

The Institutionalization of Relative Advantage: Formal Institutions, Subconstitutional Presidential Powers, and the Rise of Authoritarian Politics in Russia, 1994-2012

Burkhardt, Fabian

Postprint / Postprint

Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:

Burkhardt, F. (2017). The Institutionalization of Relative Advantage: Formal Institutions, Subconstitutional Presidential Powers, and the Rise of Authoritarian Politics in Russia, 1994-2012. *Post-Soviet Affairs*, 33(6), 472-495. <https://doi.org/10.1080/1060586X.2017.1388471>

Nutzungsbedingungen:

Dieser Text wird unter einer CC BY-NC Lizenz (Namensnennung-Nicht-kommerziell) zur Verfügung gestellt. Nähere Auskünfte zu den CC-Lizenzen finden Sie hier: <https://creativecommons.org/licenses/by-nc/4.0/deed.de>

Terms of use:

This document is made available under a CC BY-NC Licence (Attribution-NonCommercial). For more information see: <https://creativecommons.org/licenses/by-nc/4.0>

This is an Accepted Manuscript of an article published by Taylor & Francis in POST-SOVIET AFFAIRS on 2017, vol. 33, No. 6, 472-495, available at:

<https://doi.org/10.1080/1060586X.2017.1388471>

License: CC-BY-NC 4.0 (<https://creativecommons.org/licenses/by-nc/4.0/>)

Page numbering of the original in brackets.

**The institutionalization of relative advantage:
formal institutions, subconstitutional presidential powers,
and the rise of authoritarian politics in Russia, 1994–2012**

Fabian Burkhardt

<https://orcid.org/0000-0003-0789-9410>

(Research Centre for East European studies, University of Bremen, Bremen, Germany;
Graduate School for East and Southeast European Studies, Munich, Germany; German
Institute for International and Security Affairs, Berlin, Germany)

ABSTRACT

What role do formal institutions play in the consolidation of authoritarian regimes such as the Russian Federation? Oftentimes, it is assumed that autocrats, usually potent presidents, wield informal powers and control far flung patron–client networks that undermine formal institutions and bolster their rule. After the institutional turn in authoritarianism studies, elections, parties, legislatures, or courts have taken center stage, yet presidencies and public law are still on the margins of this research paradigm. This paper proposes a method for measuring subconstitutional presidential power and its change by federal law, decrees, and Constitutional Court rulings as well as a theoretical framework for explaining when and under which conditions subconstitutional presidential power expands. It is argued that as a result of a gradual, small-scale, and slow-moving process of layering, presidential powers have been accumulated over time. This furthers the institutionalization of presidential advantage toward other federal and regional institutions, which in turn contributes to the consolidation of authoritarianism.

KEYWORDS

Presidential power; comparative presidentialism; authoritarianism; institutional change; Russian politics; post-Soviet studies

The supplemental data for this article can be accessed at
<https://doi.org/10.1080/1060586X.2017.1388471>.

Introduction

What role do formal institutions play in the consolidation of authoritarian regimes? The answers to this research question usually fall into two broad categories. One line of argument posits that the institutions do not adequately reflect the political order, as formal institutions fail to constrain actors, most importantly, power-holders, such as autocrats, and more broadly, the selectorate – the set of elite actors who choose autocrats, as these actors circumvent and bend the rules in their favor. Hence, formal institutions are the mere epiphenomena of power constellations (Rodden 2009; Pepinsky 2014; Fortin-Rittberger 2017). Rules that constrain and enable the interaction of these actors do exist; however, they are informal, not codified in legislation, and usually not officially sanctioned by the state (Helmke and Levitsky 2006; Pleines 2008; Lauth 2015).

The second category of scholarship evolved with the institutional turn in authoritarianism studies. These scholars take the institutions that are associated with democracies such as parties, legislatures, elections, or courts at face value and investigate their functions and effects on various outcomes on their own terms (Frye 2012; Brancati 2014). Lately, scholars have also begun to explore the forms and **[page 472]** functions of constitutions in authoritarian regimes by moving beyond “sham constitutionalism” and the requirement that constitutions must limit government to be meaningful and a reasonable object of scholarly interest (Brownlee 2007; Ginsburg and Simpser 2014).

The post-Soviet Russian Federation as a non-Western polity and electoral authoritarian regime has figured prominently in this scholarly debate, which at its core revolves around competing conceptualizations of institutions: one perspective stresses the failure of institution-building, weak institutions, deinstitutionalization, and regime personalization. For scholars who view Western liberal democracy as a normatively colored blueprint, Russia is failing or has already failed in its “transition to the Western model of capitalism and democracy” (Sharafutdinova and Dawisha 2017, 361). Others, most prominently Barbara Geddes, have classified Russia throughout its post-Soviet trajectory as a personalist authoritarian regime (Geddes 1999) as “control over policy, leadership selection, and the security apparatus is in the hands” of “a narrower group centered around an individual dictator” (Geddes, Wright, and Frantz 2014, 318; see also Baturo and Elkink 2016; Kendall-Taylor, Frantz, and Wright 2017; Márquez 2017, 14). What unites this research agenda is a basic understanding of institutions as rules of the game that constrain actors’ behavior (Lowndes and Roberts 2013). However, these researchers argue, authoritarian rulers are not by definition “constrained by legal-institutional restraints” (Barros 2002, 11). Consequently, as Russian elite actors around the president and his network are generally “capable of overturning the outcomes of the institutionalized political process” (Przeworski 1988, 60) by personal intervention, scholars from this strand of literature are inclined to view Russia as being highly personalized and deinstitutionalized.

The perspective of the new authoritarianism research paradigm is exactly the opposite. If – according to Przeworski’s famous dictum – democracy is institutionalized uncertainty, then stable authoritarian regimes are characterized by institutionalized certainty about the fact that “political outcomes will not include those adverse to the interests of the power apparatus” (Przeworski 1988, 63). From this vantage point, struggles over uncertainty and its

reduction to a minimum are the core concern of authoritarian rulers. Institutions are “expectations of stability” and “provide order and constraint today by securing order and constraint tomorrow” (Schedler 2013, 24). Consequently, strong institutions are associated with consolidated autocracies as they demonstrate a low degree of uncertainty, while weak institutions are characteristic of autocracies that are undergoing regime crises.

For Russia, the role of formal institutions in reducing uncertainty and stabilizing authoritarianism has been touched upon by scholars from various angles. These include: political public activity and internal regime processes (Gill 2015, 18–22); regular, but unfree and unfair, elections without a level playing field on both the federal and regional levels (Golosov 2011; Gel’man 2015, 86); the emergence of United Russia as a dominant party (Reuter 2017); executive-legislative relations (Chaisty 2012), and the judiciary (Trochev 2012; Solomon 2015; Popova 2017).

Given the prominence of the presidency in Russian politics, institutional presidency-centered approaches have been surprisingly absent from this strand of literature. To be sure, there is a large body of research on the president-centered aspects of presidential power, for example, on Russian presidents as leaders (Brown 2004; Breslauer 2010; Remington 2010; Sakwa 2012; Hill and Gaddy 2013) or patrons atop far-flung patron–client networks (Ledeneva 2013; Hale 2015). However, thus far, the institution of the presidency has been largely bypassed in spite of the aforementioned “institutional turn.” This is exactly the research gap that this paper intends to fill.

The paper demonstrates that, as the result of a gradual, small-scale, and slow-moving process of layering, subconstitutional presidential powers have been accumulated over time. This furthers the institutionalization of presidential advantage toward other federal and regional institutions, which in turn contributes to the consolidation of authoritarianism.

In the following sections, I introduce the main concepts of presidential powers and institutional change and lay out the theoretical framework and assumptions about how subconstitutional presidential powers change gradually over time. In the subsequent section, I discuss the empirical strategy of extracting the relevant data, coding, and measurements. The last section presents and discusses the results for the expansion of presidential power over time and elaborates on one case study each for [page 473] laws, decrees, and Constitutional Court rulings to illustrate the argument in more detail. The conclusions summarize the primary findings and implications for the study of both Russian and comparative politics.

Theoretical framework

There is no generally accepted definition and consensus on how to measure the authority of presidents. However, one of the most popular approaches in comparative politics are the so-called Presidential Power Indices (PPI) that offer a more fine-grained instrument with which to capture variation than the literature on the system of government typologies of presidential and semi-presidential types (Elgie 2016; Elgie and Moestrup 2016; Fruhstorfer 2016). The number of indices to be found in the literature is quite large (among the most prominent are Shugart and Carey 1992; McGregor 1994; Frye 1997; Metcalf 2000; Roper 2002; Siaroff 2003).

They have been frequently used to compare presidential power cross-nationally and to assess the impact of this variation on democratic development, government stability, presidential activism, or other outcomes. As of late, they have been criticized for various methodological inconsistencies (Elster 1997; Norris 2008, 148; Negretto 2009; Fortin 2013; Doyle and Elgie 2016). Despite some wide-ranging differences, all of the indices conceptualize presidential power as institutional parchment (Carey 2000) powers, i.e. the competences and prerogatives of presidents that are formally laid down in national constitutions. Consequently, changes in presidential power occur by means of constitutional amendments, reform, or replacement.

With regard to Russia, there is disagreement on its form of government, and assessments range from semi-presidential (Morgan-Jones and Schleiter 2008), to presidential (Blondel 2015), to a non-Western, non-democratic “separation of powers without checks and balances” (Partlett 2012) or “superpresidentialism” (Holmes 1994; Fish 2000; Ishiyama and Kennedy 2001). However, cross-nationally, there is broad agreement that among all post-communist countries, Russia’s presidency is among the frontrunners in terms of constitutionally vested powers. Additionally, it has been argued that “nasty authoritarian governments tend to have nasty authoritarian constitutions” (Frye 2002, 89). In other words, from a comparative perspective, the change of authoritarian regime quality should also at least to a certain degree be reflected in constitutionally vested presidential powers. These assessments of Russia’s system of government and presidential power measurements are based on the constitution that was passed in December 1993. However, in stark contrast to other post-communist countries, Russia features a “restrained amendment culture” because “the constitutional text is amended relatively seldom” (Fruhstorfer and Hein 2016, 537). Russia in this sense poses a puzzle as, in addition to the insignificant renaming of certain federal subjects, no amendments were made until 2008, when the terms of office of the president were extended from four to six years and of the State Duma from four to five. These changes significantly increase presidential power in at least two ways. First, longer term limits are characteristic of countries that score worse on various democracy indices (Rogov and Snegovaya 2009; Batur 2014, 59–61). Second, due to the diverging term lengths, previously consecutive parliamentary and presidential elections were decoupled. Hence, the former no longer function as “primaries” (Shvetsova 2003) for the latter. This lack of counter-elite coordination increased the chances of the incumbent getting himself or his favorite successor reelected by minimizing the chances of a rival group forming around an alternative candidate.

However, despite this sparse change on the constitutional macro-level, scholars agree that by the late 2000s and early 2010s an electoral authoritarian regime was firmly in place with the presidency as the dominating force (Gel’man 2015; Gill 2015). This paper seeks to explain this discrepancy between a virtually unchanged constitution on one hand and the increasing autonomy of the executive within an authoritarian regime on the other.

The paper remains within the conceptualization of presidential power as a parchment institution by making use of the hierarchical structure of constitutions in general (Brennan and Buchanan 1985, 143; North 1990, 47; Varol 2015) and Russia’s in particular (Sharlet 1999; Krasnov and Shablinskii 2008). In contrast to the constitution, transaction costs are much lower for actors to change subconstitutional acts. Decree-making, for example, is a powerful and regularly used instrument of Russian presidents [page 474] (Remington 2014), and

Russia's legislation has been found to be very unstable (Kirdina and Rubinshtein 2014); from a comparative perspective, it is amended more frequently than in many other post-communist countries (Primakov and Dmitrieva 2011). Indeed, a number of scholars (Sharlet 1999; Fogelklou 2003; Oversloot 2007; Krasnov and Shablinskii 2008; Medushevskii 2014; Luk'yanova, Shablinskii, and Pastukhov 2016; Petersen and Levin 2016) agree that changes in Russia's institutional framework and the expansion of presidential power have occurred mainly on the subconstitutional level by means of federal law, presidential decrees, and rulings of the Constitutional Court.

