

RUSSIA’S BIG-BANG CONSTITUTIONAL AMENDMENTS

BUI NGOC SON*

I. INTRODUCTION	752
II. BIG-BANG CONSTITUTIONAL AMENDMENTS	755
III. RUSSIA’S BIG-BANG CONSTITUTIONAL AMENDMENTS	758
A. <i>A Window of Opportunity</i>	758
B. <i>The Speedy Pace</i>	762
1. <i>Amendment Rules</i>	762
2. <i>Amendment Practice</i>	764
C. <i>The Large-Scale</i>	769
1. <i>Presidential Term Limit Evasion: The Blank Slate Theory Through Constitutional Amendments</i>	769
2. <i>Superpresidentialism</i>	775
3. <i>Nationalism</i>	778
4. <i>Welfarism</i>	781
IV. CONCLUSION	783

On July 1, 2020, Russians approved the amendments to Russia’s 1993 Constitution in a national vote. Drawing from comparative scholarship on constitutional change and insights from comparative political studies, this article argues that Russia’s 2020 constitutional amendments can be understood as “big-bang constitutional amendments”—amendments that rapidly introduce large-scale change to the existing constitution all at once. The political elites’ uncertainty regarding their continued influence and the centralization of power combined to create a window for the passage of these amendments. The amendments were all enacted together, in a short time-frame, thanks to legislative supremacy and political conditions. The amendments are also substantial: they changed nearly one-third of the original Constitution and deal with a wide-range of international and domestic issues. They annul presidential term limits; significantly increase presidential power over the legislative, executive, and judicial bodies; prioritize national law over international law; constitutionalize Russian as the “state-forming” language, faith in one

* Associate Professor of Asian Law, University of Oxford Faculty of Law; PhD, The University of Hong Kong; Visiting Researcher, Harvard Law School (2012); Scholar of Study of the United States Institutes- American Politics and Political Thought, University of Massachusetts’ Donahue Institute (2008).

God, and marriage as between a man and woman; and provide for a minimum wage of not less than the subsistence minimum, compulsory social insurance, and indexation of pensions. These political, economic, social, religious, and moral changes are not merely institutional: they signify the ideational constitutional turn to centralism, nationalism, and welfarism. The big-bang constitutional amendments will entail massive effort in implementation and promise a long-term effect on Russian constitutional identity generally.

I. INTRODUCTION

On July 1, 2020, Russians approved the amendments to Russia's 1993 Constitution in a national vote.¹ The international media focused on the amendment that eliminated presidential term limits, presumably allowing President Vladimir Putin to remain in power until 2036.² However, Russia's 2020 constitutional amendments are not merely about term limits: they affected nearly one-third of the 1993 Constitution.³

This article seeks to understand Russia's 2020 constitutional amendments from a comparative and interdisciplinary perspective. This article is built on, but differs from, existing literature⁴ in three ways. First, it places Russia's experience

1. The vote was initially scheduled in April but later postponed due to the COVID-19 pandemic. Andrew Higgins, *The Theatrical Method in Putin's Vote Madness*, N.Y. TIMES (July 1, 2020), <https://www.nytimes.com/2020/07/01/world/europe/putin-referendum-vote-russia.html>.

2. See, e.g., Sarah Rainsford, *Putin Strongly Backed in Controversial Russian Reform Vote*, BBC (July 2, 2020), <https://www.bbc.com/news/world-europe-53255964> (focusing on the changes to presidential term limits and Putin's ability to run for two more six-year terms while lightly treating other changes).

3. For analyses of how the amendments altered constitutional text that has historically served an important role in guiding Russia's international and national affairs, see Gennady M. Danilenko, *The New Russian Constitution and International Law*, 88 AM. J. INT'L L. 451, 470 (1994), Lauri Mälksoo, *International Law and the 2020 Amendments to the Russian Constitution*, 115 AM. J. INT'L L. 78–93 (2021), and William Partlett & Mikhail Krasnov, *Russia's Non-Transformative Constitutional Founding*, 15 EUR. CONST. LAW REV. 644, 666 (2019).

4. See generally Anna Shashkova et al., *On Modifications to the Constitution of the Russian Federation in 2020*, 8 RUSSIAN L.J. 60, 60–83 (2020) (analyzing 2020 amendments with a socio-political lens); Anna V. Shashkova & Michel Verlainne, *On Modifications to the Constitution of the Russian Federation in 2020 for the Development of Entrepreneurial Activity*, 26 ACAD. ENTREPRENEURSHIP J. 1–7 (2020) (comparative, historical-legal, and formal-legal); William Partlett, *Russia's 2020 Constitutional Amendments: A Comparative Perspective I* (Univ. of

within comparative scholarship on constitutional change under authoritarian or similar conditions,⁵ and within comparative studies of constitutional amendment.⁶ Second, it integrates insight from comparative political studies.⁷ Third and relatedly, drawing on Carolyn J. Tuohy's concept of "big-bang" changes in health policy,⁸ this article conceptualizes Russia's 2020 constitutional amendments as "big-bang constitutional amendments."

"Big-bang constitutional amendments" are amendments that *rapidly introduce large-scale change to the existing constitution, all at once*. At first glance, the idea of big-bang constitutional amendments seems counterintuitive. Big-bang constitutional change—e.g. fundamental constitutional change after revolutions in India, South Africa, France, and Italy—is a model of

Melbourne, Legal Stud. Rsch. Paper No. 887, 2020), <https://ssrn.com/abstract=3625390> (comparative); Elizabeth Teague, *Russia's Constitutional Reforms of 2020*, 5 RUSSIAN POL. 301, 327–28 (2020) (national).

5. See generally TOM GINSBURG & AZIZ Z. HUQ, HOW TO SAVE A CONSTITUTIONAL DEMOCRACY 3 (2018) [hereinafter HOW TO SAVE A CONSTITUTIONAL DEMOCRACY] (arguing that rising authoritarian tendencies threaten liberal democracies); David Landau & Rosalind Dixon, *Abusive Judicial Review: Courts Against Democracy*, 53 U.C. DAVIS L. REV. 1313, 1383–84 (2020) (concluding that informal norms provide more protection from authoritarian influence than constitutional text in the United States); Aziz Huq & Tom Ginsburg, *How to Lose a Constitutional Democracy*, 65 UCLA L. REV. 78, 168 (2018) ("There is a low risk . . . of either military coup or the institutionalization of permanent emergency rule The threat of constitutional retrogression is more substantial"); Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 545, 547 (2018) ("New autocrats are not just benefiting from the crisis of confidence in public institutions; they are attacking the basic principles of liberal and democratic constitutionalism because they want to consolidate power and entrench themselves in office for the long haul.").

6. See generally Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions 2* (2019) (discussing how amendment works, why it fails, what its various designs around the world teach, and why amendment matters in constitutionalism).

7. See generally CAROLYN HUGHES TUOHY, REMAKING POLICY: SCALE, PACE, AND POLITICAL STRATEGY IN HEALTH CARE REFORM xvi–xviii (2018) (comparing major changes in health policy in the United States, the United Kingdom, the Netherlands, and Canada); Michael Howlett & Benjamin Cashore, *The Dependent Variable Problem in the Study of Policy Change: Understanding Policy Change as a Methodological Problem*, 11 J. COMPAR. POL'Y ANALYSIS 33, 42 (2009) (suggesting reconceptualization of dependent variables in political studies to uncover additional overall patterns of policy development overlooked by traditional punctuated equilibrium models).

8. TUOHY, *supra* note 7, at 15–17.

making a new constitution,⁹ rather than amending an existing one. “[T]he term ‘amendment’ implies such an addition or change within the lines of the original instrument as will effect an improvement, or better carry out the purpose for which it was framed.”¹⁰ If it is true that amendments merely carry out the purpose of the original constitution, then big-bang amendments cannot exist. However, the Russian story indicates that when certain conditions are met, big-bang amendments may occur.

This article argues that Russia’s 2020 constitutional amendments can be understood as big-bang constitutional amendments. The window of opportunity critical for these amendments is centralized, but precarious, political power. These amendments were quickly and simultaneously enacted, thanks to legislative supremacy and the requisite political conditions. The amendments were significant: they changed nearly one-third of the 1993 Constitution and deal with a wide-range of international and domestic issues. The amendments zero presidential term limits; significantly increase the presidential power over the legislative, executive, and judicial bodies; prioritize national law over international law; constitutionalize Russian as the “state-forming” language, faith in one God, and marriage as between a man and woman; and provide for minimum wage not less than the subsistence minimum, compulsory social insurance, and indexation of pensions. These political, economic, social, religious, and moral changes are not merely institutional: they embody the ideational constitutional transition to centralism, nationalism, and welfarism. Additionally, the big-bang constitutional amendments will entail serious effort in implementation and promise a long-term effect on Russian constitutional identity.

The approach of this study is exploratory and explanatory, rather than normative or evaluative. This article seeks to understand how and why big-bang constitutional amendments occurred in Russia. It does not provide a normative evaluation of the process or contents of the amendments. This study,

9. See generally BRUCE ACKERMAN, *REVOLUTIONARY CONSTITUTIONS: CHARISMATIC LEADERSHIP AND THE RULE OF LAW* 54–156 (2019) (analyzing India, South Africa, France, and Italy as case studies in democratic constitutional change).

