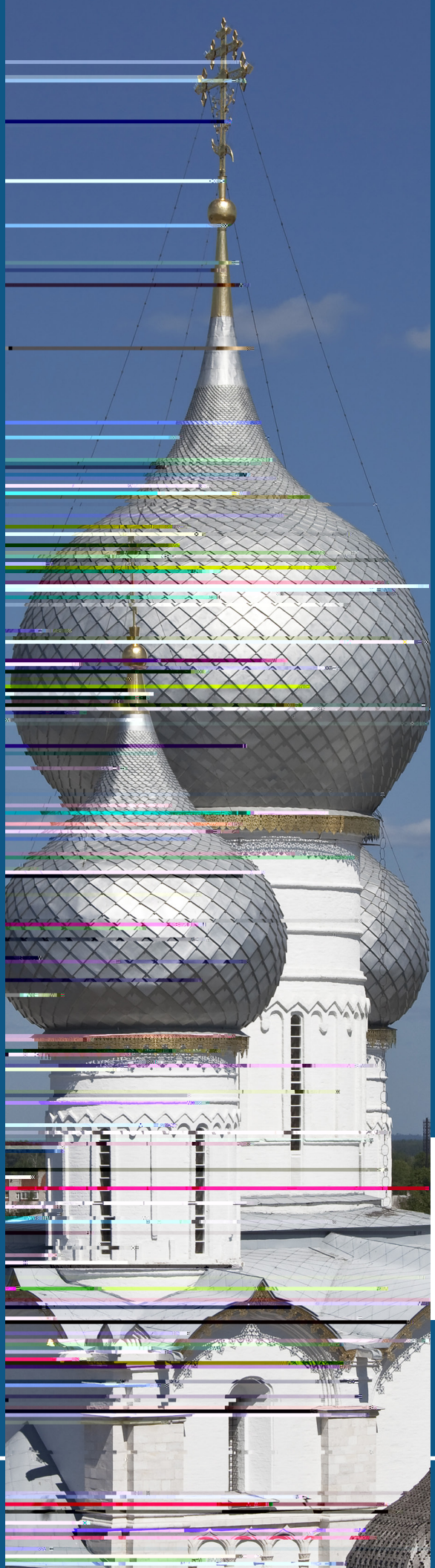

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Conference Proceedings

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

Day One

OPENING REMARKS

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

Fast forward another 15 years, and these hardships have grown even more pronounced in the Putin era. Putin has introduced many constitutional changes including the appointment of regional [illegible] the concentrated emphasis on social as opposed to civil rights. The true turning point, however, occurred with the 2020 constitutional amendments where Putin undermined the system of separation [illegible] retreated from the stated goals of the 1993 constitution, namely democracy, federalism, and the introduction to the law-based state. This conference will explore the creation of the 1993 constitution, [illegible]

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

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

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

[illegible] probably subconsciously preparing for its collapse.

Literally it was already falling apart. And republ TQK[WN _PI\ ][ML \W JM \PM =, their own independent declarations and working out their own new legislation. And I remember from June 1989 the Constitutional Commission of the Congress of People's Deputies. I was then an 18-year-old correspondent with a Russian newspaper, Komsomolskaya Pravda, and I remember reporting on one of the sittings of that commission.

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

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

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

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

Vladimir Pastukhov:
Thank you everybody. I'm not going to be long today. One of the biggest problems for me is to limit myself with the number of lessons I want to review, because MZ\ was an event of such a high scale that you can count any number of lessons, 10, 100. I'll TMI^M Q\ Ua[MTN _Q\P Å^M J]\ JMNWZM 1 I would say that I have some serious doubts.

My doubt is whether the post constitutional renaissance and the constitutional crisis really existed in that time. Because if you want to discuss a constitutional crisis, at least you have to have a constitutional order. If you don't have a constitutional order, it's hard to have a constitutional crisis. I think that we overestimate a little the constitution IT [QLM WN \PI\ [\WZa 1 \PQVS _M UM\ _Q phase of the Gorbachev revolution crises, which was only in the shape of a constitutional crisis, but it wasn't constitutional crisis itself. But the constitution became one of the main victims of that time, it became a casualty of that civil war. I think we lost about 20 or 25 years in constitutional development because of that.

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

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

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

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

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

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

A key lesson we've learned from that time is some parts of the constitution are more important than others, and it is not about human rights. The main section of the constitution is about the division of powers. And you can write an extraordinarily attrac
\Q^M ÅZ[\ XIZ\ WN \PM +WV[\Q\]\QWV IJW]\ XZQVKQXTM[
and a second part about rights. But we seriously failed with the same chapter of the Constitution

Stanislav Kucher:
<PIVS aW] <PQ[Q[\PM ÅZ[\ \QUM 1¼ IU UWLMZI\QVQI
discussion of scientists, and the one thing I can tell
aW] VW_ Q[IJW]\ \PM LQzMZMVKM JM\ MMV [KQMVQ[\[
and journalists especially, is their sense of time,
because you're limiting opening remarks to 22
minutes instead of 10.

[laughter]

I'm sorry. But I mean they were very concise and
detailed and lots of arguments here, lots to talk
about. I'd like to address Lev Ponomarev, because
he is one of Russia's living legends. One of Russia's
most well-known human rights activists. Who's suf
fered a lot. Who's been brought to police precincts
and to prison many times, and has been prosecuted.
And also because he remembers the early nineties
perfectly. I'd like to ask Lev, if he were to name one
and only lesson of that constitutional renaissance or
_PI\M^MZ _M KITT Q\ _PI\ _W]TL \PI\ TM[[WV JM'

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

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

Gorbachev was trying to maneuver, but he really
_I[ ]VIJTM \W ÅVL \PM TIVO]IOM \PI\ _W]TL PMTX

him communicate with the masses. I was among
the people who were trying to organize this process
and give it a structure. We were telling him that we
would like him to join us and speak on behalf of all
of us to the masses, to give the appropriate direction
\W \PM LM^MTWXUMV\ WN M^MV\[=VN
didn't happen. He failed and it was not possible to
move along in a constructive way. What happened
was Gorbachev was scared because he was also hav
ing to deal with the conservatives, those who adhere
to the conservative thought. Mr. Kryuchkov was
among those conservative forces who were putting
pressure, and there were some rumors circulating
at the time that were adding to that. For example,
people were told that allegedly a cooperative was
being created to produce rope ladders, to start the
[\WZUQVO WN \PM 3ZMUTQV ;W /WZJI
by that and he was refusing to join us.

We understood that we would have to deal with
those masses, and actually I was among those
democratic masses. We also understood that we
needed to look for other alternatives, look to other
alternatives, alternatives to Gorbachev. At the time

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

Stanislav Kucher:
1 PI^M I Y]M[\QWV NWZ 8M\MZ ;WTWUWV I[IV M`XMZ\ WV ;W^QM\ TMOIT [a[\MU[ )OIQV JIKS \PMV QV !! when this constitutional commission was operating,
1 ZMUMUJMZ I TW\ WN XMWXTM QV \PM ;W^QM\ =VQWV [XMK]TI\QVO WV PW_ \PM =VQ\ML ;\I\M[_I[PMTXQVO \PM XZWKM[[JMKI][M \PMZM _MZM IL^Q[WZ[NZWU =; AID who consulted members of that constitutional commission. In your opinion, what was the impact WV \PM XZWKM[[Ja \PM =VQ\ML ;\I\M['

Peter Solomon:
+WV[]T\I\QWV[_Q\P =; IL^Q[WZ[UIa PI^M PIL [WUM impact, but it was mainly indirect. The Rumyantsev commission that did the drafting work to June 1993 was admirably creative. It produced not only multiple drafts, but also a detailed discussion of what belonged in the constitution, constituting a rich literature, most of which was published in a special journal called *Konstitutsionnyi Vestnik*. My memory is that that's indeed where the foreign contributions came either directly or indirectly. But what is striking in retrospect is that there was a rich constitutional discourse, something that it would be nice to have again.

