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Russia's constitutional dictatorship: a brief history

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RUSSIA'S CONSTITUTIONAL DICTATORSHIP: A BRIEF HISTORY

*Cindy Skach**

ABSTRACT

Why is the word impeachment so terrible? After all, if the Congress passed such a motion it would have no legal force. A popularly elected president could not be removed from power by the Congress, especially this Congress, which had long ago lost the people's trust.¹

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* This article is dedicated to the memory of Alfred Stepan, 1936-2017. I am grateful to his comments on earlier drafts, as well as those of Archie Brown and S. Neil MacFarlane. All errors remain my own.

¹ BORIS YELTSIN, *THE VIEW FROM THE KREMLIN* 210 (London: Harper Collins, 1994).

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1. INTRODUCTION

For Americans who just lived through the second impeachment of the nation's 45th president, these words sound strangely familiar. But the familiarity is no coincidence. Rather, it is part of the pathology induced by the mechanics of the constitution and the office of the presidency: its direct election and its fixed terms. In 2017, things had become so problematic in Russia that British Prime Minister Theresa May claimed Russia was threatening the international order.² The following year, the US Pentagon stated that Russia was more of a threat to democracy than terrorism.³ To be sure, the democratic opening in post-communist Russia has been an arduous, and by no means linear, process. Back in 1994, just after the start of the transition to democracy, the first Russian President Boris Nikolaevich Yeltsin still considered Russia to be "legalized anarchy."⁴ In 1998, the international human rights organization Freedom House considered Russia to be only a "partly free" transitional polity—a "work-in-progress."⁵ For years, analysts inside and outside Russia have been predicting a grim future, sometimes fearing Latin American-style military intervention or an extreme nationalist, quasi-fascist outcome.⁶

² Theresa May, Prime Minister of the United Kingdom, Speech at Lord Mayor's Banquet, 14 November 2017.

³ Adam Taylor, *Pentagon says China, Russia are bigger problems for US than terrorists. Voters may not agree*, WASH. POST, January 20, 2018.

⁴ Yeltsin, *supra* note 1, at 6.

⁵ See the article by the President of Freedom House, Adrian Karatnycky, POLITICAL AND ECONOMIC REFORM IN EAST CENTRAL EUROPE AND THE NEW INDEPENDENT STATES: A PROGRESS REPORT, NATIONS IN TRANSIT 1997: CIVIL SOCIETY, DEMOCRACY AND MARKETS IN EAST CENTRAL EUROPE AND THE NEWLY INDEPENDENT STATES 3-16 (New Brunswick and London: Transaction Publishers, 1997); see also the cautious views of Russian 'democracy' expressed by leading Russian political analysts in Liliya Shevtsova, ed., *Rossiia: desyat' voprosov o samom vazhnom* (Moscow: Carnegie Centre, 1997).

⁶ *Special: Russia's Crisis*, THE ECONOMIST, July 11, 1998, at 19–21.

The difficulties Russia faces in its struggle towards democracy result, to a great extent, from the multi-dimensional character of its transition agenda. Russia has been faced not only with a political transition, but with the almost simultaneous tasks of transforming its economy, shaping a post-Cold War foreign policy, and resolving its national question. Russia, to a much greater extent than many other countries, has faced challenges posed by a completely unsettled sense of identity and problems of “stateness.”⁷ As Archie Brown writes, “[N]o other country in the world which has embarked on the course of transition to democracy has had such a complicated, quadruple task.”⁸ So was it overdetermined? No. This article argues that it was not, but rather, that Russia’s constitution—the form known as semi-presidentialism—actually complicated Russia’s transition in the face of these huge transition tasks, facilitating the turn to a pattern of governance we might call constitutional dictatorship.⁹ When we

⁷ See RONALD GRIGOR SUNY, *THE REVENGE OF THE PAST: NATIONALISM, REVOLUTION, AND THE COLLAPSE OF THE SOVIET UNION* (Stanford University Press, 1993); JOHN DUNLOP, *RUSSIA: IN SEARCH OF AN IDENTITY?* IN IAN BREMMER AND RAY TARAS, EDS. *NEW STATES, NEW POLITICS: BUILDING THE POST-SOVIET NATIONS* 29–95 (Cambridge University Press, 1997); Philip G. Roeder, *Soviet Federalism and Ethnic Mobilization*, 43 *World Politics* 196–232 (January 1991); Linz and Stepan, *Problems of Democratic Transition and Consolidation*, pp. 366–400 (A discussion of the difficulties “stateness” problems posed for the democratic transition in Russia); see Benedict Anderson, *Imagined Communities: Reflections of the Origin and Spread of Nationalism* (London: Verso, 1991); Ernest Gellner, *Nations and Nationalisms* (Ithaca: Cornell University Press, 1983); and Ernst B. Haas, “What Is Nationalism and Why Should We Study It?” *International Organization* Vol. 40, No. 3 (Summer 1986), pp. 707–44. (general questions of identity and citizenship)

⁸ See JON ELSTER, *THE NECESSITY AND IMPOSSIBILITY OF SIMULTANEOUS ECONOMIC AND POLITICAL REFORM* (1990); DOUGLAS GREENBERG, STANLEY N. KATZ, MELANIE BETH OLIVIERO AND STEVEN C. WHEATLEY, *CONSTITUTIONALISM AND DEMOCRACY* 157 (Oxford University Press, 1993)

⁹ See “Izmenenie Konstitutsii?”, *Nezavisimaya gazeta*, Nov. 6, 1998, pp. 1–3; *The Russian Crisis: Beginning of the End or End of the Beginning?* 15(1) *Post-Soviet Affairs* 55–71, 65–69 (1999) (Explaining that throughout the 1990s, an increasing number of articles and documents calling for constitutional reform in Russia, spanning across the ideological spectrum).

examine Russia's first decade on three conditions that are necessary for the semi-presidential constitution to function well – the degree to which its presidents have been genuine members of political parties, the majority building capacity of Russia's electoral system, and the structural consolidation of Russia's party system – Russia has had very unfavorable values on each of these conditions. And this, in semi-presidentialism, can be lethal.¹⁰

I. THE HISTORY OF RUSSIA'S POLITICAL SPECTRUM

And if we look at the three distinct periods in Yeltsin's administration, for example, from 1991 to 1993, from 1993 to 1995, and from 1995 to 1998, we see that President Yeltsin never enjoyed a stable single party or even coalitional majority in either the Congress of People's Deputies (from 1991 to 1993), or the State Duma (from 1993 to 1999). The same is true for the Chairman of the Supreme Soviet from 1991 to 1993, and for the Russian prime ministers (from 1993 to August 1998). Between 1991 and 1993, the Congress, which had not been elected in multi-party elections, had two main blocs. The first bloc was the umbrella organization known as "Democratic Russia" (DR). The second bloc was the Communist Party (KPRF). Both were diverse groupings plagued by internal cleavages.¹¹ The DR, which supported Yeltsin's election to the post of first Russian President, held about 40% of the RSFSR Congress seats.¹² It was described as "very amorphous, very diffuse and [without] a formal organizational structure."¹³ The KPRF, similarly, was beset by internal divisions based on "multiple political-ideological tendencies."¹⁴

¹⁰ CINDY SKACH, *BORROWING CONSTITUTIONAL DESIGNS* (Princeton: Princeton University Press, 2005).

¹¹ See ARCHIE BROWN, *THE GORBACHEV FACTOR* 188–89 (1996).

¹² JERRY F. HOUGH ET AL., *THE 1996 RUSSIAN PRESIDENTIAL ELECTION* 32 (Brookings Institution Press 1996).

¹³ STEPHEN WHITE ET AL., *THE POLITICS OF TRANSITION: SHAPING A POST-SOVIET FUTURE* 161 (Cambridge Univ. Press 1993).

¹⁴ Joan Barth Urban & Valerii D. Solovei, *Russia's Communists at the Crossroads* 37 (Westview Press 1997).

Even after the first “quasi-multiparty” elections in 1993 to the newly formed, 450-member State Duma (legislature), no single party or coalition achieved a clear majority or was able to broker a majority coalition.¹⁵ Yeltsin’s support coalition in this legislature included Russia’s Choice, the Russian Unity and Agreement Party, and the Democratic Party of Russia. Together these parties held only 22% of the Duma seats, hardly enough for a stable majority. By the time of the second State Duma elections in 1995, these three main parties in the pro-president, pro-government coalition had been re-organized and regrouped. The prime minister at the time, Viktor Chernomyrdin, founded his own center-right party, “Our Home is Russia,” which became the main pro-government party but which, in coalition with Democratic Russia’s Choice, still only held 18% of the Duma seats. This 18% was not strongly united but rather included a heterogeneous set of centrists and reformers. In fact, Chernomyrdin’s only serious political power base was “his network of friends, allies, and clients in the oil and gas industries.”¹⁶

Yevgeniy Primakov, the prime minister from September 1998 to May 1999, formed a coalition cabinet that included the Communist Party and enjoyed a majority in the State Duma. This majority was tentative; Gennadiy Zyuganov, leader of the Communist Party, the largest party in the Duma, cautioned that the Communists would offer the Primakov government only “selective support.”¹⁷ Nevertheless, it was the first time in post-communist Russia’s history that a legislative majority had been built. Unfortunately for the performance of semi-presidentialism in Russia, Primakov was unexpectedly sacked by Yeltsin in May 1999. Given this difficulty with building and sustaining party majorities, Russia has spent most of its early post-communist life

¹⁵ See Brown, *supra* note 11 at 188 (arguing that these elections did not qualify as “founding elections” understood as the first multi-party elections in the transition from authoritarian rule. In 1993, the elections were at best “quasi-multiparty,” and were characterized by high voter apathy as well as strong support for nationalists and Communists.).

¹⁶ Elena Chinyaeva & Peter Rutland, *A Prime Minister Without Politics*, 3 *Transition* 32, 32–38 (1997).

¹⁷ David McHugh, *Shokhin Quits Cabinet After Ten Days*, THE MOSCOW TIMES (Sept. 26, 1998).

in a constitutional place I call *divided minority government*. See **Table 1**. Importantly and problematically, Russia began its transition from communism from this very unfavorable starting point within the semi-presidential constitution. And this, as I detail below, laid the foundations for today's constitutional dictatorship under Vladimir Putin.

So how did Russia's prolonged placement in divided minority government complicate Moscow's capacity to deal effectively and democratically with important tasks on its transition agenda? In the section that follows, I analyze three important episodes in post-communist Russian politics. The first of these episodes was the political struggle between Boris Yeltsin and Ruslan Khasbulatov in September and October 1993. I discuss why, and in what ways, the political and constitutional conflict during this crucial period of the First Russian Republic was structurally similar to the periods of divided minority government in France in the 1950s and Weimar Germany in the 1920s. I then discuss how this struggle pre-empted reconciliatory politics and set a pattern of solving conflict through force, paving the way for a hyper-presidential administration, characterized by non-party cabinets and extensive policy-making by presidential decree. Second, I suggest that Russia's military imbroglio in Chechnya from 1994 to 1995, and specifically Yeltsin's declaration of war on the breakaway republic, was an undemocratic, presidential prestige strategy resulting from divided minority government, and of Yeltsin's perception of victory over the legislature in 1993. I conclude with a discussion of Putin's first presidency. I argue that in the wake of prolonged periods of divided minority government, Putin's early efforts to recapture authority in Russia entrenched constitutional dictatorship, ultimately thwarting chances of constitutional democracy.

Table 1: Electorally Generated Subtypes of Semi-Presidentialism

Russia 1991-1999

Consolidated Majority	Divided Majority	Divided Minority	Non-Democratic Hyper-Presidentialism
President and PM share the same majority in legislature	PM has a legislative majority, president does not	Neither PM nor president has a legislative majority	
	Sep. 1998-May 1999	June 1991-Sep. 1993 Dec. 1993-Sep. 1998 May 1999-May 2000	(Sep.-Dec. 1993)
0 Days	240 Days	2919 Days	83 Days

I then return to the constitution itself and discuss why Russia could not meet the necessary conditions for consolidated majority government—the best place to be if you have a semi-presidential constitution and care about democracy. The data is based on archival work and interviews conducted in Moscow in the 1990s.

II. THE CONSTITUTIONAL CRISIS OF 1993 AND YELTSIN'S USE AND ABUSE OF PRESIDENTIAL POWER

With the direct election of a powerful president in June 1991, post-communist Russia—then officially known as the Russian Soviet Federative Socialist Republic (R.S.F.S.R.)—instituted a semi-presidential constitutional framework and the First Russian Republic.¹⁸ Under this framework, the government was responsible

¹⁸ See Richard Sakwa, *Russian Politics* 442 (Routledge 2020) (noting that the 1978 Russian constitution served as the base document, and it “had been amended over 300 times, and the incremental nature of constitutional revision gave rise to

and accountable to the Russian Supreme Soviet, the chairman of which was the constitutional equivalent of a prime minister.¹⁹ This chairman's powers included proposing candidates to the most important government posts and reporting to the Congress of People's Deputies on all matters concerning the state of the federation, foreign and domestic affairs, and on defense and state security. These functions "were assigned to the chairman before the presidency was instituted in the Russian Federation, when the chairman of the Supreme Soviet . . . was 'the highest official person' in the Russian Republic."²⁰ In 1991, the president became the highest official of the federation. Herein lies the origin of the dual-executive structure, because "all other prerogatives of the chairman of the Supreme Soviet were left intact . . . [and now] many of the chairman's powers overlapped [with] the powers of the president. The stage was set for collision."²¹

This particular Russian version of semi-presidentialism was described by Russian legal scholar, and former member of the Supreme Soviet, Alexander Yakovlev:

With two power structures, each of which strove to obtain the age-old prize, "the totality of power," a predictable rivalry developed. The rivalry became embodied in the persons of the president of the

numerous contradictions, notably vesting supreme power in both the legislative and executive."); *see also* Boris Nikolayevich Yelstin, *Ispoved na zadannuiu temu* (1990) (recounting reform in the later years of the Gorbachev period).

¹⁹ *See* Bruce L. R. Smith, *Law and Democracy in the New Russia* 8 (Gennady M. Danilenko, 1993) (noting that the dual power structure was, even early in the R.S.F.S.R., thought of as "an incongruous arrangement that cannot function well over the long run.").

²⁰ *See* Alexander M. Yakovlev et al., *Striving for Law in a Lawless Land: Memoirs of a Russian Reformer* 129 (M.E. Sharpe, 1996) (explaining that Yakovlev was a key advisor to Yeltsin's hand-picked, constitutional committee, which drafted the December 1993 Russian Constitution, and, in 1994, Yakovlev was appointed the Plenipotentiary Representative of the President of the Russian Federation to the Federal Assembly.).

²¹ Alexander M. Yakovlev, *Striving for Law in a Lawless Land: Memoirs of a Russian Reformer* 130 (London: M.E. Sharpe, 1996).

Russian Federation and the chairman of the Supreme Soviet of the Russian Federation, who represented the two warring structures. Both structures had the right to promulgate acts that had the force of law. But who was above whom? Whose laws would prevail?²²

Constitutionally, both the president and the chairman of the Supreme Soviet could issue direct orders to government ministries and agencies.²³ In addition, both the president and the Supreme Soviet could initiate bills, and the president had limited veto over bills proposed by the Supreme Soviet. The president also headed the Security Council of the Russian Federation, had the right to declare a state of emergency, and was commander in chief of the armed forces. However, the president was not given the right to dissolve the Congress or the Supreme Soviet. He could ask for the government's resignation, but this request had to be confirmed by the Supreme Soviet. The fact that he was *not* given the right of dissolution, but that he did have direct command over the armed forces and could unilaterally declare a state of emergency, made the president dangerously sovereign without giving him recourse to normal democratic exits from conflictual situations.²⁴ The Congress and the Supreme Soviet, for their part, could force a government's resignation through a no confidence vote. Thus, the right of determining exit and the tools for resolving government crises before they became regime crises were awarded principally to the Congress and the Supreme Soviet, but not the president.²⁵ It follows that the president under this constitutional structure had greater incentives to escalate conflict to a

²² *Id.* at 140.