10. *Livermore v. Waite*, 36 P. 424, 426 (Cal. 1894).

however, has implications for understanding Russia's constitutional trajectory, given the anticipated long-term effect of the amendments on Russia's constitutional identity.

The article will proceed as follows. Part II articulates the general theory of big-bang constitutional amendments. Part III explores Russia's 2020 amendments and categorizes them as big-bang constitutional amendments. Part IV offers conclusions and insight on Russia's big-bang amendments.

II. BIG-BANG CONSTITUTIONAL AMENDMENTS

The theoretical model of big-bang constitutional amendments is drawn from comparative political studies on the scale and pace of policy change. "Scale" refers to the degree and scope of change: a spectrum of large to small change.¹¹ "Pace" refers to the tempo (timing) or speed of change,¹² and "falls on a spectrum from fast to slow" change.¹³ Scholars of comparative political economy identify different types of policy change. Carolyn J. Tuohy suggests that the intersection of scale and pace generates four possible types of policy change: "big-bang" or rapid enactment of large-scale change; "blueprint" or step-wise enactment of large-scale change; "mosaic" or rapid enactment of multiple small-scale changes; and "incrementalism" or piecemeal enactment of small-scale changes.¹⁴ This typology resonated with Michael Howlett and Benjamin Cashore's identification of four patterns of policy change: "classical paradigmatic" (one large step); "gradual paradigmatic" (one large step but with slow moving steps); "rapid incremental" (many small but fast steps); and "classic incremental" (many small and slow moving steps).¹⁵ While overlapping, these two typologies are importantly different. Tuohy presents the four types of policy change as *strategies*, arguing that each type is a consequence of political actors' deliberate choices in distinctive political and institutional conditions. Howlett and Cashore, however, conceptualize the four types of policy change as *observed patterns* happening over

11. TUOHY, *supra* note 7, at 9–14.

12. *Id.* at 11.

13. *Id.*

14. *Id.* at 13.

15. Howlett & Cashore, *supra* note 7, at 40.

time.¹⁶ These scholars' work refines and perpetuates the conception of change-patterns first developed by other scholars.¹⁷

Constitutional change is different from standard policy change in that it involves the fundamental law of the State.¹⁸ However, comparative scholarship indicates that constitutional change, particularly through amendments, is 'ordinary politics' in many ways.¹⁹ Under authoritarian regimes, political elites can control constitutional amendment much like they control ordinary policy-making. For example, political elites can dominate legislatures, the main platform for both constitutional amendment and ordinary policy-making.²⁰ Therefore, theories of policy change may be helpful in understanding constitutional change. Accordingly, this study adapts Tuohy's account of big-bang policy change to a model of big-bang constitutional amendments. Following Tuohy, a theoretical model of big-bang constitutional amendments can be articulated with three elements: a window of opportunity, space, and scale.²¹

The *window of opportunity* for big-bang constitutional amendments is characterized by centralized, but precarious, political power. Generally, two conditions open a "window of opportunity" for major changes: political capacity and political

16. *Id.*

17. *Id.* (first citing Ian Lustick, *Explaining the Variable Utility of Disjointed Incrementalism: Four Propositions*, 74 AM. POL. SCI. REV. 342 (1980); and then citing POLICY DYNAMICS (Frank R. Baumgartner & Bryan D. Jones eds., 2002)).

18. See generally William Partlett & Zim Nwokora, *The Foundations of Democratic Dualism: Why Constitutional Politics and Ordinary Politics Are Different*, 26 CONSTELLATIONS 177 (2019) (explaining the difference between ordinary constitutional and ordinary politics in a democracy).

19. Ruti Teitel, *Transitional Jurisprudence: The Role of Law in Political Transformation*, 106 YALE L.J. 2009, 2070 (1997) ("Where there is constitutional change, it has tended to occur not through special bodies or procedures but in piecemeal fashion, through negotiations and ordinary political processes. Such constitutional change has been inextricably bound up with the processes of political change.").

20. See, e.g., David Landau, *Abusive Constitutionalism*, 47 U.C. DAVIS L. REV. 189, 201 (2013) (discussing the Congress of Colombia's role in amending the Constitution to allow President Alvaro Uribe Velez to have a second term in office).

21. See TUOHY, *supra* note 7, at 15–16 (noting the limiting factors of a window of opportunity for constitutional change, as well as the strategic choice of an appropriate scale and scope for constitutional change).

will.²² “Political capacity” refers to “a particularly favourable set of institutional and electoral conditions that render those [political] actors capable of mobilizing sufficient authority to overcome vetoes and enact a program of change.”²³ “Political will” refers to a set of factors that motivate political actors to embark on big change. These factors are shaped by actors’ assessment of their positions of “*current and future influence*.”²⁴

These two conditions are similarly necessary to open a window of opportunity for big-bang constitutional amendments. First, when political elites centralize power, they gain the political capacity to immediately launch large-scale constitutional changes. Centralized power may take the form of the political leaders’ domination of major platforms and institutions relevant to the deliberation and approval of constitutional amendments, such as the legislature, courts, or public sphere. This centralization of power enables quick approval of a comprehensive package of constitutional amendments. Second, political elites will have the political will to introduce big-bang constitutional amendments if they are uncertain of their political future. Under multi-party systems and pluralistic societies, despite centralized power, political actors may face a loss of power due to institutional and popular constraints. Institutional constraints, such as regular elections and the constitutional entrenchment of term limits, may render centralized power porous. Additionally, centralized power may be contested or challenged by social actors in the public sphere through media or protests. Political actors, when confronted with institutional limits and social opposition, may strategically leverage their centralized power and enact comprehensive amendments to the constitution, in order to preserve it.

Big-bang constitutional amendments are enacted at a rapid pace because of the nature and limits of the window of opportunity. Centralized power enables actors to move quickly. Political leaders with sweeping support in critical institutions and political bodies can enact amendments without the inevitable delay and conflict that occur during meaningful constitutional deliberation. Strategically, the amendments are adopted swiftly to avoid political contestation. The prolong-

22. *Id.* at 6.

23. *Id.* (emphasis removed).

24. *Id.* at 7.

ment of the amendment process could create a platform for the opposition, a situation many political leaders wish to avoid.

Big-bang constitutional amendments occur at a large scale, institutionally and/or ideationally. The amendments may include new procedural rules, thus changing the competencies of constitutional institutions (the president, parliament, and courts). The amendments may modify underlying ideas and principles that explicitly or implicitly legitimate the institutional framework. When explicit, new constitutional ideas and principles are directly incorporated into the constitution through amendments. When implicit, ideational change may be deduced from institutional change (e.g. the incorporation of a new constitutional provision on the minimum wage implies an ideational commitment to a welfare state, rather than to a liberal state).

The above is a theoretical model of big-bang constitutional amendments. In reality, big-bang constitutional amendments are uncommon, primarily because the requisite window of opportunity is rare. But, when the conditions for political capacity and political will are met, big-bang constitutional amendments can occur, as is the case of Russia.

III. RUSSIA'S BIG-BANG CONSTITUTIONAL AMENDMENTS

A. *A Window of Opportunity*

Twenty-first century authoritarianism uses legal instruments (e.g. competitive elections and courts) to centralize power;²⁵ Russia follows this trend.²⁶ Authoritarianism enabled the government coalition, under Putin's leadership, to central-

25. For the concept of authoritarianism, see Mark Jia, *Illiberal Law in American Courts*, 168 U. PA. L. REV. 1685, 1693–94 (2020).

26. See generally Brian D. Taylor, *The Code of Putinism* (2018) (explaining how the mentality of Putin and his team has shaped Russian politics); GRAEME GILL, *BUILDING AN AUTHORITARIAN POLITY: RUSSIA IN POST-SOVIET TIMES* (2015) (explaining emergence of an authoritarian polity in Russia after the fall of the Soviet Union); WILLIAM ZIMMERMAN, *RULING RUSSIA: AUTHORITARIANISM FROM THE REVOLUTION TO PUTIN* (2014) (charting the course of Russian authoritarianism, especially noting the use of elections to consolidate power from 2000 to 2012); VLADIMIR GEL'MAN, *AUTHORITARIAN RUSSIA: ANALYZING POST-SOVIET REGIME CHANGES 2* (2015) (“The list of troubling features of Russian politics in the 2010s included unfair and fraudulent elections, . . . [and] politically subordinated and shamelessly biased courts . . .”).

ize power, opening a window of opportunity for big-bang constitutional amendments. Centralized power is manifest in three features: the political elite's control of the legislature, the Constitutional Court, and the public sphere.

