

1996

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Recommended Citation

Metcalf, Lee Kendall (1996) "Presidential Power in the Russian Constitution," *Florida State University Journal of Transnational Law & Policy*. Vol. 6: Iss. 1, Article 6.

Available at: <https://ir.law.fsu.edu/jtlp/vol6/iss1/6>

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Presidential Power in the Russian Constitution

Cover Page Footnote

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PRESIDENTIAL POWER IN THE RUSSIAN CONSTITUTION

LEE KENDALL METCALF*

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I. INTRODUCTION

In December 1993, Russia adopted its first Constitution since its independence in 1991. One of the most critical choices that constitutional drafters face is choosing between presidentialism and parliamentarism. Research indicates that this choice is an important factor in democratic consolidation. "[P]residentialism is said to have the advantages of executive stability, greater democracy, and more limited government, but the disadvantages of executive-legislative deadlock, temporal rigidity, and less inclusive, 'winner-take-all' government. Parliamentarism is said to have the opposite consequences"¹ An intermediate type, semi-presidentialism, has both a prime minister, dependent on the confidence of the parliament, and a popularly elected president.² Semi-presidentialism "retains some of the advantages of presidentialism, while showing the potential to diminish some of presidentialism's defects."³ However, these basic types are "not based on incompatible principles but rather on mixtures of elements, such as separate survival of powers or assembly sovereignty over cabinets, that may be applied in varying degrees to come up with different regime constellations."⁴

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1. Arend Lijphart, *Introduction to PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT* 11 (Arend Lijphart ed., 1992).

2. See generally Maurice Duverger, *A New Political System Model: Semi-Presidential Government*, *EUR. J. POL. RES.* 8, 165 (1980).

3. MATTHEW SOBERG SHUGART & JOHN M. CAREY, *PRESIDENTS AND ASSEMBLIES: CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS* 49 (1992).

4. *Id.* at 159.

Most studies conclude that democratic breakdown is more likely in presidential than in parliamentary regimes.⁵ However, the relationship between regime type and democratic breakdown may be more complex. For example, the exclusion of the interwar period, 1918 to 1939, from the analysis in some statistical studies may skew the results in favor of parliamentarism.⁶ European successor states in that period demonstrate an almost universal failure of democracy in parliamentary regimes, in contrast to the maintenance of democracy in two of the three semi-presidential regimes (Czechoslovakia, Finland, and Weimar Germany). This suggests that the relationship between regime type and democratic breakdown may not be constant over time and space and that, therefore, it may be necessary to include other factors in the analysis.⁷ Further, the analysis needs to be more nuanced because the risk of democratic breakdown in states with popularly elected presidents varies with the powers granted to the president.⁸

The choice between presidentialism and parliamentarism has widespread implications for the power and prestige of many political actors. Therefore, presidential power is often the subject of intense negotiation, and it can be tailored to fit an individual. For example, constitutional drafters in Poland during the interwar period created a weak presidency for fear that Marshall Pilsudski, who was widely expected to become the first president, would rule the country autocratically.⁹

This article examines the 1993 conflict between the executive and legislative branches of the Russian government over presidential power and analyzes the authority granted to the president in the December 1993 Constitution using a list of powers recognized as a means of identifying different regime types. This method provides a discrete set of legislative and nonlegislative presidential powers, which can be measured based on a scale from 0 to 4 and used to compare regimes. (See Appendix, Table 1).

5. See generally *THE FAILURE OF PRESIDENTIAL DEMOCRACY* (Juan Linz & Arturo Valenzuela eds., 1994).

6. See, e.g., Alfred Stepan & Cindy Skach, *Presidentialism and Parliamentarism in Comparative Perspective*, in *THE FAILURE OF PRESIDENTIAL DEMOCRACY*, *supra* note 5, at 136.

7. For an argument that vesting limited power in the executive may reduce the risk of democratic breakdown in new states with multiple parties by providing a measure of continuity and a way out of parliamentary deadlock, see Lee Kendall Metcalf, *Institutional Choice: The Experience of the Russian Successor States, 1918-1940* (unpublished manuscript, on file with *The Journal of Transnational Law and Policy*).

8. See SHUGART & CAREY, *supra* note 3, at 157.

9. See generally MALBONE W. GRAHAM, *NEW GOVERNMENTS OF CENTRAL EUROPE* 299-313 (1926).

The term "legislative powers" refers to presidential power in the legislative process, which may be provided for in the Constitution or delegated to the president by the assembly. The term "nonlegislative powers" refers to constitutional limits placed on the separate origin and survival of the president and the assembly. Maximum separation of legislative and nonlegislative powers is characteristic of presidentialism and is intended "to ensure that each branch could impose checks on the other without fear of jeopardizing its own existence."¹⁰ The article concludes with a comparison of authority granted to the Russian president with that granted to the French president and other popularly elected presidents, as well as an analysis of the prospects for democratic consolidation in Russia.

