

NOTES

Russia's 1993 Constitution: Rule of Law for Russia or Merely a Return to Autocracy?

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"The function of the state authority is to ensure that legal standards are binding. In its ideal development the state must act only according to the law and according to justice, and any act of the state authority must have a basis in law. That is how I see the essence of the rule of law."

-Mikhail Gorbachev¹

"The doctrine of constitutionalism means that the rule of law governs a state."²

I. Introduction

Under the 1993 Russian Constitution,³ the president may dissolve the State Duma under two circumstances: if the State Duma fails to confirm the president's candidate for prime minister three times⁴ or if the Duma expresses a no-confidence vote in the government twice within three months.⁵ The president may also unilaterally pass laws in the form of decrees.⁶ Conversely, the president of the Russian Federation can only be impeached for "high treason or other high crime," which is voted on and must be passed by a two-thirds majority in each

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1. *The Rule of Law*, 28 STAN. J. INT'L LAW 477, 481 (1992).

2. Elizabeth K. Cooper, *Comment on "Transitional Constitutionalism: Politics and Law in Russia Since 1993,"* 14 WISC. INT'L L. J. 531, 531 (1996).

3. Konstitutsiia Rossiiskoy Federatsii [Constitution of the Russian Federation], translated in 16 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein & Gisbert H. Flanz, eds. 1994) [hereinafter RUSS. CONST.].

4. See RUSS. CONST. art. 111(4). The Prime Minister is officially known as the Chairman of the Government of the Federation. See *id.*

5. See *id.* at art. 117(3).

6. See *infra* section III. A.

parliamentary chamber.⁷ In practice, this structure creates near-autocratic power in the person of the president, and consequentially the legislative body is left too weak to have any significant governmental influence. In order to appreciate the significance of the powers that a Russian leader may wield under Russia's current government, an understanding of the constitution's origin and construction is necessary. Furthermore, a discussion about the Russian constitution's allocation of governmental power must take place with a view towards its unique Russian context, accounting for Russia's historical experience and current social goals. It is only within this contextual framework that the 1993 Russian Constitution can be evaluated as developing the rule of law in Russia or simply reinforcing the autocratic rule of the past.

When Boris Yeltsin's draft constitution was adopted by national referendum in December 1993, the voter turnout was low and the people had no meaningful choice—it was either Yeltsin's constitution or none at all. The constitution presented to the Russian people in the referendum was tailor-made for Yeltsin, retaining for him strong presidential powers reminiscent of those exercised by Russian Tsars such as Peter the Great who sought to Westernize Russia and gave himself broad powers to institute reforms. The enumerated constitutional powers of the parliament are diluted by the constant threat of dissolution by the president if the laws passed are unfavorable to the president. The manner in which the constitution has been implemented by the president and the Duma since 1993 illustrates that this has been the case. In addition, the expansive power given to the person of the president begs the question of what will happen in June of 2000 when a new president must be elected.⁸

II. A New Constitution

In Spring, 1993, Russian President Boris Yeltsin presented a draft of a new Russian Constitution.⁹ Since the collapse of the Soviet Union in 1991, the Russian Federation had continued to operate under the 1978 Soviet Constitution, which had been amended over 300 times.¹⁰ The Russian Congress had been considering, without re-

7. See *id.* at art. 93(1)-(2).

8. See *id.* at art. 81(3). No one may hold the term of president for more than two terms. Yeltsin's second term began in 1996 when he was re-elected.

9. See Serge Schmemmann, *Voters in Russia Expect Results, But Not Answers*, N.Y. TIMES, Apr. 25, 1993, at 3.

10. See Margaret Shapiro, *Drafting a Constitution in the Kremlin: More Than 700 Russians Will Begin Meeting Today in Democratic Bid to Fashion a Document*, WASH. POST, June 5, 1993, at A15; Molly Warner Lien, *Red Star Trek: Seeking a Role for Constitutional Law in Soviet Disunion*, 30 STAN. J. INT'L L. 41, 103 (1994).

sult, a draft introduced in 1990.¹¹ Yeltsin published his version in April, 1993.¹² He proposed that each member of the Russian Federation¹³ send two representatives to a Constitutional Conference to discuss the draft.¹⁴ In July, the Constitutional Conference met and after making over 200 amendments, approved Yeltsin's constitution.¹⁵

At the same time that Yeltsin was promoting his version of a new Russian Constitution, the Russian Congress sped up consideration of their version of the constitution, also publishing a draft.¹⁶ Both the Russian Congress and Yeltsin looked to the Russian voters to gain approval of their versions of the constitution.¹⁷ Yeltsin, in an attempt to resolve the conflict, proposed the formation of a working group, composed of members of both sides, to negotiate and present a unified draft in September.¹⁸ Unfortunately, the Congress at this time was not amenable to compromise and instead planned to vote on a law that would make impeachment of the president easier.¹⁹

Yeltsin responded on September 21 with a televised address stating that he was disbanding the Congress and Supreme Soviet,²⁰ replacing them with a bicameral parliament for which elections would be held in December.²¹ The Russian government would not go quietly, however, and voted that night to appoint Alexander Rutskoi²² as president. A violent standoff resulted when the Congress refused to leave the White House. In the end, although the Constitutional Court sided with the Congress, it was eventually Yeltsin, with his military support, who won the day.²³

Yeltsin published a revised draft of his constitution on November

11. See Lee Kendall Metcalf, *Presidential Power in the Russian Constitution*, 6 J. TRANSNAT'L L. & POL'Y 125, 130 (1996).

12. See Schmemmann, *supra* note 9.

13. Under the Russian Constitution, the Russian Federation consists of over 20 republics. See RUSS. CONST. art. 65(1).

14. See Metcalf, *supra* note 11, at 130.

15. See *id.* at 132.

16. See *id.* at 131.

17. See *id.* at 132.

18. See *id.*

19. See *id.*

20. The Congress of People's Deputies (Congress) was elected in Russia's first multi-candidate election in March, 1990. See Thomas Remington, *Politics in Russia*, in *COMPARATIVE POLITICS TODAY: WORLD VIEW* 381, 389 (Gabriel A. Almond & G. Bingham Powell, Jr., eds., 6th ed. 1996). The smaller, more professional Supreme Soviet was composed of members of Congress and was responsible to it. See *id.* at 390.

21. See Schmemmann, *supra* note 9.

22. Alexander Rutskoi was Yeltsin's Vice President and sided with the Congress.

23. See Michael A. Hiltzik, *Yeltsin Tries to Rally Support for Constitution Russia: Urging Voters to Approve His Proposal, He Defends Draft Giving the President More Power*, L.A. TIMES, Nov. 10, 1993, at 8.

9, 1993 with new provisions increasing presidential power.²⁴ He decreed that a national referendum would be held in December to adopt his draft of the constitution.²⁵ Fifty percent of the vote was necessary for adoption of the constitution in the referendum, which merely asked for a 'yes' or 'no' answer to the question of whether the voter accepted the "Constitution of the Russian Federation."²⁶ In support of the constitution, Yeltsin stated, "[w]e need a Constitution as the core of a united and strong state. We need a constitution [sic] if we want to see legality and order restored in the country. Finally, we need a Constitution in order to pursue democratic transformations in the country consistently and calmly."²⁷ On December 12, the Constitution was adopted by 60% of voters, a narrow margin.²⁸

It is not surprising that voters approved Yeltsin's constitution. They really had no other informed choice. Yeltsin had shut down his opponents, literally, in the White House, and dismissed the government.²⁹ In a thinly veiled threat, Yeltsin suggested that if the new constitution was not adopted, then the totalitarian power of the Soviets could be restored.³⁰ Yeltsin acknowledged that there existed better means to adopt a constitution, but stated that the constitution needed to be adopted so that the new Federal Assembly—to be elected at the same time as the constitutional referendum—would have jurisdiction.³¹ Yeltsin reinforced his argument by reminding his opponents that the Federal Assembly would need time to become operational and that the Federal Assembly could not risk further delay in adoption of a constitution.³²

Using this propaganda built from exaggerated risk, Yeltsin persuaded the Russian people to vote hastily, allowing Yeltsin to circum-

24. *See id.*

25. *See id.*

26. *See* Boris Yeltsin, *On Holding a Nationwide Vote on the Draft of the Constitution of the Russian Federation*, reprinted in CURRENT DIG. SOVIET PRESS, Nov. 17, 1993, at 7.