First, Russia's ruling elite controls the legislature. United Russia, the ruling party, dominates the legislature despite competitive elections.²⁷ As of 2018, United Russia held 335 (or 74.44%) of the 450 seats in the State Duma, the lower house of the national legislature.²⁸ United Russia represents the Kremlin and the interests of the Russian elite in the legislature, according to Ora John Reuter.²⁹

Comparative analysis shows that when political elites or the holders of political powers dominate the legislature, they can introduce fundamental changes to the constitution. The Fidesz Party in Hungary, for example, "seized on the happenstance of a supermajority share of legislative seats in 2010 first to amend and then to replace the nation's constitution."³⁰ Big-bang constitutional amendments in Russia are also possible because the ruling elite dominate the legislature, the platform for amending the constitution.³¹

The second feature of centralized power in Russia concerns the Russian Constitutional Court (RCC). The RCC was designed by politicians "who try their best to maximize the

27. See Vladimir Gel'man, *The Rise and Decline of Electoral Authoritarianism in Russia*, 22 DEMOKRATIZATSIYA 503, 508-09 (2014) (United Russia acquired "an unchallenged monopoly in both parliamentary and electoral politics," although "several other parties were present on the periphery of the Russian electoral arena without posing a serious danger to the regime.").

28. Vitali Shklyarov, *United Russia Is Dead*, FOREIGN POL'Y RSCH. INST. (Dec. 9, 2019), <https://www.fpri.org/article/2019/12/united-russia-is-dead/>.

29. ORA JOHN REUTER, *THE ORIGINS OF DOMINANT PARTIES: BUILDING AUTHORITARIAN INSTITUTIONS IN POST-SOVIET RUSSIA* 160 (2017). ("[T]he Kremlin came to depend on United Russia for electoral support and the maintenance of elite cohesion, while many elites began to rely on United Russia for the provision of spoils, especially in legislatures").

30. HOW TO SAVE A CONSTITUTIONAL DEMOCRACY, *supra* note 5, at 92.

31. Sts. 134, 136 Konstitutsii Rossiiskoi Federatsii ot 12 dekabrya 1993 goda, Rossiiskaya Gazeta, 25 dekabrya 1993 [Constitution] (amendment proposals can be introduced by the legislature, among other bodies, and approved by a two-third majority vote in the legislature).

benefits from favorable court decisions and to minimize the damage from unfavorable ones.”³²

Recent comparative, constitutional law scholarship has demonstrated that would-be authoritarian leaders in several Latin American countries, including Venezuela and Bolivia, have deployed various legal tools in an attempt to control courts. The mechanisms range from packing courts’ composition (such as changing court size or removing judges) to curbing courts’ institutional resources (such as budget cuts or changing the order of court rulings).³³ Similarly, political elites in Russia use legal instruments to control the RCC. Mainly, they pack the court’s composition through material inducement. Between 2001 and 2016, presidents Putin and Medvedev amended the Act on the RCC fifteen times, and “[s]ome of these amendments . . . reflected the desire of the both rulers to make the tribunal more dependent on them, in the process giving RCC judges generous pay raises, perks and benefits.”³⁴ Consequently, the RCC “chose to pursue a pragmatic approach in order to satisfy the demands for loyalty and resilience from the highly popular President and his regime of political expediency.”³⁵ The RCC’s loyalty to the political elite enabled them to use the Court to legitimate the big-bang constitutional amendments.

The last, salient feature of the Russian political elites’ centralized power, is their control of the public sphere. The “public sphere” is defined as, “an institutionalized arena of discursive interactions in which citizens deliberate about common affairs.”³⁶ The public sphere contains social media, newspapers, and private associations.³⁷ The Russian government controls media to ensure that, “only government-approved messages are effectively circulating in the public sphere.”³⁸ Consequently, “the Kremlin and its loyalists enjoy[] full-

32. ALEXEI TROCHEV, *JUDGING RUSSIA: THE ROLE OF THE CONSTITUTIONAL COURT IN RUSSIAN POLITICS 1990–2006* 189 (2008).

33. Landau & Dixon, *supra* note 5, at 1343–70.

34. Alexei Trochev & Peter H. Solomon Jr., *Authoritarian Constitutionalism in Putin’s Russia: A Pragmatic Constitutional Court in a Dual State*, 51 *COMMUNIST & POST-COMMUNIST STUD.* 201, 204 (2018) (citation omitted).

35. *Id.* at 204.

36. *HOW TO SAVE A CONSTITUTIONAL DEMOCRACY*, *supra* note 5, at 102.

37. *Id.* at 111.

38. *Id.* at 109–10.

fledged dominance over political news.”³⁹ The Russian government’s control over major information channels provides “ample opportunities to deploy a wide range of propagandist techniques.”⁴⁰ The Russian government also enacted several ordinary pieces of legislation (e.g. the foreign agents laws, anti-extremism laws, hate speech legislation, and the 2014 amendment to the Criminal Code) to control freedom of speech and freedom of association and assembly.⁴¹

The Russian political elite’s centralized power created favorable conditions for passing big-bang constitutional amendments. In order to animate efforts for big-bang constitutional amendments and create a window of opportunity, the political elite must be confident that they have electoral legitimacy (a supermajority in the national legislature) and institutional capacity (control of the legislature, the constitutional court, and institutional venues for public discourse) to mobilize for the institutional (the legislature and the RCC) and social (popular vote) approval that is necessary for comprehensive change to the Constitution.

However, centralized power is not enough to enable big-bang constitutional amendments. Political elites must also feel their centralized power is precarious, thus inducing them to pursue quick and comprehensive constitutional changes.⁴² Constitutional term limits can produce the necessary precarity.⁴³ After serving two presidential terms from 2000 until

39. Gel’man, *supra* note 27, at 510.

40. *Id.*

41. See Maria Popova, *Putin-Style “Rule of Law” & the Prospects for Change*, 146 DÆDALUS 64, 65 (2017) (noting that several pieces of legislation enacted by the Russian government have undermined freedom of speech, association, and assembly).

42. See, e.g., Patrick Reeve, *Russia’s Parliament Opens Way for Putin To Stay in Power Beyond 2024*, ABC NEWS (Mar. 10, 2020, 3:06 PM), <https://abcnews.go.com/International/russias-parliament-opens-putin-power-2024/story?id=69504478> (Valentina Tereshkova, a lawmaker from Putin’s ruling party, initiated the term limit proposal, and told other law makers that “We must insure against these risks”; and the speaker of Russia’s senate, Valentina Matvienko said the proposal would “calm everyone” and stop discussions around “who would be successor, what will become of the security of the country, etc.”).

43. See st. 81 Konstitutsii RF (“The same individual shall not be elected to the office of President of the Russian Federation for more than two consecutive terms.”).

2008, Putin chose Dmitry Medvedev as his successor. Putin remained in power as Prime Minister until 2012, but returned to the presidency in 2012 and was reelected to the same office in 2018.⁴⁴ According to the unamended Constitution, Putin's two consecutive presidential terms would expire in 2024. His future influence in Russian politics and society was uncertain: he could serve as a prime minister again; he could remain in power as the head of the State Council (which he would equip with more power); or, he could circumvent term limits to run for a third presidential term.⁴⁵ Putin's unclear future motivated his move to constitutionally entrench his ideational, political, social, and economic project, in order to ensure that the revamped constitutional framework cannot be revoked by future leaders.

B. *The Speedy Pace*

1. *Amendment Rules*

Russia's 2020 constitutional amendment process moved quickly. Its fast pace was due in part to the legislative supremacy enshrined in the procedural, formal amendment rules. Russia's formal amendment rules conform to what Donald S. Lutz calls "legislative supremacy": "Constitutions in this category reflect the unbridled dominance of the legislature by making one legislative vote sufficient to amend the constitution."⁴⁶ Russia's Constitution provides for legislative dominance in the formal amendment process, thus enabling the actual amendment process to move quickly. The Constitution permits several actors to submit amendment proposals including the President, the Council of the Federation, the State Duma, the Government, the legislative bodies of the subjects of the Russian Federation, and groups of not less than one fifth of the number of the members of the Council of the Fed-

44. Mila Versteeg et al., *The Law and Politics of Presidential Term Limit Evasion*, 120 COLUM. L. REV. 173, 241 (2020).

45. See Roman Goncharenko, *Opinion: Putin Sets Out Path to Power Beyond 2024*, DW (Jan. 15, 2020), <https://www.dw.com/en/opinion-putin-sets-out-path-to-power-beyond-2024/a-52017915> (Putin had "two possible pathways to power. He could, as between 2008 and 2012, serve as prime minister. Alternatively, he could have himself elected as the head of the State Council, which Putin plans to equip with more power.").

46. Donald S. Lutz, *Toward a Theory of Constitutional Amendment*, 88 AM. POL. SCI. REV. 355, 363 (1994).

eration or of the deputies of the State Duma.⁴⁷ A range of legislative bodies and legislators enjoy the power to *initiate* amendments in addition to executive actors.

However, the Russian amendment model primarily establishes legislative supremacy through its rules for *adoption* of constitutional amendments. Constitutional amendments are adopted according to the rules of federal law: a two-thirds super-majority vote in the State Duma (the lower house), and a three-fourths super-majority vote in the Federation Council (the upper house). The amendments come into force after approval by the legislative power bodies (not less than two thirds of the subjects of the Russian Federation).⁴⁸ Russia's Constitution only requires referendum when making a new constitution,⁴⁹ not when amending the existing one. These provisions illustrate the Russian model of legislative supremacy: constitutional amendments are adopted like federal laws, by a simple legislative vote.

