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Through the Russian Looking Glass: The Development of a Russian Rule of Law and Democracy

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United States District Court

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THROUGH THE RUSSIAN LOOKING GLASS: THE DEVELOPMENT OF A RUSSIAN RULE OF LAW AND DEMOCRACY

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I. Introduction

On November 5, 2008, Russia issued a challenge to President-elect Barack Obama.¹ While other world leaders sent messages of congratulations to Obama² once it was clear that he had won the U.S. presidential election on November 4, 2008,³ Russian President Dmitry Medvedev was notably silent⁴ in his November 5, 2008⁵ annual Address to the Federal Assembly of the Russian Federation (the “Address”),⁶ which is somewhat analogous to the State of the Union delivered annually by the U.S. President. President Medvedev neither congratulated nor addressed President-elect Obama directly,⁷ even though this would have been an

¹ Ariel Cohen, *Europe Anti-Missile Defense System: Standing Up to Russia's Threats*, HERITAGE FOUND. (Heritage Found., Washington, D.C.), Nov. 20, 2008, at 1, available at http://www.heritage.org/Research/RussiaandEurasia/upload/wm_2139.pdf.

² See *Leaders Congratulate Sen. Obama on Election Victory*, GERMANY INFO, Nov. 5, 2008, http://www.germany.info/Vertretung/usa/en/___PR/P__Wash/2008/11/05__Obama__Congratulations__PR_archiveCtx=2028290.html, (stating that on November 5, 2008, German leaders did not hesitate to immediately send messages of congratulation to Senator Barack Obama on his victory and assured President-elect Obama of Germany's support as he prepared to take office. Chancellor Angela Merkel called Obama's victory “historic,” while the German Federal President, Horst Köhler wrote: “Allow me to congratulate you warmly, also on behalf of my fellow Germans, on being elected President of the United States of America . . . Here you can count on Germany as a reliable partner and old friend.”). See also *Sarkozy, Other French Leaders Congratulate Obama*, EARTH TIMES, Nov. 5, 2008, <http://www.earthtimes.org/articles/show/240161.sarkozy-other-french-leaders-congratulate-obama—summary.html> (stating that on Wednesday November 5, 2008, French President Nicolas Sarkozy sent President-elect Obama a congratulatory letter. Sarkozy referred to Obama's victory as “brilliant,” and after extending the “warmest congratulations” on behalf of the French people, he wrote that Obama's election “‘crowns an exceptional campaign . . . (that) has shown the vitality of American democracy to the entire world’ . . . ‘In choosing you, . . . the American people have chosen change, openness, and optimism.’ Obama's victory . . . ‘raises a great hope in France, in Europe and in the world—that an open, united, and strong America . . . will show a new way, with its partners, by the strength of its example and the adherence to its principles.’”).

³ Adam Nagourney, *Obama Wins Election; McCain Loses as Bush Legacy is Rejected*, N.Y. TIMES, Nov. 5, 2008, <http://www.nytimes.com/2008/11/05/us/politics/05campaign.html>.

⁴ See President Dmitry Medvedev, Address to the Federal Assembly of the Russian Federation, (Nov. 5, 2008), in PRESIDENT OF RUSSIA OFFICIAL WEB PORTAL, available at http://www.kremlin.ru/eng/text/speeches/2008/11/05/2144_type70029type82917type127286_208836.shtml [hereinafter Medvedev Address]. In contrast, Russian President Vladimir Putin was one of the first leaders to express solidarity with the U.S. following the terrorist attacks on September 11, 2001. See Vladimir Putin, Statement on the Terrorist Acts in the U.S. (Sept. 12, 2001), available at <http://www.invest2russia.com/urus.html>.

⁵ Medvedev Address, *supra* note 4; see C.J. Chivers, *Medvedev Takes Oath in Russia, but Putin Dominates Much of Day*, N.Y. TIMES, May 8, 2008, at A16 (discussing the election and inauguration of Dmitry Medvedev as the third President of the Russian Federation) [hereinafter Chivers, *Medvedev Takes Oath*]. Medvedev won the Russian presidential election on March 2, 2008 and was inaugurated on May 7, 2008. He succeeds Vladimir Putin who held the office from 2000 to 2008.

⁶ Medvedev Address, *supra* note 4.

⁷ See *id.*

It's no secret that many states, simply due to inertia, look at which way the wind is blowing in relations between Russia and the United States. Yes, today these relations are not the best. And many questions are being raised in Russia, including moral ones. But I would stress that we have no issue with the American people, we do not have inherent anti-Americanism. And we hope that our partners, the new administration of the United States of America, will make a choice in favour of full-fledged relations with Russia.

Id.; see also Anatoly Medetsky, *Medvedev Signs Pledge on Tariffs in U.S.*, ST. PETERSBURG TIMES, Nov. 18, 2008, at 1 (reporting that when asked later in November 2008 why he did not mention President-elect

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ideal opportunity to do so.⁸ Instead, Medvedev threatened to respond to the United States by “deploy[ing] the Iskander missile system in the Kaliningrad Region,”⁹ “if Washington proceed[s] with its planned missile defense system in Eastern Europe,”¹⁰ even though Medvedev had previously planned to dismantle those systems.¹¹ President Medvedev also demonstrated a level of assertiveness, which was highly uncharacteristic of him.¹² Specifically, he recommended that the Russian presidential term be extended from four years to six,¹³ and further, he questioned the consolidation of power that was the trademark of his predecessor,¹⁴ Vladimir Putin.¹⁵

Obama on November 5, 2008, President Medvedev said that he had simply forgotten about the U.S. election).

⁸ See Medvedev Address, *supra* note 4. Instead, President Medvedev discussed at great length, Russian policy, the Russian Constitution, and various domestic concerns Russia faces, including health care, education, and developing [a] judicial system. *Id.* Medvedev also addressed several international issues facing Russia, such as the 2008 Georgian-Russian Conflict and the ongoing international financial crisis. *Id.*

⁹ Medvedev Address, *supra* note 4.

¹⁰ Ellen Barry & Sophia Kishkovsky, *Russia Warns of Missile Deployment*, N.Y. TIMES, Nov. 5, 2008, <http://www.nytimes.com/2008/11/06/world/europe/06iht-06russia.17572437.html>. See also Cohen, *supra* note 1, at 1-2:

Moscow fiercely opposes the American missile defense system, claiming that the project compromises its national security. Yet Russia's claims fail any objective test: the top Kremlin ballistic missile experts have written that the missile shield in Europe cannot neutralize Russia's overwhelming nuclear arsenal—not even Moscow's second-strike capability

. . . .
In addition, the U.S. has done much to reassure Moscow that the system is intended only to counter possible strikes from rogue states in the Middle East such as Iran

. . . .
Russia's threat is indeed a shrewd geopolitical move. By opposing Washington, Moscow is trying to drive a wedge between “old” and “new” Europe, and between Europe and the U.S.

Id.

¹¹ See Medvedev Address, *supra* note 4.

¹² See *id.* (during his November 5, 2008 Address, Medvedev did not once refer to Prime Minister Putin, but instead, set out his own agenda: “I feel it necessary to set out my vision of the fundamental laws As the guarantor of the Constitution, I will preserve and protect these fundamental provisions.”).

¹³ See *id.* (“we should increase the constitutional mandates of the President and State Duma to six and five years respectively.”).

¹⁴ See *id.*

[T]he maturity of the democratic institutions and procedures that [the Russian Constitution] guarantees are the source for our continued development. Now, as we come to a new age in our development, we are setting new goals that call for greater participation by our citizens, political parties and other public institutions. . . .

. . . .
But an all-powerful bureaucracy is a mortal danger for civil society. This is why our society must continue calm and steady work to build up its democratic institutions and not delay this work.

Id.

¹⁵ *Putin Becomes Russian PM in Leadership “Tandem,”* CHINA DAILY, May 9, 2008, http://www.chinadaily.com.cn/world/2008-05/09/content_6672476.htm. Vladimir Putin served two terms as Russia's President, from 2000 to May 2008. President Medvedev quickly nominated Putin to be Prime Minister, the position Putin currently holds. *Id.*

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Interestingly, until this point, the newly elected Medvedev had demonstrated an unwavering willingness to work with Prime Minister Putin in “tandem,”¹⁶ by indicating that the Prime Minister would continue to serve an important role. Medvedev also said that their “cooperation will only continue to strengthen,” implying that this special relationship would continue for some time, if not indefinitely.¹⁷ This posture was particularly newsworthy because the prime minister position is regarded as second to the president, much like the U.S. Vice President to the U.S. President. Moreover, never before has a Russian Head of State conceded or opted to share his power so willingly. However, on November 5, 2008, President Medvedev demonstrated that he alone spoke for Russia and even criticized positions that his prime minister had taken while serving as president.

Soon thereafter, in a diplomatic gesture, the Kremlin announced that Medvedev had sent President-elect Obama a congratulatory telegram.¹⁸ But the message had already been sent to Washington, and it was clear — the Kremlin sought to provide President-elect Obama with his first foreign policy test and it wanted Washington to know that President Medvedev was serious.¹⁹

Undoubtedly, Americans have become increasingly concerned with Russia’s re-emergence on the world stage. Many believe that former President and current Prime Minister Vladimir Putin “has ransacked the hopes the world once had for post-Soviet Russian democracy. He is reviving Russian authoritarianism, and the world’s democracies need to prepare for its consequences.”²⁰ American leaders have even emphatically declared that looking into Putin’s eyes reveals three letters: K-G-B,²¹ suggestive that Russia has already begun to roll back progress at the behest of Putin, a former Soviet spy.²² Clearly, times have changed since

¹⁶ *Id.* (Medvedev stating that Putin would serve a “key role” alongside him).

¹⁷ Vidya Ram, *Medvedev Needn’t Be Putin’s Puppet*, FORBES.COM, May 8, 2008, http://www.forbes.com/2008/05/08/medvedev-putin-russia-face-cx_vr_0508autofacescan01.html.

¹⁸ *Russia’s Medvedev Congratulates U.S. President-Elect Obama*, RUSSIAN NEWS & INFO. AGENCY, Nov. 5, 2008, <http://en.rian.ru/world/20081105/118142101.html> (reporting that in a telegram to President-elect Obama on November 5, 2008, President Medvedev said, “I hope for constructive dialogue with you based on trust and considering each other’s interests”).

¹⁹ *Getting Medvedev’s Message; Russia*, ECONOMIST, Nov. 8, 2008 (stating that “this is the first time since the cold war that Russia has declared its intention to create a military threat to the West.”).

²⁰ *Putin the Great*, WALL ST. J., Oct. 3, 2007, at A18; see Masha Gessen, *Dead Soul*, VANITY FAIR, Oct. 2008, at 336 (LEXIS)

In May of this year, with much fanfare, Putin handed over his post as president of the Russian Federation to a handpicked successor, Dmitry Medvedev, and installed himself as prime minister. . . . But Russians continue to inhabit a country which is Putin’s creation and in which his authority is supreme, and they will be living in Putin’s Russia for a long time to come.

Id.

²¹ Jackie Calmes, *McCain Sees Something Else in Putin’s Eyes*, WALL ST. J., Oct. 16, 2007, <http://blogs.wsj.com/washwire/2007/10/16/mccain-sees-something-in-putins-eyes/tab/article/> (McCain told the Republican Jewish Coalition, “I looked into Mr. Putin’s eyes and I saw three things—a K and a G and a B.” Secretary of State Colin Powell stated something similar when he said, “I looked into President Putin’s eyes and I saw the KGB.”). K.G.B. is the Russian abbreviation for Committee for State Security, which was the Soviet Union’s premier intelligence agency, and counterpart to the U.S. Central Intelligence Agency (“C.I.A.”).

²² See Gessen, *supra* note 20 (stating that Putin once told reporters, “I was most amazed by the way that a single person could accomplish something entire armies couldn’t. . . . ‘A lone agent could rule the lives of thousands of people.’”). Ten years later, when the K.G.B. colonel suddenly got a chance to

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President George W. Bush once described looking into then-President Putin's eyes and stated that he could see into Putin's soul.²³

Medvedev's November 5, 2008 challenge serves several important functions in this regard. First, it shows that even with Putin out of office, Russian leaders plan to make their presence known. Second, it highlights Russia's newfound significance following many years of appearing irrelevant and unimportant. Indeed, Russia was perceived as having "fallen off of the radar" after the fall of the Soviet Empire. Finally, Medvedev's challenge underscores the urgency with which American leaders must respond (or organize an American position and plan), since it is abundantly clear that Russia is now relevant and very much "back on the radar."

Understandably, Americans may now regard Russia with apprehension, if not fear.²⁴ After all, it is still unclear what role Russia played in instigating or carrying out the August 2008 Georgian conflict.²⁵ And if Russia played a part, which is likely, does this necessarily mean that Russia also plans to pursue a more aggressive foreign policy course?²⁶ Equally disconcerting is that aside from Medvedev's November 5, 2008 challenge, Prime Minister Putin seems to retain a significant amount of power, despite the fact that he is no longer the president.²⁷ Compounding concerns, President Medvedev recently announced that Russia would begin a "large-scale rearming" by 2011, in response to alleged national security threats.²⁸

reshape his country, Putin remade it in the likeness of what he had known and loved best: a rigidly hierarchical, and tightly controlled system. *Id.*

²³ See Press Conference, President Bush and Russian Federation President Putin (June 16, 2001), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2001/06/20010618.html> ("I looked the man in the eye. I found him to be very straightforward and trustworthy. We had a very good dialogue. I was able to get a sense of his soul . . .").

²⁴ See *Getting Medvedev's Message; Russia*, *supra* note 19 (stating that President Medvedev's response to the financial crisis has been to become more anti-American).

²⁵ See Elise Labott, *U.S. May Seek to Punish Russia for Georgia Conflict*, CNN.COM, Aug. 12, 2008, <http://www.cnn.com/2008/WORLD/europe/08/12/georgia.us/index.html>.

²⁶ See Gessen, *supra* note 20 ("A new war with Georgia signals a return to an era when an aggressive, expansionist Russia threatened all its neighbors."); see also *Getting Medvedev's Message; Russia*, *supra* note 19 (stating that Russia would not back down and in "response to the expansion of NATO and the construction of missile defenses in Poland and the Czech Republic," Russia would place missiles in Kaliningrad as a military threat to the West).

