



THE RUSSIAN CONSTITUTION *at* THIRTY:

Conference Proceedings

Edited by:

**Dan White and
F. Joseph Dresen**

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O C C A S I O N A L P A P E R # 3 1 2



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ROUND TABLE I: The Russian Constitutional Renaissance and the Drafting of the 1993 Constitution

Stanislav Kucher, Former editor-in-chief of the RTVI-US TV network, chief political analyst and creative director of Kommersant-fm

Vladimir Pastukhov, Honorary Research Associate University College London

Stanislav Stanskikh, Russian constitutional scholar in exile, currently affiliated with UNC-Chapel Hill and the Fletcher School of Law and Diplomacy

Lev Ponomarev, Russian politician and anti-war activist

Peter Solomon, Professor Emeritus, Political Science and Criminology, University of Toronto

Kathryn Hendley, Professor, Law and Political Science Departments, University of Wisconsin, Madison

Mikhail Khodorkovsky, Founder, Open Russia Foundation

Svetlana Savranskaya, Member, History and Public Policy Program Advisory Board

Maxim Krupskiy, Galina Starovoitova Fellow on Human Rights and Conflict Resolution

Ilya Shablinsky (Zoom), Professor, Free University- Riga

Irina Alebastrova (Zoom), Professor, Free University/*Brīvā* Universitāte

Andrei Illarionov, Former senior policy advisor to Vladimir Putin, the President of Russia, from April 2000 to December 2005

Ekaterina Mishina, Professor, Free University/*Brīvā* Universitāte

William Pomeranz, Director, Kennan Institute

ROUND TABLE II: The 1993 Crisis and Its Impacts on Future Political Developments in Russia

Stephen Nix, Senior Director of Eurasia, International Republican Institute

Stanislav Kucher, Former editor-in-chief of the RTVI-US TV network, chief political analyst and creative director of Kommersant-fm

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Ekaterina Mishina, Professor, Free University/*Brīvā* Universitāte

Thomas Blanton, Director of the independent non-governmental National Security Archive at
George Washington University

Vasily Gatov, Founder, Novosti Media Lab

William Hill, Global Fellow, Kennan Institute; Former Professor of National Security Strategy,
National War College

Grigory Vaypan, Former Galina Starovoitova Fellow on Human Rights and Conflict Resolution;
Senior Lawyer, Memorial

William Pomeranz, Director, Kennan Institute

Day Two | Friday, November 17, 2023

OPENING REMARKS

Pavel Khodorkovsky, Founder, Khodorkovsky Foundation US; President, Institute of Modern
Russia; Executive Director, Sunrise

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Ekaterina Mishina, Professor, Free University/*Brīvā* Universitāte

Leon Aron (Zoom), Senior Fellow, American Enterprise Institute

Peter Maggs, Professor of Law, Research Professor of Law at University of Illinois
at Urbana-Champaign

William Pomeranz, Director, Kennan Institute

PANEL II: The Constitutional Landscape of Future Russia

Vladimir Pastukhov, Honorary Research Associate University College London

Irina Alebastrova (Zoom), Professor, Free University/*Brīvā* Universitāte

Ilya Shablinsky (Zoom), Professor, Free University- Riga

Elena Lukyanova (Zoom), Professor, Moscow State University of Higher Economics;
Co-rector of Free University

Ariel Cohen, Senior Research Fellow for Russian and Eurasian Studies and International Energy Policy, Heritage Foundation

PANEL III: Russian Judiciary and the Rule of Law: Lessons and Prospects

Kathryn Hendley, Professor, Law and Political Science Departments, University of Wisconsin, Madison.

Grigory Vaypan, Former Galina Starovoitova Fellow on Human Rights and Conflict Resolution; Senior Lawyer, Memorial

Peter Solomon, Professor Emeritus, Political Science and Criminology, University of Toronto

Nikolai Bobrinsky (Zoom), Doctoral student, Law Faculty, Humboldt University of Berlin

Lauren McCarthy, Associate Professor of Political Science and Legal Studies, University of Massachusetts, Amherst

PANEL IV: Constitutional Parameters of the Future Russian Democratic Transit: View from the Russian Democratic Opposition and Civil Society

Mikhail Khodorkovsky, Founder, Open Russia Foundation

Lev Ponomarev, Russian politician and anti-war activist

Alexandra Vacroux, Former Senior Scholar; Executive Director, Davis Center for Russian and Eurasian Studies, Harvard University

Vasily Gatov, Founder, Novosti Media Lab

William Pomeranz, Director, Kennan Institute

Conference Transcript

EDITOR'S NOTE: *Please note that these conference proceedings have been edited for clarity and brevity. Questions from individuals not on the conference program do not identify the questioner.*

Day One

OPENING REMARKS

William Pomeranz:

Good morning, everyone. My name is Will Pomeranz and I'm the director of the Kennan Institute. I would like to welcome everyone to our conference on the Russian constitution. For a few of the attendees, this may seem like *deja vu* all over again. We conducted a conference in 2008 when we marked the 15th anniversary of the Russian Constitution. The emphasis on that conference, however, was primarily looking backward at the founding and the implementation of the first post-Soviet founding law. Indeed, many of the attendees were part of the founders of the Russian Constitution. The one person, however, who looked forward was Mikhail Gorbachev, who delivered the keynote address. Gorbachev's comments were quite prescient. He emphasized that Russia had made significant advances with laws on freedom of conscious freedom of religion and private property. Gorbachev concluded however, that Russia was only halfway through the democratic transition. And he warned that if it did not follow democracy, then Russia would face many hardships in the future.

Fast forward another 15 years, and these hardships have grown even more pronounced in the Putin era. Putin has introduced many constitutional changes including the appointment of regional governors, the rebirth of Imperial and Soviet institutions such as the revived State Council and the concentrated emphasis on social as opposed to civil rights. The true turning point, however, occurred with the 2020 constitutional amendments where Putin undermined the system of separation

of powers, weakened the judiciary, and significantly retreated from the stated goals of the 1993 constitution, namely democracy, federalism, and the introduction to the law-based state. This conference will explore the creation of the 1993 constitution, which emerged from the firing of the Russian White House and the collapse of the Soviet Union.

The Putin regime, however, has only moved backwards from the aspirations that inspired Mikhail Gorbachev and a whole generation of Russians. We still don't know what comes after Putin, but there is the growing belief that a new constitution and a new generation of lawyers will be one of the requirements whenever that needs to take place.

ROUND TABLE I: The Russian Constitutional Renaissance and the Drafting of the 1993 Constitution

Stanislav Kucher:

Ladies and gentlemen. I wanted to say that I really love the title of our discussion right now: lessons of the Russian Constitutional Renaissance of 1993 when the crisis emerged with firing at the White House. I would love everyone to concentrate precisely on that, on the lessons, because that's probably the most important thing we should be taking into consideration now when working on the new constitution of whatever comes next after Putin's Russia. Not just memoirs, not just reminiscing about the moments—because many of those present here remember what exactly they were doing at the time—but rather the mistakes made back then.

For example, in 1990, the Soviet Union was probably subconsciously preparing for its collapse.

Literally it was already falling apart. And republics of what used to be the USSR were adopting their own independent declarations and working out their own new legislation. And I remember from June 1989 the Constitutional Commission of the Congress of People's Deputies. I was then an 18-year-old correspondent with a Russian newspaper, *Komsomolskaya Pravda*, and I remember reporting on one of the sittings of that commission.

There were a bunch of people, scientists, political scientists, politicians, and they were all sitting in the Marble Hall of the 14th building of the Kremlin. And all those people present included great scholars, and the discussion was very interesting in itself. I don't think I understood half of the terms they were using. They were all very learned lawyers and political scientists.

I remember when I came back to my newspaper and talked to my boss, who was Dimitri Muratov (by the way, the very famous Nobel Peace Prize winner). He was then chief of the news desk at the newspaper. I told him about my impressions, and he said, well, I guess one of their mistakes is lack of interaction with people. I mean they're discussing all those new laws they were about to introduce behind closed doors without making the public aware of what they were talking about.

To me, one of the major lessons drawn from all those times is whoever begins to work on the future constitution of Russia at some point the very process needs to be shared with the public. Especially that now we have the internet, social networks and other lots of modes and methods and technologies of interacting with a wide range of our public in both Russia and abroad.

For opening remarks, I'd like to invite Vladimir Pastukhov, who is a renowned political scientist and constitutional scholar.

Vladimir Pastukhov:

Thank you everybody. I'm not going to be long today. One of the biggest problems for me is to limit

myself with the number of lessons I want to review, because this was an event of such a high scale that you can count any number of lessons, 10, 100. I'll leave it myself with five, but before I speak of them, I would say that I have some serious doubts.

My doubt is whether the post constitutional renaissance and the constitutional crisis really existed in that time. Because if you want to discuss a constitutional crisis, at least you have to have a constitutional order. If you don't have a constitutional order, it's hard to have a constitutional crisis. I think that we overestimate a little the constitutional side of that story. I think we met with the final phase of the Gorbachev revolution crises, which was only in the shape of a constitutional crisis, but it wasn't constitutional crisis itself. But the constitution became one of the main victims of that time, it became a casualty of that civil war. I think we lost about 20 or 25 years in constitutional development because of that.

And now I'm ready to go to my short list of lessons.

Lesson number one, which I felt was the issue 30 years ago and I still think exists now, is that the constitutional text was seriously overestimated and the constitutional consensus in the society was seriously underestimated. And it's a lesson which is important for us, not only in a retrospective way, but also for today.

We developed in that time, one of the greatest constitutional texts. It could be a Booker Award candidate for sure. We absorbed all known ideas about the principles of freedom. We combined it from own constitution, euro constitution, Latin American so on. And we were proud of this work. But its life shows that unfortunately you can develop the best constitutional text in the world, and it'll never work without a constitutional consensus behind it. And that was the issue. The consensus was absent at that time, and everything failed. If you have a constitutional consensus, you have a willingness to have a constitutional order. Fortunately, you can live even without constitutional text, but not always.

The next lesson, a little bit attached to the previous one, is that constitution has to be strong. The constitution has to have something behind it who can defend it. The constitution is a conversation between the strong. You have to have in society some clear political forces which are ready to protect and develop a constitution for them. If you don't have them, it'll never work.

A constitution is not for the weak and about the weak. The constitution of the weak will soon be replaced. And that is what happened in Russia after that.

Third lesson: the Constitution is about compromise, and compromises should be between those who are strong. The Constitution never appears as a result of victory of one side, from my point of view, because if one side overcomes, it creates its own order and it will pressure the defeated side. Only if strong sides all come to a point where they need to agree about something in order to protect themselves do you have space for a real constitutional order, and constitutional development. If we're talking about 1993, I would say that the only chance for real constitutional development we had was in the middle of the monastery where negotiations between Yeltsin's team and Khasbulatov's team took place. Maybe it could be a disaster compromise. But that would create a platform constitutional development. By the way, I think that if the so-called "Anna's Conditions" (a statute accepted by the Peter the Great's successor) were not thrown to the bin in the 18th century, Russia could have started the constitutional time 200 years earlier.

A key lesson we've learned from that time is some parts of the constitution are more important than others, and it is not about human rights. The main section of the constitution is about the division of powers. And you can write an extraordinarily attractive first part of the Constitution about principles, and a second part about rights. But we seriously failed with the same chapter of the Constitution the United States. That was the biggest issue that continues to be the biggest issue today. If I could do something edgy today, I would say that I would leave everything as it is, but I will rewrite chapter three.

I would say that I'm not too optimistic about those times and about future times, but I can say that there is one serious result which is not negative. I'm not sure how seriously we were developing our constitutional order, but it was serious progress in the constitutional mind. That I can't exclude, because everything that happened, and even our talk today, is a necessary step for any future progress. Because despite the fact we haven't progressed in developing a constitutional system, we made serious progress in developing our constitutional minds. We now have a much better ideological platform to do something that we failed to do 30 years ago, maybe.

Stanislav Kucher:

Thank you, Vladimir. I just wanted to add that if you don't remember who the chairman of the first constitutional committee back then, Boris Yeltsin was. And who was his first deputy? Ruslan Khasbulatov, his future main political rival. Speaking of the division of powers, Stanislav the floor is yours now. Are you as optimistic or as pessimistic as Vladimir?

Stanislav Stanskikh:

I would say that I'm very optimistic, because we need such discussions. I have a few observations of the constitutional process in the early nineties. First, I have one disagreement with Vladimir. You mentioned that Russia didn't have a kind of constitutional consensus, but if we remember the Russian declaration of state sovereignty, for me this declaration is a symbol of some kind of constitutional consensus, because the declaration established a few fundamental constitutional principles such as separation of powers and it recognized a commitment for internationally recognized human rights among other things. But I understand your point, because the further political development in 1991-1993 showed a lack of this constitutional consensus, but we will talk about it during the roundtable.

A few observations about the constitutional process: First, the Soviet constitutional process began in 1988, when an Estonian delegation raised the topic of reestablishing the union treaty between Soviet republics at the 19th party conference. And then

this was followed by elections to the Congress of People's Deputies of the USSR, which began this work on preparing a new union treaty and the new Soviet constitution.

In 1990, the Russian Congress of People's Deputies adopted the declaration of state sovereignty, which I already mentioned, and formed a constitutional commission headed by, I would, say three deputies. In addition to Yeltsin and Khasbulatov, the third one was Oleg Rummyantsev, who was basically the Secretary of the Constitutional Commission. He was the engine of the constitution drafting process back then. In the summer of 1990, he formed a group of experts, mostly law scholars and professors of comparative constitutional law. Russians wanted to be a part of the West, but they didn't know how much it cost to build a market economy and rule of law. The first Constitutional Commission presented their first draft of the constitution just in a couple of months. But unfortunately, because of further political discussions and political development, and maybe at some point because the Congress prioritized economic measures over rule of law measures, this constitutional process lasted for three and a half years. I also want to mention the 1991 coup d'état, which created a window of opportunity for the adoption of a new constitution.

But again, the Congress was drawn in political discussions which led to a political crisis, not a constitutional crisis in 1993. First, we should remember the referendum and then events of the autumn of 1993. I'm thinking about lessons. There are many of them for Russian constitutional makers in the future, hopefully democratic oriented.

First of all, no lustration was carried out in the early nineties, which led to the authoritarian rule that we see now, with a lot of former KGB officers on the top in the political landscape. Second, the Russian political establishment has realized that legal and political conflicts can be resolved by force. And again, the entire constitutional process lasted for three and a half years. The final draft of the constitution implemented or combined basically two drafts—the presidential draft of the Constitution

and the congress's draft. But all in all, this constitutional process and the adopted constitution didn't prevent Russia from this current authoritarian rule. Another lesson or something to think about, how should we use the Federative Treaty process of 1992 for the establishing Russia's federalism in the future?

Future Russian constitution makers should also operate closely with international experts, which was done in 1990-94.

The last one, to save some time for discussion: The Russian constitution has a few birth traumas. I will talk about some of them tomorrow, but I want to talk about one of them, which is a term limit on Russia's presidency. Recently, Professor Tim Colton of Harvard spoke at a discussion at the Davis Center about 1993, and he concluded that a term limit with the two consecutive terms has had a huge impact on further Russian political development and landscape.

And I agree. When amendments to the Constitution introducing the presidency were adopted in 1991, Sergei Shakhrai, who was head of the legislative committee of the Supreme Soviet, was the one who introduced them. During the discussion, he was asked what does two consecutive terms mean? One of the MPs asked, does this mean that the citizen can be president for two terms in a row, then skip the next term and then be elected again? To which Shakhrai replied, that if the president is so popular, then he will have such an opportunity under the constitution.

This constitutional provision was adopted in 1991, not in 1993, with one big difference in 1991. This constitutional clause was accompanied by another constitutional clause. He could have two consecutive terms, but a presidential candidate shouldn't be older than 65. So what happened with the second clause? The second clause was removed in the draft of the Constitution after the dissolution of parliament in 1993, and now we see the consequences. I'll stop here. Thank you so much.

Stanislav Kucher:

Thank you. This is the first time I'm moderating a discussion of scientists, and the one thing I can tell you now is about the difference between scientists and journalists especially, is their sense of time, because you're limiting opening remarks to 22 minutes instead of 10.

[laughter]

I'm sorry. But I mean they were very concise and detailed and lots of arguments here, lots to talk about. I'd like to address Lev Ponomarev, because he is one of Russia's living legends. One of Russia's most well-known human rights activists. Who's suffered a lot. Who's been brought to police precincts and to prison many times, and has been prosecuted. And also because he remembers the early nineties perfectly. I'd like to ask Lev, if he were to name one and only lesson of that constitutional renaissance or whatever we call it, what would that lesson be?

Lev Ponomarev:

I think one of the most important lessons would be that what happened was unavoidable in a sense, because it was one logical step that was leading to the other logical step. They were all interconnected. The point of the matter is that the democratic revolution in Russia happened very fast, and it was facilitated by Mikhail Gorbachev. Of course, we know that the goal he had in mind had to do with the creation of communism or rather socialism with a human face, as it was perceived at the time. And that actually would have entailed a much lengthier process.

At the same time events were developing very fast. The people of Russia, the population was exhausted from several decades, many decades, of the socialist regime and the very poor economic conditions that existed at the time. They were really very, very bad. People felt that they had to break out, that they had to break away from that regime, and that created additional pressure. And somehow there was a need to control the situation.

Gorbachev was trying to maneuver, but he really was unable to find the language that would help

him communicate with the masses. I was among the people who were trying to organize this process and give it a structure. We were telling him that we would like him to join us and speak on behalf of all of us to the masses, to give the appropriate direction to the development of events. Unfortunately, that didn't happen. He failed and it was not possible to move along in a constructive way. What happened was Gorbachev was scared because he was also having to deal with the conservatives, those who adhere to the conservative thought. Mr. Kryuchkov was among those conservative forces who were putting pressure, and there were some rumors circulating at the time that were adding to that. For example, people were told that allegedly a cooperative was being created to produce rope ladders, to start the storming of the Kremlin. So Gorbachev was scared by that and he was refusing to join us.

We understood that we would have to deal with those masses, and actually I was among those democratic masses. We also understood that we needed to look for other alternatives, look to other alternatives, alternatives to Gorbachev. At the time it was Yeltsin, who was also a communist, but a different one. He was a competitor of Gorbachev, and we felt that we needed to go with him. I think one of the important results of that whole process was the fact that we conducted the elections to the parliament without having any kind of violence or unrest. And that was a huge accomplishment that we had the elections to the Parliament of the Russian Federation, the Russian Socialist Federal Republic at the time.

At the time the outcome was peaceful elections, and that was good. But the whole process was too fast, and we were trying to keep up with the movement of democratic Russia, which I was a part of. But I have to point out that the majority of the members of that movement were still former communists or communists. More than 70 percent of them. They got scared. That was why the crisis of 1993 happened.

I don't know if we can say that this situation was avoidable. I think it was unavoidable. And we can

compare the situation to what happened in China, where the process started about the same way: the students came to the square and we know what happened then. The government used tanks and suppressed the demonstrations with violence. There were thousands of people who were either killed or wounded. And that created a much lengthier process. It didn't happen as swiftly as it did in the Russian Federation. I would leave it up to you to decide what is better, to have it rapidly and peacefully the way we did it, or the way it happened in China.

Stanislav Kucher:

I have a question for Peter Solomon as an expert on Soviet legal systems. Again, back then in 1990 when this constitutional commission was operating, I remember a lot of people in the Soviet Union speculating on how the United States was helping the process, because there were advisors from USAID who consulted members of that constitutional commission. In your opinion, what was the impact on the process by the United States?

Peter Solomon:

Consultations with US advisors may have had some impact, but it was mainly indirect. The Romyantsev commission that did the drafting work to June 1993 was admirably creative. It produced not only multiple drafts, but also a detailed discussion of what belonged in the constitution, constituting a rich literature, most of which was published in a special journal called *Konstitutsionnyi Vestnik*. My memory is that that's indeed where the foreign contributions came either directly or indirectly. But what is striking in retrospect is that there was a rich constitutional discourse, something that it would be nice to have again.

Now, of course, when I was listening to all this, I was thinking what drafts of the constitution were people talking about? When you talk about a constitutional crisis, that concerned the much-amended Russian constitution of 1978, not the working draft of a new constitution.

The other thing is that key parts of the Romyantsev draft held. Its first part became the first two parts

of the actual Constitution of 1993 (the parts dealing with Fundamentals and Rights and Freedoms). To be sure, Yeltsin hijacked the constitution writing process in June, creating a new body, which in turn wrote new passages on separation of powers and presidential powers even before the so-called constitutional crisis. This came after the referendum of spring of 1993, so there's a lot going on here. I was also struck listening to the discussion so far that the critique has been mainly of the process of constitution production more than the content of the 1993 outcome. Yes, people have identified the separation of powers issue and presidential powers as problematic. But the big lesson that seems to be emerging is: if you're going to make a constitution, it must be produced in a way that it can perform its function and that members of society buy into it.

Stanislav Kucher:

Thank you, Peter. That's a very good point about the content of the constitution. What still seems the killer to me is the fact that if you wake an average Russian aged 50-plus in the middle of the night and ask them what the date is for Constitution Day, they'll still likely say October 7th, which is the day of the adoption of the Soviet Constitution of 1977. I mean, very few people will name December 12th, and that's kind of interesting, probably because a lot had been borrowed from that previous constitution.

I'd like to ask, before we start question and answers, Mikhail Khodorkovsky to say a couple words about the lessons of that early nineties constitutional process, because he is someone who suffered from the new presidential powers. Let's put it this way, I don't know if you would wind up in jail had it not been for the authority that Putin receive thanks to the new Constitution, or are these things not related? What do you think?

Mikhail Khodorkovsky:

Well, first of all, I was not a part of the constitutional process back when the esteemed colleagues that have been speaking were a part of it. I was part of the revolutionary process in 1991, 1993, but not part of the constitutional process in 1993. But

in retrospect, I can see that a lot of Putin's legitimacy can be traced to the changes that were made to the Constitution in 1993. My opinion is that at that point, the Constitution destroyed the notion of checks and balances. I am led to believe that the executive office of the President of Russia is a threat to Russia. The moment when the President of Russia takes office, he has almost unlimited ability to appoint and dismiss members of the security organs, the siloviki [Russian term for law enforcement agencies] That's the end of separation of powers right there, even if this is an indirect power deriving from the powers that the President has vested in his office. Those are the conclusions that I have reached from analyzing the Constitution of 1993. Something that I did not do in 1993, but Putin helped me in this by imprisoning me in 2003: Putin gave me the opportunity to spend the next 10 years to think long and hard about all these existential questions.

Stanislav Kucher:

Thank you. So now let's proceed with the questions and answers session. Before you ask your question, you can make your statement saying what you think is the crucial lesson of those days.

Svetlana Savranskaya:

Thank you very much for giving us this opportunity to be present here. It's very special. I have two quick points. One is I think that one of the biggest missed opportunities is that there were no early elections after the dissolution of the Soviet Union. That issue was widely discussed among the democratic movement, yet Yeltsin decided on against early elections. I think that's a lesson for the future. There have to be early elections to create that consensus in society and to make the parliament legitimate in the eyes of the society.

Secondly, when Peter Solomon made his remarks, I realized something. In 1993, I was a graduate student at Emory. One of the drafters of the constitution, Alexander Maximovich Yakovlev, was there at Emory working with one of the most prominent American constitutional scholars, specifically discussing the drafts of the constitution.

I was not privy to those discussions, of course. But what I suddenly realized is that by the end of the summer of 1993, he became so critical of the drafts and was on the phone with Yeltsin. I didn't know about what. When he would have direct conversations with Yeltsin and Harold Berman, who was the American constitutional scholar, he was constantly talking about separation of powers and how bad it would be for Russia to have a strong leader. That, of course is, is in response to the question: Did American advisors or American scholars have an impact? I think they tried to push it in that direction, but I think he also had other preferences. Thank you.

Peter Solomon:

I just have to say Alexander Maximovich Yakovlev, whom I knew well, had great insight into what a new Russian constitution should be. Alexander was not part of the Romyantsev crowd. At least by 1993, he was really connected more with the Gorbachev crowd. He was originally a specialist on criminal law and criminology, but moved into constitutional law ahead of almost anybody else. He was an authentic constitutional law scholar by the mid-eighties. Later he wrote a book in English that summarized his ideas and experiences. It was very good. I advise people to go back to it.

William Pomeranz:

Yes. My question to the panel and the attendees here is: should Yeltsin have started with privatization or should he have gone with consensus? Because there clearly was no consensus after privatization. So, to what extent was the decision to proceed with privatization basically too much for Russia to handle?

Vladimir Pastukhov:

It is quite a simple answer. I would say that I'm not sure that what happened in Russia in 1993 could be described as privatization. It's something different than what Thatcher had done in UK, which was also criticized, and what I could define as privatization. In Russia it was something like a transfer

of state-owned assets to some private individuals in some strange way. There was no need to make it this specific way. There was no need to make it with the speed that they selected, there was no need to do it in the face of resistance from society. I think it was the biggest mistake which they made.

Stanislav Kucher:

I'd like to make one remark, because William asked about privatization, and Vladimir said that the reform, the constitutional reform of 1993 is not necessarily about privatization. But I think what those two processes have in common is what I mentioned before: lack of public discussion. Again, everything was decided behind those walls by experts, by scholars, by scientists, by politicians. And the people of Russia did not have an opportunity to evaluate what was discussed.

Hence the answer to Peter's remark, about content, because content depends on interaction with the public. I mean, the public could have possibly made their remarks as far as content was concerned, and probably the public would've brought something else to the content of the constitution as well as to the process of privatization or how privatization was held.

But anyway, I'd love Kathryn Hendley to comment on what has just been said.

Kathryn Hendley:

I was reflecting on what's been said, and I wonder if one of the lessons of 1993 and one of the lessons for the future is that there were too many cooks in the kitchen in 1993. I vividly remember being at a conference where someone got up and they said, "I've just returned from Russia and it took me two weeks to undo the work of the French." You had all these different groups from different countries who all thought their system was the best, and they were all making their case to the Russians. And in some cases, and Peter Maggs could speak to this as well, in terms of the civil code and other pieces of legislation, you get a bit of a smorgasbord type of problem where it doesn't really gel. So that's my lesson.

But in terms of your idea, Stanislav, about public approval. In theory it's wonderful, but how would you practically achieve this. In the United States, they often have these examples, where someone goes out and polls on the First Amendment or any of our rights, and usually people will say, no, we shouldn't have that.

People don't know our constitution. The danger is you could get a very reactionary response from the public. And do you poll on each one of these pieces? I mean, when I teach, I always talk about the absurdity of having a referendum on a constitution. What are you really voting on? It's very difficult. And Russia isn't the only one that's done this. But in theory, of course we could all agree that it would be good to have public input, but precisely how would you do this? That of course in the Soviet period, they had kind of the pretend input,

Stanislav Kucher:

Well first and foremost, many colleagues can help us turn theory into practice, which was not a possibility back then in the early nineties. But even back then, let's just imagine all those scholars, all those cooks in the kitchen, working on different stuff for hours and hours, and then coming up with three versions of the new constitution of that dish, and then coming on national television and sharing those three versions with the public and then receiving...

Kathryn Hendley:

Well, then you get people out there campaigning on false premises on the not entirely accurate version of what this new vision is going to bring.

Stanislav Kucher:

Absolutely. 'you'll never know until 'you've done it, right? But the second thing is no matter how cynical it may sound, you do have to make this impression on the people that somebody tried to consult. Because right now millions of Russians are saying, nobody took our opinion when all those reports were carried out. Anyway, more questions please.

Vladimir Pastukhov:

Quick remark. I believe in 1990 of the first drafts of the Russian constitution by the Constitutional Commission was published in *Argumenty i Fakty* which had enormous...

Stanislav Kucher:

Yes, they had a circulation of 32 million copies.

Vladimir Pastukhov:

...and that's why I disagree, because the political process of these debates, constitutional debates, lasted for three and a half years. It was many of those first drafted provisions regarding presidency and human rights. They were implemented into the Soviet Russian, Soviet constitution. And there was some kind of consensus that it should have separation of powers and free speech and other human rights. That's my take.

Question:

Thank you so much. I'm a human rights defender from Russia. I totally agree with your position, and I think in my view, the main lesson for me at least is that we should understand that democracy cannot exist without citizens. How many people in Russia right now understand? What about, we're talking right now, what does it mean to have a constitution? What is the constitution about? What is the content of the Constitution? How many people have not even read or held the text of constitution in their hands during these 30 years?

My point is that it is quite important to talk with people, to talk to people, to explain the value of human rights, the value of constitution, the value of democracy. Because first and foremost, people should understand and ask themselves why do we need the constitution? And then only then the second question, what is it about and how should we create it or formulate it or something like that.

The first idea is that now we have to ask ourselves how to develop a legal consciousness in people, in people's minds because the legal consciousness

could lead to civic and political agency. The very interesting and important theory from Nobel Prize winner Amartya Sen, is that if we could build and develop civic and political agency in people's minds, it could lead for the lead to the appearance of civil society. Without civil society, it's impossible to create democracy. I think that we have to ask ourselves how to talk to people, how to explain to them these values and these important foundations, very foundations of democracy. This is the core, the key question, I don't have an answer right now unfortunately, but this is the key problem for Russian society. Russian society today is quite atomized society. We don't know how to speak to people, and this is the real problem in my view.

Stanislav Kucher:

Thank you. By the way, we have two more great constitutional experts via Zoom here, Ilya Shablinsky and then Elena Lukyanova. Sorry, Lukyanova is going to join us tomorrow, right? If you have something to say or ask a question, go ahead.

Ilya Shablinsky:

I would make more precise one question in connection with the last statement. I will speak in Russian because I think interesting, quite interesting the constitutional process in Russia just now.

I don't think it matters how many people in Russia have read the constitution and have held it in the text in their hands. The draft of the constitution was published in 1990 and I think about 40 million copies were published at the time. The issue of the constitution is resolved within the political elite. And I remember that in the constitutional commission at the time, there was a conflict between two of its members. One of them was Mr. Zorkin, the other one was Mr. Sheynis. And the two alternatives that they were insisting on representing, one was the creation of a presidential republic, and the other one would lead to the creation of a parliamentary republic. So that published draft actually contained two alternatives that were incorporated. It was either A or B. And in my opinion, it didn't have any significance at all.

I think if we look at what is going on inside the community of constitutionalists, people who are dealing with the constitutional law in Russia at the time right now, I think we can talk about them having a consensus in favor of a parliamentary republic, a government and the cabinet of ministers that are approved by the parliament. I think this is the result of a 30-year process. This is the result of comprehension of the tragic experience of establishing and developing in our country a model that presupposes strong presidential power. We had to draw conclusions from this experience, and we have drawn these conclusions.

Irina Alebastrova:

Dear colleagues, first of all, I'm happy to be here today even though online and I would like to ask a question to Professor Pastukhov. Dear Vladimir Borisovich, you listed the reasons of the failure of, I would say the better angels of our Russian constitution – the failure of constitutional values, constitutional principles, constitutionalism tools, and a lack of consensus and compromise about the content of Russian constitution. Did you mean the lack of consensus about the principles or of compromises about the details? Thank you.

