The Path to the New Russian Constitution

A Comparison of Executive-Legislative Relations in the Major Drafts

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The process of constitution-making in post-Soviet Russia was long and torturous, involving multiple drafts from the major factions drawn up over three years, bitter negotiations, and ultimately violence. But while the environment in which the debate occurred shifted repeatedly, the most significant issues remained fairly constant: executive-legislative relations and the nature of the federation. These two issues were the centerpiece of a multifaceted negotiation that occupied the political scene for most of 1993. This article examines the conceptual evolution of the executive-legislative relationship during three stages of the process: the preliminary drafts presented by the Parliamentary Commission on the Constitution and the Yeltsin team, the subsequent reconciled drafts that emerged from the Constitutional Assembly, and the final amended draft that was adopted in a nationwide referendum on 12 December 1993.

It is now commonplace to label this document "Yeltsin's constitution." While this is a convenient label, which is not altogether inaccurate given the large hand the president had in its elaboration—especially in the final amendments—it presents a distorted view of the constitution's origins.[1] This document emerged from a protracted process of relatively open negotiation among a large number of politicians, legal experts, and representatives of social groups. As most of the commentary surrounding the release of the new Russian constitution pointed out, the president has substantial, perhaps decisive, powers over both the government and parliament. But it is important to note that the powers granted to the president were only slightly enhanced with the November revision—assumed by many to be Yeltsin's revenge on parliament for the October rebellion. In fact, many of the president's most significant powers were present in the parliament's draft, including his right to issue decrees and declare states of war and emergency with virtually no limitations.

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Despite the sometimes imperious quality of the president's interventions and the decisive defeat of parliament in the October events, it is reasonable to argue that the constitution indeed reflects a consensus that developed over three years—at least among the political elite—to establish a system of government that endows the executive branch with extensive powers and limits the ability of the legislative branch to influence policymaking directly. This article contends that the constitutional document can, therefore, claim some legitimacy as a codification of a governing formula agreed upon in advance by the relevant political actors through the protracted drafting process.

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Prior to October, the negotiating process was unusually open and fostered broad participation, a fact that could have provided a procedural basis for the eventual document's legitimacy. With the violent interruption of the process in October that foundation may have been irreparably damaged, but what cannot be denied is the degree to which the final constitutional document—despite Yeltsin's last-minute tinkering—remained true to the principles expressed in the original debate. This, then, has provided the basis for the Constitution's legitimacy and explains why none of the political elite have seriously questioned it, despite evidence of electoral irregularities surrounding its adoption.

Stage I: The Presidential and Parliamentary Drafts Compared

Constitutional reform has been on the political agenda in Russia since Gorbachev initiated the process of regime change in the late 1980s. With the demise of the Soviet Union in 1991, however, significant amendments to the Basic Law to reflect the new reality of an independent Russian Federation became inevitable. By the end of 1993, the 1978 constitution had been amended over 300 times, leading to internal contradictions and a general bewilderment about the legal framework of the state. As the polarization of forces and the collapse of the economy proceeded, these legal ambiguities became a focus of political debate and a weapon in the battle between the reformist Yeltsin forces and the conservatives based in parliament.

Although some among the conservatives still hold that reform of the existing constitution was the appropriate response to the confusion, by the spring of 1992 most political forces recognized that adoption of a new Basic Law was inevitable and—if they hadn't already—began to develop their own constitutional projects. Of the many proposals presented, two were the focus of most attention—one drawn up by the Constitutional Commission of the Parliament, headed by Oleg Rumyantsev, and the other by the executive branch, written by Boris Yeltsin's advisors, most notably Sergei Alexeev and Sergei Shakhrai.[2] What is perhaps most striking about these documents is their general convergence on some of the most important institutional issues.

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There were clear differences, to be sure. The parliamentary draft was considerably more detailed and precise, betraying its long gestation as well as a commitment to the continental model of constitution-making. Moreover, this draft was more clearly linked to Soviet constitutional precedent through its protracted definition of the political economy of the new regime, an issue that was given little attention by the presidential draft. (See for example, Parl. Arts. 8, 9, 34-38, 57-61; Pres. Art. 21-23). And, not surprisingly, since the document was the work of members of the legislative branch, it envisioned a parliament with a significant role in policymaking. Nevertheless, it is somewhat surprising to note that the parliamentary draft does not outline a typical parliamentary system. Indeed, in some cases the parliamentary draft granted somewhat greater powers to the president than his own draft did.

Given the provenance of the two drafts, they are unexpectedly similar in critical areas, and it is those similarities that were more important in the long run and allowed for the relatively smooth reconciliation of the drafts at a constitutional assembly, called for that

purpose by President Yeltsin in June 1993. What follows is a comparison of the presidential and parliamentary drafts focusing on the distribution of powers between the executive branch and the legislature.

The Presidency

Both drafts agreed that the president is to be chosen by popular election to a five-year term—limited to two consecutive terms—and serves as the head of state. Moreover, there was general agreement on the duties and powers associated with that position. The president's primacy in the area of foreign policy was clearly established, with both drafts stipulating that he has the right to represent Russia abroad and to negotiate and sign international treaties. In the same vein, he was also granted substantive control over the military, serving as the head of the Security Council and commander-in-chief of the armed forces, appointing the military high command, and retaining the right to declare states of emergency or martial law.

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In domestic policymaking in both projects, the president is responsible for signing federal laws and nominating candidates to the highest positions (the chairman of the government, his deputies and ministers, justices of the highest courts, procurator general, and chairman of the Central Bank), but appointments are to be made by the parliament. Similarly, the president has the right to submit draft laws to the parliament, but the government is described as the "executive" body and as such is assumed to be the primary originator of policy. He also exercises the ceremonial powers of granting awards, pardons, asylum, and delivering to parliament an annual message on the state of the nation.