²⁷ Under the Russian Constitution, the President is, "the head of State . . . [who] shall be the guarantor of the Constitution . . ." and "represent the Russian Federation within the country and in international relations." *Konstitutsiia Rossiiskoi Federatsii* [Konst. RF] [Constitution] art. 80, available at <http://www.constitution.ru/en/10003000-05.htm>. Specifically, "The President . . . shall [] govern the foreign policy of the Russian Federation . . . [And] shall be the Supreme Commander-in-Chief of the Armed Forces . . ." *Id.* arts. 86-87. The Russian President can also issue normative decrees. *Id.* art. 90. By contrast, the Prime Minister is "appointed by the President of the Russian Federation . . ." suggesting that because he derives his power from the President, he is necessarily subordinate. *Id.* art. 111. Similarly, it is illustrative that he shares the Governmental Branch of the Russian Federation with deputy chairmen and federal ministers. *Id.* art. 110. Finally, most of the Prime Minister's duties relate to domestic concerns, including ensuring "implementation . . . of a single State policy in the sphere of culture, science, education, health protection, social security, and ecology . . ." *Id.* art. 114. Certainly, the language of the Russian Constitution indicates that the President possesses superior power and authority, compared to those powers held by the Prime Minister.

²⁸ Clifford J. Levy, *Medvedev to Bolster Military in Russia*, N.Y. TIMES, Mar. 18, 2009, at A9.

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However, Russia's recent behavior does not necessarily imply the rise of a burgeoning threat to the United States. Instead, as Medvedev recently said, Russian-American relations are merely going through a "crisis of trust."²⁹ That he directly acknowledged the existing tensions suggests that Medvedev recognizes the tense situation and the fact that Americans may be growing wary of their supposed ally. The statement also suggests that Medvedev seeks to re-establish America's trust, meaning that he would like to be on good terms with the United States.

This Article argues that now more than ever the United States must adopt a more nuanced approach to Russia. The U.S. must recognize Russia's inherent distinctiveness and unique perspective of the world. Geographic distances illustrate this point. Although Washington D.C. and Moscow are separated by 4,887.40 miles, Moscow is also 4,159.60 miles from the Russian city of Yuzhno-Sukhalinsk. Accordingly, even though Russia and the U.S. are separated by thousands of miles, Russia's size also means that thousands of miles separate its various cities, illustrative of Russia's complexity and diversity. As such, approaching Russia from an American-centric perspective that fails to acknowledge how inherently distinctive Russia is would be misguided at best —misplaced at worst.³⁰

This Article focuses on one area where the traditional American-centric perspective has distorted Russian reality — the U.S. failure to appreciate Russia's distinctive vision of the rule of law and democracy. This Article argues that future U.S. policies must recognize Russia's unique worldview. Specifically, Russia's multi-faceted and storied history, and intensely fervent nationalism have formed a unique worldview that provides the lens through which to view Russia's understanding of the rule of law and democracy. It is through this lens that the Russia of today may be reconciled, because although Russian leaders' recent actions may not necessarily comport with an American or western-style rule of law or democracy, such actions do not mean that Russia has abandoned the development of the rule of law or democracy entirely. Rather, this Article contends that Russia is developing a Russian vision of the rule of law and Russian style of democracy that comport with its uniquely Russian worldview.

Part II explores Russia's unique vision of the law. It shows that Russia has historically had a weak legal culture, which necessarily hindered the development of a full-scale western vision of "the rule of law." Part II contends that this historical weakness is actually a strength. Russia's traditional aversion to law has nurtured the development of a distinctly Russian vision of the rule of law. Although this vision of the law may not have all the characteristics or elements emblematic of a western rule of law, several of its features demonstrate that Russia is steadily moving towards a more stable rule of law that is supported and entrusted by the Russian people.

²⁹ Medetsky, *supra* note 7.

³⁰ See Doug Struck, *Gorbachev Applauds Putin's Achievements; Ex-Leader Cites Russian "Resurgence"*, WASH. POST, Dec. 5, 2007, at A22 (Mikhail Gorbachev has indicated that "Russia will not be and doesn't want to be a junior partner, a kid brother, that is doing the West's bidding," thereby suggesting that Russia is inherently different and separate from the West).

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Part III explores the Russian tradition of having a strong state that has, in turn, seemingly de-emphasized the importance of democracy. Thus, the concern that Russia has suddenly abandoned democracy may be reconciled by examining Russia's tradition of strong leaders, as well as its recent experimentation with western-style democracy. Specifically, Russia's unique understanding of the state has promoted the development of a democracy that seeks to balance both a strong state ideal and more modern democratic values. Accordingly, even though this emerging Russian-style democracy differs from those democracies of western nations, most notably, the United States, it illustrates that Russia is developing a democracy that is consistent with its own heritage, values, and sensibilities.

Ultimately, this Article concludes that the U.S. concern that Russian leadership has constructively "hijacked" Russia is misplaced. Rather, the new American administration must acknowledge that Russian leaders' behavior and actions are actually promising because they indicate the genuine development of a rule of law and democracy, albeit the development of distinctly Russian "hybrid" version.

II. Russia's Vision of the Rule of Law: The Product of a Unique Legal Experience and History

"The worst legacy we have from the Stalin era is the way we think. And we cannot obtain new thinking on credit."³¹

On January 22, 2008,³² and then again on November 5, 2008,³³ Dmitry Medvedev spoke to the Russian people about the legal nihilism³⁴ that pervades their country and how it remains a fundamental obstacle to Russia's progress. But before this, President Putin called for "cementing the rule of law in Russia,"³⁵ suggesting that this issue is neither a new development, nor a modern

³¹ GORDON B. SMITH, *REFORMING THE RUSSIAN LEGAL SYSTEM* 191 (Cambridge Univ. Press 1996) (quoting Oazug Nantoy) [hereinafter SMITH, *REFORMING*].

³² Richard Sakwa, *Dmitry Medvedev's Challenge*, OPENDEMOCRACY.NET, May 7, 2008, http://www.opendemocracy.net/article/governments/dmitri_medvedev_s_challenge.

³³ See Medvedev Address, *supra* note 4 ("I note that legal nihilism is not a new phenomenon in Russia but is something that has its roots deep in our distant past. Fifteen years is too short a time to eradicate such deeply-rooted traditions.")

³⁴ Sakwa, *supra* note 32 (reporting that Medvedev emphasized respect for, and supremacy of the law); see also President Dmitry Medvedev, Speech at the V Krasnoyarsk Economic Forum (Feb. 15, 2008), available at http://www.medvedev2008.ru/english_2008_02_15.htm ("I have spoken many times about the sources of a legal nihilism in our country that remains a distinguishing feature of our society."); see also WILLIAM BURNHAM ET AL., *LAW AND LEGAL SYSTEM OF THE RUSSIAN FEDERATION* 6 (3d ed. 2004) (Herzen described 19th Century 'legal nihilism' as "continu[ing] to undermine efforts to install legality as a principle on which both society and the state should be based."); see also EUR. PARL. ASS. DEB. 27th Sess. 1065 (Sept. 26, 1995) (the Council of Europe has emphasized that one of Russia's major tasks is to develop a legal culture or a "broad awareness of, and respect for, the rule of law . . . in all its aspects: political, legal and administrative - and at all levels: national, regional and local.")

³⁵ Steven Lee Myers, *What Chance Justice Is Done? Russia's System Is Questioned*, N.Y. TIMES, Nov. 1, 2003, at A1; Jeffrey Kahn, *Vladimir Putin and the Rule of Law in Russia*, 36 GA. J. INT'L & COMP. L. 511, 555 (2008) (stating that generally, the 'rule of law' relates to the concept that the government should remain subordinate to the law) [hereinafter Kahn, *Vladimir Putin*]; see Jeffrey Kahn, *The*

concern. Russians have historically entertained a “negative myth”³⁶ of the rule of law,³⁷ as evidenced by the numerous Russian folk sayings and proverbs that express discontent with the law and the Russian legal system.³⁸ This skepticism still resonates more than one hundred years after many of these phrases and proverbs first entered the Russian vernacular,³⁹ illustrating that Russia remains “a country currently in search of a national identity.”⁴⁰

Certainly, Russia is not distinctive in its struggle towards developing a stronger rule of law, which Mikhail Gorbachev referred to as *pravovoe gosudarstvo*—“law governed state.”⁴¹ However,

What makes Russia different from most other countries is historical context. When courts in most other countries reach results that seem to be dictated more by the preferences of the powerful than by the law, observ-

Search for the Rule of Law in Russia, 37 GEO. J. INT’L L. 353, 360, 363 (2006) [hereinafter Kahn, *The Search*]

[T]he rule of law requires some level of shared expectations by political elites, lawyers, and laypersons about what *counts* as law, about what are the limits of judicial power, and about into what spheres of life the law may *not* be permitted to intrude. . . .

. . . .

. . . . Nearly all scholars agree that the rule of law means the supremacy of law *over* government, or put another way, government *under* law.

Id.; A.V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION 188-203 (E.C.S. Wade ed., London, MacMillan 1961) (1885) (explaining that the rule of law encompasses the belief that the law should be clear, predictable, and general in its application); see James L. Gibson, *Russian Attitudes Towards the Rule of Law: An Analysis of Survey Data*, in LAW AND INFORMAL PRACTICES: THE POST-COMMUNIST EXPERIENCE 77, 78-79 (Denis J. Galligan & Marina Kurkchian eds., Oxford Univ. Press 2003); see Vasily A. Vlasihin, *Towards a Bill of Rights for Russia: Progress and Roadblocks*, 17 NOVA L. REV. 1201 (1993); see SMITH, REFORMING, *supra* note 31, at 14 (noting that the impetus for the “Golden Age of Russian Law” came from two sources, mainly: “the necessity for new laws to facilitate expanding contacts with other European empires, and lobbying by a Western-educated intelligentsia that viewed adherence to the rule of law as an essential characteristic of civilized European States”). Interestingly, the “backlash” against these new ideas represented a desire “to preserve the uniqueness of Russian society.” *Id.*

³⁶ MARINA KURKCHIYAN, *The Illegitimacy of Law in Post-Soviet Societies*, in LAW AND INFORMAL PRACTICES: THE POST-COMMUNIST EXPERIENCE 25, 30 (Oxford Univ. Press 2003).

³⁷ See Kathryn Hendley, *Assessing the Rule of Law in Russia*, 14 CARDOZO J. INT’L & COMP. L. 347, 351 (2006) (stating that the “Law has had a checkered history in Russia. By almost any definition the ‘rule of law’ has been mostly absent.”).

³⁸ See Michael Newcity, *Why Is There No Russian Atticus Finch? Or Even a Russian Rumpole?*, 12 TEX. WESLEYAN L. REV. 271, 271 n.1 (2005) (examples include, “Stand up to God with truth, and to the judge with money,” and “He went to Court with his coat and came out stark naked.”) [hereinafter Newcity, *Why Is There No Russian Atticus Finch*].

³⁹ *Id.* at 273 (stating that “[t]he attitudes expressed in the Russian folk saying quoted at the beginning of this paper have not changed and in the nearly ninety years that have passed since the Bolshevik Revolution little has happened to improve those attitudes.”).

⁴⁰ Frances H. Foster, *Izvestiia as a Mirror of Russian Legal Reform: Press, Law, and Crisis in the Post-Soviet Era*, 26 VAND. J. TRANSNAT’L L. 675, 745 (1993).

⁴¹ Hiroshi Oda, *The Emergence of Pravovoe Gosudarstvo*, 25 REV. CENT. & E. EUR. L. 373, 374; see Adi Ignatius, *A Tsar Is Born*, TIME, Dec. 31, 2007, at 46 (LEXIS) [hereinafter Ignatius, *A Tsar Is Born*]; see Hendley, *supra* note 37; see generally Kahn, *The Search*, *supra* note 35 (explaining that although some legal reform occurred in Russia under Mikhail Gorbachev, corruption and a continued distrust of the law made efforts to develop the rule of law difficult).

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ers tend to dismiss such cases as outliers. For Russians, however, such cases bring back painful memories”⁴²

Therefore, such myths that portray Russian law negatively are reinforced. Furthermore, the rule of law in Russia has historically taken a paternalistic tone, which has effectively prevented or obstructed the development of an independently thinking populace.⁴³

It is encouraging that Russia’s developing rule of law appears to be shedding the paternalistic overtones of its past. However, Russians remain deeply skeptical of the rule of law, suggesting that any genuine development and progress will necessarily be gradual and uniquely Russian. Russians have been socialized “to expect little of the legal system to the extent that when they have a positive experience, they seek to rationalize it.”⁴⁴ Thus, the development of the rule of law in Russia must be understood within “the rich context of [Russian] culture,”⁴⁵ both past and present.

A. Russia’s Historical and Cultural Antipathy Toward Law

Russia and its legal traditions were Christianized and influenced by the Byzantine tradition, which emphasized different values than those espoused by the Roman Catholic Church, which shaped Western Europe.⁴⁶ Broadly, Roman culture emphasized “notions of mutual obligation and contract,”⁴⁷ and “drawing . . . lines between the different, competing legal systems,”⁴⁸ so that Western European culture developed these values and the understanding that “performing one’s agreements was a matter of honor regardless of the subject matter of the agreement.”⁴⁹ Within this context arose “competing legal jurisdictions and a highly rational, scholastic, textual orientation to religion”⁵⁰

Perhaps the most distinctive characteristic of the development of Western legal tradition was the coexistence and competition within the same community of diverse jurisdictions and diverse legal systems. It was and is

⁴² Hendley, *supra*, note 37, at 351.

⁴³ See Mikhail Krasnov, *The Rule of Law*, in BETWEEN DICTATORSHIP AND DEMOCRACY 195, 212 (Michael McFaul et al. eds., Carnegie Endowment for Int’l Peace 2004).

The power of a law-governed state lies not in its institutional content, but in its ability to transform the philosophy of public life. The basis of this philosophy is trust in the individual and individual’s independence. The actual practice of power, including its methodology of reforms, ought to foster freedom, not paternalism.

Id.

⁴⁴ Hendley, *supra* note 37, at 371.

⁴⁵ KURKCHIYAN, *supra* note 36, at 25-42.

⁴⁶ ORLANDO FIGES, *NATASHA’S DANCE: A CULTURAL HISTORY OF RUSSIA* 293-300 (Metropolitan Books 2002).

⁴⁷ Newcity, *Why Is There No Russian Atticus Finch*, *supra* note 38, at 295.

⁴⁸ Michael Newcity, *Russian Legal Tradition and the Rule of Law*, in THE RULE OF LAW AND ECONOMIC REFORM IN RUSSIA 41, 48 (Jeffrey D. Sachs & Katharina Pistor eds., Westview Press 1997).

⁴⁹ Newcity, *Why Is There No Russian Atticus Finch*, *supra* note 38, at 294.

⁵⁰ *Id.* at 298; see John Meyendorff, *The Church*, in AN INTRODUCTION TO RUSSIAN HISTORY 315, 316 (Robert Auty & Dimitri Obolensky eds., Cambridge Univ. Press 1976).