This model allows the Russian political elite to expedite the amendment process by controlling the legislative vote, thus avoiding demanding, participatory procedures (e.g. public deliberation, intervening elections, and a referendum).⁵⁰

Legislative supremacy in Russian constitutional amendments, however, has a limit. Amendments can only be introduced to provisions in Chapters 3–8 of the Constitution, which deal with institutional structures (the federal structure, three branches of the state, and local government).⁵¹ Constitutional amendments may not be introduced to the provisions of Chapters 1, 2, and 9 of the Constitution, which respectively provide

47. St. 134 Konstitutsii RF.

48. St. 136 Konstitutsii RF.

49. See st. 135 Konstitutsii RF (requiring either a two-thirds vote of all members of a specially convened constitutional assembly or a majority vote in a nationwide referendum).

50. For theoretical accounts of demanding amendment procedures, see Yaniv Roznai, *Amendment Power, Constituent Power, and Popular Sovereignty: Linking Unamendability and Amendment Procedures*, in *THE FOUNDATIONS AND TRADITIONS OF CONSTITUTIONAL AMENDMENT 23* (Richard Albert et al. eds., 2017). For the practice of participatory constitutional amendments, see generally *PARTICIPATORY CONSTITUTIONAL CHANGE: THE PEOPLE AS AMENDERS OF THE CONSTITUTION* (Xenophon Contiades & Alkmene Fotiadou eds., 2016) (exploring the practice of referendum and public participation in the process of constitutional change).

51. St. 136 Konstitutsii RF.

for the principles of the constitutional system (e.g. the republican form of government, popular sovereignty, integrity and inviolability of its territory), citizens' fundamental rights and freedoms, and amendment rules.⁵² This codified, constitutional durability aims to preserve the core commitments that define Russian constitutional identity.⁵³ The Russian experience resonates with "the global trend" towards accepting the idea of limitations on constitutional amendment.⁵⁴ Russia adopts the idea of unconstitutional, constitutional amendments⁵⁵ as a doctrine of constitutional design. The Russian Constitution establishes substantive contents that may not be amended, and therefore amendments violating these contents can be considered unconstitutional. However, the Russian Constitution does not anticipate the RCC as a protector of unamendability. This ambiguity allows the flexible and swift engagement of the RCC in the constitutional amendment practice as outlined below.

2. *Amendment Practice*

Russia's 2020 constitutional amendment process happened very quickly. On January 15, 2020, Putin introduced a comprehensive package of constitutional amendments in his address to the Federal Assembly.⁵⁶ On January 20, the draft amendments were submitted to the State Duma. After two fast-paced readings on January 23 and March 10, the lower house unanimously adopted the draft amendments in the third, and final reading, on March 11, 2020. On March 14, all 85 federal

52. St. 135 Konstitutsii RF; chs. 1, 2, 9 Konstitutsii RF.

53. For a theoretical and comparative account of codified preservational unamendability, see ALBERT, *supra* note 6, at 144–45.

54. Yaniv Roznai, *Unconstitutional Constitutional Amendments - The Migration and Success of a Constitutional Idea*, 61 AM. J. COMP. L. 657, 660 (2013). But, for the resistance to this trend, see Richard Albert, Malkhaz Nakashidze & Tarik Olcay, *The Formalist Resistance to Unconstitutional Constitutional Amendments*, 70 HASTINGS L.J. 639, 642 (2019).

55. See generally YANIV ROZNAI, UNCONSTITUTIONAL CONSTITUTIONAL AMENDMENTS: THE LIMITS OF AMENDMENT POWERS (2017) (explaining the history and characteristics of "unamendable" constitutional provisions).

56. *Presidential Address to the Federal Assembly*, PRESIDENT OF RUSSIA (Jan. 15, 2020, 1:15 PM), <http://en.kremlin.ru/events/president/news/62582>.

subjects of the Federation Council approved the amendments.⁵⁷

On the same day, March 14, Putin signed the “Law of the Russian Federation on Introducing an Amendment to the Constitution of the Russian Federation, on Improving the Regulation of Certain Aspects of the Organization and Functioning of Public Authority.”⁵⁸ He also requested that the RCC review whether the amendments were in compliance with the unamendable provisions in Chapters 1, 2, and 9 of the Constitution.⁵⁹ Just two days later, on March 16, 2020, the RCC issued a 52-page conclusion.⁶⁰ The RCC recalled that Article 136 of the Constitution did not require it to participate in the constitutional amendment process.⁶¹ However, it held that judicial review of constitutional amendments, within the meaning of Articles 10, 15, 16, 125, and 136 of the Constitution,⁶² “may serve as ‘an appropriate guarantee of the legal force of

57. *Law on Amendment to Russian Federation Constitution*, President of Russia (Mar. 14, 2020, 1:40 PM), <http://en.kremlin.ru/acts/news/62988>.

58. *Id.*

59. *The President Issues Inquiry to Constitutional Court*, President of Russia (Mar. 14, 2020, 3:00 PM), <http://en.kremlin.ru/events/president/news/62989>.

60. Заключение Конституционного Суда Российской Федерации о соответствии положениям глав 1, 2 и 9 Конституции Российской Федерации не вступивших в силу положений Закона Российской Федерации о поправке к Конституции Российской Федерации “О совершенствовании регулирования отдельных вопросов организации и функционирования публичной власти” от 16 марта 2020 г. N 1-3 город Санкт-Петербург [Conclusion of the Constitutional court of the Russian Federation on the compliance with the provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation of the provisions of the Law of the Russian Federation on amendment to the Constitution of the Russian Federation “On improving the regulation of certain issues of the organization and functioning of public authority” of Mar. 16, 2020], No. 56 Rossiyskaya Gazeta [Ros. Gaz.] Mar. 17, 2020, <https://rg.ru/2020/03/17/ks-rf-popravki-dok.html>.

61. European Commission for Democracy Through Law (Venice Commission), Russian Federation - Extracts from the Conclusion of the Constitutional Court of the Russian Federation N° 1-Z of 16 March 2020 (Unofficial Translation) 4, Doc. No. CDL-REF(2020)022 (Apr. 30, 2020) [hereinafter Venice Commission, Unofficial Translation], [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2020\)022-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2020)022-e).

62. Sts. 10 (separation of the three powers), 15 (the Constitution’s supremacy), 16 (unamendable constitutional fundamentals), 125 (the Constitutional Court’s jurisdictions including issuing constitutional interpretation under the request of the President), 136 (rule for amendment adoption) Konstitutsii RF.

provisions on the foundations of the constitutional order of Russia and on fundamental human and citizen's rights and freedoms in the system of constitutional norms, a guarantee of consistency of the text of the Constitution."⁶³ In short, the RCC confirmed the constitutionality of the amendments.⁶⁴

While not a mandatory procedure, the Russian government held a national vote on the constitutional amendments. This was likely motivated by both procedural and substantive considerations. A national vote can supplement the lack of a public debate and lend legitimacy to the amendment process. Additionally, the national vote can consolidate the legitimacy of the comprehensive contents of amendments, given their possibly far-reaching effect on society in the future. Finally, because the amendments were denounced by more than 18,000 Russian academics, journalists, and writers as "an unlawful anti-constitutional coup," due to (among other things) the nullification of presidential term limits,⁶⁵ a popular vote became necessary to legitimize the constitutional amendments.

The national vote was initially scheduled for April 22 to ensure that the whole amendment process would be completed before May 9 (the date of an annual military parade to celebrate the 75th anniversary of the end of the Second World War), in order to signal to the public a "victorious and unifying reform."⁶⁶ However, due to the effects of COVID-19 in Russia, the national vote was postponed and held from June 25 to July 1, 2020 (amidst the ongoing pandemic). Margarita Petrikova, a Moscow pensioner, said:

I really can't understand why this is all being done in such a hurry . . . They tell us it's still risky to enter some closed premises, yet they urge us to come out

63. Venice Commission, Unofficial Translation, *supra* note 61, at 4.

64. *Id.* at 11.

65. See MARTIN RUSSELL, EUR. PARLIAMENTARY RSCH. SERV, EPRS_BRI(2020)651935, CONSTITUTIONAL CHANGE IN RUSSIA MORE PUTIN, OR PREPARING FOR POST-PUTIN? 4 (2020) (explaining the changes to presidential term limits as well as splits in public opinion).

66. Dmitri Gorelov, *Has Putin Won the Vote on Constitutional Amendments?* FAIR OBSERVER (July 8, 2020), <https://www.fairobserver.com/region/europe/dmitri-gorelov-vladimir-putin-constitutional-amendments-referendum-russia-news-15517/>.

and vote. I know they say you can do it online, but that seems too complicated.⁶⁷

Some have said that the vote was orchestrated by “a noisy one-sided propaganda campaign by state-controlled media and blatant pressure from a sprawling galaxy of state-funded companies and organizations.”⁶⁸ Eventually, the amendments were overwhelmingly adopted by nearly 78% of voters.⁶⁹

What explains the speedy amendment process? Apart from the legal features of Russia's model of legislative supremacy, the fast pace was determined by the centralized and precarious power of the political elite. Along with political will, the political elite's domination of the legislature allowed them to introduce big-bang constitutional amendments and pass them quickly.

