader would not have resulted in dissolution of the legislature, arrests, or even executions.

## V. PROSPECTS FOR THE FUTURE

Russia has made great strides in recent years toward a system based on the rule of law and respecting the separation of powers within government.<sup>257</sup> Though subject to abuse, the current Constitution has created a system unseen in Russian history. In the Duma, Russians have a relatively independent legislature, albeit one that continues to exist under the thumb of the executive. As such, it is distinguished from both the Soviet legislatures subject to the edicts of the Communist Party<sup>258</sup> and the pre-Revolutionary Duma subject to the whim of the tsar.<sup>259</sup> Despite the continued outrageousness of many deputies,<sup>260</sup> the Duma since 1996 has shown "growing maturity and realism" in its actions.<sup>261</sup> Moreover, as the legislature finds its voice for legitimate opposition, as Grigory Yavlinsky's Yabloko party has done, "the next Duma may well prove more coherent and constructive than its predecessor has been."<sup>262</sup>

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255. See David Filipov, *Yeltsin Avoids Impeachment, But New Battle Looms in Duma*, BOSTON GLOBE, May 16, 1999, at A3.

256. See Wines, *supra* note 250 (quoting Aleksandr Volkov).

257. See *supra* Parts II.D-E.

258. See *supra* notes 54-56 and accompanying text.

259. See *supra* notes 34-42 and accompanying text.

260. For example, radical General Albert Makashov made derogatory anti-Semitic remarks on the floor of the Duma, for which he remained unrepentant and which the legislature refused to condemn. See *Duma Refuses To Rebuke Deputy for Insulting Jews*, MOSCOW TIMES, Nov. 5, 1998. Nationalist deputies also sponsored a December 1998 resolution that would call on Monica Lewinsky to plead with President Clinton to halt the U.S. bombing of Iraq. See Andrei Zolotov, Jr., *LDPR Asks Lewinsky To Rein In Clinton*, MOSCOW TIMES, Dec. 18, 1998. In 1995, during a Duma session, nationalist deputy Nikolai Lysenko "yanked off [priest and liberal deputy Gleb] Yakunin's metal cross and hit him with it." David McHugh, *Zhirinovsky's Party Defamed Deputy*, MOSCOW TIMES, Aug. 13, 1998. Vladimir Zhirinovsky and a female deputy who had come to Yakunin's defense subsequently scuffled, with Zhirinovsky putting her in a headlock and pulling her hair. See *id.* The entire incident was caught on videotape and has been "broadcast on Russian television ad infinitum over the years." *Id.*

261. *End of a Road for Russia?*, ECONOMIST, Sept. 5, 1998, at 46.

262. *Id.*

Yet such progress is neither complete nor secure. The Duma remains subservient to the president, who continues to wield substantial authority. Moreover, with different individuals in positions of power, the balance of power between the two branches could shift disastrously in favor of either the legislature or executive. Opposition deputies in the Duma are eager to introduce amendments redistributing some of the president's powers to the legislature.<sup>263</sup> However, too much of a redistribution will merely replace autocratic presidential rule with chaotic parliamentary rule<sup>264</sup> and could even lead to a power seizure by Communists or nationalists in the Duma.

That the viability of the Constitution depends so much on those at the highest levels of authority indicates that its drafting remains incomplete. Nevertheless, amendments must be made carefully. To a certain extent, a presidential republic in which laws can be passed quickly is necessary for Russia to implement wide-ranging social and economic reforms.<sup>265</sup> Moreover, allowing the parliament to be the driving force behind such reforms creates two interrelated risks. First, communist-nationalist deputies would assume greater power to reverse the current course and potentially to reassert state dominance over the economy and society. Second, the legislative process may slow the pace of reform to a crawl, and waste valuable time in rebuilding the country. In Russia, where radical change is essential at this time, a parliamentary system thus could do more harm than good.