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this plurality of jurisdictions and legal systems that makes the supremacy of the law both necessary and possible.⁵¹

This logical and rational value system and framework for the rule of law, however, did not develop in Russia.

The Russian Orthodox Church shaped Russia very differently. As “the central, binding force in Russian culture for thousands of years,”⁵² the Russian Orthodox Church emphasized “the mystical and subjective, rather than the objective, formalistic, and rationalistic.”⁵³ Further, instead of accentuating “intellectuality and philosophizing,” like the Roman Church, the Russian Orthodox Church accentuated “[t]he beauty of church architecture, painted icons, music, and the liturgy”⁵⁴ Moreover, the Russian Orthodox Church emphasized “the personal ‘religious experience,’ the mystical versus the intellectual experience,” and for centuries, even fostered the development of a theocracy where church and state were one, unlike the Roman Church’s “legalistic view of the world,”⁵⁵ where the spiritual and secular were entirely separate.⁵⁶

Whereas a strong separation between the church and state and the existence of various competing jurisdictions developed in the West, this was not true for Russia. Russia did not develop a belief in the supremacy of the law or a belief in the supremacy of the rational or logical:

[T]here can be no doubt that the development of the Russian legal tradition followed a different trajectory from that of the Western legal tradition, that these differences account for profoundly different attitudes toward the law and legal institutions in Russian culture, and that these differences are attributable primarily to the influence of the Russian Orthodox Church.⁵⁷

⁵¹ Harold J. Berman, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* 10 (Harvard Univ. Press 1983).

⁵² Newcity, *Why Is There No Russian Atticus Finch*, *supra* note 38, at 292-93.

Traditionally, in order to be considered Russian, an individual had to be Orthodox and it appears that this traditional view has experienced a resurgence in post-communist Russia. Just as Catholicism and its Protestant offshoots have been extremely important in shaping the Western legal tradition, the Orthodox Church, its doctrine, even its liturgy have been central in the formation of a distinctive Russian legal tradition, which, in turn has colored popular perceptions of legal institutions, law, and its practitioners.

Id. (citations omitted).

⁵³ *Id.* at 293 (citing FIGES, *supra* note 46, at 293-300).

⁵⁴ *Id.* (citing Dmitry S. Likhachev, *Religion: Russian Orthodoxy*, in *THE CAMBRIDGE COMPANION TO MODERN RUSSIAN CULTURE* 41 (Nicholas Rzhevsky ed., Cambridge Univ. Press 1998)).

⁵⁵ Newcity, *Why Is There No Russian Atticus Finch*, *supra* note 38, 293, 296; see SMITH, *REFORMING*, *supra* note 31, at 2-7.

⁵⁶ See Newcity, *Why Is There No Russian Atticus Finch*, *supra* note 38, at 297.

In Western Europe, the church’s efforts to establish itself as an entity with authority and jurisdiction separate from secular authority sparked revival of interest in Roman law and stimulated the development of canon law and legalistic methods of analysis. During the law Middle Ages, the universities at Bologna and Paris were especially noted for their study of Roman and canon law. In Russia however, no comparable church-sponsored scholarly movement occurred.

Id.

⁵⁷ *Id.* at 295.

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B. The Law As Inadequate

Moreover, Russians have historically never respected or much admired the law.⁵⁸ The law “does not symbolize morality, honesty, and justice. Rather, it is seen as a tactical game requiring expertise in manoeuvre, influence, and persuasiveness.”⁵⁹ In this same way, legal institutions have traditionally been perceived as inadequate,⁶⁰ and legal officers have never garnered the level of respect or “standing” that their counterparts have received in places like the United States or England.⁶¹ For example, although American judges are perceived as the pillars of western society, Russian judges are viewed at as merely “bureaucrats.”⁶²

Simply, the law does not represent a moral truth for the Russian consciousness.⁶³ Instead, it is perceived as rational, formalistic, political, and “the exclusive instrument of the government,”⁶⁴ to be wielded as a “weapon of the state.”⁶⁵ “[P]olitics [is] little more than a corrupt form of warfare waged between equally unappealing clans.”⁶⁶ As such, because “the Russian state has maintained a paternalistic relationship with its citizens . . . the spirit of a law-governed state has never existed in Russia, and the idea of obedience to the law is still not particularly popular.”⁶⁷

As the Russian proverbs say, “Stand up to God with truth, and to the judge with money,” and “He went to Court with his coat on and came out stark naked.”⁶⁸ Even “[t]oday, this belief resonates strongly in the minds of Russians who largely believe the legal system is unable to resolve their problems in a just

⁵⁸ See Vlasihin, *supra* note 35, at 1202, 1208 (1993); see W. BRUCE LINCOLN, BETWEEN HEAVEN AND HELL: THE STORY OF A THOUSAND YEARS OF ARTISTIC LIFE IN RUSSIA 58-59 (Penguin Group 1998) (stating that emblematic of Russia’s deep-seated sensibility is the story of the Russian Tsar Peter the Great who “famously introduced Western ideas, and culture to Russia at the beginning of the eighteenth century.” Though, instead of receiving praise for seeking to westernize Russia, the Tsar was criticized for “sacrificing traditional Russian values on behalf of specious Western ideals.” *Id.* What may be gleaned from this story is that Russians distinguish their own culture and values, from the West’s conception of the law; western indoctrination is regarded with suspicion.).

⁵⁹ KURKCHIYAN, *supra* note 36, at 43.

⁶⁰ *Id.* at 28-34.

⁶¹ Newcity, *Why Is There No Russian Atticus Finch*, *supra* note 38, at 280. “[O]ne Russian commentator noted in 1909, ‘Here ‘judge’ is not an honorable calling that attests to impartiality, selflessness, and high service to the law alone, as it does among other peoples.’” *Id.* See RICHARD S. WORTMAN, THE DEVELOPMENT OF A RUSSIAN LEGAL CONSCIOUSNESS 288 (The Univ. of Chicago Press 1976) (stating that Tolstoy and Dostoevsky “expressed a common distaste for members of the judicial profession as officials cold and un-Russian in their rational adherence to legal science.”).

⁶² Hendley *supra*, note 37, at 358.

⁶³ ALEXANDER M. YAKOVLEV, STRIVING FOR LAW IN A LAWLESS LAND: MEMOIRS OF A RUSSIAN REFORMER 10 (M.E. Sharpe 1996).

⁶⁴ Jessica C. Wilson, *Russia’s Cultural Aversion to the Rule of Law*, 2 Colum. J. E. Eur. L. 195, 197 (2008); Kurkchiyan, *supra* note 36, at 39-40.

⁶⁵ Gordon B. Smith, *Russia and the Rule of Law*, in DEVELOPMENTS IN RUSSIAN POLITICS 5, at 108, 108 (Stephen White et al. eds., Duke Univ. Press 2001).

⁶⁶ PETER BAKER & SUSAN GLASSER, KREMLIN RISING: VLADIMIR PUTIN’S RUSSIA AND THE END OF REVOLUTION 381 (Scribner 2005).

⁶⁷ Krasnov, *supra* note 43, at 201.

⁶⁸ Newcity, *Why Is There No Russian Atticus Finch*, *supra* note 38, at 271 n.1.

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manner.”⁶⁹ Rather, the legal system is perceived as inefficient, arbitrary, and hopeless.⁷⁰ Consequently, “many analysts contend that a natural legal nihilism is manifest among Russia’s citizens and that striving for a law-governed state is hopeless.”⁷¹

C. Justice, Not Law, as the Truth

Compared to the law, the concept of justice resonates deeply with Russians because it can be reached through “internalization, thoughtfulness and collective consciousness.”⁷² Justice is connected to the Russian moral and spiritual compass and “is the concentrated expression of the Russian people’s awareness of natural law.”⁷³ As the popular saying illustrates: “Judge according to the law or according to the conscience.”⁷⁴

In the traditional Russian view, it is through justice that one can reach higher and more valuable truths as well as God,⁷⁵ suggesting that justice is more closely aligned with the Russian Orthodox Church and all that it espouses. Indeed, for Russians, justice symbolizes what man can achieve on his own, beyond the deficiencies of government and imperfections of the law.

D. Western Imperialism Through the Law

Russians have also been critical of the law since it has often represented a form of western imperialism. For example, the Judicial Reforms of 1864 introduced many new legal elements to the Russian legal system, but these were considered “western-style” institutions.⁷⁶

The principal elements of the Judicial Reforms were the introduction of professional judges and lawyers; trial by jury in criminal cases; opening judicial proceedings to the public; replacement of the old inquisitorial legal procedure that emphasized written documents and secrecy with an adversarial system relying on oral testimony in public proceedings.⁷⁷

Russian writers like Dostoevsky expressed great disdain for such legal reforms. Dostoevsky said, “[t]he new legal system is being used by a class of liberal pro-

⁶⁹ Wilson, *supra* note 64, at 196.

⁷⁰ *Id.* at 198.

⁷¹ Krasnov, *supra* note 43, at 201.

⁷² Wilson, *supra* note 64, at 198.

⁷³ Krasnov, *supra* note 43, at 202.

⁷⁴ *Id.*

⁷⁵ See YAKOVLEV, *supra* note 63, at 10 (stating that “[i]n Russian people’s consciousness, the law has never been associated with moral truth.”).

⁷⁶ See Newcity, *Why Is There No Russian Atticus Finch*, *supra* note 38, at 284.

⁷⁷ *Id.* at 279 (citing David Keily, *The Brothers Karamazov and the Fate of Russian Truth: Shifts in the Construction and Interpretation of Narrative After Judicial Reform of 1864* (Sept. 24, 1996), 34 (unpublished Ph.D. dissertation, Harvard University)).

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fessionals to destroy Russian civilization from within, to accomplish, in effect, what every foreign invasion had failed to do.”⁷⁸

E. The Twentieth Century: A Harsh Russian Legal Experience

Marxist thought also perpetuated a deep disdain for the law. Decree No. 1 on the courts of the Bolshevik government, published in 1917, stated: “All laws contrary to the decrees of the Central Executive Committee [of the Bolshevik Party], the workers’ and peasants’ government, . . . or to the minimum program of the Russian Social Democratic Workers’ Party [*i.e.*, the Bolshevik Party] and the Socialist Revolutionary Party shall be considered abrogated.”⁷⁹ *The Marxist-Leninist General Theory of the State and Law* stated: “The idea that law, whether understood as a supra-class norm of obligation, as an abstract, comprehensive kind of justice, or as a natural right of man, rules *over* the state and *over* the political authority, binding and limiting it, is by its nature a disguise for class dictatorship.”⁸⁰

Not surprisingly, Marxist thought viewed law as “the will of the ruling class, expressed in statute.”⁸¹ Ultimately, “Marxists also believed that law would die out under communism. Soviet theorists maintained that at the highest level of socialist development the state would rely less on coercion and more on persuasion Law would be replaced by other means of social control.”⁸² Thus, the law served a temporary, but necessary, evil role. Mikhail Krasnov suggests that “[s]uch a view clearly directly contradicts the meaning of a law-governed state, and its legacy complicates Russia’s ability to construct a law-governed state.”⁸³

Such Marxist theories were abstract but influenced official and popular attitudes concerning the nature of the law.⁸⁴ The Bolsheviks eliminated courts,⁸⁵ codes, and the profession of law in all of its manifestations.⁸⁶ Indeed, the law was not simply regarded with disapproval, but its study was neglected and conse-

⁷⁸ GARY ROSENSHIELD, *WESTERN LAW, RUSSIAN JUSTICE: DOSTOEVSKY, THE JURY TRIAL, AND THE LAW* 181 (Univ. of Wis. Press 2005).

⁷⁹ *IDEAS AND FORCES IN SOVIET LEGAL HISTORY: A READER OF THE SOVIET STATE AND LAW* 95-96 (Zigurds L. Zile ed., Oxford Univ. Press 1992) (translating the Decree of the Council of People’s Commissars, November 22 (December 5), 1917, “On the Court,” *SU* 1917-1918, no. 4, item 50) [hereinafter *IDEAS AND FORCES*].

⁸⁰ Krasnov *supra* note 43, at 195 (quoting MARKSISTSKO-LENINSKAYA OBSHAYA TEORIYA GOSUDARSTVA I PRAVA: ISTORICHESKIE TIPI GOSUDARSTVA I PRAVA [MARXIST-LENINIST GENERAL THEORY OF STATE AND LAW: HISTORICAL TYPES OF STATE AND LAW] 418 (V. Guilev et al. eds., 1971).

⁸¹ *Id.*

⁸² BURNHAM, *supra* note 34, at 5.

⁸³ Krasnov, *supra* note 43, at 195.

⁸⁴ BURNHAM, *supra* note 34, at 5 (fueling legal nihilism in state administration and mass consciousness).

⁸⁵ Smith, *Reforming*, *supra* note 31, at 132 (“After the Russian Revolution of 1917, courts were abolished and replaced with informal tribunals to handle various conflicts and administrative disputes. Tribunals were favored because they resolved disputes on the basis of the ‘revolutionary consciousness’ of ordinary workers, removing decisions from the elite corps of professional jurists.”).

⁸⁶ *IDEAS AND FORCES*, *supra* note 79, at 95-96.

quently development of the legal profession was held back for many years.⁸⁷ Furthermore, under Communism, the law was used primarily as a “tool” if employed at all.⁸⁸ Kathryn Hendley suggests it was used “in a blatantly instrumental fashion”⁸⁹ to promote the Communist Party. For example, the freedom of speech was guaranteed – as long as it was consistent with the Party’s interests.⁹⁰ Above all else stood the Communist Party.⁹¹

Stalin’s “dual state”⁹² was characterized by rule of force, illuminating the disconnect between what was required of the masses and what was required of the Communist Party. It was “rule of man,” not rule of law, for the majority of Russians.⁹³ Furthermore, although various iterations of Soviet constitutions contained hundreds of provisions, they were merely illusory.⁹⁴ Indeed, “telephone justice,” which linked procurators and judges’ chambers to party offices, “ensur[ed] that the justice system served the state and not its citizens.”⁹⁵ Additionally, although legislation was published in official collections, such collections “were poorly indexed and not easily available to lawyers or ordinary citizens.”⁹⁶

These various factors facilitated an environment in which Russian leaders “frequently reinterpreted, redefined, and repudiated such terms as constitutionalism, democracy, and rule of law.”⁹⁷ The sense that the law bound everyone, including the political elite, which made up the Communist Party, simply did not

⁸⁷ WORTMAN, *supra* note 61, at 288. Writers like Tolstoy considered “members of the judicial profession cold and un-Russian in their rational adherence to legal science. The intelligentsia saw true justice as emanating from a just political, social, or ethical order – the creation of better legislators – and not from a legal process guided by principles of jurisprudence.” *Id.*

⁸⁸ KURKCHIYAN, *supra* note 36, at 39.