Despite widely held beliefs, parchment institutions such as constitutions and autocratic public law in general are not meaningless in authoritarian regimes (Barros 2016). Instead, they establish a "basic order" to "get government business done, or to see that affairs of state are handled in an orderly manner" (Maddox 1982, 808), organize power and function as a "power map" (Brown 2002, 13). Moreover, institutions "as building blocks of social order" (Streeck and Thelen 2005) that demonstrate "imperfect compliance, rule reinterpretation, and coalition-building among social and political actors" (Capoccia 2016; 1100; see also Levitsky and Murillo 2009) fit the Russian context of distributive conflicts and power asymmetries well, which has been variously characterized as being dominated by "club goods" (Greene 2014, 62–72), "limited access order" (North, Wallis, and Weingast 2009), and "extractive institutions" (Acemoglu and Robinson 2012).

Constitutions thus stipulate how power is to be dispersed, exercised, and rotated among actors to stabilize the expectations of actors and to provide focal points that allow for the coordination of sanctions in case the autocrat violates the agreed-upon rules. Laying down these rules enables the lengthening of the planning horizons of elite actors, including the autocrat, and reduces conflict (Albertus and Menaldo 2014). Among other functions, they thus solve the autocrat's credibility problem and enhance trust within the regime (Myerson 2008). Thus, the "infrastructural power" of the authoritarian state as a whole, and not just that of the autocrat, is enhanced by this formalization of rules (Göbel 2011; Slater and Fenner 2011).

The distinction between "law" and "legislation," or between "constitutional" and "postconstitutional," or "in-period" choices, is widely acknowledged among constitutional scholars. Mirroring this dichotomy, for transition countries and authoritarian regimes, the origin of constitutions has also been dubbed "macro-institutional landscaping" (Schedler 2013, 62), which involves basic choices on issues such as the horizontal and vertical separation of powers. In contrast, "institutional gardening" (Offe 1994; Schedler 2013, 64) is the move from grand decisions to micro-management, the overall goal of which is precisely to reduce uncertainty and to contain agents to whom competences have been delegated within the overall constitutional framework.

The key players who are involved in this political game of "gardening" are those who were assigned "roles" with respective prerogatives with regard to law-making, decree-making, and the constitutional review process in the Russian constitutional setting, specifically the presidency, the two chambers of the legislature – the Federation Council and the State Duma – the courts, here mainly the Constitutional Court, as well as the federal (i.e. the government) and regional bureaucracies.

Over time, I argue, there has occurred an “institutionalization of relative advantage” (Pierson 2016) of the presidency and presidential power toward these other players by laying down new subconstitutional rules in favor of the presidency. I draw upon historical institutionalism and its theory of gradual, incremental change (Mahoney and Thelen 2010; Thelen and Conran 2016), and in particular the mechanism of layering, a process through which new rules are attached to old ones – in this case lower ranking rules to the highest-order rule of the constitution – by “amendments, revisions, or additions” (Mahoney and Thelen 2010, 16). In an accumulative process over time, divided powers are continuously transformed into delegated powers that are treated as quasi-subordinate branches of the executives.

The understanding of institutions in this paper comes closest to the “power-distributional approach” (Mahoney and Thelen 2010, 4, 7), which conceives of institutions as “distributional instruments laden with power implications” (Mahoney and Thelen 2010, 8). This perspective notably differs from views of the adherents of rational choice, predominantly from the field of economics, who assume that institutions are the result of voluntary, free-contracting actors who produce efficient results by maximizing [page 475] utility (for an in-depth argument on efficient versus distributive conceptions of institutions see Korpi 1985; Knight 1992; Moe 2005).

From this distributional vantage point, institutions are viewed as arenas of conflict and competition involving both “rule-makers,” who are defined as the actors who set and modify the formal rules that constitute an institution, and “rule takers,” the actors who are expected to comply with such rules and struggle to adapt the institution to their needs and agendas (Capoccia 2016; Streeck and Thelen 2005).

The initial institutional landscape in Russia was already advantageous for the presidency. The “launching organization,” i.e. Yel’tsin and his support coalition, designed the constitution after a violent dissolution of the Supreme Soviet and the suspension of the Constitutional Court; this bargaining win was then also reflected in the initial landscape (Remington 2001; Morgan-Jones and Schleiter 2008; Clark 2010). Furthermore, similar to the assumptions that are made by the unitary presidency theory, presidents have a first-mover advantage that can “operate[s] as a ratchet, in which powers once won are not given up” (Mayer 2009, 443). Presidents have less collective action problems as, for example, members of parliament, political parties, the federal ministries, or regional administrations. This first mover advantage is most pronounced with decrees, as the president can “go alone” without needing approval by parliament. Constitutional Court rulings are the most passive mechanism of presidential power expansion, as the president will only go to court as a reaction to the activity of other actors, i.e. as a plaintiff to actions that infringe upon his/her prerogatives, or as a defendant when other actors sue the president before the constitutional tribunal (see Figure 1).

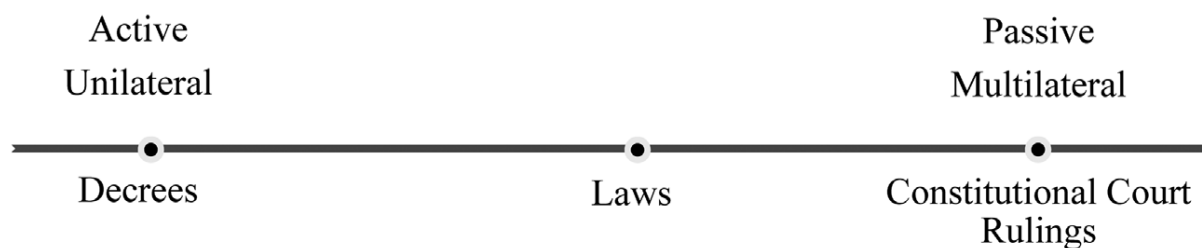


Figure 1. Presidential first-mover advantage with the three subconstitutional forms of change: strongest with decrees, weakest with Constitutional Court rulings.

Over the course of this paper’s time frame, from the initial constitutional landscape when the Constitution was adopted in December 1993 to the end of the presidency of Russia’s third president Dmitrii Medvedev in May 2012, several factors are likely to have influenced the expansion of presidential power (see Annex 1 of the Supplemental data for an overview of the variables and indicators). First, leadership might matter. Petra Schleiter (2013), for example, analyzed how the presidential commitment to democracy affected appointment patterns in the cabinet. Therefore, it could be surmised that the more pronounced the authoritarian leanings of acting presidents, the more actively they will press for expansion of their formal prerogatives. Second, regime quality can be assumed to influence expansion. Under more authoritarian conditions – as of 2007 both Freedom House and Polity IV agreed that Russia had become authoritarian – one might expect a notable increase of presidential autonomy and prerogatives. A third determinant is what Margit Tavits called the “political opportunity framework,” which is defined as “the strength of other political institutions and the constellation of political forces in government and parliament” (Tavits 2009, 35). The more hostile and pluralist this environment is, the more active presidents will become to gradually expand the presidency’s relative prerogatives in various spheres. Annex 1 shows, with regard to legislative success and velocity as well as dissenting opinion and the declined complaints of the Constitutional Courts, that the pluralism and institutional strength of other institutions were higher in the 1990s and significantly lower in the 2000s, with an almost unlimited presidential legislative success approaching 100%, increased legislative velocity, a decline in dissenting opinions, and an exponential increase in declines of constitutional complaints. Fourth, with ever more subconstitutional acts passed, the regulatory density of the institutional legal space of presidential power increases, and a gradual saturation over time should slow down expansion in most policy fields. Fifth, electoral cycles might influence presidential ambitions to expand their power, and [page 476] the proximity of the parliamentary and presidential elections should mark heightened activity in this respect. Sixth, there may be no clear temporal pattern after all, as the expansion of presidential power might be associated with presidential agenda-setting and policy preferences in specific fields that arise idiosyncratically and unrelated to systemic political environmental circumstances. Table 1 summarizes these six potential determinants and the expectations of subconstitutional power expansion.

Table 1. Variables and their direction theorized to be associated with the expansion of subconstitutional power.

Variable	Direction of variable over time	Expected intensity of expansion of presidential subconstitutional powers over time
1. Leadership: presidential commitment to democracy	Gradual decrease	Gradual increase
2. Regime quality	increasingly authoritarian	Gradual increase
3. Political opportunity framework	Gradual decrease of pluralism and strength of other institutions	Gradual decrease
4. Accumulation	Increase of regulatory density and gradual saturation	Gradual decrease
5. Electoral cycles	Four-year cycles	Cyclical expansion in proximity to elections
6. Presidential policy preferences	Idiosyncratic agenda-setting	Idiosyncratic expansion

In sum, Table 1 illustrates four temporal patterns of subconstitutional change: (1) and (2), and (3) and (4) form two clusters of, at the first glance, contradictory trends of a gradual increase and decrease in presidential subconstitutional power. However, one might also view them as being complementary, where one pattern mitigates the intensity of the other. Variables (5) and (6) represent patterns with a regular cycle in the case of the former, and an irregular, idiosyncratic direction in the latter.

The theoretical claim that is advanced in this paper, based on the power-distributional, upstream approach to institutions and the layering mechanism of institutional change, is that Russia’s consolidated authoritarian regime with a significantly autonomous presidency was not the result of a purposeful design of a specific president to accumulate infinite powers, but rather the outcome of micro-power struggles in the period when pluralism was more pronounced – that is, during the 1990s and early 2000s – which then led to a gradual layering and accumulation of the powers of the presidency. This institutional gardening, with micro-adaptations over a longer period of time, added up to a qualitative change at the macro-landscape level (Mahoney and Thelen 2010, 17).

Empirical strategy

In his sophisticated elaboration on the function of secrecy in authoritarian regimes, Robert Barros (2016) argues that autocrats strive to limit access to, and information about, the inner workings of the regime, as they are insecure and seek to conceal information about power struggles and potential weaknesses from potential outside challengers. Following Barros’s logic that the regime’s codification of public law is indeed reflective of internal power distributions and procedures, I apply a methodology to measure subconstitutional presidential power that mirrors the Presidential Power Indices. In the subsequent paragraphs,

I lay out the steps whereby I extracted, coded, and measured changes in subconstitutional power by means of presidential decrees, laws, and Constitutional Court rulings.

Laws

Following (Krasnov 2011), changes in presidential power over time can be tracked using the online legal database consultant.ru, which offers a search function for all Russian laws in the time period between 1994 and 2012. My technique of extracting laws from the database was basically the same as Krasnov's, except that I added a few more keywords as search items (see Table 2.1 of Annex 2 in the Supplemental data). Given the formalized language of these laws, this set of keywords and phrases returned nearly [page 477] 300 items that can be interpreted as the complete universe of laws that addresses issues of presidential power. This number was then further reduced by excluding the laws that repeated or doubled constitutional powers, or included paragraphs that stipulated shared responsibilities with other state organs such as the government, or with state officials such as the head of the presidential administration. In an iterative coding process, each law was ascribed to one of the 13 policy domains, and in rare cases to no more than two (see Table 2.2 of Annex 2 of the Supplemental data). Furthermore, to differentiate between the laws, weighting was employed, which resulted in a final score for each law. The higher the score, the more expansive was the law with regard to presidential power.

Presidential decrees

For the compilation of the database of presidential decrees, the same extraction and coding procedure was applied as with laws (see Annex 2 of the Supplemental data). This initial search produced 474 relevant decrees that were then individually coded, and irrelevant decrees were dropped from the database. However, the weighting process was slightly different. Instead of scores, decrees were only coded as 1 and 2 for simple and more extensive expansion due to the fact they were found to be less detailed with regard to the spheres of presidential prerogatives.

Constitutional Court rulings

The relevant rulings of the Constitutional Court (CC) were retrieved from the website of the court (<http://www.ksrf.ru/ru/Decision/Pages/default.aspx>) by searching for *prezident* (president) only in the category *postanovlenie* in the whole text of these rulings (see Table 2.2 of Annex 2 of the Supplemental data for a justification for this type of ruling and more details on the coding procedure). The goal of using the search word "president" was to produce all of the rulings that are relevant to presidential power, assuming that the presidential representative being present is a sufficiently strong sign of presidential interest in the outcome of the CC ruling, and hence to presidential power as such. At the same time, the presidential representative can be present in three different roles: (1) when the president is a plaintiff; (2) when the president is a defendant; and (3) as an invited representative of the state, when the president is not a party in the case but performs the function of "guarantor of the constitution" and is thus an interested party in accordance with the constitution (Bobrova 2008; Blokhin and Kryazhkova 2015; Kryazhkova 2016). The CC itself refers to those who are present during hearings as actors who are immediately interested in the outcome of the

court's interpretation. This method produced somewhat less than 200 rulings that were downloaded from the website. After an initial screening round, some of the rulings were dropped from the sample as the president fulfilled neither of the three abovementioned functions.