The political elites' control of the RCC also facilitated the constitutional amendment process. Putin strategically turned to the RCC for a review of the proposed amendments, which is not a required procedure. In December 2016, he publicly stated that:

I can reveal that when the government or individual ministries and departments are about to take decisions, the question is often raised whether the new rule will be consistent with the Constitution. Here, Valery Dmitrievich [Zorkin, Chairman of the Constitutional Court] knows that from time to time I phone and ask him how this or that rule will look, when it is being prepared for adoption either in the Parliament or in the Cabinet.⁷⁰

Given his experience, it is understandable that Putin requested amendment review by the RCC. Additionally, Putin turned to the RCC for a comparative reason: to legitimize the

67. Fred Weir, *Putin Set to Get His New Constitution. But Russians Ask, “Why Now?”*, CHRISTIAN SCI. MONITOR (June 30, 2020), <https://www.csmonitor.com/World/Europe/2020/0630/Putin-set-to-get-his-new-constitution.-But-Russians-ask-Why-now>.

68. Andrew Higgins, *The Theatrical Method in Putin's Vote Madness*, N.Y. TIMES (July 1, 2020), <https://www.nytimes.com/2020/07/01/world/europe/putin-referendum-vote-russia.html>.

69. Gorelov, *supra* note 68.

70. Trochev & Solomon, *supra* note 35, at 208 (citing *Meeting with Judges of the Constitutional Court*, PRESIDENT OF RUSSIA (Dec. 6, 2016, 3:30 PM), <http://kremlin.ru/events/president/news/53421>).

constitutional amendments. This is what comparative constitutional law scholars call the “presumptive legitimacy” of judicial review, deriving from the legal and autonomous nature of judicial construction of constitutional meaning.⁷¹ Because of the presumptive legitimacy extended by judicial review, domestic actors (opposition legislators and social actors) and international actors, while they may disagree with the RCC’s constitutional decisions, will nonetheless respect them.⁷² This presumptive legitimacy also explains why Putin requested that the RCC review the amendments. Furthermore, given the regime’s control of the RCC and the Court’s loyalty to the regime, its rapid certification of the amendments is not surprising.

Likewise, the political elites’ control of the public sphere aided the constitutional amendment process. With rigid controls on discourse, the political elite could introduce the constitutional amendments without serious public deliberation. In fact, the process of Russian’s 2020 constitutional amendments conspicuously lacked public debate.⁷³ Censorship also allowed the political elite to sideline the political opposition. BBC reported that “opponents were barred from campaigning in the media.”⁷⁴ On the antipode, control of the media aided propagandist support of the amendments, which influenced the national vote.

The uncertainty of the elites’ political future fueled the process. Degradation of the economy and a general fall in popularity contributed to the precarity of the political elites’ power. Sociological surveys indicated that “both Putin and United Russia’s approval ratings have been steadily decreasing since 2016 in the context of a stagnating economy and a series

71. Landau & Dixon, *supra* note 5, at 1335.

72. *Id.* at 1335–36.

73. Weir, *supra* note 69 (“[T]he Kremlin has rushed [the amendments] through with hardly any public debate.”). Covid lockdowns and restrictions may have played a role in limiting the public debate on the amendments. In addition, there was some open dissent in the open letter and independent news sources in Russia which discussed the constitutional amendments. See *Russian Scholars, Legal Experts Sign Up Against ‘Constitutional Coup’*, RADIO FREE EUROPE RADIO LIBERTY (Mar. 16, 2020, 1:39 PM), <https://www.rferl.org/a/russian-scholars-legal-experts-sign-up-against-constitutional-coup-/30490881.html>.

74. *Putin Strongly Backed in Controversial Russian Reform Vote*, BBC (July 2, 2020), <https://www.bbc.com/news/world-europe-53255964>.

of unpopular decisions made by the government.”⁷⁵ Decreasing public confidence motivated the political elites to pass the constitutional amendments in an effort to mitigate the consequences of their decreasing popularity before the situation worsened. However, with big-bang constitutional amendments, the political elite’s preoccupation is not with mere acceptance of, but rather with widespread institutional and social support for the amendments, only manifest in the overwhelming victory of the amendments in the legislative and popular votes. Such electoral support is an indicium of strong social and political consensus⁷⁶ on a fundamentally new constitutional framework. Consensus here foments sociological legitimacy of the regime, foundational to implementing large-scale constitutional amendments in the future. In short, faced with an uncertain future, the Russian political elite quickly seized upon the opportunity to gain a mandate on the big amendments through large consensus.

C. *The Large-Scale*

Russia’s 2020 constitutional amendments are considerable in scale. The amendments introduced a range of institutional changes to the political system. Moreover, the amendments changed Russian constitutional identity and core constitutional commitments. The significant institutional and identitarian change implicates an essential feature of big-bang constitutional amendments in Russia. The major changes are examined in detail below.

1. *Presidential Term Limit Evasion: The Blank Slate Theory Through Constitutional Amendments*

One of the most important and controversial changes incorporated in Russia’s 2020 constitutional amendments, is the provision that resets the meter on presidential term limits. The original Article 81.3 of Russia’s Constitution read: “One and the same person may not be elected President of the Russian

75. Gorelov, *supra* note 68.

76. According to Andrei Kolesnikov, an analyst with the Carnegie Moscow Center, “the new constitution is a political project aimed at creating a fresh pro-Kremlin social and political consensus.” Weir, *supra* note 69.

Federation for more than two terms in a row.”⁷⁷ The amendment deleted the phrase “in a row” (Russian: подряд, romanized: podryad)⁷⁸ and added that the above provision on presidential term limit “applies to a person who held and (or) holds the office of President of the Russian Federation, without taking into account the number of terms, during which he held and (or) holds this position at the time of the entry into force of the amendment to the Constitution of the Russian Federation.”⁷⁹ This provision discounts the number of terms served by the current President (Vladimir Putin), or former President (Dmitry Medvedev) of Russia.⁸⁰ This is not merely a technical change, but rather a substantive one; the change will affect the entire Russian governmental system. The presidency is “the single most important institution”⁸¹ in the Russian state. The import of this change is not only domestic, but also international: the next president of Russia will influence its international relations. This international effect helps explain why international media focused on this amendment in particular. The Russian experience also echoes the global trend toward presidential term limit evasion. To fully understand this development, it is necessary to situate the Russian experience within comparative, constitutional scholarship on term limit evasion.

Presidential term limit evasion appears to be a global trend.⁸² In a global study from 2020 (hereinafter, *2020 Study*), published in the *Columbia Law Review*, Mila Versteeg and her collaborators identify a range of “constitutional strategies” of presidential term limit evasion, used by 234 incumbents in 106 countries, since the year 2000.⁸³ These strategies include: using constitutional amendments to remove or extend term lim-

77. St. 81 Konstitutsii RF. For a discussion of the political dimension of this provision, see Paul Chaisty, *The Uses and Abuses of Presidential Term Limits in Russian Politics*, in *The Politics of Presidential Term Limits* 385 (Alexander Baturo & Robert Elgie eds., 2019).

78. 80 St. 81 Konstitutsii RF (amendments through 2020).

79. 80 St. 81 Konstitutsii RF (amendments through 2020).

80. Partlett, *supra* note 4, at 11.

81. DONALD R. KELLEY, *RUSSIAN POLITICS AND PRESIDENTIAL POWER* 1 (2016).

82. Gideon Maltz, *The Case for Presidential Term Limits*, 18 J. DEMOCRACY 128, 128 (2007); Tom Ginsburg, James Melton & Zachary Elkins, *On the Evasion of Executive Term Limits*, 52 WM. & MARY L. REV. 1807, 1812–13 (2011).

83. Versteeg et al., *supra* note 46, at 173.

its (the most common strategy with 40 cases); writing a new constitution to reset term limits, also known as the “blank slate theory” (5 cases); using a faithful agent as a replacement leader (6 cases); using courts to reinterpret constitutional provisions on term limits (6 cases); and delaying elections (3 cases).⁸⁴ The study also points out that courts facilitate, rather than prevent, term limit evasion. Courts do this by either interpreting away constitutional term limits or by validating other constitutional strategies for evasion (e.g., amendment or constitution-making).⁸⁵

The Russian government has attempted term limit evasion twice, first in 2008 with the “faithful agent” strategy, and now again in 2020 using the “blank slate theory.” Together with other cases (e.g. Kenya’s President Daniel arap Moi and Azerbaijan’s President Heydar Aliyev), the *2020 Study* discussed the “faithful agent” strategy used by Russia’s President Vladimir Putin.⁸⁶ In 2008, after serving as president for two terms, Putin found a loyal agent, Prime-Minister Dmitry Medvedev, to serve as the next president. Putin was officially out of the presidency, but was functionally more powerful than his agent.⁸⁷ The *2020 Study* notes that “[f]inding a faithful agent is often difficult. Once the agent is actually in office, there is no guarantee that he will remain faithful to the former president. That is, the strategy runs into a classic principal–agent problem, whereby it is hard for the principal to control the agent.”⁸⁸ The system effect causes the principal–agent problem. Once the agent is installed in office, he becomes part of the constitutional system and interacts with other actors in the system. It is difficult for the principal to control these dynamic interactions and their consequences. Additionally, both principal and agent may not be able to control the consequences of their dual power arrangement. To illustrate, the tandemocracy or “tandemocracy,” as referred to in Russian media, resulted in elite fragmentation which culminated

84. *Id.* at 199.