27. Michelle Lynn McClure, *An Analysis of the New Russian Constitution*, 4 J. INT'L L. & PRAC. 601, 602 (1995).

28. *See* Lev Bruni and Pyotr Zhuravlyov, *Elections: A New Duma, A New Constitution, but the Old President*, reprinted in CURRENT DIG. SOVIET PRESS, Jan. 12, 1994, at 2. The low voter turnout of 53.2% of all eligible voters was attributed to bad weather and procedural complexities. *See id.*

29. In their attempt to depose Yeltsin, the legislature barricaded itself in the White House (officially known as the House of Soviets) and elected Alexander Rutskoi as president. *See* Serge Schmemmann, *Official Warning by Yeltsin Fails to Dislodge Legislators*, N.Y. TIMES, Sept. 30, 1993, at A14. Yeltsin, in response, barricaded the legislators in the building with a ring of military troops, heavy trucks, wire, and barricades. *See id.* Yeltsin also cut off the building's phones, hot water, and electricity. *See id.*

30. *See* RUSS. PRESS DIG., *Boris Yeltsin: As President, I am Interested in Social Stability More than Anyone Else*, Nov. 16, 1993 at 1.

31. *See id.*

32. *See id.*

vent any parliamentary influence. Yeltsin argued against allowing Parliament to draft its own constitution, simply stating that "[a] document of this caliber can be discussed endlessly" while Russia needed a constitution immediately.³³

In addition to insisting that immediate adoption of the Constitution was essential, Yeltsin promptly silenced attempts by political candidates and parties to criticize his Constitution. Yeltsin had allocated free television time, in anticipation of the December election, to each of the thirteen political parties for campaign purposes.³⁴ In the end of November, Yeltsin assembled members of each party, threatening them that he would rescind their free television access if they continued to attack Yeltsin's constitution.³⁵ Yeltsin's Deputy Prime Minister Vladimir Shumeiko even attempted to remove critical parties from the ballot.³⁶ Yeltsin's tactics thus ensured adoption of the resolution.

III. The Russian Constitution's Allocation of Power

A. General Distribution of Power

The Russian Constitution vests considerable power in the person of the president. The president is defined as the head of state, guarantor of the constitution, human and civil rights, and freedoms.³⁷ The president may "decide on the resignation of the Government of the Russian Federation."³⁸ The president may also declare a state of emergency³⁹ and issue binding decrees and executive orders, so long as the decrees and executive orders do not "contravene the Constitution of the Russian Federation or federal laws."⁴⁰ The president may dissolve the Duma in certain circumstances.⁴¹ Yeltsin defended the broad presidential powers by questioning:

But what else do you want to have, in a country which has got accustomed to czars and rulers, in a country where there are no clearly defined interest groups and where normal [political] parties are just emerging, in a country where executive discipline is

33. *See id.*

34. *See* Tony Barber, *Russia: Yeltsin Invites Vote Against Democracy*, INDEPENDENT - LONDON, Dec. 6, 1993.

35. *See id.* Not only did Yeltsin threaten to take away free television access, but a study by Russian and American analysts showed that the pro-presidential party, Russia's Choice, received twenty-eight minutes of television coverage on Russia's most important television channel between November 9-21, while the leader of a moderate reformist party received only ten seconds. *See id.*

36. *See* Shapiro, *supra* note 10; *see also* Barber, *supra* note 34.

37. *See* RUSS. CONST. art. 80(1) - (2).

38. *Id.* at art. 83(c).

39. *See id.* at art. 88.

40. *See id.* at art. 90(1) - (3).

41. *See id.* at art. 84(b).

very slack and where juridical nihilism is so widespread? Would you stake in such a country only or chiefly on Parliament? Well, if you do so, just in six months—if not earlier—people will want a dictator.⁴²

By contrast, the bicameral Federal Assembly has relatively weak powers. Russia's upper house, called the Federation Council, consists of two representatives from each member of the Russian Federation.⁴³ The lower house, called the State Duma, consists of 450 deputies.⁴⁴ Unlike the presidential power to issue decrees, the jurisdiction of the Federation Council and State Duma is enumerated in the constitution.⁴⁵ The Duma may initiate impeachment proceedings of the president only on the basis of a charge of high treason or other grave crime.⁴⁶ The Duma and Federation Council must pass the impeachment vote by a two-thirds majority within three months of the initial filing of the charge against the president.⁴⁷ In addition, the Supreme Court of the Russian Federation must confirm the "presence of indicia of crime in the President's actions," and the Constitutional Court of Russia must confirm that the Duma followed proper impeachment procedures.⁴⁸

B. The Separation of Power

The Russian Constitution clearly states that the Russian Federation shall be governed by a system of separation of powers.⁴⁹ The doctrine of separation of powers provides that governmental power should be separated among several different branches of government.⁵⁰ Important to this system are the checks and balances preventing one branch of government from exercising control over another.⁵¹ An independent judiciary with the power of judicial review is also a central aspect of separation of powers.⁵²

The disproportionate amount of power granted to the president

42. Boris Yeltsin: *As President, I am Interested in Social Stability More than Anyone Else*, *supra* note 30.

43. *See* RUSS. CONST. arts. 94, 95(1) - (2).

44. *See id.* at art. 95(3).

45. *See id.* at arts. 102 - 103.

46. *See id.* at art. 93(1) - (2).

47. *See id.* at art. 93(1) - (3).

48. *See id.* at art. 93(1).

49. *See id.* at art. 10 ("State power in the Russian Federation shall be exercised on the basis of the separation of the legislative, executive and judiciary branches. The bodies of legislative, executive and judiciary powers shall be independent.").

50. *See* 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, 1366 (1995).

51. *See id.* at 1367.

52. *See id.*

infringes upon this system.⁵³ First, the president is the guarantor of the constitution.⁵⁴ To execute this role, the president may “use dispute settlement procedures to settle differences between organs of state power of the Russian Federation. . . . [and] [i]f no decision is agreed upon, he may turn the dispute over for review by the respective court of law.”⁵⁵ This power usurps the traditional role of the judiciary in a separation of powers system.⁵⁶ The president thus may resolve a dispute in the executive’s favor and then refuse to turn the matter over to the courts for review.⁵⁷

Second, the president has substantial legislative powers under the 1993 constitution. While the legislative power of the Federal Assembly is articulated in some detail,⁵⁸ and does not provide for the addition of powers not already enumerated,⁵⁹ the president may issue decrees and executive orders limited only in that they are not in conflict with the Russian Constitution or federal laws.⁶⁰

Thus the president can rule by decrees on any issue, or, indeed, many issues, until the legislature acts in conflict. Practically, however, if the president acts on an issue, then the legislature has no incentive to act.⁶¹ Thus there is no incentive for the many political factions in the parliament to compromise to effectively rule the country.⁶² The legislature therefore becomes a rubber stamp parliament with the president effectively ruling the country as an autocrat.⁶³ These “unlimited powers to legislate through presidential decree” has drawn scathing criticism:

It is this right to rule by decree, a right which ignores completely the separation of powers between the legislative and executive branches of government, which represents the biggest step back towards an arbitrary dictatorship since Mikhail Gorbachev

53. See *id.* at 1372; see also David Satter, *The Failure of Russian Reformers*, WALL ST. J., May 13, 1996, at A20 (arguing that the 1993 constitution stalled the reform process in Russia by failing to establish a political system based on a “reasonable separation of powers.”).

54. See RUSS. CONST. art. 80(2).

55. *Id.* at art. 85(1).

56. See Weisman, *supra* note 50, at 1373.

57. See *id.*

58. See RUSS. CONST. arts. 102 - 103

59. See *id.* (In addition to listing several specific duties, the jurisdiction of both the Federation Council and the State Duma allows for resolutions of issues *within the jurisdiction of the Russian Constitution*).

