

Constitutional Law and Politics in Russia: Surviving the First Decade

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Law in the post-Stalin Soviet system became increasingly important as an instrument of governance, but until nearly the end of the USSR it remained firmly subordinate to the politics of the Communist Party (CPSU). Only in the final years of the Soviet system under Mikhail Gorbachev did law begin to achieve some limited autonomy within the restructuring political system. Constitutional law became the leading edge of this incipient change in the late 1980s. Before then, the USSR Constitution of 1977 had been amended but once in a very minor and inconsequential way. However, in 1988, Gorbachev began an extensive process of constitutional reform that radically restructured the Soviet political and electoral systems. The subsequent revision of Article 6, the clause assigning monopoly power to the CPSU, accelerated the erosion of the party's hegemonic rule. Within a few short years, Gorbachev's legal revolution from above had inadvertently contributed to the demise of the Soviet Union. Thus, on the cusp of the post-Soviet era in Russian history in late 1991 and early 1992, law had finally emerged as an essential subject of study for anyone trying to understand Russia's transition from authoritarianism to democracy and the rule of law.

Even before the end of the USSR, the Soviet Russian Republic (RSFSR) under Boris Yeltsin's leadership had been moving rapidly along a parallel track of constitutional reform, with the revision and eventual replacement of the RSFSR Constitution of 1978. After 1991, the task of replacing the document with a post-Soviet, democratic constitution, and then governing within the new constitutional parameters, proved to be arduous and challenging. Still, as we look back on Russia's first decade, we see that the young polity managed to survive no fewer than five critical moments in its difficult transition. A key factor in getting through the crises of transition was the governing elite's gradually

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deepening commitment to reliance on legal process for the resolution of political conflict. In retrospect, any one of those crises could have derailed the democratic transformation project, or even doomed it altogether. Fortunately, Russia not only survived its tumultuous decade of change and crisis, but became more constitutionally tempered and politically stable in the process.

Critical Tests of Russia's Transitional Political System

The critical moments I will briefly discuss in this essay include (a) the collapse of the first post-Soviet Russian republic in 1993; (b) internal war—the first Chechen conflict, 1994–96; (c) the economic crisis of August 1998; (d) the first transfer of power, 1999–2000; and (e) the challenge of growing a constitutional culture during the first decade, 1992–2002.

Surviving the Collapse of the First Republic

The Russian Federation survived the profound constitutional crisis between president and parliament that led in fall 1993 to the collapse of the first post-Soviet Russian republic. The constitutional collision was a consequence of the heavily amended 1978 Soviet Russian Constitution, under which the first republic was governed. A patchwork document pending completion of a new constitution, it incompatibly grafted an executive presidency endowed with strong powers onto a constitution that proclaimed parliamentary supremacy, a constitutional fiction of the Soviet period. Yes, President Yeltsin resorted to extraconstitutional means in September 1993 to overcome the deadlock and, ultimately, in response to the violence incited by parliament, shut the institution down with tanks in early October. At the end of a brief interregnum in December, however, generally free and fair elections for a new parliament were held simultaneously with a referendum on a post-Soviet Russian constitution. Indeed, Yeltsin had ensured that the draft charter favored a strong executive, and the turnout numbers required for a legally certified referendum were apparently fudged, but contrary to dire predictions in Russia and abroad, there was no return to authoritarianism.

Conversely, Yeltsin accepted the limits of the 1993 Constitution that launched the second republic, and subsequently he never fully used his considerable constitutional powers. As early as February 1994, although not without grumbling, the president acceded to the new State Duma's exercise of its constitutional power of amnesty, which effected release of Yeltsin's erstwhile major opponents of the late first republic, who were then under criminal investigation for initiating the violence of the final confrontation of October 1993. In addition, not long after, in spite of the constitution's centrist bias, Yeltsin agreed to a bilateral treaty with the restless Republic of Tatarstan, thereby beginning the longer-term process of negotiating power-sharing treaties with subjects of the Russian Federation. Over the next several years, this resulted in a substantial devolution of the central government's powers. Although power-sharing would later go to excess, in the near term the treaties helped avert the possible political fragmentation of the federation.

Surviving Internal War—The First Chechen Conflict

The Russian-Chechen conflict had its roots in the nineteenth century, but its twentieth-century reincarnation first arose in fall 1991. The Soviet Union was disintegrating as the union republics moved toward the exits, declaring not only sovereignty but their independence from the USSR. The Chechen minority, which is concentrated in a small administrative enclave within the Russian Republic, seeing an opportunity to free itself from Russian dominion, declared its independence. Yeltsin and the Russian leadership, then embroiled in their final face-off with Soviet president Gorbachev, denounced the Chechen declaration, but had neither the necessary resources nor the political will to undertake action against the secessionist

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Chechens at that time. During the fractious first republic, Russia relegated its Chechen problem to the political back burner until December 1994 of the second republic, when Yeltsin’s generals persuaded him that the Chechens could be brought to heel through a brief show of force.