Now, of course, when I was listening to all this, I was thinking what drafts of the constitution were XMWXTM \ITSQVO IJW]\' ?PMV aW] \ITS IJW]\ I KWV stitutional crisis, that concerned the much-amended Russian constitution of 1978, not the working draft of a new constitution.

The other thing is that key parts of the Rumyantsev LZIN\ PMTL 1\[ÅZ[\ XIZ\ JMKIUM \PM ÅZ[\ _W XIZ\[of the actual Constitution of 1993 (the parts dealing with Fundamentals and Rights and Freedoms). To be sure, Yeltsin hijacked the constitution writing process in June, creating a new body, which in turn wrote new passages on separation of powers and presidential powers even before the so-called constitutional crisis. This came after the referendum WN [XZQVO WN !! ;W \PMZM¼[I TW\ OWC I was also struck listening to the discussion so far that the critique has been mainly of the process of constitution production more than the content of \PM !! W]\KWUM AM[XMWXTM PI^M QLM\ separation of powers issue and presidential powers

in retrospect, I can see that a lot of Putin's legiti
macy can be traced to the changes that were made
to the Constitution in 1993. My opinion is that at
that point, the Constitution destroyed the notion
of checks and balances. I am led to believe that the
M`MK]\Q^M W{KM WN \PM 8ZM[QLMV\ WN :][[QI Q[I \PZMI\
to Russia. The moment when the President of

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

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

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

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

approval. In theory it's wonderful, but how would they often have these examples, where someone goes out and polls on the First Amendment or any of our rights, and usually people will say, no, we shouldn't have that.

People don't know our constitution. The danger is you could get a very reactionary response from the public. And do you poll on each one of these piec

Kathryn Hendley:
if one of the lessons of 1993 and one of the lessons for the future is that there were too many cooks in the kitchen in 1993. I vividly remember being at a conference where someone got up and they said, "I've just returned from Russia and it took me two weeks to undo the work of the French." You had all all thought their system was the best, and they were all making their case to the Russians. And in some cases, and Peter Maggs could speak to this as well, in terms of the civil code and other pieces of legislation, you get a bit of a smorgasbord type of problem

Vladimir Pastukhov:
9]QKS ZMUIZS 1 JMTQM^M QV !! WN \PM ÅZ[\ LZIN\[
of the Russian constitution by the Constitutional
Commission was published in Argumenty i Fakty
which had enormous...

Stanislav Kucher:
Yes, they had a circulation of 32 million copies.

Vladimir Pastukhov:
…and that's why I disagree, because the political
process of these debates, constitutional debates,
lasted for three and a half years. It was many of
\PW[M ÅZ[\ LZIN\ML XZW^Q[QWV[ZMOIZLQVO XZM[QLMVKa
and human rights. They were implemented into the
;W^QM\ :][[QIV ;W^QM\ KWV[\Q\]\QWV)VL \PMZM _I[
some kind of consensus that it should have separa

I think if we look at what is going on inside the community of constitutionalists, people who are dealing with the constitutional law in Russia at the time right now, I think we can talk about them having a consensus in favor of a parliamentary re

time discussing this issue, but it's also just only very

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

Ekaterina Mishina:
Let me remind you that under the amended : ; . ; : + W V [\ Q \ ] \ Q W V W N ! \ P M + W V O Z M [[W N People's Deputies of Russia enjoyed the power to determine the guidelines of domestic and foreign policy of the country. Now this power belongs to the President of the Russian Federation and this K W V [\ Q \ ] \ Q W V I T X Z W ^ Q [Q W V Q [^ M Z a ; W ^ Q M \

; X M I S Q V O I J W] \ \ P M N I T T W N ! ! 1 _ W] T L T Q S M \ W rely on the expert support from the Justices of the :] [[Q I V + W V [\ Q \ ] \ Q W V I T + W] Z \ [X M K Q Å K I T T a \ P M T I \ M Justice Anatoly Kononov, who beautifully addresses the disadvantages of this period in his dissenting opinion, where he disagreed with the reasoning stated in the majority Opinion of the Court on \ P M X Z M [Q L M V \ Q I T , M K Z M M 6 W W N ; M X \ M U J M Z 21, 1993, the Presidential Address to the People of Russia, which was delivered on the same date.

In this dissenting opinion, Justice Kononov wrote that while examining the decree, the court completely ignored numerous facts of violation of fundamental constitutional principles by the Congress W N 8 M W X T M ¼ [, M X] \ Q M [I V L \ P M ;] X Z M U M ; W ^ Q M \ _ P Q K P were mentioned in the decree and the presidential address. Kononov pointed out that the Congress I V L \ P M ;] X Z M U M ; W ^ Q M \ L Q [K Z M L Q \ M L \ P M ^ M Z a Q L M I W N parliamentarianism by their activities. It was not the most beautiful period in the life of Russia simply because the confrontation came to a deadlock, and the

years competition between the executive power versus legislative power represented.

What is important is to look is not only what has JMMV _ZQ\\MV QV LQzMZMV\ \M\[J]\ PI\ I[\PM ZMIT political reality. Because it was a real separation. It's even maybe not a separation of power: It was separated powers, which actually from the common law legal condition is a more correct term than [MXIZI\QWV WN XW_MZ[;W \PJ\ I[J KWUQVO \W I LQzMZMV\ powers and separation of powers.

This is a short period in the Russian history. To some extent it was similar to the transitional-gov ernment in 1917. Both periods are being labeled as golden periods in the Russian history, from position WN LMUWKZIKa)VL VW_ _M¼ZM KWUQVO \W I LQzMZMV\ topic, but I don't know whether we are to discuss the legal culture of the country, which just with the observation that it is worthy of discussion.

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

Ekaterina Mishina:
Just to make a point about the golden era. The list of human and civil rights did not include prece dural rights. There was still no presumption of QVVWKMVKM <PM N]TT ÆMLOML XZM[]UX\QWV WN QVVW cence was not established on the constitutional or even legislative level at that time. It happened only QV !! IVL XMWXTM _MZM [\QTT [ZMZQVO NZWU \PM ;W^QM\ QV^M[\QOI\WZa [\IVLIZL[IVL \PM XZWKML]ZIT terms were still endless. And now I'll do a very unusual thing. I will say something good about the Constitutional Court of Russia, without which it would be impossible to change this picture, because the new Code of criminal procedure came up to the agenda only in 2002. In "the wild 1990s", the procedural rights were amended, and the situation with the criminal procedure was improved owing \W \PM MzWZ\[WN \PM [W KITTML ¹VM the Constitutional Court, which consistently ruled on unconstitutionality of certain provisions of the KZQUQVIT XZWKML]ZIT KWLM WN \PM

Kathryn Hendley:
I just wanted to make one point about a comment that Andrei Illarianov made about the importance of understanding what ordinary people think about law, namely legal consciousness. And one of the things that I think we ought to recognize is that, in \PM ;W^QM\ XMZQWL Q\ _I[TQ\MZITT that kind of research. It was literally impossible to OW W]\ IVL ÅO]ZM W]\ _PI\ XMWXTM _ that was just not permitted. And even now, the tra ditions within the legal academy in Russia do not encourage that kind of work. Of course, it is likely \W JMKWUM M^MV UWZM LQ{K]T\ NWZ all know, but I think that's something that we ought to take on board in terms of recognizing the im portance of doing the deep dives into what people are thinking, how they're using law, and how law matters or doesn't matter in their lives. This goes JIKS \W aW]Z XWQV\ ;\IVQ[TI^ IJW]\ what people are thinking about the constitution.