II. THE DISPUTE OVER A NEW CONSTITUTION

The initial course of democratization in the Russian Soviet Federative Socialist Republic ("RSFSR") was very similar to that in the USSR.¹¹ In March 1990, Russia held its first multicandidate elections for a new representative body called the Congress of People's Deputies (*S'ezd Narodnykh Deputatov*) ("Congress").¹² A smaller, more professional body known as the Supreme Soviet (*Verkhovnyj Sovet*) was selected from the members of the Congress and was accountable to it.¹³ The Council of Ministers (*Sovet Ministrov*), or cabinet, was then made accountable to the Supreme Soviet.¹⁴ In a March 1991 referendum, Russian voters indicated they favored the creation of a presidency.¹⁵

In response to the referendum result, the Supreme Soviet adopted a law which provided for the popular election of a president for a five-year term with a limit of two consecutive terms.¹⁶ The president was described as "the supreme official of the RSFSR and the head of executive power in the RSFSR."¹⁷ The president could be dismissed from office by a two-thirds vote of the Congress "on violation of the RSFSR Constitution and laws or his sworn oath."¹⁸

10. SHUGART AND CAREY, *supra* note 3, at 19.

11. See Thomas Remington, *Politics in Russia*, in *COMPARATIVE POLITICS TODAY: A WORLD VIEW* 381, 389 (Gabriel A. Almond & G. Bingham Powell, Jr., eds., 6th ed. 1996).

12. See *id.*

13. See *id.* at 390.

14. See *id.*

15. See *id.* at 384.

16. See *RSFSR Law on the RSFSR President*, reprinted in *FOREIGN BROAD. INFO. SERV. DAILY REP.: SOVIET UNION*, May 1, 1991, at 57.

17. *Id.* art. 1.

18. *Id.* art. 10.

The president was granted little legislative or nonlegislative authority. Although he could veto legislation, his veto could be overridden by an absolute majority of the Congress.¹⁹ Although he was authorized to issue decrees that did not "run counter to the Constitution and laws of the RSFSR," these decrees could be repealed by the Congress after a ruling by the Constitutional Court (*Konstitutsionnyj Sud*) to this effect.²⁰ The president appointed the chairman of the Council of Ministers with the Supreme Soviet's assent²¹ and appointed and dismissed the other ministers on the proposal of the chairman.²² The Supreme Soviet could censure the government, but the president could not dissolve the Congress or the Supreme Soviet.²³

In June 1991, Boris Yeltsin was elected to a five-year term as Russia's first president. He gained additional prominence when he defied the coup against Mikhail Gorbachev in August 1991. It soon became apparent that the Soviet Union would break up into its constituent parts and that a new, truncated Russian state would emerge. Drawing upon his enormous popularity, Yeltsin requested extraordinary powers from the Congress.²⁴ Although his opponents worried that Yeltsin would use this power to pursue the wrong purposes, they also believed that

"[w]hen chaos and anarchy reign in the country, and criminal terror becomes a part of everyday life, while parliament turns into a self-enamored talk-shop that is destroying what is left of our statehood, someone has to take the only decision that can save the nation and the state: to concentrate power in his own hands and offer his own program of national and state salvation."²⁵

President Yeltsin was granted two weeks to comment on draft laws related to the economy, and the Supreme Soviet was then to examine the drafts "in light of conclusions on these drafts submitted by the RSFSR President."²⁶ The president was also granted the authority to issue decrees on economic reform which contravened existing laws, provided that the decrees were submitted to the

19. See *id.* art. 8.

20. *Id.*

21. See *id.* art. 5(4).

22. See *id.* art. 5(5).

23. See *id.* art. 5(11).

24. See Remington, *supra* note 11, at 390.

25. Eduard Volodin, *The Right Step, but Toward What?*, reprinted in THE CURRENT DIGEST OF THE POST-SOVIET PRESS, Nov. 10, 1991, at 13.

26. Russian Soviet Federative Socialist Republic Congress of People's Deputies Resolution on Legal Support for the Economic Reform, reprinted in FOREIGN BROAD. INFO. SERV. DAILY REP.: SOVIET UNION, Nov. 6, 1991, at 46-77.

Supreme Soviet or, when it was not in session, to the Presidium of the Supreme Soviet (*Presidium Verkhovnogo Soveta*).²⁷ If the decrees were not rejected within seven days, they came into force.²⁸ If they were rejected, the Supreme Soviet was required to examine them within ten days as a draft law.²⁹ Using these powers, Yeltsin embarked on a program of radical economic reform.