Thus was launched the first Chechen war, which, in spite of confident assurances to the contrary, raged on for nearly two years with terrible human losses. The internal war, in which the greatly outnumbered and outgunned Chechens bravely and often effectively took on the Russian armed forces, was not without its political costs for the new polity being constructed from the constitutional blueprint of the Second Republic. Paradoxically, however, not only did the fledgling Russian constitutional system withstand the strains of internal war, but elite opposition to the conflict helped strengthen the constitutional separation-of-powers doctrine and the embryonic system of checks and balances.

Negative fallout for Russia from the Chechen war included the demonization of the Kremlin’s critics; ethnic scapegoating of the Chechen minority, especially those living outside the republic; and the sidetracking of at least one important piece of pending legislation, the draft Federal Constitutional Law on the Ombudsman, or commissioner of human rights. At the same time, however, the unrelenting military conflict had the surprising effect of accelerating Russian state-building. Elite opposition in the Duma, the lower house, brought forth the first attempt, albeit abortive, to amend the 1993 Constitution. Opposition to the president’s internal war policy also encouraged deputies to become more assertive toward the executive, which contributed to the first no-confidence vote in the government, in summer 1995. A few years later, the Chechen war became a key issue in a major attempt to impeach the president. Although the required reconfirmation of the Duma’s no-confidence vote failed, and the impeachment drive eventually fell short, both moves signaled greater parliamentary activism in challenging executive power.

Political opposition to the Chechen fighting also sped up the re-emergence of the Constitutional Court, which President Yeltsin had suspended during the last days of the first republic in 1993. A new statute for the court had been signed into law during summer 1994, but then months went by before the upper house, the Federation Council, and the president could agree on the judicial nominees to fill the six vacancies in the enlarged nineteen-member court. The infighting over judicial selection between Yeltsin and the senators became so intense that in a few instances, the president even defiantly resubmitted nominees already resoundingly rejected, only to see consent withheld once again. Political gridlock over the make-up of the court was looming when Russian forces invaded the Republic of Chechnya.

In addition to the proposed constitutional amendments to limit executive power, the fighting provoked parliamentary petitions to the pending second Constitutional Court to review the constitutionality of the executive decrees on the basis of which Russian armed forces had been dispatched “to restore constitutional order” in breakaway Chechnya. The catch, however, was that the court could not convene until the last remaining seat was filled. Under the circumstances, the Federation Council quickly confirmed the president’s final nominee, thereby completing the rehabilitation of the Constitutional Court as the principal component of the third branch of the constitution’s separation-of-powers doctrine. The fact that, several months later, the court reviewed the parliamentary petitions and essentially affirmed the Kremlin’s Chechen policy did not diminish the tragic irony that the war had indirectly contributed to democratic state-building in Russia in the longer run.

Surviving the August Economic Crisis

Russia’s endemic economic crisis reached catastrophic proportions in August 1998, bringing the political institutions of the country and those who ran them to a level of public disrepute unknown up to that time in the second republic. Yeltsin’s approval rating fell to the statistically nebulous zone of 3 to 5 percent, signaling the nadir of his presidency. Yet, in spite of the economic calamity and severe political perturbations, the Russian polity not only weathered the August crisis, but due to Yeltsin’s tactical political weakness, parliament at last gained traction to exercise some leverage over the all-powerful executive branch. Although parliament’s political advantage eventually eroded, the crisis did establish a new benchmark for the developing legislative-executive culture within the framework of the constitution.

Russia’s economic problems had deep roots, but the train of events leading to the August crisis began in spring 1998. Yeltsin, having dismissed his long-time prime minister, Viktor Chernomyrdin, asked the Duma to give constitutional advice and consent to a relatively unknown, politically inexperienced replacement. The opposition-dominated lower house balked, rejecting the nomination twice until, under threat of constitutional dissolution, the deputies confirmed Sergei Kirienko as prime minister. Nevertheless, it was a pyrrhic victory for the president since his new head of government could not push through the parlia-

ment an austerity package promised as quid pro quo for an international financial bailout to stabilize the shaky ruble. In this environment, Russia devalued the ruble and defaulted on its foreign and domestic debt, bringing about the collapse of its stock market as well as numerous banks, and plunging the population to new depths of economic despair.

Predictably, the president again fired his prime minister. Yeltsin then desperately sought to restore political stability and economic credibility by asking Chernomyrdin to return as head of the government. The veteran politician, however, set conditions. Chernomyrdin insisted on more authority to choose his ministers and more autonomy for the government within the executive branch. The president, with little choice, conceded these conditions and sent Chernomyrdin's name to the Duma, where he was quickly rejected by an embarrassingly large margin. Now facing an emboldened lower house no longer intimidated by the threat of dissolution, Yeltsin was forced to negotiate to secure his prime ministerial choice.