60. See RUSS. CONST. art. 90(1) & (3).

61. See Anatole Kaletsky, *Sunday Comment: Mr. Yeltsin's Nightmare at the Finland Station*, SUNDAY TELEGRAPH LONDON, Dec. 12, 1993, at 30.

62. See *id.*

63. Russia has had repeated experiences attempting to create a parliamentary body that in effect turned out to be nothing more than a rubber stamp. The results have been disastrous, as will be discussed, *infra*, at section IV.C.

launched glasnost. Ironically, it may also endanger Yeltsin's ability to impose his will on his vast and ungovernable country.⁶⁴

If the legislature does enact a law conflicting with a presidential decree, or vice versa, however, the constitution does not state that the conflicting decree would be automatically invalid.⁶⁵ In fact, Yeltsin has exercised this power to pass unconstitutional decrees.⁶⁶ In June, 1994, Yeltsin passed a decree allowing for the detention of suspects by police for up to thirty days without formal charges.⁶⁷ Even though the decree violates several constitutional provisions, and Yeltsin himself acknowledged possible impairment of human rights because of the decree, he refused to rescind it.⁶⁸

Third, like the presidential ability to rule by decree, the constitutional provisions allowing for the presidential dissolution of the Duma prevent the parliament from developing independently of the president. If the Duma rejects the president's candidate for prime minister three times, then the president may dissolve the Duma and call for new elections.⁶⁹ The president may also dissolve the Duma if it passes a no confidence vote in the government twice within three months.⁷⁰ Further, the Russian Prime Minister may ask the State Duma for a vote of confidence in the government.⁷¹ If the Duma passes a vote of no confidence, the president may within seven days decide to resign the government.⁷² The Duma can thus avoid dismissal by simply acquiescing to the president. Because the president may manipulate these provisions, for example by choosing clearly unacceptable candidates for prime minister or by forcing the Duma through the prime minister to conduct a no-confidence vote, the Duma has a strong disincentive to be critical of the president.⁷³

Finally, the president under the 1993 Constitution is "almost beyond impeachment."⁷⁴ The Duma would have to accuse the president of treason or other serious crime, and the Supreme Court must con-

64. Kaletsky, *supra* note 61. Kaletsky argues, persuasively, that Yeltsin will run into problems trying to implement his policies in the vast Russian Federation, which spans eleven time zones. Yeltsin does not act like a dictator, so his laws will not be followed out of fear. *See id.* On the other hand, he is acting without the benefit of the democratically elected, local officials, which further may frustrate implementation in the farther regions. *See id.*

65. *See* Weisman, *supra* note 53, at 1374 n.66.

66. *See id.* at 1375 n.67.

67. *See id.*

68. *See id.*

69. *See* RUSS. CONST. art. 111(4).

70. *See id.* at art. 117(3).

71. *See id.* at art. 117(4).

72. *See id.*

73. *See* Hiltzik, *supra* note 23.

74. David Hearst, *President Above and Beyond Parliament: Russia's Draft Constitution Vastly Strengthens Boris Yeltsin*, GUARDIAN, Nov. 10, 1993, at 10.

firm the crime.⁷⁵ The Russian Constitutional Court no longer has any power to impeach the president.⁷⁶ Since treason is defined as advocating the overthrow of the government, and the president is the head of the government under the constitution, it is questionable whether the Duma could in fact bring treason charges against a Russian president, since the president may not commit treason against himself.⁷⁷

Yeltsin seemed to realize that the constitution as written violated the separation of powers. He urged voters to adopt the constitution so that the new parliament would not have to draft a new constitution and get "bogged down in contradictions with the president over the separation of powers and other constitutional issues."⁷⁸ Yeltsin acknowledged the increased presidential power in the 1993 Constitution and promoted its necessity. It is likely that he wanted to create a strong presidency to ensure against a parliament like the one elected in 1990, which delayed reform and was ultimately disbanded by Yeltsin in 1993.⁷⁹

Yeltsin's 1993 constitution proclaims itself to be a document founded on the rule of law and separation of powers. In fact, it is a document that legitimizes autocratic presidential power. The president may act outside the written law and may, without any real possibility of reproach, disregard duly enacted laws. Even though Yeltsin's motives appear to be consistent with promoting democracy, the resulting near-autocratic powers of the president and weak parliamentary powers in a shell separation of powers system could lead to drastic consequences in the future. In a worst-case scenario, without true separation of powers, a dictator-tyrant could use the constitutionally-granted presidential powers to legally revert to a Stalinist regime. As a democratically elected president, though, a tyrant could operate under the facade of democracy with no one the wiser.

C. Criticism and Support for the Constitutional Distribution of Power

Criticism of Yeltsin's constitution came from all sides. Gennady Zyuganov, the leader of the Communist Party in Russia, stated that "[t]he pharaoh, the tsar, and the general secretary did not have such powers" as the president in the constitution.⁸⁰ Zyuganov also asserted that adoption of the constitution would create a presidential dictator-

75. See RUSS. CONST. art. 93(1).

76. Following the dissolution of the Soviet Union, the mechanism for enforcing the constitution became the Constitutional Court. See Lien, *supra* note 10, at 90.

77. See Laura Duncan, *Constitutional Experts Here See Risks in New Russian Document*, CHI. DAILY L. BULL., Dec. 14, 1993, at 3. In fact, the Duma has attempted to impeach Yeltsin, which will be discussed, *infra*, at section IV.B.

78. Hiltzik, *supra* note 23.

79. See *id.*

80. Barber, *supra* note 34.

ship.⁸¹ Many of the thirteen parties running in the parliamentary elections, held the same day as the constitutional referendum, "attacked the constitution as a document that will stifle democracy at birth."⁸² A political commentator of the Russian newspaper *Izvestia* said that "[t]he only real checks and balances in Russia are Yeltsin's personal qualities and inclinations."⁸³ Critics claimed that the composition of the parliament after the elections would matter little if the constitution passed, since Yeltsin could overcome any objections to his policies.⁸⁴ The constitution was considered to be "tailor-made" for Yeltsin.⁸⁵

Not everyone, however, criticized the strong presidential power in the constitution. Supporters note that the upper house of parliament, the Federation Council, may never be dissolved by the president.⁸⁶ In addition, Russia's previous parliament was perceived as adverse to compromise and did not respond to the nation's needs.⁸⁷ Therefore, it was said, a parliamentary system with a strong president was the only system with a chance of succeeding.⁸⁸ This argument has some merit, because, for the most part, the presidential powers in Yeltsin's constitution mirror those of Western parliamentary democracies.⁸⁹ In fact, the Russian Constitution is often compared to the French Constitution in that both documents withhold legislative power from the president.⁹⁰

Although Yeltsin had been described as autocratic, abrasive, and exceedingly demanding, he has also seemed to be devoted to democ-

81. See Hiltzik, *supra* note 23.

82. Barber, *supra* note 34.

83. *Id.*; see also Kaletsky, *supra* note 61.

84. See Barber, *supra* note 34; see also Kaletsky, *supra* note 61.

85. Duncan, *supra* note 77.

86. See Sam Lambroza, *The Russian Constitution Marks an Impressive Beginning*, WASH. TIMES, Dec. 10, 1993, at A27.

87. See *Russia's New Game*, WALL ST. J. EUR., Dec. 14, 1993, at 10.

88. See *id.*

89. See Lambroza, *supra* note 86 (comparing the Russian president's ability to dissolve parliament with comparable powers in England, France, and Germany.).