Yeltsin's emergency powers were due to expire on December 1, 1992. Angry at the results of his economic reforms, the Congress not only did not want to extend Yeltsin's extraordinary powers, it also wanted to reduce the powers that he had under the existing Constitution. After a series of confrontations between Yeltsin and the Congress on the powers of the president, the Constitutional Court brokered an agreement whereby the two sides agreed to return to the *status quo ante* until a referendum could be held in April 1993 to decide the issue.³⁰

Debate then began on the questions to be asked in the referendum. By March 1993, the Congress had not agreed on the questions or whether the referendum would be held at all. The Congress declared the December agreement invalid, and once again, began to strip Yeltsin of powers.³¹ Yeltsin responded by signing a decree scheduling the referendum for April 25, 1993.³² Voters were asked whether they had confidence in Yeltsin, whether they approved of his social and economic policy, whether they favored early elections for president, and whether they favored early elections of deputies.³³ The Constitutional Court decided that a simple majority, i.e., a majority of those voting, was sufficient for each of the first two questions but that an absolute majority, i.e. a majority of the electorate,

27. See *id.* at 46.

28. See *id.*

29. See *id.*

30. See *On the Stabilization of the Russian Federation's Constitutional System*, reprinted in THE CURRENT DIGEST OF THE POST-SOVIET PRESS, Jan. 13, 1993, at 8-9.

31. See *Resolution of the Congress of Russian Federation People's Deputies on Measures to Implement Constitutional Reform in the Russian Federation*, reprinted in THE CURRENT DIGEST OF THE POST-SOVIET PRESS, Apr. 7, 1993, at 10-11.

32. See *Boris Yeltsin Offers the Country a Peaceful Way Out of the Crisis*, reprinted in THE CURRENT DIGEST OF THE POST-SOVIET PRESS, Apr. 21, 1993, at 1-4. Yeltsin pretty clearly exceeded constitutional bounds in his initial statements about the decree, and the text was modified somewhat in response to criticisms by the Constitutional Court.

33. See *Final Results of All-Russia Referendum Confirm Preliminary Results*, reprinted in THE CURRENT DIGEST OF THE POST-SOVIET PRESS, May 26, 1993, at 6.

was necessary for each of the last two questions.³⁴ On this basis, the first two were considered adopted, while the last two were not.³⁵

Although Russia had been independent for over a year, it was still governed under a much-amended version of the Soviet-era 1978 RSFSR Constitution. A prolonged struggle over who would draw up and confirm a new Constitution began. The Congress maintained that it was the only body with the legal competence to determine procedures for the adoption of a new Constitution.³⁶ The Congress was considering a draft which had been introduced in 1990, but it was moving very slowly. Yeltsin's supporters were growing impatient and favored the convening of a Constituent Assembly (*Uchreditel'noe Sobranie*), asking whether "a forum that was created in a former 'geological era' [could] adopt a basic law that is designed not only for a fundamentally new historical period but for the future as well."³⁷

On April 29, 1993, Yeltsin presented his own draft of a new Constitution. Yeltsin proposed that each member of the federation send two representatives to a Constitutional Conference in June to discuss his draft.³⁸ The presidential draft provided for the popular election of the president for a five-year term, with a limit of two consecutive terms.³⁹ The president could only be removed on a finding of high treason or a deliberate violation of the Constitution.⁴⁰ The president was granted more legislative authority than in the existing Constitution. He could veto laws or parts of laws, subject to a two-thirds override in both houses,⁴¹ could adopt decrees,⁴² could schedule referenda,⁴³ and, along with the government, was granted the

34. See *id.*

35. See *id.* Over 58% of the votes cast expressed confidence in Yeltsin; 53% approved of his policies; 31.7% of eligible voters favored early elections for president; and 41.3% favored early elections of deputies. *Id.*

36. See Sergei Alekseyev, *Absolute Power for the Soviets Is Incompatible with True Democracy*, reprinted in *THE CURRENT DIGEST OF THE POST-SOVIET PRESS*, Mar. 10, 1993, at 9.

37. *Id.*

38. See Vasily Kononenko, *President of Russia Begins Promised Changes by Presenting Draft of New Constitution*, reprinted in *THE CURRENT DIGEST OF THE POST-SOVIET PRESS*, May 26, 1993, at 7.

39. See *Draft: Constitution (Basic Law) of the Russian Federation*, art. 71, reprinted in *THE CURRENT DIGEST OF THE POST-SOVIET PRESS*, June 16, 1993, at 10.

40. See *id.* art. 83.

41. See *id.* art. 103.

42. See *id.* art. 81. This provision was subject to especially harsh criticism because no limits were stated, and the Federal Assembly was only described as the supreme representative, not legislative, body. See *id.* art. 84.