Parliament's negotiators demanded, and the president conceded, his support for long-sought constitutional reforms that would rebalance legislative-executive relations by giving the two houses a degree of authority and control over the government, its personnel, and its programs. However, at the eleventh hour, the major opposition faction pulled out, the deal collapsed, and Chernomyrdin was resoundingly rejected for a second time. At that point, Yeltsin, acknowledging political reality, put forward an acceptable compromise candidate who promptly won confirmation. Although the president was no longer bound to support constitutional reforms since the deal had fallen through, he nevertheless permitted Prime Minister Yevgeny Primakov to carry out some of the prospective changes on a de facto basis. Russia was again severely tested, but in the wake of the August events, the shaken polity emerged with its resilience tempered by crisis.

Surviving the Transfer of Power

Democratic theorists argue that the first transfer of power is a crucial success indicator in the transition to democracy. During late 1999 and early 2000, Russia successfully passed this test. The process was not pretty, but a peaceful transfer of power from the country's first elected chief executive to his successor was accomplished. Although the transfer was unorthodox, it did take place within the prevailing constitutional and legal frameworks for presidential succession, or to paraphrase a prominent American politician, within "controlling legal authority." In effect, Yeltsin was within his constitutional authority to resign preterm at the end of 1999, an act that automatically conferred on his preferred successor, Prime Minister Vladimir Putin, the title of acting president pending a special presidential election mandated by the constitution. Yes, Yeltsin's surprise resignation and the ensuing abrupt and brief election campaign favored incumbent Putin, and some fraud was detected in the balloting, but not even the distant runner-up, Genady Zyuganov of the Communist Party, argued that Putin would not have easily won a run-off election if he had failed to poll the requisite 50 percent in the first round of the special election.

Learning to Play by the Rules of the New Game

In the course of any one of the preceding transitional crises, Russia could well have slid from the path of democratic development. For instance, in fall 1993, after shutting down parliament and suspending the Constitutional Court, Yeltsin enjoyed unlimited power and might have governed indefinitely by means of presidential decree, but he chose not to. Instead, he decreed new parliamentary elections, the outcome of which, as it turned out, backfired on him politically and promoted the ratification of Russia's first post-Soviet constitution to bring an end to the deadly constitutional stalemate created by its patched-up 1978 predecessor.

Similarly, in the first Chechen war, the Russian Federation could have fought on at full bore, rather than lower the intensity of the Russian-Chechen conflict to its present levels. In summer 1995, a majority of the Constitutional Court had given its blessings to the president's authority to wage war to curtail Chechnya's defiance of the constitution. Instead, Yeltsin began to wind the war down in spring 1996, a policy change driven by his desire for re-election. True, he considered canceling the election when he thought his chances for a second term hopeless, but he was persuaded to play by the election rules and went on to win a decisive runoff victory despite debilitating illness. Likewise, the 1998 financial collapse presented a classic situation ready made for backsliding to familiar authoritarian solutions, but the Russian political class instead skillfully navigated a safe passage through troubled waters, using the constitution as an arena for discourse, compromise, and the peaceful resolution of conflict. Finally, the initial transfer of political power in a transitional polity is always potentially fraught with dangers: An incumbent might invoke emergency powers or change the rules; frustrated power-seekers could attempt a coup; or putative successors might irreparably divide society by waging a divisive, no-holds-barred election campaign. Fortunately, Russia did not fall prey to any of those dangerous possibilities.

Thanks to strategic incentives built into the constitution that induce presidential self-restraint, the chief executive, as well as the major parties, factions, institutional actors, and individual players, consistently stayed within the parameters of the new constitutional order. Within the Russian political class, it might be said, a democratic constitutional culture has been steadily evolving in the course of the second republic. Although occasional flirtations with extraconstitutional measures did occur during the first decade of Russian constitutional law and politics, ultimately all major actors acquiesced in the electoral outcomes and played by the rules of the new, democratic political game.

Conclusion

As Russia moves forward beyond its transitional years, the Constitutional Court has become increasingly important in setting the pace, tone, and direction of further constitutional development. Although implementation of some court decisions during the 1990s was a problem, and other rulings were unpopular with one or another constituency, overall the institution grew in stature within the new Russian political system. In particular, the second Constitutional Court, re-established in 1995, has steadily accumulated political and moral capital essential to

its mission within the constitutional system and, in the process, accrued the respect, or at least the political deference, of all significant players in the political game. One hopes that the court will continue to serve as a source of stability in the future, helping to reduce the volatility that characterized Russia's constitutional law and politics during its first post-Soviet decade.