⁸⁹ Hendley, *supra* note 37, at 351.

⁹⁰ See SMITH, REFORMING, *supra* note 31, at 82.

⁹¹ Newcity, *Why Is There No Russian Atticus Finch*, *supra* note 38, at 290 n.115.

⁹² SMITH, REFORMING, *supra* note 31, at 34 (stating that Stalin’s Dual-State characterized a political leadership, which was “virtually unchallenged . . . and the law merely reinforce[d] its rule by force and political expediency.” In particular, Stalin’s 1936 Constitution laid out the powers of the state and the rights and duties of the citizen. The law was intended to reinforce Stalin’s dictatorship and much of the terror was carried on outside established judicial institutions.)

⁹³ Frances H. Foster, *Parental Law, Harmful Speech, and the Development of Legal Culture: Russian Judicial Chamber Discourse and Narrative*, 54 WASH. & LEE L. REV. 923, 974 (1997).

⁹⁴ See SMITH, REFORMING, *supra* note 31, at 82.

Like most constitutions, the Soviet constitutions embodied the highest statement of the goals and principles of the society . . . however, the constitutions of the former USSR were not binding legal documents in the sense that their articles were cited in court determinations . . . Many constitutional provisions remained unrealized, due to the absence of implementing legislation.

Id.

⁹⁵ Louise I. Shelley, *Why a Corrupt State Can’t Be a Strong State: Corruption in the Post-Yeltsin Era*, 9 E. EUR. CONST. REV. 70, 72 (2000); see Scott. P. Boylan, *The Status of Judicial Reform in Russia*, 13 AM. U. INT’L L. REV. 1327-28 (1998).

⁹⁶ Hendley, *supra* note 37, at 363.

⁹⁷ Foster, *supra* note 40, at 745; see Wilson, *supra* note 64.

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exist.⁹⁸ Rather, the rule of law was administered to the populace by the state in an overtly paternalistic manner.

Russians grew increasingly skeptical of the law and legal institutions during this era.⁹⁹ The law was viewed as dishonest, inefficient, arbitrary, and hopeless,¹⁰⁰ which contributed to citizens feeling “uncertain and cynical about whether legal guarantees have any meaning.”¹⁰¹ For example, the Russian writer Alexander Solzhenitsyn delivered a speech at Harvard University in 1978, criticizing Western society’s legalistic life. Solzhenitsyn was not an apologist for the Communist regime, but it certainly nurtured his critical view of “the letter of the law.”

I have spent all my life under a Communist regime and I will tell you that a society without any objective legal scale is a terrible one indeed [However,] [a] society which is based on the letter of the law and never reaching any higher fails to take advantage of the full range of human possibilities. The letter of the law is too cold and formal to have beneficial influence on society. Whenever the tissue of life is woven of legalistic relations, this creates an atmosphere of moral mediocrity that paralyzes man’s noblest impulses. And it will be simply impossible to bear up to the trials of this threatening century with nothing but the supports of a legalistic structure.¹⁰²

Solzhenitsyn’s deep distrust of the law illustrates how the paternalistic Soviet system affected the Russian populace. Accordingly, the perpetuation of this legal culture “stymied efforts to reform the legal system.”¹⁰³ Even when Yeltsin came to power, the public “did not realize the value of freedom.”¹⁰⁴

⁹⁸ See SMITH, REFORMING, *supra* note 31, at 129 (stating that “[t]he notion that the crown could be held accountable to the law – a fundamental feature of English law since the Magna Carta in 1215 – was never accepted by the monarchy nor by the Bolsheviks after the Revolution of 1917.”).

⁹⁹ See BURNHAM, *supra* note 34, at 5. Although it is tempting to blame the Communists, Russia’s struggle with instilling respect for the law goes back even further. For example, Russian serfs were emancipated in 1861, and the first parliamentary institution to represent the masses, the State Duma, which is the lower house of parliament, was established in 1905. Even then, the Tsar could still adopt laws when the State Duma was not in session, which is illustrative of the limited legal power the Russian people held, compared to that which the Tsar enjoyed. See KURKCHIYAN, *supra* note 36, at 37. From a historical perspective it is worth noting that until recently, the Russian people had never had the opportunity to directly engage in their governmental process. During the Soviet era, party leaders exercised control separate from the Russian populace. Before then, Tsars or other entities exercised similar control.

¹⁰⁰ Wilson, *supra* note 64, at 198. See Interview with Peter Baker & Susan Glasser, Authors of KREMLIN RISING: VLADIMIR PUTIN’S RUSSIA AND THE END OF REVOLUTION (June 7, 2005), available at <http://www.washingtonpost.com/wp-dyn/content/discussion/2005/06/03/DI2005060300651.html> (stating that the Russian belief that government is inherently corrupt compelled many Russians to accept Putin, simply because others may have been even more tainted than Putin); see Myers, *supra* note 35 (describing former President Putin’s calls for “cementing the rule of law in Russia” and how law enforcement often falls short of that lofty goal).

¹⁰¹ SMITH, REFORMING, *supra* note 31, at 228.

¹⁰² Aleksandr I. Solzhenitsyn, *A World Split Apart*, in SOLZHENITSYN AT HARVARD: THE ADDRESS, TWELVE EARLY RESPONSES, AND SIX LATER REFLECTIONS 3, 3-20 (Ronald Berman ed., 1980).

¹⁰³ Hendley, *supra* note 37, at 352.

¹⁰⁴ Krasnov, *supra* note 43, at 201.

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F. Post-Soviet Transition: Failure to Implement Western-Style Law

Russians emerged from the fall of Communism with a skeptical and ambivalent vision of the law; however Russia was not absolutely devoid of all legal tradition. Gorbachev attempted to “change the role of law.”¹⁰⁵ He ended rubber-stamp legislatures, invoked *pravovoe gosudarstvo*, and “his policy of glasnost allowed a glimpse into the law-making process for the first time.”¹⁰⁶ Thus, following the demise of the Soviet Empire, “Russia [was] not starting from scratch, which certainly has advantages, but it has the disadvantage of a lot of bad legal habits.”¹⁰⁷

To a certain degree, Russians optimistically believed that adopting a western-style rule of law might solve all their problems.¹⁰⁸ Although Russians recognized that transitioning to a western-style rule of law would be difficult, no one imagined how difficult it would be.¹⁰⁹ “It was a grave disillusion, a crushing of ideals,”¹¹⁰ particularly because outsiders heavily influenced Russian legal reform and the development of a post-Soviet Russian legal system¹¹¹ during this period. The “legal scholars associated with the pro-reform Institute of State and Law” who pushed for legal reforms, arrived with “considerable knowledge and expertise about the legal systems in the United States, France, Germany, the Scandinavian countries, as well as the reformist Central European states, such as Poland and Hungary.”¹¹² However, most of these experts and specialists had little or no experience with the Russian legal experience.

Many of these individuals,

[A]pproached Russia as if it was a *tabula rasa*, disregarding what existed on paper as well as prevailing legal culture. The top-down nature of these reforms and the unwillingness to pay attention to the needs of those who would be impacted felt familiar to Russians, who recognized the *modus operandi* from their Soviet past, albeit under a new banner.¹¹³

Absent from this dialogue were Russian legal reformers and scholars versed in the Russian legal perspective.¹¹⁴ Moreover, agencies like the American Bar As-

¹⁰⁵ Hendley, *supra* note 37, at 352.

¹⁰⁶ *Id.* at 353.

¹⁰⁷ Kahn, *Vladimir Putin*, *supra* note 35, at 520.

¹⁰⁸ See Smith, *Russia*, *supra* note 65, at 110.

¹⁰⁹ See SMITH, REFORMING, *supra* note 31, at 224.

¹¹⁰ Interview with Alexander Solzhenitsyn, prominent Russian writer and Nobel laureate (July 23, 2007), available at <http://www.spiegel.de/international/world/0,1518,496211,00.html>.

¹¹¹ See Hendley *supra* note 37, at 353 (stating that “[t]he inexperience of Russian policy makers with market democracy caused them to turn to Western advisors for assistance in writing the new laws and creating the necessary institutions, especially under Yeltsin.”).

¹¹² SMITH, REFORMING, *supra* note 31, at 87.

¹¹³ Hendley, *supra* note 37, at 353.

¹¹⁴ See Ignatius, *A Tsar Is Born*, *supra* note 41 (explaining that those present were “the legions of Ivy League – and other Western-educated ‘experts’ who roamed the halls of the Kremlin and the government, offering advice, all ultimately ineffective, on everything from conducting free elections to using ‘shock therapy’ to juice the economy”).

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sociation and the Federal Bureau of Investigation participated, but had no background in, or experience with, the Russian legal system.¹¹⁵

Thus, much of what was instituted and established in Russia during this post-Soviet transitional period was both foreign and unfamiliar to Russians. It is possible that the reforms were not simply incompatible, but also incapable of dealing with an inherently complicated and necessarily distinct citizenry and nation. As Thomas Friedman stated:

[F]or the first time in history, we all have the same basic piece of hardware — free markets. The question is, which countries will get the economic operating systems (neoliberal macroeconomics) and software (regulatory institutions and laws) to get the most out of those free markets Russia is the egregious example of a country that plugged into the herd with no operating system and no software, with predictably horrendous results.¹¹⁶

Western influences were “often introduced under the aegis of bilateral and multicultural aid and technical assistance programs, and a rising tide of national identity and desire for sovereignty among peoples of the former USSR” developed.¹¹⁷ Russians soon regarded these foreign legal reformers as imperialists, seeking to indoctrinate them with western beliefs and institute a western system.¹¹⁸ Stephen Sestanovich, who served as the State Department’s special advisor for the new Independent States of the former Soviet Union under President Bill Clinton, said, “the ‘90s sucked.”¹¹⁹ Ultimately, although Western advisors had good intentions and were eager to help, “most were ill-equipped to fashion laws that met the needs of this transitional polity.”¹²⁰ Indeed, by the end of the 1990s, although Russians yearned for change, the “new laws felt like more of the same,” since they “look[ed] good on paper, but [were] ignored in practice.”¹²¹

G. The Current Development of Russia’s Legal Vision: a Hybrid Legal Culture

Putin, like many of his predecessors, seems to use the law as a “tool.”¹²² Although present-day Russia lacks a western-style rule of law, a uniquely Russian vision of the law is nonetheless, developing. Several recent occasions illustrate this development. Putin stepped down from the Presidency in May 2008 on his

¹¹⁵ See SMITH, REFORMING, *supra* note 31, at 231.

¹¹⁶ Thomas L. Friedman, *A Manifesto For the Fast World*, N.Y. TIMES, Mar. 28, 1999, §6, at 40.

¹¹⁷ See SMITH, REFORMING, *supra* note 31, at 228.

¹¹⁸ See Ignatius, *A Tsar Is Born*, *supra* note 41.

¹¹⁹ *Id.*

¹²⁰ Hendley, *supra* note 37, at 368. “For example, the Western advisors who drafted the joint-stock company put protections into place for minority investors that would have worked beautifully in their own countries (*e.g.*, cumulative voting and prohibitions on insider trading), but which did little good in Russia.” *Id.* n.65.

¹²¹ *Id.* at 368-69.

¹²² KURKCHIYAN, *supra* note 36, at 39.

own accord, and then Medvedev called to lengthen the presidential term in November 2008, thereby illustrating Russian leaders' newfound willingness to be bound by rules. Consequently, the Russian populace is increasingly optimistic about the developing rule of law in Russia.

1. *Putin Steps Down from the Presidency*

In May 2008,¹²³ Putin stepped down from the Russian Presidency after having served two consecutive terms,¹²⁴ and handed it to Medvedev. This transition occurred in accordance with Russian law. Importantly, the Russian Constitution states: "One and the same person cannot hold the office of the President of the Russian Federation for more than two terms running."¹²⁵ Thus, Putin was constitutionally precluded from serving a third consecutive term. However, Putin never sought to negotiate his way around the term limit, despite much speculation. Rather, Putin accepted that the Constitution precluded a third term.

The fact that Putin willingly handed over power speaks volumes about Russia's developing vision of the law.¹²⁶ Few Russian leaders have stepped down from power on their own accord, as Putin did. Moreover, no one who stepped down willingly was as "young, physically able, and politically strong"¹²⁷ as Putin. Thus, there was an even greater likelihood that Putin could have potentially refused to step down because he is so politically fit and popular throughout Russia. Indeed, President Putin consistently boasted high approval ratings at around seventy percent,¹²⁸ suggesting that the populace may not have responded negatively had he refused to step down.

Supporters pushed Putin to amend the Russian Constitution so that he could remain in power, but Putin "demurred. The Constitution was sacrosanct."¹²⁹ Specifically, Putin's decision to abide by the Russian Constitution illustrates how

¹²³ See Chivers, *Medvedev Takes Oath*, *supra* note 5.

¹²⁴ See Ignatius, *A Tsar Is Born*, *supra* note 41.

¹²⁵ Konst. RF art. 81.

¹²⁶ See SMITH, *REFORMING*, *supra* note 31, at 237.

During this transition phase the laws themselves and their enforcement may be less than perfect, but what is important is that they are functioning, however imperfectly. Laws matter. Rights are now being recognized and new generations of Russians are growing up in a rapidly evolving culture in which justice and rule of law are not empty slogans masking authoritarian rule and the arbitrary exercise of power.

Id.; see SAMUEL HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* 266-67 (Univ. of Okla. Press 1991).

One criterion for measuring this [democratic] consolidation is the two-turnover test. By this test, a democracy may be viewed as consolidated if the party or group that takes power in the initial election at the time of transition loses a subsequent election and turns over power to those election winners, and if those election winners then peacefully turn over power to the winners of a later election. Selecting rulers through elections is the heart of democracy, and democracy is real only if rulers are willing to give up power as a result of elections.

Id.

¹²⁷ Kahn, *Vladimir Putin*, *supra* note 35, at 558.

¹²⁸ Ignatius, *A Tsar Is Born*, *supra* note 41.

¹²⁹ Megan Stack, *Putin Leads in This Power Dance; Any Talk That His Protégé and Successor Might Upstage Him Has Been Laid to Rest*, *L.A. TIMES*, Nov. 14, 2008, at A3.

much Russia has developed. Putin showed that he too, was bound by Russian laws and the Constitution — even though he was the president. Again, although few Russian leaders have stepped down when their terms expired, even fewer Russian leaders have recognized that the law binds them. Accordingly, Putin's behavior confirms and validates the Russian Constitution.