43. See *id.* art. 74.

exclusive right to introduce legislation on the budget, taxes, or other expenditures.⁴⁴

The president was also granted more nonlegislative authority. He could appoint the chairman of the government with the approval of the Federation Council (*Sovet Federatsii*), the upper house of the Federal Assembly (*Federal'noe Sobranie*),⁴⁵ and appoint and dismiss the other ministers on the proposal of the chairman.⁴⁶ The Federation Council could also censure individual ministers, but the president could ignore their action.⁴⁷ However, if the Federation Council censured the entire cabinet by an absolute majority vote, the president was required to present a new candidate for chairman.⁴⁸ The president could dissolve the Federal Assembly "after consultations with the Chairmen of the [Federation] Council" and the State Duma (*Gosudarstvennaya Duma*), the lower house, if the Federal Assembly failed to approve the president's third candidate for chairman or "in other cases when a crisis of state power cannot be resolved on the basis of the procedures established by the Constitution."⁴⁹

Sergei Alekseyev, one of the authors of Yeltsin's draft Constitution, argued in an interview: "The draft is built on the concept of a presidential republic. We are not yet ready for a parliamentary form. That requires a developed political system—one that has parties, a special level of sophistication, and firmly stated rules of play . . ." ⁵⁰ Conversely, the author of the Supreme Soviet's draft argued that the draft granted the president unprecedented "Latin American style" powers.⁵¹

Yeltsin's action forced the Constitutional Commission of the Supreme Soviet to speed up its work, and a draft was published in May. In the Commission's draft, that Rumyantsev classified as mixed presidential-parliamentary or semi-presidential,⁵² the president was granted little legislative or nonlegislative authority. The president was granted no exclusive right of introduction or decree

44. See *id.* art. 101.

45. See *id.* art. 106.

46. See *id.* art. 107.

47. See *id.* art. 111.

48. See *id.* art. 112.

49. *Id.* art. 74.

50. Yelena Dikun, *No, Not a Tsar but a President*, reprinted in *THE CURRENT DIGEST OF THE POST-SOVIET PRESS*, June 2, 1993, at 7.

51. Anatoly Kostyukov, *Oleg Rumyantsev Says That the Constitution Must Not Be Confused with a Party Program*, reprinted in *THE CURRENT DIGEST OF THE POST-SOVIET PRESS*, June 9, 1993, at 5.

52. See O. Rumyantsev & V. Lafitskiy, *Two Drafts—Two Views of the Separation of Powers*, reprinted in *FOREIGN BROAD. INFO. SERV. DAILY REP.: SOVIET UNION*, May 18, 1993, at 27-28.

power.⁵³ The president would appoint the chairman of the government and the power ministers with the Supreme Soviet's consent, and then appoint the remaining ministers.⁵⁴ The president could not dissolve the parliament.⁵⁵

Yeltsin's Constitutional Conference met and approved an amended version of his draft in July. Over 5,000 remarks and suggestions for change were received, over 500 amendments were presented, and over 200 amendments were finally accepted.⁵⁶ The term of the president was reduced from five to four years, and the impeachment provision was limited to a charge of treason.⁵⁷ The president's decree power was limited to matters not against the Constitution or federal law, and the wording on the introduction of financial legislation was softened somewhat.⁵⁸ The responsibility for approving the chairman of the government and censuring the government was moved from the Federation Council, the upper house, to the State Duma, the lower house, to better conform with international practice.⁵⁹ Finally, the conditions for presidential dissolution of the State Duma were better specified and limited to certain situations.⁶⁰

Both sides sought approval of their drafts from the constituent members of the Russian Federation. The members pitted one side against the other in an effort to increase their constitutional powers. Realizing this, Yeltsin asked a working group, composed of members of each drafting body, to come up with a unified draft in September.⁶¹ However, the confrontation between President Yeltsin and the Congress had escalated to the point where the Congress was no longer interested in compromise, and a law making it easier to impeach the president was scheduled for a vote.⁶²

On September 21, Yeltsin announced in a televised address that since "the majority of the Supreme Soviet is moving toward the outright flouting of the will of Russia's people and is pursuing a

53. See *id.* at 28.

54. See *id.*

55. See *id.*

56. See Aleksandr Yakovlev, *Yakovlev Reports on Draft*, reprinted in FOREIGN BROAD. INFO. SERV. DAILY REP.: SOVIET UNION, June 28, 1993, at 23.

57. See *id.* at 25.

58. See *id.* The amended version removed the provision that only the President could submit a budget but required that the proposal of such bills have government approval.

59. It is much more common for the government to require the confidence of the lower house.

60. See Yakovlev, *supra* note 56, at 27.

61. See Vasily Kononenko, S. Filatov, *The Constitutional Process Is Not Fading Away*, reprinted in THE CURRENT DIGEST OF THE POST-SOVIET PRESS, Oct. 6, 1993, at 9.