90. See Metcalf, *supra* note 11. On the other hand, the legislative authority of the president in Russia is substantially greater than in France. See *id.* For example, the Russian president may veto legislation, propose referenda, and has greater authority to issue decrees than his French counterpart. See *id.* In this sense the Russian Constitution is similar to Latin American presidential regimes, such as Chile, Columbia, and Brazil. See *id.* Further, France does not have the same long tradition of autocratic rule. See Duncan, *supra* note 77. Therefore, although the Russian constitution is similar to the French constitution, the increased legislative powers of the president in Russia serve to erode the barriers between the branches of government, making a shell of the system of separation of powers. See *id.*; but cf. Lambroza, *supra* note 86 (arguing that, although Russia is not "practiced in democracy," it can change by practicing the principles enunciated in the constitution.).

racy.⁹¹ Yeltsin proved to be “no tyrant.”⁹² Despite Yeltsin’s dictator-like actions in the fall of 1993, when he disbanded the Congress and Supreme Soviet, he has since then allowed competition among the political parties and shown no signs of abusing the political or human rights of even his worst critics.⁹³

A forceful Yeltsin critic and former chairman of the Constitutional Court acknowledged that the constitution had “strong authoritarian parts,” but stated that, “it’s better to have a bad constitution than no constitution. . . . [and] it’s better than to live in an authoritarian regime without a constitution or Parliament.”⁹⁴ When ultra-nationalist Vladimir Zhirinovskiy won a large percentage of the votes in the State Duma in the December 1993 election, one commentator noted that, “[m]aybe a strong presidency in Russia isn’t such a bad thing after all.”⁹⁵ Now, five years after the adoption of the constitution, it still remains to be seen how Russia will fare without Yeltsin as leader.

D. Russian Tradition of Modernizing Autocrats

A system with a powerful president fits well in Russia’s history, which is replete with autocrats beginning with the tsars and culminating in the dictatorships of Lenin and Stalin. Peter the Great, for example, who ruled from 1696-1785, sought to Westernize Russia. To modernize Russia, Peter had to amass great personal powers.⁹⁶ Peter did such things as change Russia’s outdated calendar to the western European Julian Calendar,⁹⁷ founded St. Petersburg as Russia’s “window to the West,”⁹⁸ established a regular army, founded a navy,⁹⁹ reformed the Russian alphabet, and encouraged education.¹⁰⁰ Politically and legally, Peter created the Governing Senate which acted as a chief executive and legislative body, even though it could only implement Peter’s will and not act on its own.¹⁰¹ Peter also introduced some degree of formalism in the Russian legal system, though

91. See Lambroza, *supra* note 86.

92. Kaletsky, *supra* note 61.

93. See *id.*; but see Barber, *supra* note 34 (arguing that Yeltsin’s attempt to ban political parties who were critical of the constitution from the election showed that Yeltsin “regard[ed] criticism and free debate as best a nuisance, [and] at worst political subversion.”).

94. Hiltzik, *supra* note 23.

95. *Russia’s New Game*, *supra* note 87.

96. See Barber, *supra* note 34.

97. See RONALD HINGLEY, *RUSSIA: A CONCISE HISTORY 74-75* (Thames and Hudson 1991) (1972).

98. *Id.* at 77.

99. See *id.* at 78.

100. See *id.* at 78-79.

101. See Lien, *supra* note 10, at 53.

his autocratic tendencies stifled progress in the area of public law.¹⁰² Most significant, at the end of Peter's life, he created the office of the Procurator General, which served as the "principal guardian of legality," ensuring that the Senate acted within its boundaries and that tsarist edicts were promptly executed.¹⁰³

Peter often used barbarous and unscrupulous tactics to effect political reform.¹⁰⁴ For example, Peter built St. Petersburg on a swamp using countless serfs, tens of thousand of which perished under the appalling conditions.¹⁰⁵ Also, Peter's son, who did not agree with Peter's views, escaped Russia only to be lured back by Peter and subsequently murdered by him in prison.¹⁰⁶ Peter's social reforms, though quite extraordinary, tended to benefit only the upper classes. Peter was unable to improve the lives of the majority of Russia's people, the peasants.¹⁰⁷ As a result of the combination of Peter's reforms and the lack of progress made by the peasantry, the end of Peter's reign was marked by a vast cultural rift between the new upper class and the lower classes.¹⁰⁸

The experience from Peter's time holds resonance today. Like Peter, Yeltsin in 1993 was, in a sense, trying to catch Russia up to Western democracies. Russia was failing as a superpower and needed to start again as a democracy. Boris Yeltsin has, through his actions and through his constitution, forced Russia through many difficult steps on the road to true democracy. In 1991, Yeltsin became the first democratically elected president in Russia's history. Like Peter, though, he has been forced at times to resort to undemocratic means and the effects are not always beneficial to everyone. His autocratic tendencies have slowed the legislative process.¹⁰⁹ As Yeltsin's final presidential term winds down, the question remains how Yeltsin's successor will govern under Yeltsin's constitution.

IV. The Constitution in Practice

Many questions about how the 1993 Constitution would be implemented have been addressed in the past five years. Yeltsin showed

102. *See id.* at 54.

103. *See id.* Interestingly, the practice of having the Procuracy rather than the judiciary protect legality endured through tsarist times and the Soviet regime. *See id.* This may explain, if only in part, why Yeltsin's constitution grants the executive the role of guarantor of the constitution rather than more traditional judicial review of a separation of powers system.

104. *See HINGLEY, supra* note 97, at 79.

105. *See id.* at 77.

106. *See id.* at 81.

107. *See id.*

108. *See id.*

109. *See* discussion, *infra*, at section IV.

himself to be authoritarian and inclined to govern Russia himself, without the help of the parliament. The parliament, in turn, has attempted to topple Yeltsin, but could never muster enough support. As Yeltsin's health and physical ability to govern deteriorated, however, Yeltsin has backed down from his dictator-like stance. Because of Yeltsin's actions as president, it appears that only Yeltsin's successor will know the fate of the country, as that person will be able to rule by personality rather than by law.

A. Presidential Rule By Decree

When Yeltsin was arguing for the support of his constitutional draft, he defended the presidential decree power as necessary to govern the country until the newly elected parliament could pass permanent laws.¹¹⁰ This has not been the case in practice, however. Yeltsin has used the constitutional decree power to legislate. For example, when the Duma was on the verge of passing legislation that prohibited the sale of farm land, Yeltsin issued a decree doing the exact opposite.¹¹¹ Similarly, Yeltsin has been unwilling, or unable, to compromise with the parliament in order to pass economic reforms. To institute his reforms more quickly, he issues decrees that have immediate force of law.¹¹²

Yeltsin's decrees have not always been altruistic reform measures intended to benefit the country. Yeltsin has used his decree power to grant favor and political power to businesses, friends, and political allies.¹¹³ Examples abound. First, Yeltsin in 1993 issued a decree allowing a sports fund, which was headed by Yeltsin's tennis partner, to import alcohol and tobacco into Russia without paying duty.¹¹⁴ The tax breaks caused by the decree reportedly cost Russia \$200 million a year.¹¹⁵ In 1995 Yeltsin created an oil company from several divisions of a state-owned firm.¹¹⁶ The oil industry is the most profitable business in Russia, and with a stroke of a pen Yeltsin was able to reserve a remunerative share of that industry for the government—and away from the private sector.¹¹⁷ Further, just months after he created the oil company, Yeltsin decreed that it be sold at an auction in exchange

110. See David Hoffman, *Russia Votes—For a Czar; Yeltsin Gave the Post-Soviet Presidency Enormous, Arbitrary Power Over Nation*, WASH. POST, June 16, 1996, at A1.

111. See *id.*

112. See *id.*

113. See *id.*

114. See *id.*

115. See *id.*

116. See *Russia Votes—For a Czar; Yeltsin Gave the Post-Soviet Presidency Enormous, Arbitrary Power Over Nation*, *supra* note 110.