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

Stanislav Kucher:
<PIVS aW] 3I\PZaV ;XMISQVO WN \PM thing I can see is that at that time we're discussing was the golden age for opportunities. It was the golden age of opportunity, which I mean some of those opportu nities were taken, others were missed. It's important for all of us to try to do our best to make the next golden age of opportunity truly fruitful.

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

Stephen Nix:
Okay ladies and gentlemen, we'll now start the second panel. Our panel will focus on the 1993 crisis, but also importantly its impact on future X W T Q \ Q K I T L M ^ M T W X U M V \ [1¼U ; \ M X P M V 6 Q ` 1¼U \ P M director of Eurasia at IRI. For those of you who may not be familiar with the organization, IRI

We also know what happened on October 3rd and 4th. The events were rapidly evolving. I was there W N K W] Z [M W J [M Z ^ Q V O M ^ M Z a \ P Q V O Å Z [\ P I V L < P M military was ordered to storm the White House, and they refused to obey the order. They refused to crush the population, the civilians, in 1991. They refused in 1991 and were even more unwilling to do that in 1993.

A lot of military commanders were calling the White House, and they were turning down their authority, refusing to follow the orders. I know that people were ready to defend democracy, and I was getting signals from my end. I was calling the TV station, and I was teMC /P <<>fa>.1adeSdrs ordo that in 1993.

\PM KWTTIX[M WN \PM ;W^Q-M\ =VQWV \W \PM ZQ[M WN >TIL QUQZ 8]\QV QV LMKTI[[QÅML LWK]UMV\[<PW][IVL[
of them obtained through, among other things, a NZMMLWU WN QVNWZUI\QW-V TI_[]Q\ JZW]OP\ Ja ;^M\TI VI IOIQV[\ \PM ,MXIZ\UMV\ WN ;\I\M)VL Q\¼[NZWU
those documents and I should just say a huge thank you to Carnegie Corporation of New York, which has supported this work to get the primary sources on the record for years from these documents.

4I[\ UWV\P ;^M\TIVI IVL 1 KW I]\PWZML IV MJWWS
containing the key documents around the events of October 1993. Those documents included the verba tim transcripts of Clinton's conversations with Yeltsin before, during, and after the shelling of the parlia UMV\ <PMa QVKT]LM \PM KIJTM[NZWU \PM =; -UJI[[a
in Moscow reporting on the complexity of Russian domestic politics. They include the eyewitness testi mony of Ambassador Tom Pickering, among others, not to mention General Pavel Grachev who com manded the assault on the White House.

It's from those documents that I draw the following four takeaways. I don't know how well they help us predict the future, but I think they eloquently described the past. First is the personalization of =; XWTQKa \PM *QTT *WZQ[ZMTI\QWV[PQX ;MKWVL Q[
the black and white view of Russian politics at that time to a fault. Third is the early skepticism about this constitution. One cable describes it as half-baked. Interesting, which means it didn't rise, Q\ ÆI\\MVML QV\W I [WTQL UI[[\PI\ UIa JM QVMLQJTM
Interesting. And the fourth takeaway is that Lev has described the legal revolutionary crisis, the politi cal strife. What comes through in the documents is there was a third crisis of 1993, and it was the collapse of the economy, or the economic crisis.

;W TM\ UM OW \W Ua ÅZ[\ \-ISMI_Ia \PM XMZ[WVITQbI \QWV WN =; XWTQKa ?M VW-_ SVW_ \PM *QTT *WZQ[ZMTI
tionship worked fantastically for American foreign policy interests in the 1990s. It worked much less well for Russian domestic democratic development. In fact, it actually reinforced what we now know as

Peter Solomon:
Here context is all important. How do you ana-
lyze a presidential decree to abolish the legislature
IVL KITT NWZ MTMK\QWV[\W I VM_ WVM' 1N aW] _IV\ \W
IVITabM Q\ I[XIZ\ WN IV M`Q[\QVO ÆW]ZQ[PQVO TMOIT
system, then it's one thing. But if you assume that
it's already a revolutionary situation in which
extreme measures are called for, then in a way the
_PWTM TMOIT [\Z]K\]ZM Q[[][XMVLML ZQOP\'

Operating from with the current legal system,

Ekaterina Mishina:
I just wanted to add some details to the discussion of the Constitutional Court's opinion on the De K Z M M 6 W W N ; M X \ M U-J M Z pened 30 years ago, and many details have been forgotten and so I just want to refresh that. As you know, there were dissenting opinions in the general opinion of the Constitutional Court's review of the presidential Decree No. 1400 and the presidential address, which were both delivered on the same L I a ; M X \ M U J M Z [\

1 _ I V \ \ W W z M Z a W] [W U M L-M \ I Q T [N Z W U W \ P M Z L Q [[M V \
ing opinions which provide more details to the pic ture. Justice Ernest Ametistov pointed out that the court violated provisions of the Constitution and the ! ! T I _ W N \ P M + W V [\ Q \ ] \ Q W V I T + W] Z \ ; X M K Q Å K I T T a
the court reviewed the constitutionality of the pres idential decree and the presidential address in the absence of a request. Justice Ametistov noted the Presidential address was a political statement, and the court had no power to review political issues. Also, the Constitutional Court could only opine on the constitutionality of the President's activities and decisions following the request from the Congress W N 8 M W X T M ¼ [, M X] \ Q M [\ P M ;] X Z M U M ; W ^ Q M \ W Z W V M W N \ P M K P I U J M Z [W N \ P M ;] X Z M U M ; W ^ Q M \ *] \ V W [ ] K P
request was submitted to the Constitutional Court.

Another important point. Two hours before the Constitutional Court went into session, Chief Justice Valery Zorkin, who had been openly associ I \ Q V O P Q U [M T N _ Q \ P \ P M + W V O Z M [[I V L \ P M ;] X Z M U M ; W ^ Q M \ [Q V K M , M K M U J M Z W N ! ! X I Z \ Q K Q X I \ M L Q V I X Z M [[K W V N M Z M V K M I \ \ P M ;] X Z M U M ; W ^ Q M \ ) \ \ P Q [X Z M [[K W V N M Z M V K M B W Z S Q V W z M Z M L ^ M Z a V M O I \ Q ^ M
comments on the presidential decree and the presidential address, so he was not impartial. No W { K Q I T [_ M Z M Q V ^ Q \ M L V I U M T a 8 Z M [Q L M V \ A M T \ [Q V _ P W
according to the procedure established by the law had to be invited.

In his dissenting opinion, Justice Nikolay Vitruck stated that the Constitutional Court, in delivering Q \ [W X Q V Q W V W N ; M X \ M U J-M Z ! ! K W U U Q \ \ M L V]
merous violations of Constitutional Court. He con curred with Justice Ametistov that the court could not review the constitutionality of normative acts under its own initiative in the absence of request.