62. See Remington, *supra* note 11, at 390.

course aimed at weakening and eventually removing the President and at disorganizing the work of the present government,"⁶³ he was disbanding the Congress and the Supreme Soviet and replacing them with a new bicameral parliament, the Federal Assembly, for which elections would be held December 11-12, 1993.⁶⁴ That night, a rump meeting of the Congress voted to terminate Yeltsin's powers and to appoint Vice President Aleksandr Rutskoi, who had sided with the Congress, as the new president.⁶⁵ Although the Congress was supported by the Constitutional Court, popular support was limited, and the military eventually sided with Yeltsin after a violent standoff.⁶⁶

On October 15, Yeltsin decreed that a referendum on the Constitutional Conference's draft Constitution would be held concurrently with the election.⁶⁷ Changes, which Yeltsin's Chief of Staff Sergei Filatov described in an interview as "[i]ndividual amendments, polishing a number of articles, rejecting compromises that Deputies tried to impose,"⁶⁸ were made in the draft, and the final draft was published on November 10. Some of the changes granted the president more power; others placed greater restrictions on his power. However, the relationship between the executive and legislative branches of government was not significantly altered. As Yeltsin asked:

In a country that is used to tsars or 'great leaders,' in a country where clear-cut interest groups have not developed, the spokesmen for those interests have not been defined and normal parties are only just beginning to emerge, in a country where executive discipline is extraordinarily weak and where legal nihilism is enjoying an unrestrained spree—in such a country, should we place our stakes only or mainly on parliament?⁶⁹

In the December referendum, voters were merely asked: "Do you accept the Constitution of the Russian Federation? Yes or No?"⁷⁰ It was decided that a fifty percent turnout would be required for the

63. Vitaly Kolbasyuk, *A Change of Direction, at Least; at Most, a Coup*, reprinted in THE CURRENT DIGEST OF THE POST-SOVIET PRESS, Oct. 20, 1993, at 1.

64. See *id.*

65. See Lidia Malash, *Deputies Act Like Deputies*, reprinted in THE CURRENT DIGEST OF THE POST-SOVIET PRESS, Oct. 20, 1993, at 15.

66. See Remington, *supra* note 11, at 390.

67. See B. Yeltsin, *On Holding a Nationwide Vote on the Draft Constitution of the Russian Federation*, reprinted in THE CURRENT DIGEST OF THE POST-SOVIET PRESS, Nov. 3, 1993, at 7.

68. Lyudmila Telen, *Marked by 'Sturm und Drang'*, reprinted in THE CURRENT DIGEST OF THE POST-SOVIET PRESS, Nov. 24, 1993, at 9.

69. B. Yeltsin, *As President, I Have a Greater Stake Than Others in Social Stability*, reprinted in THE CURRENT DIGEST OF THE POST-SOVIET PRESS, Dec. 15, 1993, at 9.

70. Yeltsin, *supra* note 67, at 7.

referendum to be valid and that fifty percent of the nationwide vote would be sufficient for adoption.⁷¹ Although Yeltsin acknowledged the possible pitfalls in this method of adoption, he argued for the necessity to adopt a new Constitution quickly in order to provide a legal basis for the jurisdiction of the new Federal Assembly.⁷² The Constitution was narrowly adopted.

III. RUSSIA'S 1993 CONSTITUTION

Russia's Constitution provides for a bicameral Federal Assembly. The lower house, the State Duma, has 450 seats,⁷³ half of which are party-list seats and half of which are single-member district seats.⁷⁴ The upper house, the Federation Council, has 178 seats, two for each member of the federation.⁷⁵ The Constitution also provides for a popularly elected president who is limited to two consecutive four-year terms.⁷⁶ The president is described as the head of state and "the guarantor of the Constitution of the Russian Federation and human and civil rights and freedoms."⁷⁷

The president can only be removed from office if accused of high treason or another "grave crime" by the State Duma.⁷⁸ A special commission set up by the State Duma must reach this finding, and the decision to advance accusations must be initiated by one-third of the deputies and passed by two-thirds.⁷⁹ Then the Supreme Court (*Verkhovnyj Sud*) must qualify the actions as criminal, and the Constitutional Court must conclude that the proper procedures have been followed.⁸⁰ Finally, the Federation Council must adopt a decision to impeach the president by a two-thirds vote "no later than three months after the State Duma advances its accusations."⁸¹ In a speech to the Constitutional Conference, Aleksandr Yakovlev stated that

71. The Supreme Soviet proposed that support of fifty percent of the electorate and two-thirds of the members of the Federation be required. See Vera Kuznetsova, *Parliament Upstages President*, reprinted in FOREIGN BROAD. INFO. SERV. DAILY REP.: SOVIET UNION, July 19, 1993, at 33-34.