Vladimir Pastukhov:

I will try to answer the question as I understand it, because I'm not sure that I understood in the right way. We see the usual conflict between people who look at the constitutional process from political angle and people who look at the same process from the legal angle. It is a little bit hard for me, because I'm usually looking at it more from a political angle... But anyhow, for me we can't forget that behind any constitutional process there is a political fight and there is no abstract constitutional process. This is always about somebody who wants to gain something and about somebody who is going to lose something, and it is a zero sum game. It's a win-win game from a political angle.

For me the compromise is not about the principles of the Constitution itself. It is too abstract. I can't say that there is some solution for all types and of

all situations. Each situation is particular. There were two political, at least two political forces at that time. One was running ahead for the future, another one trying to stay over the past. But the question was about the kind of rules in a constitution where both tried to find the space for their political existence. And it ended in that time formally with the victory of one side.

Andrei Illarionov:

I would like to talk about a couple of lessons since there is a title of our round the table, the lessons from the Russian Constitutional Renaissance. And I very much like this word, renaissance, because this is a reflection of something rather unique in the history of the country. As was correctly mentioned here, it lasted only for three or four years. It is just tribute to the enormous contribution to this process performed by Mikhail Gorbachev personally. Because without his enormous activity in this constitutional renaissance, regardless of any statement, it would not happen. And in this constitutional renaissance we have met the battle between two legal conditions, that we have seen some elements in the history of the country even today.

This is an evolutionary legal tradition that has been presented by Gorbachev and revolutionary legal tradition as Mikhail Khodorkovsky has mentioned early on. And Yeltsin involves people who have been named democrats supported revolutionary legal tradition of Yeltsin versus evolutionary legal tradition of Gorbachev. And it was during the whole process from 1991 to 1993. And even after that we remember how all good people who call themselves democrats who have been elected on so-called democratic platform after that heavily supported use of force against those who happen to be on the other side. So that is why it does not mean that there is no legal consciousness as opinion was talking, legal consciousness existed amongst everybody, but it was different legal consciousness. A consciousness of consensus, tradition of agreement, of consultations, of negotiations, and of achieving something similar to consensus or legal tradition. It's absolutely important that we spend so much

time discussing this issue, but it's also just only very first step towards a much deeper understanding of the constitutional problems facing Russia.

Now it has been mentioned that there was a near-consensus among constitutional lawyers concerning parliamentary republic versus presidential republic. That is only a very little step in the right direction. Just look, just for comparison, to Gaza for the moment, whether Gaza has a president, it's not a presidential republic, it's a parliamentary republic, it's a parliament that is being controlled by Hamas. Whether it changes behavior of these particular state and the particular societies or not, what is the problem? A much deeper problem than between the legal traditions of the continental legal tradition and common law legal tradition, to put it mildly.

In the Russian case, we are dealing, as well as Gaza and many other places, with extreme versions of continental legal traditions where real power belongs to executives regardless of whether they're coming from the president or from the parliament. A parliament can be tyrannical as well as not, we see from the history of many countries. So that is why if we can talk about lessons for the society, and even for the first step for constitutional law, how could it be possible to transform discussions, debates and publications, to focus on the nature of law, about the sources of law: That is, law that is coming from people that is built step by step, block by block. Not from top down but from bottom up.

Stanislav Kucher:

Thank you, Andrei. I just wanted to follow up on this developing conversation with a remark. Stanislav said the draft was published in *Argumenty i Fakty* with, again, I remember 34 million copies a week. They were even put down in the Guinness Book of Records for having the largest circulation in the world. Still, nobody reads long reads. Nobody would read a draft that long and that big, especially in the early nineties when bookstores and newsstands were filled with Playboy translations in Russian and a lot of yellow press and stuff.

A mechanism I think should be worked out somehow again in technology where people would be able to get acquainted with the major, with the crucial points offered by legal scientists, political scientists, and all those cooks Kathryn was talking about.

Vasily Gatov:

I remember this period quite well. I was also a parliamentary reporter for *Izvestia*, with a little bit more experience because I'm a little bit older. I started with the first Congress of People's Deputies. I've seen the source of constitutional debate because it started with the first Congress of People's Deputies of the USSR. The constitution does not work the way people want. And even elections law was not, in the Soviet Union, prepared for competitive elections. But the very important thing that happened, and I think Katya Mishina will agree with me, is that the distance between legal scholars who were capable of writing constitution and politicians who were kind of building the consensus was not narrowing, but instead grew wider because people wanted to legitimize the power that they received as elected deputies. Even more so for those that were appointed minister or head of a department. They probably understood all too well that when a country collapses, they can grab more power than anyone, and even more so when it was written in any law.

As was mentioned before, the person who was directly connected with the drafting of constitution and later worked on the draft, Sergey Shakhrai, was a critical voice on many issues initially, but he later complied with Yeltsin and became one of the butchers of Chechnya. To be honest, this is just very clear.

I think first and foremost that in the future, if ever the constitution should be drafted by public academic public experts, it should start, not from the theoretical frame of the constitution, but from a very deep diagnosis of the current situation in the society, elite elements of power, and so on. Otherwise, it will be, as this constitution turned out to be, a document that has almost no real connection to the real things happening within the political system.

Stanislav Kucher:

Thank you. And that's probably why again, people don't, most people don't remember the constitutional referendum of December 12, 1993.

Ekaterina Mishina:

Let me remind you that under the amended RSFSR Constitution of 1978, the Congress of People's Deputies of Russia enjoyed the power to determine the guidelines of domestic and foreign policy of the country. Now this power belongs to the President of the Russian Federation and this constitutional provision is very Soviet.

Speaking about the fall of 1993, I would like to rely on the expert support from the Justices of the Russian Constitutional Court, specifically the late Justice Anatoly Kononov, who beautifully addresses the disadvantages of this period in his dissenting opinion, where he disagreed with the reasoning stated in the majority Opinion of the Court on the presidential Decree No. 1400 of September 21, 1993, the Presidential Address to the People of Russia, which was delivered on the same date.

In this dissenting opinion, Justice Kononov wrote that while examining the decree, the court completely ignored numerous facts of violation of fundamental constitutional principles by the Congress of People's Deputies and the Supreme Soviet, which were mentioned in the decree and the presidential address. Kononov pointed out that the Congress and the Supreme Soviet discredited the very idea of parliamentarianism by their activities. It was not the most beautiful period in the life of Russia simply because the confrontation came to a deadlock, and the situation was not ideal on both sides. There were no angels in Russia at that time. And apparently the 1978 constitution with all possible amendments failed to be a good fit for the period of transition to democracy and the market economy. Thank you.

Vladimir Pastukhov:

So, we see it looks like all parties discredited the parliamentary idea, both the Supreme Court and Yeltsin in 1993.

Ekaterina Mishina:

And the Constitutional Court.

Vladimir Pastukhov:

So we see it looks like all parties discredited the parliamentary idea, both the Supreme Court and Yeltsin in 1993.

Ekaterina Mishina:

And Constitutional Court.

Vladimir Pastukhov:

But I also want to point out two more kinds of institutions that contributed a lot to delegitimize the Russian constitution. First of all, it is collective West that supported the Yeltsin coup d'état, or however we can call it, and supported the legitimacy of the Russian constitution in 1993. But that was from political legitimacy. As for constitutional law, the Viennese commission, European Commission of Democracy, for democracy through law of the Council of Europe, provided legal expertise on the Russian constitution and released their opinion in 1994. They recognized Russia's constitution in general as corresponding to democratic principles, which led to the membership of Russia in the Council of Europe. That's my two complaints about experts and the collective West.

Vladimir Pastukhov:

Ilya I'll ask you, because you made a very strong statement concerning the Congress of People's Deputies, that it was not golden era. We'll look into all possible in cases of political rights and civil freedom in liberation, liberalization in area of Russian society this year was a golden age from 1990 to 1993. And you are right, because it was exactly stated that the problem with Russia's constitution concerned power.

But that statement was not reality. In reality, this period between 1990 to some extent 1993 there was, I would not say a separation of power, this was a competition of powers...initially a competition of Soviet power versus Russian power. So that's what

years competition between the executive power versus legislative power represented.

What is important is to look is not only what has been written in different texts, but what was the real political reality. Because it was a real separation. It's even maybe not a separation of power: It was separated powers, which actually from the common law legal condition is a more correct term than separation of powers. So that was a competition of powers and separation of powers.

This is a short period in the Russian history. To some extent it was similar to the transitional government in 1917. Both periods are being labeled as golden periods in the Russian history, from position of democracy. And now we're coming to a different topic, but I don't know whether we are to discuss the legal culture of the country, which just with the observation that it is worthy of discussion.

Vladimir Pastukhov:

I have this problem when I hear that 1991 to 1993 was a golden era. I'm afraid that we make a serious mistake in our assessment of the early nineties. We assess a weak, failed state as a democratic state. I just wanted to make a clear point here that we understand that an institutional democracy is not the same as an authoritarian failed state that is too weak to establish control over society. That's my only concern.

Ekaterina Mishina:

Just to make a point about the golden era. The list of human and civil rights did not include procedural rights. There was still no presumption of innocence. The full-fledged presumption of innocence was not established on the constitutional or even legislative level at that time. It happened only in 1993, and people were still suffering from the Soviet investigatory standards, and the procedural terms were still endless. And now I'll do a very unusual thing. I will say something good about the Constitutional Court of Russia, without which it would be impossible to change this picture, because the new Code of criminal procedure came up to

the agenda only in 2002. In "the wild 1990s", the procedural rights were amended, and the situation with the criminal procedure was improved owing to the efforts of the so-called "negative legislator," the Constitutional Court, which consistently ruled on unconstitutionality of certain provisions of the criminal procedural code of the RSFSR.

Kathryn Hendley:

I just wanted to make one point about a comment that Andrei Illarianov made about the importance of understanding what ordinary people think about law, namely legal consciousness. And one of the things that I think we ought to recognize is that, in the Soviet period, it was literally impossible to do that kind of research. It was literally impossible to go out and figure out what people were thinking that was just not permitted. And even now, the traditions within the legal academy in Russia do not encourage that kind of work. Of course, it is likely to become even more difficult for reasons that we all know, but I think that's something that we ought to take on board in terms of recognizing the importance of doing the deep dives into what people are thinking, how they're using law, and how law matters or doesn't matter in their lives. This goes back to your point, Stanislav, about understanding what people are thinking about the constitution.

My argument would be more that what we ought to have had might be focus groups with people about how are we thinking about their rights, what do they want, and what would empower them in the way that Katya Mishina is talking about. A lot of you in the room are among the academic elites in Russia. And so maybe you guys can push this agenda forward.

Stanislav Kucher:

Thank you, Kathryn. Speaking of the golden age, one thing I can see is that at that time we're discussing was the golden age for opportunities. It was the golden age of opportunity, which I mean some of those opportunities were taken, others were missed. It's important for all of us to try to do our best to make the next golden age of opportunity truly fruitful.

ROUND TABLE II: **The 1993 Crisis and its Impacts on Future Political Developments in Russia**

Stephen Nix:

Okay ladies and gentlemen, we'll now start the second panel. Our panel will focus on the 1993 crisis, but also importantly its impact on future political developments. I'm Stephen Nix, I'm the director of Eurasia at IRI. For those of you who may not be familiar with the organization, IRI supports democratization worldwide. My purview is the former Soviet states. We were chaired for 25 years by Senator John McCain, who I think everyone in this room knows was the biggest champion for Russian democracy, and for the Russian people. And Mikhail Khodorkovsky, I think you know this, there was no greater champion in Congress for your freedom when you were incarcerated than Senator John McCain. We continue our work in Russia, and we continue John McCain's legacy in Russia and the former Soviet republics. I'm very honored to be in the company of such esteemed legal, constitutional scholars. This is really, really an honor for me to be with you and to hear from all of you.

The strength of any presentation at an event like this is vested in the panelists who make their presentations and we're very, very well represented here today. To my left is a man who's already been introduced, needs no introduction. A personal hero of mine. Anyone who has been detained and remanded into custody simply for speaking to his beliefs, deserves our collective respect and admiration. Certainly that's true of Lev Ponomarev to my right. We are very fortunate to have Thomas Blanton, one of the esteemed scholars that has written extensively on the Soviet Union, the newly independent Russia, and on Russia today. He's recently written a piece on the 1993 events. We'll start first with Lev, then go to Thomas.

Lev Ponomarev:

I will continue developing the topic that I already started touching upon. I have given you an intro to what was happening in 1991. My vision of what was happening, and I agree with many of the previous speakers who expressed their opinions during the first half of today's event. There were two different themes that we are talking about. One of them is legal or judicial issue having to do with constitution—the legal aspects of it. The other one is the political strife that was accompanying the events in the early nineties. And as we see, we will probably have to continue talking about political strife, because that is what determined the outcome. This is a theme that became predominant.

I think that when we are talking about the crisis of 1993, it is very clear to us that we are talking about the situation when we feared and we anticipated that the Congress of People's Deputies would deprive the legally elected president of the country of his authority. We know that the elections resulting in Yeltsin's were fair and free elections. Even the fiercest opposition couldn't say that they were rigged. They were completely transparent and correct. There were no objections to the outcome of those elections. However, this tension between the Congress and the President existed, and the Congress of People's Deputies was not willing to yield. And we know that in this tense atmosphere of the Fall of 1993, a referendum was held, which was comprised of those four questions. We know that in three out of four of these questions Yeltsin won, and that reflects the reason for a key miscalculation on what needed to be done further, because he thought that he had the overwhelming support of the people. He was counting on that and was making decisions based on that.

Therefore, it was obvious and probably inevitable that he was going to disband the parliament. But he made a fatal error in that he did not prepare people for what was coming up, that he was going to disband the Congress. There was this indefinite situation that had to do with being unprepared. And the democrats who were in parliament at the time, including myself, I was there from the Democratic Russia party, were supporting him, but there were others who did not.

We also know what happened on October 3rd and 4th. The events were rapidly evolving. I was there of course observing everything firsthand. The military was ordered to storm the White House, and they refused to obey the order. They refused to crush the population, the civilians, in 1991. They refused in 1991 and were even more unwilling to do that in 1993.

A lot of military commanders were calling the White House, and they were turning down their authority, refusing to follow the orders. I know that people were ready to defend democracy, and I was getting signals from my end. I was calling the TV station, and I was telling them, let me bring my people. We are going to voice the public opinion: People are ready to stand for democracy. But at the same time, the other forces were telling us that civil resistance was not proper at the time and that we should let the military do their business. Only in the evening on that day, when it became clear that on the one hand people who were supporting Yeltsin were out in the streets and there were also those who were supporting the rioters, who were supporting the unrest, only then was the decision made to involve the military.

I'll cut my presentation short. I just wanted to sum up that we are here talking about the constitution, about the presidential parliamentary republic. That at that time we had a constitution that supported the strong president. And I think that at the time, when we faced the failed coup in that environment, it was important to have a strong presidential power, because that was helping to ensure stability in the country. Can you just imagine what chaos would've taken place with the parliament in charge? Nobody would have been able to cope.

I want to conclude by saying that the situation in the nineties was of course very complicated. There were the wars happening in Chechnya. But it's important to point out that Yeltsin did not abuse the extraordinary authority that he was endowed with. In fact, he was displaying a lot of flexibility in dealing with the communists in the parliament who were at that time in the majority. I would say that personality does

matter. The role of a person does matter in history. And had Putin not taken over from Yeltsin, maybe the situation wouldn't have been as bad, because Yeltsin at least did not abuse the power.

Stephen Nix:

Thank you very much, Lev. You did a great job of offering a unique perspective on the events of October of 1993. Thomas, again, getting back to the title of this panel, we all understand the political, the social, the constitutional, and the legal ramification of the events of 1993. Take us more to the present and to the future. Everyone in this room is hopeful for a democratic transition in Russia. When that time comes, what's your viewpoint? Take us into a discussion, if you would, about what happens during a transition constitutionally and most importantly politically.

Thomas Blanton:

Thanks very much, Steve. I have to admit the documents don't help us much in predicting the future. All they help us to do is predict the past, so to speak. But I have two introductory comments and four points in five minutes.

First off, it's a huge honor to be on this panel with Lev Ponomarev. The last time I got to shake his hand was in the hallway of the memorial building in Moscow as Arseny Roginsky was walking me and Svetlana, my wife and co-author, down the hallway to the courtyard so he could smoke a cigarette while we talked about documents. We happened upon Lev and shook hands in our common cause for opening the history and opening present.

My second introductory comment is to say I'm no expert on the Russian constitution or even the Russian constitutional crisis of 1993. What I am an expert on is what the United States government knew, or thought it knew, as reflected in the documents that we have worked for years to bring into the public record.

This next spring, the National Security Archive will be publishing a massive collection spanning from

the collapse of the Soviet Union to the rise of Vladimir Putin in declassified documents. Thousands of them obtained through, among other things, a freedom of information lawsuit brought by Svetlana against the Department of State. And it's from those documents and I should just say a huge thank you to Carnegie Corporation of New York, which has supported this work to get the primary sources on the record for years from these documents.

Last month, Svetlana and I co-authored an ebook containing the key documents around the events of October 1993. Those documents included the verbatim transcripts of Clinton's conversations with Yeltsin before, during, and after the shelling of the parliament. They include the cables from the US Embassy in Moscow reporting on the complexity of Russian domestic politics. They include the eyewitness testimony of Ambassador Tom Pickering, among others, not to mention General Pavel Grachev who commanded the assault on the White House.

It's from those documents that I draw the following four takeaways. I don't know how well they help us predict the future, but I think they eloquently described the past. First is the personalization of US policy, the Bill-Boris relationship. Second is the black and white view of Russian politics at that time to a fault. Third is the early skepticism about this constitution. One cable describes it as half-baked. Interesting, which means it didn't rise, it flattened into a solid mass that may be inedible. Interesting. And the fourth takeaway is that Lev has described the legal revolutionary crisis, the political strife. What comes through in the documents is there was a third crisis of 1993, and it was the collapse of the economy, or the economic crisis.

So let me go to my first takeaway, the personalization of US policy. We now know the Bill-Boris relationship worked fantastically for American foreign policy interests in the 1990s. It worked much less well for Russian domestic democratic development. In fact, it actually reinforced what we now know as a common phrase, the vertical of power. In those years, because Yeltsin was our guy, so much could be forgiven. I would refer you the published tran-

script of October 5th between Yeltsin and Clinton. Bill Clinton doesn't even ask about the civilian casualties from the assault and how many people died. He just says: "You did everything exactly as you had to, and I congratulate you for the way you handled it." The next day his National Security Advisor, Anthony Lake, writes him a memo: "Mr. President, you should have called Yeltsin on that question he never answered about banning the opposition media." He never answered that. And Clinton, in his own handwriting on that document writes, and I quote, "okay, but it wasn't the time for me to raise the newspaper issue on the 5th." Personalization and its costs. The black and white view that dominates, especially in the Clinton materials, less so in the State Department materials, but especially in the US media and that reinforcement loop.

I've had debates on this group of documents with correspondents for top American media who were in Moscow at that moment, October 3-5. And they say to me, "wait, you're making excuses for Rutskoy and Khasbulatov?" And I said, "no, no, no. By the time of their assault on the TV tower it was a black and white situation." And as Tom Pickering says in our documents, we had no choice but to support Yeltsin completely. But there were turning points before then—the Danilov Monastery was mentioned. Negotiations. There were points at which other outcomes were possible and the documents help us see that contingency and the role of agency and decisions.

Let me move to the third, the takeaway, the early criticism. There's a wonderful cable written by Jim Collins preparing Warren Christopher, who's coming to Moscow later in October after the crisis. Collins writes to him about domestic politics. It's very complex and Collins questions Yeltsin's decision to push through this half-baked constitution, which concentrates the preponderance of authority in the hands of the chief executive. Collins says, "even many reformers worry about establishing a new democracy so heavily tilted toward presidential power." The cable describes the split between the cautious reformers. It's interesting, the contrast

between evolutionary and revolutionary legal and constitutional change. And Collins clearly describes this ban on media presence, newspapers, media, television, for any of the opposition including the Congress. This early skepticism is there in the documents, it was not shared at the top.

Finally, the economic crisis. You see hint after hint after hint. We published one of the briefing memos from Sir Roderick Braithwaite, who had been the ambassador to the Soviet Union and to Russia for Margaret Thatcher and John Major. And he writes in January 1993 that a fundamental problem in Russia, is that it has not figured out what to do with the rust belt of the de-industrialized heart of the Russian economy. I'm reminded of the new memoir by Fiona Hill, who argues that in fact this is something Russia has in common with Great Britain and the United States—the failure to deal with the human, political, and social costs of de-industrialization results in more radical politics in Russia, in Great Britain with Brexit, and in the United States with Trump.

What's fascinating to me is the way in which these four takeaways point us to a certain extent toward the future, but also reveal the deep flaws and blindness of US policy. There's the repeated use of a certain shorthand: These are the reformers, so we have to support reform. This was a kind of Bolshevik reform (I think Peter Reddaway coined that phrase "Market Bolshevism" to describe it) that has had political consequences to this day. Thank you.

Stephen Nix:

Thank you so much, Thomas. Thank you for guiding us through that period and your impressions. And yes, I just read some of the cables that you and Svetlana exposed. Terrific work on your part to get that information and get it out to the public. Very, very important for the public to know what happened and the formation of the bilateral relationship and why it was formed the way it was. So thank you for that.

We're going to open it up now to the audience. And again, I'd like to guide this conversation if I could,

towards the future drawing from what you heard on this panel and the previous panels at a time of a transition, a political transition in Russia. We don't know when that time comes. Vladimir Kara-Murza continues to remind us that it could happen at any time. But drawing from what we've heard today, I would like to hear from all of you, your thoughts on in the time of period of a transition, what can we learn from the pitfalls that Thomas described, economically, politically, diplomatically, when we get into another period of transition and change. And I'll throw out some topics now, Lev mentioned the elections and the fact that the elections that were conducted this period may have been the only democratic elections that the Russian Federation has had. So again, we can talk about a new constitution, we can talk about elections that would precede, we think, a new constitution for Russia. At least we hope so. We can also talk about procedure. What should be the procedure for ratification of a new constitution if that is what the Russian people support and the government proceeds on? How does that unfold?

I'm throwing out a lot of different topics that we'd like to hear from you on. And so again, we have a Russian audience, so I know there are no shy people in this room, so you want to make a question or a comment, please raise your placard. And I see one from Andrei already. Please, you have the floor.

Andrei Illarionov:

Thank you very much. But before we go to the Russian audience, may I ask a favor from our distinguished colleagues trained and practiced in Anglo-Saxon legal tradition. May I ask Peter, certainly Stephen, certainly Will, and Thomas—could you provide your legal judgment from the point of view of Anglo-Saxon or American legal and constitutional tradition on Decree No. 1400 of September 21st, 1993? How would you qualify this document, and how would you qualify the actions of President Yeltsin from September 21st up to October 4th? From the legal point of view, not from the political point of view.

Peter Solomon:

Here context is all important. How do you analyze a presidential decree to abolish the legislature and call for elections to a new one? If you want to analyze it as part of an existing flourishing legal system, then it's one thing. But if you assume that it's already a revolutionary situation in which extreme measures are called for, then in a way the whole legal structure is suspended, right?

Operating from with the current legal system, Zorkin and the majority of the Constitutional Court were correct that the decree was unconstitutional. But arguably in practice this perspective was already irrelevant.

Kathryn Hendley:

He's asking us to talk about it through the lens of American constitutional law,

Peter Solomon:

Well, I don't know how you do this meaningfully.

Kathryn Hendley:

It's just completely apples and oranges.

Peter Solomon:

Then you'd have to go to the Civil War, you'd have to go to...

Vasily Gatov:

1800. The election of 1800. Johnson, Adams.

Kathryn Hendley:

Like the suspension of Habeas corpus during the Civil War, right? It is something akin to that, isn't it?

Peter Solomon:

Maybe akin to the sort of things that courts do in wartime, a whole other rich subject.

Lev Ponomarev:

Like Lincoln, during the Civil War. What do you think Peter?

Peter Solomon:

Well, if you look, at the American Declaration of Independence in 1776, you would draw drastically different evaluations from the viewpoints of British law and American law. Or take the Emancipation Proclamation of 1863 freeing the slaves. It looks different from the vantage point of traditional property rights, as opposed to that of human rights. So, there are these turning points, and sometimes the turning points succeed. Sometimes the turning points fail.

Kathryn Hendley:

But I think this goes to a point that we were talking about this morning. In making a constitution or thinking about law, are you trying to reflect what people want? Are you trying to move society forward in a way that maybe the people don't even know that they want but is very constructive?

The classic example in US legal history is Brown versus Board of Education in terms of the desegregation of the schools. People who have studied that decision and its aftermath argue that it really wasn't the decision of Brown, it was the later legislation. But the point is that it was not where society was, the decision was out in front of society. Its goal was to make better citizens. That's what we're all getting at here: you are at a pivotal moment and it's hard to say exactly from a legal point of view how we should think about that. I think we've perfectly illustrated the point that when you ask two lawyers, you get three opinions.

Peter Solomon:

When you're in a revolutionary situation, law is down in a pretty low place.

Kathryn Hendley:

Yes, niceties don't apply.

Stephen Nix:

Andrei, I don't know if the American delegation has completely answered your question, but we gave it our best effort. Someone else?

Ekaterina Mishina:

I just wanted to add some details to the discussion of the Constitutional Court's opinion on the Decree No. 1400 of September 21st, 1993. It happened 30 years ago, and many details have been forgotten and so I just want to refresh that. As you know, there were dissenting opinions in the general opinion of the Constitutional Court's review of the presidential Decree No. 1400 and the presidential address, which were both delivered on the same day, September 21st.

I want to offer you some details from other dissenting opinions which provide more details to the picture. Justice Ernest Ametistov pointed out that the court violated provisions of the Constitution and the 1991 law of the Constitutional Court. Specifically, the court reviewed the constitutionality of the presidential decree and the presidential address in the absence of a request. Justice Ametistov noted the Presidential address was a political statement, and the court had no power to review political issues. Also, the Constitutional Court could only opine on the constitutionality of the President's activities and decisions following the request from the Congress of People's Deputies, the Supreme Soviet, or one of the chambers of the Supreme Soviet. But no such request was submitted to the Constitutional Court.

Another important point. Two hours before the Constitutional Court went into session, Chief Justice Valery Zorkin, who had been openly associating himself with the Congress and the Supreme Soviet since December of 1992, participated in a press conference at the Supreme Soviet. At this press conference, Zorkin offered very negative comments on the presidential decree and the presidential address, so he was not impartial. No officials were invited, namely President Yeltsin, who according to the procedure established by the law had to be invited.

In his dissenting opinion, Justice Nikolay Vitruck stated that the Constitutional Court, in delivering its opinion of September 21, 1993, committed numerous violations of Constitutional Court. He concurred with Justice Ametistov that the court could

not review the constitutionality of normative acts under its own initiative in the absence of request.

Justice Vitruck criticized Chief Justice Zorkin for allowing numerous violations in the procedure of deliberations, and that he openly pressed those Justices who were present the chambers. By pressing the Justices, Zorkin impeded a comprehensive and impartial analysis of the decree. Justice Vitruck mentioned that he was not given the opportunity to read the decree. He was just invited to the chambers, where he was told "Please rule on the constitutionality of the decree, which you never read."

Justice Kononov, whom I already quoted today, also cited numerous procedural violations. He stated that the court's conclusions that the President violated his constitutional duties, which the President mentioned as the grounds for his own actions, were biased, irrelevant and poorly motivated. So, the court was not impartial, it was biased.

My last citation will be from the dissent opinion of Justice Tamara Morschakova, who clearly stated that the court could not initiate the issue of impeachment because this initiative displays the active political position of the Constitutional Court, which was strictly prohibited by the 1991 law on the Constitutional Court. Justice Morschakova assessed the court's choice of the moment to suggest impeaching the President as a move to exert political pressure. Also, the court had no power to opine on the grounds for termination of the powers of the President.

This opinion of the Constitutional Court was highly questionable, and the dissenting opinions of the aforementioned Justices give a broad picture of what was happening on Ilyinka street, Building Number 21. The Justices got together late at night, and they were coerced by the Chief Justice, who was very actively involved in politics at that time.

Stephen Nix:

You've given us a lot to consider. Thank you so much for that. I'd really like to focus on what was discussed

in the earlier panel and that's the separation of powers issue as it relates to the powers of the President of the Russian Federation and what resulted from the events of October, 1993. Effects that we are still contending with today. Moving forward, how do we deal with this issue? Again, is the way forward strictly a parliamentary republic? Are there other variations on the theme? I'd really like to hear from people their thoughts on how we proceed. I'll just offer an example. I was privileged to be asked to be on the working group that drafted the constitution of Belarus for the democratic forces of Belarus. And I can just tell you it was me and a group of Soviet era judges and legal scholars that really argued fiercely for a parliamentary republic based on facts that are present today. And we had lots of discussions. Is that really the way to go? Do we base future decisions on what we're dealing with now? I'm just offering that as a question. I'm not stating an opinion one way or another, but I'd like to hear from all of you.

Vladimir Pastukhov:

Thank you so much. I won't take a lot of time as well. I want to thank Thomas. To be honest, it was the biggest input to my mind about the events of 30 years. I have thought about it for 20 years and thought about the cables and letters and the conclusions. So, thank you so much and I want a link to the book. Then I want to raise an issue which to raise a question, which maybe I don't know how to answer myself. We all understand that a reaction after the revolution is something unavoidable for a revolution. And the communist reaction after three years, four years of the Gorbachev revolution from 1989 to 1993 was irrevocable and one of the key results of the 1993 events was that it postponed this reaction for 10 years. So, the question is was it good or bad?

I remember I had my American friend who was somewhere in the beginning of nineties told me about this practice of the chickenpox parties, and I was shocked at the time, where children are gathered together to have chickenpox as early as possible. So, the question is shouldn't we have a communist slight reaction, rules reaction I would say, in the middle of nineties and then it would be a

chickenpox sickness instead of a plague, which we receive in 2003 up to today. So, this is the issue and that the issue, which led to another question which is very important. When we talk about the compromises, which we took to achieve, to assure, constitutional opportunities, I think the biggest compromise, which should be started with was the compromise between past and future. That is the problem. And over that period we were not able to achieve this compromise. But the same issue would appear in 2, 3, 5, 10, 15 years, I don't know how much Putin, but we all know that somehow it'll be resolved.

So, then the question will be should we again try to achieve with one side or should we go in a way that we should find a way to compromise between Putin's generation, somebody, I'm not talking about the war criminals, but still we understand that he introduced serious and significant forces and there will be a lot of people who will be against. So should it be the compromise or should it be just lustration, cleaning, et cetera. That's an issue. And when we talk about the presidential or parliamentary form, for me, that's nothing because the form itself doesn't prevent anything. I appreciate the address about Hamas. It's true. So the question for me, we should choose the form which is most suitable for better compromise. On my view, parliamentary form is better only in one handle. It gives more space for compromise. That's all. Thank you.

Svetlana Savranskaya:

After the last 23 years of Russian history, I really wonder if anybody doubts the need to move to restructure Russian political structure towards strengthening the parliament. It's either a parliamentary republic, or a structure where the president's powers would be severely limited. That is about the future.

What I saw in the history is this disrespect toward the parliament. You can see on Yeltsin's part, from very early on in the documents that we have, he always talks about the parliament dismissively: "Oh, the Supreme Soviet made this decision. It's good that nobody takes them seriously". And in his

talks with Clinton, Clinton doesn't say in response. "Actually, it's a good idea to take your parliament seriously". Everybody laughs.