²³ Yitzhak M. Brudny, *Ruslan Khasbulatov, Aleksandr Rutskoi, and Intraelite Conflict in Postcommunist Russia, 1991–1994*, in PATTERNS IN POST-SOVIET LEADERSHIP 75, 86 (Timothy Colton & Robert Tucker eds., Westview Press, 1995).

²⁴ John P. McCormick, CARL SCHMITT'S CRITIQUE OF LIBERALISM AGAINST POLITICS AS TECHNOLOGY 121–23 (Cambridge University Press, 1997) ("Sovereign is he who decides on the exception [*Souverän ist, wer über den Ausnahmezustand entscheidet*]").

²⁵ Brudny, *supra* note 23, at 85.

state of emergency, which then gave him a constitutional tool for solving conflict.

Eventually, political differences between the Russian president and the chairman of the Supreme Soviet escalated under this constitutional framework. Their differences concerned, for the most part, the timing and scope of economic reform. Both the president and the chairman had their own diverging ideas concerning the path out of communism, and particularly the path out of a command economy. The Supreme Soviet, for its part, had never been a complacent body. It had grown increasingly more assertive in trying to defend Russian sovereignty from the U.S.S.R., and later, in trying to maintain national cohesion in the face of centrifugal pulls from former autonomous ethnic territories and Russian-populated regions of the federation.²⁶ Importantly, a substantial faction of both the Supreme Soviet and the Congress of People's Deputies had strong ties to state industry and collective and state farms, and this faction vehemently opposed any economic policy that could result in widespread privatization or even land reform.

Boris Yeltsin, for his part, had also never been complacent. Yeltsin was elected in June 1991 with almost 60% of the valid votes. At this time, the economic crisis in Russia was severe: the budget deficit for 1991 was 26% of GDP, up from 8.5% in 1990.²⁷ Yeltsin, promising to manage this crisis, was at the height of his popularity and was still on rather amicable terms with the R.S.F.S.R. Congress and Supreme Soviet. In this period, on November 1, 1991, Yeltsin convinced the Congress to grant him significant emergency powers for one year to deal with the economic crisis.²⁸ Strong presidential powers were delegated to him, with the understanding that they could be revoked,

²⁶ Galina Starovoytova, "Sovereignty After Empire: Self-Determination Movements in the Former Soviet Union," United States Institute of Peace, Working Paper No. 19 (November 1997).

²⁷ William Maley, *The Shape of the Russian Macroeconomy*, in *RUSSIA IN SEARCH OF ITS FUTURE* 48, 53 (Amin Saikal & William Maley eds., Cambridge University Press, 1995).

²⁸ Scott Parish, *Presidential Decree Authority in Russia, 1991-95*, in *EXECUTIVE DECREE AUTHORITY* 62, 71-77 (John M. Carey & Matthew Soberg Shugart eds., Cambridge University Press, 1998).

by the RSFSR Supreme Soviet.²⁹ The powers included the right to enact special economic reforms by decree, to override previous legislation of the Russian Federation, to create or cancel all executive bodies of power, and to suspend any legal acts of local governments which violated the constitution, or violated the sovereignty of the Russian state, or both.³⁰ The Supreme Soviet could overrule a presidential decree, but it had to do so within seven days of its original issue.

Within the first year of Yeltsin's term, there was little resistance to Yeltsin's use of these powers. According to economists involved in Russia's privatization, the Congress and Supreme Soviet did not at that time believe that Yeltsin would try to push through a serious and comprehensive privatization program that could affect state industries and state farms, and lead to bankruptcy and unemployment.³¹ In fact, Yeltsin had reassured the powerful Civic Union faction of the Congress that he held views on economic reform similar to those of the CU's supporters – the industrial managers and workers.³²

But by December 1992, the situation was substantially different, as it became increasingly clear that Yeltsin was trying to implement a notoriously difficult and painful economic restructuring plan devised mainly by two young pro-market reformers, first his Finance Minister Yegor Gaydar, and then Boris Fedorov. Boris Fedorov "formulated a program for macroeconomic stabilization and tried to implement it in any way possible."³³ Prices were freed, trade was liberalized, defense expenditures were sharply cut, and large state firms were denied easy credits. Yeltsin and his reformers had support from several international financial institutions, such as the IMF and

²⁹ Stephen White, *Russia: presidential leadership under Yeltsin*, in POSTCOMMUNIST PRESIDENTS 38, 43–47 (Ray Taras ed., Cambridge University Press, 1997).

³⁰ Thomas F. Remington, *Representative Power and the Russian State*, in DEVELOPMENTS IN RUSSIAN AND POST-SOVIET POLITICS 57, 74–76 (Stephen White, Alex Pravda & Zvi Gitelman eds., Macmillan Publishers Limited, 1994).

³¹ MAXIM BOYCKO, ANDREI SHLEIFER & ROBERT VISHNY, PRIVATIZING RUSSIA 5 (1995); cf. *Moskovskie novosti* (July 15, 1990).

³² *Keesings Record of World Events*, 39201 (Nov. 3, 1992); see Boycko, Shleifer & Vishny, *supra* note 31, at 77.

³³ ANDERS ÅSLUND, HOW RUSSIA BECAME A MARKET ECONOMY 55 (1995).

foreign lending banks, but the plan, and Yeltsin's attempts to implement it, met with severe resistance from civil society and especially from a political society dominated by *nomenklatura* with ties to state enterprises. Ruslan Khasbulatov, Chairman of the Supreme Soviet at the time, was a main player in this resistance.³⁴ The Supreme Soviet continued to block government legislation concerning privatization throughout the later part of 1992 and, "[a]s a result, every subsequent major regulation of privatization was introduced by Presidential decree rather than parliamentary action."³⁵

Khasbulatov allied himself with the more conservative factions of the Congress and the Supreme Soviet, as well as with enterprise managers and communist reformers from the Gorbachev period. Their alliance was cemented by their shared anger and perception that they had all been left out of the detailed designing of reform which had been entrusted to a small group of young economists. This group—the so-called Gang of Four—“had no roots in a civil movement[.] [T]hey were there at the pleasure of the president.”³⁶ The so-called Gang was mostly made up of young, free-market minded academics, including Yegor Gaydar and Anatoliy Chubais. Yeltsin, following his constitutional prerogative, nominated one of this Gang of Four, Yegor Gaydar, Acting Prime Minister in 1992. Yeltsin then almost immediately agreed to demands by the Supreme Soviet that future nominees to the post of prime minister be approved by Congress, and that appointments to the so-called power ministries—security, foreign affairs, internal affairs, defense—be approved by the Supreme Soviet.³⁷

³⁴ The availability of this external support coalition—outside of his own legislature and even outside of the borders of his own country—was another factor which *reduced* Yeltsin's incentives to build up his own internal support through political parties and social coalitions. The combination of Yeltsin's increased decree power and this international coalition may explain why, despite Yeltsin's apparent co-operation with the RSFSR legislature in 1991, severe conflict had arisen by 1992.

³⁵ Boycko, Shleifer, & Vishny, *supra* note 31.

³⁶ John Lloyd, *REBIRTH OF A NATION: AN ANATOMY OF RUSSIA* 219 (1998).

³⁷ The Constitutional Court appealed to Yeltsin, on one hand, and Rutskoy and Khasbulatov, on the other hand, to resolve their differences for the sake of

Yeltsin had hoped that this co-operative move would encourage the Congress to confirm Gaydar, however much the Congress and Supreme Soviet disliked him. The Congress instead rejected Gaydar and forced the appointment of Viktor Chernomyrdin, former Soviet Minister of Gas from 1985 to 1989, who had ties to state industry and was more sympathetic to a slower paced economic reform than Gaydar. In a further attempt to thwart Yeltsin's economic program, the Supreme Soviet appointed Viktor Gerashchenko as chairman of the Central Bank of Russia on July 17, 1992.³⁸ Gerashchenko quickly instituted a loose credit policy for enterprises, a policy that fueled inflation, prevented or at least delayed many bankruptcies, and undercut the reformers' economic "shock therapy."³⁹

In early 1993, Fedorov managed to convince Gerashchenko and Chernomyrdin to issue a joint statement from the Central Bank and the Russian Government establishing quarterly credit ceilings. These ceilings were meant to help control the Central Bank's monetary policy and, in turn, keep inflation down. By July 1993, however, Gerashchenko had broken the credit ceilings under pressure from the agricultural and northern regional lobbies. The Supreme Soviet, for its part, adopted a budget which called for a deficit of 25 percent of GDP,

political and economic stability. After several rounds of face-to-face negotiations, Yeltsin and Khasbulatov decided to draft another constitution which would more strictly delineate presidential and legislative powers, to be voted on in an April 1993 referendum. As the referendum approached, Rutskoy, the Constitutional Court and the Civil Union proposed a round table to draft the constitution. Yeltsin refused to take part. His former aide, Gennadiy Burbulis, commented that "...the experience of east European countries had shown that 'the round table is a symptom of instability and not the right way to effect a change of authority.'" *Keesings Record of World Events*, 39201 (Nov. 3, 1992).

³⁸ See also YEGOR GAYDAR, *DNI PORAZHENIY I POBED* (1997) (stating that that the appointment of Gerashchenko, which the author originally supported, had been a major mistake).

³⁹ See ANDERS ÅSLUND, *HOW RUSSIA BECAME A MARKET ECONOMY*, 191-92 (Brookings Institution Press, 1st ed. 1995) ("The money supply (M2) increased by no less than 28 percent per month during the five months from June to October 1992...[d]estabilization was rampant.").

which Fedorov refused to endorse.⁴⁰ Gerashchenko ignored Fedorov and government directives, and continued to print money to fund a budget deficit that “the Parliament seemed intent upon elevating to an irresponsible and unsustainable level.”⁴¹ On September 18, 1993, Yeltsin appointed Gaydar to the government as First Deputy Prime Minister and entrusted him once again with economic reform policy. A “war of words” ensued between the Russian president, the cabinet, the Russian Central Bank, and the Supreme Soviet. Public opinion polls conducted in June and July 1993, in the midst of this crisis, showed severe disappointment not only with the Russian economic system, but also with the political system for its inability to resolve the deadlock.⁴²

A report in *Izvestiya* on 10 September 1993 described this situation poignantly and is worth quoting at length:

Dual power is becoming too onerous a burden for the country and the people. The split has long been moving rapidly downward from the federal level, penetrating the thick of our public life. We now have two of everything[.] Lines have been drawn in the creative unions. The speaker meets with his writers and the President with his. It won't be long before we have two central television companies, two prosecutor's offices, two supreme courts and two governments[.] Sociological measurements of public moods, not to mention one's own daily experience, confirm that political apathy is on the rise.

⁴⁰ ANDERS ÅSLUND, *HOW RUSSIA BECAME A MARKET ECONOMY 191–92* (Brookings Institution Press, 1st ed. 1995).

⁴¹ William Maley, *The Shape of the Russian Macroeconomy*, in *RUSSIA IN SEARCH OF ITS FUTURE*, 57–58 (Amin Saikal & William Maley eds., 1995).

⁴² See RICHARD ROSE, IRINA BOEVA AND VIACHESLAV SHIRONIN, *HOW RUSSIANS ARE COPING WITH TRANSITION: NEW RUSSIAN BAROMETER II*, 40 (Glasgow: University of Strathclyde Centre for the Study of Public Policy, 1993) (On a scale of +100 (very positive) to –100 (very negative), the mean score Russians considered their system of government to be was –16).

People...are looking at what is happening at the top with bewilderment and disgust. They are demanding an end to the [institutional] war[.]⁴³

The fact that Yeltsin and the Supreme Soviet both wanted to determine the timing and construction of the new political, economic and federal system is a logical consequence of the fact that they both had a constitutional right to do so. Conflict arose because these two executives had opposing political ambitions, were caught in an extremely inelastic economic situation, and could not count on the support of a clear and stable majority of deputies. Within two years, the situation had reached a point of no return: "[t]he two institutions, the Supreme Soviet and presidency, were locked in a struggle for victory which one or other had to win."⁴⁴ Eventually, this *mnogovlastiye* (multiplicity of powers) and *dvoyevlastiye* (dual power, such as that between president and legislature) led to "what many Russians preferred to term *byezvlastiye*, an absence of effective and legitimized power[.]"⁴⁵ The result was a general vacuum of legitimacy in the political system.⁴⁶

This time, however, Yeltsin made sure that he would not have any interference from the Congress or Supreme Soviet. His appointment of Gaydar on September 18 was followed, three days later, by Presidential Decree 1400, which dissolved the Congress of People's Deputies and the Supreme Soviet, censored the press, leaned on the constitutional court, and called for new, nation-wide elections and a new constitution. The Congress responded by passing an impeachment motion against Yeltsin and inaugurating the then vice-

⁴³ Yuri Orlik, *What We Can Expect from the Russian President's September Offensive*, IZVESTIA, Sep. 10, 1993, at 10; see also *Current Digest of the Post-Soviet Press*, Vol. XLV, No. 36 (1993), p. 11.

⁴⁴ John Lloyd, *Rebirth Of A Nation: An Anatomy Of Russia*, 35 (M. Joseph, 1st ed. 1998); see Vladislav M. Zubok, *Russia: Between Peace and Conflict, in WHOSE WORLD ORDER? UNEVEN GLOBALIZATION AND THE END OF THE COLD WAR*, 115 (Hans-Henrik Holm & Georg Sörensen eds., 1995).

⁴⁵ Archie Brown, *The October Crisis of 1993: Context and Implications*, in *Post-Soviet Affairs* Vol. 9, No. 3, 183, 186 (1993).

⁴⁶ See also *Nezavisimaya gazeta*, December 7, 1993.

president, Aleksandr Rutskoy, as President of the R.S.F.S.R. A dramatic series of events followed. Yeltsin sent more than 2,000 troops to surround the Congress building, where deputies had closed themselves off in protest and defiance of the president, having access only to journalists' portable cellphones to communicate with the public and the world about the situation.

The public address which Yeltsin gave on September 22, attempting to justify this unilateral decision to close down the Congress, demonstrated his unwillingness to accept political opposition as legitimate, to respect the constitution and the right of other institutions to question, challenge, and even object to his own politics. In this address, Yeltsin claimed that the legislature "has been seized by a group of persons who have turned it into the staff of the irreconcilable opposition. Hiding behind deputies, this group is pushing Russia towards the abyss . . . [and it] has lost its right to be in control of crucial levers of state power."⁴⁷

The fact that Yeltsin used force to solve the problem and frustrations of divided minority government had serious, negative implications for the rule of law and thus for Russia's democratic transition.⁴⁸ But the crucial point I would like to stress about this "September Offensive" is that it originated from divided minority government—that extremely frustrating situation of constitutionally granted power, on the one hand, and powerlessness due to a lack of legislative support, on the other hand. This makes one wonder whether the semi-presidential constitution, which combined presidential and parliamentary incentives, was a wise choice for a new state without a real party system. "The principles of parliamentary and presidential government are both equally valid, but the tragedy for Russia was that both were being pursued with equal vigor at the same

⁴⁷ Boris Yeltsin quoted in the *Financial Times* (London) 22 September 1993, p. 2; see also *Nezavisimaya gazeta*, September 22, 1993, p. 1; and Khasbulatov's response to Yeltsin's decree in *Rossiiskaya gazeta*, September 23, 1993, p. 1.