72. See Yeltsin, *supra* note 69, at 9.

73. See KONSTITUTSIJA [Constitution] [KONST.] RF art. 95 (1993).

74. See Alexey Alyushin, *The Constitutional Sources of Legislative Disarray: Russia*, E. EUR. CONST. REV., Spring 1995, at 61, 64.

75. See KONST. RF arts. 65, 95 (1993).

76. See *id.* art. 81.

77. *Id.* art. 80.

78. *Id.* art. 93.

79. See *id.*

80. See *id.*

81. *Id.*

such a complex procedure was necessary because "nobody can be prosecutor and judge at the same time."⁸²

The Constitution grants the president substantial legislative authority. The president may return a law to the Federal Assembly within fourteen days for reconsideration.⁸³ A presidential veto may be overridden by a two-thirds vote of each house.⁸⁴ This has happened on rare occasions. The president should then sign the law within seven days.⁸⁵ The president may also request a decision of the Constitutional Court on the constitutionality of federal laws.⁸⁶ There is no provision for partial vetoes.

The president is granted the right to issue decrees and directives which are binding and which "shall not contradict the Constitution of the Russian Federation or federal laws."⁸⁷ Although this right allows the president to dominate the legislative agenda—as Yeltsin has in matters, such as privatization, banking reform, and criminal procedure—the State Duma may respond to presidential decrees by passing its own legislation. The State Duma can also request a determination of constitutionality by the Constitutional Court.⁸⁸ The president can impose martial law "in the case of aggression against the Russian Federation or the direct threat thereof" and declare a state of emergency.⁸⁹ However, the president's right to decree legislation in these circumstances is not specified in the Constitution itself. Rather, this is left to subsequent federal constitutional law.

The president is not granted any reserved policy areas. However,

[b]ills on the imposition or elimination of taxes, tax exemption, the issue of state loans and changes in the financial obligations of the state and other bills pertaining to the expenditures that are covered out of the federal budget may be submitted provided there is a consent of the Government of the Russian Federation.⁹⁰

82. Yakovlev, *supra* note 56, at 25.

83. However, a consultant for the Department for Constitutional and International Law, Federation Council of the Russian parliament, claims that "the president of Russia may thus keep a law unsigned and unreturned for as long as he wishes, something he does quite often." Alyushin, *supra* note 74, at 65.

84. See KONST. RF art. 108 (1993). Because constitutional laws require two-thirds approval by the State Duma and three-fourths approval by the Federation Council, there is no provision for presidential veto.

85. See *id.* art. 107.

86. See *id.* art. 125.

87. *Id.* art. 90.

88. See *id.* art. 125.

89. *Id.* arts. 87, 88.

90. *Id.* art. 104.

Also, although most laws are considered adopted if the Federation Council has not considered them within fourteen days of their submission by the State Duma,⁹¹ *both houses* must consider legislation relating to the federal budget; federal taxes and levies; financial, currency, credit, and customs control; and the issue of money.⁹² Finally, the president can call a referendum; however, no details of this process are provided in the Constitution itself.⁹³

The nonlegislative authority granted to the president is more moderate. The president appoints the chairman of the government with the consent of the State Duma and then appoints the rest of the members of the cabinet based on proposals by the chairman of the government.⁹⁴ After the State Duma has rejected three candidates, the president "shall" appoint the chairman, dissolve the assembly, and call new elections.⁹⁵

The Constitution provides that "[t]he President of the Russian Federation may adopt a decision on the resignation of the government of the Russian Federation."⁹⁶ The government may offer its resignation to the president at any time, but it is required to do so when a new president is elected.⁹⁷ The president may either accept or reject this offer. Finally, the president may dismiss deputy ministers and federal ministers at will.⁹⁸

The State Duma may censure the government by an absolute majority.⁹⁹ The president, then, has the option to announce the resignation of the government or to reject the decision of the State Duma.¹⁰⁰ If, within the next three months, the State Duma again passes a no-confidence motion, the president may either announce the resignation of the government or dissolve the State Duma.¹⁰¹

The president shall dissolve the State Duma after it has rejected three candidates for chairman of the government¹⁰² and may dissolve the State Duma after it has adopted a second vote of no

91. *See id.* art. 105.

92. *See id.* art. 106.

93. *See id.* art. 84. However, an acting president cannot. *See id.* art. 92.

94. *See id.* art. 83.

95. *Id.* art. 111.

96. *Id.* art. 117.

97. *See id.* arts. 116, 117.

98. *See id.* art. 83. From the structure of the sentence, it is not clear whether a proposal of the chairman of the government is necessary.