This left 175 rulings for analysis in the period between January 1995 and May 2012, which were transferred into a database and manually coded. The goal of the coding process was twofold. First, to obtain an idea of competitiveness and relative judicial power of the CC vis-à-vis the presidency over time, a "win-rate analysis" (cf. Popova 2012, 47ff.) was conducted. Trial outcomes and win rates of the principal of interest – in our case the president – are an adequate measure of this mutual dependence of various state institutions. This indicator is comparable to the success rate of presidential bills in the State Duma (see Political Opportunity Framework, in Annex 1 of the Supplemental data), and it is indispensable in assessing whether expansive rulings occur in more or less competitive periods. However, it differs in that presidential preferences in terms of the outcome are judged against the empirical outcome with regard to all of the trials that are selected according to the aforementioned criteria, and not only those that are initiated by the president. Second, the trial outcomes were coded to reflect whether the court rulings were expansive, neutral, or restrictive with regard to presidential power on a scale from + 2 (win and expansion) to –2 (loss and restriction). The coding was conducted in the following way: 2 was assigned to cases when the president "won" and the court expanded or ascribed to the president additional powers; 1 was assigned when the president's preference about the outcome of the case [page 478] was clearly stated or could be inferred from the *postanovlenie* and the president won, but without an expansive ruling; 0 signifies a neutral outcome both with regard to presidential powers and outcome preferences; - 1 indicates that the president "lost" the case, i.e. the outcome was contrary to his preferences; and - 2 indicates that the court ruled in a way that diminished or limited presidential power.

Results and discussion

Laws

With the adoption of the new constitution on 12 December 1993, the institutional landscape laid down a new vertical and horizontal distribution of power among various state actors; nevertheless, for several reasons, post-constitutional, in-period gardening became a necessity virtually the next day. First, in the period of the late Russian Soviet Federative Socialist Republic (RSFSR), especially after the collapse of the Soviet Union, the Supreme Soviet had amended and passed numerous laws and codes (*kodeksy*) that needed to be amended or passed anew under the new framework. Second, the constitution itself was designed to remain open (Fogelklou 2003) both to interpretation by the CC as well as by stipulating the necessity for further specification by subconstitutional acts such as federal constitutional laws (requiring an oversized majority of two-thirds in the Duma and three-fourths in the Federation Council) as well as ordinary federal laws and codes. Lastly, with changing environmental circumstances and a gradual evolution away from the launching organization of the constitution and the emergence of new interested actors, in-period changes became a regular feature of Russian politics.

According to the applied analytical framework, law-making occupies the middle ground between unilateralism under a potentially activist president with a first-mover advantage and multilateralism under a rather passive president. Policy, and therefore the expansion of presidential power, can be shaped by the president in several ways. First the president may initiate bills by him/herself, but as practice has shown, this approach is limited to a narrow field of policies, such as international conventions and those domains for which the presidency is responsible as a “guarantor of the constitution.” Economic policy-making is usually in the domain of the government. Hence, second, the president can act through delegation to the government, or pro-presidential proxy deputies in the Duma or Federation Council. However, this legislation requires approval by both chambers; hence, the president must rely on majorities and support by the speaker and committees. As a retroactive instrument, the president also possesses veto power, which can be used as a threat to move parliamentarians closer to the ideal point of the president or to actually thwart undesirable bills (Haspel, Remington, and Smith 2006).

In this multi-stage, multi-actor process, it is evidently not only the rules that guide law-making that matter but also the relative power of agenda-setters and veto-players (for more details, see Remington 2001; Troxel 2003; Chaisty 2006). This trajectory over time from the 1990s has been aptly described by Joel M. Ostrow (2000) as a process from chaos to control, as legislative bargaining in the 1990s was characterized by frequent procedural deadlock or even breakdown, while in the 2000s the presidency managed to establish firm control over the Duma. Based on presidential support in the Duma (see Annex 1 of the Supplemental data for pro-presidential deputies, presidential legislative success, and velocity) and the resulting dynamics of executive-legislative relations, Paul Chaisty (2014) subdivided Russia’s post-Soviet trajectory into three distinct periods: “minority-presidential” (the first and second Duma convocations from 1994 to 1999), “coalition presidential” (the third Duma from 1999 to 2003), and “authoritarian presidential” (from 2003 onward).

Taking into account this periodization marked by vertical lines, Figure 2 visualizes the results for the expansion of presidential power over time, with the lower curved line marking unweighted expansion (one score for one law, vertical left axis), and the middle curved line plotting the weighted laws. The third (uppermost) curve illustrates the total number of laws that were passed per year (vertical right axis). Three additional linear lines are plotted on the graph to indicate the longitudinal trend over time.

Several findings must be noted. First, the output of the Duma has markedly increased over the years, in particular after 2005 when regularly more than 300 bills per year were signed by the president. In the [page 479] 1990s, this figure was between 100 and 200 bills. In contrast, the average level of bills that expand subconstitutional presidential power remained of similar magnitude both in the unweighted and weighted categories. The year-by-year deviation, of course, varies significantly at times, with peaks between 1995 and 1997, 2004, 2007, and 2011.

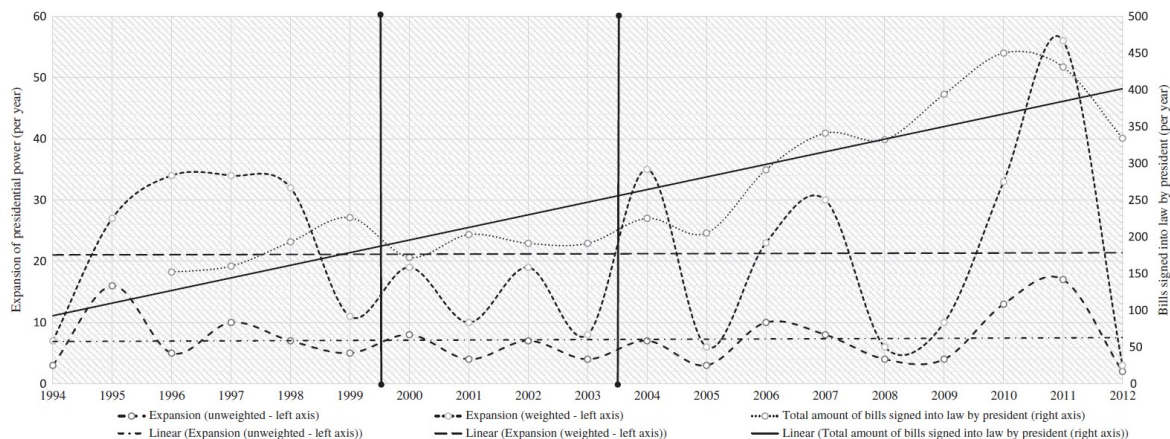


Figure 2. Expansion of presidential power by federal law relative to the Duma’s total legislative output per year. source: original data-set of 137 laws compiled and coded by the author.

However, the overall trend fits the explanatory framework of micro-power struggles and accumulation well. Over time, laws (both unweighted and weighted) that expand the presidential power as a share of the total number of laws that are passed per year decreases considerably. In other words, despite the hostile, pluralist minority-presidential environment in the early period, and with the increasing density of regulation on the subconstitutional sphere across policy domains, over time the accumulated certainty contributed both to the relative advantage of the presidency over other institutions and stabilized the authoritarian regime in the second half of the 2000s. The peaks in the 2000s mark the policy domains that had a high priority for the respective presidents.

To illustrate this argument, I briefly discuss the emergence of one bill from the transitional, coalitional presidential period.

Case study 1: Federal Law N-79-FZ, “On the Civil State Service” from 27.07.2004. Policy domain: State.

The law “On the Civil State Service” (2004) can be regarded as typical for this transitional period between the pluralist 1990s and the authoritarian late 2000s, which is reflected in its hybrid nature. On one hand, at 308 days its velocity is rather slow, which is analogous to the early Duma convocations; on average, in 2004 and 2005, presidential bills passed within 90 and 94 days, respectively. On the other, the length is not so much due to protracted bargaining within the legislature: true, it had been sent back from the third reading to the second for an additional round of amendments; however, the busy electoral cycle of parliamentary elections in the end of 2003 and presidential elections in early 2004 also took its toll. This type of policy-making was also a harbinger of the authoritarian period to come, as the process was front-loaded by the presidential administration, and bargaining mainly occurred within the executive in the pre-parliamentary phase before presidential bill initiation (see Chaisty 2005 on “zero-readings”).

Since 1995, a framework law on state service had existed, but follow-up regulations were never really pursued by the Yel’tsin administration. Consequently, in the early 2000s, the

policy sphere of public administration demonstrated a low degree of previous accumulation, and high priority by the new president Putin and his government (Obolonskii 2011; Huskey 2012; Kupryashin 2012). Launched by presidential decree in 2002, the public administration reform program of 2003–2005 was essentially driven by the presidential administration and delegated to the government under Prime Minister Kas'yanov who headed an inter-agency commission in which the main stakeholders of the reform were [page 480] represented. The inherent contradiction of the entire public administration reform project was also reflected in the bargaining on the civil state service bill: the endeavor to construct a power vertical with a united hierarchy of the executive to the regions and even local self-administration contradicted New Public Management-inspired cutbacks of the public sector (Kupryashin 2012, 78). Business representatives such as the oligarch-heavy Russian Union of Industrialists and Entrepreneurs (RSPP) or the government-affiliated think tank Center for Strategic Research (TsSR) pressed for a reduction of the number of executive organs and civil servants by 10–15%. The Communist Party (CPRF) gave voice to the critics within the bureaucracy who were anxious about the looming layoffs, and the liberal, but generally pro-presidential Union of Right Forces (SPS) together with Yabloko had already proposed a competing bill on a “Behavioral Code of State Servants”; however, it had been stalled in parliament since 2001.

When the bill was finally initiated with the Duma, observers noted that it was largely consonant with the early presidential decree on the civil state service. After the parliamentary elections, it was rushed through the second reading within 15 min, and Duma speaker Boris Gryzlov, representing the new majority Duma faction United Russia, blocked any amendment attempts. After presidential elections, a new department on state service was created within the presidential administration that was tasked to oversee the entire state service reform (including military and law enforcement). This top-down controlled process was briefly interrupted by the referral of the bill from the third reading back to the second reading on 7 July 2004. On the same day, amendments were made with regard to the salary of civil servants. This occurred against the backdrop of the reform on the “monetization of benefits,” which in 2004 and 2005 led to country-wide social protests. That is why the increase of monetary benefits in conjunction with ample non-monetary benefits such as transportation, health care, and housing was perceived to be an especially sensitive issue. In the repeated second reading, monthly cash rewards were introduced, and the concept of “cash allowances” was defined, while the president was given the right to decide on the categories of civil servants to whom these additional payments were to be allocated (Trusevich and Ushakova 2004). Only a day later, the bill was passed in the third reading, and by the end of the month it had attained legal force.

Overall, this landmark bill received a score of 20 in the coding scheme. This score was given because in almost all of the key spheres of the new law, the president was assigned a key role in defining civil service positions, awarding class ranks, determining qualification requirements for various stages of civil service and competitive tender criteria for entering civil service, income declarations, wages, and bonuses. In hindsight, the implementation of the civil service reform is rather poor, for example, with regard to the reduction of bureaucrats and executive agencies (Barabashev and Straussman 2007), or the failure to adhere to competitive selection processes for hiring new civil servants (Gimpelson, Magun, and Brym 2009). What it did

achieve, however, was to instate the president at the top of the pyramid of Russia's bureaucracy with the "infrastructural power" to define rules and procedures, while the asymmetry with regard to other state organs such as the parliament and the regions was significantly enhanced.