85. *Id.* at 179.

86. *Id.* at 239–42.

87. *Id.* at 241–42.

88. *Id.* at 242.

in huge demonstrations during the presidential power transition from Medvedev back to Putin.⁸⁹

Presidential term limit evasion in Russia, in 2020, falls under the category of the “blank slate theory”. However, unlike in Bolivia, Kyrgyzstan, Peru, Senegal, and Sudan, where entirely new constitutions reset the button on presidential term limits,⁹⁰ Russia instead used constitutional amendments for this purpose. In fact, in his address to the Federal Assembly on January 15, 2020, Putin did not explicitly propose zeroing term limits, but only stated ambiguously that: “I know that people are discussing the constitutional provision under which one person cannot hold the post of the President of the Russian Federation for more than two consecutive terms. I do not regard this as a matter of principle, but I nevertheless support and share this view.”⁹¹

The provision zeroing presidential term limits was hastily added to the amendment bill in the Russian Duma’s second reading of the bill, on March 10, 2020.⁹² Valentina Tereshkova, a lawmaker from Putin’s ruling party (United Russia), initiated the term limits proposal, arguing that the constitutional amendment should either remove or zero term limits.⁹³ The party quickly endorsed the proposal and the parliament’s speaker, Vyacheslav Volodin, said he would call Putin to consult.⁹⁴ Putin quickly appeared in the parliament and delivered a long speech, stating that he could not support the deletion of constitutional term limits but “could support the idea that would allow him to run again for office.”⁹⁵ The legislators lauded the presidential speech and overwhelmingly approved the amendments with the zeroing provision.⁹⁶ Like

89. Ilja Viktorov, *The Legacy of Tandemocracy: Russia’s Political Elite During Putin’s Third Presidency: Interview with the Sociologist Olga Kryshтанovskaya*, 7 *BALTIC WORLDS* 14, 14–15 (2014).

90. Versteeg et al., *supra* note 46, at 223–24.

91. *Presidential Address to the Federal Assembly*, PRESIDENT OF RUSSIA (Jan. 15, 2020), <http://en.kremlin.ru/events/president/news/62582>.

92. William Partlett, *Russia’s Unconstitutional Zeroing Amendment*, IACL-AIDC BLOG (Mar. 16, 2020), <https://blog-iacl-aidc.org/2020-posts/2020/3/16/russias-unconstitutional-zeroing-amendment>.

93. Reevell, *supra* note 44.

94. *Id.*

95. *Id.*

96. *Id.*

constitutional courts in five other cases,⁹⁷ the RCC was summoned to validate the “blank slate theory” as applied. Given the popular support for presidential term limits in Russia,⁹⁸ the use of the “blank slate theory” may have generated opposition. Therefore, a priori review by the RCC was deemed necessary to legitimize the amendment efforts.

The Russian experience may imply that the “blank slate theory” of presidential term limit evasion can be expanded to include constitutional amendment. Big-bang constitutional amendments can have an expansive scale akin to writing a new constitution, therefore mimicking the conditions for term limit evasion through the “blank slate theory”. In Russia, the “blank slate theory” depends upon big-bang constitutional amendments, rather than constitution-making. In the big-bang model of constitutional amendment, the scale of the amendments is extensive and coherent in that the amendments embody a large constitutional vision. The Russian amendments were proposed by the current President Putin, and therefore embodied his constitutional strategy on extensive reforms of the political, economic, and social system.⁹⁹ To reset the presidential term limit, which arguably enables the current president to remain in power, may be an attempt to implement Putin’s reformist policies embodied in the constitutional amendments.

Russia’s complex constitutional system enabled presidential term limit evasion through the “blank slate theory”.¹⁰⁰ Term limit evasion *is the macro consequence of dynamic interactions between numerous institutional and individual actors inside a complex constitutional system. To elaborate, consider three interrelated fac-*

97. Versteeg et al., *supra* note 46, at 224.

98. See Paul Chaisty & Stephen Whitefield, *The Political Implications of Popular Support for Presidential Term Limits in Russia*, 35 *POST-SOVIET AFFS.* 323, 326 (2019) (discussing popular support for presidential term limits in Russia since 2012).

99. See *PRESIDENT OF RUSSIA*, *supra* note 92.

100. This approach is drawn on systems theory, particularly complexity theory. See PAUL CILLIERS, *COMPLEXITY & POSTMODERNISM: UNDERSTANDING COMPLEX SYSTEMS* 3–4 (1998) (stating that each element in complex systems reacts to constrained information it receives from “immediate neighbors,” although “long-range interaction” is still possible because “the interaction is rich.”). For the application of this systemic approach in constitutional law, see Adrian Vermeule, *System Effects and the Constitution*, 123 *HARV. L. REV.* 4 (2009).

tors: (1) a variety of constitutional actors; (2) their dynamic interactions; and (3) the unexpected consequence.

First, the president is not the only actor in the Russian constitutional system. Russian competitive authoritarianism relies on operational institutions, so there are numerous influential institutional and individual actors inside the constitutional system. Consequently, the president's actions and power (despite its centralization) must be structurally interdependent on the powers and operation of other institutions.¹⁰¹ In particular, amendments to zero term limits are particularly controversial because of their effect on the relationship between institutions within the constitutional system. Thus, the amendment process drew much attention and energy from a range of constitutional actors, such as the legislature, its members, the government, the RCC, and Russian citizens.¹⁰²

Second, the numerous constitutional actors are interactive and interdependent. The president did not act alone, but engaged in dynamic interactions with other actors. Constitutional actors may respond to limited information (not the broader information on the whole constitutional system) surrounding the candidates in upcoming elections (Russia's legislative election in 2021, and the presidential election in 2024). Additionally, constitutional actors may be limited by near-future concerns of term limit evasion, such as the continuation of ongoing public policy reforms. A different president could prevent ongoing reforms, so these actors may be motivated to support term limit evasion for the sitting president. Furthermore, constitutional actors may respond to the limited information they receive from neighbor actors. For example, the RCC's immediately responded to the presidential request for judicial review of the constitutional amendments based on limited information from President Putin.

Third, constitutional dynamics may generate unexpected consequences. The success of term limit evasion is the conse-

101. For an analysis of constitutional complexity in Russia, see Maria Smirnova & Chris Thornhill, *A Sociological Approach to the Russian Constitution*, 15 *COMPAR. SOCIO.* 747, 750–51 (2016).

102. *How Will Constitutional Amendments Unfold in Putin-Led Russia?* CGTN (June 30, 2020), <https://news.cgtn.com/news/2020-06-30/How-will-constitutional-amendments-unfold-in-Putin-led-Russia—RE16cj8hAk/index.html> (“[I]ssues on presidential tenure in the package of amendments have drawn most of the attention.”).

quence of collective interactions between a range of constitutional actors. At first glance, the rapid success of an amendment process is seemingly due to the efforts of the dominant leader. However, given the broader effect of term limit evasion on power relations, there must also be intricate interactions amongst different constitutional actors inside the constitutional system at a deep level. This is difficult to recognize, particularly under authoritarian conditions, which normally lack transparency.

2. *Superpresidentialism*

Comparative constitutional law scholarship discusses different structures of government, such as parliamentarism, constrained parliamentarism, presidentialism, and semi-presidentialism.¹⁰³ Russia's 1993 Constitution established "an extraordinarily powerful president",¹⁰⁴ leading some to describe Russia's governmental structure as "superpresidentialism."¹⁰⁵ William Partlett demonstrates that the 2020 amendments to the Russian Constitution further centralized the power of the presidency.¹⁰⁶ The amendments significantly increased the institutional instruments at the president's disposal to control the legislature, government, judiciary, and other institutions.¹⁰⁷

First, the amendments increase the presidential power over the legislature. One amendment gives the president more power to dissolve the Duma and call for fresh elections.¹⁰⁸ Sec-

103. See Bruce Ackerman, *The New Separation of Powers*, 113 HARV. L. REV. 633, 639 (2000) ("The separation of powers involves not only presidents and parliaments, but also the constitutional status of courts and administrative agencies."); Cindy Skach, *The "Newest" Separation of Powers: Semipresidentialism*, 5 INT'L J. CONST. L. 93, 93 (2007) ("[S]emipresidentialism—an undertheorized constitutional type that is most often associated with the French Fifth Republic—has rapidly gained ground.").

104. Thomas M. Nichols, *Presidentialism and Democracy in Russia: The First Ten Years*, 50 PROBS. POST-COMMUNISM 37, 40 (2003).

105. See John T. Ishiyama & Ryan Kennedy, *Superpresidentialism and Political Party Development in Russia, Ukraine, Armenia and Kyrgyzstan*, 53 EUR.-ASIA STUD. 1177, 1177–78 (2001) (taking for granted the existence of superpresidentialism in Russia to conduct a comparative analysis of political party development).

106. Partlett, *supra* note 4, at 8.

107. *Id.* at 8–9.