117. See *id.*

for bank loans.¹¹⁸

In addition, Yeltsin appointed a loyal confidant, Lt. Gen. Alexander Korzhakov, as cabinet minister and presidential aide of the highest rank.¹¹⁹ Although not on its face unusual, Korzhakov is a former KGB officer who now commands a paramilitary security operation that can import and export weapons, design weapons, and, extraordinarily, work in the private sector as well.¹²⁰ In May, 1996, Yeltsin issued a decree pardoning the former director of the Yaroslavl water supply, Vladimir Petrov.¹²¹ Petrov had been incarcerated on charges of embezzlement and corruption.¹²² In this case, Yeltsin effectively took the place of the court.¹²³

Yeltsin's ability to rule by decree has gone largely unchecked during his presidency,¹²⁴ but Yeltsin has not governed absolutely. Yeltsin has had to concede to the wishes of those that have power in Post-Soviet Russia, such as the prosperous regions who want to retain their own tax money and natural resources.¹²⁵ For example, although Yeltsin has near absolute power in Moscow, he has been signing "power-sharing" agreements with other Russian regions.¹²⁶ These agreements give the regions special tax breaks and control over property, allowing them to be more independent of the will of the Kremlin.¹²⁷

Yeltsin's proclivity for ruling by decree has significant consequences. First, the legislature is not given the opportunity to develop policy, learn compromise, and govern the country.¹²⁸ Second, his decrees, not passed by the legislature, may simply be overturned by the next president.¹²⁹ Third, by granting more autonomous power to the individual regions, Yeltsin weakens the presidency because local officials will not effect his decisions but instead demand to govern themselves.¹³⁰

118. *See id.* Not surprisingly, one of the banks that bought the company was one with strong Kremlin connections. *See id.*

119. *See id.*

120. *See id.*

121. *See id.*

122. *See id.*

123. *See id.*

124. *See id.*

125. *See id.*

126. *See id.*

127. *See id.*

128. *See* Kaletsky, *supra* note 61.

129. *See Russia Votes—For a Czar; Yeltsin Gave the Post-Soviet Presidency Enormous, Arbitrary Power Over Nation, supra* note 110.

130. *See id.*

B. Duma Dissolution and Constitutional Issues

Since the adoption of the Russian Constitution and parliamentary elections in 1993, the Duma has had few options for expressing dissatisfaction with Yeltsin and his government. Indeed, it seems that the only way that the Duma has been able to make any noise or get attention is by voting no-confidence or threatening impeachment. So far, however, a constitutional crisis has been averted.

During the Russian war with the break-off republic Chechnya, the Duma voted no-confidence in Yeltsin's government in an attempt to coerce Yeltsin to dismiss certain officials. In June, 1995, after Chechen rebels raided a southern Russian town and took hundreds of hostages, the Duma voted no-confidence, demanding that Yeltsin dismiss the officials responsible for the situation.¹³¹ Yeltsin and Prime Minister Viktor Chernomyrdin responded by asking the Duma to hold another no-confidence vote and declaring that Yeltsin would dismiss the Duma if it did not back down.¹³² Prime Minister Chernomyrdin chastised the Duma, stating that, "[t]he Duma decision destroys cooperation between the executive and legislative power and destabilizes the situation in the country."¹³³ The Duma, which blamed just three of Yeltsin's cabinet members for the hostage crisis, and not the entire government, had no constitutional means of removal of individual ministers.¹³⁴ In what appeared to be an effort to compromise, Yeltsin subsequently fired the three ministers to which the Duma objected.¹³⁵ In the end, the parliament succumbed in a vote thirty-three votes short of no-confidence.¹³⁶ Although touted as a historical compromise, many believed that the vote would have been the same had Yeltsin refused to discharge the offensive ministers.¹³⁷ The Duma was unwilling to take its objections of the government so far as to cause a constitutional crisis and its own dismissal.¹³⁸ Dismissal of the Duma

131. See Steven Gutterman, *Russian Leaders Challenge Lawmakers*, UNITED PRESS INT'L., June 22, 1995.

132. See *id.*

133. *Id.* "Cooperation" seems to have meant "acquiescence to Yeltsin."

134. See *Doomed Duma*, ASIAN WALL ST. J., June 26, 1995, at 10. In a token gesture, however, the Duma took a separate vote for the dismissal of three ministers. See *id.*

135. See Lee Hockstader, *Anti-Yeltsin Vote Fails in Moscow; No-Confidence Vote Falls Short of Required Majority in Duma*, WASH. POST, July 2, 1995, at A22.

136. See *id.*

137. See *id.*

138. See *id.* A year earlier, the Duma took a no-confidence vote in response to "black Tuesday," when the ruble lost twenty-one percent of its international value. See Marina Lapenkova, *Government Faces Parliament Censure After Chechen Fiasco*, AGENCE FRANCE PRESSE, June 21, 1995. Although the vote failed by over thirty votes, one-third of the Duma did not even appear, choosing to voice their dissatisfaction through abstention. See Washington Post Foreign Service, *Yeltsin Government Survives No-Confidence Vote*, WASH. POST, Oct. 28, 1994, at A35.

would mean that the legislators would lose the privileges afforded to them by virtue of their office, such as computers, modern offices, and free apartments.¹³⁹

Another means by which the Duma has shown its disapproval of Yeltsin has been by attempting to impeach him. At the same time as the no-confidence vote in June of 1995, the Duma undertook to initiate preliminary impeachment procedures against Yeltsin.¹⁴⁰ The support of 150 Duma members (two-thirds) is required to officially begin impeachment procedures, however, and the Duma reportedly gathered no more than one hundred.¹⁴¹ Again, in December, 1996, the Duma scheduled a discussion of impeachment proceedings and a vote of no-confidence.¹⁴² At this time, Yeltsin had withdrawn the last remaining troops from Chechnya, a move that the Duma viewed as unconstitutionally conceding to the rebel republic's independence.¹⁴³ The Duma backed down in recognition that Yeltsin was recovering from multiple bypass heart surgery.¹⁴⁴ Less than two months later, the Duma voted 102 to 87 against adopting a draft resolution on impeaching Yeltsin on the basis of ill health.¹⁴⁵ The Duma did vote in favor of adopting the resolution as a basis for further debate, however, showing that the issue was not closed.¹⁴⁶

In mid-1998, regional legislatures began to pass motions to impeach Yeltsin.¹⁴⁷ Although the individual regions have no actual power to impeach Yeltsin, the regional motions were significant.¹⁴⁸ They showed that the regions were unhappy with the government and were willing to "demand[] a fundamental change of economic course."¹⁴⁹ Further, the motions indicated a unification of the regional deputies behind a single mandate to topple Yeltsin.¹⁵⁰ Mean-

139. See Hockstader, *supra* note 135.

140. See *Doomed Duma*, *supra* note 134.

141. See *id.* It is unlikely that the Duma would be able to impeach Yeltsin, even if the Duma did get the required two-thirds vote. The Supreme Court, which must confirm the impeachment vote, is highly politicized in favor of Yeltsin and would be unlikely to vote against him. See *id.*

142. See Genine Babakian, *Communists Retreat from Yeltsin Impeachment Vote*, USA TODAY, Dec. 2, 1996, at 4A.

143. See *id.*

144. See *id.* Communist leader Gennady Zyganov stated, "[t]he president is sick. Let him get better." *Id.*

145. See *Urgent Duma Rejects Draft Resolution on Impeaching Yeltsin*, AGENCE FRANCE PRESSE, Jan. 22, 1997. The Duma was forty-two votes shy of passing the resolution. See *id.*

146. See *id.*

147. See Dmitry Zaks, *Coal Miners Stop Trains Once Again*, MOSCOW TIMES, July 2, 1998, at No. 1486.

148. See *id.*

149. *Id.*

150. See *id.*

while, several Duma deputies opposed to Yeltsin formed a committee to work toward impeachment.¹⁵¹

In August, 1998, Yeltsin and Duma leaders reached a tentative agreement by which the Duma agreed to refrain from attempts to impeach Yeltsin or pass votes of no-confidence in Yeltsin's government.¹⁵² In return, Yeltsin promised not to dismiss the parliament.¹⁵³ Communist leader Zyuganov initially endorsed the plan, but changed his mind after meeting with Communist Party leaders.¹⁵⁴ Prime Minister Primakov made an identical offer in January, 1999, in an attempt to prevent the Duma from voting on impeaching Yeltsin, but the offer was rejected.¹⁵⁵

Finally, in December, 1998, the speaker of the Duma, Gennady Seleznyov, announced that the Duma would vote in January on an impeachment charge against Yeltsin for waging the war in Chechnya.¹⁵⁶ The parliamentary committee was continuing its investigation on three other counts of impeachment, including instigation of and participation in the collapse of the Soviet Union and his orders to send tanks to dispel parliamentary rebellion in 1993.¹⁵⁷ In addition, the committee was considering a charge of "genocide of the Russian people," effectively blaming Yeltsin for the decline of the Russian population as a result of a high death rate and low birth rate.¹⁵⁸ On February 18, 1999, the Duma impeachment commission presented its findings on five counts of impeachment.¹⁵⁹ The Duma scheduled a debate on these counts for April 15, 1999.¹⁶⁰ Just two days before the scheduled debate, the Duma postponed the impeachment vote.¹⁶¹ This delay was seen as the end to the Communist-driven preoccupation with impeaching Yeltsin.¹⁶²

151. See *id.*; see also Svetlana Ilyina, *A Specter of Parliamentary Revolution*, NEZAVISIMAYA GAZETA, Apr. 9, 1998, at 3, summarized in RUSS. PRESS DIG.