We have another document that we discussed, which was published in April 1993. An American parliamentary delegation comes to Russia, and they discuss all kinds of issues: economic reform, arms control, human rights. They never mentioned "how is the parliament doing? How's your relationship with parliament?" These are members of Congress, they should be interested in the relationship between the president and the parliament in Russia, but they're not.

There is this deep tradition in Russian practice, where the parliament is simply not taken seriously. It's all presidential power. We should think creatively about the next stage of Russian development where parties actually experience a transition of power. And thank you, Vladimir, for bringing up the metaphor about the chickenpox party. I think if Russia had one change of party in power, the communists would not be running Russia today. The difference would be that we would not have had Putin for 23 years if elections actually took place.

Stephen Nix:

Thank you. I think you loudly advocating for more of a parliamentary style republic. Thomas back to you.

Thomas Blanton:

Svetlana always says it better than I do, but I wanted to come back to that same point, which is a key dynamic. We only see briefly mentioned in the documents about September 21st and Decree No. 1400, is that on September 19th, Poland holds a chickenpox party and Kwaśniewski and the communists and ex-communist win the plurality in the parliamentary elections of September 19th.

I think it's at that moment, and it's only suggested or hinted in the documents, that Yeltsin takes the final two decisions: First, the Decree No. 1400;

and second, no early election for the presidency. He could see if the Poles, with Solidarity and their history, could give Kwaśniewski a plurality in the parliament—the Sejm, what's going to be his fate? In the immortal words of Strobe Talbott, there was just too much shock and not enough therapy in the reforms.

Stanislav Kucher:

I have a comment and question for you as a historian. As far as I understand Russia opened its archives just for a while, just for a couple of years probably. Is it true or is it exaggerated in your point of view?

Thomas Blanton:

They're open today, but I can't go.

Stanislav Kucher:

Okay. My second question. We observed a competition between the new and old legitimacy of the Congress of Deputies, and the new legitimacy of Yeltsin as a president that was elected in 1991. One of the lessons that we should probably learn, and that was a big mistake of Russian democratic process, is that a parliamentary election never happened after the presidential election and the presidential elections never happened simultaneously with the parliamentary election in 1993. As far as I know, that was one of the topics for Clinton and Yeltsin in the autumn of 1993...about possible presidential elections too, but it never happened. That's what the Russian opposition should learn. The old political structures should be reelected at the same time or within six months or one year, but in some kind of foreseeable future.

Stephen Nix:

So you're proposing a two-tiered electoral process, correct? At the same time, or one after another? Either presidential, then parliamentary, or vice versa?

Vladimir Pastukhov:

I just wanted to bring into the discussion some of the insights of comparative politics and political science. First of all, on the type of regime that

works best with new democracies. I mean we have this huge literature headed by Linson Stefan's work that argues that when you look at the cases in the world at large, presidential systems are more likely to deteriorate into authoritarian than parliamentary. Fair enough. But can parliamentary ones be, can you imagine a parliamentary system in Russia? I can't actually, because I don't think our people could function there without a strong executive. So in my view, probably a form of semi-presidential as the in-between one. Something like the French system, a version of that where you have a president, but the president doesn't control the executive branch, which is elected, and where the prime minister is a creature of parliament. They can be of different parties, and it encourages rotation.

Now it's complicated for people to understand if you're interested in the broad public, but I just think functionally it's the thing that would work best. The other person I want to refer to is Tom Ginsburg, who's done a lot of comparative constitutional analysis. He has a coauthored piece in the last few months, I think it's in *Journal of Politics* called the "Constitutionalization of Democracy." And what's he talking about? The trend that he observes in new constitutions of democracies to include political parties, elections, the rules of democratic process. Now those are not in the American Constitution, those were not in the Russian Constitution. There are arguments against that, that it solidifies, puts in stone things that shouldn't be. On the other hand, you think about what happened in Russia in the last 25 or 30 years. You have a different series of elections or for the Duma. The rules changed with almost every election just on the basis of what people in the presidential administration thought would produce the results that they wanted. So there was a kind of manipulation there with the system of representation. But I don't know frankly whether a future Russian constitution should include parliamentary elections and the rest. But it's certainly something that people should think about.

Stephen Nix:

Your preference would be that this would be set forth in separate legislation.

Peter Solomon:

Probably. Once you have Putin's people dominating, they simply change the rules for elections every go around. That's not very good. In fact, people who watch these elections would become quite cynical. It's one of these dilemmas.

Stephen Nix:

And as the audience knows, the big change in the upcoming presidential elections is going to be an expansion of electronic voting, which will allow total domination of the results. Yes, it's reflective of changes every cycle. There's a dramatic change in the way elections are administered. So, we've heard about parliamentary style, you're advocating a little bit more for a mixed system. Happy to hear anyone else who has an opinion on this. We'll go first to you William, and then we'll go to you Vasily.

William Pomeranz:

I will just turn to the provision in the Russian Constitution that talks about the division of powers and the division says that state power will be divided between executive legislative and judicial power and that all institutions will be autonomous. I think that most people have gravitated to the second part of that sentence and the idea that there would be autonomous institutions. But the most important part of that phrase is the notion of state power. And state power has a long tradition in Soviet law and in imperial law, and it has never been associated with division of powers. When Russia drafted a notion of a division of powers, it borrowed from very different terminology of Russian history, but they never reflected on what state power meant in practice.

State power in Russian history has never been divided. And so, from the very beginning of this provision, the notion of separation of powers was flawed because they began with the notion of state power and then started to talk about how it would

be divided. And I think that was really the starting point of why the separation of powers for the most part hasn't worked in the Russian Federation.

Vasily Gatov:

I just want to add a little bit of reality into this conversation, because whatever happens in the next years, meaning the regime that will succeed Putin, it will definitely not be parliamentarian. It will likely be a "dictatorship with good intentions." We hope for that and will move most likely in, I don't know whether it will end up with Moncloa Pacts of the Spanish model.

Russians will need to negotiate a general compromise within themselves, within Russia. How will we live together, how will people who've been killing people live together with people who didn't want to kill people and are really angry about that. This is not going to happen the same way as with the defeat of Germany, which resulted with occupation of territory. I mean, Russia will not be occupied under any condition.

When we're speaking about what type of division of power or what type of parliamentarianism or presidential or semi-presidential system will Russia have, the problem is that it will include both.

Because it will involve a dictatorship that will move towards democratization and an inevitable round table that will be a proto-parliament.

If people like what happens with the roundtable, they would probably support parliament. If they like what the benevolent dictator is doing, they will support presidential form of power if not even monarchy. I mean, why not? Russia has a tradition of monarchy.

Thank you very much for your great effort to declassify the document because not only are they important for legal scholars, but for historians and journalists, they are like a pirate trove of knowledge.

Stephen Nix:

Okay, thank you Vasily for the sobering commentary and trying to help us manage expectations. Stan, you have a comment?

Stanislav Kucher:

It's both a comment on a question, and thanks to Vasily. You are kind of reading my thoughts when you said, let's bring this to reality a little bit. It was no one other than Putin's chief propaganda peddler, Margarita Simonyan, Chief of RT, who said, I think 13 years ago, that the first truly free election in Russia will bring Hitler to power. She said that, and she's probably happy with the kind of Hitler they have now at the moment. But that's still pretty much true. And this is exactly what Vasily was talking about. I imagine a pre-election in Russia next year, let's say Professor Sullivan is right and Putin's body is in a fridge somewhere and we have this reelection tomorrow, who do you think will win?

Probably someone like Prigozhin, or probably Girkin in that case (aka Strelkov), right? I mean it is nice and easy. So, what do you think, is there a stance that you think the United States could take on that in the very near future? I mean, is there any idea of a political stance that the United States can take here, dictatorship or not a dictatorship? Can they just let things go to a certain extent or not? That's question number one.

And thing number two is, I think what Russia really needs is a sort of Magna Carta where representatives of different political forces, movements, would sit together at some point. Opposition, liberal opposition, right wing opposition, current political elites—where they sit together and think of way of how to turn Russia from a one man ruled society to something else. Whatever we're discussing here and how can we launch a process like that and Magna Carta like that. That's something I think we all need to discuss. Thank you.

Mikhail Khodorkovsky:

Probably, without any doubt the question of how Russia is governed will be determined by the Russians themselves. That said external forces and parts of the Russian democratic opposition may be able to have an influence on this. The question is in what direction to exert this influence? Before

the war, I had a different idea of this than now. But after the war it became very clear to me that a key component of this is to ask what happens after Putin. Russia should not be an aggressive state. What is the danger in a system that is centralized in Moscow, and even more so a system centered on a single person, Putin? In a country as vast as Russia, there are very few common uniting elements in the whole country.

What I mean is elements that would allow that center, Moscow, to say to the whole country, you need me. In the Russian tradition, the one thing that can unite everyone is an external enemy. And this truth is just an absolutely inevitable component of such a centralized regime. If we want to try to change this, we've got to offer, propose a different system of governance and to exert what influence we can in order to give this as much of a chance as we can give it. The first question is what is the source of power? If the source of power is the federal center, we'll come right back to that variant of which I spoke earlier.

If we say that the source of power are the Russian regions: situation may be different because the regions don't have a need for an external enemy, they're much closer to the voter and indeed they're further away from the country's borders.

Second question is the separation of powers. I will be the first to admit that a parliamentary republic can be just as good a mask for a dictatorship as a presidential republic can be. The Soviet Union was formerly a parliamentary republic. But nonetheless, in a parliamentary republic, the chances for a successful separation of powers are several times better. Some colleagues and I have often had discussions about what would be better or would it be better for Russia to have a Politburo running things as opposed to Putin running things.

The Politburo was more predictable. What I'm getting at is that the structure of the future power, the foundations, are being laid right now today. Because if right now we are creating a coalition model of the opposition, there is a greater probability that

a multicentric model of power will be created when the time comes forward. If on the other hand, right now we seek a hero who will come to replace an anti-hero, Putin, the probability is higher that the new hero will come to take the place of the anti-hero and become an anti-hero himself.

Andrei Illarionov:

I would like to endorse what Mikhail described just now, because it's not just the result of the political process that is important, but how those results were achieved. We have seen from our history, when one hero, Mikhail Gorbachev, was fighting the *nomenklatura*, along came another hero, Boris Yeltsin, who became the hero, casting Gorbachev as the antihero. And after that, Yeltsin's successor then became another hero in some circles. That is why we can expect another hero to rise to fight today's antihero, Putin.

I would like to try to develop what Peter was talking about—these presidential, parliamentary, or let's say semi-presidential models. It would be correct to consider the history of Russia.

We did not start even with a semi-presidential system like a French system. We started with the American system. It was a very early stage of the Americanization of Russia's political system. When we elected not only a president but also a vice president who has been mentioned early today, Mr. Ruskoy. We know that as soon Mr. Ruskoy became vice president, he became immediately became a challenger to the boss and leader of the opposition. We know how it ended. It did not end well...neither for Mr. Ruskoy nor for the whole political system.

After that it this political system evolved, to more of a French political system in the 1990s, with a president and with some rather reasonably powerful prime minister, even when not fully supported by the parliament.

The best example is Mr. Primakov and his government, which was the only government that was

fully supported by parliament. How did it end for Mr. Primakov? Not very well, as we all know...he was sacked. Why? Because he immediately became a challenger to Mr. Yeltsin and definitely a rival candidate for the presidency.

From this legal administrative process, he immediately became a political enemy. If you look at this French political system, each prime minister in the 1990s was immediately considered by political circle and by society as a challenger to the boss.

General Lebed was once considered to be the candidate for presidency. Mr. Primakov, Mr. Stepashin, even Mr. Kiriyenko for a short three months were considered as potential candidates. The same when Putin appeared, before he was named as a successor.

Putin learned this lesson, and that is why all other Prime Ministers prefer to keep an extremely low profile and not demonstrate any interest in political power. Today, the possible candidate to replace Mr. Putin is [Prime Minister] Mishustin.

Is this a unique feature of Russia? No, just look at Ukraine. The Ukrainian political process was similar to some extent. Even though it's a different political system, who were the candidates for replacing the president? Prime Minister Kuchma immediately appeared as a challenger. With President Kuchma, Mr. Yushchenko, the prime minister became challenger. Then Ms. Tymoshenko, then Mr. Yanukovych, and so on.

This is a process of this political system. The prime minister immediately becomes the challenger and a political enemy. That is why it's an invitation to the Civil War, either a cold civil war or hot civil war, depending on the emotions of the population and the political symbols. We should understand that.

Let's look at the parliamentary system, and whether it's possible to have a parliamentary system in Russia or Ukraine or in that part of the world. We have only three good examples: Estonia Latvia, and Lithuania. Three countries with a very different political culture and different political/legal

historical traditions. The question we're talking about now is the number of countries with different political, legal, cultural tradition, which I would call Muscovite/Byzantine, which would include Russia, Belarus, Ukraine, Moldova, and Georgia? What we can see there? We can see there that a parliamentary republic does not work for the moment. We don't know what will be possible tomorrow, but we have only a strong president, whether a Yeltsin or Yushchenko. If somebody tries to establish a parliamentary system, like in Georgia and Moldova, behind the official circles will be the backing of an omnipotent oligarch—Mr. Ivanishvili in the case of Georgia, or Mr. Plahotniuc in the case of Moldova.

The official structure we are talking about would be one story, but real political power, as we know in Georgia, belongs not to the President, not to the parliament, but to Mr. Ivanishvili. It did belong to Mr. Plahotniuc until he was expelled from Moldova and is now the subject of the prosecution.

This is a very important problem that you invited us to discuss. The essence of political culture of those countries creates a very strong demand for these strong executives, whether it is official or unofficial behind the scenes. The real question is whether it is possible for this political culture somehow to make a breakthrough to a parliamentary system, which is definitely better than the presidential system from this regard. Whether it's possible, for example in the United States, a presidential system, it's got problems and caveats, but it more or less it worked for about 250 years. Maybe not perfectly, but so far a little bit better than in some other places. But the question for this part of the world is whether it's possible, what kind of political model could create some semblance of whatever parliamentary system or presidential system with a very substantial limitation of executive resources. We have not seen any historical example, and we don't know whether it's possible at all.

Stephen Nix:

Thank you, Andrei. That was great. Thank you for reminding us of this political situation in Ukraine.

I had forgotten that it's a very neat linear line of succession that took place there. Let's hear from the audience, please.

Question:

I wanted to link this discussion to our previous panel and a couple of very important things that were said. You highlighted this fundamental speed of reform, and how it took everybody by surprise. And we also touched on the fact that legal literacy is almost non-existent. There will be this fundamental tension between the desire to affect reform and the desire to arrive at this new structure sometime in the future. The beautiful Russia of the future. And the ability to reach this public consensus and support it because we're effectively at ground zero, right? The speed with which the public can acquire even the basics of understanding the constitution and the speed at which the reform process will be happening will not be the same.

I'm afraid that unless there are measures in place, then we unfortunately are going to end up with the same result where the constitution, where any high-level document that is generated by highly educated experts with decades of experience and has absolutely no buy in from the general public.

The question becomes when do we start this process? What safeguards can we have in place that civic education will actually take root. I have been in civil society for 17 years. What I have learned was that there hasn't been enough effort to educate and engage with the citizens. We need to not miss this lesson again and support these civic education, public awareness, and phrasing efforts now...but how we do it when some society is in exile, when pretty much any independent organization that has been doing things like that has been decimated?

Vasily Gatov:

You may be surprised, but Russia makes a serious effort to educate kids about the Constitution, about the division of power, and so on. On the president's

website, there is a section for children which was written literally by a person who fully believes in the constitution, division of power, and so on. It's a mandatory part of fourth grade education. They have to spend a certain amount of hours reading constitution and reading this part on Putin's presidential website.

The problem is that kids (and this is clear from some recent focus groups surveys) that kids see an imbalance between what they read and what see in real life around them. The war only added to that.

Kathryn Hendley:

I wanted to bring another element into the conversation. I agree with Mr. Koski that the question of what's going to happen to Russia is up to Russians. Yet the reality is that all of these countries are going through huge transitions, and that a lot of the nuts and bolts are going to be paid for by other countries and other multilateral institutions. I think we should pay a little bit of attention to the politics of development. I totally agree with Sophia's argument. I was there in 1993 and I was making all of these arguments to USAID about the importance of bottom-up reforms.

Their answer reveals the problem. They asked: what are we going to show Congress in a year? Right? And that's the problem we have here: maybe rethink the whole funding model and the whole way we do development.

I have to inject a note of realism. I don't see very much room for optimism. Because as we look at other countries (whether it's Afghanistan or Iraq or any country that we go in and try to "help") help we offer is never really what they want. I guess I hope, and I'm sure Sophia joins me in this, that the next time around in Russia that we pay a little bit more attention to what the Russians want rather than what the consultants want. What will they be able to provide? Can they work on this issue of bottom-up socialization in terms of issues of democracy, civil society, and law.

Grigory Vaypan:

I wanted to mention one element of the separation of powers that has been almost entirely missing from this discussion, and that is the judiciary. While we all think of 1993 as the end of a judiciary in Russia that can stand up to the President, at the same time, it was also hardly a court (speaking of the Constitutional Court) that was impartial at the time.

Ekaterina provided a good summary of all the flaws and the reasoning why the 1993 case should have never even taken up. The case was inadmissible. There was no adversarial process whatsoever. But even if we look at the dissenting opinions, I find them problematic as well. In some of them, their reasoning legitimizes presidential emergency rule. It's just striking if we compare the speed with which the constitutional court adjudicated the case in September 1993, and the speed with which the same constitutional court adjudicated the case on the annexation of Crimea in 2014, or the case about Navalny's access to the ballot in 2018, or the so-called Constitutional Amendments of 2020.

It was the same speed. The political context was different. In 1993, the court was standing up to the president. In subsequent years, the court was siding with the president. But the lack of judicial integrity was there all along. It seems to me that as we look at the future, there's no way forward without judicial integrity, judicial independence and impartiality—meaning a true judiciary within the system of the Russian state.

William Hill:

I just wanted to reference the times I lived in the Soviet Union. I studied, worked, and lived in Russia a lot. If the society residing in the Soviet Union could produce the reform movement that many of you in this room took part in, I see no reason why the Russia that I have experienced over the last 20 years cannot also very quickly produce something that is analogous. Will it? That's a different question.

My experience as a practitioner has been not just in Russia. I've seen a number of ossified systems

that when they start to go, they go really fast, and one needs to be ready for them. I think Mikhail Khodorkovsky has hit an important point. A lot of you have talked about the separation of powers in the constitution, which is important, but also the devolution of power within the state is something that is equally important and can be equally effective in terms of providing a check on political things.

A final point from listening to everything. I've heard a lot about institutions, structures, and the constitution. I just wonder about the role of people. Can you envision this Russian constitution of 1993 if different people had been there? Could they have made it work? Or was the problem that it was a constitution that no people could have made work? I haven't heard a definitive answer, but it's worth thinking about this.

Ultimately, instances like this come down to a political struggle, and reformers have to win the political struggle. One of the things that one deals with both as an outsider and an insider, is what means are proper for the reformers to use in order to prevail over individuals or groups who do not subscribe to norms or rules of the game? What can you do in order to prevail, in order to stay empowered so that you can effect reform? I think ultimately the answer is: it depends. I think one needs to look at in Russia going forward, because it's certainly a question from the 1993 constitutional crisis—what Yeltsin did, what we from the US did in order to support him.

William Pomeranz:

I'll try to be short. So, I'm just going to deal with the question of who has sovereignty under the Russian Constitution. So initially it was the multinational people of the Russian Federation, without naming any sort of individual nationality. Putin has changed that because during the 2020 constitutional amendments, added a provision that states that the Russian language is the language of the state forming people, thereby putting Russia ahead of the multinational people of the Russian Federation. There's always the question of federalism and we'll deal with that tomorrow. But the federalism

that emerged in the 1990s and early 2000s clashed with national law and federal law. So, there was a major problem with devolving this concept to the regions. And this problem was only compounded by the fact that the Russian Constitution forbade the founding of an official ideology. So how can Russia actually change its constitution without including an official ideology?

Day Two

OPENING REMARKS

Pavel Khodorkovsky:

Good morning. Russia is hard to comprehend. I'm Pavel Khodorkovsky, and I started the Institute of Modern Russia in 2010 to deepen the knowledge and understanding of Russian politics and society among policymakers, experts, and journalists. Our main product is essentially analytical coverage. We are basically answering the question: what happened?

Today with the war of aggression against Ukraine, raising the stakes and upping the uncertainty, the main question on people's mind is different: What will happen? What will happen if the man in Kremlin dies? What will happen if there is another armed insurrection? What will happen if Ukraine loses the war? Those are frightening scenarios in the US because they trigger the core concern of instability.

But I believe "what will happen?" is not the right question. With Russia now more opaque and increasingly unstable, it's a multiverse of outcomes, where a seemingly concrete grasp of the chain of command can be appended by a phone call from Belarus to negotiate with a Russian mercenary. Now, what's the question then? I believe the question is: what should happen? What should happen in these scenarios? It may feel scarier yet to come up with these answers.

That's why I've now started the Khodorkovsky Foundation in the US—to bring the top experts on Russia together to formulate a positive vision for

the country's future. My job is to help you understand what should happen back there so that you can make better decisions here. We are kicking off this work with the question, "what should be the structure of the Russian state?" And the key to this is understanding the Russian Constitution. You're about to learn how the fundamental law of the nation was developed, what it can look like in the future, how it'll impact the judiciary, and what should be its parameters for a democratic transition.

There are a few things I want to highlight as potential topics that might surface during these discussions.

The configuration of Russia's future government will hinge on the internal balance of power. Today, a prevailing misunderstanding exists both in Russia and the United States regarding what kind of a Russian government configuration is in US interests. This misunderstanding could lead to unintended and potentially very harmful consequences. So, correcting this is imperative for mutual comprehension and progress.

Then there is the question of challenging historical narratives. The notion that Russia is inherently aligned with autocratic rule is a myth...a very hurtful myth that we must dispel. History teaches us that societal norms and political structures are not static. Switzerland, the prominent example of direct democracy has only granted full voting rights to women in 1970, the latest to do so.

Synchronizing perceptions and aspirations: I think that one of the crucial tasks is to align what the United States believes Russia aspires to with what Russia genuinely seeks. Understanding the desired structure of power, the rules of governance and the conditions for Russia's reintegration back into the European mainstream civilization is essential.

A fundamental issue today concerning Russia is obviously it's aggression and unpredictability. In international affairs, the US is often bewildered by the opaque and difficult to comprehend decision-making process of the current government,

leading to more uncertainty and tension. So perhaps our discussions could emphasize the creation of mechanisms and not just commitments. These mechanisms should ensure that both domestic and international agreements are not just promises but are embedded in a framework that guarantees compliance and accountability. We must recognize that declarations and procedures do not always align in present day Russia. Without a solid procedural foundation, any commitments, memoranda, and treaties can be easily disregarded, as evidenced by the war in Ukraine that started three months after Putin confirmed that he had no intentions of challenging the borders.

At this conference, we want to see if we have a consensus, or can reach a consensus. If there is one, we want to try and convince the stakeholders that times have changed, that we have changed, and that we can expect that after Putin there will be a fundamental change. We'll have to discuss what changes are realistic in Russia and desirable for Russia. We must prepare for the post-Putin era, and we must answer the question of what should happen by examining these realistic and hopefully desirable changes for all parties.

There are two fundamental reasons why I believe that the time for formulating this vision is now. The first is crisis management and planning. If you enter a crisis without a plan in place, you will quickly become forced into a series of unavoidable tactical decisions and will simply lack the time to formulate a strategy. I think this is well understood, but the deeper problem is that you're forced to build a team around expertise in solving tactical issues as opposed to a team of strategists.

The second point that I want to make is that coalescing support for a plan is better than coalescing a support for a personality. A well-formulated consensus in support of a plan, a strategy, a program—that can have broad support and withstand the changes of political figures entering and leaving the stage. Without such a vision in place, political leaders are going to be selected based on their likability, which very quickly brings us back to the personalis-

tic and inherently authoritarian model. Our mission is to create a robust framework for Russia's constitutional evolution, and to form a working group dedicated to crafting a white paper that would reflect these discussions and deliberations.

I'd like to quickly highlight the panels that we're going to have in the program today. The first panel that we're about to listen to and participate in is on the Russian Constitution, and its initial design and further development. We'll delve into the flaws, the impact of constitutional amendments, and the 2020 counter-reform.

Panel number two will focus on the constitutional landscape of future Russia, and will invite us to contemplate the constitutional landscape and explore the topics like doomsday constitution and envision a system and post-apocalyptic scenario.

Panel number three is on the Russian judiciary and the rule of law, and lessons and prospects. It will focus on the relationship between the constitution and the rule of law, as well as examine judicial independence in Putin's Russia.

Finally, panel number four will address the constitutional parameters crucial for Russia's democratic transition.

To make sure that we have a successful and dynamic conference, I urge everyone to engage actively in the discussion, because your questions and insights are crucial to deepening our collective knowledge and understanding. We aim for a dialogue where ideas are shared freely, regardless of whether they agree with or differ from the prevailing views. Through this interaction, we can obtain new insights and progress that this conference aims to accomplish.

A few acknowledgements. I'd like to thank the Kennan Institute and the Wilson Center for graciously hosting us, and in particular William Pomeranz and the whole team at the Kennan Institute for providing support and guidance every step of the way that allowed us to put this event together.

I would like to also extend my deepest gratitude to the distinguished experts who contributed their wealth of knowledge and their time to the successful development of the program. Our planning began with discussions on the history of constitutional development, leading us to the best works on the topic and their authors, many of whom we'll hear from today. Your recommendations, your hours on Zoom, and hundreds of messages on Signal helped shape this event. To each and everyone: my profound gratitude.

This conference is an opportunity. It's an opportunity for you to contribute to a vision of Russia that is democratic, predictable, and is a constructive player on the world stage. Let's engage in these discussions with open minds and the shared commitment to a more stable future. The result could well be a roadmap for transformation.

Thank you for joining the Russia's Constitution and Democratic Transit Conference.

PANEL I: **Russian Constitution: Initial Design and Further Development**

Alexandra Vacroux:

Thomas Jefferson wrote in 1823 that a permanent constitution must be the work of quiet leisure, much inquiry and great deliberation. We can hardly describe the current moment as one of quiet and leisure, and in fact, it's probably never the case that constitutions are drafted in a period of quiet and leisure, but rather in a period of turmoil. I can promise however that the scholars at this conference and on this panel have invested a lot in the inquiry and deliberation part of Thomas Jefferson's statement.

We're going to start today by looking at the Russian constitution of 1993. It's achievements and failures, as Peter Maggs put it. Ekaterina Mishina is going to get us started with the birth defects of the 1993 constitution and how it was amended, definitely for the worse in 2020.

Ekaterina Mishina:

It's a big honor to speak here today and thank you so much for joining us. We really wanted this event to be a constitutional law Woodstock. Sadly, some of our colleagues, the absolute best experts on constitutional law, could not travel from Russia for obvious reasons. Some could not travel from Europe due to bureaucratic problems but will be participating via Zoom. So, here we are, and we'll try to give you a picture of the adoption of the Constitution and its further development.

I will be speaking about the initial flaws of the fundamental law of Russia, and how it was adopted in 1993. I must make a point that for almost three years the holiday that we used to celebrate on December 12th, the day of the Russian Constitution, is not a holiday anymore. Now it's the day of remembrance of the original Constitution, because although this constitution was obviously not perfect (it was tailored to suit a specific Russian president, Boris Yeltsin), it established the principle of the separation of powers, the supremacy of international law, human rights and freedoms as the highest value, and the independence of courts and judges. And while it granted enormous powers to the Russian president, Boris Yeltsin, for whom the constitution was written, Yeltsin did not actually extend these powers beyond the limits of the constitution itself.

His successor took a different pattern, and that was the pattern of persistent strengthening of the power *vertikal*, which reached its ultimate expression in the 2020 constitutional amendments. By the powers granted by these amendments, we now have the president who is literally irremovable and uncontrollable.

The initial design of the 1993 constitution also provided for a powerful President, which is unsurprising, because the Russian constitutional model was based on the French constitution. It made the President the most powerful figure within the system of powers. In the Russian constitution, the President is not just the strongest figure, he's the main organ of state power. Article 10, which estab-

lishes the principle of separation of powers, doesn't mention the president. We find him in Article 11, which lists the organs of state power according to four branches: the legislative, the executive, the judiciary, and the president who is mentioned first on this list. An analysis of the original text of the constitution leaves no doubt that the president is the main actor and the most important organ of state power. This conclusion is also reflected in the Russian legal doctrine.

Many Russian constitutionalists and legal scholars share this point of view, including, surprisingly, Valery Zorkin, the notorious Chief Justice of the Russian Constitutional Court. He mentioned in his commentary on the Russian constitution that the president is *de jure* and *de facto* present in every branch of power.

Professor Vladik Nersesyants, a noted Russian academic, wrote back in 1999 that the system of separation and interaction of powers established in the Russian constitution is asymmetric and imbalanced, and that it displays an obvious inclination towards the powers of the president. Nersesyants also pointed out that a number of constitutional provisions indicate that the presidential power is placed above the classic triad of branches of power. According to another prominent legal scholar, Professor Oleg Kutafin, the constitutional provision establishing the president provides for the mutually coordinated functioning and interaction of organs of state power and envisages a specific institution of presidential power which sits above other branches. And my noted colleagues, Professor Krasnov and Professor Shablinsky point out that by excluding the president from the triad of branches of power, the Constitution places him above this classic triad.

I must make a point that sadly this constitution is not free from the Soviet legacy, and Article 80 part 3 provides the best example. According to this article, the Russian president determines the guidelines of domestic and international policy. This is a very old norm that not only poorly complies with the principle of separation of powers, but which unfortunately transferred over from the Soviet constitu-

tions. First it appeared in the Constitution of 1918, where it was the power of the all-Russian Congress of Soviets and the all-Russian Central Executive Committee. Then we see it in the 1977 Constitution of the Soviet Union, where it was the power of the Communist Party and in the 1978 constitution of RSFSR which was amended in 1991 and 1992. That was the power of the RSFSR Congress of People's Deputies, the highest organ of state power. This Soviet norm outlived the Soviet Union, and now this power belongs to an individual and not to a collegial body of power.

This presidential power is a time bomb, because due to this constitutional design, the construction of power was stripped of balance and now the president can dictate what to do to all branches of power. Sadly, this power was confirmed and extended by the Russian Constitutional Court, which made these guidelines of domestic and foreign policy binding—first for the Russian government and then for all bodies of state power.

Also, I must note that another obvious Soviet legacy may be found in the vague definition of the procedure of formation of the Federation Council. Due to this vague definition, this procedure has changed many times, to the point that the selection procedure of the upper house of the Russian parliament has been stripped of its representative nature. Up to 30 members of the upper house are directly appointed by the president, seven of them for life.

The current Russian constitution has been amended multiple times, and I literally cannot name a single amendment that was either good or necessary. All the amendments were excessive, and some of them were disruptive.

One of the most dangerous and disruptive amendments was made in 2014, eliminating the best court in Russia, the Higher Court of Arbitration, the top economic court of the country. The lawmakers who initiated this procedure wrote in the explanatory note: "we are suggesting to do this in order to ensure the uniformity of the application of law and to eliminate the possibility of denial of access to

justice.” But the amendment was not the merger of two courts, as was presented both in the media and in the explanatory note. It was a hostile takeover performed by the Supreme Court of the Russian Federation. This constitutional amendment came into force in 2014.