Justice Vitruck criticized Chief Justice Zorkin for allowing numerous violations in the procedure of

in the earlier panel and that's the separation of-pow
ers issue as it relates to the powers of the President
of the Russian Federation and what resulted from
\PM M^MV\[WN 7K\WJMZ !! -zMK\[\PI\ _M IZM [\QTT
contending with today. Moving forward, how do
_M LMIT _Q\P \PQ[Q[[]M')OIQV Q[\PM _Ia NWZ_IZL
[\ZQK\Ta I XIZTQIUMV\IZa ZMX]JTQK')ZM \PMZM W\PMZ
^IZQI\QWV[WV \PM \PMUM' 1¼L ZMITTa TQSM \W PMIZ NZWU
people their thoughts on how we proceed. I'll just
WzMZ IV M`IUXTM 1 _I[XZQ^QTMOML \W JM I[SML \W JM
on the working group that drafted the constitution of
Belarus for the democratic forces of Belarus. And I
t ÊË®Ù Sent t KMM TRT]q\ à\M T''T aW] Q\ _I[UM IVL I OZW]X WN ;W^QM\ MZI
R]LOM[IVL TMOIT [KPWTIZ[\PI\ ZMITTa IZO]ML ÅMZKMTa
for a parliamentary republic based on facts that are
present today. And we had lots of discussions. Is that
ZMITTa \PM _Ia \W OW' ,W _M JI[M N]\]ZM LMKQ[QWV[WV
_PI\ _M¼ZM LMITQVO _Q\P VW_' 1¼U R][\ WzMZQVO \PI\
as a question. I'm not stating an opinion one way or
another, but I'd like to hear from all of you.

Vladimir Pastukhov:
Thank you so much. I won't take a lot of time as
well. I want to thank Thomas. To be honest, it was

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

We have another document that we discussed, which was published in April 1993. An American parliamentary delegation comes to Russia, and they discuss all kinds of issues: economic reform, arms control, human rights. They never mentioned "how Q[\PM XIZTQIUMV\ LWQVO' 0W_¼[aW]Z ZMTI\QWV[PQX _Q\P XIZTQIUMV\'º <PM[M IZM UMUJMZ[WN +WVOZM[[they should be interested in the relationship be tween the president and the parliament in Russia, but they're not.

There is this deep tradition in Russian prac tice, where the parliament is simply not taken seriously. It's all presidential power. We should

works best with new democracies. I mean we have
\PQ[P]OM TQ\MZI\]ZM PMILML Ja 4QV[WV ;\MNIV¼[
work that argues that when you look at the cases
in the world at large, presidential systems are
more likely to deteriorate into authoritarian than
parliamentary. Fair enough. But can parliamen-
tary ones be, can you imagine a parliamentary
[a[\MU QV :][[QI' 1 KIV¼\ IK\]ITTa JMKI][M 1 LWV¼\
think our people could function there without
I [\ZWVO M`MK]\Q^M ;W QV Ua ^QM_ XZWJIJTa I
form of semi-presidential as the in-between one.
;WUM\PQVO TQSM \PM .ZMVKP [a[\MU I ^MZ[QWV WN
that where you have a president, but the president
doesn't control the executive branch, which is
elected, and where the prime minister is a creature
WN XIZTQIUMV\ <PMa KIV JM WN LQzMZMV\ XIZ\QM[
and it encourages rotation.

Now it's complicated for people to understand
if you're interested in the broad public, but I
just think functionally it's the thing that would
work best. The other person I want to refer to
is Tom Ginsburg, who's done a lot of compara-
tive constitutional analysis. He has a coauthored
piece in the last few months, I think it's in Journal
of Politics called the "Constitutionalizaten-US a TZ¡ ö JM WN L _PI\¼[PM \ITSQVO W]\' <P

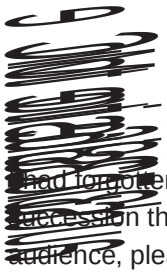
trend that he observes in new constitutions0003005B005C>0.5m03005B0052lleen-USdemocracies to include political part

the rules of democratic process. Now those are
not in the American Constitution, those were not
in the Russian Constitution. There are arguments

that shouldn't be. On the other hand, you think
about what happened in Russia in the last 25 orhose >>BDC i<00610B07(hao R)0.5 <005-US \ \ \0àV îÍÀ 0 ðI V \ [[

\PM _IZ 1 PIL I LQzMZMV\ QLMI WN \PQ[\PIV VW_
But after the war it became very clear to me that a
key component of this is to ask what happens after
Putin. Russia should not be an aggressive state.
What is the danger in a system that is centralized in
Moscow, and even more so a system centered on a
[QVOTM XMZ[WV 8]\QV' 1V I KW]V\Za I[^I[\ I[:][[QI
there are very few common uniting elements in the
whole country.

fully supported by parliament. How did it end for



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

Question:

I wanted to link this discussion to our previous-pan el and a couple of very important things that were said. You highlighted this fundamental speed of reform, and how it took everybody by surprise. And we also touched on the fact that legal literacy is almost non-existent. There will be this fundamental \ M V [Q W V J M \ _ M M V \ P M L M [Q Z M \ W I z M K \ Z M N W Z U I V L the desire to arrive at this new structure sometime in the future. The beautiful Russia of the future. And the (the1iraci>pct0, and ho)9.t ¶ M V [Q P€€ Đ à M N@ å M0 •g V € p «ÀN W Z NM 0 M

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

Ekaterina provided a good summary of all the
ÆI_[IVL \PM ZMI[WVQVO _Pa \PM !! KI[M [PW]TL
have never even taken up. The case was inadmissible. There was no adversarial process whatsoever.
But even if we look at the dissenting opinions, I
ÅVL \PMU XZWJTMUI\QK I[_MTT 1V [WUM WN \PMU
their reasoning legitimizes presidential emergency rule. It's just striking if we compare the speed with which the constitutional court adjudicated the case
QV ;MX\MUJMZ !! IVL \PM [XMML _Q\P _PQKP \PM
sameC BT /C2_0 1 Tf 10 0 0 10 108 462spb >>BDC A2ut.6 (e ceC300051004B>10.7 <00500003005C0050004D

that emerged in the 1990s and early 2000s clashed

I would like to also extend my deepest gratitude to the distinguished experts who contributed their wealth of knowledge and their time to the successful development of the program. Our planning began with discussions on the history of constitutional development, leading us to the best works on the topic and their authors, many of whom we'll hear from today. Your recommendations, your hours W V B W W U I V L P] V L Z M L [W N U M [[I O M [W V ; Q O V I T helped shape this event. To each and everyone: my profound gratitude.

This conference is a unique opportunity for you to contribute to a vision of Russia that is democratic, predictable, and is a constructive player on the world stage. N17TJ ET EMC /P <</43.5 (R)64.9 (ussia tha)9.5 (t)]TJsia thaêÁ‘ rP0 Z >§q, i2 Û rS _•m¡ ,

justice.” But the amendment was not the merger of two courts, as was presented both in the media and in the explanatory note. It was a hostile takeover XMZNWZUML Ja \PM ;]XZMUM +W]Z\ WN \PM :][[QIV Federation. This constitutional amendment came into force in 2014.