152. See International Affairs, *Russian Parliament Rejects Chernomyrdin as Premier; Crisis Overshadows U.S. Summit; Other Developments*, FACTS ON FILE WORLD NEWS DIG., Sept. 3, 1998, at C1.

153. See *id.*

154. See *id.* Zyganov denounced the plan in a televised debate, declaring that it "had too many loopholes" and did "not guarantee anything." *Id.*

155. See Daniel Williams, *Russian Premier Offers Deal That Would Weaken Yeltsin*, WASH. POST, Jan. 26, 1999, at A14.

156. See *Report: Yeltsin Impeachment Nears*, UNITED PRESS INT'L, Dec. 22, 1998.

157. See *id.*

158. See *id.*

159. See Comment and Analysis; Country Profile; Forecast, *Russia: Yeltsin's Poor Health, Conflict with Parliament*, HILFE COUNTRY REP., Feb. 1999, at 8.

160. See David Hoffman, *Premier Urges Halt to Efforts to Oust Yeltsin; Russian Parliament's Move Could Undermine Primakov*, WASH. POST, Apr. 11, 1999, at A19.

161. See Sharon LaFraniere, *Russian Legislature Delays Vote to Impeach; Move Likely Ends Effort to Oust Yeltsin*, WASH. POST, Apr. 13, 1999, at A13.

162. See *id.*

The Duma has not been alone in causing tension between parliament and the president. In 1998, Yeltsin dismissed his prime minister twice, narrowly averting constitutional crises. At the end of March, 1998, Yeltsin suddenly dismissed Prime Minister Viktor Chernomyrdin.¹⁶³ Chernomyrdin had been prime minister since 1992.¹⁶⁴ Yeltsin named his energy minister, Sergei Kiriyenko, as prime minister.¹⁶⁵ When the Duma rejected Kiriyenko's nomination by a vote of 186 against and 143 for, Yeltsin immediately renominated him, stating "I have no other candidate."¹⁶⁶ The Duma rejected him again.¹⁶⁷

When Yeltsin again renominated Kiriyenko, Yeltsin gave the Duma an ultimatum: either confirm his nomination or face dissolution.¹⁶⁸ Yeltsin promised, if the Duma again rejected Kiriyenko, to appoint him by decree.¹⁶⁹ Yeltsin, counting on the Duma deputies to act in their own self-interest, circulated a letter in the Duma informing members that, in the event of dissolution, each deputy would have to vacate their free state apartments, accept a one-way ticket to their home region, and comply with a weight allowance for transporting their belongings.¹⁷⁰ Many deputies agreed to compromise for fear of losing their jobs.¹⁷¹

By a vote of 251 to 25 against, the Duma approved Kiriyenko as prime minister.¹⁷² The Duma, however, was not pleased. Ultra-nationalist Vladimir Zhirinovskiy likened the "compromise" to a choice between tuberculosis and a cold.¹⁷³ A Communist deputy from a southern city stated, "[t]his was done only under threat of destruction. . . . The Duma was forced to do this to keep itself alive."¹⁷⁴ He continued that, had the Duma been dissolved, then the situation would have been worse because Yeltsin could have ruled by decree and would have been out of control.¹⁷⁵

163. See David Hoffman, *Ousted Russian Prime Minister to Seek Presidency*, WASH. POST, Mar. 29, 1998, at A30.

164. See *id.*

165. Daniel Williams, *Yeltsin Pushes for Premier's Approval; Party Leaders are Hedging Bets*, WASH. POST, Apr. 8, 1998, at A19.

166. See Daniel Williams, *Parliament Rejects Kiriyenko; As Expected, Yeltsin Renominates Prime Minister Candidate*, WASH. POST, Apr. 11, 1998, at A9.

167. See Daniel Williams, *Premier Vote May Seal Russian Legislature's Fate*, WASH. POST, Apr. 23, 1998, at A34.

168. See Genine Babakian, *Kremlin Clash Coming to a Head; Vote on Premier Could Lead to a New Parliament*, USA TODAY, Apr. 23, 1998, at 13A.

169. See *id.*

170. See *Premier Vote May Seal Russian Legislature's Fate*, *supra* note 167.

171. See Babakian, *supra* note 168.

172. See Kathy Lally, *Duma Approves Premier, Yielding to Yeltsin's Choice; Vote of 251-25 to Approve Prevents Parliament Dissolution*, BALTIMORE SUN, Apr. 25, 1998, at 1A.

173. See Babakian, *supra* note 168. "So we choose the cold." *Id.*

174. Lally, *supra* note 172.

175. See *id.*

Despite the fact he had fought so hard for Kiriyenko's appointment, a mere four months later, Yeltsin again dismissed his prime minister for enacting emergency measures that caused an economic crisis in Russia.¹⁷⁶ On August 23, 1998, Yeltsin reappointed Viktor Chernomyrdin as prime minister.¹⁷⁷ A week later, the Duma rejected Chernomyrdin.¹⁷⁸ Yeltsin immediately renominated him.¹⁷⁹ The Duma rejected him again.¹⁸⁰ The Communist leader Zyuganov stated that his party, the largest in the Duma, would never accept Chernomyrdin.¹⁸¹ He also asserted that dissolution of the Duma would be illegal and lead to civil unrest.¹⁸² After a tense several days, Yeltsin avoided a showdown by nominating Yevgeny Primakov as prime minister, who was accepted by the Duma.¹⁸³

Although Yeltsin avoided a constitutional crisis in these cases, his deference to the Duma showed declining strength.¹⁸⁴ In the last five years, Yeltsin has shown a strong dislike for compromise and a tendency to do things his own way.¹⁸⁵ Case in point was his insistence four months earlier in nominating Kiriyenko and forcing the Duma to accept him as prime minister. However, by later giving in to the Duma, he showed political weakness that is likely to only increase in the future.¹⁸⁶ In addition to a lack of political strength, Yeltsin's physical strength has decreased as well. Yeltsin's health has been poor since he had heart bypass surgery in 1996 and a series of complaints has kept him in the hospital for much of the time since September,

176. See *Russian Parliament Rejects Chernomyrdin as Premier; Crisis Overshadows U.S. Summit; Other Developments*, *supra* note 152.

177. See *id.*

178. See *id.*

179. See *id.*

180. See Dave Montgomery, *Yeltsin Nominee Rejected Again; Fiscal Crisis Getting Worse*, *RECORD* (Bergen County, NJ), Sept. 8, 1998, at A1.

181. See *id.* Zyganov also said that the Duma would impeach Yeltsin if he attempted to resubmit Chernomyrdin as candidate for prime minister. See Sharon LaFraniere, *Legislative Leaders Decry Moscow's Political Vacuum; Quick Formation of Government Sought*, *WASH. POST*, Sept. 10, 1998, at A26.

182. See Daniel Williams, *Parliament Awaits Yeltsin's Next Move; 2nd Rebuff of Nominee for Premier Leaves Crisis-Ridden Nation Facing Political Void*, *WASH. POST*, Sept. 9, 1998, at A22. Zyganov stated, "[d]issolution would not mean dissolution of the Duma, but the disbandment of the Russian Federation. A mistake by the president and his team may have the price of civil peace in society." *Id.*

183. See Daniel Williams, *Primakov Earns Broad Support Through Unclear Ideology*, *WASH. POST*, Sept. 11, 1998, at A20.

184. See *id.* Some Russian observers opined that the Primakov nomination marked the end of the Yeltsin era. See *id.*

185. See *Return of the Ancien Regime*, *WASH. POST*, Sept. 11, 1998, at A30.

186. See David Hoffman, *Diplomat is Named Russian Premier; Yeltsin Backs Down, Drops Chernomyrdin*, *WASH. POST*, Sept. 11, 1998, at A1.