After almost 27 years after its adoption, the Russian constitution was amended yet again in 2020—and it never saw such a huge set of amendments. The original constitutional design was disfigured completely. I refer to this as to “Putin’s Amendments,” because it was President Putin who first declared his intention to change the constitution and then submitted the draft to the State Duma.

Putin’s amendments are unprecedented for several reasons. First, the number of the amendments—206. Compare this number to the 27 amendments made to the Constitution of the United States. Absolutely amazing, right? All these amendments were adopted by both houses of the Parliament and the constitutionality of these amendments was confirmed by the Constitutional Court. And what was especially nice on the part of the Constitutional Court was how it addressed the procedure was used for adopting these amendments: The all-Russia vote, which never existed in the Russian legislative framework before February 14th, 2020. The president issued this regulation, which in turn introduced this new procedure. The Constitutional Court noted the novelty of the approach, but since there was a need to adopt the new amendments, they would approve the new instrument for doing so.. At least they were very sincere, right?

Some of the amendments are very discriminatory by their nature. First there is the amendment on the Russian language mentioned by Will Pomeranz yesterday during our morning session. Second, another amendment confirmed a very conservative approach towards marriage by stating that the Constitution must ensure protection of marriage as a union of a man and a woman. Third, there is the concept of historic truth, which appeared in Russian public discourse several years ago and now has made its way to the constitutional level.

These amendments also strongly affected the Russian judiciary; the President now can terminate the powers of all judges, starting from the Chief Justices of the Constitutional Court and the Supreme Court. All these amendments destroyed such fundamental principles as judicial independence and irrevocability of judges. Russian legal practitioners have noted that the procedure of termination of judicial powers without any involvement of bodies of judicial community is totally disruptive and bad.

Putin’s amendments also downsized the number of justices on the Constitutional Court. They changed the procedure of submitting individual complaints to the Constitutional Court, making the life of Russian citizens even harder than it was. The provision from the federal constitutional law of the Constitutional Court establishing the power of the Constitutional Court to decide on the possibility to enforce decisions of the European Court of Human Rights was elevated to the constitutional level. The amended Art. 125 of the Constitution vested the Constitutional court with the power to decide on the possibility to enforce judgments of foreign or international (interstate) courts, foreign and international arbitrations, which impose obligations on the Russian Federation. That was definitely a response to the decision of the appellate court of the Hague in the case of the Yukos shareholders versus the Russian Federation.

So, we came to the point where the constitution as it was amended in 2020 has further extended President Putin’s powers. He’s now the head of the executive branch. At the same time, he retains the power to dissolve the lower house of the Russian parliament. After non-binding consultations with the Federation Council, the Russian president directly appoints a number of “force ministers,” the so-called Siloviki. He can remove these officials from the office without any consultation or prior approval or coordination. He can fire the Prime Minister. He can dissolve the State Duma under more circumstances than was initially envisaged in the Russian constitution. He will be a lifetime member of the Federation Council after expiration

of his, I don't know, 17th term in office or whatever it will be. Here we are in the 30th year of operation of the Russian Constitution: with an irremovable and uncontrollable president. Sadly, Putin's constitutional amendments constitute an obvious trend back to the Soviet system and ruin the best features of the original version of the Russian constitution.

The original Russian constitution provided spacious room for international legal standards in the domestic legal setting, and clarified the status of international law in Russia's domestic legal system. The 2020 amendments symbolize the end of Russia's commitments to the international community and its fundamental values. My final observation is that with the amendments of 2020, in the 27th year of operation, the Russian constitution became a member of the 27 Club of celebrities like Janice Joplin, Jim Morrison and Jimi Hendrix who died at age 27. Thank you.

Leon Aron:

Yes, thank you. Thank you very much. Any constitution's effectiveness is only as good as the compliance that it commands and by that standard, by that criterion, the record of the 1993 constitution is rather remarkably auspicious. I am particularly impressed by the two processes that were developing in parallel. The court's drawing on the Constitution in their decision-making on the one hand and on the other the compliance of the executive branch with the decisions of the courts. If you recall, Article 125 describes the function of the Constitutional Court as that of checking and testing the constitutionality of the decisions of the executive branch as well as the administrative acts of the parliament. And until the criminal procedural code was adopted in 2001 December, 2001, the Constitutional Court essentially cleaned up or adjusted the old Soviet criminal code to comply with the Constitution. Among other things, it eliminated a number of the remnants, legal remnants of the Soviet police state, including the residence permits and residents registration.

The so-called infamous "propiska." The lower courts and that is just a significant followed suit,

especially after the Supreme Court's so-called "instruction" that enabled lower-level courts to examine the constitutionality of the decisions of authorities on every level. The courts rushed right in and the statistics for that period, 1993 to 1998, is that the citizens also exercised with glee. They're very unusual, exotic, but rather a pleasant right to sue authorities at every level. There were around 91,000 suits brought by citizens at every level and in better than three out of four cases, the courts sided with the plaintiffs. The epitome of this direct confrontation between the constitution and the authorities and the executive branch, came in two cases.

One was the trial of the Naval officer Alexander Nikitin on charges of high treason and espionage brought by the FSB. The defense based its strategy on two articles of the constitution, Articles 42 and Articles 29, the first one referring to the right to truthful information about the environment and the second one enabled or enshrined the right of Russian citizens to freely receive, pass on produce, and disseminate information and Nikitin was acquitted. The judge specifically said that he was acquitted because of these very strong constitutional arguments, and it is the first case, unfortunately the last one as well in Russian history, whereby someone was acquitted on charges of treason brought by the secret police.

The second dramatic case of the clash between the constitutional law and the executive came in early February, 1994. Drawing on its right to issue blanket amnesty, the Duma annested the leaders of the 1993 rebellion.

Now at the time, the procurator general Alexander Kazannik, who personally was against that amnesty, upheld the law and the pardoned men were released. Kazannik actually resigned in protest on the same day. I believe that this is the first and only case in Russian history, and I would bet a substantial amount of money if I had it that probably in at least European history as well, whereby the victors in a civil conflict granted amnesty to the leaders of the defeated side within the four months of the end of the conflict.

Yeltsin, as we all remember, was much exercised, shocked as it was reported at the time. He threatened to rearrest the pardoned men...and yet in the end the law, the constitutional law as exercised by the Duma, was left to stand. I think it's also relevant to our discussion that none of the pardoned men were in any way constricted in their constitutional right to participate in national politics. Two years later, after the second Duma election in 1995, many of them entered into Duma. Alexander Rutskoy was freely elected and then reelected as governor of one of the central Russian regions. Thanks very much.

Peter Maggs:

Thank you. The first two speakers have discussed in great detail some of the ways in which Putin changed the Constitution into something very different from what it started as in 1993. In yesterday's discussion, we looked quite a bit at the background of the development of the 1993 constitution.

Today I would like to look at a somewhat more abstract level about the nature of the change, the nature of the process of the change, and what that might teach us for the future. Because while I think it's a very good idea to discuss a future constitution, one needs also to discuss how we get there. From here in particular, I'd like to look at a couple of basic questions. One is rapid movement versus gradual movement. Yesterday, I mentioned the unseemly lack of communication and deliberation that led to a split in the Orthodox Church in the 17th century as an example of rapid movement. Someone else mentioned the end of segregation in the United States. That was an example of a brilliant policy of slow movement by the National Association for the Advancement of Colored People, which first sued to integrate law schools and then gradually moved down the ladder and saved interracial marriage for last so as to not only move gradually, but to gradually reform public opinion.

Now I'd like to move into the Brezhnev era and another project, also to some extent based on an observation of what was happening in France. The French-British consortium that produced Airbus got into a race with the Tupolev Aviation

Complex, which was producing the Tupolev 144, and Tupolev actually, by cutting various corners, won the race. Also, I think pretty well established by some espionage as to what the western powers were doing, some surreptitious purchase of western equipment and some counter-espionage by intelligence agencies trying to feed it false plans, but it was a race.

Now, as we know, the Tupolev project failed spectacularly with the crash at the 1973 Paris Airshow, while the Concorde project continued on for 30 years before it was destroyed by a combination of a freak accident and the rise in fuel prices. I think what is interesting, and I would credit this to the relative weakness among Soviet leaders, was that when the civilian authorities tried to convince the military to buy into the project and spend defense money for a military version of the plane, the military leaders said no. They were very well informed about the technical characteristics of the plane, that it was hastily designed, a gas guzzler, and with very little capacity to move people from one place to another. And here was a case where power was decentralized, not among the judiciary and so forth, but decentralized into power structures when there was a somewhat weakened center within which the military reached a very rational decision.

Now when we look at why Putin was able to turn a constitution, which seemed fairly promising at first, into basically window dressing for a dictatorship, it's clear he adopted a slow policy. And like the NAACP, he had some success in bringing along public opinion with him. There was also a mention yesterday of the lack of scholarship in Russia on the details of public opinion on the law. I'm delighted that Kathy Henley is here, who is recognized as the foremost expert in that, not only outside Russia but inside Russia.

And I would like to look back a bit into Russian history. When I was studying in the Department of Civil Law at Leningrad State University, the most senior professor in the department was Professor Nadezhda Veniaminovna Rabinovich, who had completed the Raev Law Courses for Women and

graduated in 1912 at a time when women were not admitted to St. Petersburg Imperial University, as it was called then. She was very outspoken and I would like to think that she inherited some of that outspokenness and brilliance from the brilliant professor Leon Petrozhitski, who moonlighted by lecturing at the Raev Courses for Women but is really famed for introducing to Russia and to some extent to the world the science of looking at what people thought about the law, and not just looking at what the books said the law was.

Unfortunately, that tradition was lost in Russia. He had to flee to Poland, and the Communist regime confiscated his research notes. But I am happy to see this approach somehow reemerging with Professor Henley's work. And I think it is a very important thing if we're trying to figure out how one gets from here to there. Even though the role of the public is much more limited in Russia than in many other countries, I think it can't be ignored. And it was to provide window dressing for this role that Putin decided to have the vote on the amendments.

The Tupolev 144 fell apart and crashed under Brezhnev, so essentially did the Russian constitution under Putin. Meanwhile, the French constitution has been serving for many decades as the center of a vibrant democracy, respecting human rights and freedoms. I think this shows that copying a design without some of the accompanying background, and in France we had a well over a century and a half of liberty and equality and fraternity, with some brief deviations for Napoleon and so forth in the 19th century. By the latter part of the 20th century, democracy and justice had become very firmly entwined in the French consciousness.

Clearly Russian legal consciousness was much weaker. And if we look back to the weaknesses of the Constitution, one part was the legal consciousness was weaker. But the other part which has been very important and which the other speakers have pointed out is that the very fine principles, particularly in the first part of the constitution depended heavily on an independent judiciary. And that independence was sliced away very deliberately by

Putin's salami tactics, as the other speakers have said. I think we have two things to learn here. One is you often have a very hard choice between moving slowly and moving quickly. The second is you need a combination of an independent judiciary and strong public belief in the rule of law. And if you don't have those, no matter how beautiful the language you write, it won't work. Thank you.

William Pomeranz:

Well, thank you very much. I'm going to rely on the previous speakers who have dealt with all of the flaws of the Russian Constitution in great detail. I'm going to focus on simply on one aspect of the Russian Constitution and that is this notion of the separation of powers. Now, Article 10 states said that state power should be divided between executive legislative and the judiciary and that all these institutions should be autonomous. Most commentators dealt with the second half of the clause, but I have focused more on the first half of the clause and the notion of state power. In fact, that clause was the most important part of the article. State power has never been associated with either the horizontal or vertical division of power. And in fact, this term has been associated with the unconstrained use of power by the sovereign for centuries.

In retrospect, this was the most important part of the notion of separation powers, that it included a notion of state power and then went on to describe the other branches. I also just want to talk about a competing concept in the Russian Constitution of state power, namely the idea of state unity. The preamble of the Constitution emphasized the notion of state unity, and the 2020 amendments expanded this concept by asserting a unified system of public power and including local self-government in this concept.

Unity, in fact, has been a long running theme throughout Russian law and Russian history.

When Russia first wrote a constitution, the fundamental laws of 1906, the first clause did not deal with the autocrat, but dealt with the Russian state.

It confirmed that the Russian state is “one and indivisible.” This first clause, however, was followed up by a very confusing clause, that talked about the independence and the laws of Finland and that they have their own legal regimen that was different from the Russian state. Indeed, what the Fundamental Laws emphasized in these clauses was the notion of legal pluralism, that law depended on the regions and not necessarily on national law.

Finally, Russia always has gravitated to this notion of state power at any time of crisis. Indeed, Anatoli Chubais remarked in 2021 that the liberal reformers wanted emulate China to rebuild the Russian economy, but they soon discovered that the Russian state had essentially dissolved. And without a state, gradual economic reform was out of the question.

Putin came to power in 1999 to restore the notion of the all-powerful Russian state. He said in his millennium message that for the Russian people, it was not an anomaly to have a strong state, but the state was the guarantor of order and the driving source of change. Over the passing years, Putin basically bypassed the notion of independent branches of government. He placed the legislature under the control of the presidential administration, which drafted a significant number of laws. Indeed, the presidential administration is recognized as one of the primary sources of law in Russia as opposed to the legislature. Putin also relied, as all Russian rulers have done on the issuance of personal decrees as opposed to formal laws. And under the 2020 constitutional amendments, Putin put the executive branch under the general supervision of the president as opposed to the prime minister.

Ekaterina mentioned how Putin has weakened the independence of the judiciary, most notably the Constitutional Court. But I’ll just add two other reforms that have occurred. One, the 2020 amendments prohibit the publication of dissenting public special opinions, and that was what Justice Kononov was very famous for. And the other major effect of the 2020 amendments was the reappointment of Valery Zorkin to a sixth term as chairman, which was clearly politically motivated and ensures that a

reliable person remains at the helm of the Russian and constitutional court even though Zorkin is well beyond the mandatory age of retirement. So as we look toward the future as to what sort of reforms are needed for constitutional reform, I think that the notion of state power must be addressed and removed from the Russian legal lexicon.

Alexandra Vacroux:

Thank you to all of you.

DISCUSSION

Andrei Illarionov:

I have a question for Ekaterina and for William. Both of you spent most of your time discussing probably one of the most important issues of the overwhelming concentration of power in the executive. I would like to invite your comment, maybe it’s time to move from the expression separation of power toward a slightly different term with necessary consequences for institution building in future.

We have not only the example of the Russian constitution, but the US Constitution as well. The US constitution is built on a different premise: separated power. There is a very clear distinction between three, not branches, but three powers. So long as we keep this term and concept, we would have a recurring problem of monopolization of power, regardless of whether it’s called state power, public power, any other power.

Instead of that, we could move to the concept of separated powers. Would you consider this is a movement in the right direction?

Ekaterina Mishina:

Thank you very much, Andrei, for your question. First of all, I must make a point that maybe in the Russian translation it would sound differently. In any country, and specifically in any country which is located in the post-Soviet space, the constitution *de facto* can differ tremendously from the constitution *de jure*. So, it’s both important how we formu-

late the constitutional provisions and how they will be applied, because the Constitution works directly, it applies directly.

I strongly support the idea of making the branches of power truly independent, and the idea to enshrine the principle of checks and balances, rather than just the separation of power, if that you have been talking about.

Andrei Illarionov:

I would like to suggest we abandon the separation of power fully. Separated in the US Constitution, it's very clear there are three different powers, not just branches of power. So that's an idea that I'd like to your comment on—to consider how to divide this power that in the Russian case is almost always monopolized.

William Pomeranz:

Yeah, so I agree about the question of language and for a pre-revolutionary reference, I will turn to a speech delivered by Maxim Vinaver in 1906. He talked about the notion of what it means to have a law-based state and the isolation of each power so that they all can actually pursue their responsibilities. And he did not talk about checks and balances at all. Quite frankly, he talked about the need for a division between executive and judiciary, which had occurred in the judicial reforms in 1864. But he said that what was needed going forward was a division between the executive and the legislative, and that unless the legislative branch could exercise its power completely, Russia would not transition to a rule of law state. So yes, I think that that is a very important distinction to make and that Russian jurists have long talked about this goal over many decades.

Peter Solomon:

I want to call attention to what is often seen as one of the most important aspects of a constitution. I tell my students to look at first when they open a new constitution at its amending formula: how easy is it to change the constitution? How do you change the constitution? One of the things that I

thought was particularly good about the Russian constitution of 1993 is that it was a constitution that was very hard to amend, at least in structural terms, to begin with. The first two parts couldn't be amended at all without convening a constitutional convention authorized to approve a new constitution. But the amending formula for the rest of the constitution, of course, was based on the US model. It required qualified majorities of the two houses of the parliament plus simple majorities in three quarters of the regional legislatures.

Now this seemed a formidable barrier, very difficult to achieve, and for 20 years there were no amendments changes to the Russian constitution. Then of course things did start to change, they changed because the reality of power was such that “the vertical” had reached a point where the president in effect controlled all those different legislative bodies. What I wonder is if someone is designing a new constitution for Russia, what amending formula would you want to use? Could anybody think of one that is better than the US model one that was used in 1993?

Ekaterina Mishina:

Thank you very much, Peter, for your absolutely brilliant question. I think that we should start with the risk assessment. I am a legal practitioner, so risk assessment is a very important part of my job. The main task would be to minimize the risks of repeating this scenario of 2020, when the all-Russia vote was invented specifically for simplification of the procedure of amending of the constitution.

If you look closer at the amendments which were adopted in 2020, you'll see that there were changes that were indirectly made to the unchangeable Chapter One and Chapter Two of the Constitution: the role of self-government, access to public service etc. There are many provisions which have been indirectly changed: the role of international law, the sacred Article 15 of Chapter One, which contains the list of fundamentals of Russia's constitutional system. These fundamentals of the constitutional system are enthusiastically protected

by the Russian authorities from so called “undesirable organizations.” What was done in 2020 was an attempt to impede the exercise of fundamentals of the constitutional system. So, who is the undesirable organization in this picture? Right?

I have a lot of questions about that. In my book, whatever the future procedure of amending of the Russian constitution will be, it must be very complicated in order to avoid the patterns which came to their logical end in 2020.

William Pomeranz:

I agree. And yes, Putin was able to get around the first two chapters of the constitution by introducing new legislation that basically gutted the first two parts. So going forward, I think that we should acknowledge that it is difficult to amend the current Constitution. But we will also need a person at the helm of Russia who is willing to abide by the Constitution as well.

Peter Maggs:

Economists talk about the famous “bowl of Jello theory,” in which if you have a bowl of Jello and push down in one place, it comes up an equal amount in another place. And we see this in operation in the United States in which the only practical way of changing the Constitution is to change who’s on the Supreme Court.

Thus, the more unchangeable the Constitution, the more there is pressure to try to subordinate the Supreme Court to political whims. Given Russia’s very bad history of judicial independence, whether you want the process for changing the Constitution to fall to the Supreme Court and the Constitutional Court is something you just have to think about.

William Pomeranz:

And I just have one other comment in terms of strengthening the Constitution. I think the other important reform is to limit the power of decree because essentially Putin’s pen can actually publish a law all by itself. And it was only in late pre-revolu-

tionary Russia that laws were asserted above decrees. But the decree has always been the very important part of Russian governance; it allows the executive to publish an edict that has the force of law.

Question:

President Putin loves referenda, and he has used them in Crimea and certainly in Ukraine. What is the basis in the Constitution for holding referenda? We know they’re fake from the way that he has carried them out. But nevertheless, is there a legal basis in the constitution for referenda on issues? I know they give the veneer of public decision making,

Ekaterina Mishina:

Thank you very much for your question. The referenda are not addressed in detail in the Russian constitution...there is a separate law on the referenda, which unsurprisingly was not used in 2020. From my point of view, referenda are very popular in authoritarian regimes, because there are so many ways to play with the votes and a lot depends on how you formulate the questions which you submit to the referendum.

Specifically in the case of the amendments in 2020, over 200 amendments were combined into one law on the constitutional amendment. The voters had no chance to say: listen, I like this amendment, but I strongly dislike that one. No way. It was either a yes or a no.

Here I think we should look to the experience of the Basic Law of Germany, which does not mention referenda, because referenda were actively used by the Hitler’s regime. That was one of the lessons learned from disadvantages of the Weimar constitutional system of 1919. Non-democratic regimes love referenda because they know how to play with public opinion. I strongly believe that in the constitution of beautiful future Russia, there will be no place for referenda.

I think that instead of inventing a bicycle we should use at the experience, the positive experience of

our neighbors. And here Germany provides us with a beautiful experience of how lessons of the past should be learned.

Peter Maggs:

One technical point. In [Russian held territories in] Ukraine, the referenda were generally in puppet republics set up for the purpose of having the referenda and making things look a little legal. And if you're the puppet master, you could do it any way you want.

Ilya Ponomarev:

I just want to make clear, to sharpen your position, if I may: You were saying several times about the abuse of the constitution of 1993. Do you think that what's happening in the country is the abuse of the constitution, or is it the logical consequence of how it was designed from the very beginning? Because to my mind, that is saying that it was designed to be abused. We need to understand this, because we are all thinking about a new constitution. Do we need to rewrite it from scratch? What's your position? Or do we need to amend the current one?

Connected to this is the procedure. We just touched this issue of the referendum. When this constitution was passed, half of the region actually rejected the Constitution in the vote. How would you assess the legitimacy of the current text that appeared as a result of the coup and as a result of this not so perfect referendum? Thank you.

Ekaterina Mishina:

Thank you very much for the question. I totally agree with your statement that the point where Russia is now in its constitutional development has strong roots in the initial design of the Russian Constitution. And though the Russian constitutional model was borrowed from the French experience, it was not directly copied—certain things were borrowed, certain things were not. As I already mentioned in my presentation, the initial design provided for the strong imbalance of the presidential powers, and that's what we should avoid in the future when it will be time to draft the new consti-

itution for Russia. So yes, I strongly believe that the semi-presidential constitutional system, which was envisaged in the Russian constitution in 1993, provides for unlimited powers of the head of the state.

That's why the constitutional model that was envisaged in the constitution of the Fifth Republic of France is usually referred to as "Caesarian constitution," because it makes the French president as powerful as one of the Caesars of the ancient Rome. Surprisingly, none of the French presidents wanted to extend the powers initially envisaged in the constitution. On the contrary, the presidential powers were limited, including the presidential term, which is totally non understandable from the viewpoint of the Russian political elite. How come you've got seven years and now you make it five? Are you serious? Why?

So, we are where we are now in Russian constitutional development because of its initial design, which was dangerous and definitely not perfect. I must confess, I voted against this constitution—mainly because of part three of Article 80. Russian President can do anything. He can dictate his conditions to the branches of power, and that should not be happening.

Second, the abuse of the constitution, which happened under Putin's rule, came up in the form of Putin's so-called legalism. Putin proclaimed the dictatorship of law after he came to power. And look where we are now. This is not the kind of legalism that we wanted, and we don't need such a constitutional design in future Russia.

Answering the last part of your question—if I'm missing something, please remind me. I really don't want Russia to find itself in a legal and constitutional vacuum. Together with my dear colleagues, Ilya Shablinsky and Irina Alebastrova, we drafted a sort of a first aid kit for further constitutional development—the most necessary amendments to the original design of the 1993 Constitution—which should be used for the short period of time within which drafters will be working on the text of a new Russian constitution. Because you cannot just say:

“Okay, there will be no constitution for a couple of months, we’ll see what happens and after that we’ll get a new one.” Now the first aid kit has been developed. Professor Shablinsky and Professor Alebastrova will speak about this in detail. Thank you.

Kathryn Hendley:

I want to ask a more provocative question. As Peter pointed out, the actual language of the 1993 Constitution on Amendments was carried over from the German constitution, which you have said has lots of good qualities, and it did work for a while. I’m not sure that this idea that we’re inevitably going to get to where we are now with the 1993 constitution really holds up.

But my question is, given that we seem to be arguing that Putin could do whatever he wanted, why didn’t he just start over? Why did he put forward these 206 amendments? Why not just convene all the Putin-like thinkers and create exactly the constitution that he wants without this annoying provision about amendments and the other things that are problematic for him? The other provocative question I want to ask you is that if you live in a country with no opposition, can you have a constitution that’s going to restrain whoever the most powerful group is in that country?

Ekaterina Mishina:

Kathy, thank you very much for your question. I’m not Professor Solovei. I cannot read Putin’s mind. I think that since respect for the “Great Past” is a part of his policy and his propaganda, perhaps it was more of tactical move to make amendments to the Constitution and completely change its nature but not replace it. Technically it will still be the constitution adopted in 1993.

Kathryn Hendley:

But consider: We have the Stalin constitution. The Brezhnev constitution, the Yeltsin constitution. You would think the one thing that Putin would want is the Putin constitution, right?

Ekaterina Mishina:

He has the Putin amendments. I think it’s more than enough.

Kathryn Hendley:

The starting over would feed into that side of Putin, right?

Vasily Gatov:

He didn’t want to start the constitutional process because it would include the creation of a constitutional convention. You would need to write the law on the constitutional convention. You would need to have elections. Everything would be under revision at that moment. And he definitely knows that under the carpet there is a very strong competition over who is really benefiting. They offered this path to Putin, but it was decided that it would take too much time to prepare and not give the desired results.

William Pomeranz:

I’m not going to answer the question on the opposition, but I just think that in terms of why Putin didn’t rewrite the constitution, he simply turned to another Russian legal concept, namely the notion of legality and law abidingness. He didn’t want to rewrite the Constitution. And there is a long tradition in Russian law about this notion of legality, of people just following the law as written. That’s what he wanted to emphasize, and that’s what he did during his amendments.

Alexandra Vacroux:

Peter, are you going to answer Kathy’s question?

Peter Maggs:

I’m going to sort of answer the question. If you want to be a dictator, to stay in power, you need a number of things. You need a good palace guard, and he’s got that. You need efficient secret police that takes care of opponents, and he’s got that. You need enough formal power to write decrees and things. And he has that. But a good dictator over insures himself, and part of the over-insurance is

going through the motions of legality and trying to get public approval. A key example of this is the fake presidency of Medvedev, which only could be explained by over-insuring, in purporting to comply with legal formalities, rather than directly using brute power, to get around term limits.

I think this is a question of over-insurance. Considering Kerensky and Trotsky, if you underinsure, it's not a good thing in Russian history.

Alexandra Vacroux:

I want to go back to Kathy's question actually, because I think given how much concern there is about having a dominant branch of government in Russia, it's a legitimate question. How do you deal with that if there is no opposition to quell that branch or to keep it under control? Is it possible with just the constitution to adapt for that?

Ekaterina Mishina:

I don't think so, but right now as you see, being a member of opposition in Russia involves huge risks, with criminal prosecution coming in first place. Right now, we have Russian propaganda and Russian official ideology, which by the way is strictly prohibited by Article 13 of the Constitution—the absence of official or state ideology is one of the fundamentals of the Russian constitutional system.

Still at the end of 2020, there was a document that was approved by the Russian government. This document indirectly established the fundamentals of the state ideology including historic truth, appreciation of cultural traditions of Russia, and all this famous demagoguery that you definitely know. Opposition was featured as one of the dangers to the current regime. So political pluralism, which is also one of the fundamentals of the Russian constitutional system, has been removed from the picture.

Being a member of the opposition is dangerous and punishable—if you are lucky, under the Code of administrative offenses; if you are not lucky, under the criminal code. Before making strong moves towards decreasing the powers of the most

powerful actor, we need to restore the possibility for the opposition to operate freely without risking criminal prosecution.

William Pomeranz:

I will invoke the previous 15th anniversary of the Russian Constitution. Oleg Rummyantzev talked about the problems of the two constitutions that were competing with each other in 1992 and 1993. And he concluded that the 1993 Constitution was adopted mainly because all the parties were just exhausted.

Question:

I have the following question. I understand that we'll have a separate discussion about any future Russian constitution, and we are speaking about history right now, but what lessons should be learned from past??

Ekaterina Mishina:

Russia is strongly affected by its Soviet past. And the main lesson which should be learned is de-Sovietization. But what we see in Russia now is the strong presence of re-Sovietization. The concept of enemies is back. First, we've got foreign agents, then we've got "undesirable organizations," now we have "unfriendly countries." The concept of a foreign agent was extended and extended and extended, was covered more and more actors. Now under the 2022 law, we have persons under foreign influence, which are also on the list of enemies. There are also domestic enemies and foreign enemies. This is one problem.

The other problem is what's happening with the rule of law in Russia because Soviet constitutional design had no place for the rule of law. What's happening in Russia now is an open violation of the fundamental principle of the rule of law, which is one of the fundamentals of the constitutional system of the Russian Federation.

The next issue I would say is vagueness of legislative wordings. Look at this language, that's

exactly how it was formulated in early Soviet years. Vladimir Lenin in his letter to Dmitriy Kursky, the People's Commissar of Justice, or the Minister of Justice, emphasized that wordings should be broad and flexible, and judges will determine the limit of application of these wordings. This resulted in unlimited judicial discretion and arbitrary law enforcement, and here we are again. What's happening now is the second coming of these vague definitions, like the wording of Article 275 "High Treason" of the criminal code. Look how this wording was amended in 2012: Now, almost anyone can be prosecuted and sent to penal colony for up to 25 years for almost anything. Look at the details of the guilty verdict of Vladimir Kara-Murza. He was sentenced to 25 years for participation in three international conferences. How about that?

So de-Sovietization should include getting back to the key principles of the rule of law, and getting back to the real separation of power, as it was envisaged in the original design of the Russian constitution. The original design didn't have only bad features, there were also some obvious advantages, like the role of international law and definitely the separation of powers.

We must learn from the past. Path dependence is a very important thing. History matters and I think that task number one is now to stop the re-Sovietization threat, including the practice of disproportionately severe punishments. Yesterday's sentence of Sasha Skochilenko: seven years for changing price stickers. Do you remember the Law of Three Spikelets of 1932? The practice of sentencing up to 10 years in penal colony for picking up several spikelets [wheat grains] from the kolkhoz field is coming back. So, we must not only learn from the past, first we must learn what exactly what was happening in the past and we must take precautions. And there is another thing which is sometimes missed by the legislators and legal practitioners: the regulatory impact of the new legislation. When we are drafting new norms, we must keep in mind how these norms will be applied.

William Pomeranz:

So, in terms of what we can learn from Russian history, and especially 1917, was that power was distributed amongst many different sources of law without an ability to have a single source of law. And so going forward, I think that if indeed Putin proves himself mortal, we will have to figure out how Russia makes that transition and doesn't really go back to notions of dual power or the notion of federalism that relies on 40-plus individual agreements between the regions and Moscow.

Alexandra Vacroux:

Please join me in thanking our first panel for a very interesting conversation.

PANEL II: The Constitutional Landscape of Future Russia

Vasily Gatov:

Hello everyone. Dear friends, colleagues, we go to the second session, to the second panel of the conference.

Now I will introduce our panel, which is half present here. Half of the panel will join us via Zoom. Vladimir Pastukhov is a renowned Russian political philosopher and well constitutional scholar. He's a visiting fellow at St. Anthony's College at the University of Oxford. He has authored several books and over 200 scholarly articles on constitutional law and political science. And Dr. Pastukhov is one of the authors of the report "Constitutional Crisis in Russia and How to Resolve It" by the Institute of Modern Russia.