⁴⁸ Archie Brown, *Political Leadership in Post-Communist Russia*, in *RUSSIA IN SEARCH OF ITS FUTURE*, 28–47, esp. 43–44 (Amin Saikal & William Maley eds., 1995).

time: like two trains approaching on the same track, the collision would be disastrous for both."⁴⁹

As the former *Financial Times* correspondent for Russia wrote, the September Offensive was "aimed at breaking the Gordian knot of political tensions and enmities now so large and tight that a chainsaw, not a sword, is required."⁵⁰ Indeed, the "Gordian knot" is an accurate description of divided minority government, because institutional conflict becomes so intertwined and complicated in this subtype that it cannot simply be "undone," but rather may encourage drastic solutions. Thus, divided minority government is likely to lead out of the democratic box, into non-democratic, presidential dominance and extensive use of emergency and decree powers. Empirical evidence tells us that indeed, Yeltsin decided to solve the dilemma of divided minorities this way: by unilaterally closing down the legislature, restricting the operation of the constitutional court, censoring the media, and ruling by decree with a small group of hand-picked advisors. Yeltsin's unilateral action can be likened to that of Alexander the Great in the fable of the Gordian knot, who favored drastic action over cautious deliberating. As Yeltsin himself wrote, "[i]f the parliament does not exist, there is not, there must not be, any dialogue with it."⁵¹

In the aftermath of the September Offensive, Boris Yeltsin called for a new constitution to be drawn up and put to a national referendum.⁵² Yeltsin took complete control of this constitutional process.⁵³ Backed by the popular support he received in a "plebiscite"

⁴⁹ RICHARD SAKWA, *RUSSIAN POLITICS AND SOCIETY* 48 (3d ed. 2002).

⁵⁰ John Lloyd, *Rock Solid Against Yeltsins' Reforms*, *FINANCIAL TIMES* (LONDON), Sept. 6, 1993, at 21.

⁵¹ John Lloyd, *Yeltsin Confident As Direct Rule Wins Military Support*, *FINANCIAL TIMES* (LONDON), Sept. 23, 1993, at 1 (quoting Boris Yeltsin).

⁵² It was actually called a plebiscite and not a referendum in order to avoid the law on referendums. See Michael Dobbs, *Yeltsin Challenges His Foes In Congress, Calls For Referendum*, *THE WASHINGTON POST* (Dec. 11, 1992), <https://www.washingtonpost.com/archive/politics/1992/12/11/yeltsin-challenges-his-foes-in-congress-calls-for-referendum/1ad742d4-821f-4f48-96b0-1a80b4c66db1>.

⁵³ *Izvestiya* [Constitution], July 16, 1993, at 3–6; cf. *Izvestiya* [Constitution], Nov. 10, 1993, at 3–5.

in April 1993, which in reality had the effect of a referendum, Yeltsin believed he had been given a *carte blanche* popular mandate to write this constitution. In this referendum, nearly 59% of those voting (but only 38% of the electorate) said they had confidence in Yeltsin.⁵⁴ “For Yeltsin and his supporters this was a verdict that justified pressing ahead with a constitution that provided for a presidential republic with a much more limited legislature, and by the end of that year they had obtained that objective.”⁵⁵

The process of drafting, discussing and approving a new constitution is extremely important in the constitutional moments of transitional democracies. Elites have, in these moments, a chance to demonstrate their democratic commitment to the nation.⁵⁶ The more transparent and plural the constitution-making process is, the more respect shown by the new leaders – not only for the democratic ideal, but for the citizens *qua* citizens of the nation. In the ideal constitution-making environment, a democratically elected constituent assembly freely debates and discusses different draft-constitutions, attempts to decide difficult or contentious points through consensual rather than majoritarian mechanisms, and submits the final draft to a referendum for legitimization by a clear majority of the electorate.⁵⁷ Usually a new democracy meets some to most of these conditions. Spain, in 1979, met all of them. Russia, in 1993, met none. Yeltsin drew up the 1993 Constitution under an opaque veil, since there was no election of a constituent assembly.

Indeed, the legislature played no role in drafting or approving the constitution. Even the first draft by Yeltsin’s hand-picked constitutional committee was discarded, apparently because it

⁵⁴ White, Rose & MacAllister, *How Russia Votes*, Table 4.2 (1997).

⁵⁵ *Id.* at 46.

⁵⁶ See Jon Elster, *Afterword: The Making of Postcommunist Presidencies*, in *Postcommunist Presidents* 225–37 (1997); Juan J. Linz, *Introduction: Some Thoughts on Presidentialism in Postcommunist Europe*, in *Postcommunist Presidents* 1–14 (1997).

⁵⁷ The requirements for an ideal constitution-making environment have been previously evaluated. See LINZ & STEPAN, *PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION* 81–83 (1978) (of all the countries treated here, only Spain in 1979 met the criteria.).

restricted presidential power and gave more power to the legislature.⁵⁸ Yeltsin's final document was submitted to a plebiscite, and Yeltsin later argued that it had been approved in a "referendum" by the required majority of votes. In reality, however, there was a very low turnout rate for this national consultation. Official figures claimed that turnout was about 54%, but even if this were true, that meant that the constitution was actually only approved, and this legitimized, by 31% of the electorate.⁵⁹ Some observers even doubt whether the 50% requirement had really been met.

What were the main elements of this constitution, drafted in secrecy and approved by only 31% of the Russian electorate? Russia's 1993 constitution can be considered a variation towards a *strongly presidential* semi-presidential system, both *de jure* and *de facto*. That is, constitutional powers are significantly unbalanced in favor of the president. The president enjoys significant legislative-initiative and legislative-blocking power and has rather free-handed decree power. The constitution simply states, for example, that "the president of the Russian Federation issues decrees and directives" (Article 90.1), which are "mandatory throughout the territory" (Art. 90.2) and which "must not contravene the constitution of the Russian Federation and federal laws" (Art. 90.3).⁶⁰ This means that almost no objections can legally be made to presidential decrees, nor any limits placed on their frequency.

Moreover, the one body that can decide whether or not a presidential decree contravenes the constitution or federal law is the Constitutional Court, the judges of which must be chosen by the Federation Council from the candidates submitted by the president (Art 83.f). Only presidential decrees concerning the introduction of martial law, or a state of emergency must be "confirmed" by the Federation Council (Art. 102.b, c). The requirements concerning this

⁵⁸ Interview with Galina Starovoytova, Member of this Constitutional Committee in 1993, in Moscow (Mar. 26, 1998).

⁵⁹ See WHITE, ROSE & MCALLISTER, A WEAK YES FOR A CONSTITUTION IN HOW RUSSIA VOTES, 87, 106 (1997).

⁶⁰ JOHN LLOYD, REBIRTH OF A NATION: AN ANATOMY OF RUSSIA, 105-06 (M. Joseph ed., 1st ed. (1998)).

confirmation are ambiguous given the president a wide scope regarding what situations constitute national emergencies, as in Weimar Germany.⁶¹

In general, some checks to presidential power by the government, the Constitutional Court, the State Duma, and the Federation Council do exist, but the language concerning necessary countersignature from these bodies is often ambiguous. Moreover, the checks to presidential power often involve complicated procedures.⁶² For example, impeachment of the president is only possible on the basis of a charge of treason or "grave crime." This charge must be filed by at least one-third of the State Duma's total membership, confirmed by a ruling of the Supreme Court, confirmed by a ruling of the Constitutional Court, confirmed by a ruling of a special committee of the State Duma, and approved by two-thirds of the *total* membership of both the State Duma and the Federation Council. All these procedures, and the final ruling by the Federation Council, must take place within three months of the initial filing of the charge by the State Duma, otherwise the charge against the president is rejected.

Another crucial power awarded to Yeltsin in the 1993 constitution comes from Article 85.1, which allows the president of the Russian Federation to use "conciliation procedures to resolve disagreements" between the center and the federal units.⁶³ Using this power, Yeltsin was able to grant special "semi-autonomous" status to Tatarstan, allowing Tatarstan to regulate its own trade and establish its own state bank. Treaties between the Kremlin and other republics, oblasts and krajs followed. Such bilateral deals may have been necessary for mitigating inter-elite tensions and may have helped avoid the type of bloodshed witnessed in Chechnya's secession war with Moscow. But these bilateral treaties also appear to be working against the development of a democratic federation in which the subunits are able to protect themselves from transgressions by the center, because "...the pervasiveness of the federal government's web

⁶¹ See Maurice Duverger, *Les régimes semi-présidentiels*, 13 (1987).

⁶² See Colton, Boris Yeltsin, *Russia's All-Thumbs Democrat*, 49-74 (1995).

⁶³ Richard Sakwa, *Russian Politics and Society*, App. 3 (London: Routledge, 1996).

of bilateral deals with the regions—epitomized by the bilateral treaties—amounts to a selective provision of private goods that effectively substitutes for the public goods that might create incentives for inter-regional collective action.”⁶⁴

Several presidential powers are checked by the Federation Council rather than by the State Duma.⁶⁵ Again, this was Yeltsin’s preference. Realizing the need for majority support and noting the simultaneous lack of such support in the State Duma, Yeltsin arranged this prerogative to be given to the Federation Council. The Federation Council was composed at the time of very few political party representatives and was instead dominated by independent regional elites who generally favored Yeltsin’s politics because they had been appointed by him.⁶⁶ From 1995 to 2000, members of the upper house were chosen from the heads of executive and legislative governments in each of the 89 regions, which were themselves chosen through competitive elections. In elections that took place for governors during 2000, twenty-eight of the forty-four winners were incumbents. None was openly critical of the Kremlin. As of July 2000, governors agreed to surrender their seats in the Federation Council to representatives who would sit on the council for them. Some analysts feel that this body, which should provide an important check to the power of the Kremlin, and which has so far been rather supportive of Kremlin policies, is now in danger of extinction in the face of an extremely strong president. The relative strength of the Russian president becomes apparent when we compare it to other semi-presidential systems. If we measure the *de jure* powers of the presidents of Russia, the French Fifth Republic, and Weimar Germany, we note that the Russian president is constitutionally almost twice as powerful as the president of the French Fifth Republic, and at least one-third more powerful than the president of the Weimar Republic.

⁶⁴ Steven L. Solnick, *Hanging Separately? Cooperation, Cooptation, and Cheating in Developing Federations*, Paper presented at the Annual Meeting of the American Political Science Association in Boston, MA (Sep. 3–6, 1998).

⁶⁵ See Viiktor Sheinis, *Moscow News No. 46*, (Nov. 12, 1993).

⁶⁶ *RFE/RL Research Report* (Feb. 4, 1994).

At first glance, this comparative data would seem to support arguments that strong presidential powers are related to democratic breakdown. However, the *crafting* of such strong presidential powers into the 1993 Russian Constitution must be seen as a consequence of Yeltsin's experience with divided minority government. Moreover, in spite of these strong *de jure* powers, Yeltsin often found himself quite impotent, because he lacked a coherent Duma majority. It was from this position of impotence that he often resorted to appointing non-party ministers that were loyal only to him; to sacking prime ministers at whim, even when they proved to be working cooperatively with the Duma; and to ruling extensively by decree, as a substitute for a Duma majority. In addition, if we look at Weimar Germany, the president was much *less* powerful than in Russia, and only slightly *more* powerful than in France. Yet, Russia has managed to move back from hyper-presidentialism, whereas Weimar never could. Thus, the *de jure* powers of presidents alone cannot explain democratic breakdown.

One can make a plausible argument that in spite of the frustration from this impotence, Yeltsin managed to keep his autocratic tendencies at bay and thus keep Russia from moving completely and permanently into the non-democratic box through his "very sensitive instinct (rather than other capacity) about how far he can go in either direction."⁶⁷ This perhaps allowed him to toe the fine line between authoritarian rule (which would prevent him from staying on amicable terms with the Group of Seven, NATO and the EU) and democracy (which might, given legislative and social opposition to economic reforms, have made him cut economic reform programs.) International monetary organizations, such as the IMF, have had rather unrealistic expectations with respect to the Russian economy. But Russian society has also been somewhat unrealistic in terms of its expectations.

Indeed, after Yeltsin's overwhelming victory and surge of popular support in the 1991 election, he *did* have, at that time, a window of

⁶⁷ Andrey Grachev, "Russian Society: Which Way out of Communism?", Presentation at the Russian and East European Centre Seminar at St Antony's College, Oxford, (Oct. 20, 1997).

opportunity. He might have attempted to change the historical legacy in Russia of a highly centralized, cult of personality-type political leadership, towards a democracy built upon the sovereignty of the people represented in legislature. In this window of opportunity, Yeltsin might have attempted to legitimate the legislature, establishing it as an important democratic institution. What would have happened if a different constitutional structure had been chosen in 1991? As Stephen White argues, “[f]or Khasbulatov, Russian history, and then Marxism-Leninism had combined to exaggerate the power of a single ‘tsar.’” Therefore, it was essential, in these circumstances, to establish a secure division of powers and then to develop the role of parliament as a ‘representative organ’ of the whole society. Parliament, in particular, could serve as a ‘counterweight’ to the executive, exercising its influence over public spending, legislation, and the composition of government as parliaments did in other countries.⁶⁸ Yeltsin did not, however, accept the challenge of developing and fortifying an institutional counterweight to his own power. Let me now discuss several episodes that illustrate how Yeltsin instead led Russia to hyper-presidentialism.

III. THE CHECHEN CRISIS

Chechnya claimed full independence from the Russian Federation on March 12, 1992, under the leadership of its president, General Dzhokhar Dudaev.⁶⁹ Immediately following Chechnya’s declaration, Yeltsin followed suit by imposing a state of emergency in the region and sending Russian troops to Grozny, the Chechen capital. The Russian Supreme Soviet refused to approve Yeltsin’s decree, these troops were immediately withdrawn, and for the two and a half years

⁶⁸ *But cf.* Stephen White et al., *How Russia Votes* 46, 47 (1997) (discussing mixed popular support for a “strong leader who could make decisions and put them quickly into effect” as opposed to “parliament and elections.”).

⁶⁹ *NEW STATES, NEW POLITICS: BUILDING THE POST-SOVIET NATIONS* 712 (Ian Bremmer & Ray Taras eds., 1997) (In 1989, the Russian population in Chechen-Ingushetia were a minority (22%), while Chechens, were a majority (55%). A remaining 12% were Ingush, 1% Armenian, 1% Ukrainian, and 9% “others”).

that followed, Russia pursued a policy of peaceful co-existence with Chechnya.⁷⁰ Then on December 11, 1994, one year after Yeltsin had shelled his own legislature and orchestrated the adoption of a constitution that gave him strong powers, he again sent Russian troops into Chechnya. This time, neither the State Duma, nor the Constitutional Court, nor the Federation Council, was asked to approve Yeltsin's declaration. Russian public opinion polls showed a 65% disapproval rate for the use of force in Chechnya, but public opinion was ignored.⁷¹ Within the Chechen Republic, Russian troops committed gross violations of human rights and repeatedly breached international humanitarian law.⁷² Most of the Russian media's accounts of the Chechen War were distorted by government censorship.⁷³

What led to the Kremlin's decision to declare war on this break-away federal state, especially given that the overwhelming consensus in the State Duma, as well as the majority of the public, were strongly against the use of force? Moreover, why did the Kremlin pursue a policy of peaceful co-existence with Chechnya from 1991 until 1994, and then breach co-existence violently in 1994? The Russian military intervention of Chechnya must be seen in the context of the September-

⁷⁰ See generally Gail W. Lapidus, *Contested Sovereignty: The Tragedy of Chechnya*, 23 Int'l Sec. 5, 15–16 (1998) (discussing Yeltsin's aborted military intervention in Chechnya).