99. *See id.* art. 103. "Censure" refers to a vote of no confidence by a legislature in a government policy.

100. *See id.*

101. *See id.* arts. 83, 84.

102. *See id.* art. 111.

confidence in the government or a motion of confidence has failed.¹⁰³ However, the president may not dissolve the State Duma in the first year of its term, when charges of impeachment have been lodged, during martial law or a nationwide state of emergency, or during the last six months of the president's term.¹⁰⁴

IV. COMPARATIVE ANALYSIS

The Russian Constitution is most often compared to the French Constitution because the nonlegislative authority of the president is similar in both constitutions. However, the differences are perhaps less substantial than indicated in Table 2 (Appendix), especially with regard to cabinet dismissal. Technically, the French president does not have the authority to dismiss cabinet ministers, the prime minister does.¹⁰⁵ However, it was not until 1986 that the president and the prime minister were from different political groupings, so the president had exercised this power *de facto* for almost forty years.¹⁰⁶

The major difference in the two constitutions lies in the legislative authority of the president. The Russian president has substantially more legislative authority than the French president: the total of eight points as opposed to one point (Appendix, Table 2). The Russian president can veto legislation and propose referenda (the French president cannot) and has greater decree authority (Appendix, Table 2).¹⁰⁷ In this regard, the Russian Constitution is more similar to Latin American presidential regimes, such as Chile (1891 and 1925), Columbia (*pre-1991*), and Brazil.¹⁰⁸

Table 2 (see Appendix) also compares the power of the Russian president to forty-one other popularly elected presidents.¹⁰⁹ With regard to legislative power, the authority granted to the Russian president is relatively typical in four of the six categories (Appendix, Table 2). However, the Russian president is granted more authority to issue decrees and to propose referenda than the vast majority of popularly elected presidents (ninety percent and ninety-eight

103. *See id.* art. 117.

104. *See id.* art. 109.

105. *See* SHUGART & CAREY, *supra* note 3, at 155.

106. *See id.*

107. *See id.*

108. *See id.*

109. *See id.* The proposed Argentine Constitution and Bulgarian and Romanian Constitutions were omitted from the calculations. The first was omitted because it had not been adopted. The latter two were omitted because there are some interesting patterns of presidential power among the post-communist states that deserve to be studied separately.

percent, respectively) (Appendix, Table 2).¹¹⁰ Overall, eighty-eight percent of popularly elected presidents are granted less legislative authority than the Russian president (Appendix, Table 2).¹¹¹

With regard to nonlegislative authority, the pattern is more of a mix. The authority of the Russian president to form the cabinet and to respond to censure are on the low side (Appendix, Table 2). The Russian president has high authority to dismiss the cabinet, but so do eighty-three percent of popularly elected presidents (Appendix, Table 2).¹¹² The one area where the Russian president's and the French president's authority is higher than the norm is with regard to the power of dissolution. Seventy-five percent of popularly elected presidents have less authority in this area (Appendix, Table 2). However, overall the Russian president is granted less non-legislative authority than sixty-three percent of popularly elected presidents (Appendix, Table 2).¹¹³

V. CONCLUSION

Analysts, both Russian and Western, worry that the enormous legislative authority granted to the Russian president will thwart democracy by allowing Yeltsin to simply ignore the parliament. However, this has proved difficult. For example, in early 1994, the first State Duma granted amnesty to the insurgents who participated in the events of October 1993,¹¹⁴ and in April 1995, the second State Duma passed a resolution declaring the dissolution of the Soviet Union invalid. The Federation Council has also rejected Yeltsin nominees for the Constitutional Court and procurator general.

Other analysts were concerned about the mix of nonlegislative authority given to the president. Because the Russian president has the power to dismiss a cabinet, or members thereof who enjoy the confidence of the parliament, "there is no institutionally defined authority over the cabinet, . . . [and] executive-legislative conflict is likely."¹¹⁵ Further, "[t]his institutional design has bred instability wherever it has been used, whether in Chile in the late nineteenth century, in Peru leading up to Fujimori's coup in 1992, or most ominously, in Weimar."¹¹⁶

110. *See id.*

111. *See id.*

112. *See id.*

113. *See id.*

114. *See* Alessandra Stanley, *Russia Congress Votes to Release Yeltsin Enemies*, N.Y. TIMES, Feb. 24, 1994, at A1.

115. Matthew S. Shugart, *Of Presidents and Parliaments*, E. EUR. CONST. REV., Winter 1993, at 30, 30.

116. *Id.* at 32.