In both drafts, the president's most significant powers in domestic affairs rest in his ability to take decisive action in extraordinary circumstances. His right to declare a state of emergency or a state of war may not require parliamentary concurrence. In the presidential draft, the only stipulation is that the president must "inform" the Federation Assembly without delay of the existence of these decrees (Pres. Arts. 76, 77). Both also state that the parliament—the full parliament in the parliamentary draft, only the upper house in the presidential—may also declare states of emergency, but there is no requirement for approval of presidential action (Pres. Art. 96; Parl. Art. 86, para. 1q).[3] Apparently, the drafters assumed that the situations requiring this kind of response would be sufficiently obvious to require no more detailed limitations. Indeed, both drafts give the president the general right to issue decrees with few stipulations on when that power may be invoked. Only the parliamentary draft notes that this right pertains to "edicts and directives that are by nature executive acts" (Parl. Art. 93, para. 2). But the absence of further definition of what constitutes "executive acts" gives the president immense potential power and seems to imply a general acceptance of the principle of a strong leader who is ultimately responsible for the security and well-being of the nation.

While the outlines of the president's duties were generally consonant between the two drafts, there were differences, some rather obvious, others more subtle. Most obviously, the parliamentary draft envisioned a vice president elected in the same vote as the president

(Parl. Art. 92, para. 4). However, nowhere in the document were the duties of this office spelled out. This is particularly surprising since the parliamentary draft as a whole is exceedingly detailed in most of its provisions. The drafts also differed on who can call a referendum, with the parliamentary draft reserving that right to parliament (Parl. Art. 86, para. 1d) while the Yeltsin draft granted it to the president (Pres. Art. 74).

Generally, however, the parliamentary project granted the president substantial powers, even in some cases greater than those in the presidential draft itself. In particular, despite the presence of a vice president in the parliamentary draft and its statement that the government—the prime minister and the cabinet—is the head of executive power (Parl. Art. 97, para. 1), it in fact gave the president decisive control over the executive branch. Perhaps indicative of the government's subordination was the absence of a separate chapter on it in the parliamentary draft.

In the original Yeltsin draft, the government was empowered to issue decrees (Pres. Art. 110); in the parliamentary draft, the government was limited to issuing resolutions and instructions that could, however, be countermanded by the president (Parl. Art. 97, para. 4). Likewise, it stipulated that the president, not the prime minister, must submit a budget to parliament (Parl. Art. 93, para. 1h). Also in the parliamentary draft, the president was given the right to chair meetings of the government, which would, presumably, give him effective control over the proceedings (Parl. Art. 93, para. 1c). More subtle, but potentially significant, were slight differences in the wording governing the president's relationship with the government, with the parliamentary draft more clearly establishing its subordination to the president. According to the parliamentary draft, the president "appoints" the chairman (the prime minister) and other members of the government "with the concurrence of the parliament " (Parl. Art. 93, para. 1b). The presidential draft, in contrast, stated that the president "submits to the [parliament] a candidacy" for the post of prime minister, but appoints other members of the government "upon the recommendation of the chairman of the government and after consultation with the Federation Council," the upper house of parliament (Pres. Art. 73). In effect, then, the parliamentary draft envisioned presidential dominance of the executive more clearly than the presidential draft itself did.

Although clarity in the relationship between the government and the president avoids the most troubling aspect of a dual executive modeled on the French system, it severely limits the parliament's ability to check the actions of the executive branch.[4] In a typical parliamentary system—and in the French system itself—the accountability of the government to the parliament is the principal mechanism for parliamentary influence in policymaking. Perhaps the parliamentary drafters were willing to relinquish this power because they were counting on the vice president to provide the institutional counterbalance. But if that were the case, one would expect to find the duties of the vice president spelled out in some detail. As noted above, they were not. It would appear then, that the parliamentary drafters shared with the presidential team a preference for a presidential regime.

The most important divergence by far, however, is the proposal in the presidential draft to give the president the right to dissolve the parliament (Pres. Art. 74). While both projects give the president the right to call elections, only the presidential draft stipulates that he may unilaterally dismiss the Federation Assembly. This right may be invoked in the event that the lower house, the State Duma, rejects the president's proposed candidate for chairman of the government three consecutive times. After the third rejection, the president

has the right to dissolve the house and call new elections. The power of dissolution gives the president a formidable, even overwhelming, weapon in the event of a conflict between the legislature and the executive. The counter to this power is the parliament's ability to impeach the president, but in both documents the procedures are convoluted and severely limit the parliament's ability to use this action as a counterweight to the president.

The Parliament

In both drafts, the parliament—the Federation Assembly in the Yeltsin draft, the Supreme Soviet in the parliamentary—was bicameral. (The lower house was named the State Duma in both; the upper house being the Federation Council in the presidential draft, and the Federation Assembly in the parliamentary.) Members of the two chambers were to be simultaneously elected to four-year terms, though by different methods, and were guaranteed immunity. In line with its primary function of general representation, the Duma in both cases was to consist of three hundred deputies elected from territorial districts. The presidential draft does not specify the nature of those districts; the parliamentary draft mentions both single-mandate and multi-mandate districts, and states that each constituent unit of the Federation must be represented by at least one deputy (Pres. Art. 85; Parl. Art. 85, para. 2).

The upper house, in contrast, was clearly designed to represent the component regions of the Federation. Reflecting the controversial nature of the Federation, however, the exact size of the upper house was not specified in either draft, and the formula for electing deputies was complicated and somewhat ambiguous. The presidential draft stated that two deputies were to be elected "from each component of the Federation," but then went on to state that "additional" deputies were to be elected from republics, autonomous *oblasts*, and autonomous *okrugs* (Pres. Art. 85). The parliamentary project offered two electoral variants for the upper house. The first specified that two deputies would be elected from each republic, *krai*, *oblast*, and autonomous *oblast*, and one deputy from each autonomous *okrug*, specifically delineating the distinctions among the constituent units of the Federation and, most notably, granting krais status equal to republics. A second version was closer to the presidential formula, stipulating that the upper house—the Federation Assembly—was to consist of no more than two hundred deputies, with at least 50 percent elected by the republics, autonomous *oblasts*, and autonomous *okrugs* (Parl. Art. 85, para. 3).