⁷¹ See generally Leonid Nikitinsky, *Frustrated Generals Take Aim at Journalists*, Moscow News (Feb. 3, 1995), <https://advance-lexis-com.access.library.miami.edu/api/document?collection=news&id=urn:contentItem:3SJF-1SR0-0061-K1JH-00000-00&context=1516831> (discussing the information war between Russian generals and independent journalist reporting on the Chechen Campaign).

⁷² See generally Svante E. Cornell, *International Reactions to Massive Human Rights Violations: The Case of Chechnya*, 51 Eur.-Asia Stud. 85, 87–91 (1999) (discussing human rights abuses in Chechnya during Russia's Chechen Campaign).

⁷³ See Nikitinsky, *supra* note 71; see also NATIONS IN TRANSIT 1997: CIVIL SOCIETY, DEMOCRACY AND MARKETS IN EAST CENTRAL EUROPE AND THE NEWLY INDEPENDENT STATES 318–20 (Adrian Karatnycky et al. eds., 1997) (suggesting that the media is still censored by the federal and regional governments and the courts).

December 1993 crisis, the year prior to the intervention, considering the anticipation of the presidential elections of 1996. It must be seen in the context of divided minority government.

In the face of increasing nationalist sentiments in the electorate, and increased dissatisfaction with the economy, Chechnya presented an opportunity for Yeltsin and the reformers in 1994. "By the time of the Chechen crisis, the power group exhausted itself in domestic and foreign policies..." and Yeltsin needed to find some prestige strategy to re-legitimize his use of exceptional powers and extended use of presidential decrees.⁷⁴ Just one year earlier, Yeltsin had solved the showdown with the Russian legislature unilaterally, through the use of force. In the end, he achieved his goal (a constitution granting him substantial powers which dwarfed those of the legislature in comparison) and prestige in the international community for having saved Russia from the apparent threat of reactionary forces. This support from the international community gave Yeltsin an inflated sense of his actual domestic legitimacy: having won the game he played with the Russian legislature in 1993 through force, Yeltsin must have felt that the same technique could be successfully used again in Chechnya. After all, "Yeltsin found out that knots are easier to cut than to untie," and thus, "he doesn't even want to *try* to untie them."⁷⁵

Another motivation Yeltsin had for engaging in war with Chechnya as a prestige strategy was the fact that the 1993 elections to the State Duma gave the relatively unknown Vladimir Zhirinovskiy and his nationalist Liberal Democratic Party, which had as a top policy priority the restoration of the former Soviet empire, 23% of the popular vote for the PR elections and a total of 14% of the Duma seats.⁷⁶ These results suggested an increasing popularity of nationalist ideas in the electorate, and "...demonstrated to Yeltsin's Kremlin of

⁷⁴ Mikhail Gorbachev, *Moscow News* No. 1, 3 (Jan. 6, 1995).

⁷⁵ Interview with Sergey Kovalev in Moscow (Mar. 26, 1998).

⁷⁶ BRUCE D. PORTER, RUSSIA AND EUROPE AFTER THE COLD WAR: THE INTERACTION OF DOMESTIC AND FOREIGN POLICIES (Celeste A. Wallander, ed.); *The Sources of Russian Foreign Policy After the Cold War*, 135 (Boulder: Westview Press, ed., 1996); see also Election data from White, Rose and McAllister, *How Russia Votes*, p. 123.

advisers that Yeltsin had to change his liberal image, rhetoric, and allies in order to win the next presidential election.⁷⁷ That is, “[t]hroughout 1993 and most clearly after the defeat of reformist parties in the December elections, politicians in the Yeltsin camp were compelled to pay greater attention to the views of the nationalist right—especially on the question of Russian minorities in the former Soviet republics.”⁷⁸ In this context, at least two incentives emerging from the semi-presidential institutions—the conflict structured between the two executives which led to an ever-escalating struggle for power, and the need to win crises to improve chances for presidential re-election—seem to have been crucial in Yeltsin’s decision to intervene militarily in Chechnya in 1994.⁷⁹ One close advisor to Yeltsin sincerely believed that Yeltsin wanted a war for prestige reasons, and that “Yeltsin even calculated that it would only take him eight days to win this war.”⁸⁰

⁷⁷ Michael McFaul, *A Precarious Peace: Domestic Politics in the Making of Russian Foreign Policy*, 22 (3) MIT Int’l Security 5, 28-29 (1998).

⁷⁸ Jeffrey T. Checkel, *Ideas and International Political Change: Soviet/Russian Behaviour and the End of the Cold War*, New Haven: Yale Univ. Press, 177 (1997); see also Gail W. Lapidus, *Contested Sovereignty*, 23 Int’l Security 5, 17 (1998) (Lapidus states that one of the factors leading to the shift in Russia’s policy toward Chechnya was “[t]he impact of the December 1993 elections, which persuaded Yeltsin to jettison his liberal image, supporters, and advisers in favor of a more nationalist and authoritarian strategy and greater reliance on hardline political figure[s].”).

⁷⁹ Interview by Sergey Filatov with Lyudmila Telen of Moscow News No. 6 (Feb. 10) (Sergey Filatov, Head of the Presidential Administration, when asked in an interview why Russia had allowed Chechnya special status for three years and then intervened, replied that “[t]here were objective circumstances for this: a grave economic situation in Russia and the opposition in the branches of power.”).

⁸⁰ Interview with Sergey Kovalev in Moscow (Mar. 26, 1998) (Kovalev believed that Yeltsin provoked the crisis because he wanted a war and thought it would be an easy victory. He commented, “The Security Council realized that Yeltsin wanted a war, so they decided ‘OK, we support the war.’ This was the game.” The idea of provoking, and then trying to solve, a crisis to win popular support was, to a certain extent, also a legacy of communist-era decision-making.).

The final decision to invade Chechnya was taken only by Yeltsin, and “[t]he nature of the decision-taking on the war was fatally cast in the mold of the Byzantine court Yeltsin had created, or allowed to be created, around him – and in this case, no liberal voices were allowed to penetrate.”⁸¹ This was the culmination of a process that Yeltsin had gradually created since 1992, in his drive to centralize decision making and keep it vertical, directly under his administration. The Foreign Ministry, although not originally concerned with Chechnya, was stripped of some of its co-ordination duties. These duties were placed in the lap of the Russian Security Council, which was already part of the presidential administration and under direct supervision of the president.⁸²

As mentioned earlier, public opinion on the war in Chechnya was ignored.⁸³ Opinion polls conducted in the summer of 1994, several months before the invasion, showed that only 5% of those polled believed that “Moscow must at any price – including the use of force – preserve Chechnya within the Russian Republic.”⁸⁴ However, the decision to invade and carry out a war with the Chechen Republic was made independently of public opinion, and for that matter, independently of the State Duma, and of the major liberal forces in Russia.⁸⁵ One might wonder why Yeltsin, if he was indeed pursuing a *prestige* strategy,

⁸¹ Lloyd *supra* note 60, at 194.

⁸² JEFFREY T. CHECKEL, *IDEAS AND INTERNATIONAL POLITICAL CHANGE*, 111 (Yale Univ. Press 1997).

⁸³ See Jack Snyder, *Democratization, War, and Nationalism*, in Celeste A. Wallander, *Democratization, War, and Nationalism*, 21–40, (Public opinion was ignored in spite of Kozyrev’s declaration that “as a democrat he felt constrained to take into account public opinion of foreign policy matters.”); see also Interview by Segodnya with Kozyrev (Apr. 30, 1994) (Moreover, Kozyrev “spent 1992 and 1993 touting the value of democratic norms in domestic and international affairs, yet by the beginning of 1994 he was forced to jump aboard the nationalist, pro-Serb, neo-imperial bandwagon like virtually everyone else in Russian politics.”).

⁸⁴ IAN BREMMER & RAY TARAS, *NEW STATES, NEW POLITICS*, 62 (Dec. 28, 1996).

⁸⁵ Emil’ Pain and Arkady Popov, *Vlast’ I obshchestvo na barrikadakh*, *Izvestiya*, 4 (Feb. 10, 1995); see also Michael McFaul, *A Precarious Peace*, 29 (1998).

ignored public opinion and risked alienating his support base. His moves seem counterintuitive, especially since two of the major reform parties in the State Duma which generally supported Yeltsin, Yavlinski's Yabloko and Russia's Choice, were also strongly opposed to Yeltsin's decision on Chechnya, and regarding it as a move toward authoritarian presidentialism.⁸⁶

Members of the Russian cabinet also resisted the war. Several of them, including Russian Minister of Justice Yuri Kalmykov, chose to resign rather than individually or collectively challenge Yeltsin.⁸⁷ Sergey Kovalev, Yeltsin's advisor on human rights and member of Yeltsin's presidential council, also resigned. In his letter of resignation to Yeltsin he included a strong criticism of the conflict, which he tied back to the constitutional tensions. And "[l]ater, after he had himself been comprehensively bloodied in Chechnya, Kovalev reflected: 'I had been thinking in straightlines. I could not see that dissolution of parliament [in 1993] led to Chechnya.'"⁸⁸ In his letter, Kovalev stated his disgust with the Chechen crisis, pointing to what he felt was a missed opportunity to push the country on the road to democracy. He laid blame for the failure directly with Yeltsin:

In this conflict we have seen in full measure contempt for the law, flouting of the constitution...what is particularly horrifying is another aspect of the régime you've created, which has been revealed by this crisis: utter contempt for human life...The totalitarian order, which was dealt a serious but possibly not fatal blow, is defending itself...Your personal guilt lies in encouraging these tendencies instead of checking

⁸⁶ See John Lloyd, *When The Centre Does Not Hold: Russia's Military Action in Chechnya Threatens its Own Insecure Democracy*, Financial Times, (Dec. 20, 1994) ("For Mr. Yegor Gaydar, leader of Russia's Choice; for Mr. Grigory Yavlinsky, leader of Yabloko; for Mr. Otto Latsis, Russia's leading liberal columnist; for Mr. Sergey Yushenkov, chairman of the State Duma's (lower house) defence committee, the threat is clear: it is of an authoritarianism that bases itself on the need to prepare the country for war against its enemies.").

⁸⁷ *Id.*

⁸⁸ Lloyd *supra* note 60, at 97.

them. It's sad for me that you have lost your soul, that you are unable to evolve from a Communist Party secretary into a human being. You could have done so.⁸⁹

Strong opposition to the war in Chechnya was even evident from the Russian Minister of Defense, General Pavel Grachev, who, it was said later by insiders, did not really want to go to war. Though desperately unpopular and relatively inexperienced, he was enough of a soldier to realize the problems. But he was trapped in a particularly hard place; and he volunteered his men in much the same spirit as a Stalin-era tractor plant director might have pledged to double output.⁹⁰ Of course, the war in Chechnya was a complicated and multi-faceted conflict that cannot be reduced to having any single cause. However, in light of the empirical evidence in this section, it seems that Yeltsin's use of force in Chechnya was indeed a strategy aimed at re-legitimizing his authority in the absence of a presidential majority. His idea was to create, and then solve, a major crisis. If Yeltsin did indeed operate under such a logic, it would explain why he would ignore public opinion on the war, believing that the public was wrong and that they needed to be led by someone who, "...as the personal embodiment of the popular will that cannot be procedurally ascertained in a time of crisis, has the authority to act—unconstitutionally or even anti-constitutionally—with all the force and legitimacy of that originally popular will."⁹¹ In this way, Russia's war with Chechnya was a demonstration of hyper-presidentialism that developed out of the conflictual divided-minority government. Now let me discuss a process that further demonstrates Russia's movement

⁸⁹ *Id.* at 200–201.

⁹⁰ *Id.* at 97.

⁹¹ JOHN MCCORMICK, CARL SCHMITT'S CRITIQUE OF LIBERALISM, 139–140 (1999). ("Interestingly, this is Carl Schmitt's problematic and, eventually reactionary, conceptualization of the *Reichspräsident* in the Constitution of the Weimar Republic, espoused in his *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (Munich: Duncker and Humblot, 1934)").

toward non-democratic hyper-presidentialism: the technocratization of the Russian cabinets under Yeltsin.

IV. THE TECHNOCRATIZATION OF CABINETS UNDER YELTSIN
UNTIL SEPTEMBER 1998

As I discussed earlier, one of the probable outcomes of the conflict in divided minority government is a move towards more autocratic, presidential domination of decision-making. I submit that this move is often characterized by the gradual *technocratization* of cabinets, in which ministers appointed are not members of parties, but rather, are non-party specialists chosen for their expertise in a specific technical field (usually economics). The technocratization of cabinets was popular in Latin America, when several countries in the region embarked upon the difficult path of economic adjustment.⁹² While the inclusion of such non-party experts in government can be important for assuring informed, specialized decision-making, appointing technocrats to head government ministries may not be particularly conducive to democratic consolidation, especially when it excludes parties from government and narrows the decision-making process to non-party specialists.⁹³ In effect, technocratization unlinks the cabinet from the legislature. Jean Blondel and Maurizio Cotta's study of eleven consolidated democracies found that in the model of democratic government, "parties provide the pool of eligibles, the people with long party careers among whom candidates for government positions are to be selected, while [parties] control also the selection (and deselection) process[s]."⁹⁴ In presidential systems, a president is free to choose his cabinet without having to worry about the legislature's confidence in the cabinet. In parliamentary and semi-presidential systems, however, the

⁹² See STEPHAN HAGGARD & ROBERT R. KAUFMAN, *THE POLITICS OF ECONOMIC ADJUSTMENT* (Princeton Univ. Press 1992).

⁹³ See JOEL HELLMAN, *WINNERS TAKE ALL: THE POLITICS OF PARTIAL REFORM IN POSTCOMMUNIST TRANSITIONS*, 203-24 (Cambridge Univ. Press 1992).

⁹⁴ JEAN BLONDEL & MAURIZIO COTTA, *PARTY AND GOVERNMENT: AN INQUIRY INTO THE RELATIONSHIP BETWEEN GOVERNMENTS AND SUPPORTING PARTIES IN LIBERAL DEMOCRACIES*, 249 (1996).

legislature's lack of confidence in the cabinet can terminate it, and thus, choosing *party* members for the cabinet, preferably party members with good ties to the legislature, can be very important for the efficacy and even the survival of the government. In Russia, President Boris Yeltsin increasingly appointed technocrats to government posts—a dangerous practice for democracy which began to reverse itself somewhat with the appointment of Prime Minister Yevgeniy Primakov. Vladimir Mau, former close aide to Gaydar and Chief of the Economic Reform Center in Moscow, admitted that Russia in the early 1990s could easily be described as “constitutional authoritarianism,” partly because “there’s no such thing as a government majority [in Russia]. We have purely presidential government. They [the ministers] are the ministers *of the president*.”⁹⁵

On March 23, 1998, Yeltsin dismissed the cabinet in a “surprise” decree, claiming that Russia needed a cabinet with renewed energy and life, meaning that Prime Minister Chernomyrdin had not pushed economic reform far enough.⁹⁶ Yeltsin’s snap decision came as a surprise even to Chernomyrdin.⁹⁷ Yeltsin then nominated Sergey Kiriyenko to fill the post, a 35-year-old from Nizhny Novgorod who was not an active member of any political party, but rather, was known for his economic and managerial skills in one of Russia’s regions. Yeltsin’s nomination of Kiriyenko met with very strong resistance from the Duma, where the nomination had to be approved. Gennady Zyuganov, leader of the Communist Party, was the strongest opponent to the nomination. The Communists’ usual allies, the Agrarians, mainly supported Kiriyenko, not for his programme, but rather, on the grounds that a rejection of Kiriyenko and a resulting presidential dissolution of the Duma would allow Yeltsin to govern for several months exclusively by decree. According to Article 111 of the Russian constitution, “[f]ollowing three rejections by the State Duma of candidates submitted for the head of the government of the Russian Federation, the president of the Russian Federation appoints a head of

⁹⁵ Interview with Vladimir Mau, Chief of the Economic Reform Center in Moscow, in Moscow (Mar. 17, 1998).