After almost 27 years after its adoption, the Russian constitution was amended yet again in 2020—and it never saw such a huge set of amendments. The WZQOQVIT KWV[\Q\]\QWVIT LM[QOV _I[LQ[ÅO]ZML KWU pletely. I refer to this as to “Putin’s Amendments,” JMKI][M Q\ _I[8ZM[QLMV\ 8]\QV _PW ÅZ[\ LMKTIZML his intention to change the constitution and then []JUQ\\ML \PM LZIN\ \W \PM ;\I\M ,]UI

Putin’s amendments are unprecedented for sev eral reasons. First, the number of the amend ments—206. Compare this number to the 27 IUMVLUMV\[UILM \W \PM +WV[\Q\]\QWV WN \PM =VQ\ML ;\I\M[ )J[WT]\MTa IUIbQVO -ZQOP\')TT \PM[M IUMVL ments were adopted by both houses of the Parlia ment and the constitutionality of these amendments _I[KWVÅZUML Ja \PM +WV[\Q\]\QWVIT +W]Z\ )VL what was especially nice on the part of the Constitu tional Court was how it addressed the procedure was used for adopting these amendments: The all-Russia vote, which never existed in the Russian legislative framework before February 14th, 2020. The presi dent issued this regulation, which in turn introduced this new procedure. The Constitutional Court noted the novelty of the approach, but since there was a need to adopt the new amendments, they would approve the new instrument for doing so.. At least \PMa _MZM ^MZa [QVKMZM ZQOP\'

;WUM WN \PM IUMVLUMV\[IZM ^MZa LQ[KZQUQVI\WZa by their nature. First there is the amendment on the Russian language mentioned by Will Pomeranz aM[\MZLIa L]ZQVO W]Z UWZVQVO [M[[QWV ;MKWVL IVW\PMZ IUMVLUMV\ KWVÅZ

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

graduated in 1912 at a time when women were not
ILUQ\\ML \W ;\ 8M\MZ[J]ZO 1UXMZQIT =VQ^MZ[Q\a I[
Q\ _I[KITTML \PMV ;PM _I[^MZa W]\[XWSMV IVL 1
would like to think that she inherited some of that
outspokenness and brilliance from the brilliant
professor Leon Petrozhitski, who moonlighted by
lecturing at the Raev Courses for Women but is
really famed for introducing to Russia and to some
extent to the world the science of looking at what
people thought about the law, and not just looking
at what the books said the law was.

=VNWZ\]VI\MTa \PI\ \ZILQ\QWV _I[TW[\ QV :][[QI 0M
PIL \W ÆMM \W 8WTIVL IVL \PM +WUU]VQ[\ ZMOQUM
KWVÅ[KI\ML PQ[ZM[MIZKP VW\M[*]\ 1 IU PIXXa
to see this approach somehow reemerging with
Professor Henley's work. And I think it is a very im
XWZ\IV\ \PQVO QN _M¼ZM \ZaQVO \W ÅO]ZM W]\ PW_ WVM
gets from here to there. Even though the role of the
public is much more limited in Russia than in many
other countries, I think it can't be ignored. And it
was to provide window dressing for this role that
Putin decided to have the vUSh [(o)(e)29.3 (D10 108 683.0205 Tm [<0Te)]TJ [(wa or this r)19.3 (ole tha)11 (t)]TJ

1\ KWVÅZUML \PI\ \PM :][[QIV [\I\M Q[¹WVM IVL
QVLQ^Q[QJTM º <PQ[ÅZ[\ KTI][M PW_M^MZ _I[NWTTW_ML

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

I strongly support the idea of making the branches of power truly independent, and the idea to en

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

Peter Maggs:
One technical point. In [Russian held territories in]
=SZIQVM \PM ZMNMZMVLI _-MZM OMVMZITTa QV X]XXM\ ZM

M`IK\Ta P Q\ _I[NWZU]TI\ML QV MIZTa ;W^QM\ aMIZ[
Vladimir Lenin in a letter to Dmitriy Kursky, the
People's Commissar of Justice, or the Minister of
Justice, emphasized that wordings should be broad
IVL ÆM`Q M IVL R]LOM[_QTT LM\MZUQVM \PM TQUQ\
of application of these wordings. This resulted
in unlimited judicial discretion and arbitrary
law enforcement. And here we are again. What's
happening now is the second coming of these
^IO]M LMA V[TQSM \PM _WZLQVO WN)Z\QKTM
"High Treason" criminal code. Look how
this wording was changed in 2012: Now, almost
anyone can be prosecuted and sent to penal colony
for up to 25 years for almost anything. Look at the
details of the guilty verdict of Vladimir Kara-Murza. He was sentenced to 25 years for participation
[`—B„êŒP À Ð ÂDÐ S P PV Q \ Q Q T Q \ Q L M Q t Q] L W °^

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

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

If we go beyond those gatherings, we would say that the predominant point of view is that Russia is destined to be an authoritarian state. And maybe I would speak in favor of that, because I'd like to have stability. But I think today stability is not a [WT]\QWV ;\IJQTQ\a IVL I]\PWZQ\IZQIVQ[U IZM VW\ \PM solution. Their time has passed.

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

It cannot exist without special catalysts, without stimuli. My colleagues who worked in the pharmaceutical industry tell me that the stabilization of a pill is the most important stage in the production of medicine. You can have the best combination of chemicals and agents possible, but they will not JM MzMK\Q^M]V\QT \PM [\IJTM XQTT IXXMIZ[ )VL \PM problem with this authoritarian pill of Putin is that it's actually falling apart.

It has been working for 500 years and we need to have special conditions for its stabilization and UIaJM _IZ Q[WVM WN \PW{M KWVLQ\QWV[;W ZMOIZL less of what kind of authoritarianism we have in Russia right now, it'll be always falling into war and the war will lead to a revolution.

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

I'm afraid that I have exactly the opposite point of view. 1248.0205.8 (lem is in Putin.)]TJ

1 IJ[WT]\MTa LW VW\ JMTQM^Mspecialists were very few and private between,. At
ic solution for the tasks that Russia is facing at this that time the rule of law concept was nearly “terra
\QUM)\ \PQ[[\IOM 1 \PQVS _ incognita.” Today, we have “too much”
cases. We need to understand the constitutional
principles that function in the West in order to
incorporate them in the best way possible.

Elena Lukyanova:
Following the logic of today’s discussion, I would
prefer to say something organizational at this time.

We have a lab in our university on the transition
XMZQWL \PI\ _QTT PI^M I-V]UJMZ WN LQzMZMV\ XZWR
MK\[?M]VLMZ[\IVL \PI\ \ZIV[Q\QWVTQ
and complex.

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

We also are going to launch a transitional justice
XZWRMK\ 1 SVW_ _MTT \PM LQ{K]T\QM[WN I \ZIV{Q\QWVTI
period, because I am a daughter of the last chair
UIV WN \PM ;]XZMUM +W]VKQT WN \PM =,,. 1 [I_
what it’s like when members of parliament in a new
state do not have any shovel-ready laws and what
PIXXMV[VM`\ 0W_ ^MZa LQ{K]T\UQ[ISM[IZM UILM
in a rush. We believe that those who will come next
will need these drafts, and our purpose is to prepare
these draft laws.

The second topic is that it was mentioned that
Russia hasn’t been able to cultivate a legislative and
legal culture. I would say that over 30 years, people
learned to protect their rights and during these 30
years they also were able to learn constitutional ter
minology. We revered a number of good lawyers.
These lawyers work in accordance with the highest
[\IVLIZL WN \PM Z]TM WN TI_ ,W WJZ [Q\]I\QWV
perhaps is somewhat easier than my father and his
colleagues faced 30 years ago.