Irina Alebastrova, who will join us via Zoom, is a renowned Russian legal scholar. She was a department head at the Russian University of Justice, she's Doctor of Law and one of the major subjects of her interest is social solidarity and constitutional law, and both in Russian and international perspectives.

Ilya Shablinsky who will also join us via Zoom is a professor at Free University of Riga and before that of course in Moscow. And he's an author of

a number of books and articles and constitutional law and constitutional theory as well as the history of state and law.

Elena Lukyanova, she's also a famous Russian constitutional scholar. She serves as co-director of the free University of Riga and is a lawyer with significant career in public service and academia. She's also a professor at the Moscow State University and Higher School of Economics where she has contributed to the fields of constitutional and municipal law.

Ariel Cohen is a non-resident senior fellow at the Atlantic Council Eurasia Center. He is a Tufts alumni and he wrote six books and numerous articles on the issues of Russia, international relations and security issues.

This panel will discuss those particular problems that must be addressed by a future constitution of Russia, and probably will continue with some of the issues that have been touched on at the first panel. Vladimir Pastukhov will start our discussion.

Vladimir Pastukhov:

Thank you very much for your invitation. I have to apologize...one of the reasons why Berezovsky lost his lawsuit to Abramovich was that he wanted to impress the attorneys and the court by using his English, which was not perfect. And I prefer to choose to speak in Russian because we have interpretation and I'm going to give a fairly short presentation despite some time limitations.

I'd like to give you some personal history here. I think it might be interesting, and it may be in the interest of today's meeting. In 1993 -94, the years that we are talking about, my friend, Vladislav Zubok, was a fellow at the Woodrow Wilson Center. I learned about the Woodrow Wilson Center from him. He also supplied me with an application questionnaire. And for the first time in my life, I tried my luck and I filled out such a form. I remember how I was filling it out by hand and there was a request for the theme for the topic that I would like to explore. It was the following, "The inevitability

of the return to authoritarianism: the preconditions for irreversible, inevitable return to authoritarianism in Russia."

I did receive a response from the Woodrow Wilson Center. At that time the response stated that this topic was of no interest because it was not actual at all. At that time I was only 30, and I got a little bit upset, by the way. I said I would never set my foot in the Woodrow Wilson Center. And I have to say that I fulfilled that promise. You are seeing me here for the first time in 30 years.

I came here because I'd like to make a statement that will be contrary to what I was saying 30 years ago. I assume that, with a certain level of certainty, we can say that post-communist Russia may either be democratic or it may not be at all. That's the dilemma we're facing at this time. I really think that we are at a certain watershed moment, because if Russia is not democratic, then there will be no Russia at all. There will be no future. Of course, the threat of Russia's dissolution exists. It's real. In fact, it's quite real.

I know that some people assume that this is not a threat, it's just an option. At the same time, I think that the dissolution of Russia, especially one that is chaotic and uncontrollable, would be a catastrophe not only for Russia. It would be a catastrophe for the rest of the world. And as much of a problem it would be for Russia, it would much more so be big problem for the rest of the world.

Maybe people will not agree with me, but I would say to you a Russia that is dissolving is not so serious...but a Russia that has already dissolved or fallen apart: That is something much more serious.

Speaking about how to prevent it from happening, I think that there is no unified opinion on that. It is possible maybe to say that Russia will be prevented from falling apart by a strong hand. That one could say that Russia was created to be an authoritarian state, that any other option is not possible. I think I'm a little bit late with my claim that I made in the nineties...I think today I wouldn't have received the same response from the Wilson Center. If I were to

rephrase what Dmitri Medvedev says, the center of decision making is eventually coming to the conclusion that after Putin the ideal outcome for Russia would be a monarchy.

When we have the enthronement of our son of a bitch, excuse my language, he will create the same state as was started by Putin. That person is not going to cross any thresholds, meaning he will maintain decent relationships with the rest of the world. Maybe this is the point of view that is frequently expressed that the gatherings are similar to the one we're having now. The so-called party gatherings.

If we go beyond those gatherings, we would say that the predominant point of view is that Russia is destined to be an authoritarian state. And maybe I would speak in favor of that, because I'd like to have stability. But I think today stability is not a solution. Stability and authoritarianism are not the solution. Their time has passed.

I did predict that there would be a return to something like Putin's authoritarianism. It could have been even worse, by the way. But there's another aspect of it, and that would be decadent authoritarianism. It will be part of the historically evolving chain of events in Russia. Probably you could describe this as the ultimate stage. You could say it's a rotting stage. It's characterized by lack of stability.

It cannot exist without special catalysts, without stimuli. My colleagues who worked in the pharmaceutical industry tell me that the stabilization of a pill is the most important stage in the production of medicine. You can have the best combination of chemicals and agents possible, but they will not be effective until the stable pill appears. And the problem with this authoritarian pill of Putin is that it's actually falling apart.

It has been working for 500 years and we need to have special conditions for its stabilization and maybe war is one of those conditions. So, regardless of what kind of authoritarianism we have in Russia right now, it'll be always falling into war and the war will lead to a revolution.

Coming out of the revolution will lead back to the authoritarianism...or not. It's a cycle that is hard to stop. Yesterday we had a very fruitful discussion and Lev Alexandrovich expressed a very smart, very wise idea that the whole problem is in Putin. Maybe in principle, the format was not so bad. We just got unlucky with Putin.

I'm afraid that I have exactly the opposite point of view. I think the format was not that good either. A bad format inevitably gives birth to people similar to Putin. It could be Putin, or it could be somebody else. In order to undo this cycle, this looping cycle where you have authoritarianism, war, revolution, authoritarianism, war, revolution...we need to figure out how to do that.

I think this format involves centralized power. I think Peter Solomon said yesterday that the executive power in Russia is weak. It's going to fall apart. I don't know which format could even work. How are we going to cope without centralized power? Russia doesn't function without a centralized power. And for me this centralized power, and the way it is structured, is the focus of all the problems.

The only way for us to break this indefinite cycle is to break the centralized model of the Moscow-driven bureaucracy. This, or you could say vertical of power that's based on the integration of local elites and absorbing those local elites into itself. Transition is necessary from a consolidated bureaucracy, from the vertical of power. When you have a single channel model, the model that you have is based on the consensus of the local elites. And without that I think nothing will be possible.

What is Russia right now? It's a kind of a barracks that's guided and controlled by a Chief Thief who is the Thief in Charge. He makes sure that everybody complies with the limits and some rather cruel methods are used to punish the dissenters, including wet sheets. Instead, we need to have a multi-story, multi-apartment unit. We need this building instead of this barracks.

I absolutely do not believe that we can find a historic solution for the tasks that Russia is facing at this time. At this stage I think we can't find any historic cases. We need to understand the constitutional principles that function in the West in order to incorporate them in the best way possible.

Elena Lukyanova:

Following the logic of today's discussion, I would prefer to say something organizational at this time.

We have a lab in our university on the transition period that will have a number of different projects. We understand that transit would be difficult and complex.

Ilya Ponomarev is in favor of a revolution and his Congress is preparing a whole package of laws. We are also preparing a package of laws, but without a revolution. And therefore, we need to discuss different options.

We also are going to launch a transitional justice project. I know well the difficulties of a transitional period, because I am a daughter of the last chairman of the Supreme Council of the USSR. I saw what it's like when members of parliament in a new state do not have any shovel-ready laws and what happens next. How very difficult mistakes are made in a rush. We believe that those who will come next will need these drafts, and our purpose is to prepare these draft laws.

The second topic is that it was mentioned that Russia hasn't been able to cultivate a legislative and legal culture. I would say that over 30 years, people learned to protect their rights and during these 30 years they also were able to learn constitutional terminology. We revered a number of good lawyers. These lawyers work in accordance with the highest standard of the rule of law. So, our situation perhaps is somewhat easier than my father and his colleagues faced 30 years ago.

The situation of 1993 constitution was different. Yury Tikhomirov, Tamara Morshchakova, Mikhail Krasnov, Anatoly Kononov, Vladik Nersesyants—

specialists were very few and private between,. At that time the rule of law concept was nearly "terra incognita." Today, we have "terra cognita."

As already mentioned, back then they tried to create a transitional constitution using sort of tweezers. We now work to create the separation of powers that was lacking in the initial text of the Constitution. I'm not sure, but I think it is woefully insufficient for the constitution.

In the first part of our discussion, somebody put it very well. The crux of the matter is not only in the vertical but also in the horizontal. How are we to separate various functions to achieve equilibrium? I believe that we need to start from the grassroots, and then whatever is left for federal power would be a slightly different or radically different picture. The United States started much the same way. They were collecting various states and joining them into a single structure.

What do we have at the moment? A project that was prepared by a lab where they used tweezers. We tried to redistribute the power, excluding the most egregious authoritarian elements and they also tried to reshuffle the judges creating the beginning of a judicial reform. There is another constitution project where aadditional definitions in new terminology used to fill in the gap in the value of the 1993 constitution. But we try keep our on chapters one, two, and nine to a minimum. Because these chapters are immutable. We believe that all efforts should be put to those areas where the constitution could be legally changed.

We believe the second chapter should not be changed, but it's a revolutionary version. According to it, the new representative organ takes power as soon as the window of opportunity is open, and holds power until the election of a new parliament or constitutional assembly. We understand that we would not be able to hold a normal election based on the law that currently exists. That can't happen. That's why we prepared amendments to the electoral law. We also prepared a new law on political parties—taking the German model as am

example and adapting it to Russian conditions. Also, we would not be able to hold normal elections if we still face limitations from the Criminal Code. So, we cleaned up the criminal law and took away certain conditions that do not allow us to create a normal environment for elections. We have already written the concept of a new law on the mass media.

Apart from that, we also face the issue of intervening justice. What do we do with people who intentionally or unintentionally faked elections? What do we do with members of precincts electoral committees? Teachers and engineers who unintentionally violated certain laws? What do we do with the bureaucrats and functionaries who were doing their little thing in their little offices unintentionally supporting the capture of power, because their responsibility is written in the criminal code and some of it is not delineated at all. What kind of transitional justice are we supposed to have? Because unless we process all of that, unless we accept our mistakes, we are doomed to repeat the same mistakes. These are also the issues that we are asking ourselves. And of course, interim justice is the issue of utmost importance.

Sooner or later the war will end. The military law is really obsolete. It became old during 70 years of peace in Europe. But of course, we need to bring to justice war criminals. Fortunately, we have some norms, but war criminals remains one matter. But what about other people who were accomplices in helping to wage this war of aggression? No international court nor special tribunal yet knows what to do with them. We are dealing with these matters.

Some other problems that we face at the moment...For example, the Congress of People's Representatives don't have enough knowledge and know-how, and as a result have demonstrated mistakes in their lawmaking. What's needed is additional education and training for people who are making decisions. We are preparing reforms of the local authorities, which is not a simple undertaking. We are also thinking about the problem of improving the federal structure. I don't know how this two-level system would work. It's a difficult issue.

Whether Russia is going to experience a collapse or a creeping collapse, as somebody put it, I don't have this impression, for very simple economic reasons. This is a large country with a unified transportation system, with unified power systems, and with a system of communications that benefits all regions. Perhaps on the periphery there would be a certain chipping away. And maybe it would be better for them. But the constant striving for a vertical is well understood. The territory is of course large and sometimes it requires centralized decisions. Otherwise, it would be very difficult to call this chunk of territory a single state.

We think about these problems and would very much like specialists in transitional law, of constitutional law to join our effort. We would like to invite and welcome everybody on our side, and we would be extremely grateful to anyone with a critique, who would say, no, you haven't done a good enough job. I would like more of such critics.

Irina Alebastrova:

Thank you. The anniversary of the current constitution is an occasion not only to reflect on the dramatic, if not to say tragic, path of its development to date, but also to think about the future of Russian constitutionalism. I think Russia should be ready for democratic transformations. I absolutely agree with the point of view that the future of Russia could only be democratization. In order to prepare these democratic reforms, we need a solid program.

An important element of such program should be a clear idea of the model of government which would be the most appropriate to Russian conditions. I have been thinking a lot about this model and from my point of view parliamentary republic would be the most appropriate and would fit Russian conditions the most.

Yesterday we heard some statements that lead me to believe that there is a bit of a consensus in this regard in terms of democratic political scientists and constitutionalists. But I would say that this consensus is not broad enough. Even right now,

there is an opinion that in such a large country with so many problems, a centralized system with a very strong presidential system would be better. I think this is a very big mistake. Today we could preserve Russia and make it democratic only within the legal model of a parliamentary republic. A legal model of a parliamentary republic was worked out and presented by a team of Russian constitutionalists in the form of draft amendments to the original text of the 1993 Constitution.

Since the researcher's task is to propose different models of development, I would like to draw attention to the experience of our neighboring post socialist states, namely those that have moved with a greater or lesser degree of success along the path of democratization and hybrid regimes. Now there are 21 such countries as *The Economist* would call them, flawed democracies or hybrid regimes, out of 29 post socialist countries. I would say that it's a very impressive figure. As you can see, they constitute a majority of post socialist countries, and that majority became a nightmare for the post socialist dictators including Russian authorities. That moved them to act the way they did on February 24th last year.

Only six of these more or less democratic post socialist countries established classical parliamentary republics, while fifteen of them have forms of government that Russian researchers usually characterize as parliamentary-presidential republic. I prefer to call them parliamentary republics as well. It's a kind of revolution in the development of the practice and theory of checks and balances.

There are two main features of this form of government. First is the unprecedentedly weakened presidential power and direct presidential elections. One would think it's a surprising combination and almost illogical, but the clearest manifestation of the weakening is the minimal legal role of the president in forming the government, in deciding the removal of individual ministers in the government, and in dissolving parliament. In classical parliamentary republics, the president has no opportunity or power to participate directly in the govern-

ment. This is the key of the keys to the mechanism of good governance through personnel issues.

But in the new post-socialist democracies, presidents are not even entrusted with these keys. Only a few of them were trusted, making their legal role akin to the status of political notaries that only certify the decisions of the parliament and partly those of the government. Of course, countries with a strong tradition of personal power have a hard time getting used to such a weakened presidential institution.

For example, Ukrainian president of Volodymyr Zelensky plays a very active role in the appointment and dismissal of ministers of power. There is essentially a one channel model of government, in spite of the fact that the president has the right to nominate only candidates for the ministers of defense and foreign affairs to the Verkhovna Rada. But he does that concerning all ministers. These people, these candidates are not only coordinated with the president. He essentially proposes his own people.

Serbian President Alexander Vučić is also very active. For example, there was an announcement that the president dissolved the parliament on November 3rd, 2023. However, according to the Serbian constitution, he could not have done so at his own discretion, but only at the government's request. The continuing significant one channel government was overlaying the cultural situation. In any case, that tendency toward weaker presidential power compared to a classic complimentary republic is evident.

It would logically seem very problematic to combine a noticeable weakening of presidential power with direct presidential elections. However, there is a logic here. It's likely that the president who has been unprecedentedly weakened legally will become a moral authority, using his statements, recommendations, and assessments, while depending on the trust of his electorate. He can distance himself from the influences of partisan parties, and thus compensate for the main setback of such a system: sometimes substituting the interests at the national level with narrow party interests. This form of governance would be the so-called plebiscite democracy.

The gist of this model is the presidents of post socialist countries, according to their constitutions, don't have the role of political figures. They are the conscience of the nation, and they are supposed to influence the power based on their moral authority accumulated over years. One could say that it's somewhat similar to a parliamentary monarchy system. On the other hand, I think it fits into the overall trend of increasing the role of the so-called soft power of law in society.

There are different forms of this model's manifestation, such as in mediation, legal frameworks, problem solving, the high level of media freedom, etc. This role that has been given to the president in post-socialist countries, and they play their roles differently. We don't hear from some of them at all, and in some countries there is space for expressing presidential opinions.

I have given you some examples, but criticism of a respectful but weak president is sensitive. It can even be dangerous sometimes. We see that situation in Georgia in 2023: An attempt was made to impeach in Georgian President Salome Zurbishvili before the end of her term in office. The corresponding reform had taken place in Georgia previously in 2017 amid disagreements between the ruling Georgian Dream party and the previous president. This case demonstrates the potential is high for a legally weakened president with soft power, even when power that is grounded in the will of voters.

However, the danger of having the president concentrate a huge amount of power in his hands does not exist in this situation. He can be or she can be a counterbalance to some of the ministers and the ruling parties. I would say that this new parliamentary republic model, as I call it, should not be neglected.

Ilya Shablinsky:

The theme of my second presentation is the new judiciary power in Russia and its constitutional basis. Perhaps my colleagues here have had a chance to view the draft amendments that my colleagues

and I have prepared for your consideration. We have tried to propose those for your consideration, and one of the most important tasks was the creation of a new legal basis for the enforcement of law in Russian Federation. More specifically, we were trying to propose a new order for how the judges are going to be appointed and also new ways to measure their responsibility.

There is also the issue of renewing the judiciary. We know what kind of justices and judges we have now and what kind of decisions they make, but that of course is a separate staffing issue that we are not dealing with at this time. We are talking about the legislative basis for applying pressure on the judges. In the proposal that we have developed for this conference, we have proposed the creation of the Supreme Judiciary Council as the new body that will be in charge of federal judges appointments. There's nothing special about this. A lot of you know about such a mechanism, which exists in many countries.

There are a number of countries where there are supreme councils of justices or judges, and those provide for the independence of the judiciary and are in charge of the selection and the appointment of judges. I would like to briefly look at two possible scenarios. One is how the selection and appointment of judges is happening in Russia right now and what is so problematic about the system. And the second scenario is the order of the creation of this supreme judiciary council and how it can be done.

Currently in Russia, the selection of judges and appraisal of their qualifications is done by the Supreme Qualification Commission. It is very infrequently mentioned, and the media and the practitioners don't mention it too often either, but actually the collegium of judges is very similar to the analogous organs in the European countries in form.

In content, of course, it's a completely different structure and everything is done differently. The difference is huge. This supreme qualification collegium is in instrument by the Administration of

the President. Each region has its own qualification board. I would say with a certain level of certitude that they depend on the regional environment. But the administration of the president is taking an interest in the regional boards as well if they think that the regional level decisions are subject to questioning.

For example, last year a teacher from Penza spoke in May of last year to her eighth graders about events such as the bombardment of Mariupol and about the destruction of the theater and other consequences. One of the students wrote a complaint about her, and this woman, this teacher, was given five years of conditional detention, which is a very soft sentence. But the regional panel summoned the judge who passed this verdict, and the administration of the president took a keen interest. I don't know whether this judge has been fired or not, but I know that she had undergone some checking. Final decisions are made by the administration of the president. Regional panels, in reviewing candidates, send their results for further consideration in Moscow.

And each of those nominees has detailed conversations with high level bureaucrats, and they have a very clear goal in checking the political stance of each candidate, and they perhaps touch upon some minor sins such as alcohol addiction or weird behavior.

There is actually a decree on the organs of judiciary that describes the responsibilities of the selection collegium, which makes those appointments. In reality, all appointments at the federal judge level and higher are approved by the presidential administration. According to the constitution, all federal judges are appointed by the president. And in 2020 there was another amendment that had to do with the status of the judges. According to that law, the president was fully granted the authority to pick the chairman of judiciary panels and their deputies. Those chairing judges used to be appointed for six years.

Putin had accumulated full control over the judiciary by 2003. Whether full or not completely full control could be debated, but I think the Yukos case provides a very, very good example of just how stron-

his control was. I think the authority to appoint judges should be taken away from the president. I am in favor of keeping the presidential position as part of the governance structure, but he or she should not have the authority to appoint judges.

There should be a new organ, the Supreme Judiciary Council, that should be in charge of those appointments. Let me quote from the draft: "people who have a stellar reputation, exemplary reputation and vast experience of working in the government advocacy or educational, educational bodies." This should be taken into consideration in deciding who should serve on the Supreme Judiciary Council. They should be former attorneys, legal scholars, maybe also teachers or educators. In our view, members of such a body should be people who are not current members of the judicial branch. They should be people who can assess the nomination without being influenced by their corporate preferences.

One could say, and of course we need to remember what kind of judges we have right now in some European countries, the Supreme Judiciary Councils incorporate representatives from other legal fields including people who are public defenders, and also by the way, some representatives of civil society, and human rights people. How can they be selected? The procedures that have been provided for already exist. We have the all-Russia Congress of Judges. That could be the organ, or it could be done again by the Supreme Council.

But in any case, there should be a federal law that sets forth the procedures for the formation of this Supreme Judiciary Council. How we are going to pick candidates teaching in law schools is a separate issue. I think that special conferences could be held as is done in many countries. Well, what does the world experience tell us, what does it show us? In the majority of countries, the so-called old democracies, such councils are formed by the parliament or by the government, and nobody has any significant doubts. In Italy, one third of this Supreme Council of Legislature is appointed and two thirds are actually appointed by the parliament. In Spain, 200

are appointed by the Congress of the deputies, and 10 are appointed by the Senate. But in the new democracies, Romania, Poland, those organizations are formed by appointments, by the judge, by the courts, and by the human rights organizations. I don't necessarily think we need to learn from the experience of Hungary, where the appointments are done by the government proportionate to the factions in the government. So that's the overall concept.

Of course, there are details that we need to think about. For example, the numbers, the size of that particular organ. We need to also consider the specific nominations, specific individuals, but I don't want to elaborate on that and go to that level of details. This is the overall concept that we have. This is the overall general view of what can be done.

Ariel Cohen:

I would like to give you a fair warning. I'm not a constitutional lawyer. But I started my career in Washington by criticizing the constitution drafts, and back then I wrote that these drafts were authoritarian. They skewed power towards the president and I predicted it would never lead to anything good, even if President Yeltsin looked so nice and warm and fuzzy.

I can't miss an opportunity to show off my predictive powers. I read about the federative model of government and its practice, which is described in two sources: One is the Federative Agreement of 1992, and the second one is the constitution itself. And there are certain imbalances because the Federative Agreement was not canceled. But the constitution, of course, has primacy.

The second thing is that there are two interpretations of the government form. One way to interpret it as: there is a centralized country, there is a man in charge, and it's a president. The first thing that the president did, was to use the mention in the constitution of presidential representatives, and he created federal districts. There was no such construction as presidential districts. And now there are, and the presidential authority rests upon them

very nicely. I think that this construction is under serious question. The fact that you have representatives somewhere doesn't mean that you are allowed to create a federal structure and assign certain authority to this ad hoc structure.

Later, in 2022, the Constitutional Court in its infinite wisdom said that the highest officials of the constituent entities are accountable to the president. That is also not written in the constitution. Now we also see that in comparison with 1937, when the judicial and executive power was united, essentially. Now it's at least separated. But general governing was the precedent that was used to create these federal districts that I have already mentioned.

Another issue: There aren't very clearly delineated differences between districts, regions, and various other territorial units. Do we need to do that, or is that not needed in Russia? I'm sure that there are plenty of opinions on this matter, but it's clear that in the Northern Caucasus the situation is somewhat different and the units are somewhat different. They're national. Do we need a national republic in Tatarstan? if you were to ask the indigenous population, they would say yes. I visited Kazan, and they told me how they shed their blood and they were knee deep in blood, and that's how they formed their nation. The recognition of the national roots of these republics is important. The right to help one's culture, one's language: This is something that is not welcomed in today's situation.

Here's another interesting question: The issue of existing constituent entities of the Federation vis-a-vis the issue of consolidation. Those in favor of consolidation are in solidarity with today's authorities because today's authorities constantly speak about the benefits of consolidation. If you'd allow me to depart from the structural federative matters and look at it from the point of view of foreign policy, I would say that the main threat to Russia is not Ukraine or the West. I'd say it's China because Russia is lagging behind China socially and economically. The question is when and how China begins to claim the territories of Siberia and the far East.

Deng Xiaoping spoke about it with Shevardnadze, former Minister of Foreign Affairs. When I spoke to Shevardnadze, he mentioned that Deng Xiaoping took him outside. They had huge maps on the tables. They looked very much like Soviet maps and Shevardnadze said something was missing in those maps. And Deng Xiaoping said that the maps reflect our unequal treaties...but please don't worry, we don't have any claims on you so far. The fact that these maps of injustices continue to be published in Chinese school books is something of a curiosity. There are at least 27 million people that live to the east of the Urals. Compare that to Heilongjiang province, only one province, where there are 30 million people.

There are different opinions on the population counts, but this certain disequilibrium, this misalignment, is just like Chekhov's gun. It is going to shoot, especially if Russia emerges from this crisis significantly weakened. The Chinese will require certain changes according to their maps. But I have deviated somewhat.

Another important issue is the management of federal units, and their lack of tax collecting authority. Their inability to replenish their treasury or collect local taxes. And it could be value added taxes, like in some states in the United States, or it could be income taxes. It could be any other type of tax, but they are either in an embryonic state or non-existent. That forces the constituent entities into a subservient position vis-a-vis the federal center. Because the federal center has the purse and the strengths of the purse.

Now, given this large territory, managing everything manually from the old square is a little hard. And that's why, based on the American experience...incidentally, I should say that I keep reading the Federalist Papers. Of course that puts me to sleep. But the topic is essentially the same: How to establish a federated distribution of powers and how to manage it. It grows up from the grassroots, and then the entities join up on a volunteer basis. But we see that our states have larger powers than Russian oblasts.

Maybe we shouldn't discard this experience...how to broaden the powers of the constituent entities so that they would be in charge of their own economic development and establish their own foreign relations? That is an important issue. By the way, there is an additional issue of the absence of direct election of governors right now. It now goes via the federal assembly with a presidential veto possibility. That is lipstick on a pig. This is not real autonomy. It's not a real expression of the will on the part of the people who live in these regions and those who want to elect their own person to be in charge.

When I was discussing this issue with the people in the government, back when I was still traveling to Moscow, they quoted several reasons. First of all, we cannot trust the people. People are not to be trusted. Secondly, the corrupt local elites are not to be trusted. And besides, all of these people on the margins, just like in Voinovich book, *Moscow 2042*, these people are unknowable. We in the center are well known, and we are good, and we know what to do, and we know what they need better than they know themselves.

So, the issue of electing governors is an important point. We also have the decision of the constituent court to make the governors accountable to the president. That is another moment and another point.

What else could be discussed? Defense, but also federal tax collection. The transportation system, emergency situations like floods and fires. They are immediately made accountable to the President.

What about the issue of expressing the local will, and choosing one's culture and language? Interesting issues to discuss. Here's another thing. What percentage of the GDP is collected as taxes by the region and given to the federal center? And what percentage could be kept by the region itself? And this is quite a serious point. I think we need to discuss it in depth. I think we need to research it because both in Russia and in the United States, the federal center is inflated. It spends a lot of money on necessary and unnecessary matters.

I think that if people in the units, in the districts and in the regions keep more of their money, they would improve the quality of life. We could quote examples...for example, Brazil, Australia, some other countries who do not have an inflated federal center. Imagine if the United States were to move the capital to New York. Imagine the traffic jams, even here there are traffic jams. The issue of the administrative capital is resolved on the same level as the issue with Astana, a small city. In the future they can think about canceled federal districts and electing local attorneys and district attorneys and of course governors.

Finally, the appointment of Constitutional Court judges could also be taken from under the old square building.

Vasily Gatov:

Concerning the federal aspects of the constitution and so on...from a logical point of view, a federation is a voluntary union. But which federation model should be used?

Ariel Cohen:

It's not unequivocal in the constitution, the federal treaty with the people. Even in the Soviet Union, there was a procedure for seceding from the union. I wanted to ask the following question. Reassigning government power may happen in Putin's Russia. This redistribution of power may require that the change in the federation, maybe not all members of that federation will want to live with each other as part of the same federation that was artificially cut and pasted by Stalin. Some of those territories were carved in a very weird way, not only by Stalin, by others as well.

As it is popular to say now, there's a post-colonial issue here. How we are going to handle the situation with the formation of the subjects of, or using your suggestion, Vladimir, to have a two-tier system. Who is the subject of the law? People who speak the same language, who perceive themselves as part of the same territorial formation? For example, some in Moscow can claim that they are separate.

Well, I don't think they will want to do that because they will want to keep sucking resources from the rest of the country like they are doing now.

Is there any hypothesis about how this reinstitution of the federation is going to happen, or what is going to happen in the regions where there is a compact majority of a minority? Then the issue of sovereignty emerges. Yeltsin said at the time, take as much as you can. Just take as much as you can, however much you want. Intuitively, I have a feeling that the North Caucasus will be a problem. It is becoming more and more Islamist. People of my generation, whether they're Christians or Buddhists or something else, experienced the oppression or the pressure of the Soviet system. Those of a much younger age in Central Asia, for example, those who grew up without this pressure of the Soviet system are more religious and more nationalistic. So how are they going to handle the Northern Caucasus?

If you produce more diamonds and oil than anybody else, you want to be independent. You want to be like a United Arab Emirates or Qatar. I wasn't saying it at the beginning, because it has nothing to do with the topic of our discussion, but we're living through very dark times and the fissures and the cracks that we are observing going to happen everywhere. All of our notions, various legal concepts, sovereignty, the right for self-determination, which collide and get combined in your presentations.

If we reorganize, then we should talk about the rightful national self-determination. So, if somebody in the Far East wants to live in an autonomous unit somehow and be closer to China...well, there used to be a Far Eastern Republic. Indeed it existed. So, who knows what's going to happen. We need to understand the external players as well as internal players and what we observed in the 1990s timeframe, such as the attempts to increase autonomy in the Urals. One could talk about the attempts to negotiate better conditions within Russia and maybe try to pressure them.

DISCUSSION

Question:

I have a question for Elena, who raised a very important topic. What she was saying was very practical about the interaction with Duma. We have encountered a very serious problem in the relationship between professional jurists, constitutionalists, and deputies. Each lawyer may have three opinions. Each deputy has at least one opinion. So there is this clash. When we develop this project, these opinions can differ vastly, because there are political interests.

What you have been just speaking about, the federative agreement or the federation treaty, we talked about this for half a day just about this one question in the parliament.

Elena, Irina, Ekaterina, all of you who are here, we respect all of you, but I have a specific question for Elena. How do you see this balance between strict legal construct or juridical control and the opinion of those who are not professionals in the field?

Elena Lukyanova:

Well, this is not a very difficult question. It's a question for the Duma. There is always professional assistance and advisors in any parliament who work with its members on a regular basis. In some of the parliaments of the world, there is even a procedure that provides for the staff an opportunity to express their opinions publicly. I'm not saying that you don't have the expertise. I'm saying that maybe there is a certain insufficiency of it.

There's a need for regular consistent work between specific experts and elected officials. You need to work longer with every draft. But you make decisions and pass things very quickly. When you are in a situation that a law, if the vote is positive, if the outcome was positive, is going to be enacted tomorrow. That takes a certain level of responsibility. I don't know how it would work. The experts seem to be overloaded with work.

There is quite a lot of legal creation or work. I'm also, besides my legal work, a member of the anti-War Committee and I'm also a member of the expert group supporting your gathering. I am very busy. We need to think about how to do this. But parliamentarians are not always professionals in the legal field. It's fine. They need to be worked with and we need to take time to prove our point.

One more note. Ilya is always trying to copy the American system. Yes, definitely we need to take into consideration the examples of and models of those countries who were successful. And I know that Ilya likes the American model, which I like too. And he frequently says to me, why are you always saying that this or that is not going to work for us.