⁹⁶ Boris Yeltsin, Televised Address, (Mar. 23, 1998).

⁹⁷ See Interview, Galina Starovoytova, *supra* note 58.

the government of the Russian Federation, dissolve the State Duma and schedule new elections."⁹⁸

Moreover, Duma members were averse to a dissolution because it would have meant giving up the benefits that came with Duma seats, which included subsidized government apartments, cars and travel.⁹⁹ The Communists managed to reject the nomination of Kiriyenko in the first two rounds of voting, trying to persuade Yeltsin to nominate another candidate. Yeltsin called their bluff and nominated Kiriyenko a third (and final) time, and most of the parties acquiesced in Yeltsin's decision and approved Kiriyenko. However, the tension that mounted between Yeltsin and the Duma over Kiriyenko's approval meant that, although Kiriyenko was finally approved, he did not have very much support in the daily politics of the Duma, and he was considered to be somewhat of an intrusion in their affairs. This is completely contrary to the premise of parliamentary government, where a prime minister depends on parliament for his support. As Kiriyenko himself admitted: "I don't owe anything to anybody, except to the president."¹⁰⁰

Yeltsin replaced the rest of the cabinet with mostly young technocrats, which for some analysts "...confirms that President Boris Yeltsin intends to remodel the government not as a force in its own right, but as a non-political economic bureau of the Kremlin."¹⁰¹ Most ministers had no political affiliation and faced a Duma majority opposed to the kind of tax reform program that the Kiriyenko government tried to develop. Important business tycoons who controlled state resources, such as Boris Berezovsky and Vladimir Potanin, resisted the Kiriyenko governments' reforms from the beginning, because at the simplest level, improved tax collection and tax reform would have reduced their profits. In addition, the financial oligarchs who controlled the most important banks in Russia expected

⁹⁸ RICHARD SAKWA, *RUSSIAN POLITICS AND SOCIETY*, 421–22 (5th ed. 2020).

⁹⁹ See *IZVESTIYA*, 1-2 (Russ.) (Mar. 28, 1998).

¹⁰⁰ Mark Whitehouse, *President Confirms He's Tsar*, *THE MOSCOW TIMES* (Apr. 25, 1998).

¹⁰¹ David McHugh, *Technocrats Dominant in Cabinet*, *THE MOSCOW TIMES* (Apr. 30, 1998).

the government to print money to prop up the fledging Russian banking system. Thus, by August 1998, the Russian government was in deep financial trouble, did not have the political support it needed from the Duma to reform the tax system, and was under strong pressure from those in control of state resources to print money and pursue a stronger industrial policy—the exact contrary to the liberal reforms some experts argued were necessary to save the economy from “sliding into the abyss.”¹⁰² The government called for simultaneous rouble devaluation and default on its US \$40 billion obligations to Russian and Western holders of its high-yield treasury bills.

On August 23, Yeltsin sacked the entire Kiriyenko government, shielding himself from responsibility for the economic crisis. Quibbling between Yeltsin and the State Duma over the appointment of a new, mutually acceptable prime minister took several weeks, during which time the rouble continued to lose value. As Chrystia Freeland of the *Financial Times* wrote, “[a]s the political establishment haggles...the whole economy may be burning down.”¹⁰³ Yeltsin eventually nominated Viktor Chernomyrdin for the post, but he was defeated twice in the Duma. On September 11, in Yeltsin’s third and final chance, the former head of the Foreign Intelligence Service, Yevgeniy Primakov, was confirmed by the Duma in a vote of 315 to 63.¹⁰⁴ Several important ministers appointed to this Primakov government by presidential decree had no political affiliation. These included the ministers of Health, Culture, Education and Regional Policy, who were “[a]ll primarily professionals rather than politicians who will follow a party line.”¹⁰⁵ Mikhail Zadornov of Yabloko was kept on as Finance Minister. Yuri Masliukov, a Duma deputy from the Communist Party, was chosen as First Deputy Prime Minister,

¹⁰² Martin Wolf, John Thornhill, & Stephen Fidler, *Comment and Analysis: Meltdown*, FIN. TIMES, 15 (Aug. 28, 1998).

¹⁰³ Chrystia Freeland, *All Bets Are Off*, FIN. TIMES, Aug. 29, 1998, at p. 6.

¹⁰⁴ David McHugh, *Primakov Approved as Prime Minister*, THE MOSCOW TIMES (Sept. 12, 1998).

¹⁰⁵ THE MOSCOW TIMES (Oct. 1, 1998).

bringing the Communists into a coalition government that enjoyed a majority in the Duma—a first in post-communist history. The increasingly assertive Primakov, who enjoyed considerable support in the Duma, thus moved Russia into divided majority government, where it remained for almost nine months. Eventually, Yeltsin became wary of Primakov's growing popularity, both within the Duma and in the general population, and dismissed him in May 1999.

Why is this pattern problematic? History again provides the example. The initial *technocratization* of the Russian cabinet is similar to Weimar during the last years of the Republic (1930-1933). President Hindenburg was an anti-party president, much like Yeltsin. As the economic situation worsened in 1930, Hindenburg appointed an increasing number of technocrats to Weimar's cabinets, and the legislature (much like the Russian Duma) gradually began to abdicate responsibility to Hindenburg, refusing to pass votes of no-confidence which would have either (1) forced them to take the reins in a divided minority government, with all the difficulties that implied, or (2) resulted in a legislative dissolution by the president. Therefore, legislative parties under the last years of the Weimar Republic avoided their responsibility to check presidential power and instead tolerated presidential cabinets made up of non-party technocrats (*Fachkabinette*). If we compare the party affiliations of the eight main cabinet ministers under Ebert and Hindenburg, Ebert's party (the Social Democratic Party or SPD) held the plurality (27%) of the ministries over his tenure, while over Hindenburg's tenure, the plurality (37%) of the major cabinet positions were held by non-party technocrats, more than any other single party. In fact, von Papen and von Schleicher were the last two prime ministers to be appointed before Hitler, and both were non-party prime ministers. And most importantly, very similar to Yeltsin, Hindenburg sacked his coalition-building prime minister (Brüning) prematurely. In Russia just before his dismissal, Primakov had been trying, with the support of a legislative majority, to exercise more control over government policymaking and encourage constitutional reform that would make the president less powerful vis-à-vis the government and the Duma. Had Primakov had a longer time horizon, a reasonable counter-factual could be made that Primakov might have been successful in some of these important reform efforts.

Of course, both the historical circumstances and the international context are quite different in Russia now than they were for Germany in 1933. Certainly, Yeltsin's considerations of the IMF loan policies kept his political behavior within certain limits. Nevertheless, the autocratic, unpredictable tendencies in Yeltsin's personality have been brought out by the incentives in semi-presidentialism. He towed the line between some semblance of transitional democratic semi-presidentialism—which kept him on acceptable grounds with the international community—and outright autocratic rule, which allowed him and his technocratic cabinets to dominate policymaking. But in the long run, Yeltsin's domination prevented Russia from moving more consistently toward democracy and toward a more stable and workable semi-presidentialism founded upon strong legislative majorities.

Surveys conducted in Russia in 1996 found “[t]hat rising dissatisfaction with the political system was due to fears over rising crime, the injustices involved in the privatization programme, embarrassment over continued political instability, and feelings of political inefficac[y]”¹⁰⁶ This dissatisfaction with the political system in Russia is exemplified through low levels of participation, as evidenced by the steady decrease in voter turnout over the last few years.¹⁰⁷ In a nation-wide survey conducted by VTsIOM in 1999, 63% of respondents characterized the political situation in Russia as a “rise of anarchy.” In another poll that year, 58% of respondents felt that everything in Russia would have been better off if the country had remained as it was prior to 1985.¹⁰⁸ Other foundational building blocks of democracy already suffer from a lack of trust on the part of citizens. A public opinion poll taken in early 1998 by the Centre for the Study of Public Policy asked people to rank Russian institutions on a trust scale of 1 (no trust) to 7 (great trust). 81% of the people answering this

¹⁰⁶ M. Steven Fish, *The Predicament of Russian Liberalism: Evidence from the December 1995 Parliamentary Elections*, 49 EUR.-ASIA STUD. 191, 220 n.66 (1997).

¹⁰⁷ See White et al., *supra*, at 120–21.

¹⁰⁸ CTR. FOR THE STUD. OF PUB. POL'Y., *Russia Votes* (2015), www.russiavotes.org.

poll expressed low to no trust scores (1,2 or 3) for political parties; 70% expressed a low to no trust score for the legislature and 72% for Yeltsin. These scores were slightly worse for parties and parliament than they were for the elements of the Russian state (64% claiming no to little trust), which in fact collapsed after the fall of the USSR.¹⁰⁹ Alarming, 42% of those polled after the 1996 presidential elections rated the pre-perestroika political regime more positively than Russia's current political regime.¹¹⁰

The continued weakness of the Russian state and its failure to re-build itself was exemplified by the fact that tax collection in Russia for 1997 was only 8% of GDP, well below the average of consolidated European democracies and only one third of that in developing countries.¹¹¹ Moreover, 56% of Russians polled in 1998 about the ease of tax evasion claimed there was "no need to pay" taxes, and a further 27% claimed that if they were caught, they would only have to pay a bribe.¹¹² In addition, the Russian Mafia and the Russian banking industry have developed their own coercive and financial structures – parallel to those of the state – just as a shadow economy developed in the USSR to supplement the ill-functioning command economy of socialism.¹¹³ These structures permeate the political class, as "...Russian public officials have gradually forged a new political system where the notions of the rule of law and the public good are

¹⁰⁹ See Richard Rose, *New Russia Barometer VI: After the Presidential Election*, 272 UNIV. OF STRATHCLYDE CTR. FOR THE STUD. OF PUB. POL'Y. (25 July-2 Aug, 1996); Michael McFaul, *State Power, Institutional Change, and the Politics of Privatization*, 47 WORLD POL. 210, 228 (1995).

¹¹⁰ Rose, *supra* note 110.

¹¹¹ THE ECONOMIST, *Is Russia Going Wrong?* (1997), <https://www.economist.com/leaders/1997/11/20/is-russia-going-wrong>.

¹¹² RICHARD ROSE, GETTING THINGS DONE WITH SOCIAL CAPITAL: NEW RUSSIA BAROMETER VII 49 (1998).

¹¹³ An early EBRD evaluation of corruption in the CIS countries shows a positive correlation between erratic or inconsistent government policy and high levels of entrepreneurial corruption. See their report, EUR. BANK FOR RECONSTRUCTION & DEV., TRANSITION REPORT 1997: ECONOMIC TRANSITION IN EASTERN EUROPE AND THE FORMER SOVIET UNION 37–40 (1997).

secondary to the necessity of keeping power and managing the state's wealth."¹¹⁴

After one year in office, the new Russian President Vladimir Putin has so far contradicted the principles of democracy rather than nourish them.¹¹⁵ The armed assaults on Media-Most's corporate offices and the Glasnost Foundation signal danger for civil liberties. The appointment to prime minister of technocrat Mikhail Kasyanov, reportedly an ally of oligarch Boris Berezovskii, made many democrats flinch. A political solution to the bloodshed in Chechnya is more distant now that Putin has decreed Moscow's direct control over the republic for the next few years. The shocking imprisonment of Media-Most's Vladimir Gusinsky sent a startling message to those critical of the Kremlin.¹¹⁶ And most recently, Putin's botched treatment of the Kursk nuclear submarine tragedy raised serious questions about Russian governmental efficacy and accountability.

And yet, an interesting point here is that people seemed to *distrust* Putin and the state *less* than they do parties or parliament. Part of the blame for this situation must be placed on the deadlock between the executive and legislative branches of government and the political conflict that came out of prolonged placement in divided minority government. The parliament, "...its lack of cohesion and ineffectiveness are also a consequence of the fact that parliament is far from being the key decision-making center. Rather, the latter is located in the presidential apparatus—which may explain why some of the sharpest political conflicts in 1996-97 were among Yeltsin's closest advisers, between Chubais and Alexander Korzhakov, for example, or Chernomyrdin and Boris Nemstov, or Lebed and almost everyone else."¹¹⁷

¹¹⁴ Virginie Coulloudon, *The Criminalization of Russia's Political Elite*, 6 *E. Eur. Const. Rev.* 73, 78 (1997).

¹¹⁵ Cindy Skach, *Democracy Under Siege*, 4 *RUSS. WATCH, STRENGTHENING DEMOCRATIC INSTS. PROJECT, HARV. UNIV.*, 1, 9 (2000).

¹¹⁶ See Ben Dunlap, *Russian Media Cry Foul*, 1 *RUSS. WATCH, STRENGTHENING DEMOCRATIC INSTS. PROJECT, HARV. UNIV.*, 1, 9-11 (2000).

¹¹⁷ See John Barber, *Opposition in Russia*, 32 *GOV'T & OPPOSITION* 598, 613 (1997).

What is this semi-presidential constitution and why is it so vulnerable? A semi-presidential constitution is one in which the head of state is a popularly elected president with a fixed term of office; and the head of government is a prime minister who is responsible to the legislature. The outstanding feature of semi-presidentialism therefore is the existence of two executives. Executive power is shared between the president and prime minister, and this sharing by definition excludes a neat division, often leading to ambiguity. Moreover, the legitimacy, accountability and responsibility of the two executives are fundamentally different. The prime minister emanates from the legislature and is responsible to it, whereas the president has greater autonomy from the legislature and can survive without its approval. This autonomy sets up incentives for the president to push his own agenda, even if it means invading the prime minister's domain. The shared power, but unequal legitimacy and accountability, structure theoretically predictable and empirically verifiable tensions into the semi-presidential constitution.

Imagine, for example, disagreement between the president and the prime minister, when it is often not clear which executive has final decision authority. The president almost always has constitutionally granted emergency powers, and constitutional power vis-à-vis the military and the intelligence community. In crisis situations, it is possible that the president and the legislature issue conflicting orders to the military, but the military may decide against the decision of the elected majority and in favor of its chief commander - the president. The unintended consequence may be extended military rule and the suspension of democracy, especially in countries with a history of military intervention in politics.

The greater the president's scope of powers – particularly decree, veto and emergency powers – and the lower the limitations on these powers, the greater his possibility to govern without the prime minister, or alternatively, with a hand-picked cabinet of allies. Presidents who rely extensively on these powers over an extended time move the regime out of semi-presidentialism into what I refer to as non-democratic hyper-presidentialism. In hyper-presidentialism, the extended use of emergency and decree powers violates the democratic principles of participation and inclusion. It concentrates decision-making in a small, opaque group of individuals under the

tutelage of the president, and thus violates institutional guarantees for polyarchy, particularly, "institutions for making government policies depend on votes and other expressions of preference." One observable characteristic of hyper-presidentialism is the packing of the cabinet with non-party, technocratic specialists rather than political party representatives. This technocratization of the cabinet divides it even further from parties in the legislature. The legislature may try to veto a technocratic cabinet and presidential decrees, but the president in the semi-presidential type usually retains dissolution power with which she can threaten a non-cooperative legislature.