<PM [Q\]I\QWV WN !! KWV[Q\]QQWV_I[LQzMZMV\
Yury Tikhomirov, Tamara Morshchakova, Mikhail
Krasnov, Anatoly Kononov, Vladik Nersesyants—

As already mentioned, back then they tried to
create a transitional constitution using sort of
tweezers. We now work to create the separation
of powers that was lacking in the initial text of the
Constitution. I’m not sure, but I think it is woefully
QV[]{KQMV\ NWZ \PM KWV[Q\]\QWV

1V \PM ÅZ[\ XIZ\ WN W]Z LQ[K][[QWV
very well. The crux of the matter is not only in the
vertical but also in the horizontal. How are we to
[MXIZI\M ^IZQW]N]VK\QWV[\W IKPQM
I believe that we need to start from the grassroots,
and then whatever is left for federal power would
JM I[TQOP\Ta LQzMZMV\ WZ ZILQKITT
<PM =VQ\ML ;\I\M[[\IZ\ML U]KP \PM [I
They were collecting various states and joining
them into a single structure.

?PI\ LW _M PI^M I\ \PM UWUMV\') XZW
was prepared by a lab where they used tweezers.
We tried to redistribute the power, excluding the
most egregious authoritarian elements and they
IT[W \ZQML \W ZM[P]|M \PM R]LOM[KZ
beginning of a judicial reform. There is another
KWV[\Q\]\QWV XZWRMK\ _PMZM IILLQ\
QV VM_ \MZUQVWTWOa]NL \W ÅTT Q
value of the 1993 constitution. But we try keep
our on chapters one, two, and nine to a minimum.
Because these chapters are immutable. We believe
\PI\ ITT MzWZ\[[PW]TL JM X]\ \W \PW[
the constitution could be legally changed.

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

example and adapting it to Russian conditions. Also, we would not be able to hold normal elections if we [\QTT NIKM TQUQ\I\QWV[NZWU \PM +ZQUQVIT +WLM ;W _M cleaned up the criminal law and took away certain conditions that do not allow us to create a normal environment for elections. We have already written the concept of a new law on the mass media.

Apart from that, we also face the issue of intervening justice. What do we do with people who QV\MV\QWVITTa WZ]VQV\MV\QWVITTa NISML MTMK\QWV['What do we do with members of precincts elector IT KWUUQ\\MM[' <MIKPMZ[HVL MVOQVMMZ[_PW]VQV \MV\QWVITTa ^QWTI\ML KMZ\IQV TI_[' ?PI\ LW _M LW with the bureaucrats and functionaries who were LWQVO \PMQZ TQ\\TM \PQVO QV \PMQZ TQ\\TM W{KM[ ]VQV\MV tionally supporting the capture of power, because their responsibility is written in the criminal code and some of it is not delineated at all. What kind WN \ZIV[Q\QWVIT R][\QKM IZM _M []XXW[ML \W PI^M'Because unless we process all of that, unless we accept our mistakes, we are doomed to repeat the same mistakes. These are also the issues that we are asking ourselves. And of course, interim justice is the issue of utmost importance.

;WWVMZ WZ TI\MZ \PM _IZ _QTT MVL <PM UQTQ\IZa TI_ is really obsolete. It became old during 70 years of peace in Europe. But of course, we need to bring to justice war criminals. Fortunately, we have some norms, but war criminals remains one matter. But what about o (e(ha)9.8 (t about o (e(ha)9.8 (t about o t(ms)18.303005F0049/MCI3US)/MCID 3466 >>BD(t theccompl)13s (

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

;QVKM \PM ZM[MIZKPMZ¼[\I[SQ[\W XZWXW[M LQzMZMV\ models of development, I would like to draw attention to the experience of our neighboring post socialist states, namely those that have moved with a greater or lesser degree of success along the path of democratization and hybrid regimes. Now there are 21 such countries as the Economist would call \PMU ÆI_ML LMUWKZIKQM[WZ PaJZQL ZMOQUM[W]\ of 29 post socialist countries. I would say that it's a ^MZa QUXZM[[Q^M ÅO]ZM)[aW] KIV [MM \PMa KWV[\Q tute a majority of post socialist countries, and that majority became a nightmare for the post socialist dictators including Russian authorities. That moved them to act the way they did on February 24th last year.

Only six of these more or less democratic post socialist countries established classical parliamen \IZa ZMX]JTQK[_PQTM ÅN\MMV WN \PMU PI^M NWZU[WN government that Russian researchers usually characterize as parliamentary-presidential republic. I prefer to call them parliamentary republics as well. it's a kind of revolution in the development of the practice and theory of checks and balances.

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

But in the new post-socialist democracies, presidents are go

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

The gist of this model is the presidents of post socialist countries, according to their constitutions, LWV¼\ PI^M \PM ZWTM WN XWTQ\QK conscience of the nation, and they are supposed to QVÆ]MVKM \PM XW_MZ JI[ML accumulated over years. One could say that it's somewhat similar to a parliamentary monarchy [a[\MU 7V \PM W\PMZ PIVL overall trend of increasing the role of the so-called soft power of law in society.

<PMZM IZM LQzMZMV\ NW-ZU[WN \PQ[UWLMT¼[UIVQ festation, such as in mediation, legal frameworks, problem solving, the high level of media freedom, etc. This role that has been given to the president in post-socialist countries, and they play their roles LQzMZMV\Ta ?M LWV¼\ PMIZ NZWU [WUM WN \PMU I\ ITT and in some countries there is space for expressing presidential opinions.

I have given you some examples, but criticism of a respectful but weak president is sensitive. It can even be dangerous sometimes. We see that situ ation in Georgia in 2023: An attempt was made \W QUXMIKP QV /MWZOQIV- 8ZM[QLMV\ ;ITWUM B]ZI JQ[P^QTQ JMNWZM \PM MVL WN PMZ \MZU QV W{KM <PM corresponding reform had taken place in Georgia previously in 2017 amid disagreements between the ruling Georgian Dream party and the previous president. This case demonstrates the potential is high for a legally weakened president with soft power, even when power that is grounded in the will of voters.

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

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

and I have prepared for your consideration. We have tried to propose those for your consideration, TQ\QK of the Åo]Zim[ant Paka wa\M \PM creation of a new legal basis for the enforcement WN \PTMQZQUWJ[IQIM]\PWZQ\Q VaQWV 5WZM [XMK were trying to propose a new order for how the judges are going to be appointed and also new ways to Pmeasure Qheir Åespo\sibility. \PM

There is also the issue of renewing the judiciary.
We knoy004D6 (e is also the issu10 0 0 10 (y cor)10.5 (e their r)11d EM

\PM 8ZM[QLMV\ -IKP ZMOQWV PI[Q\[W_V Y]ITQÅKI\QWV
board. I would say with a certain level of certitude that they depend on the regional environment. But the administration of the president is taking an interest in the regional boards as well if they think that the regional level decisions are subject to questioning.

For example, last year a teacher from Penza spoke in May of last year to her eighth graders about events such as the bombardment of Mariupol and about the destruction of the theater and other consequences. One of the students wrote a complaint about her, IVL \PQ[_WUIV \PQ[\MIKPMZ _I[OQ^MV Å^M aMIZ[WN
conditional detention, which is a very soft sentence. But the regional panel summoned the judge who passed this verdict, and the administration of the president took a keen interest. I don't know whether MZ \PQ[R]LOM PI[JMMV ÅZML WZ VW\ J]\ 1 SVW_ \PI\
she had undergone some checking. Final decisions are made by the administration of the president. Regional panels, in reviewing candidates, send their results for further consideration in Moscow.