The parliamentary project made no distinction between the two chambers: the full range of legislative powers were to be held jointly. And those powers were to be substantial, including amending the Constitution, ratifying changes in the status of components of the Federation, ratifying international treaties, approving the federal budget and fiscal and monetary policy, consenting to the president's choice of members of the government, appointing justices to the high courts and the chairman of the Central Bank, and, perhaps most important, holding the right to impeach the president, vice president, the chairmen of the Supreme Soviet, and high court judges. All of these powers were consistent with those granted to parliament in the president's draft. In addition, however, the parliamentary draft gave the Supreme Soviet "oversight powers," extending to the determination of the "basic directions of foreign and domestic policy," a phrase ripe with possibilities for conflict with the president (Parl. Art. 86).

The presidential draft was only slightly more precise in distinguishing between the chambers, granting relatively more powers to the upper house (Federation Council),

including the right to appoint high officials, ratify foreign policy, declare states of emergency and war, and impeach the president (Pres. Art. 94-96). The only responsibilities to be held jointly, according to the presidential draft, were amendments to the Constitution, admission of new members to the Federation, adoption of the federal budget, and examination of the president's annual message (Pres. Art. 92). The State Duma's responsibilities were limited to fiscal and monetary policy, declaration of amnesties, and the establishment of state awards (Pres. Art. 99). Furthermore, the Federation Council was granted a virtual veto power over decisions of the Duma, which could then be overridden by a two-thirds vote of the Duma, but underscored the lower house's subordination in the original presidential project (Pres. Art. 102). Finally, the presidential draft stipulated that members of the Duma may not simultaneously be members of the Federation Council (Pres. Art. 87).

In general, therefore, the parliamentary and presidential drafts differed more noticeably on the powers of parliament than on those of the president, with the parliamentary project envisioning a cooperative relationship between the legislative and executive branches. Nevertheless, even in the parliamentary draft, the legislature's powers were more potential than actual. As in the French system, the notion of checks and balances between the branches was embedded in the text, but was not mandated. In practice, it is likely that the parliament's role would be more dependent on the willingness of the president to share policymaking responsibilities than on any independent legislative resources. An aggressive, popular president could easily dominate the policymaking process if he so desired; if the parliament proved to be recalcitrant, he could use his substantial independent powers and ignore the legislature. On the other hand, a president willing to include the parliament in policymaking could, in practice, enhance the parliament's role.

Thus, the institutional relationship between the executive and the legislature outlined in the parliamentary document was mutable and could change substantially depending on presidential styles, the political environment, and the policy agenda. This flexibility could be useful in that it would allow the political system to accommodate a wide range of situations over time without necessitating frequent amendments —clearly a benefit in a rapidly changing and crisis-ridden environment. At the same time, however, it put the legislature in a rather subordinate position and again seemed to emphasize the underlying preference for presidential dominance.

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Stage II: The Constitutional Assembly, June-July 1993

A constitutional conference was called by Yeltsin with the goal of producing a single, authoritative project that would then be adopted as the Basic Law, thereby resolving the constitutional crisis that he considered "the main obstacle to implementation of reform."[5] Claiming the authority to proceed with his agenda based on the April 1993 referendum, Yeltsin issued a decree on adoption of a new constitution by 10 June, making it clear that his draft was to be considered the basis for discussion, but admitted the possibility of

amendment after a discussion of principles and a detailed analysis of alternative proposals by the conference.[6] At the same time, he reiterated the importance of both the 1990 Declaration of State Sovereignty of the Russian SFSR and the 1992 Federation Treaty as foundations for the new constitution.

Preparations for the conference began in May with the dispatching of "representatives of state structures and specialists in the field of law" to the constituent republics and regions to solicit additions or amendments to the president's draft and ensure the correspondence of republic constitutions and the proposed Basic Law.[7] Yeltsin's proposal of a constitutional conference precipitated a split within the leadership of the Supreme Soviet. Speaker Ruslan Khasbulatov remained adamantly opposed to the conference, characterizing it as "one way of unconstitutionally adopting a Constitution." Deputy Speaker Nikolai Ryabov and Chairman of the Council of Nationalities Ramazan Abdulatipov, while acknowledging the unconstitutionality of the president's actions in calling the conference on his own authority, nonetheless urged the parliament to participate in the formulation of a new Basic Law using the presidential draft as the basis for discussion.[8] At the same time, Ryabov proposed that the Supreme Soviet authorize the convening of a constitutional conference whose delegates would consist of members of the parliament's Constitutional Commission and two representatives from every member of the Russian Federation.[9] Faced with this conflict, the Supreme Soviet split the difference, sanctioning the constitutional conference, but maintaining that the "only version" to be considered was that produced by the parliamentary commission.[10]

With this modulated, but indispensable, imprimatur from parliament the Constitutional Conference was convened on 5 June with three goals, according to Sergei Filatov, the president's chief of staff: the writing of a single draft constitution, the establishment of a method for its adoption, and a preliminary decision on the process of electing a new parliament.[11] The composition of the membership was considerably more diverse than that envisioned by Ryabov's counterproposal. A total of 762 representatives of a broad political and social spectrum convened in Moscow, divided into five working groups representing different interests.[12] These groups considered the original draft article by article along with summaries of more than 2,000 comments and proposals. Each group discussed and voted on the amendments, with a simple majority determining the group's position. Reports from each group were compiled and analyzed by a "constitutional arbitration commission" under the direction of Academician Vladimir Kudryavtsev, charged with collating the results of the discussions and presenting a final revised draft.[13] This process took somewhat longer than was hoped, requiring an additional two weeks to resolve problems and necessitating a final reconvening of the conference participants in a plenary session on 26 June where the reconciled draft was approved.