V. THREE SUBTYPES OF SEMI-PRESIDENTIALISM

These tensions between the president, the prime minister and the legislature are inherent in the structure of semi-presidentialism and are therefore permanent. However, the presence of a legislative majority, and an amicable relationship between the president and that majority, can minimize the probability that these tensions emerge as serious institutional conflict. Here I introduce three qualitatively different, electorally generated subtypes within semi-presidentialism: consolidated majority government (the president and prime minister are from the same party/party coalition and have a parliamentary majority); divided majority government (the prime minister has a legislative majority, but the president is from the opposition); divided minority government (neither the president nor the prime minister has a parliamentary majority).

This all means that in order for the constitution to work in a way that is supportive of democracy, the party system and electoral system of a country with this constitution are absolutely crucial. Here are the conditions that worked against this happening in Russia:

1. The Absence of an Institutionalized Party System in Russia

At least some minimal degree of party system institutionalization is necessary for building presidential and legislative majorities. The institutionalization of a party system is characterized by the following: (1) regularity in the pattern of party

competition (low volatility); (2) stability of party roots in society and of citizens strongly and consistently attached to parties; (3) citizens and other organized interests perceiving parties to be “the way to go,” and accepting them as the legitimate intermediary and means of influence in the democratic process; and (4) stability of party organization, with party influence at both national and local levels, and party elites’ loyalty to their parties.

Russia’s post-communist party landscape did not meet any of these criteria.¹¹⁸ Instead, the Russian party system never allowed for coherent and coincident presidential and legislative majorities.¹¹⁹ These characteristics included a problematic societal cleavage structure; the predominance of independents in elections rather than party candidates; the divide between center and regional politics; the high volatility and low discipline in parties and factions; and the

¹¹⁸ See Bruce L. R. Smith, *Constitutionalism in the New Russia*, in BRUCE L. R. SMITH & GENNADY M. DANILENKO, *LAW AND DEMOCRACY IN THE NEW RUSSIA* 4 (1993). For the counter argument that Russia did indeed begin to develop a party system, “albeit a fluid and inchoate one,” see M. Steven Fish, *The Advent of Multipartyism in Russia, 1993-1995*, 11 *POST-SOVIET AFFS.* 340, 340–383 (1995). *Contra* Fish, I would argue (following Sartori, Mainwaring) that one cannot speak of a party system unless there is a minimal level of institutionalization, which does not yet seem to be the case in Russia. Also see Juan J. Linz, *Introduction: Some Thoughts on Presidentialism in Postcommunist Europe*, in RAY TARAS, *POSTCOMMUNIST PRESIDENTS* 1–14 (1997) for the argument that Russia may be a stalemated, rather than unstructured, party system.

¹¹⁹ Brazilian parties during, and even after, the early years of democratization suffered from a similar underdevelopment, the most decisive features of which were most of the parties’ “...fragility, their ephemeral character, their weak roots in society, and the autonomy politicians of the catchall parties enjoy with respect to their parties.” As a consequence, and perhaps with lessons for Russia, Brazilian politics (like other countries with weak party systems) has been plagued by serious corruption problems, and powerful economic elites were able to influence government by side-stepping the legislature. See Scott Mainwaring, *Brazil: Weak Parties, Feckless Democracy*, in TIMOTHY R. SCULLY, *BUILDING DEMOCRATIC INSTITUTIONS* 354–398 (1995).

anti-party position of the first Russian President Boris Yeltsin, and his successors, including Vladimir Putin.¹²⁰

The cleavage structure in Russian society, around which a party system might have been built, was the first major obstacle to institutionalization. There were no parties which could be considered real “pairs of opponents,” as in some of the west European democracies which have historically had left-right, or secular-religious, cleavages, or both. In Russia, “this situation did not develop, as parties did not generally call forth opposition from their logical alternatives.”¹²¹ Therefore, the parties that have come into play and hold seats in the State Duma are, and have been, with the exception of the Communist Party, what Duverger called internally created parties, because they were born in the legislature, fathered by political elites.¹²² The formation of these parties, for the most part, did not involve the mobilization of any collective identities in Russian society and consequently, these parties lacked a social base and “...are either less likely, or simply less able, to establish a strong organizational network at the mass level.”¹²³

In the earlier years of democratization, parties tended to base their program on the nature of the regime itself, or at least to posit “reform” against resistance to reform (which is also sometimes a cleavage between change to a new competitive political system versus return to some authoritarian system of the past). Another issue around which Russian political parties were developing was nationalism.¹²⁴

¹²⁰ On the problems of cleavages in post-communist societies, with reference to East Central Europe, see JON ELSTER, ET AL., INSTITUTIONAL DESIGN IN POSTCOMMUNIST SOCIETIES: REBUILDING THE SHIP AT SEA 131–155 (Cambridge Univ. Press eds., 1998).

¹²¹ JON ELSTER, CLAUS OFFE & ULRICH K. PREUSS, INSTITUTIONAL DESIGN IN POST-COMMUNIST SOCIETIES 147 (1998).

¹²² PETER MAIR, PARTY SYSTEM CHANGE: APPROACHES AND INTERPRETATIONS 183–184 (1997).

¹²³ *Id.*

¹²⁴ Walter Laqueur, *Russian Nationalism*, 71 *Foreign Affairs* 103, 103–16 (1992); see Astrid S. Tuminez, *Russian Nationalism and the National Interest in Russian Foreign Policy*, in Celeste A. Wallander, *The Sources of Russian Foreign Policy After the Cold War*, 41–68 (1996) (showing a typology of Russian nationalism).

An emerging party system based on these elite structured cleavages is problematic for democratic consolidation, because political contestation around these cleavages is not always about policy, but rather, about the rules of the game. Surveys conducted in 1993 and 1995 showed "...clear evidence of anti-democratic tendencies among [party] supporters...In particular, supporters of the Communist Party and its presidential candidate Gennadiy Zyuganov, and the Liberal Democratic Party leader Vladimir Zhirinovskiy, [were] distinguished not just by their expected anti-market and anti-Western stance, but by a far greater willingness, under certain conditions, to abandon democracy."¹²⁵ In a consolidated democracy, there is a majority consensus in political and civil society at least on one crucial point: that democracy is the best type of regime for processing differences of opinion. In the first five years of Russian democracy, there was strong evidence that (at least) the supporters of Zhirinovskiy and Zyuganov considered "...democracy as expendable, in light of the magnitude of the problems facing Russia, rather than as the best way to mitigate loss."¹²⁶

Another problem of the party landscape in Russia, which worked against institutionalization and thus against majorities, was high party system fragmentation.¹²⁷ In 1993, twelve political parties

¹²⁵ Stephen Whitefield & Geoffrey Evans, *Support for Democracy and Political Opposition in Russia, 1993-1995*, 12 *Post-Soviet Affairs* No. 3 218, 220 (1996).

¹²⁶ *Id.* at 239.

¹²⁷ See Joel M. Ostrow, *Procedural Breakdown and Deadlock in the Russian State Duma: The Problems of an Unlinked Dual-channel Institutional Design*, 50 *Europe-Asia Studies* No. 5 793, 793 (1998) (The Duma has a dual-channel institutional design, "[i]n which partisan factions and legislative committees are parallel, autonomous channels of organization."); Arthur Lupia & Mathew D. McCubbins, *The Democratic Dilemma: Can Citizens Learn What They Need To Know?* 211-214 (1998) (Dual-channel systems may provide important checks and balances in the legislative process. However, the high party fragmentation in the Russian Duma, combined with linkage problems between parties and committees, prevents the dual-channel design from being an effective 'verification' device and instead often leads to stalemate. On the utility of well-designed dual-channel systems).

managed to get seats in the Russian Duma.¹²⁸ In addition to these twelve parties, 31% of the seats were held by non-party independents.¹²⁹ A positive indication of party system development came after the 1995 legislative elections, when independents in the Duma were reduced to 12% of the seats. However, after the 1999 elections, independents held a whopping 25.3% of the Duma seats.¹³⁰ There are other indicators of Russia's poor party system institutionalization. For example, many Russian parties have competing national and local organizational structures, which exacerbate the problems of holding together an already disintegrating federal system.¹³¹ Indeed, "[n]one of the parties that came into existence in 1990-91 . . . had developed into coherent national organizations with regional branches. All underwent splits, sometimes more than once."¹³² And even more problematic is the fact that for the parties, "[t]he links with Moscow and the provinces were very tenuous, if they existed at all."¹³³

Moreover, deputies don't seem to care very much about their local constituencies once elected. Surveys and interviews of State Duma and Federation Council candidates, conducted by the Ford Foundation Moscow in St Petersburg in 1993, showed that only about 25% of the candidates polled thought about their constituency after they were elected. "The notion of working back in the constituency with their electors, or in a party, had no place in their thinking. Answers to the question, 'How will you keep in touch with your electors?' revealed that, although a minority had clear ideas,

¹²⁸ See Alfred Stepan & Cindy Skach, *Constitutional Frameworks and Democratic Consolidation: Parliamentarism versus Presidentialism*, 46 *World Pol.* 1, 10 (1993).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ See Peter C. Ordeshook, *Russia's Party System: Is Russian Federalism Viable?* in *POST-SOVIET AFFAIRS* 12, 4 at 195-217 (1996) (noting the institutional and non-institutional elements which work against federalism in Russia).

¹³² Mary McAuley, *Russia's Politics of Uncertainty*, 273, (Cambridge: Cambridge Univ. Press, 1997).

¹³³ *Id.*

others had hardly thought about it...few had given any thought to creating a social constituency for themselves."¹³⁴

Another problem impeding party system institutionalization is high volatility. Between the 1993 and 1995 elections to the State Duma, the average electoral volatility in terms of votes for parties was 47.0, almost eight times higher than the European average.¹³⁵ Between the 1995 elections and February 1996, the parties holding seats in the Duma had experienced an average gain or loss of 22 seats because parliamentarians elected under one party label changed party affiliation.¹³⁶ There is also high volatility with respect to parties' voting patterns in the Duma. Parties have tended to support the government on individual issues and pieces of legislation, rather than according to a general program or platform. Both Zhirinovskiy's Liberal Democratic Party of Russia and the Communist Party of the Russian Federation under Zyuganov often supported government policies from 1995-1997, despite their strongly anti-government pre-election attitude.¹³⁷ Such support was not necessarily in exchange for compromises on policies and negotiated political bargains, but rather, often in exchange for monetary bribes. As one government official mentioned, "the Communists' and Zhirinovskiy's votes are on sale."¹³⁸ This type of corrupt majority building is an effect, as well as a further permitting condition, of low party system institutionalization.

The inchoate nature of the party system was exacerbated by Yeltsin's anti-party position and Russia's electoral system (discussed below), which has, at best, only weak incentives for majority-building. These conditions work against the development of a solid political society. This in turn works against democracy. Comparative lessons

¹³⁴ *Id.* at 266.

¹³⁵ *Id.*

¹³⁶ See Stefano Bartolini & Peter Mair, *Identity, Competition, and Electoral Availability: The Stabilisation of European Electorates 1885-1985*, Appendix 2, (Colchester: ECPR Press, 2007).

¹³⁷ See White et al., *supra* note 30, at 237-39.

¹³⁸ See John Barber, Opposition in Russia, in GOVERNMENT AND OPPOSITION 32, 4 at 597-613, 607-09 (1997).

from some Latin American cases demonstrate the connection: in Brazil, Ecuador and Peru, inchoate party systems have contributed to the presidential practice of "decretismo" and an overall decrease in democratic governability; contrariwise, the institutionalized party systems of Venezuela, Chile, Uruguay and Costa Rica have been crucial in helping to reduce corruption and establish a rule of law in these countries.¹³⁹ Inchoate party systems can also paralyze parliamentary government, because they can produce uncertain coalitions and governmental instability. Thus, it seems bleak for the prospects of Russian democracy that the party landscape is still underdeveloped and non-institutionalized. As I explore in the next chapter, this is particularly problematic under Russia's semi-presidential framework, because semi-presidentialism combines the potentially unstable situation of divided minority government with the possibility of presidential *decretismo*. Let me now turn to one of the important mechanisms which could theoretically improve party system institutionalization in Russia and discuss why it has not yet been able to do so.

2. Prospects for Majority-Building Electoral Formulae in Russia

Under certain conditions, an electoral system can manufacture legislative majorities. These majorities, in turn, decrease the chances that the tensions inherent in semi-presidentialism emerge as conflict. Are there any majority-building capacities in Russia's electoral

¹³⁹ Interview with Vladimir Mau, Former Close Aid to Gaydar & Chief of the Econ. Reform Ctr. of Moscow (Mar. 1998) (In these chapters I make some use of extended elite interviews as a research technique. Elite interviewing may be less reliable than some other means of data collection, to the extent that the interviewee is involved in the data he is reporting and thus the results may be biased. However, the extended interview is nevertheless an extremely useful heuristic device and, when supplemented by other data-collecting techniques, may provide invaluable insight to a given problem or pattern of behaviour under investigation.) See Charles F. Cannell & Robert L. Kahn, "The Collection of Data by Interviewing," in RESEARCH METHODS IN THE BEHAVIORAL SCIENCES, 327-380 (New York: Dryden Press, 1953).

systems? The State Duma's electoral system combines two different formulae: proportional representation (PR) and plurality (or first-past-the-post). Half of the 450 Duma seats are contested in first-past-the-post, single member districts. The other half of the Duma seats are contested under PR from closed party lists. There is also a 5% threshold.¹⁴⁰ We can think of the Russian formula as a combination of light majority building with some PR. This combination is sometimes called *personalized PR*, particularly in Germany, because it allows voters to choose some individual candidates through the single member district contests, rather than just choosing from among impersonal, closed party lists.¹⁴¹

Due to the single member district element in this system, not all parties will be awarded seats. Moreover, there is a threshold of 5% for the PR contests. Rational parties that are not strong enough to win single member district elections, or pass a 5% threshold in the PR elections, thus have incentives to broker exchanges. For example, where Party A realizes that its candidate has no chance in a District 1, Party A can withdraw its candidate in that district and 'offer' its support and its share of the electorate's support to Party B's candidate, as long as Party B promises to do the same for Party A in another district. These are *electoral* coalitions; whether or not these then transfer to policy coalitions is another matter, but it is a start, and it can build the idea of compromise and bargaining into the parties. In a multi-party system that is well-institutionalized and relatively non-polarized, the single-member district race and the threshold encourage inter-party bargaining and trading among parties, which usually reduces the number of parties (over the long run) in the system.

However, the problem in Russia with this electoral system has simply been that the party system is too inchoate to react to the aforementioned incentives. One indicator of the Russian parties' failure to react rationally to these incentives is evidenced by the high

¹⁴⁰ Russian Electoral Law, <https://www.belfercenter.org/publication/russian-election-law>.