2. *Medvedev's Call to Amend the Constitution*

During his Address to the Federal Assembly of the Russian Federation, President Medvedev proposed to amend the Russian Constitution by extending the presidential term from four years to six.¹³⁰ Immediately, critics protested this as an unconstitutional proposal intended to facilitate Putin's return to the presidency,¹³¹ as soon as 2009 by some estimates.¹³² However, what remains vital, and something that many have failed to recognize or appreciate, is that in seeking to amend the Russian Constitution, Medvedev followed procedure and worked within the established framework of the Constitution — a huge step in the right direction towards solidifying a stronger rule of law in Russia.

To amend the Constitution, the Russian President must submit a draft bill¹³³ to the lower house of Russia's parliament, the State Duma,¹³⁴ which votes on the bill. If a majority of the State Duma votes in favor of the bill, it may then become law,¹³⁵ assuming that a majority of the upper house of Russia's parliament, the Council of Federation, also votes for it. Alternatively, according to the Russian Constitution, the bill is assumed to have passed if the upper house does not examine the bill within fourteen days.¹³⁶ Assuming the bill passes both Houses, it may be treated as federal law. At this point, it is submitted to the President for signing and promulgation.¹³⁷

¹³⁰ Medvedev Address, *supra* note 4 (stating that “we should increase the constitutional mandates of the President and State Duma to six and five years respectively.”).

¹³¹ See Tony Halpin, *Fast Deal May Set up Putin as President for Twelve Years*, *TIMES* (London), Nov. 13, 2008, at 39 (stating that “[b]y engineering his return to the Kremlin, however, Mr. Putin will strengthen criticism that Russia is sliding into dictatorship.”). Interestingly, Medvedev's call to amend the Constitution will not affect him, further evidence that change has taken root in Russia. This contrasts with the time President Yeltsin sought to consolidate his own power in 1993.

¹³² *Id.* (explaining “[Medvedev] would then resign and call a snap election to make way for his mentor to return. Mr. Putin would govern for two more terms of six years each, until 2021 . . .”).

¹³³ Konst. RF art. 104(1) (“The right of legislative initiative shall belong to the President of the Russian Federation, members of the Council of Federation, deputies of the State Duma, the Government of the Russian Federation, and legislative (representative) bodies of constituent entities of the Russian Federation.”).

¹³⁴ *Id.* art. 84(d) (“The President of the Russian Federation . . . shall submit draft laws to the State Duma . . .”).

¹³⁵ *Id.* art. 105(1)-(2) (“Federal laws shall be adopted by the State Duma. Federal laws shall be adopted by a majority of votes of the total number of deputies of the State Duma, unless otherwise envisaged by the Constitution of the Russian Federation . . .”).

¹³⁶ *Id.* art. 105(4) (“A federal law shall be considered to have been approved by the Council of Federation if over half of the total number of members of that chamber have voted for it or if the Council of Federation does not examine it within fourteen days . . .”).

¹³⁷ *Id.* art. 107(2) (“The President of the Russian Federation shall sign the federal law and promulgate it within fourteen days.”).

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In amending the presidential term, Medvedev adhered to the process laid out in the Russian Constitution.¹³⁸ First, Medvedev submitted his proposed bill to the State Duma shortly after he expressed an interest in amending the presidential term on November 5, 2008.¹³⁹ On November 21, 2008, the State Duma voted 392-57 to approve the bill.¹⁴⁰ After the State Duma, the bill went to the Council of Federation, which also passed it.¹⁴¹ Medvedev then signed the federal law on December 30, 2008, after it passed through the necessary and appropriate legal channels.¹⁴²

The current path to amending the presidential term pursuant to the Russian Constitution, starkly contrasts “those bloody days in Moscow in late 1993”¹⁴³ when the Constitution had little or no weight. Indeed, the Constitution could not prevent the 1993 crisis that included some of the most violent street fighting in Moscow since the Bolshevik October Revolution in 1917.¹⁴⁴ Specifically, in October 1993, President Yeltsin¹⁴⁵ confronted the Russian parliament seeking to expand his Presidential powers.¹⁴⁶

Demonstrators and police clashed, television stations were stormed,¹⁴⁷ and there were “rumors of troop movements.”¹⁴⁸ On television, Yeltsin explained that he had no choice: “It is impossible not only to implement difficult reforms, but to maintain elementary order.”¹⁴⁹ Ultimately, Yeltsin secured more presidential powers for himself and normalcy eventually returned to Moscow. Those days in 1993, however, stand in sharp contrast to the civility emblematic of Medvedev’s 2008 constitutional amendment. Perhaps most striking about the 2008 amendment was the lack of attention paid to such an historic event. It was almost a non-event.

¹³⁸ See *Russia Lawmakers OK Longer Presidential Terms: Bill Could Help Speed Ex-President Putin’s Return to the Kremlin*, MSNBC.COM, Nov. 21, 2008, available at <http://www.msnbc.msn.com/id/27841709/> [hereinafter *Russia Lawmakers OK*].

¹³⁹ See Medvedev Address, *supra* note 4.

¹⁴⁰ *Russia Lawmakers Ok*, *supra* note 138.

¹⁴¹ Philip P. Pan, *Russia Lengthens Presidential Tenures*, WASH. POST, Dec. 30, 2008, at A12.

¹⁴² *Id.*

¹⁴³ SMITH, REFORMING, *supra* note 31, at 233.

¹⁴⁴ See *id.* at 232-33.

¹⁴⁵ See Adi Ignatius, *Boris Yeltsin*, TIME, Apr. 26, 2007, at 27 (LEXIS) (stating that Boris Yeltsin was the Russian Federation’s first President. He served from 1991-1999, at which point, he stepped down to let Putin takeover) [hereinafter Ignatius, *Boris Yeltsin*]. It is worth noting that Yeltsin was Russia’s first popularly elected President. Although he won fifty-seven percent of the vote, he ultimately left the position with approval ratings in the single digits. Boris Yeltsin, Wikipedia, http://en.wikipedia.org/wiki/Boris_Yeltsin (last visited Apr. 16, 2010). See generally Gessen, *supra* note 20 (explaining that under Yeltsin, “Russia’s larger-than-life first post-Soviet president,” the Russian economy and politics careened out of control and into crisis).

¹⁴⁶ See Margaret Shapiro, *Yeltsin Dissolves Parliament, Orders New Vote*, WASH. POST, Sept. 22, 1993, at A1.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

H. Reasons Why Russia's Unique Vision of the Rule of Law May Endure

Must constitutions be fixed?¹⁵⁰ Few constitutions are static documents that spring into existence fully formed.¹⁵¹ Instead, strong and successful constitutions possess the ability to develop and evolve over time to respond to changing political, economic, and social conditions.¹⁵² Thus, as Russia continues to develop and evolve, it necessarily demands a constitution that can do so, too.¹⁵³ Certainly, it is feasible that Medvedev's call to amend the Russian Constitution was prompted by the various changes that Russia is currently experiencing. Indeed, Medvedev's "eagerness to change the [C]onstitution was rooted in uncertainty over shifting global dynamics, especially Russian wariness of America in the wake of Russia's war with the U.S.-backed Georgia. By ruling longer, . . . Medvedev hopes to create greater stability."¹⁵⁴ Thus, because the Russian Constitution has proven capable of dealing with Russia during this volatile period, its flexibility and legitimacy are confirmed.

Furthermore, some of the U.S. criticism regarding Medvedev's call to amend the presidential term is seemingly hypocritical. For example, in 2008, New York City too, moved to extend its own mayoral term limit from eight years to twelve, due to the city's ongoing financial crisis, thereby allowing New York City's current mayor, Michael R. Bloomberg, to seek a third consecutive term.¹⁵⁵ Supporters of the proposed New York City bill, which subsequently passed, said that the "dire economic situation confronting the city . . . demanded continuity of leadership."¹⁵⁶ Certainly, New York City has had to deal with the financial crisis, but

¹⁵⁰ See Norman Stone, *Putin Rescued Russia from Disaster: So Let's Just Let Him Be*, *TIMES* (London), Oct. 4, 2007, at 5 (suggesting that "[t]here is no real reason for constitutions to be set in tablets of stone."); see also Kahn, *Vladimir Putin*, *supra* note 35, at 555 n.212.

The Russian [C]onstitution is not a sacred document. Some will argue that the events between October-December 1993, where a flawed referendum followed the use of force against the Russian Supreme Soviet, gives the present [C]onstitution an aura of illegitimacy that anyone concerned with the rule of law cannot help but be troubled by . . . If [the] United Russia [political party] overwhelmingly controls the State Duma after the next round of legislative elections, then the [C]onstitution should be amended.

Id.

¹⁵¹ See Sewell Chan & Jonathon P. Hicks, *Council Votes, 29 to 22, to Extend Term Limits*, *N.Y. TIMES*, Oct. 23, 2008, available at <http://cityroom.blogs.nytimes.com/2008/10/23/council-to-debate-term-limits-change/>. Again, it is worth noting that in 2008, New York City extended the mayoral term limit to three terms.

¹⁵² SMITH, *REFORMING*, *supra* note 31, at 102-03.

¹⁵³ See Medvedev Address, *supra* note 4.

[T]he personal freedom and the maturity of the democratic institutions and procedures that [the Constitution] guarantees are the source for our continued development. Now, as we come to a new age in our development, we are setting new goals that call for greater participation by our citizens, political parties and other public institutions.

Id.

¹⁵⁴ Stack, *supra* note 129.

¹⁵⁵ Michael Barbaro & Fernanda Santos, *Bloomberg Gets His Bill, and a Public Earful*, *N.Y. TIMES*, Nov. 4, 2008, at A1.

¹⁵⁶ Chan & Hicks, *supra* note 151.

so too has Russia.¹⁵⁷ Thus, if New York City can change its term limits, should not Russia be permitted as well? In any event, regardless of the soundness of New York City's plan to amend its own rules, Russia has received significantly more criticism.

Moreover, against these political and economic developments is the Russian "revolutionary consciousness," a term that exemplifies the fact that when Russians seek change, it has all-too-often been both drastic and revolutionary.¹⁵⁸ Russians have historically "desire[d] to do too much too quickly," as opposed to "gradual, more effective methods of reform."¹⁵⁹ By contrast, Russia's political leaders are currently exercising prudence by working within the appropriate legal channels — the Russian Constitution — rather than making sudden, irrational, or radical changes or moves.¹⁶⁰ Compounding this promising behavior are the serious problems Russia is undoubtedly facing.¹⁶¹ This makes Russia's steady course even more impressive.

Finally, it is easy to forget that the second Russian Revolution of 1991 occurred only nineteen years ago, meaning that Russia has been a democracy for less than two decades.¹⁶² Indeed, the rule of law in Russia today has existed for

¹⁵⁷ See Medvedev Address, *supra* note 4 (stating that "[t]he global financial crisis also began as a 'local crisis' on the U.S. domestic market [But] when the U.S. economy began to slide it pulled financial markets all around the globe with it in its fall. The crisis has now become global in scale.").

¹⁵⁸ See Interview with Peter Baker & Susan Glasser, *supra* note 100 (suggesting that as Russia is the birthplace of revolution, this may be the historical ebb to that flow).

¹⁵⁹ ROBERT B. AHDIEH, *RUSSIA'S CONSTITUTIONAL REVOLUTION: LEGAL CONSCIOUSNESS AND THE TRANSITION TO DEMOCRACY, 1985-1996*, at 9 (Pa. State Univ. Press 1997).

¹⁶⁰ See SMITH, *REFORMING*, *supra* note 31, at 94.

The course that Yeltsin and Russia was taking had few if any models to follow. The American and French Revolutions toppled colonial or monarchical regimes and sought a clean break from the past. In the Russian case, the revolution was being attempted from the top down. Rather than experiencing a clean break from the past, Yeltsin was attempting a "controlled" and orderly revolution. The stakes were high and there was no guarantee that if one side saw that it was losing the argument, it would not resort to violence to preserve its interests.

Id.

¹⁶¹ See Medvedev Address, *supra* note 4.

I want you all to know that our goals remain unchanged. The sharp fluctuations in the political and economic situation, the turbulence in the world economy and even the rise in military and political tension will not serve as a pretext for dismantling democratic institutions or for nationalising industry and finance. Citizens' political freedom . . . [is] sacred

. . . .
Those who want to make some "easy" political capital out of the global economic crisis, who have their hearts set on populist chatter and want to destabilise society in order to satisfy their personal ambitions, I advise them to read the Constitution. I consider it my duty to warn those who seek to provoke tension in a political situation. We will not allow anyone to inflame social . . . strife, deceive people and draw them into illegal action. We will continue to maintain Constitutional order through all the legal means.

Id.

¹⁶² See SMITH, *REFORMING*, *supra* note 31, at 234 (stating that democracy took centuries to evolve in Western Europe); see Medvedev Address, *supra* note 4.

I remind you that the Russian Constitution celebrates its fifteenth anniversary in December. What is important is not the date itself of course, but the fact that it is a Constitution that upholds freedom and justice, human dignity and welfare, protection of family and Fatherland, and the unity of our multiethnic people — not just as common values, but as legal concepts. In other words, the Constitution gives them force in practice and supports them with all the resources of

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less than “the span of a single generation.”¹⁶³ Building a federal system and culture of legality takes time and it would be presumptuous to assume that within a few years Russia could abandon its history of legal nihilism¹⁶⁴ and convert an ardently skeptical populace into one with “a mindset that appreciates, responds to, and engages in the exercise of legal self-limitation.”¹⁶⁵ Developing a willingness to be bound by the rule of law takes time, particularly in Russia, a country that has historically struggled with the very concept.¹⁶⁶ As Russia necessarily lacks a strong foundation or model rule of law that Putin and Medvedev can rely upon, the Russian peoples’ willingness to follow the law is impressive.

Accordingly, instead of rolling back progress, Russia’s political leadership has demonstrated its desire to establish a legal culture and rule of law by working through the appropriate channels of Russian law. Such embraces should be commended as progress. To that end, it is misguided to suggest that any mistakes along the way indicate that Russia is not necessarily moving in the right direction. Mistakes are inevitable and perhaps they are signs of democracy at work, since democracies are liable to falter. One might even contend that this revolutionary development means that Russians have finally developed a belief in themselves and their leaders, as they are finally holding themselves accountable. In any event, embracing a stable rule of law free of the paternalistic overtones of past Russian governments will take years to fully develop.

the state and with all of its own authority. The Constitution forms our social institutions and the way of life of millions of people.

Id.

¹⁶³ Kahn, *supra* note 35, at 521.