1998.¹⁸⁷

C. Turmoil in 1999

The tension between Yeltsin and the Russian Parliament thickened in 1999. In April, when the Duma was scheduled to begin impeachment proceedings against Yeltsin, Yeltsin's aides indicated that Yeltsin would fire his cabinet, including Primakov, or disband Parliament.¹⁸⁸ The constitutional issue becomes more complicated here, as according to the Constitution, Yeltsin may not disband the Russian Parliament during an impeachment inquiry.¹⁸⁹ Thus, if the Duma began impeachment proceedings, Yeltsin would not be able to fire his prime minister and then threaten Duma dissolution if the Duma failed to confirm Yeltsin's new candidates for prime minister.

On Wednesday, May 12, Yeltsin fired Primakov as prime minister, just one month after the Duma voted to defer an impeachment vote against President Yeltsin.¹⁹⁰ Yeltsin saw Primakov as a threat; Primakov was too popular, too close to the Communists, and had developed his own independent political power.¹⁹¹ Immediately the Duma and the rest of the world reacted. Focus was centered on Yeltsin's perceived lack of control of Russia, his visibly declining health, and his apparent inability to function.¹⁹²

The Duma instantly voted, in a non-binding resolution, 243 for and 20 against, calling for Yeltsin to resign.¹⁹³ The Communist Party, who favored Primakov, voiced loud criticism of Yeltsin's decision.¹⁹⁴ In the meantime, Yeltsin nominated Sergei Stepashin, the interior minister and first deputy prime minister, as Primakov's replace-

187. See Reuters, *Yeltsin is Hospitalized Again for Ulcer Treatment*, N.Y. TIMES, Feb. 28, 1999, at 10. Yeltsin has been hospitalized between September 1998 and March 1999 for bronchitis, exhaustion, pneumonia, and a bleeding stomach ulcer. See *id.*

188. See Hoffman, *supra* note 160.

189. See RUSS. CONST. art. 109(4).

190. See Thomas Graham, *Yeltsin Is the Problem*, WASH. POST, May 13, 1999, at A27.

191. See *id.*

192. See *Dangerous Russia*, WASH. POST, May 13, 1999, at A26. Yeltsin changes premiers "because he can." See *id.* He is also "in uncertain control of his own faculties," as he "babbled so embarrassingly at an official ceremony that his aides persuaded Russian television networks not to air the tape." *Id.* Yeltsin has also been repeatedly referred to as looking "puffy" and unable to speak clearly. See, e.g., David Hoffman, *Yeltsin Dismisses His Prime Minister; Primakov Scolded for Inaction on the Economy*, WASH. POST, May 13, 1999, at A01; Robert G. Kaiser, *In Russia, Limited Visibility; Freer, But No More Secure in Leadership, Statistics or Tomorrow*, WASH. POST, July 25, 1999, at B01; Daniel Williams, *Yeltsin Sacks Another Premier; Russian Parliament Taps the New No. 2 as His Successor*, WASH. POST, Aug. 10, 1999, at A01; Fred Hiatt, *Yeltsin the Democrat?*, WASH. POST, July 4, 1999, at B07.

193. See Hoffman, *supra* note 192.

194. See *id.* Yeltsin's decision was called "extremely irresponsible—not from the point of view of Yeltsin, but in terms of the welfare of the country." *Id.*

ment.¹⁹⁵ At the same time, the Duma also scheduled the beginning of a debate to impeach Yeltsin, renewing the previous counts discussed above.¹⁹⁶

It is here that Russia faced a real constitutional dilemma. If the Duma voted in favor of one count of impeachment, then Yeltsin would be unable under the Russian Constitution to disband Parliament until the impeachment count(s) were decided upon by the Federation Council. The Federation Council must decide upon impeachment within three months of the Duma vote of impeachment.¹⁹⁷ Three months, however, could be an eternity if Russia was in a state of political chaos. It was unclear at the time what would happen if the Duma voted to impeach Yeltsin and then rejected Yeltsin's candidate for prime minister three times. It would not be outside the realm of possibility for Yeltsin to declare a state of emergency, as permitted by the constitution, or issue a decree changing the constitutional structure of the government.

The crisis, however, was averted when the impeachment attempt failed by seventeen votes.¹⁹⁸ The vote failed for many reasons: less than half of the Duma members were present; five out of twenty-nine invited witnesses showed up; Yeltsin was absent from view, diffusing the situation; and the state television refused to broadcast the debate.¹⁹⁹ In the end, the impeachment vote likely failed because the charges against Yeltsin attributed to him responsibility for the ills of Russia in recent years to him.²⁰⁰

A short four days later, Yeltsin's candidate for prime minister, Sergei Stepashin, was confirmed in a landslide vote of 301 to 55.²⁰¹ Stepashin was easily approved so soon after a possible impeachment crisis because "some said they were tired of confrontation, some said Yeltsin might appoint someone more objectionable if Stepashin were rejected, and some declared they have been through so many prime ministers they hardly care."²⁰²

195. *See id.*

196. *See id.*

197. *See* RUSS. CONST. art. 93(3).

198. *See* David Hoffman, *Bid to Impeach Yeltsin Defeated; Communists Lose Parliament Votes on All 5 Charges*, WASH. POST, May 16, 1999, at A21. The charge with the highest amount of votes received 283 out of 300 required to pass. *See id.*

199. *See* David Hoffman, *Effort to Impeach Yeltsin Falters; Communists Say They Will Prevail; Many Witnesses Fail to Show*, WASH. POST, May 15, 1999, at A17.

200. *See* *Bid to Impeach Yeltsin Defeated; Communists Lose Parliament Votes on All 5 Charges*, *supra* note 198. "[T]he charges against the Russian president [sic] contain practically everything that has plagued our country during the past decades." *Id.*

201. *See* Sharon LaFraniere, *Stepashin Confirmed as Russian Premier; Legislators, Docile After Impeachment Defeat, Vote Overwhelmingly for Yeltsin Pick*, WASH. POST, May 20, 1999, at A19.

202. *See id.*

Less than three months later, Yeltsin fired Stepashin, quickly naming a former intelligence officer, Vladimir Putin, as his successor.²⁰³ There was no reason for this move except that Yeltsin wanted to name his successor. Stepashin's cabinet was to remain the same and Putin seemed to offer nothing new in terms of reform or initiatives.²⁰⁴ The only difference between Putin and Stepashin was Putin's interest in running for president.²⁰⁵ The Duma confirmed Putin without incident a week later.²⁰⁶

The recent events in Russia evoke potential for crisis and cautious optimism, if that may be possible. On one hand, the constant changes in government coupled with the legislature's focus on Yeltsin's antics take the attention of the Parliament, which should be concentrating on remedying the ills of Russian society, such as economic woes and instability. In addition, all of these changes so close to Parliamentary elections in December and presidential elections in June 2000, indicate that it is futile to hope for change. There is simply no time left for any real change.²⁰⁷ The final, and most disturbing of possibilities, is that Yeltsin will find a way to draft a new constitution or amend the current one, allowing himself to run for another term, continuing the instability of the last several years. For example, Yeltsin has discussed a reunion with Belarus, a former Soviet republic.²⁰⁸ Such a reunion could be the reason behind creating a new constitution.²⁰⁹

On the positive side, crises have been averted each time they arose, and each issue was handled by remaining within the parameters of the Constitution. Yeltsin did not declare a state of emergency nor issue any decrees that would have interfered with the constitutional processes. Although elections are quickly approaching, Yeltsin has yet to make any attempt to run for another term and, indeed, has consistently stated that he will not run.²¹⁰ As it stands, Russia and the world await what the future, and a Russia post-Yeltsin, will hold.