¹⁴¹ BUILDING DEMOCRATIC INSTITUTIONS: PARTY SYSTEMS IN LATIN AMERICA 26–27 (Scott Mainwaring & Timothy R. Scully eds., 1995).

percentage of split-ticket voting (whereby a voter votes one party for the PR race and another party for the single member district race) in State Duma elections. By splitting their tickets, voters are often trying to vote 'usefully' for a familiar, local notable in the single-member district election, and then use their party list vote as a protest against the party in power at the federal level. Split ticket voting also often indicates the electorate's weak attachment to parties.¹⁴² In order to discourage split-ticket voting, parties must campaign strongly not only for their party in the PR race, but also for their party candidate in the single-member district races. In Russia this does not happen. The single-member district elections have been personalized, and personalities are often more important than party affiliations.¹⁴³ The evidence from the results of the 1993 State Duma elections shows that parties either had not employed these strategies, or that the electorate was anti-party, or both: 63% of the single-member district seats were won by independents. The electoral rule in 1993 which did not list party affiliation on the single-member ballot exacerbated split-ticket voting, but it also appears that parties did not do much to counter the high personalization of the elections.¹⁴⁴

In the 1995 elections to the State Duma, 35% of the single-member district seats were won by independents.¹⁴⁵ The decrease in the percentage of independents at first suggested an improvement. However, the 1999 Duma elections had 51% of the single member district seats captured by independents. Moreover, a closer look at other indicators shows that this decrease from 1993 to 1995 was the result of independent candidates creating new parties and labels for themselves, rather than joining existing parties. Thus, while in 1993

¹⁴² See DIETER NOHLEN, WAHLSYSTEME DER WELT: DATEN UND ANALYSEN: EIN HANDBUCH [WORLD'S ELECTORAL SYSTEMS: DATA AND ANALYSIS: A MANUAL] 299–312 (1978). This combined system is similar to that practiced in the Federal Republic of Germany, Venezuela, and New Zealand.

¹⁴³ White, *supra* note 30, at 139–141.

¹⁴⁴ Robert G. Moser, *The Impact of Parliamentary Electoral Systems in Russia*, 13 POST-SOVIET AFFAIRS 284, 295–98 (1997).

¹⁴⁵ Stephen White, Matthew Wyman and Sarah Oates, "Parties and Voters in the 1995 Russian Duma Elections, *Europe-Asia Studies*, 49, 5 (1997), pp. 767–798, at 783.

there were 12 parties winning seats in the Duma, in 1995 there were 22 parties winning seats in the State Duma.¹⁴⁶ That is to say, the number of parties actually represented in the Duma was almost doubled within two years. As some observers noted, “[i]n the early months of 1995, [...] the press was full of reports of the formation of new political parties, rather than coalitions. [...] Thus, even before a single vote was cast, a substantial majority of parties were condemned to winning nothing.”¹⁴⁷

Electoral system reform has been suggested as a means of building up and institutionalizing Russia’s party system. Perhaps the PR elections need to be less proportional in order to encourage majorities. Writing in 1993, Steven Fish suggested that “...a PR system for legislative elections would generate parties...and perhaps even create some organizational basis for overcoming the chaos and hyper individualism that now enervate soviets on all levels.”¹⁴⁸ However, since Fish had made this suggestion, fragmentation has become a serious problem. A greater number of parties will not necessarily translate into *better* parties, or into a *structured* party system. Party proliferation, which can emanate from PR elections if there are many social divisions and parties “in-waiting”, has little to do with actual party development.

Party development involves expansion of national party organization to local levels and parliamentarians’ commitment to their party through, among other things, legislative discipline. Moreover, recent research building upon the findings of Stepan and Skach shows that countries using “less proportional systems are more likely to survive [as democracies] than those with a highly proportional system.”¹⁴⁹ Finally, a larger number of political parties in a system tends to be associated with a higher degree of polarization (ideological

¹⁴⁶ White, *supra* note 30, at 139.

¹⁴⁷ *See id.* at 123, 224–25.

¹⁴⁸ *Id.* at 200, 203.

¹⁴⁹ Steven Fish, *Who Shall Speak for Whom? Democracy and Interest Representation in Post-Soviet Russia*, POLITICAL PARTIES IN RUSSIA, 43–44 (Alexander Dallin ed., 1993).

or otherwise).¹⁵⁰ The fact that Russia is a large and regionally diverse federation adds another dimension to the Russian party system.¹⁵¹ The Russian Federation approaches the conceptual opposite of what the Italians refer to as “partitocrazia,” or partyarchy.¹⁵² In the literature on parties and democracy, partyarchy is a system that appears to meet all the formal requirements for a democracy, but the political parties dominate to such an extent that the quality of democracy is questioned. Parties in a partyarchy are highly disciplined and centralized, control all nominations for public office, have penetrated all existing organizations in civil society, and squeeze out any other organizations linking government to society.¹⁵³

In addition, the media are controlled or extensively monitored by parties. Scholar Michael Coppedge argues that something close to this ideal type characterized Venezuelan democracy, which is also a federation.¹⁵⁴ The Russian Federation, however, seems to be the conceptual opposite of the ideal type partyarchy. First, Russian parties play almost *no* mediating role between government and society, since societal interests themselves are so fragmented, and since individual

¹⁵⁰ See Giacomo Sani & Giovanni Sartori, *European Political Parties: The Case of Polarized Pluralism*, in *POLITICAL PARTIES AND POLITICAL DEVELOPMENT* 137–76 (Joseph LaPalombora & Myron Weiner eds., Princeton Univ. Press 1966).

¹⁵¹ See Robert G. Moser, *The Impact of Parliamentary Electoral Systems in Russia*, 13 *POST SOVIET AFFAIRS* 284, 291–92 (1997) (“The tensions between the different regions of the Russian Federation and the centre have been reflected in debates concerning the different electoral system that was to be chosen for the Duma. The Federation Council, which had to approve the electoral law, and which was dominated by regional Yeltsin appointees, insisted on limiting the number of Moscow-based party members which could be on any party list to This was meant to protect the interests of the regions in the overall agenda of the parties. Similarly, the Federation Council also resisted scrapping the single-member districts. Within the single-member districts, candidates had to collect signatures from 1% of the voters, with no regional requirements. Party lists had to collect 200,000 signatures, with no more than 7% coming from any one unit.”).

¹⁵² See JOSEPH LAPALOMBARA, *DEMOCRACY, ITALIAN STYLE* (1987) (discussing Italy’s Christian Democrats and patriarchy).

¹⁵³ *Id.* at 215–16.

¹⁵⁴ See MICHAEL COPPEDGE, *STRONG PARTIES AND LAME DUCKS* 18–64 (Stanford Univ. Press 1994).

business oligarchs tend to control most state resources, including the Russian media. Russian parties also play almost no role as mediating institutions; more than 80% of Russians polled in 1998 distrusted political parties.¹⁵⁵ Second, Russian parties have little internal discipline, and in elections held in single-member districts, have almost no control over nominations. This occurs because most parties—excepting the Communists and, in the past, the Agrarians—have had inadequate grass-roots bases and were therefore “unable to nominate credible, electable candidates to win single-member districts.”¹⁵⁶ If Italian partyarchy is one extreme end of a continuum, then the Russian party situation, which we can call patriarchy, is on the opposite end.¹⁵⁷ Neither partyarchy nor patriarchy is fully democratic.

Another element contributing to the patriarchy in Russia was the absolute majority run-off system used to elect the president. As I discussed earlier, this presidential electoral system may, under conditions of inchoate parties, further polarize the electorate and personalize elections instead of bringing parties together. Russia's 1996 presidential elections, in which Yeltsin's main opponent was Communist Party leader Gennadiy Zyuganov was a clear example.¹⁵⁸ The binary nature of the two-round electoral system structured this

¹⁵⁵ Richard Rose, *Getting Things Done With Social Capital: New Russia Barometer VII*, UNIV. OF STRATHCLYDE GLASGOW CTR. FOR THE STUDY OF PUB. POL'Y (1998), http://www.cspp.strath.ac.uk/view_item.php?id=303.

¹⁵⁶ Marat R. Akopian, *Choosing a Method of One's Own Election: Explaining the Choice of the Mixed Electoral System for Russia's State Duma (1998)* (unpublished manuscript) (paper presented for the 1998 Annual Meeting of the American Political Science Association, Boston, September 3–6, 1998).

¹⁵⁷ I call this “patriarchy” to emphasize the leader (usually the president but perhaps also the prime minister) who, in the absence of strong parties, controls government, or at the very least *aims* to control it, and assumes that he is sovereign.

¹⁵⁸ This system in France brought *pre-existing*, centre-leaning blocs closer together. Yet it also seems to have encouraged the rise of extreme parties such as Jean-Marie Le Pen's *Front National*, which has held several mayorships in France and is taken seriously as an election contender (even for the presidential elections).

two-man race, which to many seemed more like a referendum on Communism than an election based on the policy programs of the candidates.¹⁵⁹ In sum, the electoral formulae used in Russia have never been the strongest for encouraging legislative majorities. But even the incentives that do exist in the legislative electoral system are not effective, because the party system itself remains unstructured, and the Russian social fabric has problematic cleavages around which coalition-able parties cannot really develop. Now I will turn to a third crucial condition that impedes majority formation, the legacy of Russia's first anti-party president.

3. Boris Yeltsin, and The Anti-Party President

In semi-presidential constitutions, it is crucial that a president be actively supported by, and an active supporter of, a political party. I showed elsewhere that to a certain extent even Charles de Gaulle, and to a much greater extent the successive presidents of the Fifth Republic, were all "party men" in this sense, and consequently were often able to rally majority support in the electorate and, with help from majority building electoral systems, in the legislature. This enabled French presidents to operate under the least conflict-prone subtype of semi-presidentialism much of the time. I have also, elsewhere, looked at this condition in Weimar, and discussed how Friedrich Ebert's "party man" quality likewise helped minimize conflict in Weimar's early years, but how the non-party presidency of General Hindenburg contributed to conflictual semi-presidentialism, which may have eventually led to breakdown.

Unlike France, but similar to the latter years of Weimar, the first directly elected Russian President Boris Yeltsin never created a political party for himself, nor did he join any of the parties which began to form in Russia after 1990. Yeltsin had spent half of his life in the Communist Party, but shunned the nascent parties of post-

¹⁵⁹ See Yitzhak M. Brudny, *In Pursuit of the Russian Presidency: Why and How Yeltsin Won the 1996 Presidential Election*, 30 COMMUNIST AND POST-COMMUNIST STUD. 255, 255-75 (1997).

communist Russia.¹⁶⁰ In spite of the advice of two of his close advisors, Sergey Shakhray and Gennadiy Burbulis, Yeltsin missed crucial opportunities to form a party when his popularity was high—for instance, after his election to the presidency of the Russian Soviet Federative Socialist Republic (RSFSR) in June 1991.¹⁶¹ As the Chief of Operational Analysis of the Analytical Directorate in the State Duma admitted, “[O]n several important instances, the President *skillfully* avoided all chances to be part of a party.”¹⁶² For example, the DR “provided crucial support for Yeltsin’s presidential victory in June 1991, yet his victory did not lead to its consolidation as the ‘party of power,’ or indeed, to its consolidation as a party at all. Yeltsin clearly felt more at ease working through his own ‘team’ free of political or social control.”¹⁶³ Unsurprisingly, an important faction of the DR had formally moved into opposition against Yeltsin by 1993.¹⁶⁴ This was to be expected, since Yeltsin’s treatment of the DR demonstrated a lack of forward-looking strategy and a lack of appreciation for the support he received, which “makes no sense as an electoral strategy. To communists, he remains a traitor. To liberals, he has abandoned all the values that made him popular. Thus, he has eliminated his political base.”¹⁶⁵

¹⁶⁰ David Hoffman, *Russians Take the Life Out of Their Parties*, WASH. POST, Nov. 7, 1999, at A29.

¹⁶¹ See Lloyd, *supra* note 36, at 102.

¹⁶² Interview with Nikolay Sakharov, in Moscow, Russ. (Mar. 23, 1998); see also Michael McFaul, *Yeltsin’s Legacy*, 24 WILSON Q. 42, 53 (2000) (demonstrating that Yeltsin had no interest in developing a presidential party).

¹⁶³ RICHARD SAKWA, *RUSSIAN POLITICS AND SOCIETY* 153 (4th ed. 2008).

¹⁶⁴ See MICHAEL MCFAUL & SERGEY MARKOV, *THE TROUBLED BIRTH OF RUSSIAN DEMOCRACY: PARTIES, PERSONALITIES, AND PROGRAMS* 66–77 (Stanford: Hoover Institution Press, 1993) (Nikolay Travkin, leader of the pro-western Democratic Party within the DR bloc, expressed concern as early as June 1991 over Yeltsin’s independent nature and zig-zag policies, warning that the party would withdraw its support if it came down to that).

¹⁶⁵ Daniel Treisman, *Why Yeltsin Won*, 75 FOREIGN AFFAIRS 64, 73 (1996) (quoting Anders Aslund, Opinion, *Almost Anyone is Better Than Yeltsin*, N.Y. TIMES, Feb. 13, 1996 (§ A), at 21).

In trying to understand why Yeltsin would eliminate his political base without much concern for future consequences, it is important to realize that Yeltsin viewed politics “not as a coalitional process [...] but as a zero-sum game of personal struggle for power.”¹⁶⁶ This is a warlike, rather than peace-oriented and legalistic, view of politics. In the former, force monitors persuasion, might establishes right, and conflict resolution is sought in terms of the defeat of the enemy – of the other ‘looked’ on as a *hostis*. In the latter, force is kept in reserve as an *ultima ratio*, as a last and worst reason, and conflict resolution is sought by means of covenants, courts and “rightful” procedures.¹⁶⁷

Indeed, Yeltsin, most poignantly in Moscow in 1993 and in Chechnya in 1994, demonstrated his warlike view of politics and his propensity to resolve conflict through force and the defeat of the enemy, rather than through compromise or by means of “rightful” procedures. Yeltsin himself admitted that covenants, courts, and other rightful procedures were alien, since “[t]he very word *constitution* was a strange dish for us to taste.”¹⁶⁸ Yeltsin was even extremely suspicious of his inner circle and, not unlike Stalin, followed a pattern of individual and isolated leadership based on perceptions of insecurity and fear of the enemy, of the “other.”¹⁶⁹ In Yeltsin’s own words,

¹⁶⁶ Hough, et. al., *supra* note 12, at 15.

¹⁶⁷ GIOVANNI SARTORI, *THE THEORY OF DEMOCRACY REVISITED* 41-42 (1987) (discussing Carl Schmitt’s concept of ‘the political.’). *See also* Carl Schmitt, *Der Begriff des Politischen* (Duncker & Humblot ed., 1991) (1932).

¹⁶⁸ *See* Yeltsin, *supra* note 1 at 216 (Yeltsin admittedly knew little about constitutional government and legitimate power anyway. He said, “Who knew five years ago what a referendum was in our country? What was ‘impeachment’? How a parliamentary system differs from a presidential system? What legitimate versus illegitimate authority meant? Besides a few legal scholars, I doubt that anyone knew. Now people are learning bit by bit to figure out all these constitutional subtleties.”).

¹⁶⁹ *See* ANDREY GRATCHEV, *L’EXCEPTION RUSSE: STALINE EST-IL MORT?* (Paris: Éditions du Rocher, 1997) (discussing the inertia of authoritarian style government and the heritage of Stalin in today’s Russia); *see also* JOHN MORRISON, *BORIS YELTSIN: FROM BOLSHEVIK TO DEMOCRAT* (1991) (for a biographical account of Yeltsin).