¹⁶⁴ See Medvedev Address, *supra* note 4. President Medvedev explained that the Constitution is important to develop “a new legal system and independent courts, and in combating corruption and legal nihilism.” *Id.* He further noted,

[L]egal nihilism is not a new phenomenon in Russia but is something that has its deep roots in our distant past. Fifteen years is too short a time to eradicate such deeply-rooted traditions. But it is also true that we have not yet made a deep-reaching systematic attempt to address this problem of disregard for the law.

Id.

¹⁶⁵ JEFFREY KAHN, FEDERALISM, DEMOCRATIZATION, AND THE RULE OF LAW IN RUSSIA 280 (Oxford Univ. Press 2002). “Progress in developing a state governed by the rule of law” began during Gorbachev’s time in power, and the progress forged “was impressive when viewed against Russian and Soviet legal traditions.” However, “For such concepts to take root, they must be institutionalized and inculcated into the legal culture of a society.” SMITH, REFORMING, *supra* note 31, at 76.

These contentious issues had to be resolved in an atmosphere of political and economic turmoil. Furthermore, unlike the American [C]onstitution that was drafted behind closed doors by an elite group of white, well-educated, wealthy, male land-owners, the new constitution in Russia was being worked out in the glare of television lights and involved a vast array of interest groups, factions, political parties, and prominent political figures, seeking to maximize their particular interests.

Id. at 80.

¹⁶⁶ Smith, *supra* note 31, at 103.

It is encouraging that all parties in Russia today – even the extremists on the right – appear to recognize the legitimacy of the new constitution and are operating within its provisions. This is the best indication yet that Russia is on its way to constitutionalism. However, given its centuries-long tradition of dictatorial and arbitrary rule, it will be a long and perilous journey.

Id.

III. Russia's Vision of Democracy: Balancing A Strong State Ideal & Democratic Values

For Russians a strong state is not an anomaly that should be gotten rid of. Quite the contrary, they see it as a source and guarantor of order, and the initiator and main driving force of any change I am not calling for totalitarianism A strong state power in Russia is democratic, law-based, workable federative state.

-Vladimir Putin¹⁶⁷

The Russian mentality needs a baron, a tsar, a president. . . in one word, a boss.

-Valentina Matviyenko¹⁶⁸

To many Americans, Russia is moving away from democracy, and towards a burgeoning authoritarian regime.¹⁶⁹ However, this is ill conceived. Putin and now Medvedev, have not necessarily rolled back democracy as many fear or suspect. Specifically, the Russian people desire a strong state¹⁷⁰ embodied by a strong leader — the strong-state ideal.¹⁷¹ Following the Soviet-era, which over-emphasized this strong-state ideal, came the post-Soviet era, which overemphasized implanted western-democratic ideals.¹⁷² After having survived both periods, Russia is now developing its own unique hybrid version of democracy, which seeks to balance the traditional Russian strong state¹⁷³ with modern democratic values.¹⁷⁴

A. Components of Russian Democracy: Balancing Strong State and Democratic Ideals.

1. *Strong Mother Russia: Derzhavnost*

Central to the Russian worldview is the desire for Russia, “the Motherland,” to possess international status and influence.¹⁷⁵ “Russians are very patriotic people,

¹⁶⁷ Stephen Handelman, *Shadows on the Wall: Putin's Law-and-Order Dilemma*, 9 E. EUR. CONST. REV. 88, 88 (2000) (quoting Vladimir Putin, *Rossiia na rubezhe tysyacheletii [Russia on the Threshold of the Millennium]*, NEZAVISIMAYA GAZETA, Dec. 30, 1999, http://www.ng.ru/politics/1999-12-30/4_millennium.html).

¹⁶⁸ BAKER & GLASSER, *supra* note 66, at 371.

¹⁶⁹ See Gessen, *supra* note 20 (stating that “[o]nce, [the Kremlin] was the symbol of a nascent Russian democracy. Now it’s the command center of an entrenched Russian autocracy.”); see Struck, *supra* note 30, (stating that Western critics allege that Putin “has throttled democracy,” and that former Soviet leader Mikhail Gorbachev disapproves of some of Putin’s “moves to consolidate power.”).

¹⁷⁰ See Thomas F. Remington, *Russia and the “Strong State” Ideal*, 9 E. EUR. CONST. REV. 65, 68 (2000) (quoting an internet article by Vladimir Putin where he stated, the “state’s structures and institutions have always played an extremely important role [in Russia].”).

¹⁷¹ See *id.* at 65-69.

¹⁷² See SMITH, REFORMING, *supra* note 31, at 228-31.

¹⁷³ See Remington, *supra* note 170, at 65-69. “Calls to strengthen the state have become widespread in Russia.” *Id.* at 65. See Handelman, *supra* note 167, at 88-91.

¹⁷⁴ See Remington, *supra* note 170, at 65 (stating that people on both sides “[l]ook for granted that Russia’s statehood was weakened by the unsuccessful reforms of the 1990s and that the restoration of state strength must now take high priority.”).

¹⁷⁵ See *id.* at 69.

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they want Russian spoken, they want their views to be the correct ones, and they want a leader who projects these things.”¹⁷⁶ In this sense, Russians have historically desired a strong Russia, or *derzhavnost*, the status of being a great world power.¹⁷⁷ Consequently, Russians have accepted leaders who provided a strong image and international status, even if that necessarily resulted in diminished individual rights or the diminution of other principles of western-style democracy.¹⁷⁸

The Soviet model adhered to this sensibility by overemphasizing the strong state ideal. Arguably, “[n]o political system has ever been more hostile to civil society than the communist totalitarian regime Stalin erected.”¹⁷⁹ This ultimately resulted in “[f]at living standards, the burden of penurious third-world client states, and technological lag,” which ultimately “convinced younger Soviet leaders and thinkers that the Soviet model of a strong state had led to a dead end.”¹⁸⁰ The Gorbachev years marked the final period of this era, and “new ideas arose that challenged the older, simplistic version of the strong state ideal.”¹⁸¹ Indeed, Russians sought new models, including the concept of *pravovoe gosudarstvo* — a symbolic departure away from the strong-state ideal, and so a period that resembled a “law-governed state” emerged.¹⁸²

2. *The 1990s: The Loss of National Pride*

Although the demise of the Soviet Empire resulted in the development of a western-style democracy,¹⁸³ the honeymoon did not last long. Adding to the fact it no longer retained hegemonic status alongside the United States, Russia soon

¹⁷⁶ Interview with Peter Baker & Susan Glasser, *supra* note 100 (of course this begs the question of whether this characterizes the United States, as well).

¹⁷⁷ See Remington, *supra* note 170, at 69, (stating that “Russians have believed for centuries that Russia should be [a great world] power”).

¹⁷⁸ See Madeline Albright, *The 2008 Time 100: Vladimir Putin*, TIME, Apr. 30, 2009, available at: http://www.time.com/time/specials/2007/article/0,28804,1733748_1733757_1735578,00.html (stating that Russians “celebrate national traditions and prize collective glory, not individual freedom.”); see Remington, *supra* note 170, at 66.

Peter and Stalin are paired in the minds of many ultranationalists today as heroic figures who expanded the industrial base of the state, increased the state’s control over society, and made Russia a mighty and feared military power in the world. The ideal of the “strong state” in the sense of *derzhava* – a great world power – is inseparable, for such self-styled patriots, from the image of a commanding patriarchal leader who, through force of will, defeats all natural and social enemies to build up the state’s formidable might.

Id.

¹⁷⁹ Michael McFaul et al., Introduction to BETWEEN DICTATORSHIP AND DEMOCRACY: RUSSIAN POST-COMMUNIST POLITICAL REFORM 1, 14 (Carnegie Endowment for Int’l Peace 2004).

¹⁸⁰ Remington, *supra* note 170, at 67.

¹⁸¹ *Id.* Mikhail Gorbachev was the last General Secretary of the Communist Party of the Soviet Union. He served from 1985-1991. See C.J. Chivers, *Gorbachev, Rebuking Putin, Criticizes Russian Elections*, N.Y. TIMES, Jan. 29, 2008, at A8.

¹⁸² Remington, *supra* note 170, at 67.

¹⁸³ See SMITH, REFORMING, *supra* note 31, 226-27 (stating that at the beginning of the transition, “Russians openly spoke of joining the ranks of ‘civilized’ countries Many unrealistically assumed that economic stabilization and recovery could be achieved in a matter of a few years.”).

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experienced corruption,¹⁸⁴ the ransacking of national industries by oligarchs,¹⁸⁵ a stock market crash,¹⁸⁶ persistent economic stagnation,¹⁸⁷ declining age expectancy,¹⁸⁸ and a declining population,¹⁸⁹ hardly what Russians envisioned western-style democracy would provide. Ultimately, democracy, or at least the type that the West had imposed on Russians, was not the “savior” for which Russians had hoped.¹⁹⁰

This post-Soviet era left Russians humiliated and floundering in third-world status¹⁹¹ and “the perception of the West as mostly a ‘knight of democracy’ [was] replaced with the disappointed belief that pragmatism, often cynical and selfish, [lay] at the core of Western policies.”¹⁹² Equally important, Russian President Yeltsin was considered a buffoon and fool.¹⁹³ Specifically, the Yeltsin years were characterized by an “ailing, intoxicated president who disappeared for weeks at a stretch, while his government failed to pay wages and frittered away billions of dollars of international aid.”¹⁹⁴ Not only was President Yeltsin an embarrassment domestically within Russia, he was also regarded as ridiculous abroad, which only compounded Russians’ sense of embarrassment and humiliation.¹⁹⁵

Russians, who had always reveled in the stature of their great nation became disillusioned with “the obvious weakening of state power”¹⁹⁶ at the direction of their first post-Soviet leader, Boris Yeltsin. Russians began to yearn for something other than Yeltsin,¹⁹⁷ and something other than a western-style democracy. “Russians desperately awaited a new leader who would put the 1990s behind them”¹⁹⁸ and restore greatness to their “hobbled nation.”¹⁹⁹

¹⁸⁴ See *id.* at 235 (“The outbreak of crime in Russia [during the 1990s] [was] a system of the collapse of order.”).

¹⁸⁵ See Gessen, *supra* note 20.

¹⁸⁶ See Handelman, *supra* note 167, at 89 (discussing the 1998 Russian stock market crash and ensuing financial crisis).

¹⁸⁷ *Id.*

¹⁸⁸ See SMITH, REFORMING, *supra* note 31, at 187.

¹⁸⁹ See BAKER & GLASSER, *supra* note 66, at 194.

¹⁹⁰ See *supra* note 183 and accompanying text; see Fred Weir, *KGB Influence Still Felt in Russia*, THE CHRISTIAN SCI. MONITOR, Dec. 30, 2003, at 6.

¹⁹¹ Interview with Alexander Solzhenitsyn, in London, Eng. (Aug. 5, 2008), available at <http://www.independent.co.uk/arts-entertainment/books/features/alexander-solzhenitsyn-his-final-interview-885152.html>.

¹⁹² *Id.*

¹⁹³ See Ignatius, *Boris Yeltsin*, *supra* note 145.

¹⁹⁴ BAKER & GLASSER, *supra* note 66, at 39.

¹⁹⁵ See *id.*; see also Gessen, *supra* note 20.

¹⁹⁶ Remington, *supra* note 170, at 65.

¹⁹⁷ See Gessen, *supra* note 20 (Putin had “all qualities for which Russia, exhausted and embarrassed by Yeltsin’s provincialism and unpredictability, seemed to yearn.”).

¹⁹⁸ BAKER & GLASSER, *supra* note 66, at 39.

¹⁹⁹ *Id.* at 38.

Consequently, the term “democracy” was removed from many presidential speeches by the end of the 1990s because it had become so severely tarnished. “‘Democracy’ was not [then] — if it had ever been — a goal supported by much of the population, and the very word had been discredited, an epithet that had come to be associated with upheaval rather than opportunity.”²⁰⁰ More than ever, many Russians “believed authoritarianism was the only path for their country.”²⁰¹ As Peter Baker and Susan Glasser have suggested, Russia was a “country in between” when Vladimir Putin arrived.²⁰²

3. *The Putin Years: Restoration of A Strong Mother Russia and National Pride*

Vladimir Putin was Russia’s “antidote to Boris Yeltsin.”²⁰³ Although he was introduced to his country as “young, energetic, decisive, determined, worldly, reform-minded, [and] dependable,”²⁰⁴ sobriety alone drew Russians to Putin. Indeed, at that time, it did not take much to impress Russians — the bar had been set quite low. One poll found that when Putin took office, forty percent of Russians expressed that what “they admired most in the new President was that he was sober.”²⁰⁵ “Where past Russian leaders were sometimes bombastic, buffoonish, or fossilized, Putin seemed young and vigorous, cool and detached.”²⁰⁶

Putin asserted himself not long after taking office in 2000. He exclaimed that “[o]ffending [Russia] will cost one dearly.”²⁰⁷ Without apologies, Putin even stated that “the collapse of the Soviet empire ‘was the greatest geopolitical tragedy of the century,’”²⁰⁸ thereby reminding Russians of their inherent greatness and strength — *derzhavnost*.²⁰⁹ Moreover, Putin “had the gift of seeming to be all things to all people, of uniting an otherwise fractured society with soothing words about stability and order.”²¹⁰ After the previous decade that had been marked by revolution and chaos, Putin now intended to “end the revolution.”²¹¹ He sought to bring order and stability to his people who had not been afforded

²⁰⁰ *Id.* at 3.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.* at 39.

²⁰⁴ Gessen, *supra* note 20.

²⁰⁵ BAKER & GLASSER, *supra* note 66, at 39-40 (stating that “[s]obriety alone became a major element of Putin’s appeal, in contrast to his frequently drunken predecessor”); see Gessen, *supra* note 20.

²⁰⁶ BAKER & GLASSER, *supra* note 66, at 40.

²⁰⁷ Otkrytoe pismo Vladimira Putina k rossiyskim izboratelyam [Open Letter from Vladimir Putin to Russian Voters] (2000), available at <http://www.ticketsofrussia.ru/gov/putin/letter.html> [hereinafter Open Letter].

²⁰⁸ *Putin: Soviet Collapse a “Genuine Tragedy,”* MSNBC.COM, Apr. 25, 2005, <http://www.msnbc.msn.com/id/7632057>.

²⁰⁹ Remington, *supra* note 170, at 69.

²¹⁰ BAKER & GLASSER, *supra* note 66, at 7.