108. St. 111 Konstitutsii RF (amendments through 2020).

ond, the amendments vest the president with greater power to control the cabinet. For example, one amendment allows the president to appoint individuals to the Ministry of Justice, Foreign Affairs, Defense, Internal Affairs, and Emergency Situations with “consultation” (not agreement) of the Federation Council.¹⁰⁹

Third, the amendments further empower the president to control the judiciary. The president can request that the RCC review the constitutionality of a law adopted by the Federal Assembly before the president signs it.¹¹⁰ The Constitutional and Supreme Court justices can be dismissed by the Federation Council following a presidential proposal.¹¹¹ The president can nominate the chairperson, deputy chairperson, and justices of the RCC, Supreme Court, and other federal courts.¹¹² The number of constitutional judges is decreased from 19 to 11,¹¹³ which may enable the president to exercise more control over the RCC.

Fourth, the amendments increase presidential power over other institutions. The president has the authority to appoint the prosecutor general and his deputies, as well as prosecutors of the constituent components of the Russian Federation.¹¹⁴ The amendments enhance the president’s power to appoint the Audit Chamber and Security Council.¹¹⁵ The amendments elevate the status of the State Council from an advisory body of the president, created by a presidential decree, to a constitutional body.¹¹⁶ Under the new amendments, the role of the State Council is to “help coordinate the interactions of different branches of the government, and to determine the princi-

109. St. 83 § d.1 Konstitutsii RF (amendments through 2020). The amendments increased presidential power because they “called for the president to consult with the Federation Council, but not for the Federation Council to give its specific agreement.” See, Teague *supra* note 4, at 322.

110. St. 125 § 5, cls. 5.1(a)–(c) Konstitutsii RF (amendments through 2020).

111. St. 102 § 2(d) Konstitutsii RF (amendments through 2020).

112. St. 128 §§ 1, 2 Konstitutsii RF (amendments through 2020).

113. See st. 125, § 1 Konstitutsii RF (amendments through 2020) (providing that the Constitutional Court shall consist of 11 judges).

114. St. 129 §§ 3, 4, 5. Konstitutsii RF (amendments through 2020).

115. See st. 83 §§ e.4–f Konstitutsii RF (amendments through 2020) (providing that the president can present nominations for half of total number of auditors and can form and control the Security Council).

116. St. 83, § e.5 Konstitutsii RF (amendments through 2020).

pal guidelines for domestic and international policy and for the priorities of social and economic development of the country.”¹¹⁷ With this new constitutional status, the State Council may not merely be an advisory body, but may have a more significant role in determining principles of domestic and foreign policy.¹¹⁸

The scale of the constitutional change to Russia's super-presidential system is extensive in both an institutional and ideational sense. The amendments substantively alter the composition and jurisdictions of major state institutions. This change affects the overall institutional operation, including power relations among the president, the legislature, and the courts. However, these extensive amendments are not merely institutional. They also embody the alternation of ideational commitments. All of the above-mentioned institutional changes are centered around a single idea: concentration of the power with the president. This indicates the ideational move from constitutional separationism to “centralism”¹¹⁹ in institutional design. Due to the unamendable rules, the amendments do not textually change the constitutional principle of the separation of powers as represented in Article 10 of the Constitution.¹²⁰ However, the institutional changes centralize state power, demonstrating a living,¹²¹ ideational constitutional change from separationism to centralism, without a formal amendment to Article 10.

117. *Russia Adopts Major Amendments To Its Constitution, Our Thinking*, MORGAN LEWIS (Jul. 13, 2020), <https://www.morganlewis.com/pubs/2020/07/russia-adopts-major-amendments-to-its-constitution>.

118. Teague, *supra* note 4, at 318.

119. Partlett, *supra* note 4, at 8.

120. *See* st. 10 Konstitutsii RF (“State power in the Russian Federation shall be exercised on the basis of its division into legislative, executive and judicial power. The bodies of legislative, executive and judicial power shall be independent.”).

121. For living constitution changing overtime without formal amendments, see generally DAVID A. STRAUSS, *THE LIVING CONSTITUTION* (2010) (arguing in favor a system which allows the constitution to evolve without being formally amended).

3. *Nationalism*

After the collapse of the Soviet Union in the late twentieth century, “world constitutionalism” emerged.¹²² Russia’s 1993 Constitution followed the global trend of constitutional internationalization,¹²³ ingraining unamendable universal constitutional principles (e.g. fundamental rights according to international law).¹²⁴ In the early twenty-first century, the world has witnessed a shift from world or global constitutionalism, in its various forms, to neo-secessionism, nullification, and deference to local authority.¹²⁵ Russia’s 2020 constitutional amendments exemplify this new and divergent trend. The amendments reverse internationalist aspirations and defer to nationalist ones.¹²⁶ This constitutional change is significant, and embodies “constitutional nationalism,” or the ideational constitutional turn toward nationalist commitments.

Constitutional nationalism is manifest in amendments enabling national law to prevail over international law. Article 15 of Russia’s 1993 Constitution establishes this principle:

The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.¹²⁷

This constitutional principle provides for the primacy of international law over national law. However, because this principle is formally unamendable,¹²⁸ the amendments provide a method for national law to supersede international law

122. Bruce Ackerman, *The Rise of World Constitutionalism*, 83 VA. L. REV. 771, 772 (1997).

123. See generally Wen-Chen Chang & Jiunn-Rong Yeh, *Internationalization of Constitutional Law*, in THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW 1165, 1165 (Michel Rosenfeld & András Sajó eds., 2012).

124. Partlett, *supra* note 4, at 12.

125. Ran Hirschl, *Opting Out of “Global Constitutionalism”*, 12 LAW & ETHICS HUM. RTS. 1, 1 (2018).

126. Partlett, *supra* note 4, at 12.

127. St. 15 § 4 Konstitutsii RF.

128. See st. 16 § 2 Konstitutsii RF (“No other provision of this Constitution may conflict with the fundamental principles of the constitutional order of the Russian Federation.”).

through institutional circumvention. The amended Article 79 provides that, “a decision of an interstate body . . . shall not be enforced in Russia if the decision at issue is based on an interpretation of an international treaty that contradicts the Constitution.”¹²⁹ In addition, the amended Article 125 allows the RCC “to rule on and to prohibit the enforcement of (1) a decision by an interstate body based on the interpretation of an international treaty that contradicts the Constitution; and (2) a foreign or international court or arbitration decision imposing obligations on Russia that contradict public policy.”¹³⁰ These two changes may enable the RCC to void decisions by the European Court of Human Rights and other international tribunals.¹³¹

Understandably, when the draft amendments were adopted by the Russian legislature and verified by the RCC, the Venice Commission of the Council of Europe issued an opinion expressing its concern regarding the proposed amendments to Articles 79 and 125.¹³² The Commission believed that the proposed amendments constitutionalized the RCC’s power to declare an international judgment non-executable, a power already in use by the RCC and formally granted through amendments to the Federal Law in force since December 2015.¹³³ The Commission criticized the proposed constitutional amendments on the ground that allowing the RCC to declare international judgments non-executable “contradicts the obligations of the Russian Federation under the European Convention on Human Rights.”¹³⁴ The 2020 constitutional amendments, specifically Articles 15 and 79, in-

129. MORGAN LEWIS, *supra* note 118 (citation omitted).

130. *Id.*

131. Partlett, *supra* note 4, at 14.

132. European Commission for Democracy Through Law (Venice Commission), Opinion on the Draft Amendments to the Constitution (as Signed by the President of the Russian Federation on 14 March 2020) Related to the Execution in the Russian Federation of Decisions by the European Court of Human Rights, Doc.No. CDL-AD(2020)009 (June 18, 2020), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)009-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)009-e).

133. *Id.* at 6.

134. *Id.* at 17–18.

dicade Russia's resistance to external influence on national law.¹³⁵

Constitutional nationalism is also manifest in amendments that attempt to tie public officers to Russia. The incumbent president, ministers, judges, and heads of regions are not allowed to have foreign citizenship or residence permits in other countries.¹³⁶ A presidential candidate must have lived in Russia for at least the past 25 years (rather than 10 years, as the original Constitution stated) and may not have ever held foreign citizenship or residency.¹³⁷

Constitutional nationalism is evident in other amendments that instill national values. The amendments establish Russian as the "state-forming" language.¹³⁸ The amendments stipulate faith in one God and define marriage as between a man and woman,¹³⁹ prohibiting same-sex marriage. This change is not merely technical and institutional, but transforms national identity into constitutional identity.

To be sure, national identity is not necessarily equated with constitutional identity.¹⁴⁰ "National identity characteristics—drawn from indicators including history, language, religion, culture, sociology, economics, philosophy, politics, and law—can only be relevant to the extent that they inform an order in a fundamental constitutional sense."¹⁴¹ The 2020

135. For a comparative discussion of constitutions as the site for resistance to external influence, see Vicki C. Jackson, *Constitutional Comparisons: Convergence, Resistance, Engagement*, 119 HARV. L. REV. 113–14 n.18–19 (2005).

136. St. 78 § 5 Konstitutsii RF (amendments through 2020).

137. See st. 81 § 2 Konstitutsii RF (amendments through 2020) ("Any citizen of the Russian Federation . . . who has resided in the Russian Federation on a permanent basis for not less than 25 years, who does not have and never had foreign citizenship, residence permit or another document certifying the right . . . to have residence in the territory of a foreign state may be elected President of the Russian Federation.").