After its war of independence, the US was in a certain situation that was actually fertile and favorable for the kind of work that had to be done on the formation of the state. And that was unique and it's not going to exist everywhere.

PANEL III: Russian Judiciary and the Rule of Law: Lessons and Prospects

William Pomeranz:

Welcome back to our third panel of the day on the Russian judiciary and the rule of law in Russia. This panel will be joined by Kathryn Hendley, Peter Solomon, Lauren McCarthy, and Grigory Vaypan. Kathryn, let's start with you.

Kathryn Hendley:

I like to work with this idea that we have to distinguish between political cases and mundane cases. This is something that comes out of some of the writing on Nazi Germany, this idea of dualism where you can talk about law operating in different ways depending on the context. When we're thinking about judicial independence, we might want to consider, how are ordinary citizens thinking about this? Are they totally obsessed with the fact that in a significant number of cases the courts are acting

in response to their political masters or do they pay more attention to the fact that in the vast majority of cases, people who are dealing with mundane issues are able to go to court, be fairly satisfied with what happens and believe that when they're asked about their cases, they believe that the judges have acted independently. So, we start and we're going to have a little bit of data. So, here's a public polling question that is kind of a shocking result.

I wasn't able to analyze these results because we have only descriptive results. They're not asking if judges are independent, but should they be independent? Now you would think this would be a no-brainer, but we see here that Russians are in fact quite divided on the question of whether or not you should even aspire to the idea of judges not being controlled by political authorities. To me that was very interesting, and it prompted me to ask a question about how they think about judicial independence? Not should judges be independent but the actual reality.

I'm going to share some results from two different surveys. One is a survey done in 2008 by INDEM, a Moscow think tank, and it comes out of a book project in which Professor Mishina was a co-author. I also rely on a 2018 survey, the Russian Longitudinal Monitoring Survey that asked exactly the same question.

Here is the question, which of the following statements best describes your point of view? The possible answers: judges in Russia are basically independent; judges in Russia are basically under the control of representatives; and it's hard to say. And for any of the data people in the room, you'll know that in Russia, this "hard to say" issue is one that is somewhat unique to Russia. When I did the analysis, I had to keep that in mind, because as we'll see, it represents a significant percentage of people, and it's hard to know what that means. Does that mean that they literally have no opinion or does it mean that they're somewhere in the middle? You see that both in 2008 and in 2018, we unsurprisingly get an answer that judges are basically dependent. And that's I think what we would expect.

The interesting question is: who are these people that think that judges are independent and what are the predictors of that attitude? I'll skip the methodological challenges. I don't think this is a methodological group. I wanted to talk with you about two factors that are associated with attitudes towards courts and judicial independence. One is education and the other is prior experience with the courts.

Regarding higher education, if we would run this same analysis in a country with a robust democratic system and the rule of law, you would see that people with higher education are more likely to think that their courts are independent. In autocratic countries, not just Russia but autocratic countries in general, people with university educations are more likely to think that they are dependent. We have lots of theories as to why this would be. Maybe they're keeping up on politically inspired cases, maybe they're more deeply engaged. All kinds of different stories might be behind this. But it's an interesting result and we see this both in the 2008 results and then in the 2018 results. And in both cases the differences are statistically significant.

But here's the interesting thing. You would think, given that we have this result for people who are more highly educated, namely that they think the courts are more dependent, it would seem to follow that people who have legal education should be even more skeptical; that they should be even more pessimistic about the courts, but they're not.

I have two different surveys here again with the same question. In an independent project, I surveyed students who were just finishing their legal education in 2016. They emerged from law faculties with a pretty positive opinion of courts. In the full sample, we have almost half of them saying that judges are independent. And then I distinguish between full-time students and correspondence students.

Correspondence students tend to be much older. Most have full-time jobs in addition to taking law classes. Their greater skepticism makes sense. The

full-time students are a little bit more idealistic. All of these law students are very different from our general sample. I thought, maybe that's just this is a result of coming out of law school and having heard all these wonderful things about the legal system. You haven't seen the tawdry side of courts. Then I went to this larger, very large N survey – the Russian Longitudinal Monitoring Survey – and pulled out the lawyers.

You see that almost half of these lawyers from the RLMS, who would be older people, think that judges are independent. This is an interesting result. It says that if you have sort of a superficial knowledge—you're a university educated but not in law—then you're going to emerge as being skeptical. But if you have the benefit of legal education, then you're likely to be more open to the possibility of judges being independent.

A second factor that I explored is experience with courts. When you start talking to people about courts in Russia, it's hard to find anybody that has anything good to say about them. But when you talk to people who are more engaged in the day-to-day reality of courts, they are able to see some of the challenges that courts are facing, can sort of weigh the pluses and minuses, and maybe distinguish between in this dualistic way between the politicized cases and the mundane cases, the results can be very different. This is something I think that needs to be tested in other authoritarian countries.

In another study that I did, I found that when you ask Russian court users about their experiences in courts, they were generally positive. This is a result that people often push back on, but the data support it. And the same thing is true here in the 2018 survey. We find that the majority of people who had court experiences believed that their judges had been impartial. Now, the one thing we have to recognize here is that going to court is not a typical activity. In this very large survey, only about 11 percent of people had gone to court. That's not unique to Russia. That's true pretty much everywhere.

But here's what's interesting, they had a good experience personally, but then you ask them this question about what do you think about judges and courts in general? And they come back and they're very negative about it. Here we just see these results played out here in the data. That's a puzzle. Why would they think courts were fair and independent in their case but not in general? Yet it's consistent with what some folks who did a very similar study in China found. It's just something to think about a little bit.

What's new and interesting about what I found: It's not surprising that a solid majority believe that Russian judges are dependent on officials, and in some ways, given what the literature has predicted from other studies in authoritarian countries, it's not that surprising that people who with higher education are also skeptical about that. What's interesting and what upends our thinking about the role of education exposure to courts is this piece of the story that nobody has looked at before because they never had this data before.

Logic would suggest that lawyers should be even more skeptical than lay people because they know a lot about the legal system. The results show just the opposite. That's the punchline and as I've tried to indicate as I've gone along here, I think the results make more sense when we factor in this reality of dualism. This framework reminds us that, depending on the context of your case, you could have a very different experience. The way I often put it is that the same judge can decide things very differently depending on what the context of the case is. I'll leave it there. Thank you very much.

Peter Solomon:

I'm talking about judicial reform and counter reform. Russia's constitution of 1993 promised judicial independence, and within a few years, new laws had established on paper its key ingredients: lifetime appointments of judges with firing only for cause and by their peers; control of judicial administration by judges; and decent funding for the courts. Most of these were achieved by the start

of the Putin presidency, but with courts gaining power through new jurisdictions, authorities sought to reassert control by making courts and judges more accountable. The Kozak reforms of 2002, which established disciplinary responsibility for judges and changed the makeup of the judicial qualification commissions that dealt with it, started the process of limiting judicial independence in practice and signaled to observers, like retired judge Tamara Morshakova, that judicial counter reform had begun.

Over the next two decades, Russia experienced waves of reform and counter-reform in the judicial sphere, adopting measures that advanced judicial independence and power and ones that harmed them.

Among the positive developments was the jury trial, from its spread to most parts of the country in the early 2000s, to its later decline due to lost jurisdiction, to its recent renaissance at the district court level. Another useful change was the creation of authentic appellate review as a replacement for cassation as the first level of case review.

Among the counter-reform measures, I would include the move of the Constitutional Court to St. Petersburg, the elimination of the High Arbitrage Court, and changes in the Constitutional Court. Especially damaging to judicial independence was the presidential administration's assertion of control over judicial selection and promotion of most judges. This was achieved through the expansion of the role of the presidential commission on judicial nominations, a body that included top law enforcement officials. By 2017, this body was rejecting nearly a third of the judicial nominations that reached it coming from the judicial qualification commissions and the Supreme Court. These included judges proposed for promotion to higher courts and appointment to the crucial position of chairs of courts. In the same spirit, the firing of judges became a presidential prerogative with the constitutional amendments of 2020.

Another critical part of the judicial reform story is the role of informal practices. While in theo-

ry judges have security of tenure, in reality they remained dependent on the goodwill of the chairs of their courts who could easily arrange their discipline or dismissal on a pretext. Judges who gave more than the rare acquittal, or whose decisions were reversed by higher courts, or who failed to take their chair's advice on particular cases, were vulnerable to such reprisals and might also be deprived of bonuses and benefits. Moreover, to advance to a higher court or administrative post required both a good performance record and the support of the chair, who also served as the main conduit for occasional attempts at outside influence on case outcomes. In short, the incentives shaping the conduct of judges supported conformism and discouraged creative adjudication. All same, on occasion individual judges did blow the whistle on attempted interference in cases, including pressure from their chairs or supervisors on higher courts.

The limits on judicial independence and practice that I've been referring to were well known in Putin's Russia, and ideas for how to address them became available when in 2016 the Putin himself asked to hear about them. The Center of Strategic Research under former Finance Minister Alexei Kudrin developed proposals with the help of a team from European University's Petersburg Institute for the Rule of Law. Their recommendations included reducing the terms of court chairs from six years to four with, at the district court at least, election by their peers—the system that has existed in Ukraine since 2014. Also proposed was the transfer of many of the chairman's functions to newly empowered court administrators. But their most dramatic proposal was to take the president and his commission on judicial nominations out of the process for most judicial appointments, apart from the first one where the president's participation is required by the Constitution. This responsibility would be transferred to staff at the Supreme Court. At the same time, the membership of the presidential commission on judicial nominations would change dramatically, with the removal of high-ranking representatives of law enforcement to be replaced by members of the legal community.

Needless to say, none of these proposals were accepted. Throughout the Putin years, judicial reform also embraced the search for efficiency and ways to help judges cope with huge and growing loads of routine cases. Simplified procedures that eliminated the hearing of evidence became pervasive, including judicial orders in civil cases and accelerated procedures at the arbitrazh courts. In the criminal realm, there was the Russian version of plea bargaining, along with reconciliation and court findings in business related cases.

Reflection on the future courts and judges in Russia, calls for consideration of the impact of Russia's war in Ukraine. One consequence has been the reduction of dialogue about the work of courts even before the war. By 2012 international projects in judicial reform, a source of new ideas, had ended. And in 2021, Constitutional Court judges could no longer publish dissenting opinions. With the war, Russia pulled out of international bodies such as the Council of Europe and also international associations for constitutional court judges and prosecutors. Over the long haul, this isolation will mean less exposure of Russian legal officials to new thinking.

Another issue is the extent to which judges in Russia face increased pressure to conform to regime expectations because of casework relating to the war. To begin, the Constitutional Court has continued its pragmatic ways in refusing to treat as unconstitutional the new administrative charge for discrediting the army (in a case in which my colleague Grigory Vaypan here participated). Judges on other courts have had to enforce new rules on business and finance, participate in the crackdown on dissent and on NGOs with foreign connections, and deal with military matters relating to recruitment, discipline, and offenses committed by soldiers.

To be sure, the barrage of new laws and regulations on these matters has left judges little discretion in applying them. It is still worth asking whether any judges have resisted the new demands and been subject to discipline as a result, and whether there has been an increase in judges leaving their posts,

many of whom were already taking early retirement, typically in response to excessive caseloads.

The judicial career may well have lost some of its appeal. For a few years, there have been reports of a shortage of candidates for judgeships, not only in the occupied regions but also in many parts of the country. This may explain why this year judges were awarded a 30 percent increase in salaries and similar increases in bonuses and benefits at a time when the state budget was stretched to cover military demands.

In sum, the situation of judges in Russia—where a successful career requires meeting regime expectations on overall performance and occasionally in particular cases—is a classic manifestation of an authoritarian state. Ideas for changing this are available, such as those offered by the Kudrin team and also a *Liberal'naia Missiia* study in which Katya Mishina participated. We also just heard the idea that Russia should adopt the European model of judicial council, notwithstanding the fact that it has not proved to be a panacea much of the time. To these, I would add a fresh approach to evaluating the performance of judges (something I can talk about later if you like). However, I see little prospect of the realization of these ideas without a change in regime, not just a change in leader.

Lauren Mccarthy:

Thanks to everyone for coming today and to the organizers of the conference for putting this together. I am going to draw on a lot of themes that we've already heard today and pull them together to make one big point: In thinking about the future of the Russian legal order, it is important to pay attention not only to the overarching structure of the legal system, some of the institutional design questions that we've been talking about with regard to the constitution, but the many pathways that we can study that teach us about how law and the legal system can be weaponized using ordinary and mundane procedures.

Often this happens, through a lot of what Peter was just talking about, through activating existing

bureaucratic incentives through informal practices and the sort of favorite topic of my own research performance indicators.

In other words, what I'd like to argue is that the people who implement the law matter tremendously in the way that the law works in practice. To give a couple of examples, I'd like to talk about two tools that the Russian system has used quite effectively to implement this repressive legal regime such as it exists today. The first is essentially a two-track system of legal punishment.

All of us are very familiar with the many politicized criminal prosecutions, often based on falsified or trumped-up evidence that the government has used against opponents. We need to go no further than this room to talk about that, but there is another form of violation of the law called administrative offense penalties. And one of the things that the Russian state has done very effectively over the past 10 years is amp up the penalties within that code, and also apply them to wider and broader types of activities.

Administrative offenses, for those who are not in the weeds with me, are non-criminal infractions that are usually punishable by some kind of a fine and in some cases what's called administrative detention, or administrative arrest, for up to 30 days. This is a short-term in jail. Again, this is probably a little bit more technical and in the weeds than we have been beforehand, but this has been such an incredibly effective way to suppress dissent.

A couple of innovations in the code of administrative offenses that I just want to touch on. The first is increasing fines. One of the things that we're all familiar with is the increasing illegalization of protest. Keeping in mind that the average Russian salary is about 57,000 rubles, the fine for participating in a protest that is unauthorized, which nearly all are, has gone from 2,000 rubles to up to 300,000 rubles. That's happened over the past 10 years. Another innovation in the administrative code meshes the administrative offense code with the criminal code in the form of two and three strikes laws. If you

violate the protest laws three times within 180 days, that will be grounds for opening a criminal charge. Likewise, Peter mentioned the "discrediting the military" law. If you do that twice and are convicted twice of that administrative offense within a year, that is also grounds for opening criminal charges.

Another way that the administrative offense code has been used is to pass laws that have very similar criminal and administrative offenses. And this creates a great degree of uncertainty in the population about whether or not the thing that they do, whether that's posting online about the war or standing outside with a sign about the war in some other form of protest, whether that's going to be a fineable offense, which many people are willing to bear, or whether that's going to be a criminal prosecution that can land you in jail for many, many years.

Again, coming back to this example of discrediting the military, the companion criminal offense is disseminating knowingly false information about the Russian military, which to a non-legal ear sounds very similar, and in fact has been used almost in exactly the same way: both criminally and administratively. The administrative offense is punishable by a fine of 30,000 rubles, possibly up to 50,000, and then more if you have some kind of official position. The second, disseminating knowingly false information about the Russian military, is a criminal offense punishable at its most serious form up to 15 years in prison, which thank goodness has not yet been charged.

The point here is that two people doing the exact same activity in the exact same way in two different regions, with two different police stations and two different judges, might be charged differently as administrative or criminal. That creates a tremendous amount of fear.

We've already mentioned in an earlier panel the case of Sasha Skochilenko, who was sentenced yesterday to seven years in prison for disseminating knowingly false information. I have been studying the judicial decisions of the discrediting cases. There are at least 10 cases of swapping price tags

that only received administrative fines. So, this really creates unevenness in the system. And I think this is something that again, is happening within the context of ordinary procedural ways of doing things. You can see the exact same patterns with social media posts about atrocities in Bucha, or the bombing of the maternity hospital in Mariupol. Those posts have been criminally charged and they have also been administratively charged. Both have been used to target political opponents of the regime as well as ordinary citizens. Again, creating an additional level of uncertainty. This strategy takes advantage of something that Katya Mishina mentioned earlier: the vague language in these laws that allows every judge to make their decision and go home and sleep at night because it is legally correct.

There is so much vagueness in the terminology used in these laws. You can see when you look very closely at the decisions, how they actually struggle to try to figure out at the very beginning before they understand what they're supposed to do, how to manage this all. What is discrediting? How do we define it? One judge went to Wikipedia, another judge went to a regular dictionary to look it up.

These vague descriptions allow judges to come to the sort of politically palatable, correct, and desirable decision on nearly all cases. That includes things that are as absurd as a person holding up a blank piece of paper. You can bring in an expert and somehow that expert will say that that is discrediting the military. Then the judge will say, yes, that is discrediting the military. This goes back to the original point about the people who implement the law and takes advantage of precisely these kinds of informal norms and pressures. Judges are concerned about reversals, they're concerned that what goes up to the appeals court, even if it's an administrative case, will be turned back and overturned.

We see lots of patterns of judges who should be dismissing cases because they've exceeded the statute of limitations are instead returning those cases to the police to do it. They don't want that on their own record. This is one of the ways in which we see these informal incentives playing out and the

tools of the repressive legal regime, this administrative versus criminal distinction.

The second strategy of this repressive regime that I want to briefly mention is what I'm going to call for lack of a better word, "listification." Which is to say, the creation of lists of people and organizations for which increasing penalties can be applied. The best-known example of this, and we have plenty of experts on this in the room, is the foreign agents list. This was first applied to NGOs, then it was expanded to media and journalists and citizens and informal organizations and then affiliates of all of those people. And once you create the list, you can add fines: You can fail to register as a foreign agent, which comes with a fine. If you continue to fail to register, it's an even bigger fine or a prison sentence. You can fail to label your materials properly, including not using the appropriate font in comparison to the other font used for the actual material. You can fail to complete reports to the Ministry of Justice. And these fines are of course all increased if the news media or a person in an official position does it. After that, after you create a bunch of fines, then you can create restrictions on freedom. Anybody who's been named a foreign agent can't do a whole bunch of things.

They can't run for political office, they can't hold government positions, they can't consult with the government on a variety of different things. They can't receive state funding, they can't contract with the state, and they can't do educational work with minors, which is to say they can't teach. Books from foreign agents have been removed from library shelves and professors at universities who've been named foreign agents have been fired.

This listification takes advantage of another area of bureaucratic incentives. The incentives whereby your performance indicators are counted over time. Once you start creating a list, then you have to add people to the list...and you have to let add people to the list every Friday, as it turns out in this particular situation. Once you have that list, you can both tighten the screws on the people, organizations included there, and you drive bureaucrats who are

in charge of putting people on this list to search harder and harder to find people and or organizations to put on the list.

In sum, to go back to my original point, I think that understanding the nuts and bolts of how this regime works is important because it teaches us a lot about how using very standard parts of the law, things that originally look innocuous, things that originally seem limited, can be weaponized against people who are against the regime or who the regime perceives to be against the regime.

Thinking about institutional design and the big, grand ways that we've been talking about in this conference is really critical. But also understanding the incentives of the day-to-day, the people who have to implement the laws that come out of that new institutional design, is really critical. I'll stop there. Thank you very much.

Grigory Vaypan:

Good afternoon, everyone. What are we going to do with all of this in a future Russia, with its repressive system? With its system of terror and even more importantly with the people who operate it?

I want to move on to the issue of transitional justice. And I would like more specifically to focus on the failure of transitional justice in the early post-Soviet years as a major factor that explains why the rule of law has never taken root in post-Soviet Russia.

I think it's an appropriate panel and an appropriate place to remember Galina Starovoitova, a revered human rights advocate, scholar, and a member of the Russian parliament, who was a fellow here at the Kennan Institute in 1989. There's a Galina Starovoitova Fellowship still available here at the Kennan Institute. She was the person who in 1992 and 1997 twice introduced a draft law on lustration in the Russian Parliament. Many people, including her close associates, many people even in the human rights community, in civil society, did not support that idea. And many people would say to

her that her proposal would lead to what was called a "witch hunt," a word now familiar to most people in the United States. To those people, Starovoitova would always respond, would you rather want witches to be hunting for us?

Starovoitova was murdered in 1998. She didn't live to see that history proved her right: This is exactly what happened. Witches are hunting for all of us.

In the early post-Soviet years, around 1989 to 1991, there was a very narrow, very short-lived window of opportunity to address Soviet-era crimes. And very little was done to confront those past crimes. Impunity for those crimes set the ground for persecution and abuses of power to reproduce themselves in post-Soviet Russia. So, this is basically a short summary of lessons learned of the transitional justice mistakes made 30 years ago. Now that we're speaking about a potential future Russia, these are mistakes that I believe we should not repeat. Let me briefly summarize the four aspects of that failed transitional justice project in the late 1980s and early 1990s: no truth finding, no investigations and prosecutions, no reparations to the victims, and no guarantees of non-recurrence.

First, there was almost no truth finding about Soviet era crimes. Most victims remained unnamed. The only database of almost 12 million victims that we have in Russia today is a database compiled by Memorial, which only has about 3 million names. Only a quarter of people who suffered during the Soviet regime. And it's a non-government run database. It's a civil effort. Most mass graves remain unidentified. It's estimated that 4 million bodies, 4 million people are buried all across Russia in unmarked graves. In most cases, we don't know where those graves are and who those people are. Most of the archives remain closed.

And in 1992, a law was adopted, a law that provided basically that the personal data of any security service agents were a state secret. And that foreclosed most of the opening of the archives.

Second, almost no investigations and prosecutions took place. There were some criminal cases that were opened in the late 1980s, but were closed in early 1990s because of the expiration of the statute of limitations. There've been a couple of remarkable examples where still living former KGB officers, retired KGB officers were questioned by investigators about their crimes. But then the cases were closed, those people died. Investigations and prosecutions ended with nothing. No one has been brought to justice for Soviet era crimes. Some of the results of those investigations were even made secret. The most notorious example is the Katyn massacre investigation.

Third, no reparation for the victims. In 1991, the only transitional justice law that was adopted in Russia in the last days of the Soviet Union was a law on remedies for victims of political repression. That law provides to this day a one-time lump sum compensation of 75 rubles, less than \$1, per one month spent in the gulag with a cap of 10,000 rubles, which is about a hundred dollars. There are still living survivors of the Gulag, children of the Gulag, people I represent as a lawyer who are still unable to return to places their families were deported from. They have a right to compensation under that same 1991 law, but that compensation has never been provided to the vast majority of those people. And in general, the whole transitional justice project has been reduced to that idea of some negligible compensation to the victims. But it's just one of those four aspects that I'm mentioning. And even that aspect, the reparation aspect, has been largely unaddressed.

And finally, no guarantees of non-recurrence. The Communist Party trial in 1992 at the constitutional court ended with nothing. And like I mentioned, the lustration draft laws introduced by Galina Starovoitova were never even discussed in the Parliament. As a result, not only did the structures of the Soviet state remain the same, but even the same people kept running the system. Just to give you a couple examples: One is Vyacheslav Lebedev, a judge on the Moscow City Court who used to jail

Soviet dissidents in the 1980s for crimes that very closely resemble the crimes that Russian activists are being convicted of today, like anti-Soviet propaganda, for example. In 1989, he was appointed Chief Judge of the Supreme Court of the Russian Federation, and he continues to be Chief Judge to this day.

Vladimir Putin himself, as recent research has uncovered, personally participated in the persecution of dissidents in St. Petersburg as a junior KGB officer in mid-1970s. Had that lustration law been adopted in the early 1990s, he could not have had a career in public service in the Russian government as a consequence.

Again, what's important to understand and to learn from this story is that the window of opportunity was extremely narrow. There's consensus among researchers that it was confined to basically just the final few months of 1991 before the economic reforms began and people lost focus on things such as transitional justice. It was also the time when the Soviet system and the security service apparatus were at their weakest. From the failed coup in August to December 1991, gave just four months to accomplish something, very little was done. Sadly enough, many people in civil society, many people in the activist community, resisted the idea of a full transitional justice agenda.

To conclude, transitional justice for both Soviet-era and post-Soviet Putin-era crimes should be a priority in a future Russia for any future government. We hope that we will have an opportunity to deal with that as a united Russian civil society.

But I have one very specific point to make here in this audience, and that is I believe that a demonstrated commitment to transitional justice should be something that the West should be asking in any kind of negotiations with a future Russian government. In particular, any lifting of the sanctions should be conditioned upon a demonstrated commitment to transitional justice and a transitional justice agenda. A good case in point here, I believe, from the United States is the comprehensive

Anti-Apartheid Act adopted in 1986. If you look at that act, it established a plethora of sanctions against the then-South African government, but it also contained a list of preconditions for the lifting of those sanctions, including not only the release of political prisoners, but also the elimination of apartheid laws and ensuring the political participation of all South African people in the reforms. I think it's a good example to consider and I'll stop here. Thank you.

Nikolai Bobrinsky:

My good friend and colleague Grigory Vaypan offered an overview of the shortcomings of the post-Soviet transitional justice in Russia. I want to take his point further and talk about what lessons for the future can be learned from these mistakes. I'm researching potential transitional justice after Putin and have published a book about it so you can find more about these lessons in my book. I will start with a disclaimer. It is impossible to predict what the political landscape in Russia after Putin is going to look like. This doesn't prevent us from developing an agenda for the traditional government and for pro-democracy parties and candidates in the first three elections.

Now, I'm returning to the lessons from the failures of post-Soviet transition. The first lesson is that we should act quickly as the experience of the years 1991-1992 shows the window of opportunity for launching transitional justice remains open for just a few months. This means that the most urgent measures must be implemented immediately without waiting not only for the adoption of a new constitution, but even for the outcome of the first free elections. Secondly, focus on individual responsibility and do not blame groups.

The only full-fledged trial of Soviet crimes in Russia was the case of the Communist Party of the Soviet Union in the Constitutional Court. But no one was accused at that trial and the plaintiffs and defendants argued about the collective responsibility of unspecified leaders and members of the Communist Party. As a result, the court could not

recognize even the most heinous crimes of the Communist regime, nor name the individuals who were responsible for them. The narrative of collective responsibility should be abandoned. Since it leads to the preservation of total impunity, it is necessary to bring to trial at least some key perpetrators of the state related or systemic crimes such as aggression, preservation of power, state terror, corruption and torture.

Thirdly, make perpetrators speak about their crimes. Many former communist party members and KGB officers who never faced trial or fact-finding procedure quickly moved from insincere public commitment to human rights to denial of Soviet crimes or authorization and justification of these crimes. Agents of the regime should be encouraged to expose crimes in which they participated or which they witnessed. This can be done through granting them a relief from criminal liability in exchange for testimony provided that such testimony is given publicly. For example, before a truth commission.

The fourth lesson is to prioritize vetting the judiciary and prosecuting obstruction of justice. Grigory Vaypan has already mentioned the chief judge of the Russian Supreme Court, Vyacheslav Lebedev. This is just a striking example of a general rule. New Russia has completely inherited the judiciary from the Soviet state. In the 1991 concept of judicial reform cherished by many liberal Russian lawyers, vetting of the judiciary was not mentioned at all. On the contrary, that concept spoke about the need to treat the members of judiciary "with care". This omission should not be repeated for the second time. Judges, prosecutors and investigators who took part in state terror should be relieved of their duties at the early stage of democratic transition. Subsequently, their activities must be investigated for suspected obstruction of justice.

Those complicit in criminally violating fundamental human rights such as freedom of speech or freedom of assembly, and those who took part in mock trials must be indicted and finally give victims as many reparations as possible. According to the law on rehabilitation of victims of political

persecutions of 1991, one of its goals was to ensure an affordable level of compensation for damage inflicted on those victims. This clause on affordable level of compensation foreshadowed the plight of victims of communist persecutions in the new Russia. Democratic transition must include a broad program of reparations for victims of the crimes of the regime, starting from expedited release and rehabilitation of victims of state terror; amnesty for those sentenced to severe punishment for petty crime; containing a simplified procedure for recognition as victims of those who suffered from armed conflicts and torture by police and special services and ending with generous compensations for damage to health and property and moral damage.

I will conclude my presentation by repeating those five lessons from the post-service transition for post-Putin transitional justice. Once transition starts, act quickly and implement transitional justice as early as possible. Focus on individual responsibility and do not blame groups, make perpetrators speak about their crimes, prioritize vetting the judiciary and prosecuting obstruction of justice and give victims as many reparations as possible. Thank you.

DISCUSSION

William Pomeranz:

I want to deal firstly with this question of transitional justice, which is such an important issue going forward. And Russians don't really know, but it had the first international, well tribunal, dealing with transactional justice in 1917. The Muravyov Commission had hearings for about six months about the crimes of the Tsarist State, and it was only closed down after the Bolsheviks took over. Russia actually has an important historical tradition of transitional justice that is often not remembered.

I also want to deal with the question of transitional justice. I want to ask Grigory and Nikolai, is transitional justice going to get caught up in the war in Ukraine as well going forward? Because there are many attempts now to update the notion of the crime of aggression or crime against peace

and basically charged Russia with that and they haven't been able to do so because it's not a part of the Rome statutes. To what extent will transitional justice become part, become caught up in the war in Ukraine? And the other issue that the war talks about or has been raised is the question of reparations for Ukraine and the \$200-300 billion that's left over in Western banks, and will that be used for the recovery of Ukraine? In terms of transitional justice, which is just such an important issue, to what extent is that going to be caught up in the aftermath of the Russian Ukraine war?

Grigory Vaypan:

To the extent that it's a question of prediction, I cannot tell. But to the extent that you're asking of my opinion whether it should be: yes, definitely it should. Transitional justice should address not only domestic crimes and abuses of the Russian government, but also its crimes committed as part of armed conflicts both domestically and internationally. We're speaking first and foremost about Ukraine, but it's not just Ukraine. It's also Georgia, Syria, and the Chechen wars. It's important to remember that the same culture of impunity, or "chain of impunity", as was stated in a recent Memorial report, is something that perpetuates those crimes, especially during the armed conflicts that Russia has participated in.

Just to remind you, Sergei Surovikin, who was at a certain point the head of the Russian army in Ukraine last year, began his career as a junior military officer whose battalion killed three protestors in downtown Moscow in August 1991 during the days of the coup. Rather than being prosecuted for that crime, he was let off the hook by Boris Yeltsin and was even promoted. That's how his career as a military commander started. It's crucial to break this culture of impunity in the Russian armed forces, and certainly war in Ukraine should be part of a comprehensive transitional justice agenda.

Nikolai Bobrinsky:

I concur with what Grigory said. Just to add, there is a declaration signed by many Russian lawyers,

called the Brussels Declaration, in favor of creating an international tribunal for the crime of aggression. So, there is already voice in Russia for such an initiative to address this crime.

Question:

Several years ago, I was the victim of a crime in St. Petersburg and the crime was reported to the police and the police came and investigated it. But all of my acquaintances in St. Petersburg told me not to expect anything from the investigation...that the criminal would be able to bribe his way out of any prosecution. Do you believe that bribery is an issue in the judicial system in Russia?

Kathryn Hendley:

The answer is yes,

Peter Solomon:

Yes, but it's not as serious an issue as pressure from chairs of courts and the power vertical. The extent of corruption and the courts varies significantly with region. It's much more common in the south and in the Far East than it is in the north and west. But when it occurs, it tends to be more often in civil cases of high value. There's very little bribery at all in criminal cases, because it simply doesn't work. You can get exposed...if you bribe, and the judge acquits, then there'll almost certainly be an appeal. It'll go to higher levels of the courts, and an inquiry may follow. It's just dangerous for everybody involved. One of the other problems, even in civil cases, is if you want to bribe to get a certain result, you have to have enough money to pay for multiple levels of the system. You win, then it's appealed, then it's appealed again. And you've got a whole lot of different judges and court staff to deal with. In fact, studies of corruption in Russian court often show that much of the time the people who bribe, they're not trying to get a particular result, they just want to avoid delay in the case, get it heard sooner.