²¹¹ *Id.*

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such luxuries. Putin declared: “The time of uncertainty and anxious expectations is past.”²¹²

Putin “reinterpret[ed] the [strong state] tradition in a pragmatic and modernizing spirit . . .,”²¹³ which resonated with Russians, young and old. He ordered the return of the Soviet anthem with slightly modified lyrics, decided to leave Lenin’s embalmed body in the Red Square, which his predecessor had questioned, and reinstated the Soviet red flag.²¹⁴ Putin even encouraged his countrymen to be proud of the accomplishments of the Soviet Union. He posited: “Was there nothing but Stalin’s prison camps and repression? What about the achievements of Soviet science, of the spectacular space flight of cosmonaut Yuri Gagarin, of the art and music of cultural heroes like the composer Dmitri Shostakovich?”²¹⁵ Russians yearned to hear this “nationalism mixed with Soviet-era symbolism.”²¹⁶

Illustrative of Russia’s sudden “reemergence,” Putin secured a Russian city to host the 2014 Olympic Winter Games,²¹⁷ an honor that had not been bestowed on Russia since Moscow hosted the 1980 Summer Games. Indeed, when Russia hosts the 2014 Winter Games, its people will no longer have to “suffer the indignity of watching [their] athletes stand silent on the Olympic medals podium,” as was the case during the 2000 Summer Games in Sydney.²¹⁸

Moreover, after years of worshipping all things western,²¹⁹ the word *nashe* — Russian for “ours”— has become *en vogue*.²²⁰ As Aleksandr Oslon, a Kremlin pollster exclaimed: “It was very uncool to be Russian in the beginning of the nineties Every newspaper and television show was obsessed with showing how bad this country [was] and how hopeless we [were] and how good life is in the West. Now it’s cool to be Russian again.”²²¹

²¹² *Id.* at 312.

²¹³ Remington, *supra* note 170, at 69.

²¹⁴ BAKER & GLASSER, *supra* note 66, at 65.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ The 2014 Winter Games will be hosted by the Russian city of Sochi. This is the first post-Soviet Olympic Games that will be held in Russia. It must be noted that more than most nations, Russia has historically regarded its athletic accomplishments in the Olympics as a major source of national pride. That their nation has secured the 2014 Winter Games is a huge victory for the Russian people and something to credit Putin with having secured. Certainly, Russia would not have been rewarded with the opportunity to host an Olympic Games if the Olympic Committee thought that Russia was incapable of hosting. Therefore, from an international perspective, Russia is perceived as possessing a certain level of stability and viability, or at least Russians’ perception is that the rest of the world perceives it that way. Interestingly, the last time the Olympic Games were held on Russian soil was in 1980, when Moscow hosted the Summer Games, and which the United States boycotted. Much has changed.

²¹⁸ BAKER & GLASSER, *supra* note 66, at 65.

²¹⁹ *See id.* at 64.

²²⁰ *See id.* Aleksandr Nevzorov, an investigative journalist from St. Petersburg explained the concept of *nashi* as “a circle of people — let it be enormous colossal, multimillion — to whom one is related by common language, blood, and motherland.” *Id.* at 74 (stating that some critics including Nevzorov, contend that *nashi* has become darker during the previous several years).

²²¹ *Id.* at 64.

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Putin has restored Russia²²² to what its people believe is its rightful place alongside other world powers,²²³ while also “shepherd[ing] Russia into a bright future of economic reform and stable democracy.”²²⁴ Putin certainly brought Russia out of economic despair, following a period in which “the working masses lost their life savings in an economic crash,” while “the favored few ripped off state assets in rigged auctions.”²²⁵ Almost symbolically, Putin penalized those oligarchs that had pillaged Russia and had come to represent all that was wrong with the 1990s — greed, corruption, rampant capitalism.²²⁶ “The era of the oligarchs [was] over.”²²⁷

Putin instituted a thirteen percent flat tax, advanced new land codes to assist in property purchases and sales, and instituted reforms to overhaul the “famously corrupt and inefficient state electricity and natural gas monopolies.”²²⁸ Consequently, conditions for the middle class have improved.²²⁹ As *Business Week’s* Moscow bureau correspondent stated: “That’s giving a lift to the mood in the country.”²³⁰ Indeed, compared to “the basket case” that it was throughout the 1990s, “Russia’s economy has grown an average of 7% a year for the past five years.”²³¹ Even more impressive, under Putin, Russia paid off a foreign debt that

²²² See Stone, *supra* note 150 (stating that Putin will be satisfied being acknowledged throughout the world as the person who brought economic stability to Russia, and which, consequently, allowed for a democratic renaissance in the country); see Richard Stengel, *Person of the Year: Choosing Order Before Reform*, TIME, Dec. 31, 2007, at 42 (discussing Putin’s “extraordinary feat of leadership in imposing stability on a nation that has rarely known it and brought Russia back to the table of world power.”); see Struck, *supra* note 30 (stating that Gorbachev credited Putin because he “pulled Russia out of chaos” and “assured [it] a place in history”). Of course, Gorbachev qualified such statements with an acknowledgment that the news media has been suppressed and that election rules are inconsistent with democratic ideals. *Id.*

²²³ See Daniel Twining, WKLY. STANDARD, Jan. 16, 2006 (LEXIS) (stating that Russia “is reasserting state control, in a concerted strategy to make Russia a great power once again.”); see John Wendle, *The New Gambit: Moscow’s View*, TIME, Aug. 28, 2008, available at <http://www.time.com/time/world/article/0,8599,1836837,00.html> (pro-Kremlin analyst Sergei Markov explains, “[i]f the U.S. and Britain think they are first-level countries and Russia is a second-level country, we don’t agree”; this is symbolic of Russians still desiring to be counted as an equal).

²²⁴ Gessen, *supra* note 20.

²²⁵ BAKER & GLASSER, *supra* note 66, at 39.

²²⁶ See Gessen, *supra* note 20. Putin “launched an attack on Russia’s oligarchs, who were forced to give up their assets to the state or Putin’s allies; many . . . now live in exile, and at least two — Mikhail Khodorkovsky and Platon Lebedev, the former owners of the country’s largest oil producer, Yukos — are behind bars.” *Id.* Putin has even said he wants to continue his campaign against Russian oligarchs from the 1990s. *Id.*

²²⁷ Charles Clover et al., *Putin Says There is to be No Review of Privatisations*, FINANCIAL TIMES (London), July 29, 2000, at 7.

²²⁸ BAKER & GLASSER, *supra* note 66, at 84.

²²⁹ Jason Bush, *Russia: How Long Can the Fun Last?*, BUS. WK., Dec. 7, 2006, available at www.businessweek.com/globalbiz/content/dec2006/gb20061207_520461.htm, (stating that in 2000, only eight million qualified as middle class, but by 2006, this percentage had risen to about thirty-seven percent of the population).

²³⁰ *Id.*

²³¹ Ignatius, *A Tsar Is Born*, *supra* note 41.

was once close to 200 billion dollars,²³² the Russian economy grew from about 200 billion dollars in 2000, to about 920 billion dollars by 2006.²³³

Strengthening Russia's economy has provided Russia with a sense of "stability and predictability,"²³⁴ and is a major reason Putin is still regarded as Russia's savior and a "great Russia[n] Patriot."²³⁵ Indeed, an anti-revolution has occurred in Russia. Ultimately, Putin represents something for which Russians can be proud,²³⁶ and someone who has encouraged Russians to be proud of being Russian again.²³⁷ For these reasons, Putin's presidency, which was marked by "managed democracy,"²³⁸ and "vertical of power,"²³⁹ represents a balance between the traditional strong state ideal and more-modern democratic ideals — a uniquely Russian hybrid-style vision of democracy.²⁴⁰ This understanding is consistent with former President George W. Bush's description of Russia in 2004. At a summit in Santiago, Chile, an aid to President George W. Bush indicated that the U.S. President understood that Russia needs a "'style of government that [is] consistent with Russian history.'"²⁴¹

²³² *Id.*

²³³ Lilia Shevtsova, *Post-communist Russia: A Historic Opportunity Missed*, 83 INT'L AFF. 891, 894 (2007).

²³⁴ Kahn, *Vladimir Putin*, *supra* note 35, at 554.

None of this would matter, of course, if Putin's last eight years had not brought a sense of stability and predictability to most Russians after the upheavals of the 1990s. Those two characteristics are commonly considered to be two of the greatest benefits of the rule of law in a society.

Id.; see J.D. Kahn, *Russia's "Dictatorship of Law" and the European Court of Human Rights*, 29 REV. CENT. & E. EUR. L. 1, 1-14 (2004).

²³⁵ Interview with Peter Baker & Susan Glasser, *supra* note 100. According to a poll, 82% of Russians approved of Putin's leadership. Kahn, *Vladimir Putin*, *supra* note 35, at 554. This is almost a fourteen-fold increase from his starting point in August 1999, when only 6% of Russians knew who he was. *Id.* See SMITH, REFORMING, *supra* note 31, at 228-29, (showing that the most revered institutions in Russia remain the army, the church and the presidency. Although 62% of the populace expressed trust in the army, only 7% expressed trust in political parties); see Struck, *supra* note 30 (stating that Gorbachev believes "Putin salvaged the country from the ravages of . . . Boris Yeltsin, whose rule as president of Russia from 1991 to 1999, set the country careening toward capitalism at the cost of great economic and social turmoil . . . 'Now Russia is having a resurgence . . .'").

²³⁶ See Interview with Peter Baker & Susan Glasser, *supra* note 100.

²³⁷ BAKER & GLASSER, *supra* note 66, at 38 (Russians young and old now sing "Russia, Putin, Unity," illustrative of their newfound Russian pride.); see *Duma Approves Old Soviet Anthem*, CNN.COM, Dec. 8, 2000, <http://archives.cnn.com/2000/WORLD/europe/12/08/russia.anthem/>; see Gessen, *supra* note 20 (stating that there remains a minority of critics within Russia, including one of Putin's former economic advisors, Andrei Illarionov, who resigned in December 2005, and stated: "'It is one thing to work in a country that is partially free' 'It is another thing when the country loses all political freedom The very nature of the state has changed.'").

²³⁸ McFaul et al., *supra* note 179, at 9. ("Putin's advisors have a term for this transformation of democratic practices without altering formal democratic rules: 'managed democracy.'").

²³⁹ BAKER & GLASSER, *supra* note 66, at 84. This has been described as "a single chain of command with [Putin] at the top." *Id.*

²⁴⁰ See Remington, *supra* note 170, at 68 (explaining that "Russians want a strong state but also value democratic liberties and the rule of law"). Moreover, Remington described the development of a "'third way,' which is neither the radical neoliberalism of the early 1990s nor the ultranationalist statism of the 'red-brown' extremists, but a reinterpretation of the ideal of a strong state." *Id.*

²⁴¹ BAKER & GLASSER, *supra* note 66, at 377.

B. Development of a Unique Russian Hybrid Democracy

Indeed, the balance of a strong state ideal and modern democratic values now characterize Russia's vision of democracy. Specifically, the 2004 presidential election reelecting Putin for a second term; the unique tandem relationship between Medvedev and Putin as President and Prime Minister, respectively; and finally, Medvedev's most recent call to amend the Constitution highlight the development of Russia's democracy. These occasions illustrate the coexistence of Russia's traditional strong state ideal with more modern and open democratic principles.

1. 2004 Presidential Election: Putin, Again

When President Putin won the Presidency in March 2004, he earned more than seventy percent of the popular vote, easily securing a second term.²⁴² The election results indicated that Russians were generally pleased with Putin. However, the election also highlighted several very important features of Russian democracy. First, it illustrated Russians' newfound ability to directly choose their President.²⁴³ Specifically, Russians have frequently voted since "the first semicompetitive election in the Soviet Union in the spring of 1989."²⁴⁴

Russians receive a holiday on election day, unlike Americans, which has compelled some criticism that there exists a "voting tax"²⁴⁵ in the United States. In any event, Russians are voting more than ever before. Voter turnout has "remained solid even in the late 1990s, averaging more than 60 percent in national elections. Evidently voters believe that these elections matter,"²⁴⁶ or else they would not be participating. Furthermore, "the major stakeholders in Russia's political and economic system continue to devote major resources to these electoral processes, which suggests that the outcomes are not predetermined and have consequences."²⁴⁷

²⁴² See Vladimir V. Putin, Times Topics, http://topics.nytimes.com/top/reference/timestopics/people/p/vladimir_v_putin/index.html (last visited Apr. 16, 2010).

²⁴³ Konst. RF art. 81(4) ("The rules of electing the President of the Russian Federation shall [be] determined by the federal law."). Putin has suggested that Russia's presidential election process, by direct vote, is better and more democratic than the American process, which is complicated by an electoral college that no one seems to actually understand.

²⁴⁴ Michael McFaul & Nikolai Petrov, *Elections*, in BETWEEN DICTATORSHIP AND DEMOCRACY: RUSSIAN POST-COMMUNIST POLITICAL REFORM 23, 23 (Michael McFaul et al. eds., Carnegie Endowment for Int'l Peace 2004).

²⁴⁵ See Rachel Sklar, *Rachel Maddow Decries "The New Poll Tax," Long Lines*, HUFFINGTON POST, Nov. 3, 2008, available at http://www.huffingtonpost.com/2008/11/03/rachel-maddow-decries-lon_n_140455.html.

This is a poll tax. How much do *you* get paid for an hour of work? Do you have the kind of job that would be delighted to give you an hour, a half-day, a whole day off work because you were waiting in line at your precinct? Even if it won't cost you your job, can you afford to not work those hours? Are you elderly or disabled, do you not have the physical stamina for this kind of exertion? This is a poll tax Who is not in those lines — because they can't afford to be?

Id.

²⁴⁶ McFaul & Petrov, *supra* note 244, at 52.

²⁴⁷ *Id.*

The 2004 Russian presidential election also illustrated that although Russians willingly embrace features of democracy, such as the right to vote, they still yearn for a strong state. Russians knew Putin and his policies, since he had served as President for the previous four years. Therefore, when Russians went to the polls in 2004, they demonstrated a desire for an additional four years of the strong state ideal, which Putin had clearly embodied during his first term.

2. *Medvedev and Putin's Tandem-Relationship: An Unprecedented Relationship?*

Putin handed the Russian Presidency to Medvedev in May of 2008,²⁴⁸ and soon thereafter accepted the position of Prime Minister, though it is clear that Putin still retains a significant amount of power. Unquestionably, Putin “became Russia’s most powerful prime minister since the post was first established.”²⁴⁹ In many respects, Putin continues to behave like the head of state.²⁵⁰ Moreover, soon after taking office, Medvedev referenced his tandem arrangement with Putin and indicated his desire to nurture it.²⁵¹ Specifically, Medvedev said, “no one has any doubt that our tandem, our cooperation, will only continue to strengthen.”²⁵²

Thus, a unique and very distinct relationship between the President and Prime Minister has taken root. Although critics argue that Putin’s assumption of power is unlawful, as it is unprecedented for the Prime Minister to hold the amount of power that Putin holds, Russians are generally content that he has remained a central figure. Indeed, a November 2008 poll showed that Putin’s popularity was at eighty-three percent, while Medvedev’s was at seventy-six percent.²⁵³ Russians are not rushing to change the status quo, they enjoy the peace and stability that Putin’s rule provides.