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263. Deputies began formulating draft amendments immediately following the Duma's confirmation of Primakov in September 1998. See Vandenko, *supra* note 235. The first proposals would allow the Duma to vote no-confidence on individual members of the government, in addition to the government as a whole, enabling the legislature "to respond to decisions and actions of government members and to exert influence on the government's policy." *Id.* The Duma has supported such amendments for years. See, e.g., *Opposition in State Duma Comes Out To Broaden Its Powers*, RUSS. PRESS DIG., Dec. 12, 1996 (reporting that deputies had proposed a series of amendments "aimed at increasing their powers and diminishing the presidential ones").

264. Viktor Shenis, one of the architects of the Russian Constitution, cautioned in a 1997 interview that although the parliament has too few powers, amendments must be implemented carefully "so as not to upset the existing balance of forces in any way." Larisa Aidinova, *President Personally Amended Constitution*, RUSS. PRESS DIG., Dec. 11, 1997. Nevertheless, Shenis advocates a shift in the balance of power between the executive and the legislature: "Putting all eggs in one basket is not the best policy." *Id.*

265. Indeed, in the American experience, a separate, independent executive was created after the Framers witnessed the inefficiencies of the Continental Congress, a body that "found itself incapable of discharging its duties and responsibilities." LOUIS FISHER, *CONSTITUTIONAL CONFLICTS BETWEEN CONGRESS AND THE PRESIDENT* 9 (4th ed. 1997).

A number of amendments nevertheless could and should be made. The first amendments should remedy those provisions of the Constitution that have most hindered the growth of a law-based state. Most prominent are Articles 111 and 117, which allow the president to dissolve the Duma in certain circumstances.<sup>266</sup> While many observers initially decried this authority because it would enable the executive to dispense with its legislative rival and rule by decree in its absence,<sup>267</sup> in practice the president need not even dissolve parliament to have his way. Instead, the president can dictate policies through mere threats of dissolution.<sup>268</sup> Although the Duma stood fast against such threats in the August-September 1998 showdown with the President and won its choice for Prime Minister, virtually all other such standoffs before or since have ended in victory for the executive.<sup>269</sup> The Russian people can therefore be forgiven for believing that its president is an autocrat and its legislators self-interested cowards.<sup>270</sup> To inculcate respect for constitutional institutions and for the rule of law generally, the Constitution must be amended to allow the legislature to exist without fear of dissolution.<sup>271</sup>

Further amendments should allow the Duma to assume a greater role in determining the composition of the government, thus "making the Cabinet . . . answerable to the parliament and

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266. See *supra* notes 104-05 and accompanying text.

267. See, e.g., Weisman, *supra* note 2, at 1378 ("Rather than strengthen the separation of powers, these provisions will stifle honest democratic debate and lead to presidential domination of the Duma."); Lien, *supra* note 10, at 110 ("The principal drawback of the Constitution is its tendency to centralize power in the executive branch to an extent that will render meaningless any constitutional limitations in the presence of an executive who chooses to disregard them.").

268. See *supra* notes 188-91 and accompanying text.

269. See Lowe *supra* note 164; *supra* Part IV.B.

270. Indeed, the inability of Russia's institutions to govern effectively in the years following the collapse of the Soviet Union have engendered general apathy and pessimism for the future. As *The Economist* described, "[T]he Russian state consists of a few shallowly rooted institutions—a presidency, a parliament, a central bank and so on—which have yet to earn public trust, and which are dwarfed by an impenetrable and antique hinterland of cynicism, incompetence, racketeering and bureaucratic dead-weight." *End of a Road for Russia?*, *supra* note 261, at 45.

271. Some observers understandably are concerned with impasses that can only be broken with dissolution, or at least the threat of it. See Weisman, *supra* note 2, at 1395. To that end, alternative solutions include (1) limiting the maximum number of times the president could submit a prime ministerial candidate to two, but allowing the president to dissolve the Duma if it rejects a subsequent candidate, or (2) requiring the Duma and the president to meet following a second rejected candidate. See *id.* Certainly, greater dialogue between the two branches should facilitate legislation. Yet allowing the president the power to dispense with a disagreeable legislature, however intractable, runs contrary to principles of separation of powers and implicitly acknowledges that compromise is both impossible and unnecessary.