203. See Williams, *supra* note 192.

204. See *id.*

205. See *id.*

206. See David Hoffman, *Putin Is Confirmed as Premier of Russia; Ex-KGB Operative Promises No Pre-Election Initiatives*, WASH. POST, Aug. 17, 1999, at A10.

207. As one editorial noted, "The Russian president consistently has proven himself adept in crisis, but incompetent at and uninterested in governing between emergencies. Given his unsteady health, there's no reason to expect different this time, and no scant expectation for Russia to escape its downward drift between now and the election." *Russia's Latest Drama*, WASH. POST, May 24, 1999, at A24.

208. See Hiatt, *supra* note 192.

209. See *id.*

210. See *Yeltsin Sacks Another Premier; Russian President Taps the New No. 2 as His Successor*, *supra* note 192.

D. A Parallel with the Past

In 1905, Tsar Nicholas II was an unpopular tsar largely because Russia was losing the war with Japan.²¹¹ Making matters worse, on January 9, 1905, the Tsar's advisors ordered troops to open fire on a peaceful procession of unarmed workers who were marching to the Winter Palace²¹² in St. Petersburg.²¹³ Hundreds were killed and Russians refer to the episode as Bloody Sunday and, after the incident, began to refer to the Tsar as Bloody Nicholas.²¹⁴ This led to sporadic violence and labor strikes, which caused interruptions to vital production in much of the Russian Empire.²¹⁵ Tsar Nicholas during this time created the Soviet, an ordinary word that means "council" in Russian, which was led by a revolutionary by the name of Trotsky.²¹⁶ On December 3, 1905, the police arrested members of the Soviet for political insurrection and the military quashed a similar revolt in Moscow.²¹⁷ This episode was deemed the revolution of 1905.

Despite the fact that Nicholas was still Tsar following the revolution of 1905, his power was greatly diminished.²¹⁸ As a concession to political opposition, Nicholas had allowed the creation of a State Duma.²¹⁹ A constituent body, consisting of those loyal to the Tsar, elected the Duma members and its decisions were subject to veto by the State Soviet and the Tsar himself.²²⁰ Although the Duma had very weak power, the Tsar no longer could pass legislation without the Duma's consent, thus rendering the Tsar's power no longer absolute.²²¹ But Tsar Nicholas refused to allow too many incursions on his autocratic power, and in 1906 he promulgated a set of "Fundamental Laws" which included the power of the Tsar to call elections, disband the Duma, and issue decrees.²²² Between 1906 and 1917, four Dumas were elected.²²³ The Tsar dissolved the first and second Dumas for failing to comply with his wishes, the third served the full term, and the fourth was interrupted by the 1917 Revolution.²²⁴ Dissolution of

211. See HINGLEY, *supra* note 97, at 142. The war with Japan lasted from 1904 to 1905 and concerned control of Korea. See *id.*

212. The Winter Palace was the Tsar's residence in St. Petersburg.

213. See HINGLEY, *supra* note 97, at 142.

214. See *id.*

215. See *id.*

216. See *id.*

217. See *id.* at 144-45. The capital of Russia at the time was St. Petersburg.

218. See *id.* at 145.

219. See *id.*

220. See *id.*

221. See *id.* at 145.

222. See Lien, *supra* note 10, at 62.

223. See *id.* at 62-63.

224. See *id.*

the Dumas "fueled revolutionary activity and increased terrorism."²²⁵ In response, the Tsar attempted to appease the people by instituting reform measures and heralding the beginning of a "constitutional monarchy."²²⁶ But because there was no obligation for the Tsar as the executive to compromise with the legislature and no means for ensuring that the government obey constitutional norms, the period has been described as "sham constitutionalism."²²⁷ The unrest culminated in the October Revolution of 1917, in which the dictatorship of Lenin, and eventually Stalin, began.

The parallels of the end of Tsar Nicholas' reign to the past five years in Russian history are striking. The current situation is much like the sham constitutionalism during the early part of the twentieth century. The Duma is unable to act independently and effectively apart from the president. Although Yeltsin has been, by and large, a popular president, his presidency is coming to an end and it is unclear who will succeed him. In addition, political unrest and dissatisfaction is increasing, evidenced in part by the demand of individual regions to govern themselves and the Duma's constant tension with Yeltsin. Like Nicholas, Yeltsin tries, often unsuccessfully, to implement reforms to improve the situation for Russians, while at the same time preserving his own absolute power. Yeltsin's unwillingness to yield any authority to the Duma inhibits Russia's progress towards becoming a republican democracy. The similarities with the past show the importance of Yeltsin's successor and how he will govern Russia.

V. A Look to the Future

Yeltsin's presidential term concludes in 2000, when elections will be held. No one candidate stands out as a clear front-runner. In the eight years that Yeltsin has been president, he has governed more as a tsar would, rather than a president. "Yeltsin sees himself more as an emperor and father of the nation For him it is very difficult to comprehend that he has to share power with another democratic institution, such as the parliament."²²⁸ "Power is his ideology, his friend Everything that is beyond the fight for power concerns him much less."²²⁹ Yeltsin has invested all of his policies and reforms in himself rather than engaging in compromise and debate with parliament.²³⁰ He has not created a political party.²³¹

225. *See id.* at 63.

226. *See id.*

227. *See id.* at 63-64.

228. Hoffman, *supra* note 110.

229. David Hoffman, *Yeltsin's Policies Belie Reform Image*, WASH. POST, Feb. 15, 1996, at A1.

230. Hoffman, *supra* note 110.

231. *See id.*

Yeltsin's popularity currently stands between two and three percent.²³² It is hard to believe that there could be anywhere to go but up. One can only hope that Yeltsin's successor will not have the habit of changing prime ministers like changing socks. One wonders if the unknown could be worse than the familiar. As one political analyst put it, the political possibilities for Russia's future could make America and, indeed, Russia, "nostalgic for a corrupt but friendly drunk as a partner."²³³

The election in June, 2000 is up for grabs. The Russian Constitution as written and as implemented by Yeltsin has created an extremely weak parliament with power only to complain rather than effect any real change. The Parliament has such a small role in government that political parties could not be developed to share the responsibility for government. Rule of law does not exist in Russia yet. A good starting point may be to amend the constitution to limit the power of the president.²³⁴ Although this would make a good beginning, a more important task is to implement a democratic system and a rule of law to encourage stability.²³⁵

Yeltsin's successor could easily act as dictator without any means of reproach. Indeed, the Russian people are wearied from the constant economic upheaval and insecurity.²³⁶ One committed to and concerned about the democratic future of Russia can only hope that the June 2000 election brings a new president more respectful of the rule of law and separation of powers; a president willing to govern the country consistently and effectively, within crisis and without.

Postscript

On December 31, 1999, in a surprise move, President Boris Yeltsin resigned from office, naming his then-current prime minister, Vladimir Putin, as acting president. Presidential elections were moved up to March, 2000, three months sooner than originally planned. On March 26, Putin was elected president.

Yeltsin has been able to choose his successor, much like any autocrat would. Yeltsin continued to change his prime ministers until he found a suitable successor and, once found, Yeltsin resigned less than five months later. Yeltsin consistently used the powers vested to him in the 1993 Russian Constitution, the constitution that he himself drafted, to rule as an autocrat. He has met little resistance to his ac-

232. See Kaiser, *supra* note 192; Hiatt, *supra* note 192.

233. Jim Hoagland, *Worse than Yeltsin*, WASH. POST, Sept. 12, 1999, at B07.

234. See Kaiser, *supra* note 192.

235. See *id.*

236. See Victor Linnick, *The Fault Line in Russia: A Country Nostalgic for Security Confronts the Uncertain Promise of Democracy*, WASH. POST, June 23, 1996, at C2.

tions. Now he has succeeded in hand-picking the next Russian president.

The danger in all of this is that no one knows Vladimir Putin. He appeared out of obscurity when appointed by Yeltsin in August, 1999 and only a short time has passed for Russia and the rest of the world to see who he is and for what he stands. As the next president of Russia, all we can do is hope that he will rule Russia according to the rule of law in the constitution rather than act in his own interests, using the constitution as a document granting him absolute power.