Up to this time, however, the makeup of the government has not been directly determined by the party composition of the State Duma. Chairman of the Government Victor Chernomyrdin has retained his position despite the victories by a fragmented opposition in 1993 and again in 1995. However, in the event that a disciplined opposition is unified behind a single candidate, a Russian president could be pressured into "cohabitation," much like France's Francois Mitterand was in 1986 despite a greater ability to dissolve the assembly. Also, a tacit division of labor between Yeltsin and Chernomyrdin seems to have evolved where the prime minister "is directly responsible for economic management, while the President oversees foreign and security policy, provides strategic direction, and enforces the loyalty of regional governments to central government."¹¹⁷ However, it is apparent that variation in the relationship between the president and the prime minister is possible.

Although many challenges lie ahead for Russia as it attempts to consolidate democracy, there are, nonetheless, grounds for optimism. A second State Duma election has been held, and a second, even larger, victory for the opposition has been confirmed.¹¹⁸ A presidential election has been held, and the communists accepted the defeat of their candidate in the second round, despite allegations of improprieties in Yeltsin's campaign.¹¹⁹ The conflicts between the executive and legislative branches of government and pro-reform and conservative factions are likely to continue, but thus far, the conflicts have been mediated by constitutional means. The longer that pattern persists, the more likely it is that the principles embodied in the Constitution will become broadly accepted norms of behavior.

117. Remington, *supra* note 11, at 391.

118. See Michael McFaul, *A Communist Rout?*, N.Y. TIMES, Dec. 20, 1995, at A21.

119. See Alessandra Stanley, *Yeltsin Defeats Communist Foe by a Surprisingly Wide Margin; Health Issue Looms for 2d Term*, N.Y. TIMES, July 4, 1996, at A1.

VI. APPENDIX: TABLES

Table 1: Powers of Presidents

Legislative Powers

Package Veto/Override		Partial Veto/Override	
4	Veto with no override	4	No override
3	Veto with override requiring majority greater than 2/3 (of quorum)	3	Override by extraordinary majority
2	Veto with override requiring 2/3	2	Override by absolute majority of membership
1	Veto with override requiring absolute majority of assembly or extraordinary majority less than 2/3	1	Override by simple majority of quorum
0	No veto; or veto requires only simple majority override	0	No partial veto

	Decree		Exclusive Introduction of Legislation (Reserved Policy Areas)
4	Reserved powers, no rescission	4	No amendment by assembly
2	President has temporary decree authority with few restrictions	2	Restricted amendment by assembly
1	Authority to enact decrees limited	1	Unrestricted amendment by assembly
0	No decree powers; or only as delegated by assembly	0	No exclusive powers

Budgetary Powers		Proposal of Referenda	
4	President prepares budget; no amendment permitted	4	Unrestricted
3	Assembly may reduce, but not increase amount of budget items		
2	President sets upper limit on total spending, within which assembly may amend	2	Restricted
1	Assembly may increase expenditures only if it designates new revenues		
0	Unrestricted authority of assembly to prepare or amend budget	0	No presidential authority to propose referenda

Nonlegislative Powers

	Cabinet Formation		Cabinet Dismissal
4	President names cabinet without need for confirmation or investiture	4	President dismisses cabinet ministers at will
3	President names cabinet ministers, subject to confirmation or investiture by assembly		
		2	Restricted powers of dismissal
1	President names premier, subject to investiture, who then names other ministers	1	President may dismiss only upon acceptance by assembly of alternative minister or cabinet
0	President cannot name ministers except upon recommendation of assembly	0	Cabinet or ministers may be censured and removed by assembly

	Censure		Dissolution of Assembly
4	Assembly may not censure and remove cabinet or ministers	4	Unrestricted
		3	Restricted by frequency or point within term
2	Assembly may censure, but president may respond by dissolving assembly	2	Requires new presidential election
1	"Constructive" vote of no confidence (assembly majority must present alternative cabinet)	1	Restricted: only as response to censurés
0	Unrestricted censure	0	No provision

Source: MATTHEW S. SHUGART & JOHN M. CAREY, PRESIDENTS AND ASSEMBLIES: CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS 150 (1992).

Table 2: Comparative Powers of Presidents

Constitution	Legislative Powers					Nonlegislative Powers						
	Package Veto	Partial Veto	Decree	Exclusive Introduction	Budgetary Power	Referenda	Total	Cabinet Formation	Cabinet Dismissal	Censure	Dissolution	Total
France	0	0	1	0	0	0	1	1	0	0	3	4
Russia	2	0	2	0	0	4	8	1	4	2	3	10
Other 41 countries												
% same	51	66	7	80	73	2	7	12	83	2	7	2
% less	46	0	90	0	0	98	88	5	17	16	75	34
% more	2	33	2	20	27	0	5	83	0	57	17	63

Source: MATTHEW S. SHUGART & JOHN M. CAREY, PRESIDENTS AND ASSEMBLIES: CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS 155 (1992).