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

There is actually a decree on the organs of judiciary that describes the responsibilities of the selection collegium, which makes those appointments. In reality, all appointments at the federal judge level and higher are approved by the president4 ET EMC 7ration. Adapproed 2xu0 a6 (. In n(S)/MCID 4779 >>BDC BT 10apra)10 (t)0.5 (ion.210.2 ( )]t89 >>ET EMC f1 of)-144.1 (ju

are appointed by the Congress of the deputies, and IZM IXXWQV\ML Ja \PM ;MVI\ democracies, Romania, Poland, those organizations are formed by appointments, by the judge, by the courts, and by the human rights organizations. I don't necessarily think we need to learn from the experience of Hungary, where the appointments are done by the government proportionate to the factions in the OW^MZVUMV\ ;W \PI\¼[\PM W^MZIT KWVKMX\

Of course, there are details that we need to think about. For example, the numbers, the size of that particular organ. We need to also consider the spe KQÅK VWUQVI\QWV[[XMKQÅK want to elaborate on that and go to that level of details. This is the overall concept that we have. This is the overall general view of what can be done.

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

1 KIV¼\ UQ[[IV WXXWZ\]VQ\a tive powers. I read about the federative model of government and its practice, which is described in two sources: One is the Federative Agreement of 1992, and the second one is the constitution itself. And there are certain imbalances because the Federative Agreement was not canceled. But the constitution, of course, has primacy.

The second thing is that there are two interpretations of the government form. One way to interpret it as: there is a centralized country, there is a UIV QV KPIZOM IVL Q\¼[I XZM[QLMV\ that the president did, was to use the mention in the constitution of presidential representatives, and he created federal districts. There was no such construction as presidential districts. And now there are, and the presidential authority rests upon them very nicely. I think that this construction is under serious question. The fact that you have representatives somewhere doesn't mean that you are allowed to create a federal structure and assign certain authority to this ad hoc structure.

Later, in 2022, the Constitutional Court in its QVÅVQ\M _Q[LWU [IQL \PI\ \PM PQOPM[\ W{ constituent entities are accountable to the president. That is also not written in the constitution. Now we also see that in comparison with 1937, when the judicial and executive power was united, essentially. Now it's at least separated. But general governing was the precedent that was used to create these federal districts that I have already mentioned.

Another issue: There aren't very clearly delineated LQzMZMVKM[JM_MMV LQ[\ZQK\[ZMOQWV other territorial units. Do we need to do that, or is \PI\ VW\ VMMLMLQV :][[QI' 1¼U [ZM \PI\ \ plenty of opinions on this matter, but it's clear that in the Northern Caucuses the situation is somewhat LQzMZMV\ IVL \PM]VQ\[IZM [WUM_PI\ LQz They're national. Do we need a national republic QV <I\IZ[\IV' QN aW] _MZM \W I[S \PM QVLQ population, they would say yes. I visited Kazan, and they told me how they shed their blood and they were knee deep in blood, and that's how they formed their nation. The recognition of the national roots of these republics is important. The right to help one's culture, one's language: This is something that is not welcomed in today's situation.

Here's another interesting question: The issue of existing constituent entities of the Federation vis-a-vis the issue of consolidation. Those in favor of consolidation are in solidarity with today's authorities because today's authorities constantly speak IJW]\ \PM JMVMÅ\[WN KWV[WTQLI\QWV 1N me to depart from the structural federative matters and look at it from the point of view of foreign policy, I would say that the main threat to Russia is not =SZIQVM WZ \PM ?M[\ 1¼L [Ia Q\¼[+PQVI J sia is lagging behind China sociallw(>>BDC a(en-US)/MCID >B)0.5 (o1

, M V O @ Q I W X Q V O [X W S M I J W] \ N W Z U M Z 5 Q V Q [\ M Z W N . W Z M Q O V \ W ; P M ^ I Z V I L b M P M U M V \ Q W V M ing took him outside. They had huge maps on the \ I J T M [< P M a T W W S M L ^ M Z a U] I V L ; P M ^ I Z V I L b M [I Q L [W U M \ P Q those maps. And Deng Xiaoping said that the U I X [Z M Æ M K \ W] Z] V M Y] I T \ Z M worry, we don't have any claims on you so far. The fact that these maps of injustices continue to be published in Chinese school books is something of a curiosity. There are at least 27 million people \ P I \ T Q ^ M \ W \ P M M I [\ W N \ P M = Z I T [+ W U X I Z M \ P I \ \ W Heilongjiang province, only one province, where there are 30 million people.

< P M Z M I Z M L Q z M Z M V \ W X Q V Q W V [W V \ P M X W X] T I \ Q W V counts, but this certain disequilibrium, this mis- alignment, is just like Chekhov's gun. It is going to shoot, especially if Russia emerges from this crisis [Q O V Q Å K I V \ T a _ M I S M V M L < P M + P Q V M [M _ Q T T Z M Y] Q Z M certain changes according to their maps. But I have deviated somewhat.

Another important issue is the management of fed- eral units, and their lack of tax collecting authority. Their inability to replenish their treasury or collect local taxes. And it could be value added taxes, like Q V [W U M [\ I \ M [Q V \ P M = V Q \ M L ; \ I \ M [W Z Q \ K W] T L J M income taxes. It could be any other type of tax, but they are either in an embryonic state or non-ex- istent. That forces the constituent entities into a subservient position vis-a-vis the federal center. Because the federal center has the purse and the strengths of the purse.

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

DISCUSSION

Question:

I have a question for Elena, who raised a very important topic. What she was saying was very practical about the interaction with Duma. We have encountered a very serious problem in the relationship between professional jurists, constitutionalists, and deputies. Each lawyer may have three [illegible] there is this clash. When we develop this project, [illegible] political interests.

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

Elena, Irina, Ekaterina, all of you who are here, we [illegible] Elena. How do you see this balance between strict legal construct or juridical control and the opinion [illegible]

Elena Lukyanova:
[illegible] tion for the Duma. There is always professional assistance and advisors in any parliament who work with its members on a regular basis. In some of the parliaments of the world, there is even a procedure [illegible] their opinions publicly. I'm not saying that you don't have the expertise. I'm saying that maybe [illegible]

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

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

One more note. Ilya is always trying to copy the [illegible] into consideration the examples of and models of [illegible] I know that Ilya likes the American model, which I like too. And he frequently says to me, why are you always saying that this or that is not going to work for us.

[illegible] tain situation that was actually fertile and favorable for the kind of work that had to be done on the formation of the state. And that was unique and it's not going to exist everywhere.

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

William Pomeranz:
Welcome back to our third panel of the day on the Russian judiciary and the rule of law in Russia. This panel will be joined by Kathryn Hendley, [illegible]

in response to their political masters or do they pay more attention to the fact that in the vast majority of cases, people who are dealing with mundane Q[[]M[IZM IJTM \W OW \W KW]ZM methodological changes. I don't think this is what happens and believe that when they're asked about their cases, they believe that the judges have IK\ML QVLMXMVLMV\Ta ;W _Mtowards courts and judicial independence. One is \W PI^M I TQ\\TM JQ\ WN L-I\I ing question that is kind of a shocking result.