Anyway, corruption is a problem, but not as great as you might think. And from all appearances it's worse

in Ukraine, that is corruption in the courts is worse in Ukraine than in Russia. But if you take southern Russia, near Ukraine, then it's exactly the same.

Kathryn Hendley:

Let me just make one other point. If you look outside of the criminal arena, if you look at civil cases and arbitrazh cases, one of the things that I think most people don't understand is that a vast majority of the cases in Russia are debt collection cases where there's actually no dispute between the parties. Those are handled through these summary procedures, and the amounts are trivial. So there's not really an incentive to bribe. It's a puzzle for court scholars to understand why debt collection cases continue to dominate in the courts. Of course, Russians can bring whatever case they want, but it's quite inefficient in the sense that the outcome is already known.

Andrei Illarionov:

I have one observation and one question. The observation is such that almost each issue that has been discussed at this panel as well as previous panels has not only something that we can discuss in future but has already existed, drafts or documents that have been prepared over the last year or couple of years by a number of organizations of the Russian Democratic opposition. Certainly, they are at a different level of preparedness, but, for example, the Congress of People's Deputies have prepared documents on almost each issue like constitution, municipal government, bill of lustration, transitional jurisprudence...that is, for just about each issue that have been touched upon, we have real documents that we can discuss. Not only what we would like to see in those documents in the future, but already documents that we can somehow transform our discussions in more practical ways. Just what is included, what is right, maybe what should be added, what should be corrected, and so on. So probably at the next stages of a similar conference, we can have a much more practical discussion on those issues because we have documents.

My question will be to Nikolai, because he made quite a strong statement, about justice against groups. And I have question about that, because we know that, for example, the Nuremberg Tribunal had a very clear provisions about such organization like the Nazi party, SS, Gestapo and some other organizations of the totalitarian Nazi regime in Germany. We had an international legislation against such a terrorist organization like Al-Qaeda, ISIS. Many countries have undertaken special legislation against Hamas as a terrorist organization. So why don't you think that such organizations like the KGB/FSB or some other organizations of the current regime, not only talking about the communist regime, should not fall into the same category?

Nikolai Bobrinsky:

Thank you for your question. I think that we should specify what is the legal meaning of categorizing such organizations. If you suggest sending any officer to jail because he used to work for this organization, I think it's impossible. This precedent about the SS tribunal, as far as I know, it is not recognized in contemporary practice of international criminal courts. But if this identity is grounds for vetting through lustration, then I think it's possible. It is widely spread in the context of post-communist transitions in central and Eastern Europe, and we can adopt such a model.

But my idea is that we should not vet everyone, even from within these bodies. We should choose between those who were implicated in really severe violations of human rights from those who just, for example, served as border guards. A future democratic government should not create numerous vacancies for itself. It's better to isolate those who are bad guys from the general population. It's of course, it's a political point, but also a legal one because any lustration must be implemented by the government and by the people.

Andrei Illarionov:

Not every SS or Gestapo officer was sent into camps after 1945, but the organizations were disbanded and banned. The same story with the

Baltic countries that banned the FSB/KGB and all such organizations on the territory of those countries. It does not mean that every member who participated in this organization went to jail.

William Pomeranz:

We have several online questions and lots of hands in the room as well. Our next question from online: "Poland seems at the moment to be starting a transformation back to a more democratic regime. To what extent can an international example help Russia to deal with the problems of courts?"

Kathryn Hendley:

We have a long, sad history of doing legal development by trying to work off of the models of other countries. There aren't very many positive stories. It's a seductive idea, because you think they might be similar, and we could adopt this institution, or we could institutionalize this way of thinking. To be honest, changing institutions is the easy part. The hard part is transforming legal culture, trying to get people to understand the changes and to be interested in them and to engage with them.

The previous story about how your friends were so completely convinced that the police would do nothing is illustrative. There's not a law that we can pass that's going to change the way they think about the police, and that is what we really need is that kind of thing. I don't know what the answer is. Maybe Poland's going to find the answer and then we can build on that.

Peter Solomon:

International pressure sometimes makes a difference. And of course, we have the story of various East European countries that joined the EU. The moment when there was the best leverage was actually when they were candidates for membership in the EU before they got in. Once they were inside the EU, leverage no longer worked well. But now Poland in the last few years has gotten in trouble with the EU, and it has actually sanctioned Poland a bit, and threatened additional sanctions.

Kathryn Hendley:

The EU accession process is also very formalistic and doesn't really deal with how people are engaged with legal institutions.

Peter Solomon:

I agree with you completely. I just thought the question was about international influence. And I agree with you that reform projects that go into a country, if it's just the people, the experts from the country of origin trying to promote what they think is good, then they tend to fail. You have to have outside experts who are sensitive enough to try to somehow create internal demand...say by putting out interesting ideas and waiting for judges and other people in the countries respond to them. I went through all this in judicial reform projects in Russia and even wrote an article about this.

Ekaterina Mishina:

Thank you so much. When we watch the news, when we read judicial decisions, we feel that many Russian judges are hugely unfit for the office. Not only because they're poorly educated, not only because they're affected by their previous career, not only because they underwent professional deformation, but because they lack certain qualities which are absolutely necessary to make a good judge. So, my question is, what do you think about the idea of psychological evaluation of candidates for judicial positions?

Grigory Vaypan:

I was struck when I read a 2011 interview with Constitutional Court Justice Gadis Gadjevo to *Novaya Gazeta*, where he was pressed on certain controversial decisions, judgments that he was part of on the court. Finally, he said: "well, at the end of the day, as a judge, you must be loyal to the state. If you're serving, you must be loyal to the state."

I think it's a very telling quote because it exposes the kind of judicial mentality that they have from top to bottom. They don't see themselves as independent actors, they see themselves as part of

the bureaucracy. I've been at Constitutional Court hearings many times, and the way you would see judges shaking hands with the representative of the president or the representative of the Parliament, tells it all. They see themselves as part of one apparatus, and people appearing before courts, citizens, are outsiders in the system.

I completely agree. It's an enormous psychological, mental, philosophical problem that you cannot change with any law, like Kathy said.

Kathryn Hendley:

Maybe we need to distinguish between apex court judges, where the expectations of them are different, and ordinary court judges. Now we're back to the discussion of yesterday when we were talking about different traditions of law. Judges are bureaucrats in civil law systems. They are not independent actors. They are not bred for courage or speaking out or anything like that. I'm not here to say whether that's right or wrong, it is what it is. And that's not true just in Russia. It's not true across Europe. Changing what we are looking for in a judge would be a much bigger transformation. But I think constitutional court judges are different.

Question:

Last session we were discussing that it may not be a good idea to copy a practice from one country and implement in other country, but nevertheless, do you see any doctrines or practices from the US legal system to implement in future Russia?

Lauren Mccarthy:

I would say one thing to the question about practices. I think it has to do with policing. One of the things that I think was meant to be good but has turned out to be bad is the time limits on police investigations. For example, where you create a system in which almost everything happens before the investigation is officially opened so that they don't go over the limit.

I think that while it was intended well to learn from the experience of other countries, that kind of thing has really made it very challenging to make sure that procedural rules are properly followed, because almost everything is happening in the shadows in the timeframe that is not related to that official opening of the case. That's just one small example of something where you could change around incentives quite significantly.

Question:

Two short questions. Question number one is do you know if Russian lawyers are engaged in the development of any mechanisms for further reparations for Ukraine? Because the \$375 billion that are in frozen assets are not enough. Ukraine has suffered more than \$1 trillion by now. Are there any long-term mechanisms to ensure reparations? Second question: Russia has failed to restore justice for so many victims, both inside Russia and outside. What makes you think that this time there will be something that would favor these changes, given that even with the change of several people in Kremlin, the overall apparatus of oppression will remain?

Question:

My question relates to the relations, or the prospect of relations of Russia and the European Court of Human Rights. There is no more dodging Russia's infringement of the minimum standards of the European Convention of Human Rights. What do you think? Will it jeopardize the Russian judicial independence and whether rulings of the courts will be based on the standards of the European Convention on Human Rights?

Grigory Vaypan:

I'm not aware of any particular reparations effort in addition to what we are already aware of. Why is it going to be different this time? No one is sure of that. My point is just if we don't try, it's not going to work. If we try, it might work. It might not work,

but it might work, and that's why we should be working on that.

One sign of hope that I see compared to 30 years ago is that at least in Russian civil society, and at least among ourselves, we can now see this consensus that there should be a comprehensive transitional justice agenda including vetting, including lustration. If we look at what was 30 years ago, I mean at the founding Congress of Memorial almost 35 years ago, in 1989, there was a resolution adopted saying that we should not proceed with any criminal prosecutions "in the interests of humanity and mercy."

I'm really glad that this attitude has changed, and that we now have consensus, at least among ourselves, that transitional justice is the way forward. Rule of law is not going to take hold in Russia without transitional justice.

Speaking of the European Court of Human Rights, it's already been a tough relationship. In the last years of Russia's membership in the Council of Europe, so many important judgements were not implemented beyond the payment of compensation. Some crucial decisions like, for example, an interim measure ordering the Russian government to release Alexei Navalny, were not complied with in 2021 while Russia was still a member and was formally obliged to implement those rulings. Certainly Russia's expulsion from the Council of Europe makes things even worse. What's left is the UN human rights system and institutions like the recently appointed United Nations Special Rapporteur on the human rights situation in Russia. It's not a judicial mechanism, but it's a naming-and-shaming mechanism that may have certain diplomatic consequences around the world.

Question:

My question is more basic to whoever wants to answer. What are the real judicial mechanisms for bringing Russia to accountability for these crimes? We now see the International Criminal Court,

whose judges are prosecuted now in absentia in Russia. There are some lawyers who say that actually the General Assembly could establish special tribunal as it was with Sierra Leone. What real mechanisms do you see to bring Russia to that accountability.

Question:

A question for Dr. Hendley on the differentiation between educated people and lawyers in terms of their assessment of the courts. Couldn't a factor be a psychological self-defense mechanism—that your whole life isn't futility?

Kathryn Hendley:

You mean if you're a lawyer? Yes, but you would think that that would dissipate over time, that you would start to be more resentful. My initial hypothesis was that the kind of rosy glasses that you see in law students would not be present among lawyers. Your argument that their attitudes could be motivated by psychological self-defense is possible.

Peter Solomon:

On the question, who is to be held responsible and how? Is it Russia as a country? Is it Russian leaders? I was working with a colleague from Ukraine, a very good international law scholar this past year. She is a big proponent of the creation of a new tribunal that would fill gaps left by the existing system. And I think she's got a lot of credibility. But on this question of the responsibility of Russia and its leaders, the landscape is not yet clear. There are still gaps.

Kathryn Hendley:

As you indicated in your question, there's a lot of mixed evidence on what works best. If you have a tribunal that isn't based in the country, then is there any legitimacy for that process within the country? Do you really get the shaming that you want? But you do get some people put on trial. So there are many, many, many decisions that have to be made that haven't been made yet.

Peter Solomon:

It's just too early to answer that question.

William Pomeranz:

And for Ukraine, there over a hundred thousand cases in Ukraine that have been documented and are basically ready to go. The only question is who will have jurisdiction over these types of cases and whether a Ukrainian tribunal will actually be able to evaluate and achieve justice for these crimes.

Kathryn Hendley:

And whether or not they have the institutional capacity within the courts.

Question:

That's why I'm asking what the experienced lawyers think of the different mechanisms, and which is most realistic: general assembly, international criminal court, and so on.

Grigory Vaypan:

I'm sure you know about most of these procedures and proceedings, there's no silver bullet, there's no perfect mechanism. There are many proceedings currently underway that include documenting the crimes, claims being made, and claims being heard. There are proceedings at the International Court of Justice, in fact, two sets of proceedings. There is an investigation at the ICC. There are several cases pending or being heard before the European Court of Human Rights, where Russia is still bound to answer to crimes committed before September 2022. Importantly, there's the United Nations International Independent Commission of Inquiry on Ukraine, which is active in collecting evidence of the crimes of this war. These processes are all under way. It doesn't mean we should expect all perpetrators to be brought to justice, but it also doesn't mean there's a stalemate right now.

Question:

My question is to Peter Solomon, on your statement about the level of corruption in Ukraine, that it's worse than in Russia. It hurts me a bit. According to international research, the index of the perception of corruption in different spheres shows Ukraine is much better than Russia. And I just wanted to ask on which information your statement is based.

Peter Solomon:

Fair enough. I guess my most important source is Maria Popova's work. Her comparative article and book and so on. But whether this is up to date, whether things have changed, for example, in the last two years is an interesting question. There is, of course, a huge effort to attack corruption in Ukraine.

Question:

I'm comparing Russia and Ukraine, talking about the level of corruption.

Peter Solomon:

But that's general corruption. I'm just saying in the courts it appears that there is somewhat more corruption in Ukraine. I wouldn't take a stand on this, I'm certainly not saying that the bulk of cases in Ukraine involve corruption. It is mainly civil and business cases of value that have the potential for corruption. I suggest that you look at a good article by a Ukrainian legal scholar on the two tracks of handling of business conflicts there.

William Pomeranz:

I have one last final question. We have all talked about the judiciary and the courts, but no one has talked about the procuracy. And the procuracy, quite frankly, is probably the most powerful institution and the longest running institution in Russian law. To what extent do reforms of the procuracy have to be done in order to change the Russian judicial system?

Peter Solomon:

That's a fine question. There were serious attempts to reform the procuracy in the early nineties, as you know quite well. In fact, if you go back to the 1991 Conception of Judicial Reform, which was a serious critique of administration of justice in Russia written by a group of nine jurists including Sergei Pashinand and Tamara Morshchakova, that document presents the Procuracy as the main source of evil in the system. In fact, it's an exaggerated indictment, but it did lead to a discussion of reforming the Procuracy. One of the ideas was that you should eliminate all the procuracy's supervisory roles, including general supervision. In the end, all that happened was the elimination of one or two specific forms of supervision. As I recall, in the 1992 Law on the Procuracy did ban total fishing expeditions. Procuracy officials became obliged to provide evidence of wrongdoing before they engaged in an investigation of an enterprise or business. The Procuracy also lost the right to supervise a procedure at trials where it also handled prosecutions. Still, as far as judges are concerned, the Procuracy remained powerful and a force to be reckoned with. In some respects, it may have gained in power.

Kathryn Hendley:

They're very, very skilled infigters.

Peter Solomon:

Yes, they are. That's a good way to put it. And you've written wonderful things about the procuracy over the years.

Kathryn Hendley:

Would you agree with that Will?

William Pomeranz:

Yes, they are. Okay. Well, with that, we're going to bring this discussion to a close. Thank you panel.

PANEL IV: **Constitutional Parameters of the Future Russian Democratic Transit: View from the Russian Democratic Opposition and Civil Society**

Angela Stent:

Welcome to the final panel. Today, we will have a very important discussion about the constitutional parameters of the future Russian democratic transit. We have a very distinguished, excellent panel here to speak.

Let me just introduce to you our final panel. Although I think none of them need an introduction, they definitely will get one. Mikhail Khodorkovsky, as you know, was the former head of the Yukos Oil company. He was a political prisoner for 10 years. He's a leading member of the Russian opposition and organizing groups to think about the future there. Lev Ponomarev is a Russian opposition politician. He's a human rights activist. During the Perestroika period, he was one of the founders of the Memorial Human Rights Society. He worked with Andrei Sakharov during the elections for the people's deputies of the USSR, and he has founded the Movement for Human Rights in Russia. Alexandra Vacroux next to him is the Executive Director of the Davis Center for Russian and Eurasian studies at Harvard University. She writes on Russian and Eurasian policy issues. She writes about the war in Ukraine. She's also the head of the Master's program at the Davis Center, of which I was a graduate. So she has educated generations of young people in the field. Vasily Gatov next to her is a media analyst and journalist with 35 years of experience in Russian and foreign media, and he's a visiting scholar at the Annenberg School for Communication and Journalism in Southern California. And our own, William Pomeranz, of course, whom you all know is director of the Wilson Center's Kennan Institute and you've been listening to him for the last two days. He's an expert on the complexities of political economic developments in Russia, and he's a legal

scholar and a historian by training. I look forward to everybody's remarks and please, Mikhail Borisovich, you can start.

Mikhail Khodorkovsky:

I would like to welcome the participants, and I'd like to take advantage of the fact that I can speak Russian here. I think Putin's regime will exhaust itself within the next five to ten years. In many ways it has to do with the fact that it's a personalized regime that's based on its founder. And once the founder is gone, it will not be preserved in the same condition.

So, the question is, what's next? What can we do? What do we do? And how can we do what we want, and not what we don't want to do? And what needs to be done right now? Why is this question being asked by us, the democratic opposition of Russia? Why are we speaking about it in the United States? Well, this is how the situation has evolved. We ended up in a situation when the West and the United States in particular can apply pressure, maybe even substantive pressure to the direction which the transit takes. And this influence will be formed not only when the transition starts in the future, but it also can happen now ahead of time.

So, what are the items that we're looking at? Items on the agenda where the West and the United States can play a significant role: one is a choice between the monopolized power belonging to one person in the future or a group power, that is going to be more distributed and more collective.

This question of choice is already being formed, today: Whether it's going to be a coalition continue as a highly competitive situation when only one leader will emerge and monopolize power. So that is item number one: coalition versus one person.

Number two is readiness to influence Russia's future through lifting sanctions. Now, it is premature to talk about the lifting of sanctions. Sanctions are being introduced, and they will have to continue being introduced so long as the War in Ukraine

continues. But we must think about the moment when the war will end, and the time to lift the sanctions. What is going to be done in exchange for lifting sanctions? Will it be, for example, another strategic arms reduction treaty, that later will be recalled, violated, and repealed? Or will it be something else?

Another example, which is probably not the last one, but one I would like to highlight: acknowledgement of Putin's legitimacy. Putin will try to prove that he's legitimate by creating the facade of adhering to a procedure. And that will depend not on how people will vote, because of course we know that there will be no voting, really no elections, but it's going to depend on whether people will believe that Putin has majority support or not. That of course is our, Russian, internal affair. But whether the West will recognize or not recognize that Putin as a legitimate president at the end in the long run, I think this issue can be resolved in different ways.

For example, the Parliamentary Assembly of the Council of Europe passed a resolution where they state that the next Putin term is not going to be legitimate. What others will say, time will show. Our task here is to convince those American political forces who are interested in issues related to Russia that a democratic Russia is possible. It's not evident, but it is possible. Secondly, that the possibility of hinges upon what the US is going to be doing today. That is also related to what America and the West is going to do during the transition time, which will happen as it always happens: unexpectedly out of the blue. I'm telling you sincerely about our agenda, and thank you very much for dedicating time to the issues pertaining to Russia here.

Lev Ponomarev:

I am very happy that I can continue the presentation. The fascist country that we're dealing with exists. Unfortunately, hundreds of thousands of people were killed, and now is the time to stop the butchery, to stop the fascism, to stop the leader of fascism.

What can we compare this situation with? Probably with the Second World War. How was this problem resolved at that time? In a good way, by the way. Germany ended up being a democratic state. It was done through occupation. It is obvious that the occupation of Russia is impossible. That is not going to happen, so this is why we're all here.

If occupation is not possible, then the West needs to make huge efforts. It doesn't mean that there is no civil society in Russia, and it doesn't mean that they will not be doing anything. However, I would say that so far the West has not taken effective measures. I have given you the example of occupation. Well, that doesn't work. Okay, I agree, but sanctions don't seem to be as effective either.

There is a proposal to show Congress how the bureaucrats in Russia to a significant degree continue spending their vacations in NATO countries. Not only just anywhere in the world, but in NATO countries. Imagine during the Second World War Hitler and people from his entourage spending their vacations like this.

How do we stop that already? We talked about this at a conference in Brussels. By the way, I am speaking here on behalf of the Sakharov movement when I say that we would like to have sanctions that would impact any bureaucrat within the system, whether they are a state counselor of the first or the second rank, or among the highest echelons of power. All those people are pillars of support to Putin. So maybe not based on the personality, but based on the position he or she occupies, they should be sanctioned. This way the state system would start falling apart because people would start quitting. This is a very specific proposal that I have come to make here, and I have spoken with different people, including in the US Congress. I think this problem can only be resolved in the US and in Europe.

We will have the opportunity to use transitional justice. Of course, Putin is hoping to preserve the preferences that he has in place. I think the government will have some kind of turnover. I am

not sure whether Putin will or will not be alive, or how long he will be alive. I think that we have observed some indicators that he's losing his absolute power. We know what happened to Prigozhin. It is very hard to say how strong Putin is. But of course, he still is strong. Of course, he is punishing his opponents in the most abominable ways, as we see with some of them who are incarcerated and detained in camps.

We also need to know that his successors may agree with him. So where is the guarantee that the new and more charismatic younger people are not going to make repeat the wars of choice in Russia? We have to use a policy of carrots and sticks, and we should be using sanctions wisely, including economic sanctions.

Okay, so what is a carrot and what is a stick? We should be giving them the promise of something positive coming out of certain little steps that they can take. Maybe this would help them to move closer to democratic elections. And I think it should be the majority elections, something that happened during Gorbachev. I remember the 1990's, I remember the movement, Democratic Russia, and we won the election. It was a peaceful transfer of power in 1990. We had a peaceful democratic revolution. It sounds like a miracle, doesn't it? So perhaps a step-by-step process. And then later on, if we were to have the majority elections, then we have to have political parties.

Mikhail Khodorkovsky is very right when he says we should avoid a single leader. And one would understand that of course, majority elections like it happened under Gorbachev where different groups nominated various people. A group of 500 people could already nominate one person, and everybody, all these nominees were equal. Perhaps my vision of the future is a bit too optimistic. Nevertheless, I'll stop here.

Alexandra Vacroux:

It's an honor to be here with my fellow panelists, and I want to make three comments based on what

I heard today at the conference. The first is that the choices that were made when the 1993 constitution was designed reflected, of course the political situation at the time and the different political players, as Ekaterina Mishina mentioned this morning. There's a certain degree of path dependence in which institutions evolve at any given time. It's important to think therefore that how the constitution changes or is rewritten is also going to depend on who is going to be drafting it and what the political conditions are at the time. For example, the fact that we are all very concerned about the fact that the presidency or the executive branches may be much more powerful than the other branches will definitely have an influence on how the next constitution is drafted.

It's important to at least recognize the influence of the moment on the decisions that are made. I would also say that it's important to remember that the people who are interested in undermining documents or regulations or constitutions are usually the ones that are not in the room when the negotiations are taking place. I remember when I was studying pharmaceutical corruption and markets in Russia in the 1990s. I would go and visit these different companies and they would say, we have an entire room of lawyers, and as soon as a regulation comes out, we throw it into the den of lawyers and they figure out how to circumvent the rules. The same will be true with the constitution. It's extremely important that it's not only the same liberal-minded people that are behind the drafting and that are in the discussions, and that people really think about those who are not interested in the same objectives.

The second point I would make is that Americans are so proud of their constitution and their system of government. In the 1990s, many people were convinced that if only other countries would adopt our wonderful constitution and institutions, everything would turn out wonderfully. What we have found in this country in the past, let's say five to 10 years, is that in fact, the effectiveness of the institutions depends on the willingness of the

players that are in those institutions to observe the norms that underpin them. So it's fine decide to determine and to design a constitution that has all of these important checks and balances, but it's also important to remember that you're relying on certain norms in order to make sure that those are observed and that you have to anticipate, as Kathy Hendley said in the previous panel, that there's no easy way to change the culture of the legal system or public opinion. Yet without those changes, it's very difficult to have the kind of country that you want based on the constitution that you design.

I would suggest as an educator that one of the best things that you could do to start changing that idea now is to make sure that there is access to online English classes as extensively as possible for anybody who has left Russia or is still in Russia. This is happening now, but not nearly to the extent that it should. Once people have access to sources of information, to academic journals, to newspapers, to different media outlets in other languages, they start to realize that there are systems beside their own that could be quite informative.

Finally, the third point I would make is that we've concentrated a lot on separation of powers and how important it is—with good reason. We have also, to some extent, focused on the importance of individual rights.

I would point out and remind everybody who already knows that *federalism* is also a critical aspect of the Constitution, particularly in a system where opposition is so suppressed and repressed as in Russia. It might be that one of the best sources of a counterweight to a strong federal government is finding ways to empower the regions that are part of the federal system. I would really urge those who are thinking about the next constitution or of the first aid kit, as Irina mentioned, that a lot of attention be paid to how the regions can be really fully integrated into a system and provide some, let's not say opposition, but at least a counterweight to federal power. I'll leave it there.

Vasily Gatov:

Thank you. I would probably bring grain of salt in all the discussions because I mean, it's really kind of important to envision the future great, beautiful Russia with a worthy constitution and respect for the rule of law and sufficient number of professionals who can implement everything and highly developed political culture and so on, and everything that I just listed is very questionable. Taking from where Alexandra finished, I would say that first we need to realize that the parameters of future Russia, I mean landscape, physical landscape, I mean, how much of Russia will remain Russia? How much of Russia must remain Russia, the societal landscape? What is happening now with the of mobilization of criminal elements? It's not going to be like smallpox or chickenpox. It's really more of a cholera that will seriously damage the societal structure.

I mean, we all hope for victory of Ukraine and coalition that stands behind Ukraine, but it may well end in some kind of ceasefire. That will be both not beneficial for the Western side here, and at the same time a humiliation for Russian society because it didn't achieve the victory from their point of view. There will be another wave of resentment and we can imagine how bad this could be. The biggest problem is that, and I think every scholar who not only studied law but also social implications of Russia, is how Russians view justice and law. It's not because Russians are so egotistical or selfish or atomized, it's just because there is no normal legal culture and there never was, to be honest...the very short period under Alexander the Second should not be counted.

One of the important lessons that I gather from all the discussions of the conference is that we know very, very few things about minimal requirements of the future constitution. We barely understand what power might look like after the conditions of change arise. We may synthesize what elites will like, and probably they would like something like America. But we also have neighbors, and half of our neighbors would like Russia to not exist at all, and some of our neighbors are still our adversaries

that want not only for Russia not to exist, but for Russia to be defeated and humiliated and partitioned. So this is not an easy set of conditions.

William Pomeranz:

This new generation of lawyers (with the exception of human rights lawyers) has not been very political. Nevertheless, a strong contingent civil law land practitioners now exist in Russia which was not true when the Soviet Union collapsed. I also think in light of the 2020 amendments, certain imperial principles have been expanded and enshrined in Russia's founding law. But what does Russia actually believe? Boris Yeltsin famously held a competition about what was the Russian idea. In the end, Russian scholars could not find a consensus on the Russian idea and the competition simply stopped. But at some point, Russia has to figure out what it stands for, and it shouldn't be empire or statehood.

Putin did recently put forward a new history course where he talked about Russia as its own civilization distinct from the West. For Russia to go forward, it will have to abandon this new course on statehood. Indeed, this course as written, reminds one of an updated version of the history of state and law, and I'm sure that it will be received as well as previous courses on Marxism, Leninism in the past. Therefore, we need to take advantage of the 50 years of new legal consciousness and new generation of who have been trained under very different circumstances. When I practiced law in Russia, I was always impressed by their collegiality and their expertise in law. We need to take advantage of these in-country resources and to expand on them.

DISCUSSION

Angela Stent:

I would like to ask a question of our three Russian participants on the panel. Earlier on today, I was on a Zoom call, and Denis Volkov from Levada was giving the latest results of their surveys. It's very striking how passive the majority of the Russian population is today, and how they've tuned out Putin.

Mikhail Khodorkovsky:

We understand that the transition is possible in several directions. Either the transition will be happening inside Putin's elite, as esteemed Lev Ponomarev has suggested. Or this transition will happen on the streets. It's possible that there would be a case where both scenarios can happen simultaneously. In any case, a lot will depend on how the oppositional democratic forces will treat this transition, how they will approach it. If they approach it from the standpoint of a revolutionary party, then the transition, most likely, will be authoritarian. If they approach it in the mode of a people's front, then I think it's more likely that the transition will be more democratic. I agree completely with the fact that the key issue of balance is the regions. The regions are the key, and the participation of regions in the process is very, very important.

I don't believe that anyone who unilaterally obtains power in Russia will willingly share it. Throughout our history, there has been only one instance of such sharing, and the outcome wasn't favorable for the individual who did so.

Lev Ponomarev:

I would like to give an example of the transition in the way it happened in 1989 and 1992. Why was it successful? People were out in the streets. They didn't have arms, but the streets were full of people. Up to a million people would be out in the streets on the eve of the elections. Can this happen again?

I would like to emphasize the role of the West, which is significant and cannot be overestimated. The Soviet power was falling apart gradually, bit by bit, and partially it was due to the information war, if you please, that was happening on the Western end and it was broadcast to whole of the Soviet Union. I started listening to those broadcasts when I was in the 10th grade when I was in high school. I knew what the truth was. I think informational pressure, I would call it counter propaganda, should be happening. There are democrats there, maybe there aren't that many of them, maybe up to 25 percent, but we need to have a peaceful revolution.

The second point: We need to not only have the politicians define the political situation, but the economic situation. That is a very important point. People who were supporting the transition in the years I cover in my statement now, 1989 and 1992, understood that they could not live as they were anymore. They had no option other than just go to the streets, take to the streets and try to accomplish something. We need to include people.

Vasily Gatov:

I would try to answer your question, Angela, and suggest some ideas as well. Most passive or behavioral avoidance of events comes from two major sources. One, as all of us know, is the spirit of silence. The spirit of silence and a double spiral of silence, because people are afraid, but they are also kind of being told what is correct to say. So it eats itself. The second important thing is that people are tired of bad news, really tired. What about alternative media, whether it be US government funded, German government funded, or British taxpayer funded or even Russian? Exiles generally convey a negative agenda. An agenda that says, guys, your economies are in tatters, your country is disrespected, your soldiers are murderers, your commanders are criminals, and your president is worse than evil.

People just hide from that. They just don't want to hear that. I don't say that everyone, some people really kind of are in the bubble and it's okay. But the silent majority? They just don't want to hear it. And here I agree with Lev, that there should be an alternative way to deliver information and convey values that people would probably jump on. On the other hand, I don't believe that Russia could be crashed economically. It's not the Soviet Union. With all the problems the country has, it is far from the condition Soviet Union had for years.

Because it's a market economy. I mean, there are some very interesting effects that the war has brought about, like the tremendous economic growth of transit. Previously, there was no economic growth there. And because the country is orient-

ed to the East now, truck drivers went there, there is a lot of border trade and logistics and so on. If we want to address ordinary Russians, the agenda should be much broader than just condemning Putin as a criminal.

Similarly on the diplomatic front, with all understanding how difficult it would be, some issues remain critically important, like nuclear issues and strengthening the non-proliferation regime—especially assuming China wants to expand their nuclear arsenal. This is a perfect reason to speak with Russians about that. What do they think about that? What does India think about that? What does Russia and India think about that, what Pakistan think about it?