The Conference Draft Constitution—July 1993

The document that emerged from the conference, though based on the presidential draft format, was indeed a new document. Only three articles in the president's draft were left unchanged, and a number of elements from the parliamentary project were incorporated into the reconciled draft. A new chapter originating from the Federation group was added on the "Foundations of the Constitutional System" that defines the fundamental principles of the new Russian system. These include a republican form of government, federalism, the separation of powers, the priority of human rights, the unity and indivisibility of the state,

the equality of all forms of ownership, and a multi-party system. All of these principles were embedded in Yeltsin's original draft, but the separate chapter was largely incorporated from the parliamentary draft.

The Presidency

The most important changes to the presidential draft occurred in the chapters detailing the separation and distribution of powers between the president and the parliament, leading to a slight decrease in the president's influence over the other parts of government, particularly the regions. The underlying principle in the decisionmaking on these issues was that no one can be a judge in his own case. Accordingly, the description in Yeltsin's draft of the president as the "arbiter in disputes" between state organs (Pres. Art. 80) was deleted, after apparently bitter complaints from both parliamentary and republican representatives.[14] Presidential veto of legislation was also ratified, but could be overridden by a two-thirds vote of the Federation Assembly and was specifically prohibited in the case of Federation Constitutional Laws (Arts. 106-7).[15] In addition, the president's term was shortened to four years instead of five, making it equal to the parliament's and ensuring that the electoral fate of the president would be linked to some degree with that of the deputies.

In compensation, however, his right to dissolve parliament was affirmed (Arts. 84,109, 116), but with some added restrictions. First, dissolution was limited to the State Duma only, and there was a narrowing of the circumstances under which it may occur. Whereas the Yeltsin draft's rather broad language allowed dissolution in two cases—when the Duma refused to accept the government proposed by the president and "in other circumstances when a crisis of state power cannot be resolved" the new language restricted the right to cases when the Duma refuses to accept the president's nominee three consecutive times, or votes no confidence in the government twice in three months. And it specifically prohibited its use in the following circumstances: within the first year after parliamentary elections, during a state of emergency or a process of presidential impeachment, or within six months of the end of a presidential term of office.

The impeachment process was modified (Art. 108), largely adopting the language from the parliamentary draft that clarified the procedure and, in fact, increased the safeguards for the president against arbitrary charges or political manipulation of the process. As the conference draft reads, the process is quite complicated, involving an accusation lodged against the president by the State Duma of state treason or another grave crime. The Federation Council then must vote on the accusation, but only after a thorough judicial review of the process. In both chambers these actions must be initiated by not less than one-third of the total membership and receive two-thirds support. The Constitutional Court must determine if the Duma has followed appropriate procedure and the Supreme Court must confirm that the accusation is sufficiently supported by evidence to warrant further action. This last stipulation was a change from the language of the parliamentary draft, which gave the Constitutional Court responsibility for adjudicating the reasonableness of the accusation and was likely a reaction against the Constitutional Court's politicization and its tendency to side with parliament against Yeltsin.

The Parliament

As for parliament, the reconciled draft adopts the names from the presidential draft for the individual chambers and clarifies somewhat the division of responsibilities between them,

distinctions that had been virtually absent in both the original drafts. According to the conference draft, the Duma appears to have primary responsibility for legislation (Art. 102), while the Federation Council provides the institutional check on the president (Art. 101). For individual members there are additional limitations on their activities outside parliament. The restriction against dual parliamentary mandates that was present in the presidential draft remains intact, but is extended to positions in local government as well. Moreover, members of both chambers are prohibited from pursuing any income-producing activities other than "teaching, scientific or other creative activities." (Art. 97)

The lower house, the State Duma, was by far the beneficiary of the conference revisions. As noted above, in both the Yeltsin and parliamentary drafts, the lower house had no clear role beyond serving the symbolic function of representation. As a result, the method of its election was spelled out in detail, but in neither text was it clear what the lower house was to do. In contrast, the Federation Council's duties were clear, but its composition and method of election or appointment were vague at best. In any event, the Duma's power relative to the Federation Council was significantly expanded. Its representational function remained intact; in fact, its size was increased from 300 to 400 deputies (Art. 94), but it now appears to have been intended as the primary legislative house, having first crack at most draft laws (Art. 102). Moreover, the Federation Council's control over legislation is limited to a mandatory "consideration" of the Duma's actions on only a specified list of issue areas (Art. 105). Of course, these are the most important policy areas, including all monetary and financial questions, ratification of treaties, and war and peace, but that oversight is undermined by the retention of the Duma's ability to override a rejection or revision of legislation by the upper house by a two-thirds vote (Art.104). Even more important, the Duma wrested from the upper house what is typically the most important vehicle of parliamentary control over the executive: the right to choose the chairman of the government from the candidates nominated by the president (Art. 102,111).

Indeed, the Federation Council of the conference draft is substantially weaker than the upper house in either of the original drafts. Nevertheless, the Federation Council retains potentially significant responsibilities. It must confirm [*utverzhdenie*] any changes of borders between constituent territories of the federation and affirms or acknowledges [*podtverzhdenie*] presidential decrees of state of emergency or war (Art. 101, paras.b, c). These terms seem to imply the need for positive ratification of boundary questions, but only a passive acceptance of the extraordinary states. This would represent a dramatic weakening of parliament's powers relative to the president. In the Yeltsin draft (Pres. Art. 96) and the parliamentary draft (Parl. Art. 86) the parliament—the Federation Council in the former, and the whole Supreme Soviet in the latter—was empowered to declare or cancel states of emergency or martial law and even mobilize the armed forces. That power is now apparently exclusively the president's.