Decrees

Presidential decrees are a powerful proactive, unilateral tool at the disposal of Russian presidents. In comparative perspective, Russian decree authority is prototypical, as normative decrees become permanent law and enter into force immediately, i.e. without approval from the assembly (Carey and Shugart 1998, 10). Given the extensive constitutional legislative power of the president and the hostile Duma majority in the 1990s, the early work focused on the potential dangers of Yel'tsin unilaterally circumventing the parliament and its consequences for Russia's democratic transition (Parrish 1998). However, others have shown that Yel'tsin also strove toward cooperation and compromise in executive-legislative relations and to act through law (Remington, Smith, and Haspel 1998; Pleines 2003, 107–109).

In continuation of his earlier work (Remington, Smith, and Haspel 1998; Haspel, Remington, and Smith 2006), Remington (2014) provides a parsimonious explanatory framework based on spatial theory modeling. The most important expectations that can be derived from this model were that as laws are **[page 481]** more durable than decrees, presidents prefer laws, and with the policy space becoming more "crowded" by laws, over longer periods, decrees should be used less and less. Moreover, a pro-presidential parliament should produce a higher volume of laws, and a lower volume of decrees. His theoretical framework holds up to empirical reality until the mid-2000s, when the volume of decrees once more increases despite the accumulation effect and United Russia's pro-presidential majority in the Duma. Transcending the executive-legislative framework and highlighting the augmented importance of the bureaucracy, this renewed upsurge of decree activity in Remington's view reflects an "activist presidential agenda of recentralization of state economic control, a new preoccupation with state security issues, and a new concern about social welfare" (Remington 2014, 114).

Decrees that add new presidential prerogatives on a sustained basis are therefore a subset of all normative decrees, as policy-making irrespective of the policy domain does not automatically entail the expansion of institutional presidential powers per se. Hence, as with other subsets such as decrees in specific policy domains, the dynamic over time might be different than with all normative decrees. Figure 3 therefore plots expanding decrees (weighted and unweighted, descending linear approximation, left axis) against the total number of decrees including non-normative (e.g. appointment and ceremonial) and classified decrees (upper flat linear approximation, right axis), and the total amount of normative decrees (lower flat linear approximation, right axis).

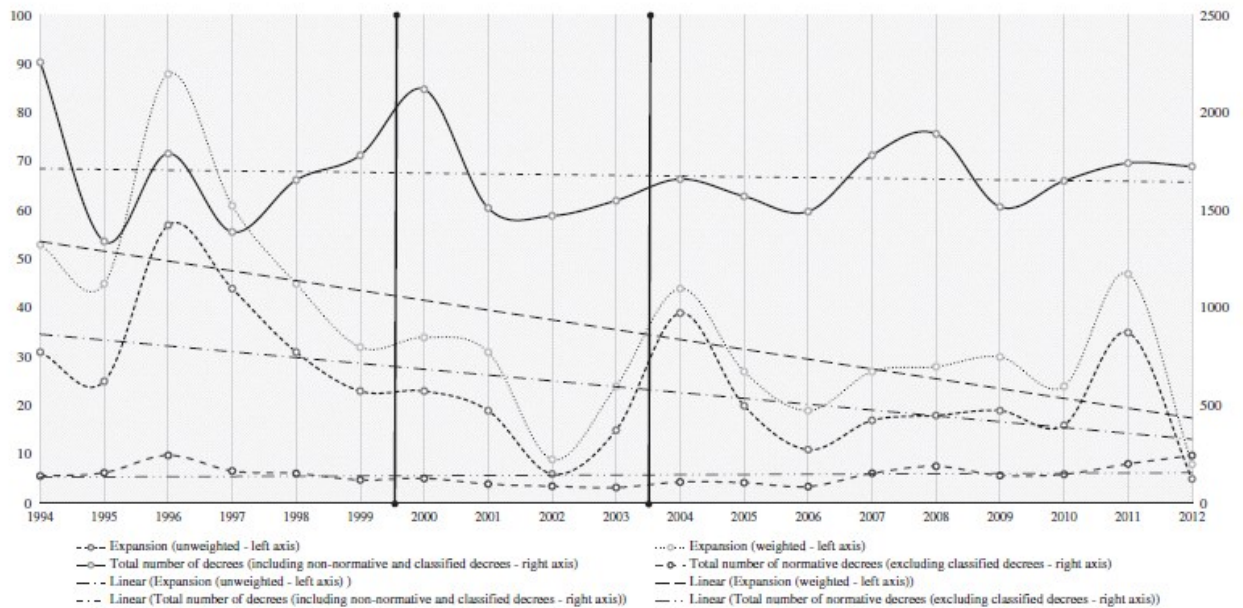


Figure 3. Expansion of presidential power by decree (left axis) plotted relative to the total volume of decrees and the total volume of normative decrees (right axis). source: original data-set of 474 presidential decrees compiled and coded by the author.

A cross-check with Protsyk (2004) and Remington (2014) demonstrates that the total volume of decrees and the normative decrees shows an identical dynamic over time (such as the peak in 1996, the slump in the early 2000s, and a rising trend after 2006), which underscores that the applied method of decree extraction is generally valid. The difference between the aforementioned decrees and those that expand presidential power is that the former are flat over time – i.e. the peaks in the beginning and at the end of the period compensate for the slump in the middle – while the latter clearly demonstrate a downward trend, both in the weighted and unweighted categories.

Consequently, the primary finding from these trajectories is that the assumptions regarding a gradual accumulation over time and the importance of the political opportunity framework can be confirmed. The drop in the share of expansive decrees of the total volume is even greater than the share of expansive laws within the total amount of new laws by year (Figure 2), i.e. due to the pliable pro-presidential majority and the more durable character of laws that the presidents, also in the authoritarian period, generally prefer over decrees, and hence the steeper drop in decrees. Moreover, this downward trend permits a rejection of the assumption that it might be either presidential commitment to democracy [page 482] or overall regime quality that drives presidential unitary action to expand power, or more precisely that longitudinal dynamics are contrary to the theoretical expectations.

Second, electoral cycles matter. However, as Remington showed, cycles do not matter equally over all policy domains, but they were most prominent in the “political structure” domain, i.e. mostly relating to issues of “powers and organization of federal, regional, and local government” in the years in which presidential elections were held (Remington 2014, 110–112). However, peaks in the sample in the policy domains “presidential administration” and “executive” only occurred in the years 1996 and 2004, which were also election years, but

they marked the transition from the first to the second terms for Yel'tsin and Putin. A lengthier time period with additional cycles will be needed to gauge whether this is a persistent trend; for this, the 2018 presidential elections and the transition from Putin's third to fourth presidential term will be crucial.

Third, in terms of leadership, presidential policy preferences certainly outweigh presidential commitment to democracy. This became especially evident under the presidency of Dmitrii Medvedev, who could boast a pro-presidential majority in parliament but faced a strong prime minister with ex-President Putin and received limited support in the bureaucracy and the wider elite. However, Medvedev did have a clear policy agenda that included liberalization of the penitentiary system, an anti-corruption campaign, and police reform (Taylor 2014; Wilson 2015). Although he mainly preferred to act through parliament by law, he also actively used decrees to further articulate presidential prerogatives in the policy domains of "security" and "state," hence the spike in the years 2009–2011.

Case study 2: institutional gardening in military–technical cooperation and arms export

The policy domain "military" illustrates well how the use of presidential decrees changed over time. Strikingly, between 1994 and 2012, expansion occurred more frequently in the military sphere – closely followed by the "presidential administration" and "state" categories – than in any other domain in the coding scheme. As most PPI involve executive-legislative relations – and therefore predominantly civil issues – continuous subconstitutional gardening in the military sphere reveals a blind spot with regard to politics such as Russia and its militarization (Kryshtanovskaya and White 2003) of presidential politics.

The evolution of the defense industry – and arms exports in particular – is indicative of the trajectory of state-business relations from the early 1990s to the 2000s and the regulative power of presidential decrees as a whole (Sanchez Andres 1998, 2004). Until 1998, no federal law on Military-Technical Cooperation (MTC) had been passed, and hence there was ample room for institutional gardening by decree. After an early pluralist phase when many state agencies were engaged in arms exports, in November 1993, the state corporation Rosvooruzhenie was created as the dominant player in the field. Although this specialized agency was subordinate to the government, a decree in March 1994 (N450) introduced a presidential representative who was to oversee arms trade. In the same year, a State Committee on MTC directly under the president was created with wide-ranging competences (N2251). This monolithic approach was not only contested by enterprise directors and regional leaders, but was also challenged when the young liberal Anatolii Chubais became head of the presidential administration in July 1996.

However, in August 1997, the pendulum once again swung back toward more restrictive licensing, and a decree suitably named "On Strengthening State Control" (N907) determined three, i.e. two other main companies in addition to Rosvooruzhenie, that were responsible for different spheres of arms exports (Basu 2001, 441, 442). This emerging state-centric approach was also visible in the effort to vertically integrate assets in large companies. Consequently, in November 2000, these three firms were finally merged into the Federal State Unitary Enterprise (FGUP) Rosoboroneksport by decree N1834, which was subordinate to the Ministry of Defense with the director being appointed and the statute approved by the president

(Bjelakovic 2008). Rosoboroneksport and arms export was at first managed by a State Committee for MTC from 2000, and after the public administration reform – when committees were abolished altogether – by the Federal Service for MTC (FSVTS), and state control over the defense industry was steadily increasing. The culmination of this process was decree N1702 from December 2007, which finally granted Rosoboroneksport the monopoly on arms trade – the second export monopoly [page 483] after Gazprom for gas. Four other major arms producers lost their right to independent export (Gritskova, Lantratov, and Safronov 2006). While it retained its export monopoly, Rosoboroneksport was transformed into an open joint-stock company, the shares of which were transferred in 2011 to the State Corporation Russian Technologies (Rostec), a quasi- “noncommercial organization created by a donation of state funds or property to advance the public interest or create public goods” (Volkov 2008). Rostec turned into a massive defense holding that comprised 700 organizations in 60 Russian regions with the goal of guaranteeing Russia’s technological advantage in the world.

In sum, through institutional gardening over two decades, this vertical integration of arms trade reduced competition between enterprises. However, it increased state, and therefore presidential, control over the military–industrial complex, a development that is hardly captured by only considering the constitutional provisions for the president as the “commander-in-chief.”

Constitutional Court rulings

The logic of common Presidential Power Indices is grounded in a textual understanding of constitutions. However, even when the constitution is rigid and rarely amended, political circumstances and social norms change. If the institutional framework includes sufficiently flexible provisions, judicial interpretation becomes an important aspect of change without amending the very text. From a common law perspective, especially American scholars have cautioned about “obsession over text” and a “fetish for code-like constitutions” (Lessig 1994, 104), as interpretative judicial practices can allow for sufficient flexibility to adapt to new circumstances (Sunstein and Holmes 1995). Through interpretation over time, judge-made constitutional law becomes an important component of the institutional framework; this type of judicial layering has also been called “constitutional lawmaking” (Sweet 2007, 916). Given this built-in malleability, over longer periods of time, the same text-based framework may evolve and transition through various “constitutional regimes” (Sunstein 1994, 102). As a civil law system, Russia basically does not recognize judge-made law (Waggoner 1997), and the Constitutional Court Act allows the court to either uphold or invalidate a contested norm. However, by continuously expanding its own powers, the court has developed “unwritten judicial power” by interpreting contested norms and making these interpretations binding for other courts and the executive. Hence, the court increasingly acted as a “‘positive’ legislator” (Trochev 2008, 122, 123).

With these quasi-legislative amendment powers, the difference between constitutional politics and ordinary politics collapses. This, in turn, renders the Constitutional Court an inherently political player. From a global perspective, this comports with a trend toward the judicialization of politics and the extension of policy-making areas where judicial intervention is possible. Consequently, with courts as political institutions, they “also cannot be understood

separately from the concrete social, political, and economic struggles that shape a given political system” (Hirschl 2008, 113).

According to the theoretical framework, constitutional review is characterized as a multilateral process with a low preference by the president to go to court and actively exploit it for expansion of powers. The main actors in this multilateral process are the court itself, the plaintiff who initiates the trial, and the defendant. Furthermore, other third parties who are allied with one or more of these actors might take an interest in the trial. The court cannot initiate judicial review by itself. However, after a petition of the president, the Federation Council (or one-fifth of its deputies), the Duma (or one-fifth of its deputies), the Supreme Court, the Government, and the legislatures and executives of Russia’s federal subjects (regions), it can: (1) engage in abstract review, checking for conformity with the Constitution of various types of legislation; (2) resolve horizontal and vertical separation-of-power issues; (3) review the constitutionality of the laws that violate the rights and freedoms of citizens; and (4) give an authoritative interpretation of the constitution (Nußberger 2010, 67, 68; Henderson 2011, 206–210; Thorson 2012, 41–44).