I would say that with all understanding of how awful current situation is, unfortunately we shouldn't wait for Putin regime to collapse. We unfortunately need to interact. And probably that would also shorten the life of this regime. I mean, I don't know why, but I believe in that.

Angela Stent:

Can I just ask you, how would you interact with ordinary Russians?

Vasily Gatov:

Well, I mean still YouTube is not banned and you can do it there. Russians are quite clever in accessing Instagram. It's still one of the largest platforms. TikTok is available. There are some alternative platforms developed to be able to reach Russians. Well, mostly it should be video.

Angela Stent:

Okay, thank you. I had a question for Will and Alexandra: We heard that the United States will have a major role in what happens after Putin goes and there's a transition. I wonder whether you both agree with that, and how you think that the United States can in fact influence what happens? I'll start with you, Will.

William Pomeranz:

We have experience with this and it's not a really good experience. That's why I'm not optimistic that the US, when we can't find consensus on aid to Ukraine and on a host of other issues, would be willing to create a new Marshall Plan for Russia or would want to engage in this. I don't see that as an actual possibility; or it will happen only after we deal with Ukraine. And I think we're going to be dealing with Ukraine for a long, long time. So I don't think the US is going to take the lead.

The question is, will Europe invite Russia back? And I don't think Europe is in the mood to do that either. They have decided that they're not going to import oil and gas. They have decided that they're not a part of the Council of Europe, they're not a part of the European Court of Human Rights. The list goes on. I don't think there's an appetite for Europe to immediately forgive Russia or engage with Russia. Obviously, there are reasons to do so in terms of nuclear weapons and national security, et cetera. But I think Europe will be very circumspect after this conflict, and they will not give Russia the same kind of free pass that largely happened after the end of the Soviet Union.

Alexandra Vacroux:

I agree with Will. I don't think that there is a US government policy solution that's going to come in and sort of make things better and extend American influence into Russia. I do think that there is the possibility to engage more soft power methods, which I think in the end are more productive because they don't undermine those Russians that are cooperating with American universities, think tanks, negotiators, policies, experts, and things like that. I would also not underestimate the extent to which business opportunities could play a critical role in reestablishing ties with a new Russia. So there's always been an interest in investing in Russia. Right now it's impossible and very unattractive, but people will come back and once people come back, investors come back. They also want to have the kinds of official relationships that

make investment more protected, the protection of property rights, and things like that. Those might be the best advocates for real change, rather than heavy-handed government policies or some sort of Marshall Plan, which I also agree is completely unrealistic.

One other thing that you hear is that Russia may be a hurricane right now, but China is climate change. And as soon as the situation with Ukraine is stabilized, I think that that means the situation in Russia is also improved. There is a great willingness to go back to talking to Russia, because China is still seen as a much more important threat. I think that will be a dynamic on Russia over the long-term, maybe in the five or ten years when the regime is changing.

Question:

By what year do you expect there to be a new constitution of the bright, wonderful Russia? And if I had asked you this question two years ago in November 2021, before the full-scale invasion, how would your answer have been different? That is, in your estimation, did Putin's decision to invade Ukraine accelerate the eventual appearance of a bright Russia of the future, or did it put it further back?

William Pomeranz:

I don't have a year, but I think as we've talked about the 2020 constitutional amendments, I think they were implemented in large part with Putin's invasion of Ukraine in mind. I think that the plan for Putin was that he was going to rely on the 2020 amendments, and that would be the Constitution for Russia for a long time. There were other changes that he introduced, but the one I like least, the notion of the Russian language as the language of the state forming people really said what Putin was going to do.

Question:

But in 2021, would you have said that the bright Russia of the future was closer or further away?

William Pomeranz:

I would say it was further away. It was further away because Putin had made his plan known, and he was not going to implement positive liberal legal reforms. He just wasn't going to do it. Maybe others disagree.

Vasily Gatov:

I would probably give another argument to that. I also don't have a year, technically a male Russian person born in 1952 is likely to die in the next four or five years. Kind of logical, but again, his medicine is much better. He doesn't drink and so on.

But Will is absolutely correct. I mean making the decision for the Ukrainian war, making decision of further isolation of the country. Putin also weakened his regime. In 2021, I would have put further out in time. He probably accelerated the situation, but you never know by how much.

Alexandra Vacroux:

The fundamental question is: did the war hasten the decline of the regime? Is the end closer now than it was before the war? For me, looking at the deep silence while Prigozhin was marching on Moscow and the elite were trying to figure out how this was going to end, and their unwillingness to come forward and support Putin, suggests that the fragility of the system is more extensive than we had thought before. It might have been fragile before, but it wasn't under as much pressure. Now not only is it more fragile, but we know that it's fragile. That's where we begin to see that the end is possible.

Lev Ponomarev:

I sense a different wave. I agree that the system is much more fragile now since the start of the war. However, it would be very complicated to predict the exact date of its demise. I would say two or three years. I just would like to recall that a few days before the war, the whole world thought something

different. I remember how Putin managed to convince everybody that there would be no war. And I remembered that was true even the day before,

Mikhail Khodorkovsky:

When we say constitution, what kind of constitution are we talking about? If we are discussing the constitution of the democratic Russia that's uniform for the whole territory, then the war moved this possibility further into the future. And I'm not sure whether it's going to happen within the next 20 years. One case in point, Germany. Imagine that under occupation de-Nazification took 20 years.

But if we are talking about a differentiated diverse Russian constitution, a Russia that lives according to a particular law and not under the dictatorship, then yes, I agree that the moment became closer. Because if there was no war, if Putin found a different way to stabilize his regime, maybe he could have stayed in power until he was 90 years old. But right now this is very unlikely, five to 10 years is my estimate for the remaining Putin's rule.

Ilya Ponomarev:

I would like to thank Will and Pavel for putting on this conference. I think it was very important and I think it's a major milestone. But I have a question for Mikhail. When you were speaking, you mentioned the idea of the popular front, and contrasted it with the idea of a revolutionary party. And I would agree with the position that the popular front is always better.

The question is how to construct it. And to my mind in the position, the biggest problem is the problem of trust. In this conference we discussed many issues and events where people were always suspicious about each other: Armed resistance versus nonviolent resistance, insurgents versus selections, and these kinds of things. To my mind, the only possible common denominator is the legislature process.

That's why in the Congress of People Deputies, we have everybody, all political parties of all times

in Russia, which were ever in the parliament, even including United Russia, are represented there. Because it's about the text and the text is always neutral and the text doesn't give any questions to imagination. It's all written down there. And that's how we can proceed. What is for you the basis of uniting the popular front?

Mikhail Khodorkovsky:

I am sufficiently critical about detailed texts because I remember 500 days of Grigory Yavlinsky.

Life is a lot more complex than those texts. As you know, I also try to be very thorough teaching myself and others about coalition building. What is a coalition?

It's essentially a gathering of political representatives, and representatives, or rather people who elected those representatives do not always enjoy seeing their elected representatives next to people they don't like.

And this lack of patience, tolerance, and willingness to prioritize our tasks: first, to stop the war; second, to change the regime; and third, to conduct fair and honest elections, that everything else is secondary and everything else could be left for the next stage of discussion — can be challenging to accept. Why? Because people often prefer discussing topics, they're passionate about. Feminists want to talk about feminism, climate activists focus on environmental issues, and so forth.

And as soon as we start deviating from our three main goals, all our unity, within the coalition, begins to fall apart. And that's when we must tell ourselves: yes, our agenda is important, we, each will work on our agenda, but we have three goals in common: end the war, change the regime, and conduct fair elections. Thank you for your participants for their constructive position. And sometimes it's very difficult to convince people to do just that. But I would like to thank our participants for their constructive position.

Question:

Two points. First, for a country founded by communists, there's no mention of formalizing labor law or the rights of the laboring people. Which reminds me of something Lyudmila Alexeyeva told me once when the Moscow police force came to her representatives to ask her assistance in helping them organize a trade union. I don't think the effort went anywhere, but I think it's significant in and of itself.

Second is the question of national minorities, which also has not been referred to at all. I believe, and I may be wrong, there are 168 ethnic minorities living in Russia today. Thank you.

Lev Ponomarev:

If I understood your first question correctly, it was no accident the communist regime was called totalitarian. It was a very hard bureaucratic mechanism of ruling the country. No grassroots initiatives were supported, such as labor unions. There was even a slogan: "The labor unions are a school of communism." Think of it. It's a contradiction in terms.

Now about minorities. Here's the story, any attempts to preserve national language or national culture was perceived as a disturbance of the public order. Under Soviet rule, conflicts that concerned national problems did not appear. Why? Because everything was eradicated at the root. But we understand that every ethnic group would like to preserve their language, their culture, their memory. And that's why as soon as there was some freedom, people tried to resuscitate that. That's when we started having problems. And besides democracy is not an ideal system. In fact, there is no such thing as an ideal system. Perhaps democracy is the best out of the worst because you manage to resolve the main issues without war.

Andrei Illarionov:

Could I ask everybody on the panel about the elephant in the room that we're a little bit shy to talk about? Mikhail Khodorkovsky mentioned in his

remarks about when Putin's regime will go away, but it's very important how it will go away. Will it go away by itself, or will it be forced to go away.

After that: the discussion about the de-Nazification of Germany showed that took more than 20 years after occupation of Germany. That is why the critical question for any constitutional design critically depends on the political landscape that would exist at that particular time. The question is whether you can see free democratic, law abiding, federal, non-aggressive Russia even absent the military defeat of Putin's regime.

Mikhail Khodorkovsky:

Firstly, regarding how the regime could leave, I've already touched on this, but I would also suggest reading my book for a comprehensive exploration. I've extensively covered the various possibilities, including some rather challenging scenarios. Do I believe in democratic, free, federative Russia?

Yes, I do believe in such Russia in a very far most future. However, looking ahead 20 years, I see Russia as a highly diverse nation. It would likely be deeply federated, with some regions more democratic, others less so, and some even exhibiting tribal or clan-like characteristics.

What would unite these diverse regions is the shared interest in preserving infrastructure, maintaining living standards, and also understanding the need of addressing external threats, as not all regions are fortunate enough to have friendly neighbors.

Now the attempt to make Russia democratically unified overnight, I believe could only lead to a dictatorship. Given the vast differences among local communities, bringing them to the same denominator could only be accomplished by federal democratic system and bureaucracy. However, as you may know our federal bureaucracy tends to establish a rigid, uncompromising vertical power structure, with a leader at the helm who always needs an external enemy. So, considering the diverse nature of the situation, I believe significant progress within

20 years is feasible, albeit challenging. However, a more realistic timeline for substantial change would likely extend to 40 years.

Lev Ponomarev:

It's a tactless question because we are all futurists. We're involved in futurism here. And I would like to cite an example that I have cited several times. Has the country become more democratic after 1990? No, but at the same time, we've been able to put in place a foundation through our constitution. Today the critics of the regime say that the first two articles of the constitution are the best examples of constitution crafting. So, that was some sort of success that we managed to write these two articles.

What is a perfect democracy? Perhaps we don't know a single country with a perfect democracy. We know that even the United States has its own host of issues.

How do I think power would evolve? I really think it would be an evolution and a slow one at that. And the result is not going to be immediately democratic. But slowly the population of Russia will be properly educated, thanks to our actions inside of Russia. I really count on the awareness campaign on educational campaign. Slowly the population will form a new understanding of how to enter Europe and how to become a European state. Yes, it's a gradual process, but as our dissidents used to say, you need to do what needs to be done and let it be, what happens will happen. I think we should follow this principle.

Alexandra Vacroux:

Whether military defeat is required is an interesting question. I would say that first of all, I don't know exactly what military defeat of Russia looks like, because perhaps even more important than what happens on the battlefield is the question of how Putin would be able to explain what happened on the battlefield to the population. So given the effectiveness of propaganda and the demobilization of the population over many years, my feeling is that he would probably be able to sell whatever

outcome happens in Ukraine as being not a defeat, right? Maybe not a victory, but not a total defeat.

I also think that the West is probably not going to support Ukraine to the point where a military defeat is possible, and therefore orienting Russia's democratic future on that outcome will be a distraction that keeps us from thinking of the other ways in which the democratic future is achievable.

Vasily Gatov:

I think the question about military defeat is more important than my prognosticating on the issues and what scenarios may emerge. It's been almost 10 years since I wrote my first set of scenarios—which were more anecdotal and humorous in nature. But we can still think of quite a number of variants that would lead to regime change in Russia, but all of them are completely internal. I mean, it is impossible to imagine that anyone would risk bringing war onto the territory of a country that has 1600 nuclear weapons at the ready. Speaking about military issues, and of course the arms race that Putin restarted, gives us a feeling that it's kind of a return of the seventies and eighties. And while Russia will break its neck as Soviet Union did, we don't understand this in full.

I mean, we know that Putin lies a lot and of course people who report to Putin lie a lot. So we don't know whether this arms race is for sure, and probably people from the intelligence community could tell us more about that. But so far, I don't see reason to believe that arms race will break the neck of Putin's regime. I won't talk about the military issue, and I hesitate to talk about economic issues when I have a person who ran a multi-billion dollar company and is an economist in the room. But I will turn to the potential economic collapse of Russia.

I think that collapse is also on the horizon because of sanctions. When you look at the interest rates in Russia, the rise in inflation, the lack of access to capital, foreign capital markets, and that gasoline is basically rationed in Russia...there is a whole host of economic issues that confront Putin and con-

front Russia as well. I think that we need to consider over the slightly longish term whether sanctions and all this pressure on Russia will actually have an impact on Putin's ability to stay in power. At some point, I think that there could be a possibility that a sharp economic decline could have a dramatic impact on Putin's ability to stay in power.

Question:

It is very important to discuss right now the structural and institutional changes in Russia. But democracy needs democrats, and whatever structures you build, if they are not filled with people who have certain values, these structures will never work in the right way.

I would like to share very quickly the results of the survey that I conducted with a bunch of Ukrainian researchers this year. We asked Ukrainians if they had contacts with Russians, they are relatives and friends, and there are almost 48 percent of Ukrainians who have relatives or friends in Russia. After the full scale invasion, what did these Ukrainians hear from their contacts in Russia? For 85percent of those who had such contact, they heard Russian propaganda.

When your close relatives repeat what has been said by Putin or what has been said by propaganda on Russian TV, it does not give much hope that Russian people are ready to support those values that you are talking about here. Even if tomorrow the dictator dies, conducting free and fair elections will demand so many people with such values all over Russia to be part of election commission watchdogs, to count votes, and so on and so forth. It's not only about the lack of repression; it's also about the ability and the readiness of these people to participate in all those processes.

I would like to ask you especially about the messages that would work with these people who don't believe their relatives. Because if we don't say that Russia has to recognize its active political responsibility, what are we talking with them about?

Vasily Gatov:

First and foremost, Russia should stop the war. That's the first thing. And what will Russia recognize, and when and how, is definitely not the first question. Definitely. As far as the opinions of the population is concerned, we've seen that in 1982 the Soviet people who've been voting for the Communist Party in numbers approaching 99.9 percent, in just in three years, they changed. After seven years, they elected the first free parliament. So, people's opinions change, and propaganda is not the only thing that affect them.

It's very easy to believe there is some kind of flutist that hypnotizes people. People choose conformity because they understand that they are alone. Even if they oppose what is happening. I don't know what messages will work. It needs constant checking, and it needs constant change. Everybody tries it in many different organizations, starting from those existing in Ukraine and on to those existing in other countries that try to message Russians. One day it could come to fruition.

William Pomeranz:

I want to thank all of our panelists, both yesterday and today, for this very important and lively discussion. We have reached the endpoint though for our discussions on the Russian Constitution and Democratic Transit. I'd like to thank our partners: the Khodorkovsky Foundation and the Institute of Modern Russia for their excellent cooperation over the past two days of the conference.

Thanks to all of the speakers who have joined us here in Washington and virtually for a very fruitful set of discussions. I want to remind you that you can stay updated on our upcoming events and publications by visiting our website. Thank you all once again for coming.

Panelist Biographies

Irina Alebastrova (Zoom)



Irina Alebastrova holds a Doctor of Law degree with a thesis on social solidarity in constitutional law. An alumna of Lomonosov Moscow State University's Law Department (1984), she specializes

in legal studies and has distinct interests in constitutional law, including Russian and international perspectives, constitutional reforms, human rights, governance forms, territorial organization, and extraordinary regimes. She is engaged in teaching various law disciplines, including constitutional law and governmental organization and activities in Russia. Alebastrova is currently serving as has served as a Professor at the Free University/*Brīvā* Universitāte.

Leon Aron (Zoom)



Leon Aron is a Senior Fellow at the American Enterprise Institute (AEI), an acclaimed expert on Russian policy, contributing significantly to the understanding of Russia's post-Soviet evolution.

With a PhD in Political Sociology from Columbia University, his expansive work includes several pivotal books and numerous articles, providing in-depth analysis of Russian foreign policy, politics, and literature. A former governor at the Broadcasting Board of Governors and a recognized voice in international broadcasting, Aron continues to influence opinions on US-Russia relations through his scholarly and media engagements.

Nikolai Bobrinsky (Zoom)



Nikolai Bobrinsky is a Researcher of transitional justice, doctoral student at the faculty of law of Humboldt University of Berlin. Born in Moscow, graduated from the faculty of law of MGIMO

University. Worked as business and human rights

lawyer. Participated in opposition activism in Russia, in particular, as a member of local council of Ramenki district in Moscow (2017-22). Selected books: *Between revenge and oblivion. The concept of transitional justice for Russia*, Institute for Law and Public Policy, 2021 (in co-authorship with Stanislav Dmitrievsky).

Ariel Cohen



Ariel Cohen, is a nonresident senior fellow at the Atlantic Council's Eurasia Center, is an authority on international security, energy policy, with expertise in Russia, Eurasia, and

the Middle East. With over two decades at the Heritage Foundation, he has substantially influenced international energy policy and security. Cohen, who holds a PhD from Tuft's Fletcher School, has authored six books and numerous articles, making frequent appearances on major media networks and contributing to prominent publications. He also founded International Market Analysis Ltd and is a senior fellow and the Managing Director of the Energy, Growth, and Security Program at the International Tax and Investment Center.

Vasily Gatov



Media analyst and journalist with 35 years of experience in Russian and foreign media, visiting scholar at the Annenberg School for Communication and Journalism at the University of Southern

California. He has reported on the Chernobyl disaster, the failed coup d'état of 1991, and the first Chechen war. He has been an executive director and strategist for several Russian media companies. Founder of Novosti Media Lab, a research organization dedicated to promoting innovation in communication and the social impact of media.

Kathryn Hendley



Kathryn Hendley is a professor at the University of Wisconsin–Madison, specializing in law and politics with a focus on legal and economic reforms in the former Soviet Union. Holding a Ph.D.

from the University of California-Berkeley and a J.D. from UCLA, her notable work involves an in-depth analysis of the Russian legal profession as well as business conduct and law’s role in the everyday lives of Russians, backed by prominent institutions like the World Bank and the National Science Foundation. A former director of the Center for Russia, East Europe, and Central Asia, Hendley is a consultant on Russian legal reforms for major international agencies.

Mikhail Khodorkovsky



Mikhail Khodorkovsky, a former prominent businessman, is a leading figure in Russia’s philanthropic and political landscape. Founder of the Open Russia Foundation, he ardently champi-

ons civil society strengthening and democratic governance in Russia. Arrested in 2003 after critiquing government corruption, Khodorkovsky, an Amnesty-recognized prisoner of conscience, was released in 2013. He is at the forefront of advocating for a parliamentary republic model in Russia, envisioning a state committed to human rights, free elections, and rule of law. Through Open Russia and the Khodorkovsky Foundation, he continues to campaign for democratic reforms.

Pavel Khodorkovskiy



Pavel Khodorkovskiy is the founder of the Khodorkovsky Foundation US, a non-profit organization focused on advancing parliamentary democracy and federalism through engaging

policy experts, academics, and civil society leaders. He is also the president of the Institute of Modern Russia, an organization that seeks to promote the

development of civil society development in Russia through reinforcing the rule of law and strengthening relationships between Russia and other countries. Pavel serves as the Executive Director of Sunrise, where he leads a team distributing crucial supplies to war-affected areas in Ukraine, drawing on his 13 years of experience in the non-profit and tech sectors to assist individuals in need and advocate for peace and democracy. Before joining Sunrise, Pavel co-founded and served as the CTO of Enertiv, a company that provides operations and energy management solutions for buildings.

Stanislav Kucher



Stanislav Kucher is a journalist, political analyst, lecturer, media manager and motivational speaker with 25 years experience of work for Russian and American print and electronic media,

and a history of numerous conflicts with the Putin administration. Kucher serves as Chief Content Officer of Samizdat Online international anti-censorship platform, writes as special contributor for The Messenger and CNN Opinion and hosts a morning show on a Russian-language radio network in New York. He is also a blogger with a 100 k + audience on Telegram, Youtube and Facebook. He has previously worked as editor-in-chief of RTVI-US television network, Snob magazine, National Geographic Traveler (Russian edition) and many more media outlets.

Elena Lukyanova

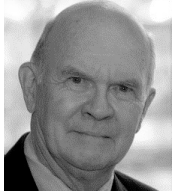


Elena Lukyanova is a lawyer with a significant career in public service and academia. She was a professor at the Moscow State University, and the Higher School of Economics, where she

contributed immensely to the fields of Constitutional and Municipal Law. Lukyanova has been a prominent member of the Public Chamber of the Russian Federation and led the Institute for Monitoring the Efficiency of Law Enforcement. Actively involved in political and social activities,

she is known for her participation in landmark legal cases and public law disputes, fostering a robust understanding and practice of law in Russia. She currently serves as a co-rector of Free University (*Brīvā Universitāte*)

Peter Maggs



Peter B. Maggs, a Harvard alumnus and Research Professor at the University of Illinois College of Law, is a renowned expert in intellectual property and comparative law with a focus on the Russian legal system. He has lectured globally, authored pivotal books, and contributed extensively to intellectual property law discourse. His works provide significant insight into the legal landscapes of various former Soviet states. Maggs is a member of the District of Columbia bar and has been engaged in around 250 court and arbitration cases as an expert consultant or witness.

Lauren Mccarthy



Lauren McCarthy is an Associate Professor of Legal Studies and Political Science at the University of Massachusetts Amherst. She was a recipient of the Fulbright fellowship, the Kennan Institute and the Aleksanteri Institute. Her research focuses on the relationship between law and society in Russia, police and law enforcement institutions, citizen oversight, repressive and authoritarian law, and the issue of human trafficking. McCarthy's book, *Trafficking Justice: How Russian Police Use New Laws, from Crime to Courtroom* (2015) explores how Russian law enforcement agencies have implemented laws on human trafficking, and was based on her dissertation which won the Edward S. Corwin Award from the American Political Science Association. Currently, McCarthy is working on a second book project focusing on the legal suppression of wartime dissent in Russia, and another on grassroots civilian oversight and police accountability in Russia. McCarthy holds PhD. in Political Science from the University of Wisconsin-Madison.

Ekaterina Mishina



Ekaterina Mishina is an independent legal scholar with BA and MA in Jurisprudence from Moscow State University, and a PhD from the Institute of State and Law of the Russian Academy of Sciences. She has held pivotal positions including Principal Advisor to the Chief Justice of Russia's Constitutional Court (1995-1997) and Deputy Director at the Institute of Legal Studies of the National Research University (2005-2011). In 2005-2014, she served as Associate Professor, Department of Constitutional Law, Faculty of Law of the National Research University – Higher School of Economics. In 2012-2016, she was a Visiting Professor at the University of Michigan. Mishina contributed significantly to Russia's legal reform initiatives and academia and is currently serving as a Professor at the Free University/*Brīvā Universitāte*.

Stephen B. Nix



Stephen Nix, Esq. is the Senior Director of Eurasia, International Republican Institute. Nix is a specialist in political party development and judicial and legal reform in the former Soviet Union. Nix received his JD from the Georgetown University Law Center in 1989. Nix served as Midwest field director for the National Republican Congressional Committee, worked in the litigation section of the law firm of Baker & Hostetler in Washington, DC, and served as legal counsel to the International Foundation for Electoral Systems in Ukraine and Russia. He assisted in the drafting of crucial reform legislation in Ukraine, including the Constitution of Ukraine, the presidential and parliamentary election laws, and the Law on the Constitutional Court of Ukraine. Nix joined IRI in 2000 after serving for two years as senior democracy specialist at the US Agency for International Development. In his current role as Senior Director of IRI, he oversees programs in Belarus, Georgia, Kyrgyz Republic, Moldova, Russia and Ukraine.

Vladimir Pastukhov



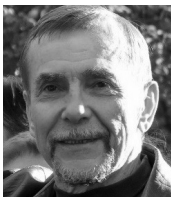
Vladimir Pastukhov holds a doctorate in political science and is a Honorary Research Associate at University College London. In the 1990s, he was a fellow at the Institute for Comparative Political Sciences and the Institute of Latin America (both under the Russian Academy of Sciences). He served as counsel to the Constitutional Court of the Russian Federation, as well as to the State Duma and the Moscow City Mayor's Office. He is the author of several books and over 200 scholarly articles on constitutional law and political science. Dr. Pastukhov is also one of the authors of the report, *Constitutional Crisis in Russia and How to Resolve It*, by the Institute of Modern Russia.

William Pomeranz



William Pomeranz, the Director of the Wilson Center's Kennan Institute, is an expert guide to the complexities of political and economic developments in Russia, particularly through the lens of law. He leverages extensive, hands-on experience in international and Russian jurisprudence to address a wide range of legal issues, from the development of Russia's Constitution to human rights law to foreign investment and sanctions. He is also the author of *Law and the Russian State: Russia's Legal Evolution from Peter the Great to Vladimir Putin* (Bloomsbury, 2018).

Lev Ponomarev



Lev Ponomarev, Ph.D. is a persecuted Russian politician and an anti-war and human rights activist in exile. During the Perestroika, Ponomarev was one of the founders of the Memorial Human Rights Society, a trusted aide to Andrei Sakharov during the elections for People's Deputies of the USSR and a co-founder of the Democratic Russia political movement. Between 1990-1995 Lev Ponomarev served as a State Duma Deputy. In

1997 he founded the Movement For Human Rights. In 2014, he co-organized a Congress of Russian Intellectuals against the War, Isolation of Russia and Restoration of Totalitarianism. In 2020, Ponomarev was the first Russian citizen recognized as a foreign agent by the Russian government. In 2022, Ponomarev initiated a petition "Stop the war with Ukraine!—No to war", which gathered more than a million signatures in just a few days.

Ilya Shablinsky (Zoom)



Ilya Shablinsky is currently a Professor at the Free University at Riga. He is the author of numerous books and articles on constitutional law, theory and history of state. Prior to the 2022 full scale war in Ukraine, Shablinsky served as Professor at the Faculty of Law of the Higher School of Economics. Shablinsky holds a Doctor of Law and a PhD in Philosophy.

Peter Solomon



Peter H. Solomon, Jr., Emeritus Professor of Political Science and Criminology at the University of Toronto, is a noted expert on Soviet and post-Soviet legal systems, focusing on judicial reform in Russia and Ukraine. Author of significant works like "Soviet Criminal Justice under Stalin", and most recently "The Judicial System of Russia" (with Kathryn Hendley: Oxford UP, 2023), Solomon has contributed extensively to understanding criminal law and justice in transitional states. Involved in numerous judicial reform projects worldwide, Solomon serves on the Institute of Law and Public Policy's Board of Trustees in Moscow and has been an expert witness in over eighty refugee claim cases from the USSR and successor states.

Stanislav Stanskikh



Stanislav Stanskikh is a Russian constitutional scholar in exile, a Research Fellow at UNC-Chapel Hill, a Visiting Scholar at Fletcher School of Law and Diplomacy, Harvard's Davis

Center Associate and a CEO of the New England Institute for Country Conditions Expertise, LLC. After graduating from Lomonosov Moscow State University School of Law, he worked at TNK-BP, served as the Executive Director of the Russian Foundation for Constitutional Reforms and as the founding Deputy Editor-In-Chief of the Russian Constitutional Court's academic law review, among other positions. Stanskikh is a compiler of the collection of documents on the Russian constitutional process in 1990-1993. Author of the 2020 petition against amendments to Russia's Constitution with over 250,000 signatories. In 2023, Stanskikh signed the Berlin Declaration of Russian Democratic Forces and the Brussels Declaration of Russian lawyers, legal scholars and human rights defenders, endorsing the creation of an international tribunal to investigate the crime of aggression against Ukraine.

Angela Stent



Angela Stent is Senior Adviser to the Center for Eurasian, Russian and East European Studies and Professor Emerita of Government and Foreign Service at Georgetown University. She is

also a Senior Fellow (non-resident) at the Brookings Institution and a Senior Advisor to the US Institute of Peace. From 2004-2006 she served as National Intelligence Officer for Russia and Eurasia at the National Intelligence Council. From 1999 to 2001, she served in the Office of Policy Planning at the US Department of State.

Stent's many publications include: *The Limits of Partnership: US-Russian Relations in the Twenty-First Century* for which she won the American Academy of Diplomacy's Douglas Dillon prize for the best book on the practice of American Diplomacy. Her latest book is *Putin's World: Russia Against the West and With the Rest* for which she won the Fletcher School of Law and Diplomacy's prize for the best book on U.S-Russian Relations.

She was a member of the senior advisory panel for NATO's Supreme Allied Commander in Europe for Admiral James Stavridis and General Philip Breedlove. She is a member of the Council on Foreign Relations. She is a contributing editor to *Survival* and is on the editorial boards of the *Journal of Cold War Studies*, *World Policy Journal* and *Internationale Politik*

Alexandra Vacroux



Alexandra Vacroux is Executive Director of the Davis Center for Russian and Eurasian Studies at Harvard University. Her scholarly work addresses Russian and Eurasian policy issues, including

the war in Ukraine. As director of graduate studies for the Davis Center's MA program in regional studies, she has mentored dozens of Harvard's best and brightest students and regional experts. She also directs the center's Scholars Without Borders program. While living in Moscow (1992-2004), Vacroux was a consultant for the Russian Privatization Agency, partner and head of sales at the Brunswick Warburg investment bank, and an active member of the board of United Way Moscow. While completing her dissertation on corruption in Russian pharmaceutical markets she was affiliated with the Center for Economic and Financial Research (CEFIR), a Russian think tank associated with the New Economic School. Prior to joining the Davis Center in 2010 she lived in Washington, DC, where she was a Senior Scholar at the Kennan Institute. She holds a Ph.D. in government from Harvard University.

Grigory Vaypan








Grigory Vaypan is a Russian human rights lawyer and scholar. He is a Senior Lawyer at Memorial, Russia's oldest human rights group and laureate of the 2022 Nobel Peace Prize. He is also a

Democracy Fellow at the Center for European Policy Analysis in Washington, D.C. He achieved notable victories before Russian courts, including the cases of imprisoned activist Ildar Dadin and Soviet-era deportees. Since 2013, Vaypan pioneered amici curiae interventions in Russia's Constitutional Court. He is the recipient of the 2022 Moscow Helsinki Group Human Rights Award for defending human rights in court. Most recently, Grigory has been involved in the legal defense of Russian citizens prosecuted for protesting against Russia's war in Ukraine. Vaypan is a former Galina Starovoitova Fellow on Human Rights and Conflict Resolution at the Kennan Institute. He holds law degrees from Harvard Law School and Lomonosov Moscow State University and a Ph.D. in International Law from Saint Petersburg State University.









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