putting a formal end to the strange practice where ministers are subordinate not to the prime minister but the president."<sup>272</sup> Under the 1993 Constitution, while the president must seek the parliament's approval of prime ministerial appointments, all other ministers in the government are appointed without legislative consideration.<sup>273</sup> The provision is understandable in light of the political situation in 1992-1993, to which the current executive-legislative relationship often resembles, and in which an intransigent legislature dominated by opponents of reform confronted Yeltsin's policies at every step. By unilaterally appointing his own ministers, the president is able to ensure that his policies are implemented with little obstruction from the Duma. Although such debate between opposing world views—that is, communist against capitalist—is likely to continue in Russia for years to come, democratic, law-based governmental institutions will gain legitimacy only if they are allowed to engage in that debate. In other words, ironically, Russia will be neither democratic nor based on law if communist and nationalist perspectives are eliminated from government by creating, in the Duma, a weak vehicle for debating reforms and implementing opposing policies. Moreover, by allowing the president to hire and fire new governments at his whim, as Yeltsin repeatedly did, the Constitution sentences Russia to a fate of lurching from one governmental crisis to another.<sup>274</sup> Little continuity and predictability in policies can result from these maneuverings—such is the recipe for stagnation.<sup>275</sup>

At the very least, the Constitution needs amendment in order to eliminate serious procedural inconsistencies that so far have been avoided. In particular, the prohibition on dissolution of the Duma during impeachment directly conflicts with the requirement that the Duma be disbanded if it refuses to approve the prime minister after three votes. This situation presented itself with Stepashin's nomination in May 1999 on the eve of the impeachment debate.<sup>276</sup> Fortunately, however, a constitutional crisis was averted, as the impeachment failed and Stepashin was

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272. Boris Kagalitsky, *Last Chance for Rewrite*, MOSCOW TIMES, Mar. 12, 1999.

273. See KONST. RF art. 83(a), (e).

274. See *supra* note 247 and accompanying text.

275. See Williams, *supra* note 252, at A1 ("By appointing and dismissing a succession of prime ministers, Yeltsin has brought a halt to economic and political reform and deprived Russia of a steady administrative hand at a time when it desperately needs one").

276. See Catherine Belton, *Yeltsin's Move May Test Constitution*, MOSCOW TIMES, May 13, 1999.

approved.<sup>277</sup> Nevertheless, the conflict remains in the Constitution.

For the foreseeable future, Russia likely will be hampered by economic crisis, thus requiring concerted reforms to stabilize the country. While the ability for decisive action by a single branch should be protected, such power is accompanied by the significant risk of overreaching by the empowered branch. If the past is any guide, one can expect future Russian executives to seize on domestic crises to consolidate power in their own hands, for example, as Gorbachev attempted to do in 1990-91<sup>278</sup> and as Yeltsin did in 1993.<sup>279</sup> Although the composition of the Duma has been generally hostile to democratic reforms, Russia's path toward democracy and the rule of law will be better protected by a stronger legislature as opposed to an autocratic executive.

## VI. CONCLUSION

Without doubt, the Russian Constitution is a flawed document, requiring amendment if the country is committed to becoming a democracy.<sup>280</sup> For the time being, the Constitution may suit Russia's needs; the country, with its roots in centralized government, may be currently incapable of anything more advanced than its current political system.<sup>281</sup> Perhaps what is needed is a training period in which Russians, both citizens and officials, can come to terms with the idea of an independent legislature before granting that body true autonomy. The last six years have shown that separated centers of power can coexist and even cooperate in Russia.<sup>282</sup> Stability, however, will have consequences both within and outside Russia's borders. If Russians can embrace key concepts and norms of Western law and tradition, such as separation of powers, Western businesses and international financial institutions will be more confident about investing in Russia, thus stimulating the country's

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277. See *supra* notes 250-51 and accompanying text.

278. See SHARLET, *supra* note 53, at 95 (describing Gorbachev's acquisition of special emergency and permanent presidential powers to confront growing internal crises).

279. See *supra* notes 84-93 and accompanying text.

280. See McClure, *supra* note 2 (describing the imbalance of power among the branches of government; Weisman, *supra* note 2 (outlining the constitutional powers granted to the three branches of government and recommending amendments to the Russian Constitution).