Table 2 lists the number of cases that have been initiated by Russian regions (federal subjects), by the president, and the Duma. Petition activity is longitudinally clustered, and declines across the three initiators. As with laws and decrees, three periods can be distinguished. The first period lasts approximately [page 484] until 2001, when all three initiators are relatively active, and the overwhelming number of cases directly pertains to the sphere of presidential power. Among the main initiators, the president is most reluctant to file a petition and only resorts to this measure in the most competitive and challenging phase in 1996 and 1997. In the second period, until approximately 2005–2006, in which pluralism and hence conflict especially in the executive-legislative realm is significantly reduced, the president entirely refrains from petitioning, the Duma does show some restrained activism, but petitions no longer relate to presidential powers. However, regional executives and legislatures were comparatively active in filing petitions with the court. The period was a time of recentralization, which amounted to a top-down campaign for the unification of law (Kahn, Trochev, and Balayan 2009) and comprised the cancellation of regional legislation in contradiction with federal law and an attempt to increase the implementation of court decisions. Moreover, with the rise of United Russia and central quasi-appointment of governors as of 2004, both regional legislatures and executives were gradually integrated into the federal hierarchy (Reuter 2010; Golosov 2011). Wresting away control from local authoritarian regimes (Gel’man and Ryzhenkov 2011) necessarily spurred regional resistance, which among other issues is reflected in the increased petition activity, but nevertheless only in exceptional cases (Pomeranz 2009) directly related to presidential powers. In the third period of consolidated authoritarianism, petition activity among these initiators ebbed away almost completely.

Table 2. Numbers of petitions by initiators and year.

	1995	1996	1997	1998	1999	2000	2001	2002	2003
Initiated by Russian regions (executive or legislative)	0	3	3	3	0	2	0	2	2
Average presidential success		0.66 (1/2/-1)	1 (2/1/0)	0		1 (2/0)		1 (2/0)	0
Initiated by Duma	4	2	2	3	3	2	1	1	2
Average presidential success	1.5 (2/2/0/2)	2 (2/2)	1.5 (1/2)	0.33 (-1/0/2)	1 (2/1/0)	0.5 (1/0)	2 (2)	0	0
Initiated by president	0	3	5	0	1	0	0	0	0
Average presidential success		0.67 (1/2/-1)	1.2 (1/1/1/2)		-1				
	2004	2005	2006	2007	2008	2009	2010	2011	2012
Initiated by Russian regions (executive or legislative)	5	2	6	1	0	1	0	0	0
Average presidential success	0.2 (0/1/0/0/0)	0	0	0		0			
Initiated by Duma	2	0	0	0	0	0	0	0	0
Average presidential success	0								
Initiated by president	0	0	0	0	0	0	0	0	0
Average presidential success									

Note: the lowermost row of each pair of rows displays average presidential success and expansion rates, with coding results for each ruling indicated in parentheses.

[page 485]

In terms of the win rates of the president and the expansion of powers, they were notably higher when a petition was filed by the Duma or the regions than by the president. For

presidents, filing petitions is an instrument to defend the status quo, and therefore only in rare occasions – if at all – does it serve to expand formal powers. However, for other actors such as the federal legislature and regional organs, petitions oftentimes serve to move the status quo (back) closer to their preferences, which particularly in the first and second periods challenged presidential preferences.

It is widely acknowledged that judicial behavior is to a large extent guided by strategic considerations (Epstein and Knight 2000; Whittington 2003; Helmke 2005; Hilbink 2007), although there have been some arguments about which preferences, be it policy preferences or personal goals such as job satisfaction and promotion, are predominant (Epstein and Knight 2013). Ideally, this goal-oriented behavior takes into consideration the preferences and potential actions of other actors in the institutional context. In a comparative perspective, it is first and foremost the president who can most easily launch a “counterattack” (Ginsburg 2003, 85) against the court. This is even more relevant in the Russian case with its institutional memory of the CC’s suspension in 1993, subsequent expansion of the number of judges from 15 to 19, and a certain “court packing” by appointing pro-presidential judges. One such survival strategy was to avoid politically contested issues with regard to the separation of power and federalism and to increasingly accept individual rights petitions (Epstein, Knight, and Shvetsova 2001). However, this was not always feasible or desirable. As Table 2 illustrates, especially when the Duma or regional legislatures or executives challenged the presidency, the court was most inclined to interpret presidential powers expansively. Over time, this not only amounted to an accumulation of presidential powers, but it also indirectly bolstered the court’s weight with regard to other institutions, particularly regular courts (Burnham and Trochev 2007; Henderson 2015).

Figure 4 provides a complete overview of all of the court trials in the database with the presidential representative present, showing the number of cases per year and the coding result irrespective of the petitioner. The vertical lines separate the three periods from each other. In the first, the major players who were entitled to file petitions challenged each other; especially in the years 1996 and 1997, these petitions directly pertained to core presidential powers. This early period is unique in the sense that the president lost in four instances (three trials were initiated to verify the constitutionality of a bill, and one to resolve a separation-of-powers issue between the two parliamentary chambers and the president), while in global terms the court tended to interpret presidential powers expansively. In the second period after 2001, political pluralism and competitiveness decreased markedly; however, the overall caseload of the court increased. Expansive rulings of the court related to federalism and the judicial legitimation of the united vertical of the executive. In the third period under consolidated authoritarianism, the presidency and its powers remained unchallenged and hence did not expand by means of judicial interpretation. However, the overall caseload of the CC markedly increased, and it performed an important function in resolving power-distributional conflicts beyond executive-legislative and center-periphery relations with regard to issues such as the Criminal Code, Civil Code, Tax Code, Labor Code, Housing Code, Budget Code, and pension rights. In sum, the increased number of cases that is of interest to the president without pertaining to the core issues of presidential power does not attest to a deinstitutionalization of politics. Somewhat similar to Turkey, the court used its clout to

selectively protect some groups while suppressing the demands of others (Belge 2006). Nor did the court function as the “last bastion against the threat of authoritarianism” (Baudoin 2006). Quite to the contrary, it became a crucial pillar of a stable authoritarian regime (Hendley 2015; Solomon 2015; Popova 2017), and the “fifth wheel of the carriage of the Russian autocracy” (Schwartz 2000, 162).

Case study 3: A strategic, pro-presidential Court in a pluralist environment 1995–2001 and the implied powers doctrine

The paradigmatic case for pro-presidential, expansive interpretation is the court’s 1995 Chechnya decision (Pomeranz 1997; Schwartz 2000, chap. 5; Trochev 2008, 128; Thorson 2012, 129–132). Under review were three presidential decrees and one governmental act on the domestic use of military force without promulgating a state of emergency and without the approval of the upper chamber. At 10–8 the vote [page 486] was close, but the ruling not only stated that the president had the right, but under certain circumstances was obliged to act to protect the sovereignty of the Russian Federation. An as-yet unmatched number of eight judges, each attached a Dissenting Opinion (*Osoboe Mnenie*), in which Judge Luchin argued that this ruling had been the first to apply the so-called implicit or implied powers doctrine to the Russian presidency (Henderson 2011, 129, 130). Under certain circumstances, presidential powers could go beyond those that are stipulated in the Constitution. Overall, 12 rulings in this period expanded presidential power, some of them with direct reference to this doctrine, such as the April 1996 ruling that the president had the right to temporally appoint heads of regional administrations (Krasnov and Shablinskii 2008, 56, 57). Taken together, the rulings cemented presidential advantage with regard to both the horizontal and vertical separation of powers. More specifically, the rulings fortified the president’s clout in the legislative realm – for example, by allowing a form of a soft veto, i.e. the right to send a bill back to the Duma if the president thought it was passed in violation of respective regulations; widened the scope of decree power; and enhanced the president’s role in determining the structure of the federal executive, in the nomination process of the prime minister, and with regard to suspending the Prosecutor General for criminal offenses.

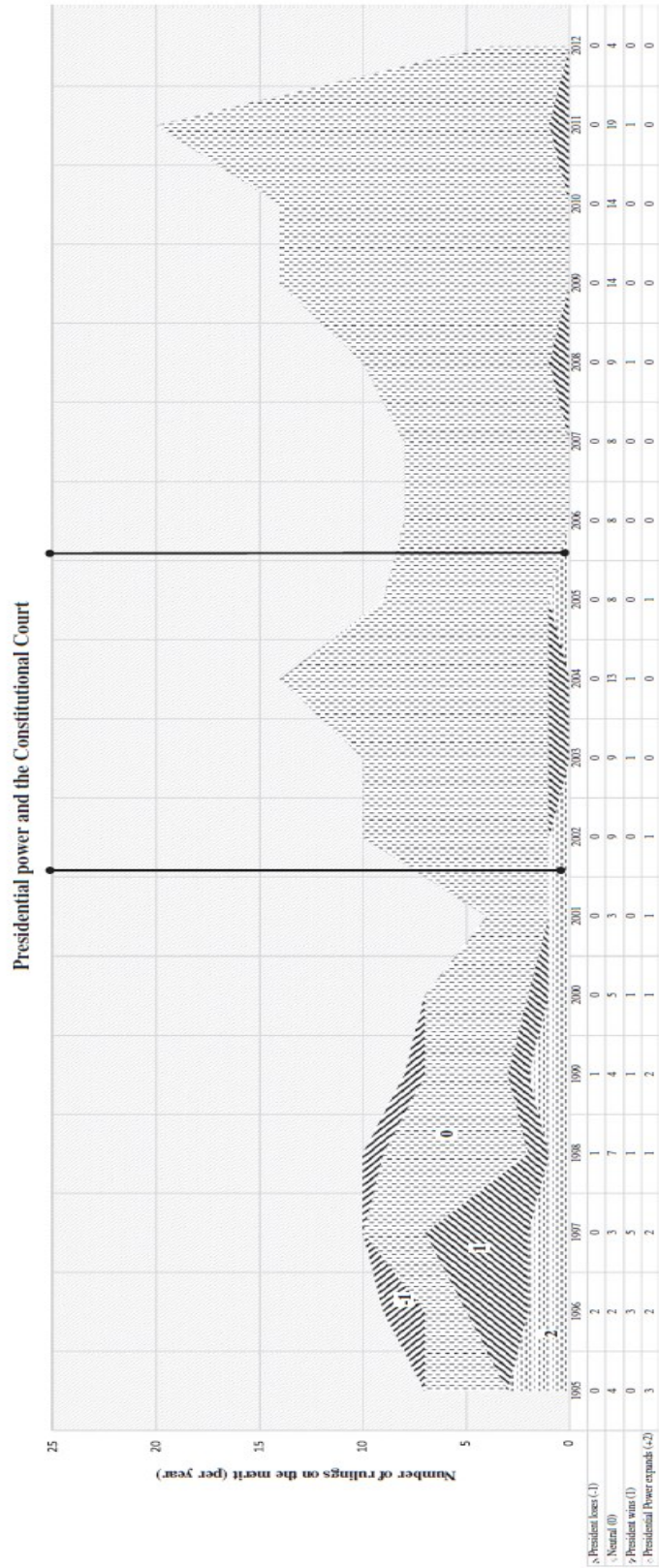


Figure 4. Number of court trials with the presidential representative present, and outcome coded from + 2 to - 2. Source: Original database collected by the author.

[page 487]

In two instances, the CC reviewed the provisions of the constitutions – the basic laws – of regions (federal subjects). The gist of these rulings was not just to bring regional public law in line with the federal constitution but also to promote a “unified system of the executive in the Russian Federation” with the president at the top. In the December 1997 ruling on provisions of the Tambov region’s Basic Law, the CC went beyond stating that the regional Ministry of Internal Affairs must be subordinate to the federal Ministry. In a further elaboration on regional executive-legislative relations, the CC stated that the accountability of the executive to the legislative should not be exaggerated and its status diminished. In sum, in this period, an expansive interpretation of presidential power was not so much the outcome of purposeful presidential activism, but rather the result of this multilateral environment in which the Duma, the Federation Council, as well as regional legislatures and executives petitioned the CC, which then oftentimes strategically interpreted presidential power expansively by hedging its bets and thus securing its existence.