Moreover, the tandem relationship between Putin and Medvedev resembles other Russian political relationships of the past. During the Soviet era, the leader of the Soviet Union was constructively the head of state, but the individual with actual power was the head of the Communist Party, illustrative that this “unprecedented” relationship may not actually be so unprecedented,²⁵⁴ and instead represents the continued desire for a strong state — which Putin embodies.

Putin’s assumption of power only underscores the development of Russia’s unique democracy. Specifically, Putin was constitutionally precluded from serving as president for a third consecutive term. The Russian Constitution states:

²⁴⁸ Adrian Blomfield, *Vladimir Putin Could Reclaim Russian Presidency Within Months*, TELEGRAPH.CO.UK, Nov. 6, 2008, <http://www.telegraph.co.uk/news/worldnews/europe/russia/3392827/Vladimir-Putin-could-reclaim-Russian-presidency-within-months.html>.

²⁴⁹ *Id.*

²⁵⁰ *Putin Becomes Russian PM in Leadership “Tandem,” supra note 15.*

²⁵¹ *See id.*

²⁵² *Id.*

²⁵³ Miriam Elder, *Door Opens for Putin to Return to Kremlin; Constitutional Reform Would Allow Ex-President to Make Dramatic Comeback*, INDEPENDENT, Nov. 15, 2008, at 32.

²⁵⁴ *See SMITH, REFORMING, supra note 31, at 225.*

“One and the same person may not be elected President of the Russian Federation for more than two terms running.”²⁵⁵ If Putin had sought a third term, it would have violated the Constitution and the democratic values it espouses. The first words of the Russian Constitution are: “The Russian Federation – Russia is a democratic federal law-bound state with a republican form of government.”²⁵⁶ Article 4 of the Constitution adds: “The Constitution of the Russian Federation and federal laws shall have supremacy in the whole territory of the Russian Federation.”²⁵⁷ Thus, Putin could not seek a third term because the Constitution, which necessarily constrains him, precluded him from doing so.

In light of the inherent importance of the Russian Constitution, because Russians regard Putin as symbolic of the strong state ideal, they have willingly accepted and welcomed his continued presence. Specifically, Putin has assumed an unprecedented amount of responsibility and power as prime minister. In particular, although the Russian Constitution provides that “The President of the Russian Federation shall be the Head of State,”²⁵⁸ and shall “represent the Russian Federation within the country and in international relations,”²⁵⁹ it was Putin, as the Russian Prime Minister, whom the international community sought during the August 2008 Georgian conflict. By contrast, the Russian Constitution specifies that the duties of the prime minister include developing and submitting to the State Duma a federal budget; implementing a uniform state policy in the sphere of culture, science, education, health social security, and ecology; administration of federal property; and implementing civil rights and freedoms; as well as “other powers vested in [him] by the Constitution.”²⁶⁰

Accordingly, by permitting this unique tandem relationship between the president and prime minister to develop, Russians are reconciling their historic desire to maintain a strong state system with the democratic values embodied in their Constitution.²⁶¹ This relationship is emblematic of Russia’s hybrid vision of democracy.

3. *Medvedev’s Call to Amend the Constitution, November 2008: Civility and Openness*

Medvedev requested that the Russian Constitution be amended in November 2008.²⁶² Generally, there are two ways to change the Russian Constitution.

²⁵⁵ Konst. RF art. 81(3). It is interesting to note that there is not yet a definitive answer regarding whether Article 81 means that the same person is precluded from holding office for more than two terms generally, or whether the same person is only precluded from serving more than two terms consecutively, but can later return to the presidency.

²⁵⁶ *Id.* art. 1.

²⁵⁷ *Id.* art. 4(2).

²⁵⁸ *Id.* art. 80(1).

²⁵⁹ *Id.* art. 80(4).

²⁶⁰ *Id.* art. 114(g).

²⁶¹ See Ignatius, *A Tsar Is Born*, *supra* note 41 (quoting Strobe Talbott of the Brookings Institute who suggested, “Putin has returned to the mechanism of one-man rule Yet, it’s a new kind of state, with elements that are contemporary and elements from the past.”).

²⁶² See Medvedev Address, *supra* note 4.

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“The first is the convocation of a constitutional convention to make corrections to the main chapters of the constitution or to work out a new draft The second way is to introduce a few amendments that do not contradict the basis of the constitutional regime. . . .”²⁶³ The first way is long and complex, whereas the “only reasonable way to change the constitution in the midterm and long term is to add amendments gradually as has been done in the United States.”²⁶⁴

Russian law provides that passage of Medvedev’s bill would require a majority of the State Duma to vote for its adoption.²⁶⁵ Indeed, when Medvedev submitted his bill, the State Duma decisively passed it by a vote of 392 to 57,²⁶⁶ an example of democratic values at work. Although it may be argued that a majority of those who voted for the bill’s passage were members of Putin’s own United Russia political party, whereas all fifty-seven members of the minority Communist faction voted against the bill,²⁶⁷ Russia’s leaders abided by democratic principles, nonetheless. Ultimately, the bill was passed by the upper house of Russia’s parliament, and on December 30, 2008, Medvedev signed a law extending the Russian presidential term from four years to six.²⁶⁸

The passage of the bill illustrates several important points. First, compared to the Soviet era, when only one political party existed, the Communist Party,²⁶⁹ there are now several political parties, including United Russia Party and the Communist Party.²⁷⁰ However, these are not the only parties. The very existence of multiple political parties may be attributed to the 1990s when Russians expressed a strong desire to have multiple political parties, each of which could represent different factions or demographics within Russia. The very existence of multiple political parties is itself indicative of democratic progress.

Moreover, although laws were allegedly unanimously passed during the Soviet era, this was because no opposition was permitted²⁷¹ and vocal and public dissent was prohibited. The passage of Medvedev’s bill illustrates how vocal and public dissent is clearly permitted now. Specifically, the Communist faction responded to the bill’s passage with disgruntled comments. Communist Party and State Duma member Viktor I. Ilyukhin said: “‘Why do we have to do this today?’ . . .

²⁶³ Viktor Sheinis, *The Constitution, in BETWEEN DICTATORSHIP AND DEMOCRACY: RUSSIAN POST-COMMUNIST POLITICAL REFORM* 56, 81 (Michal McFaul et al. eds., Carnegie Endowment for Int’l Peace 2004).

²⁶⁴ *Id.* at 82.

²⁶⁵ Konst. RF art. 105 (“Federal laws are passed by the House of Representatives [State Duma]. Federal laws are passed by a majority of votes of all deputies of the House of Representatives [State Duma] . . .”).

²⁶⁶ Matthew Chance & Max Tkachenko, *Russian Parliament Approves Extension of Presidential Term*, CNN.COM, Nov. 12, 2008, <http://www.cnn.com/2008/WORLD/europe/11/12/russia.president/index.html>.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ See SMITH, REFORMING, *supra* note 31, at 193.

²⁷⁰ *Id.* at 215.

²⁷¹ See generally Handelman, *supra* note 167, at 88-91 (explaining that the transition to democracy was difficult because of the Soviet government’s corruption and criminality, which caused public distrust).

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'Why are we in such a hurry? A strict authoritarian regime has already been established in this country. There is already unprecedented concentration of power in one person's hands.'²⁷²

Not to be outdone, the Communist Party's President, Gennadi A. Zyuganov "scoffed at the idea that four years was a short period . . ." ²⁷³ Zyuganov stated: "Soviet five-year plans had produced the Magnitogorsk and Kuznetsky metallurgical plants, the Gorky automotive factory and the Stalingrad tractor factory."²⁷⁴ Finally, several other Communist Party members sarcastically questioned Medvedev's intelligence. In any event, it is unimaginable that this type of dissent would have been permitted, let alone made public, during the Soviet era. Thus, although Medvedev's bill may represent a greater consolidation of power in the presidency, it was democratically passed by the State Duma in an atmosphere of openness and where dissent was permitted. Indeed, this amendment to the Russian Constitution illustrates Russia's vision of both a strong state and democratic values.

C. Will Russia's Hybrid Vision of Democracy Endure?

Putin has effectively restored Russia to a familiar style of government by consolidating power in the presidential branch. Certainly, Russia has historically been ruled with an authoritarian, if not arbitrary, fist,²⁷⁵ a fact that Putin recognizes:

"Russia will not soon become, if ever, a carbon copy of, say, the U.S. or England, where liberal values have kept historical traditions. Among us, the state, its institutions and structures, have always played an exceptionally important role in the life of the country and the people. For Russians, a strong state is not an anomaly, not something that must be fought against, but, on the contrary, the source and guarantor of order, the initiator and the main driving force of all change."²⁷⁶

In 2000, because Russia was at the brink of third-world status, Putin suggested that Russia needed a strong state power²⁷⁷ because a Western-style democracy was seemingly not fit for it. In effect, Russia's history and worldview necessitated something better tailored to its needs.

Consequently, because a strong state represents a return to that which Russians are comfortable with, if not well-suited for, it is not surprising that a Russian-style democracy would ultimately incorporate strong state elements. Perhaps Russians still desire a tsar-like ruler. Indeed, Russians have even referred to

²⁷² Ellen Barry, *Russia Moves Closer to Extending the Presidential Term*, N.Y. TIMES, Nov. 15, 2008, at A8.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ See KURKCHIYAN, *supra* note 36, at 37; see *supra* note 99.

²⁷⁶ Nikolai Sokov, *Russia's New Concept of National Security*, 9 E. EUR. CONST. REV. 83, 84 (2000).

²⁷⁷ See *id.*

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Putin as “the protector of the system.”²⁷⁸ Thus, although “Putin’s treatment of the strong-state theme differs from earlier models of state strength in Russian thought by virtue of its insistence on law, democracy, and freedom,”²⁷⁹ Putin has not forgotten how central a strong state remains.

Putin has also indicated that a consolidation of power in Russia is necessary to ensure a more stable development of the law. As Russia proceeds through this transitional period, Putin has indicated that any divergence from “democracy” may be necessary because Russia is not yet ready for a totally democratic system.²⁸⁰ Although this type of statement does not comport with certain of Putin’s other statements, it suggests that Russia has never been, nor will it ever be able to adopt the type of democracy of America or Britain — and consequently, that it is futile to assess Russian democracy from a western-democratic perspective.²⁸¹ Accordingly, it remains unclear whether Russia is necessarily capable of developing the type of democracy found in the U.S. or Britain, or if it is simply beginning the process, such that comparisons are futile.

In any event, a strong Russian state is not necessarily an anomaly, or suggestive of a burgeoning authoritarian state. Rather, a strong-state Russia simply suggests that Russia is nurturing its own distinct hybrid-style of democracy.²⁸² Ultimately, because Russia is actively working to develop democracy on its own and on its own terms, this hybrid-style of democracy is likely to endure.

IV. Conclusion

“What matters above all is not whether a law is bad or good. What matters is whether or not the law exists. A bad law is nevertheless a law. Good illegality is nevertheless illegal.”²⁸³

If you believe the American rhetoric, Russian leaders have hijacked the rule of law and democracy that was slowly developing in Russia. However, as this Article explains, Russian reality is quite different. Current Russian leaders have actually strengthened, not abandoned, legal and democratic reform.

This Article has offered a new, more nuanced approach. It has reexamined Russian legal and political developments through a Russian, rather than an American-centric lens — through the *Russian* looking glass. This Russian lens has revealed a vision of law and democracy that is uniquely Russian, a hybrid-style

²⁷⁸ Yuri Zarakhovich, *The New (Old) Russian Imperialism*, TIME, Aug. 27, 2008, available at <http://www.time.com/time/world/article/0,8599,1836234,00.html>.

²⁷⁹ Remington, *supra* note 170, at 65.

²⁸⁰ It is worth noting that this is inconsistent with the author’s argument that Russia may not even be a good candidate for western-style democracy. However, it is feasible that Putin would make such statements to suggest that a western-style democracy remains the goal, even if it is not.

²⁸¹ See Eric Kraus et al., *Russia Profile Weekly Experts Panel: An Investment of Diminishing Returns?*, RUSSIA PROFILE.ORG, Mar. 14, 2008, available at <http://www.russiaprofile.org/page.php?pageid=Experts%27+Panel&articleid=a1205517754>, (arguing that the “West is far too smugly secure in its sense of inherent political superiority to consider alternative versions of ‘democracy.’”).

²⁸² See Remington, *supra* note 170, at 68.

²⁸³ ALEXANDER ZINOVIEV, *THE YAWNING HEIGHTS* 306-07 (Random House 1979).

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scheme that seeks to incorporate Russian values, as well as the Russian experience.

Russia faces great challenges. The process of creating a new legal and democratic culture will be long, arduous and, at times, stagnant or ineffective.²⁸⁴ However, if Russia continues to nurture its unique vision of the law through its hybrid-style rule of law and democracy, it will meet these challenges. In the process, it has already introduced a new generation to a distinctively Russian vision of the law and democracy — consistent with Russia's own heritage and values. What is most impressive about Russia's newfound vision of the law is that it seeks to incorporate Russian values that comport with the Russian experience.²⁸⁵ Indeed, for all of the criticism against Putin, he has nonetheless reinterpreted the Russian tradition of being a world leader and power "in a pragmatic and modernizing spirit"²⁸⁶

The next step for U.S. policymakers, scholars, and citizens is to abandon their American-centric view of Russia and recognize the reality of Russian law and democracy today. With a new U.S. administration, it is time to reconsider the prevailing American-centric view.²⁸⁷ Through a Russian lens, they will see Russia's current reform program for what it is — progress rather than retreat.

²⁸⁴ See SMITH, REFORMING, *supra* note 31, at 237 (stating that "[d]uring this transition phase the laws themselves and their enforcement may be less than perfect, but what is important is that they are functioning, however imperfectly. Laws matter.").

²⁸⁵ An issue beyond the scope of this Article, but worth noting is that Russia's burgeoning legal culture may soon become a source of Russian national pride, in the same way Russians are proud of their ballet or technological developments. Indeed, the development of its hybrid vision of the law may ultimately be a great success and thusly, a source of national pride.

²⁸⁶ Remington, *supra* note 170, at 69.

²⁸⁷ See Struck, *supra* note 30.