“people at the top generally have no friends. You develop a kind of insularity and exercise incredible caution in dealing with people. All of this is true of me – the insularity, the caution in speaking with new acquaintances.¹⁷⁰

Yeltsin’s justification for not attaching himself to any political party was based on his belief that the president alone was the arbiter of the system. According to Yeltsin, the president – by remaining above parties – could safeguard against the “swing” in policies that would inevitably result from party alternation in government.¹⁷¹ This belief is evident from Yeltsin’s memoirs, where he writes that:

I would like to believe . . . that the majority of Russians realize [that] the only definite guarantor of calm is the president himself. That is, if they elected him, they should stick to their choice. If the country is gradually, though very slowly, coming out of the crisis, if the day of judgment promised by both the left and the right is not coming, then that means it is possible to live – and live with that president.¹⁷²

However, the fact that Yeltsin took the reins over so many crucial decisions seems incongruent with the role of a genuine arbiter.¹⁷³ Moreover, a genuine arbiter is not antipolitical, as Yeltsin seemed to be. Finally, even if we give Yeltsin the benefit of the doubt and consider him to have had the role of arbiter, or of a heroic leader like de Gaulle, “once the emergency is over, the heroic leader seems out of place” and turns into “a flagrant reminder of the incapacity of the political class to cope with serious problems successfully.”¹⁷⁴ Indeed, Yeltsin’s domination of political decision-making de-

¹⁷⁰ Yeltsin, *supra* note 1, at 180.

¹⁷¹ Interview with Lilia Shevstova, Political Analyst, Moscow Carnegie Foundation, (Mar. 23, 1998).

¹⁷² Yeltsin, *supra* note 1, at 292–93.

¹⁷³ See WOLFGANG J. MOMMSEN, MAX WEBER UND DIE DEUTSCHE POLITIK 362–72, 375–79, & 398–405 (1959) (discussing the argument put forth by Max Weber during the Constitutional debates in Germany in 1918).

¹⁷⁴ Jack Ernest Shalom Hayward, *Governing France: The One and Indivisible French Republic* 13 (Wiley-Blackwell, 2nd ed., 1988).

legitimized the Russian political system by suggesting the incapacity of the other institutions.

Had Yeltsin encouraged the development of parties to back him in the legislature, Yeltsin might have avoided the precarious periods of divided minority government that plagued his terms in office. Instead, Yeltsin preferred to “stay unconstrained, and thus capable of maneuver.”¹⁷⁵ As a former, close aide to Yeltsin said, “[t]he President has some sort of allergy to parties, and *he* wants to control all decisions; he’s not a team player.”¹⁷⁶

What have been the consequences of Yeltsin’s anti-partyness for the development of democracy? First, Yeltsin tipped the balance of institutional power in favor of the president, away from the government and the legislature. He built a vertical, strongly presidential power system in which parties do not play a central role. Yeltsin restructured several institutions, such as the Security Council and the Foreign Ministry, so that most decisions would come under his direct command.¹⁷⁷ Yeltsin’s presidential administration expanded to over 3500 staff members by 1994, and there were numerous committees and offices that took research and administrative tasks away from the legislature and placed them under presidential administration.¹⁷⁸ Second, as a further means of extending his control throughout the vast federation, Yeltsin appointed loyal cronies to the posts of *predstaviteli prezidenta* (presidential representatives) or *glavy administratsii* (heads of administration) in the regions, and relied on

¹⁷⁵ Lloyd, *supra* note 36, at 15.

¹⁷⁶ Interview with Galina Starovoytova, Member of State Duma and Political Advisor to President Yeltsin, Moscow, Russ. (Mar. 23, 1998) (emphasis added) (interview conducted just prior to her assassination in 1998).

¹⁷⁷ See Alex Pravda, *The Politics of Foreign Policy*, in STEPHEN WHITE, ALEX PRAVDA & ZVI GITELMAN, DEVELOPMENTS IN RUSSIAN AND POST-SOVIET POLITICS 208, 225–27 (1994); Alexei G. Arbatov, *Russia’s Foreign Policy Alternatives*, 18 INT’L SEC. 5, 5–43 (1993); Karen Dawisha & Bruce Parrott, *Russia and the New States of Eurasia: The Politics of Upheaval* 202–7 (1994).

¹⁷⁸ Archie Brown, *The Russian Crisis: Beginning of the End or End of the Beginning?*, 15 Post-Soviet Affairs 56, 63 (1999); Stephen White, *Russia: Presidential Leadership Under Yeltsin*, in *Postcommunist Presidents* 38, 51–52 (Ray Taras ed., 1997).

these representatives individually for support in the regions, and collectively for support in the Federation Council.¹⁷⁹ After 1995, Yeltsin no longer had the legal power to appoint regional leaders (now elected) or members of the Federation Council, who are now popularly elected. However, Yeltsin continued to influence control over the dismissal and replacement of governors in regions which had not yet held elections. In the first half of 1996, for example, Yeltsin managed to replace six governors.¹⁸⁰

The clearest example of Yeltsin's concentration of power at the expense of other political institutions was his decision to use force in October 1993 against the Congress of People's Deputies, which had decided to impeach him. A major faction in the Supreme Soviet at the time was becoming increasingly reactionary, but Yeltsin's uncompromising attitude and "might over right" style of conflict resolution pre-empted the road for compromise. Sergey Kovalev, former Human Rights Commissioner under Yeltsin, suggested that Yeltsin even encouraged the October 1993 conflict, since "all of [Yeltsin's actions in] 1993 were done to provoke Rutskey and Khasbulatov to take the first move toward force. Yeltsin was waiting for this."¹⁸¹ When Yeltsin recounts this period in his memoirs, we immediately realize that Yeltsin did not understand the constitutional interdependence between the president and the Congress of People's Deputies. Yeltsin writes:

Why is the word impeachment so terrible? After all if the Congress passed such a motion it would have no legal force. A popularly elected president could not be removed from power by the Congress, especially this Congress, which had long ago lost the people's trust. Furthermore, the subjective factor is not important

¹⁷⁹ Lilia Shevtsova, *Russia's Postcommunist Politics: Revolution or Continuity?*, in *THE NEW RUSSIA: TROUBLED TRANSFORMATION* 5, 9 (Gail W. Lapidus ed., 1995).

¹⁸⁰ Steven Solnick, *Will Russia Survive? Center and Periphery in the Russian Federation*, in *POST-SOVIET POLITICAL ORDER: CONFLICT AND STATE BUILDING* 58, 76 (Barnett Rubin & Jack Snyder eds., 1998).

¹⁸¹ Interview with Sergey Kovalev, Former Human Rights Commissioner, in Moscow, Russ., (Mar. 26, 1998).

here; what's important is the legal substance of the issue - the Congress does not have the power to remove the president because it did not elect him. Any schoolchild could understand that.¹⁸²

Yeltsin's isolated leadership and anti-legislature attitude set a poor precedent for other political candidates. Simply "because Yeltsin remained independent, others followed his example, believing that democratic government could function without parties. This neutrality by some of Russia's most well-known figures (Yeltsin, Popov, Stankevich, Sobchak) seriously retarded the development of party affiliation."¹⁸³ One might have thought that Yeltsin would have experienced a certain degree of political learning, realizing how important parties are for real democratic power under semi-presidentialism. However, with the advent of the 1996 presidential election campaign, Yeltsin made no effort to enlist party support. His only campaign technique consisted of what some analysts have described as "buying" society – through more than 64 decrees issued from January to June of 1996, which gave social benefits to certain underprivileged (and large) constituencies.¹⁸⁴ Yeltsin's regional headquarters, in these months prior to the election, became "'a glorified social services and janitor's office combined' that was working hard to make the president 'look kind and fair like Robin Hood come alive.'"¹⁸⁵

In comparative terms, many of the Latin American democracies have seen similar populist campaign practices, especially in the federated Latin American states where regional elites also act as local representatives of the president.¹⁸⁶ But even in these examples, presidents have made pre-election "deals" with local elites and

¹⁸² Yeltsin, *supra* note 1, at 210 (emphasis added).

¹⁸³ McFaul & Markov, *supra* note 160, at 11–12.

¹⁸⁴ Treisman, *supra* note 161, at 64–77.

¹⁸⁵ *Id.* at 68.

¹⁸⁶ See *Populism and Polarisation Threaten Latin America*, THE ECONOMIST (May 9, 2019), <https://www.economist.com/briefing/2019/05/09/populism-and-polarisation-threaten-latin-america>.

pursued populist strategies *through* the existing parties.¹⁸⁷ Even in post-communist Georgia, President Eduard Shevardnadze launched the Citizens' Union in November 1993 in an effort to ensure political support in the Georgian legislature. The presidential elections of 1995 gave Shevardnadze's party the majority he needed to govern democratically, and consequently, "[t]hroughout 1996, the new parliament functioned cohesively and productively to enact key legislation underpinning the foundations of civil society and of economic reform."¹⁸⁸ In Russia, however, there is a continuous circle which works against parties: the more that Yeltsin ignored parties and alienated them from his decisions, the more directly dependent he was on civil society, which was itself weak, unstable, and lacked crystallized identities.¹⁸⁹ Thus Yeltsin's support group never consolidated and remained, as it was during his first presidential term,

¹⁸⁷ See Edward L. Gibson, *The Populist Road to Market Reform: Policy and Electoral Coalitions in Mexico and Argentina*, 49 *WORLD POL.* 339-70 (1997). (documenting how Argentina's Menem and Mexico's Salinas were successful in using the support of their populist parties to pursue neo-liberal reforms, by relying heavily on over-represented rural constituencies (which provided electoral support) and attacking the under-represented urban constituencies (where most of the hard-hit public-sector is located)).

¹⁸⁸ Elizabeth Fuller, *Georgia Stabilizes*, 3 *TRANSITION: YEAR IN REVIEW* 82, 83 (1997).

¹⁸⁹ See PETER MAIR, *PARTY SYSTEM CHANGE* 168 (1998); although there has been an incredible growth in the number of NGOs in Russia since 1991, many are struggling due to a lack of funds. According to a poll published in *The Chronicle of Philanthropy* (May 1996), 75% of Russians polled could not name any charity. As far as trade unions, the Federation of Independent Trade Unions of Russia (FNPR) retained many control mechanisms of its predecessor, the All-Union Central Council of Trade Unions. Moreover, there are almost no grass-roots farmers groups given the very small percentage of private farmers. That said, small business associations at the central and local levels are beginning to attract more members and provide economic and other services, but there is still a long way to go before these groups form the crucial horizontal links with each other which would build a strong civil society fabric. See the report on Russian civil society in KARATNYCKY, ET AL, *NATIONS IN TRANSIT* 317-18; see also ALFRED STEPAN, *RETHINKING MILITARY POLITICS: BRAZIL AND THE SOUTHERN CONE* (Princeton University Press, 1988) (discussing the importance of horizontal links in civil society).

“a conglomeration of individuals whose only unifying thread was personal rapport with the president.”¹⁹⁰

If we compare Yeltsin to the first directly elected president of the French Fifth Republic, General de Gaulle, it becomes even clearer that Yeltsin’s attitude towards parties did not even approach what is necessary for minimizing conflict in semi-presidentialism. General de Gaulle, not unlike Yeltsin, was the first president of a new republic, had a high percentage of initial popular support, and was trusted with the responsibility of re-equilibrating a system that was on the brink of civil war. De Gaulle gradually realized how parties could help him manage the potentially conflictual semi-presidential institutions by giving him a majority in the legislature, and therefore, full, democratic access to presidential powers.¹⁹¹ Within the first years of the Fifth Republic, there is evidence of de Gaulle reaching out to the *Union pour la nouvelle République* (UNR), the party that took its inspiration from de Gaulle and considered de Gaulle its leader.¹⁹² Over de Gaulle’s presidency, he increasingly filled government cabinets with members of the UNR, demonstrating support of the party.

The difference the party-man condition made in terms of de Gaulle’s support in the first two legislatures of the Fifth Republic is important. When we compare it to Yeltsin’s *official* party support in the first two legislatures, to de Gaulle’s, the difference is striking. Of

¹⁹⁰ Timothy J. Colton, *Boris Yeltsin, Russia’s All-Thumbs Democrat*, in TIMOTHY J. COLTON & ROBERT C. TUCKER, *PATTERNS IN POST-SOVIET LEADERSHIP* 49, 68 (Boulder: Westview Press, 1995).

¹⁹¹ As I discuss in Chapter Two of my *Borrowing Constitutional Designs*, the argument is sometimes made that de Gaulle remained somewhat distanced from parties because “his concept of power prevented him from attaching to any particular party”; see also COLLETTE YSMAL, *LES PARTIS POLITIQUES SOUS LA VE RÉPUBLIQUE* 44 (1989).

¹⁹² Jean Charlot, *L’UNR: Etude du Pouvoir au Sein d’un Parti Politique* 259 (Presses de Sciences Po, 1967) (quoting Albin Chalandon, General Secretary of the UNR in 1959, who noted the difficulty, but not impossibility, of having de Gaulle as the party “leader”: “We are in a situation such that we ought to constantly serve him without being directly commanded by him.” Discourse before the first National Council of the UNR, Palais d’Orsay, Paris, 26 July 1959).

course, in the inchoate party landscape of Russia, there were several parties that supported the president and the government although they had no official affiliation with Yeltsin or support from him. However, this meant that there was no certainty of support over time, but rather, that support was bargained for in the State Duma on each individual issue, most certainly adding to the already high degree of uncertainty and volatility in the system.

Yeltsin's successor to the Russian presidency, Vladimir Vladimirovich Putin, took office *de facto* on January 1, 2000, after Yeltsin's resignation. Putin was the popularly elected in the first round of voting in March, 2000. Putin, like Yeltsin, has declared himself to be "above" party politics. In an open campaign letter to the Russian people published on his personal web page, Putin claimed that "[t]he poverty of peoples cannot be justified by any references to the purity of party principles, whether 'Right' or 'Left' ones." The party that has thus far supported Putin most steadfastly — *Yedinstvo* (Unity) — still has no real political program and lacks organizational strength. It is, in that sense, weaker than the Communist Party, and less well-grounded at the regional and local levels. Moreover, before his election, Putin suggested that democracy was "dictatorship of the law," evoking images — albeit distant ones — of the Latin American dictators of the 1970s, for whom some sense of legality, but not democratic legitimacy, was integral to the regime. Human rights advocates, including the current Russian Commissioner for Human Rights Oleg Mironov, express concern over Putin's plans for a "strong state." Recently Putin, adding to this concern, told Russians in a public address that they have been too optimistic about achieving democracy quickly. What's more, Putin's centralization-of-power, "strong state" plan, as well as some of his recent ministerial appointments, will facilitate informal mechanisms of influence and representation which will continue to side-step and delegitimize political parties and courts. Thus, Putin was, problematically, just as much of a non-party man as Yeltsin had been during the entire first decade of Russian democracy.

Table 2: Three Crucial Conditions for Minimizing Conflict in Semi-Presidentialism.

Postcommunist Russia 1991-1999

One:	Two:	Three:
Institutionalization of the Majority- Building Integration of Presidents		
Party System	Capacity of the Electoral into the Party System	
Very Low	Low	Non-Existent

VI. CONCLUSION

As supported by the data discussed above, Russia had conditions that keep it in divided minority government, the most problematic subtype of the semi-presidential constitution, for the first decade of its transition from non-democratic rule. Russia's chances for moving toward democracy under semi-presidentialism were and still are today clearly less than the chances of moving further toward a non-democratic alternative, or remaining in a state of arrested transition, *unless* there are major changes that would involve developing an institutionalized party system (endogenously), changing electoral rules to promote political parties and party coalitions, amending the constitution to give less unilateral power to the president, and ensuring that future presidents identify with a political party and are willing to set a tradition of not using their constitutional powers beyond their limits as a substitute for a Duma majority. A tall order for a country spanning many time zones — a country so rich in culture and potential, awaiting its true democratic birth.