Conclusions

This paper has demonstrated that by continuous institutional gardening, the Russian presidency has accumulated considerable powers over two decades that continuously shifted advantage from other institutions at the federal and regional levels toward the presidency. Slow-moving, small-scale change does indeed lead to an institutionalization of advantage and thus to qualitative change in the long run. The findings have several implications for various strands of scholarship in comparative politics and Russian studies alike.

First, some additional skepticism is appropriate with regard to the Presidential Power Indices’ usual approach to measuring constitutional powers. When rigid constitutions and restrained amendment cultures concur, PPIs are likely to fail in tracking substantial gradual institutional changes over the long run, which – as in the case of Russia – can lead to measurement errors and misguided interpretations about the role of constitutional stipulations, both in democracies and non-democracies. One way to approach this issue, it has been argued, is the measurement of subconstitutional powers and their change over time by means of laws, decrees, and Constitutional Court rulings.

Second, caution should be exercised when making statements about the role of formal institutions and the degree of personalization in neopatrimonial and authoritarian regimes. By zooming in from a macro-perspective to a micro-level of less visible, day-to-day power struggles and incremental parchment changes, it can be illustrated that even in regimes with high degrees of informality, the outcomes of such power struggles are regularly formalized and codified in subconstitutional acts. Accordingly, evidence from the Russian case was presented in support of Robert Barros’s thesis that authoritarian public law can indeed be an adequate reflection of internal regime practices. In contrast to grand schemes and conscious power-grabbing strategies, these micro-power struggles erupt over – at first [page 488] glance – mundane issues. However, their formalized outcomes accumulate over time, and accumulated presidential advantage amounts to qualitative changes such as authoritarian consolidation at the macro-level.

Third, and more specifically with regard to Russia, we should acknowledge that beyond informal practices and patron–client networks, the continuous accumulation of formal powers

is indicative of authoritarian dynamics. From this perspective on Russia's post-Soviet trajectory, it should be taken into account that it was not so much the political will or authoritarian convictions of individual presidents, but repeated micro-power struggles that were often won by the presidency. In other words, Putin profited from the accumulation of presidential powers in the Yel'tsin era, and he did not necessarily need to have a grand plan to build an authoritarian polity from the very beginning. Rather, a multitude of power struggles in various policy domains contributed to this slow-moving process of authoritarian consolidation in three periods from a more pluralist period in the 1990s, to a transitional period in the early 2000s, to consolidated, authoritarian presidentialism in the late 2000s and early 2010s. Among the hypotheses, the political opportunity framework and the assumption about accumulation best explained expansion dynamics over time, yet electoral cycles and presidential preferences are also crucial, at least in some policy domains.

Fourth, the paper does not only intend to speak to presidentialism comparativists or Russia scholars. The message to a broader audience is that reducing our understanding of presidential power to Putin as a person is flawed. Putinology – the art of trying to get into the mind of Putin as is widely practiced in the media and among policy wonks – is not only methodologically doubtful, as we simply lack reliable information. Excessive personalization also bears the risk of simplifying complex processes. Consider the following three recent examples of institutional gardening. In 2014, with federal constitutional law N11, the president was granted the right to appoint up to 10% of senators in the upper chamber, whereas previously the Federation Council exclusively hosted representatives from the Russian regions. In 2013, Putin liquidated the state news agency RIA Novosti and created the new media holding Russia Today by decree N894. While RIA Novosti had been subordinate to the government, the general director of Russia Today is now appointed by the president. And lastly, after the reintroduction of gubernatorial elections in 2012, the Constitutional Court decided in a ruling (32-P/2012) that the “municipal filter” and the prerogative of the president to hold consultations with political parties on gubernatorial candidates was constitutional. Each of these three instances could be interpreted as further regime personalization in line with Putin's long-term strategy to undermine parliament, media, and political parties. While such an interpretation is not completely wrong, adherents of the power-distributional approach to institutions would highlight the role played by micro-power struggles between rule makers – groups within the state and the wider elite lobbying for these changes to solve specific distributional conflicts – and rule takers, as well as the formalization of the outcome of these power struggles by means of subconstitutional acts. Formalization on its part signals successful conflict resolution, the prolongation of time horizons of elite actors, and the reduction of uncertainty. But numerous conflicts and their temporary resolution by formalization create additional asymmetries, in Russia oftentimes to the advantage of the presidency.

Fruitful avenues for future research in comparative politics and presidentialism studies would involve investigating whether a subconstitutional change of presidential powers is useful for tracking dynamics in the other post-Soviet countries and other regions in the world with strong presidents. As the method in this paper was customized for Russia, a debate that is similar to the one about the validity and reliability of Presidential Power Indices would be

useful on common and cross-nationally applicable standards for measuring subconstitutional longitudinal change.

For Russia, it will be essential to come up with an adequate measure to map internal regime and power dynamics with the help of codified law and regulations for the consolidated authoritarian period from the late 2000s to Putin's third term from 2012 to 2018 and beyond. With the bureaucratization of politics in Russia and the shift from the representation of interests to the "administration of things" (Huskey 2010, 366), conflicts over power and resources have migrated from the sphere of public politics in executive-legislative relations to the opaque realm of bureaucratic agencies. The outcome of these "bulldog fights under a rug" is certainly codified, yet the bulk of documents that contain this [page 489] information, such as government directives or various presidential orders (such as *rasporyazheniya* and *porucheniya*) is not publicly available, or even classified. Without systematic access to this information, analysts are faced with the danger of underestimating bureaucratic resistance to presidential power and to overstating the degree of informality in Russian politics.

Acknowledgments

Previous versions of this paper were presented at research seminars at Ludwig-Maximilians-Universität München's (LMU Munich's) Geschwister Scholl Institute of Political Science, Bremen University's Research Center for East European Studies, SWP Berlin, as well as at the ECPR General Conference in Prague. I would like to thank the participants for insightful comments, and in particular the conveners of the research seminars in Munich and Bremen, Petra Stykow, and Heiko Pleines. I am also grateful for comments by Claudia Zilla, Janis Kluge, Philipp Lottholz, Hilmar Girnus, and the reviewers of this journal. All mistakes remain my own.

Disclosure statement

No potential conflict of interest was reported by the author.

Funding

Financial support for this research was provided by the Graduate School for East and South East European Studies at LMU Munich as part of the German Federal and State Excellence Initiative [German Research Association (DFG) grant number DFG-GSC 1046].

ORCID

Fabian Burkhardt <http://orcid.org/0000-0003-0789-9410>

References

- Acemoglu, Daron, and James A. Robinson. 2012. *Why Nations Fail: The Origins of Power, Prosperity and Poverty*. 1st ed. New York: Crown Publishers.
- Albertus, Michael, and Victor Menaldo. 2014. "The Political Economy of Autocratic Constitutions." In *Constitutions in Authoritarian Regimes*, edited by Tom Ginsburg and Alberto Simpser, 53–82. New York: Cambridge University Press.
- Barabashev, Alexei, and Jeffrey D. Straussman. 2007. "Public Service Reform in Russia, 1991–2006." *Public Administration Review* 67 (3): 373–382.
- Barros, Robert. 2002. *Constitutionalism and Dictatorship: Pinochet, the Junta, and the 1980 Constitution*. Cambridge: Cambridge University Press.
- Barros, Robert. 2016. "On the outside Looking in: Secrecy and the Study of Authoritarian Regimes." *Social Science Quarterly* 97 (4): 953–973.
- Basu, Baidya Bikash. 2001. "Russian Military-technical Cooperation: Structures and Processes." *Strategic Analysis* 25 (3): 437–450.
- Baturo, Alexander. 2014. *Democracy, Dictatorship, and Term Limits*. Ann Arbor: University of Michigan Press.
- Baturo, Alexander, and Johan A. Elkind. 2016. "Dynamics of Regime Personalization and Patron–Client Networks in Russia, 1999–2014." *Post-Soviet Affairs* 32 (1): 75–98.
- Baudoin, Marie-Elisabeth. 2006. "Is the Constitutional Court the Last Bastion in Russia against the Threat of Authoritarianism?" *Europe-Asia Studies* 58 (5): 679–699.
- Belge, Ceren. 2006. "Friends of the Court: The Republican Alliance and Selective Activism of the Constitutional Court of Turkey." *Law & Society Review* 40 (3): 653–692.
- Bjelakovic, Nebojsa. 2008. "Russian Military Procurement: Putin's Impact on Decision-making and Budgeting." *The Journal of Slavic Military Studies* 21 (3): 527–542.
- Blokhin, Pavel, and Olga Kryazhkova. 2015. *Kak zashchitit' svoi prava v Konstitutsionnom Sude: prakticheskoe rukovodstvo po obrashcheniyu s zhaloboi v Konstitutsionnyi Sud Rossii* [How to Protect One's Rights in the Constitutional Court: Practical Guidance on Addressing Complaints to the Constitutional Court of Russia]. Moscow: Institut Prava i Publichnoi Politiki.
- Blondel, Jean. 2015. *The Presidential Republic*. Houndmills: Palgrave Macmillan. [page 490]
- Bobrova, Vera. 2008. "Institut Polnomochnogo Predstavatelya Prezidenta v Konstitutsionnom Sude: praktika deyatel'nosti." [Institution of the Plenipotentiary Representative of the President in the Constitutional Court: Practical Activity.] *Zhurnal Konstitutsionnogo Pravosudiya* 16–19.
- Brancati, Dawn. 2014. "Democratic Authoritarianism: Origins and Effects." *Annual Review of Political Science* 17: 313–326.

- Brennan, Geoffrey, and James M. Buchanan. 1985. *The Reason of Rules: Constitutional Political Economy*. Cambridge: Cambridge University Press.
- Breslauer, George W. 2010. "Reflections on Patterns of Leadership in Soviet and Post-soviet [Russian] History." *Post-Soviet Affairs* 26 (3): 263–274.
- Brown, Archie. 2004. "Vladimir Putin's Leadership in Comparative Perspective." In *Russian Politics under Putin*, edited by Cameron Ross, 3–16. Manchester, NH: Manchester University Press.
- Brown, Nathan J. 2002. *Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government*. Albany: State University of New York Press.
- Brownlee, Jason. 2007. *Authoritarianism in an Age of Democratization*. New York: Cambridge University Press.
- Burnham, William, and Alexei Trochev. 2007. "Russia's War between the Courts: The Struggle over the Jurisdictional Boundary between the Constitutional Court and Regular Courts." *The American Journal of Comparative Law* 55 (3): 381–452.
- Capoccia, Giovanni. 2016. "When do Institutions 'Bite'? Historical Institutionalism and the Politics of Institutional Change." *Comparative Political Studies* 49 (8): 1095–1127.
- Carey, John M. 2000. "Parchment, Equilibria, and Institutions." *Comparative Political Studies* 33 (6–7): 735–761.
- Carey, John M., and Matthew Soberg Shugart. 1998. "Calling out the Tanks or Filling out the Forms?" In *Executive Decree Authority*, edited by John M. Carey and Matthew Soberg Shugart, 1–29. Cambridge: Cambridge University Press.
- Chaisty, Paul. 2005. "Majority Control and Executive Dominance: Parliament-president Relations in Putin's Russia." In *Leading Russia – Putin in Perspective: Essays in Honour of Archie Brown*, edited by Alex Pravda, 119–138. Oxford: Oxford University Press.
- Chaisty, Paul. 2006. *Legislative Politics and Economic Power in Russia*. Basingstoke: Palgrave Macmillan.
- Chaisty, Paul. 2012. "The Federal Assembly and the Power Vertical." In *Routledge Handbook of Russian Politics and Society*, edited by Gill Graeme and James Young, 92–101. Abingdon: Routledge.
- Chaisty, Paul. 2014. "Presidential Dynamics and Legislative Velocity in Russia, 1994–2007." *East European Politics* 30 (4): 588–601.
- Clark, William A. 2010. "Boxing Russia: Executive-legislative Powers and the Categorization of Russia's Regime Type." *Demokratizatsiya* 19 (1): 5–22.
- Doyle, David, and Robert Elgie. 2016. "Maximizing the Reliability of Cross-national Measures of Presidential Power." *British Journal of Political Science* 46 (4): 731–741.
- Elgie, Robert. 2016. "Three Waves of Semi-presidential Studies." *Democratization* 23 (1): 49–70.