138. St. 68 Konstitutsii RF (amendments through 2020).

139. See Partlett, *supra* note 4, at 13 ("[P]rovisions draw from Russia's Orthodox religious identity and state that Russia inherits its ideals and beliefs in God from its ancestors and only recognizes marriage between a man and a woman.").

140. For an analysis of constitutional identity, see generally GARY JEFFREY JACOBSON, *CONSTITUTIONAL IDENTITY* 7 (2010) (arguing that constitutional identity—a mix of the political aspirations and commitments—is acquired through experience).

141. Gerhard van der Schyff, *Member States of the European Union, Constitutions, and Identity: A Comparative Perspective*, in *CONSTITUTIONAL IDENTITY IN A*

amendments constitutionalize Russian national identity characteristics (language, religion, and moral values), rendering them fundamental commitments of the Russian constitutional order. These constitutionalized, national characteristics are fundamental in that they inform ordinary law-making and constitutional adjudication related to language, religion, and family. These national constitutional values are identitarian in the sense that they are aspirational commitments defining the fundamentals of Russia's constitutional order.

4. *Welfarism*

After the collapse of the Soviet Union, Russia and other post-communist countries in Eastern Europe, such as Poland, Hungary, Belarus, and Kazakhstan, were confronted with the pressures of reconstructing the welfare state, as they could no longer rely on a statist economy centrally controlled by the government.¹⁴² They adopted different strategies, including “dismantling statist welfare structures, keeping them in place with declining resources, or restructuring them according to a liberal model.”¹⁴³

The Russian Constitution of 1993 expresses a continued commitment to a welfare social state, making clear that the Russian Federation is “a social State” that promises “guaranteed minimum wages and salaries,” “state pensions”, and “allowances and other social security.”¹⁴⁴ The constitutional commitment to welfarism is dissonant with the reality of inequality in present-day Russia. Putin said in 2012 that “[t]he differentiation of incomes is unacceptable, outrageously high . . . Therefore, the most important task is to reduce material inequality.”¹⁴⁵ Some analysts estimate that 111 billionaires control nearly one-fifth of all household wealth in Russia.¹⁴⁶ In re-

EUROPE OF MULTILEVEL CONSTITUTIONALISM 305, 328–29 (Christian Calliess & Gerhard van der Schyff eds., 2019).

142. LINDA J. COOK, *POSTCOMMUNIST WELFARE STATES: REFORM POLITICS IN RUSSIA AND EASTERN EUROPE I* (2011).

143. *Id.* at 3.

144. St. 7 Konstitutsii RF.

145. Jason M. Breslow, *Inequality and the Putin Economy: Inside the Numbers*, FRONTLINE (Jan. 13, 2015) (second alteration in original), <https://www.pbs.org/wgbh/frontline/article/inequality-and-the-putin-economy-inside-the-numbers/>.

146. *Id.*

sponse, Russia's 2020 constitutional amendments aim to address the issue of material inequality by providing more social and economic rights to citizens. Due to the unamendable rules, new amendments cannot modify the social and economic rights established in Chapter 2 (such as the rights to private property and social security).¹⁴⁷ However, the amendments can address social and economic rights in the context of federal structure.¹⁴⁸ They promise that the federal government will ensure a minimum wage not less than the subsistence minimum, compulsory social insurance, and indexation of pensions.¹⁴⁹ This structural duty generates an entitlement to social and economic rights for citizens. At a deeper level, amendments to Russia's structural duty express an ideational change, an enhanced commitment to welfarism. The 2020 amendments strengthen the commitment to the principles and policies of a welfare state. The state's regulation of a minimum wage, compulsory social insurance, and pension aims to address material inequality.

Partlett argues that the amendments provide support for the RCC to enforce the government's economic obligations, especially considering the RCC's prior cases defending citizens' social and economic benefits (e.g. housing subsidies).¹⁵⁰ Comparative literature also indicates that courts in Latin American have used constitutionally established social and economic rights to promote material equality.¹⁵¹ The legislature could also be a deliberative forum to enforce social and economic rights, and to promote material equality and social welfare policy. The preservation of social and economic rights is theoretically connected to legislature's mandate "to promote the general welfare by aggregating preferences or maximizing

147. See sts. 34–43 Konstitutsii RF (providing social and economic rights, including the right a home, free use of one's own labor, family leave, disability pay, health care, and education).

148. In constitutional theory, the distinction between rights and structures is not always clear. See Ozan O. Varol, *Structural Rights*, 105 GEO. L.J. 1001, 1005 (2017) (arguing that rights can generate and distribute power).

149. Compare st. 75 Konstitutsii RF, with st. 75 § 5 Konstitutsii RF (amendments through 2020).

150. Partlett, *supra* note 4, at 5.

151. See Mila Versteeg, *Can Rights Combat Economic Inequality?*, 133 Harv. L. Rev. 2017, 2029 (2020) (noting that comparative literature has shown that a range of Latin American courts directly enforce social rights contained in their constitutions).

overall utility.”¹⁵² From this perspective, the 2020 amendments may provide the basis for legislating a subsistence minimum, compulsory social insurance, and indexation of pensions to address the issue of material inequality, and more generally to realize the welfarist commitment to a social state.

IV. CONCLUSION

Russia's 2020 big-bang constitutional amendments create a comprehensive constitutional framework.¹⁵³ The institutional changes animated by the amendments are consistently underpinned by three organizing constitutional principles: centralism, nationalism, and welfarism. These three principles are interrelated in a coherent way. A centralized state draws on nationalist values and implements welfare policies to consolidate power and fortify the sociological and moral foundations of its legitimacy. Although the amendments do not explicitly refer to these principles, they can be inferred from the institutional changes that reset presidential term limits and increased presidential power over major state institutions; prioritized national law over international law; constitutionally incorporated national values; and altered the federal government's social and economic functions.

Given that the big-bang amendments are extensive, they require significant effort from both the Russian State and Russian society for their implementation.¹⁵⁴ “Russian lawmakers said they would now amend about 100 laws and adopt several new ones so that legislation aligns with the constitutional amendments.”¹⁵⁵ Thus, the big-bang amendments place high demands on the legislature.

Additionally, the amendments that centralize power with the president require political elites (power holders) to address institutional fragmentation and growing social discon-

152. GRÉGOIRE WEBBER ET AL., *LEGISLATED RIGHTS: SECURING HUMAN RIGHTS THROUGH LEGISLATION* 4 (2018).

153. See TUOHY, *supra* note 7, at 17 (noting that big-bang change “can yield coherent policy frameworks”).

154. See *id.* (stating that big-bang change places high demands on implementation of the policy).

155. Danila Galperovich, *Russia's New Constitution to Further Silence Debate*, VOA (July 18, 2020, 8:12 PM), <https://www.voanews.com/press-freedom/russias-new-constitution-further-silence-debate>.

tent.¹⁵⁶ In Russia, “from April to August 2018, the disapproval rating of the president, the prime minister and the government rose respectively from 17% to 30%, from 57% to 71% and from 53% to 66%.”¹⁵⁷ Similarly, political opposition poses a significant challenge to the implementation of the 2020 amendments.¹⁵⁸ To centralize power, political elites need to increase public approval and mitigate opposition.

Furthermore, the nationalist amendments, that prioritize national law over international law, may force the Russian political elite to confront international challenges, like the Venice Commission’s criticism of the proposed amendments to Articles 79 and 125.

The implementation of the welfarist amendments requires financial resources and institutional capacity, including legislation on welfare policy and governmental execution of that legislation, and judicial promotion of social and economic rights.

Apart from the immediate challenges, the 2020 amendments, due to their big-bang nature, will have a long-term effect on Russian constitutional identity. The 2020 amendments change Russian constitutional identity, despite the fact that the fundamental constitutional provisions (in Chapters 1, 2, and 9) remain unchanged due to their permanent unamendability. The amendments redirect the regime’s essential constitutional commitments toward centralism, nationalism, and welfarism. To borrow Gary Jacobsohn’s theory of constitutional identity,¹⁵⁹ the 2020 amendments generate constitutional “disharmony” in the Russian Constitution, despite the amendments’ internal coherency. These constitutional disharmonies can be categorized as internal, external, and normative. Internally, the amendments’ new commitments to centralism and nationalism are dissonant with the original Consti-

156. See Camilla Pagani, *The Fragmentation of Russia’s Discontent*, ISPI (Nov. 04, 2019), <https://www.ispionline.it/en/pubblicazione/fragmentation-russias-discontent-24315> (noting existence of domestic challenges such as social discontent and lack of societal cohesion).

157. *Id.*

158. *Russia’s Constitutional Plebiscite Approved in Landslide, Paving Way for Putin’s Continued Rule*, RADIO FREE EUR. RADIO LIBERTY (July 2, 2020, 6:24 AM), <https://www.rferl.org/a/russian-constitutional-vote-putin/30699853.html>.

159. JACOBSON, *supra* note 140, at 15.

tution's commitments to the separation of powers and internationalism. Externally, the amendments' commitment to welfarism is inconsistent with the reality of social material inequality in Russia. Normatively, the commitments to centralized power are discordant with separation of powers as an ideal of constitutionalism. These disharmonies generate space for institutional and social actors to deliberate the essential features of the constitutional polity and bridge the gap between constitutional commitments and reality. These constitutional dynamics deserve further studies in future.