Similarly, the Federation Council is charged with "deciding the question" of using Russian armed forces outside of Russian territory (Art. 101, para.d). This seems to be a rather vague way of giving the parliament some role in determining questions of war or peace. As the commander- in-chief of the armed forces, the president retains the right to take immediate action in the event of attack, including the declaration of a state of war, but it seems that the drafters intended to limit the unilateral decisions of the president to defensive actions.

Stage III: The Revised Constitution of December 1993

At this point, the political reality of presidential-parliamentary rivalry intervened to short-circuit the constitutional process for a time. Although the reconciled draft had been approved by the members of the conference, the Supreme Soviet, acting on the urging of its speaker, Ruslan Khasbulatov, refused to ratify the document and instead produced yet another parliamentary draft on 14 July, the day the conference draft was issued. A new process of negotiation was started in August, culminating in the formation of a Constitutional Commission working group by presidential directive on 8 September.[16] With Nikolai Ryabov as its head, the working group consisted of sixteen deputies and six experts and was charged with reconciling the conference draft with the new parliamentary text and presenting proposals for a single agreed-upon text by 15 September.[17] The Supreme Soviet, in turn, appointed a parliamentary delegation to "hold consultations with the President" to work out a compromise.[18]

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Ryabov announced that the intention of the working group was to "compare the two draft Constitutions and select the best parts of each."[19] In fact, despite the continued refusal of the parliament to accept the draft that emerged from the conference in June, its new draft was, for the most part, little changed from its previous document, and the working group quickly came to some conclusions that, in essence, reiterated the decisions made at the conference. On 16 September, Ryabov stated that the group had decided that the Federation Structure section was better in the president's version, while the Civil Society and Citizens' Rights sections were better in the parliament's draft. However, it was decided to rewrite the System of State Power section—the description of executive-legislative relations—from scratch in order to "find a compromise between a purely presidential and a purely parliamentary form of government."[20]

It was this section that had been reworked in the new parliamentary draft to respond to the most glaring deficiencies in the original. In particular, this draft had a separate section stipulating the duties of the vice president (Art. 97). The new language clarified the vice president's position as next in the line of succession in the event of the president's incapacity or early retirement, but the nature of the vice presidency in normal times remained vague, with his duties to be defined solely by the president himself. Although this section filled in an obvious gap in the original draft, it in no way altered the president's dominance of the executive branch, nor did it explain why the office of vice president was considered necessary.

The new parliamentary draft also changed slightly the relationship between the president and the government, enhancing somewhat the latter's autonomy. For example, it stated that the resignation of the president did not demand the simultaneous resignation of the government (Art. 99, para. 5). Nevertheless, according to the rest of the document the president retains his dominance within the executive branch, including the right to overturn resolutions and directives of the government (Art. 98).

As in the original parliamentary document, the two houses of parliament shared legislative duties. The one case where the previous document made a distinction between them—the impeachment process—was amended to give either house the right to initiate the impeachment process with the final determination left to the other chamber. Otherwise, the articles governing executive-legislative relations remained essentially intact.

In short, the new parliamentary document was little changed from its predecessor, which itself was not vastly different from the draft that emerged from the conference. Why, then, did the Supreme Soviet refuse to ratify the conference draft and insist on issuing its own amended version? Apparently this decision was made by the parliamentary leadership—that is, Khasbulatov—rather than members of the Constitutional Commission itself who generally accepted the reconciled conference draft as a reasonable compromise, even if flawed in some aspects. The problem seems to have been more symbolic than substantive. Khasbulatov continued to insist that only the parliament was empowered by the existing constitution to adopt a new Basic Law; accepting the conference draft, therefore, would represent an abrogation of responsibility. Perhaps more important, however, the constitutional question was increasingly seen as the central battleground in the conflict between president and parliament for political primacy. Accepting the document that resulted from a presidential initiative was, therefore, tantamount to a surrender.

With the suspension of parliament on 21 September, however, the issue was mooted. Following the decisive defeat of the parliamentary opposition in early October, the Yeltsin team revised the conference draft. For the most part, the revisions that were made were relatively minor, clarifying the language to minimize ambiguity. Several of the changes, however, were indeed significant.

Although beyond the scope of this article, the most important and obvious revision concerned the nature of center-republic relations. In the new draft, the Federation Treaty is entirely absent. This is a critical change in that the inclusion of the treaty was a major controversy at the June conference and was considered crucial to ensure republic support. Its absence, therefore, undoubtedly was targeted against the republican leaders who had used the conflict in Moscow quite effectively to carve out a substantial degree of independence. Yeltsin seems intent on reining in those governments and reasserting central control.

Several of the changes were specifically limited to this transitional period and will not materially affect the constitutional order in the future. Most notably, the new parliament will serve as an interim body, serving only a two-year term this time; the full four-year term will apply to future parliaments. In addition, the principle of the exclusivity of parliamentary activity was suspended temporarily. For the first session only, deputies in the Duma may simultaneously be members of the government. This was obviously necessitated by the fact that most of the members of the incumbent government ran for seats in the Duma and fully expected to retain their ministerial positions after the election.

The formation of the Federation Council is clearer than before, with Article 95 specifying that of the two representatives from *each subject territory of the Federation*, one each will come from the "representative and the executive organs of state power," though exactly what this means is unclear since the December election produced independent candidates. However, there does seem to be an expectation that the members of the Federation Council will have other responsibilities since the transitional section notes that the first Federation

Council will not be working on a constant basis and its members, unlike deputies, are not restricted in the kinds of paying jobs they may hold in addition to their Council seat.[21] But the Council's powers relative to the president may have increased slightly with a change in language (Art. 102). It now appears that the Federation Council must actively confirm [*utverzhdenie*] presidential decrees on states of emergency and war. How much difference this will actually make, however, is unclear.

The size of the Duma has been increased from 400 to 450 deputies. This amounts to a full 50 percent increase over the original 300 seats, but it is unclear what impact this may have on the chamber's functioning. It further enhances the Duma's claim to being representative, but at the same time the larger size may make it more unwieldy. Enlarging a representative institution is a classic technique for undermining its ability to function effectively. The internal structure of the Duma —its committee structure, its leadership apparatus, and the depth of its staff resources—will therefore be particularly critical in determining its effectiveness as a legislative body.