281. Indeed, one Yeltsin adviser has argued that the American separation of powers system is too sophisticated for Russia. See AHDIEH, *supra* note 14, at 166-67.

282. The modern Duma certainly has met with greater success than did its pre-Revolutionary ancestor. See *supra* notes 34-42 and accompanying text.

economic recovery, and, in turn, its progress toward a more democratic society.<sup>283</sup>

Unfortunately, time may be running out.<sup>284</sup> With the election of Vladimir Putin to the presidency, the Russian Constitution enters a period of greater uncertainty. Should Putin prove to be even more authoritarian, less conciliatory, and less concerned with international approval than Yeltsin, the Constitution would enable significant abuses of power and perhaps ultimately, the end of Russia's current experiment in democracy and the rule of law.<sup>285</sup> Putin's experience as a KGB colonel raises questions about his commitment to liberal ideas; many view his accession to the presidency as a symbol of the resurgence of the secret police agency.<sup>286</sup> Nevertheless, while imbuing the executive with broad authority creates significant risks, the potential danger of ceding too much power to the Federal Assembly is clear—a halt, if not a reversal, of democratic, economic, and legal reforms. Amendments, therefore, must balance carefully among the aspirations for effective reform, a more restrained executive, and a more independent legislature.

In terms of its broad authority, the executive in the current Russian Constitution is a direct descendant of the tsars and Soviet premiers.<sup>287</sup> Such centuries-old experience likely means

283. See Donald D. Barry, *Introduction to TOWARD THE "RULE OF LAW" IN RUSSIA?*, *supra* note 19, at xiii-xiv. Indeed, following the economic and political turmoil of 1998, international financial institutions agreed that "without deep changes in the way Russia is governed, lending the country any more money is useless, or even harmful." *Money Can't Buy Me Love*, *ECONOMIST*, Feb. 6, 1999, at 23.

284. According to one Russian political scientist, time may already have run out, particularly with regard to amending the Constitution. "[I]f this unique window of opportunity [to amend the Constitution] is missed in 1999 then in 2000 we will face a younger and more aggressive autocrat. The consequences are not hard to predict." Kagalitsky, *supra* note 272.

285. Yeltsin may have shown respect for constitutional procedures and norms in part because the Russian Constitution is *his* document. See AHDIEH, *supra* note 14, at 56-62 (describing the Constitutional Conference of 1993, whose attendees were invited to discuss Yeltsin's proposed constitution), 72-73 (explaining additional presidential powers added to the Constitution at Yeltsin's behest following the events of October 1993). In contrast, Tsar Nicholas II, who felt that the Fundamental Laws were largely forced upon him, dissolved the pre-Revolutionary Duma twice. See *supra* notes 36-39 and accompanying text. Future presidents thus might not necessarily share Yeltsin's desire to preserve the order created by the 1993 Constitution.

286. See Richard Paddock, *The KGB Rises Again in Russia*, *L.A. TIMES*, Jan. 12, 2000, at A1. In the days after becoming acting president, Putin quickly appointed many former KGB colleagues to top posts in his administration. See *id.*

287. Beyond the president's wide-ranging powers, an example of the legacy of such authoritarian rule in Russia was seen in Yeltsin's continuous need to label prime ministerial appointments and other high-ranking officials as his chosen "successors." See Brian Whitmore, *The Men Who Would Be King—Won't*, *MOSCOW TIMES*, Aug. 12, 1999. According to one political analyst, "Russia isn't a

that a significant weakening of presidential authority is unlikely in the near future—even less so now given economic weakness and conflict in Chechnya. Russia's future stability, however, requires a more balanced governmental system in which cooperation, not apocalyptic confrontation, is the norm for relations among the governmental powers. Nevertheless, despite examples of presidential excess and legislative cravenness, the divided power between executive and legislature during the initial six years of the Russian Constitution represents a major step forward in light of Russia's history of authoritarian rule and disregard for the rule of law.

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monarchy, but the mechanism of transferring power resembles a monarchy." *Id.* (quoting Andrei Ryabov).

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