- Elgie, Robert, and Sophia Moestrup. 2016. "Weaker Presidents, Better Semi-presidentialism?" In *Semi-presidentialism in the Caucasus and Central Asia*, edited by Robert Elgie and Sophia Moestrup, 207–226. London: Palgrave Macmillan.
- Elster, Jon. 1997. "Afterword: The Making of Postcommunist Presidencies." In *Postcommunist Presidents*, edited by Ray Taras, 225–237. Cambridge: Cambridge University Press.
- Epstein, Lee, and Jack Knight. 2000. "Toward a Strategic Revolution in Judicial Politics: A Look Back, a Look Ahead." *Political Research Quarterly* 53 (3): 625–661.
- Epstein, Lee, and Jack Knight. 2013. "Reconsidering Judicial Preferences." *Annual Review of Political Science* 16: 11–31.
- Epstein, Lee, Jack Knight, and Olga Shvetsova. 2001. "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government." *Law & Society Review* 35 (1): 117–164.
- Fish, M. Steven. 2000. "The Executive Deception: Superpresidentialism and the Degradation of Russian Politics." In *Building the Russian State: Institutional Crisis and the Quest for Democratic Governance*, edited by Valerie Sperling, 177–192. Boulder: Westview Press.
- Fogelklou, Anders. 2003. "Constitutionalism and the Presidency in the Russian Federation." *International Sociology* 18 (1): 181–198.
- Fortin, Jessica. 2013. "Measuring Presidential Powers: Some Pitfalls of Aggregate Measurement." *International Political Science Review* 34 (1): 91–112.
- Fortin-Rittberger, Jessica. 2017. "Strong Presidents for Weak States. How Weak State Capacity Fosters Vertically Concentrated Executives." In *Parties, Governments and Elites*, edited by Thomas Poguntke, Ina Kubbe and Philipp Harfst, 205–226. Wiesbaden: Springer VS.
- Fruhstorfer, Anna. 2016. "Recent Debates and Advances in the Scholarly Examination of Presidential Institutions." *French Politics* 14 (2): 254–271.
- Fruhstorfer, Anna, and Michael Hein, eds. 2016. *Constitutional Politics in Central and Eastern Europe: From Post-socialist Transition to the Reform of Political Systems*. Wiesbaden: Springer VS.
- Frye, Timothy. 1997. "A Politics of Institutional Choice: Post-communist Presidencies." *Comparative Political Studies* 30 (5): 523–552.
- Frye, Timothy. 2002. "Presidents, Parliaments, and Democracy: Insights from the Post-communist World." In *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*, edited by Andrew Reynolds, 81–103. Oxford: Oxford University Press. [page 491]
- Frye, Timothy. 2012. "In from the Cold: Institutions and Causal Inference in Postcommunist Studies." *Annual Review of Political Science* 15: 245–263.
- Geddes, Barbara. 1999. "What do we Know About Democratization After Twenty Years?" *Annual Review of Political Science* 2: 115–144.

- Geddes, Barbara, Joseph Wright, and Erica Frantz. 2014. "Autocratic Breakdown and Regime Transitions: A New Data Set." *Perspectives on Politics* 12 (2): 313–331.
- Gel'man, Vladimir. 2015. *Authoritarian Russia: Analyzing Post-soviet Regime Changes*. Pittsburgh, PA: University of Pittsburgh Press.
- Gel'man, Vladimir, and Sergei Ryzhenkov. 2011. "Local Regimes, Sub-national Governance and the 'Power Vertical' in Contemporary Russia." *Europe-Asia Studies* 63 (3): 449–465.
- Gill, Graeme J. 2015. *Building an Authoritarian Polity: Russia in Post-soviet Times*. Cambridge: Cambridge University Press.
- Gimpelson, Vladimir, Vladimir Magun, and Robert J. Brym. 2009. "Hiring and Promoting Young Civil Servants: Weberian Ideals versus Russian Reality." In *Russian Bureaucracy and the State: Officialdom from Alexander III to Vladimir Putin*, edited by Don Karl Rowney and Eugene Huskey, 231–252. Basingstoke: Palgrave Macmillan.
- Ginsburg, Tom. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge: Cambridge University Press.
- Ginsburg, Tom, and Alberto Simpser, eds. 2014. *Constitutions in Authoritarian Regimes*. New York: Cambridge University Press.
- Göbel, Christian. 2011. "Authoritarian Consolidation." *European Political Science* 10 (2): 176–190.
- Golosov, Grigorii V. 2011. "The Regional Roots of Electoral Authoritarianism in Russia." *Europe-Asia Studies* 63 (4): 623–639.
- Greene, Samuel A. 2014. *Moscow in Movement: Power and Opposition in Putin's Russia*. Stanford, CA: Stanford University Press.
- Gritskova, Aleksandra, Konstantin Lantratov, and Ivan Safronov. 2006. "Sergei Chemezov sygral v monopoliyu." [Sergei Chemezov Played Monopoly.] *Kommersant*, December 15. <https://www.kommersant.ru/doc/730496>.
- Hale, Henry E. 2015. *Patronal Politics: Eurasian Regime Dynamics in Comparative Perspective*. New York: Cambridge University Press.
- Haspel, Moshe, Thomas Remington, and Steven S. Smith. 2006. "Lawmaking and Decree Making in the Russian Federation: Time, Space, and Rules in Russian National Policymaking." *Post-Soviet Affairs* 22 (3): 249–275.
- Helmke, Gretchen. 2005. *Courts under Constraints: Judges, Generals, and Presidents in Argentina*. Cambridge: Cambridge University Press.
- Helmke, Gretchen, and Steven Levitsky, eds. 2006. *Informal Institutions and Democracy: Lessons from Latin America*. Baltimore, MD: Johns Hopkins University Press.
- Henderson, Jane E. 2011. *The Constitution of the Russian Federation: A Contextual Analysis*. Oxford: Hart Publishing.

- Henderson, Jane E. 2015. "Developments in Russia." *European Public Law* 21 (2): 229–238.
- Hendley, Kathryn. 2015. "Resisting Multiple Narratives of Law in Transition Countries: Russia and Beyond." *Law & Social Inquiry* 40 (2): 531–552.
- Hilbink, Lisa. 2007. *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile*. New York: Cambridge University Press.
- Hill, Fiona, and Clifford G. Gaddy. 2013. *Mr. Putin: Operative in the Kremlin*. Washington, DC: Brookings Institution Press.
- Hirschl, Ran. 2008. "The Judicialization of Mega-politics and the Rise of Political Courts." *Annual Review of Political Science* 11: 93–118.
- Holmes, Stephen. 1994. "Superpresidentialism and Its Problems." *East European Constitutional Review* 3: 123–126.
- Huskey, Eugene. 2010. "Elite Recruitment and State-society Relations in Technocratic Authoritarian Regimes: The Russian Case." *Communist and Post-Communist Studies* 43 (4): 363–372.
- Huskey, Eugene. 2012. "The Bureaucracy." In *Routledge Handbook of Russian Politics and Society*, edited by Graeme J. Gill and James Young, 175–185. Abingdon: Routledge.
- Ishiyama, John T., and Ryan Kennedy. 2001. "Superpresidentialism and Political Party Development in Russia, Ukraine, Armenia, and Kyrgyzstan." *Europe-Asia Studies* 53 (8): 1177–1191.
- Kahn, Jeffrey, Alexei Trochev, and Nikolay Balayan. 2009. "The Unification of Law in the Russian Federation." *Post-Soviet Affairs* 25 (4): 310–346.
- Kendall-Taylor, Andrea, Erica Frantz, and Joseph Wright. 2017. "The Global Rise of Personalized Politics: It's Not Just Dictators Anymore." *The Washington Quarterly* 40 (1): 7–19.
- Kirdina, Svetlana, and Aleksandr Rubinshtein. 2014. "Effekty path dependence i ekonomii ot masshtaba v Rossiiskom zakonotvorchestve." [The Effects of Path Dependence and Economies of Scale in Russian Lawmaking.] *Voprosy Ekonomiki*, 11: 58–82.
- Knight, Jack. 1992. *Institutions and Social Conflict*. The Political Economy of Institutions and Decisions. Cambridge: Cambridge University Press.
- Korpi, Walter. 1985. "Power Resources Approach vs. Action and Conflict: On Causal and Intentional Explanations in the Study of Power." *Sociological Theory* 3 (2): 31–45.
- Krasnov, Mikhail. 2011. "Zakonodatel'no Zakreplennye Polnomochiya Prezidenta Rossii: Neobkhodimost' ili Servil'nost'." [Strengthening of the Powers of the President of Russia Enshrined in Law: Necessity or Servility?] *Sravnitel'noe Konstitutsionnoe Obozrenie* 83 (4): 1–13. [page 492]
- Krasnov, Mikhail, and Il'ya Shablinskii. 2008. *Rossiiskaya sistema vlasti: Treugol'nik s odnim uglom* [The Russian System of Power: A Triangle with One Corner]. Moscow: Institut prava i

- publichnoi politiki. Kryazhkova, Olga. 2016. "The Russian Constitutional Court and Presidential Powers." Email interview with author, April 18.
- Kryshtanovskaya, Olga, and Stephen White. 2003. "Putin's Militocracy." *Post-Soviet Affairs* 19 (4): 289–306.
- Kupryashin, Gennadii. 2012. *Modernizatsiya gosudarstvennogo upravleniia: instituty i interesy* [Modernization of the State Administration: Institutions and Interests]. Moscow: Izdatel'stvo Moskovskogo Universiteta.
- Lauth, Hans-Joachim. 2015. "Formal and Informal Institutions." In *Handbook of Comparative Political Institutions*, edited by Jennifer Gandhi and Ruben Ruiz-Rufino, 56–69. London: Routledge.
- Ledeneva, Alena V. 2013. *Can Russia Modernise?: Sistema, Power Networks, and Informal Governance*. Cambridge: Cambridge University Press.
- Lessig, Lawrence. 1994. "The Path of the Presidency." *East European Constitutional Review* 3: 104–106.
- Levitsky, Steven, and María Victoria Murillo. 2009. "Variation in Institutional Strength." *Annual Review of Political Science* 12: 115–133.
- Lowndes, Vivien, and Mark Roberts. 2013. *Why Institutions Matter: The New Institutionalism in Political Science*. Houndmills: Palgrave Macmillan.
- Luk'yanova, Elena, Il'ya Shablinskii, and Vladimir Pastukhov. 2016. *Konstitutsionnyi krizis v rossii i puti ego preodoleniya* [The Constitutional Crisis in Russia and Ways of Overcoming It]. Otkrytaya Rossiya: Institut Sovremennoi Rossii. <http://bit.ly/2st0kLt>.
- Maddox, Graham. 1982. "A Note on the Meaning of 'Constitution'." *American Political Science Review* 76 (4): 805–809.
- Mahoney, James, and Kathleen Thelen. 2010. "A Theory of Gradual Institutional Change." In *Explaining Institutional Change: Ambiguity, Agency, and Power*, edited by James Mahoney and Kathleen Thelen, 1–37. New York: Cambridge University Press.
- Márquez, Xavier. 2017. *Non-democratic Politics: Authoritarianism, Dictatorship, and Democratization*. London: Palgrave.
- Mayer, Kenneth R. 2009. "Going Alone: The Presidential Power of Unilateral Action." In *The Oxford Handbook of the American Presidency*, edited by George C. Edwards and William G. Howell, 427–454. Oxford: Oxford University Press.
- McGregor, James. 1994. "The Presidency in East Central Europe." *RFE/RL Research Report* 3 (2): 23–31.
- Medushevskii, Andrei. 2014. "Problems of Modernizing the Constitutional Order." *Russian Politics & Law* 52 (2): 44–59.
- Metcalf, Lee Kendall. 2000. "Measuring Presidential Power." *Comparative Political Studies* 33 (5): 660–685.