The Duma's internal organization may also help determine the role of prime minister. The constitution states that each chamber of parliament will meet separately and choose a "chairman and his assistants to preside over the session and manage the internal order of the chamber" (Art. 101). Prior to the opening of the legislative session on 11 January 1994, the choice of chairmen (commonly referred to as speakers) dominated discussions among the political parties. Those discussions seemed to indicate that these positions will have powers more similar to those of the speaker in the U.S. House of Representatives than in the British House of Commons or the French National Assembly. In particular, it appears that the speakers will have control over the legislative agenda. In the French system, as well as in strictly parliamentary systems, this is the prerogative of the prime minister and a major source of his power. In the Russian system, it appears that the speaker will not only be able to determine the timing and content of legislative initiatives, but will also have a separate mandate from the prime minister and the government. Elected by the full house, the speakers can thereby claim to have independent authority equivalent, if not superior, to that of the prime minister. This may result in an exceedingly complex division of powers among the leadership and creates the potential for another conflict between an aggressive legislative leadership and the executive such as has plagued the post-Soviet Russian system. Thus far, it appears that Prime Minister Viktor Chernomyrdin's position is preeminent, having relatively smooth relationships with Ivan Rybkin, Speaker of the Duma, and Vladimir Shumeiko, chairman of the Council of the Federation. But present personalities aside, institutionally this arrangement is likely to produce a prime minister with few resources and fragile authority in relation to both the parliament and the president.

". . . in his relationship to the military, the president seems to have seized the initiative."

The president's dominance within the dual executive and over the parliament has been greatly enhanced by the latest revisions to the constitution. The subordination of the government to the president is underscored by a new article (Art. 116) that requires the government to resign upon a new president's election, apparently in direct response to the second parliamentary draft. The president now has the right to chair government meetings

—adopted from the first parliamentary draft—and now seems to have the primary responsibility for naming the chairman of the government, with the State Duma's role reduced to agreeing to the president's selection (Art. 83, 111).[22] Likewise, the president seems to have the right to decide independently on the resignation of the government, apparently without the consent of the Duma (Arts. 83, 117). In addition, the prime minister now has the right to call a question of confidence himself. In the earlier draft the Duma had to initiate the action (Art. 117). If the Duma votes no confidence, the president then has seven days to decide whether to dismiss the government or dissolve the Duma and call new elections. This means that the government itself can precipitate a process that could result in the dissolution of the Duma. Given the clear subordination of the government to the president, however, this is tantamount to giving the president a virtually unlimited ability to dismiss parliament whenever he finds it politically expedient. The potential for the president to create an atmosphere in which politicians and parties face a constant threat of elections again deeply undermines the parliament's ability to provide an institutional check on the president. In effect, then, this threat can be manipulated by the executive branch to coerce adoption of controversial legislation even in the absence of a parliamentary majority.

". . .the government itself can precipitate a process that could result in the dissolution of the Duma.."

Finally, in his relationship to the military, the president seems to have seized the initiative. In addition to being the commander-in-chief and appointing the leadership of the military, the president now must confirm the military doctrine, an issue that was entirely absent from previous drafts.

Results of the Constitutional Referendum

This amended document was voted on in a nationwide referendum held on 12 December, coincident with parliamentary elections. On 13 December, Nikolai Ryabov, head of the Central Electoral Commission, announced that the draft had been accepted, with over 53 percent of the eligible electorate casting ballots on the question, approximately 60 percent of whom approved the draft.[23] These results appeared to exceed the threshold of 50 percent of the electorate that was established prior to the election as the minimum necessary for the vote to be considered valid. Consequently, the new constitution became effective immediately.

Almost immediately, however, questions arose regarding the validity of the announced results. In particular, some analysts questioned the likelihood that the voters simultaneously voted in favor of Yeltsin's constitution and in unexpectedly large numbers for the anti-Yeltsin parties, including the Communist Party and the reactionary Liberal Democratic Party (LDP), suggesting that the results may have been tampered with.[24] This speculation was fueled by some discrepancies in the data that emerged after the election from the Central Election Commission (CEC) and the unusual swiftness with which the referendum results were announced, only hours after the polls closed.[25] Results of the parliamentary elections, in contrast, were not officially announced until 22 December, a full ten days after the election.

In response to questions on the timing, the CEC explained that all resources had been dedicated to the referendum vote, thereby allowing for quick results, but at the same time

causing delays in the immensely more complicated task of counting votes in the party list and single-member district elections. Moreover, there are a number of possible explanations for vote-splitting by individuals. Support for the opposition forces—in particular for the LDP—may have been intended to indicate opposition to a recent economic policies rather than a repudiation of the president or his institutional program. Indeed, a reading of the constitutional projects proposed by the LDP and other opposition parties shows a general convergence with the two major drafts on the dominance of the presidency.[26]

An alternative explanation may be that many voters inadvertently voted for the constitution. The format of the ballot was negative rather than positive, meaning that one had to indicate approval by crossing out "no," leaving "yes" untouched. This was unlike the rest of the large ballot in which one indicated one's choice of party or individual candidate by placing a cross in the box next to the name. It is possible that some of the voters failed to read the instructions carefully and unintentionally voted in favor of the draft. This is a classic electoral technique to inflate the support of an unpopular measure. In the absence of exit polls or other methods of determining the intentions of voters, however, we cannot draw any definitive conclusions beyond the numbers themselves.

In any case, speculation on the validity of the referendum results has been limited, since it is in almost no one's interest to reopen the question of the referendum. Despite the announcement in May that the December turnout was probably only 46.1 percent of the electorate, technically invalidating the constitutional vote, none within the political elite publicly challenged its legitimacy.[27] Even those who opposed the constitution—especially the parliamentary leadership that was defeated in October—have no incentive to challenge the authority of the vote since they are now, for the most part, safely ensconced in the new parliamentary institutions whose own legitimacy would be undermined if the constitutional vote were questioned.

Any lingering suspicion of tampering by the political elite across the ideological spectrum, however muted, points up a major weakness of the new regime: a lack of faith in the process since the October events. Faith in the political process in Russia has never been very high, even in the best of times, but the catastrophic breakdown of political civility in the fall of 1993 disillusioned even supporters of Yeltsin's political reforms. More to the point, it may have effectively annulled the fragile consensus that emerged during the long process of negotiation and reconciliation of competing drafts. As a result, the legitimacy that the new constitutional order might have justifiably claimed based on the process of its elaboration has been undermined.

The literature on regime transitions emphasizes that the prospects for survival of a new constitutional order depend primarily on the good will of the relevant actors and their agreement to comply with the established framework. That being the case, the recent turmoil does not bode well. Nevertheless, guarded optimism that the new regime will be able to function effectively is possible. Perhaps most important, there seems to be a general sense among the political elite that it is time to get on with the business of governing, even if the institutional arrangements are flawed. The president has indicated a desire to forestall tensions with the parliament by appointing a personal representative, Alexander Yakovlev.[28] Furthermore, the apparent and growing dominance of Prime Minister Chernomyrdin and the recent cabinet shake-up are clearly designed to assuage the conservative forces within the legislature.

Finally, despite the most recent changes, the new Russian constitution is largely consonant with the ideas expressed throughout the debate preceding its adoption. As this article has tried to demonstrate, a general agreement on the appropriateness of a presidential regime for Russia was evident in all the major drafts considered during 1993. If the political elite can recover that consensus, the regime may yet flourish.

Notes

1. In using the term "Yeltsin's constitution" there is often an implied or stated comparison with "DeGaulle's Constitution" that inaugurated the Fifth Republic in France in 1958. Given the structural similarities of the two hybrid presidential regimes, particularly the provision of a dual executive, a comparison of the two cases may be a useful method of analyzing the new Russian constitution. But in most cases, the comparison is meant to convey the idea that both constitutions were tailor made by and for these forceful personalities with little consultation and less negotiation with other actors. As such, it is based on a faulty understanding of the extended process that led to the elaboration of the French constitution. De Gaulle was certainly the personality most closely identified with the presidential regime model, but for the twelve-year life of the Fourth Republic constitutional change was a constant political issue, with many alternative conceptions openly, often bitterly, debated. The debate reached a peak between 1956 and 1958, during which time a constitutional project for a presidential regime was elaborated and a consensus for it developed among the political elite. Indeed, the system established in 1958 included a number of substantial compromises—most notably the dual executive itself—that were demanded by rival politicians in order to provide an institutional check on a De Gaulle presidency. The swiftness of the constitution's final adoption was in large measure a result of its long gestation period. For a discussion of the French constitutional drafting process, see for example Nicholas Wahl, "The French Constitution of 1958: The Initial Draft and Its Origins," *American Political Science Review*, 53 (June 1959): 358-82 and *The Fifth Republic: France's New Political System* (New York: Random House, 1959); Michel Debré, "The Constitution of 1958: Its Raison d'Etre and How It Evolved" in *The Impact of the Fifth Republic on France*, edited by William G. Andrews and Stanley Hoffmann (Albany: State University of New York Press, 1981); Hugues Tay, *Le régime présidentiel et la France* (Paris: R. Pichon et Durand-Auzias, 1967); Georges Vedel, "L'instabilité gouvernementale," *Revue Banque et Bourse*, 130 (1956): 3-19; Roy Pierce, "France Reopens the Constitutional Debate, " *American Political Science Review* (June 1952) and "Constitutional Reform in France," *Journal of Politics* (17 May 1955): 221-47; Pierre Viansson-Ponté, "Le débat sur la révision constitutionnelle," *Le Monde* (Paris) 24 May 1958, 1; Michel Winock, *La République se meurt: 1956-58*, 2nd edition, (Paris: Editions du Seuil, 1985).

2. Hereafter referred to as "parliamentary" and "presidential" drafts respectively.

3. The parliamentary draft does provide for a parliamentary cancellation of a state of emergency or martial law, but it was unclear as written whether this implied the right of the Supreme Soviet to overturn a prior presidential declaration or was limited to its own declaration. (Parl. Art. 86, para.1q).

4. For a discussion of the dual executive as a potentially fatal flaw in the French constitutional system, see Michel-Henri Fabre, *Principes républicains de droit constitutionnel*, 2nd ed. (Paris: Librairie Générale de Droit et de Jurisprudence, 1970); Maurice Duverger, *Echec au Roi* (Paris: Albin Michel, 1980); Roger-Gérard Schwartzenberg, *La Droite absolue* (Paris: Flammarion, 1981); Daniel Amson, *La Cohabitation politique en France* (Paris: Presses Universitaires de France, 1985); Didier Maus, *Les Grandes textes de la pratique institutionnelle de la Ve République*, Notes et Etudes documentaires no 4,786, (Paris: Documentation Française, 1985); Elijah Kaminsky, "The Contemporary French Executive: Stable Governments, Unstable Institutions," paper presented at the annual conference of the American Political Science Association, Atlanta, Ga., 30 August 30-3 September 1989; Guillaime Bacot, "Ni se moumettre, ni se démettre," *Revue politique et parlementaire* (January-February 1978); Michel Béranger, "La Responsabilité politique du chef de l'état," *Revue du droit public*, 95 (September-October 1979): 1265-1314.

5. *Izvestiya*, 13 May 1993, 1. For the presidential decree on the convening of a constitutional conference see *Izvestiya*, 21 May 1993, 1.

6. *Izvestiya*, 2 June 1993, 1.

7. *Izvestiya*, 13 May 1993, 1.