- Moe, Terry M. 2005. "Power and Political Institutions." *Perspectives on Politics* 3 (2): 215–233.
- Morgan-Jones, Edward, and Petra Schleiter. 2008. "Russia: The Benefits and Perils of Presidential Leadership." In *Semi-presidentialism in Central and Eastern Europe*, edited by Robert Elgie and Sophia Moestrup, 159–179. Manchester, NH: Manchester University Press.
- Myerson, Roger B. 2008. "The Autocrat's Credibility Problem and Foundations of the Constitutional State." *American Political Science Review* 102 (1): 125–139.
- Negretto, Gabriel. 2009. "Political Parties and Institutional Design: Explaining Constitutional Choice in Latin America." *British Journal of Political Science* 39 (1): 117–139.
- Norris, Pippa. 2008. *Driving Democracy: Do Power-Sharing Institutions Work?* New York: Cambridge University Press.
- North, Douglass C. 1990. *Institutions, Institutional Change, and Economic Performance*. Cambridge: Cambridge University Press.
- North, Douglass C., John Joseph Wallis, and Barry R. Weingast. 2009. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Cambridge: Cambridge University Press.
- Nußberger, Angelika. 2010. *Einführung in Das Russische Recht* [Introduction to Russian Law]. Munich: Beck.
- Obolonskii, Aleksandr. 2011. *Krizis byurokraticheskogo gosudarstva. Reformy gosudarstvennoi sluzhby: mezhdunarodnyi opyt i Rossiiskie realii* [Crisis of the Bureaucratic State. Reform of Civil Service: International Experience and Russian Realities]. Moscow: Fond Liberal'naya Missiya.
- Offe, Claus. 1994. "Designing Institutions for East European Transitions." *IHS Reihe Politikwissenschaft*, 19 (November): 4–24.
- Ostrow, Joel M. 2000. *Comparing Post-soviet Legislatures: A Theory of Institutional Design and Political Conflict*. Columbus, GA: Ohio State University Press.
- Oversloot, Hans. 2007. "Reordering the State (without Changing the Constitution): Russia under Putin's Rule, 2000–2008." *Review of Central and East European Law* 32 (1): 41–64.
- Parrish, Scott. 1998. "Presidential Decree Authority in Russia, 1991–1995." In *Executive Decree Authority*, edited by John M. Carey and Matthew Soberg Shugart, 62–103. Cambridge: Cambridge University Press.
- Partlett, William. 2012. "Separation of Powers without Checks and Balances: The Failure of Semi-presidentialism and the Making of the Russian Constitutional System, 1991–1993." In *The Legal Dimension in Cold-war Interactions: Some Notes from the Field*, edited by Tatiana Borisova and William B. Simons, 105–140. Leiden: Brill/Nijhoff.
- Pepinsky, Thomas. 2014. "The Institutional Turn in Comparative Authoritarianism." *British Journal of Political Science* 44 (3): 631–653.

- Petersen, Felix, and Ilya Levin. 2016. "The Russian Federation." In *Constitutional Politics in Central and Eastern Europe: From Post-socialist Transition to the Reform of Political Systems*, edited by Anna Fruhstorfer and Michael Hein, 519–545. Wiesbaden: Springer VS. [page 493]
- Pierson, Paul. 2016. "Power in Historical Institutionalism." In *The Oxford Handbook of Historical Institutionalism*, edited by Orfeo Fioretos, Tulia G. Falleti and Adam Sheingate, 124–141. Oxford: Oxford University Press.
- Pleines, Heiko. 2003. *Wirtschaftseliten und Politik im Russland der Jelzin-Ära (1994–99)* [Economic Elites and Politics in Russia during the Yel'tsin Era (1994–99)]. Münster: Lit.
- Pleines, Heiko. 2008. "Autoritäre Tendenzen in formal demokratischen Regimen. Russland und die Ukraine in der vergleichenden Politikwissenschaft." [Authoritarian Tendencies in Formally Democratic Regimes. Russia and Ukraine in Comparative Political Science.] *Politische Vierteljahresschrift* 49 (2): 363–377.
- Pomeranz, William E. 1997. "Judicial Review and the Russian Constitutional Court: The Chechen Case." *Review of Central and East European Law* 23 (1): 9–48.
- Pomeranz, William E. 2009. "President Medvedev and the Contested Constitutional Underpinnings of Russia's Power Vertical." *Demokratizatsiya: The Journal of Post-Soviet Democratization* 17 (2): 179–192.
- Popova, Maria. 2012. *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine*. New York: Cambridge University Press.
- Popova, Maria. 2017. "Putin-style 'Rule of Law' & the Prospects for Change." *Daedalus* 146 (2): 64–75.
- Primakov, Denis, and Arina Dmitrieva. 2011. "Stabil'nost' zakonodatel'stva i zakonodatel'naya politika v postsovetskikh i postsotsialisticheskikh stranakh." [Stability of Legislation and Legislative Politics in Post-Soviet and Post-socialist Countries.] In *Pravo i pravoprimerenie v Rossii: mezhdistsiplinarnye issledovaniya* [Law and Law Enforcement in Russia: Interdisciplinary Studies], edited by Vadim V. Volkov, 55–78. Moscow: Statut.
- Protsyk, Oleh. 2004. "Ruling with Decrees: Presidential Decree Making in Russia and Ukraine." *Europe-Asia Studies* 56 (5): 637–660.
- Przeworski, Adam. 1988. "Democracy as a Contingent Outcome of Conflicts." In *Constitutionalism and Democracy*, edited by Jon Elster and Rune Slagstad, 59–80. Cambridge: Cambridge University Press.
- Remington, Thomas. 2001. *The Russian Parliament: Institutional Evolution in a Transitional Regime, 1989–1999*. New Haven, CT: Yale University Press.
- Remington, Thomas. 2010. "Presidents and Parties: Leadership and Institution-building in Post-communist Russia." In *Institutions, Ideas, and Leadership in Russian Politics*, edited by Julie M. Newton and William J. Tompson, 22–42. New York: Palgrave Macmillan.
- Remington, Thomas. 2014. *Presidential Decrees in Russia: A Comparative Perspective*. New York: Cambridge University Press.

- Remington, Thomas, Steven S. Smith, and Moshe Haspel. 1998. "Decrees, Laws, and Inter-branch Relations in the Russian Federation." *Post-Soviet Affairs* 14 (4): 287–322.
- Reuter, Ora John. 2010. "The Politics of Dominant Party Formation: United Russia and Russia's Governors." *Europe-Asia Studies* 62 (2): 293–327.
- Reuter, Ora John. 2017. *The Origins of Dominant Parties: Building Authoritarian Institutions in Post-soviet Russia*. Cambridge: Cambridge University Press.
- Rodden, Jonathan. 2009. "Back to the Future. Endogenous Institutions and Comparative Politics." In *Comparative Politics Rationality, Culture, and Structure*, edited by Mark Irving Lichbach and Alan S. Zuckerman, 2nd ed., 333–357. New York: Cambridge University Press.
- Rogov, Kirill, and Maria Snegovaya. 2009. "Sroki imeyut znachenie." [Terms Are Important.] *Ekonomicheskaya Politika* 5: 75–92.
- Roper, Steven D. 2002. "Are All Semipresidential Regimes the Same? A Comparison of Premier-presidential Regimes." *Comparative Politics* 34 (3): 253–272.
- Sakwa, Richard. 2012. "Leadership, Governance and Statecraft in Russia." In *Poor Leadership and Bad Governance: Reassessing Presidents and Prime Ministers in North America, Europe, and Japan*, edited by Ludger Helms, 149–172. Cheltenham: Edward Elgar.
- Sanchez Andres, Antonio. 1998. "Privatisation, Decentralisation and Production Adjustment in the Russian Defence Industry." *Europe-Asia Studies* 50 (2): 241–255.
- Sanchez Andres, Antonio. 2004. "Arms Exports and Restructuring in the Russian Defence Industry." *Europe-Asia Studies* 56 (5): 687–706.
- Schedler, Andreas. 2013. *The Politics of Uncertainty: Sustaining and Subverting Electoral Authoritarianism*. 1st ed. New York: Oxford University Press.
- Schleiter, Petra. 2013. "Democracy, Authoritarianism, and Ministerial Selection in Russia: How Presidential Preferences Shape Technocratic Cabinets." *Post-Soviet Affairs* 29 (1): 31–55.
- Schwartz, Herman. 2000. *The Struggle for Constitutional Justice in Post-communist Europe*. Chicago, IL: University of Chicago Press.
- Sharafutdinova, Gulnaz, and Karen Dawisha. 2017. "The Escape from Institution-building in a Globalized World: Lessons from Russia." *Perspectives on Politics* 15 (2): 361–378.
- Sharlet, Robert. 1999. "Russian Constitutional Change: An Opportunity Missed." *Demokratizatsiya* 7 (3): 437–447.
- Shugart, Matthew Soberg, and John M. Carey. 1992. *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*. Cambridge: Cambridge University Press.
- Shvetsova, Olga. 2003. "Resolving the Problem of Preelection Coordination: The 1999 Parliamentary Election as an Elite Presidential 'Primary'." In *The 1999–2000 Elections in Russia: Their Impact and Legacy*, edited by Vicki L. Hesli and William M. Reisinger, 213–231. New York: Cambridge University Press. **[page 494]**

- Siaroff, Alan. 2003. "Comparative Presidencies: The Inadequacy of the Presidential, Semi-presidential and Parliamentary Distinction." *European Journal of Political Research* 42 (3): 287–312.
- Slater, Dan, and Sofia Fenner. 2011. "State Power and Staying Power: Infrastructural Mechanisms and Authoritarian Durability." *Journal of International Affairs* 65 (1): 15–29.
- Solomon, Peter H. 2015. "Law and Courts in Authoritarian States." In *International Encyclopedia of the Social & Behavioral Sciences*, edited by Neil J. Smelser and Paul B. Baltes, 2nd ed., 13:427–434. Oxford: Elsevier Science Ltd.
- Streeck, Wolfgang, and Kathleen Ann Thelen. 2005. "Introduction: Institutional Change in Advanced Political Economies." In *Beyond Continuity: Institutional Change in Advanced Political Economies*, edited by Wolfgang Streeck and Kathleen Ann Thelen, 1–39. Oxford: Oxford University Press.
- Sunstein, Cass. 1994. "Changing Constitutional Powers of the American President." *East European Constitutional Review* 3: 99–103.
- Sunstein, Cass, and Stephen Holmes. 1995. "The Politics of Constitutional Revision in Eastern Europe." In *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, edited by Sanford Levison, 275–306. Princeton, NJ: Princeton University Press.
- Sweet, Alec Stone. 2007. "The Juridical Coup D'Etat and the Problem of Authority." *German Law Journal* 8: 915–928.
- Tavits, Margit. 2009. *Presidents with Prime Ministers: Do Direct Elections Matter?* Oxford: Oxford University Press.
- Taylor, Brian D. 2014. "Police Reform in Russia: The Policy Process in a Hybrid Regime." *Post-Soviet Affairs* 30 (2–3): 226–255.
- Thelen, Kathleen, and James Conran. 2016. "Institutional Change." In *The Oxford Handbook of Historical Institutionalism*, edited by Karl Orfeo Fioretos, Tulia Gabriela Falleti and Adam D. Sheingate, 1st ed., 51–71. Oxford: Oxford University Press.
- Thorson, Carla. 2012. *Politics, Judicial Review and the Russian Constitutional Court*. Houndmills: Palgrave Macmillan.
- Trochev, Alexei. 2008. *Judging Russia: Constitutional Court in Russian Politics, 1990–2006*. New York: Cambridge University Press.
- Trochev, Alexei. 2012. "Suing Russia at Home." *Problems of Post-Communism* 59 (5): 18–34.
- Troxel, Tiffany A. 2003. *Parliamentary Power in Russia, 1994–2001: President vs. Parliament*. New York: Palgrave Macmillan.
- Trusevich, Sergei, and Oksana Ushakova. 2004. "Rubrika: V Gosudarstvennoi Dume." [Section: In the State Duma.] *Parlamentskaya Gazeta*, August 7.
- Varol, Ozan O. 2015. "Stealth Authoritarianism." *Iowa Law Review* 100: 1673–1742.

Volkov, Vadim. 2008. "Russia's New 'State Corporations': Locomotives of Modernization or Covert Privatizations Schemes?" *PonarsEurasia – Policy Memos*, August. <http://www.ponarseurasia.org/memo/russias-new-state-corporations-locomotives-modernization-or-covert-privatizations-schemes>.

Waggoner, Jeffrey. 1997. "Discretion and Valor at the Russian Constitutional Court: Adjudicating the Russian Constitutions in the Civil-law Tradition." *Indiana International & Comparative Law Review* 8: 189.

Whittington, Keith E. 2003. "Legislative Sanctions and the Strategic Environment of Judicial Review." *International Journal of Constitutional Law* 1 (3): 446–474.

Wilson, Kenneth. 2015. "Modernization or More of the Same in Russia: Was There a 'Thaw' Under Medvedev?" *Problems of Post-Communism* 62 (3): 145–158. **[page 495]**