8. *Segodnya*, 18 May 1993, 1, quoted in *Current Digest of the Post-Soviet Press*, 45:20, 16 June 1993, 5.

9. *Nezavisimaya Gazeta*, 15 May 1993, 1, 3.

10. *Komsomolskaya pravda*, 21 May 1993, 1, quoted in *Current Digest* 45:20, 16 June 1993, 6.

11. *Rossiskiye Vesti*, 8 June 1993, quoted in *Current Digest*, 45:23, 7 July 1993, 4-5.

12. The first group, consisting of 162 people, represented federal organs, including members of the Congress of People's Deputies, and members of its Constitutional commission (95 people); representatives of the president and the government (50 people); factions of the Supreme Soviet (14); and the Academy of Science (3). The second group consisted of 176 representatives of members of the Federation, including leaders of the republics, leaders of executive and legislative bodies and of territories, provinces, the autonomous province, autonomous regions and the cities of Moscow and St. Petersburg; as well as 176 experts in law. The third group was composed of 26 people representing local self-government chosen by the Union of Russian Cities, the Union of Small Cities, the Russian Association for the Revival and Development of Historic Small and Medium-Sized Cities, and other organizations. The fourth group represented 36 political parties—16 considered "democratic," 11 considered anti-Yeltsin, and 4 centrist—public associations (64); trade unions (58); and religious denominations (17). Other participants came from a wide variety of social organizations including the Assembly of Democratic Forces of the Northern Caucasus, the Confederation of Peoples of Russia That Were Subjected to Repression, the International League of Numerically Small Peoples and Ethnic Groups, and the Senezhskoye Forum. Fourteen creative unions, three veterans' organizations, three human rights organizations, two ecological organizations, the All-Russia Society for the Disabled and others also sent representatives. The fifth group represented producers and entrepreneurs, including delegates from the Russian Union of Industrialists and Entrepreneurs, the International Stock Exchange and Commodity Exchange Union, the Hermès joint-stock company, the international Association of Enterprise Executives, the League of Entrepreneurs and Cooperative Members, the Russian Agro-Industrial Union, and the Chamber of Commerce and Industry. Filatov in *Rossiskiye Vesti*, 8 June 1993, quoted in *Current Digest*, 45:23, 7 July 1993, 4-5; Alexander Rahr, *Radio Free Europe/Radio Liberty Daily Report*, 28 May 1993.

13. *Rossiskiye Vesti*, 8 June 1993, quoted in *Current Digest*, 45:23, 7 July 1993, 4-5.

14. Lyubov Tsukanova, *Rossiskiye Vesti*, 29 June 1993, 1, quoted in *Current Digest*, 45:26, 28 July 1993, 1.

15. Federal Constitutional Laws define the specific mechanisms for the implementation of constitutionally determined duties—such as the procedures governing the actions of the government (Art.114)—and have the force of the constitution, but may be changed without resorting to the complicated process of constitutional amendment. Unlike normal legislation that requires only majority support, however, changes in federal constitutional laws require a three-fourths vote in the Federal Council and a two-thirds vote in the State Duma. Moreover, these laws are not subject to presidential veto (Art. 107).

16. *Nezavisimaya Gazeta*, 10 September 1993, 1.

17. Members of the working group included Yevgeny Ambartsumov, Boris Zolotukhin, Sergei Kovalyov, Yevgeny Kozhokin, Mikhail Mityukov, Yuri Ryzhov, Oleg Rumyanstev, and Viktor Sheinis. *Nezavisimaya Gazeta*, 10 September 1993, 1. The group itself later added Deputies Ivan Fedoseyev, Buldayev (the new secretary of the Supreme Soviet's Constitutional Commission), Vladimir Isakov, and Sergei Baburin. *Nezavisimaya Gazeta*, 11 September 1993, 2.

18. Headed by Khasbulatov, this delegation's members included Ramazan Abdulatipov, Yuri Voronin, Yevgeny Ambartsumov, Vladimir Isakov, Vladimir Novikov, Oleg Rumyantsev, and Veniamin Sokolov. *Nezavisimaya Gazeta*, 11 September 1993, 2.

19. *Segodyna*, 16 September 1993, 1.

20. *Segodnya*, 16 September 1993, 1.

21. A clarification in terminology now has the members of the Federal Council called simply "members," with the term "deputy" reserved for the Duma.

22. The original text of Art. 111 read as follows: "Predsedatel' Pravitel'stva Rossiskoi Federatsii naznachaetsya Gosudarstvennoi Dumoi po predstavleniyu Prezidenta Rossiskoi Federatsii." The

amended text reads: "Predsedatel' Pravitel'stva . . . naznachaetsya Prezidentom . . . s soglasiya Gosudarstvennoi Dumoi."

23. Central Electoral Commission, 13 December 1993.

24. Interview with Nina Belyaeva, 10 January 1994.

25. There were some discrepancies in early reports of the referendum results. On 14 December 1993 *Segodnya* reported that the Central Electoral commission (CEC) announced that about 29.3 million voters, or about 60 percent, had approved the draft; a week later *Rossiskiye Vesti* recorded the vote as 32.9 million, or 58.4 percent, in favor. While these figures are not drastically different, these differences have contributed to widespread suspicions that the final results were tampered with.

26. For a compendium of draft constitutions drawn up by the major political parties see *Konstitutsii Rossikoi Federatsii (alternativnye proekty)*, vols. 1 & 2, *Obozrevatel'*, 17-18, (Moscow: RAU Corporation, 1993).

27. According to an independent analysis of the CEC data by *Izvestiya*, the turnout was only 49 million out of a total of 106.2 million registered voters, or 46.1 percent. *Izvestiya*, 4 May1994, 4.

28. Until this appointment, Yakovlev, a professor of law, worked in Moscow's Institute of State and Law and actively participated in drafting the new Russian constitution. *Radio Free Europe Daily Reports*, 25 January 1994.