I wasn't able to analyze these results because we have only descriptive results. They're not asking if judges are independent, but should they be QVLMXMVLMV\' 6W_ aW]_W]TL a no-brainer, but we see here that Russians are in fact quite divided on the question of whether or not you should even aspire to the idea of judges not being controlled by political authorities. To me that was very interesting, and it prompted me to ask a question about how they think about judicial QVLMXMVLMVKM' 6W\[PW]TL but the actual reality.

1¼UOWQVO\W[PIZM[WUMZM surveys. One is a survey done in 2008 by INDEM, a Moscow think tank, and it comes out of a book project in which Professor Mishina was a co-author. I also rely on a 2018 survey, the Russian 4WVOQ\]LQVIT 5WVQ\WZQVO ; the same question.

Here is the question, which of the following [\I\MUMV\[JM[\ LM[KZQJM[aW]Z possible answers: judges in Russia are basically in LMXMVLMV\# R]LOM[QV :][[QI KWV\ZWT WN ZMXZM[MV\I\Q^M for any of the data people in the room, you'll know that in Russia, this "hard to say" issue is one that is somewhat unique to Russia. When I did the analysis, I had to keep that in mind, because as we'll see, Q\ ZMXZM[MV\[I [QOVQÅKIV\ it's hard to know what that means. Does that mean that they literally have no opinion or does it mean \PI\ \PMa¼ZM [WUM_PMZM QV both in 2008 and in 2018, we unsurprisingly get an answer that judges are basically dependent. And that's I think what we would expect.

The interesting question is: who are these people that think that judges are independent and what IZM \PM XZMLQK\WZ[WN \PI\ I\\Q\]LM' 1¼T methodological group. I wanted to talk with you about two factors that are associated with attitudes [\arZ\ courts and judicial independence. One is education and the other is prior experience with the courts.

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

But here's the interesting thing. You would think, given that we have this result for people who are more highly educated, namely that they think the courts are more dependent, it would seem to follow that people who have legal education should be M^MV UWZM [SMX\QKIT# \PI\ \PMa[PW]TL J pessimistic about the courts, but they're not.

IZM JM[QKWTaZWZ\\P[same question in the independent project, L legal education in 2016. They emerged from law faculties with a pretty positive opinion of courts. In the full sample, we have almost half of them saying that judges are independent. And then I distinguish between full-time students and correspondence students.

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

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

You see that almost half of these lawyers from judges are independent. This is an interesting knowledge—you're a university educated but not in law—then you're going to emerge as being skepti then you're likely to be more open to the possibility of judges being independent.

A second factor that I explored is experience with courts. When you start talking to people about anything good to say about them. But when you talk to people who are more engaged in the day-to-day reality of courts, they are able to see some of the challenges that courts are facing, can sort of weigh the pluses and minuses, and maybe distin guish between in this dualistic way between the politicized cases and the mundane cases, the results needs to be tested in other authoritarian countries.

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

But here's what's interesting, they had a good question about what do you think about judges and very negative about it. Here we just see these results played out here in the data. That's a puzzle. Why would they think courts were fair and independent with what some folks who did a very similar study in China found. It's just something to think about a little bit.

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

Logic would suggest that lawyers should be even more skeptical than lay people because they know a lot about the legal system. The results show just the opposite. That's the punchline and as I've tried to indicate as I've gone along here, I think the results make more sense when we factor in this reality of dual[sm. This framework helps us that depend ing on the context of your case, you could have a ently depending on what the context of the case is. I'll leave it there. Thank you very much.

Peter Solomon:
I'm talking about judicial reform and counter reform. Russia's constitution of 1993 promised judicial independence, and within a few years, new laws had established on paper its key ingredients: the courts. Most of these were achieved by the start

Needless to say, none of these proposals were ac
cepted. Throughout the Putin years, judicial reform
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help judges cope with huge and growing loads of
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the hearing of evidence became pervasive, including judicial orders in civil cases and accelerated

bureaucratic incentives through informal practices

in charge of putting people on this list to search

;MKWVL ITUW[\ VW QV^M[\QOI\QWVQM\VLQ[ZWVMK[\QWVPM ![NWZK
took place. There were some criminal casess that were opened in the late 1980s, but were closed in early 1990s because of the expiration of the statute of limitations. There've been a couple of remarkable examples where still living former KGB W{KMZ[ZM\QZML 3/* W{KMZ[_MZM investigators about their crimes. But then the cases were closed, those people died. Investigations and prosecutions ended with nothing. No one has been JZW]OP\ \W R][\QKM NWZ ;W^QMa WZ KZQUM[;WUMdN; the results of those investigations were even made secret. The most notorious example is the Katyn massacre investigation.

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

)VL ÅVITTa VW O]IZIV\MM[WN VWV ZMK]ZZMVKM <PM
Communist Party trial in 1992 at the constitutional court ended with nothing. And like I mentioned, the lustration draft laws introduced by Galina ;\IZW^WQ\W^I _MZM VM^MZ M^MV LQ[K][[ML QV \PM
Parliament. As a result, not only did the structures WN \PM ;W^QM\ [\I\M ZMUIQV \PM [IUM J]\ M^MV \PM
same people kept running the system. Just to give you a couple examples: One is Vyacheslav Lebedev, a judge on the Moscow City Court who used to jail

closely resemble the crimes that Russian activists IZM JMQVO KWV^QK\ML WN \WLIa TQS
paganda, for example. In 1989, he was appointed +PQMN 2]LOM WN \PM ;]XZMUM +W]Z\
Federation, and he continues to be Chief Judge to this day. Y]M[\QWVML Ja

Vladimir Putin himself, as recent research has uncovered, personally participated in the persecu \QWV WN LQ[[QLMV\[;\ 8M\MZ[J]Z
W{KMZ QV UQL ! [0IL \PI\ T][\ZI\QW
adopted in the early 1990s, he could not have had a career in public service in the Russian government as a consequence.

Again, what's important to understand and to learn from this story is that the window of opportunity was extremely narrow. There's consensus among ZM[MIZKPMZ[\PI\ Q\ _I[KWVÅVML \W
\PM 'MTTJíZ L! "JMMã\zM[\PM :

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

Nikolai Bobrinsky:
My good friend and colleague Grigory Vaypan [illegible] take his point further and talk about what lessons for the future can be learned from these mistakes. I'm researching potential transitional justice after Putin and have published a book about it so you [illegible] start with a disclaimer. It is impossible to predict what the political landscape in Russia after Putin is going to look like. This doesn't prevent us from developing an agenda for the traditional government and for pro-democracy parties and candidates in [illegible]

Now, I'm returning to the lessons from the failures [illegible] should act quickly as the experience of the years 1991-1992 shows the window of opportunity for launching transitional justice remains open for just a few months. This means that the most urgent measures must be implemented immediately without waiting not only for the adoption of a new [illegible] sibility and do not blame groups.

[illegible] Russia was the case of the Communist Party of the [illegible] defendants argued about the collective responsi[illegible] Communist Party. As a result, the court could not recognize even the most heinous crimes of the Communist regime, nor name the individuals who were responsible for them. The narrative of [illegible] it leads to the preservation of total impunity, it is necessary to bring to trial at least some key perpetrators of the state related or systemic crimes such as aggression, persecution of political [illegible] corruption and torture.

Thirdly, make perpetrators speak about their crimes. Many former communist party members and KGB [illegible] cedure quickly moved from insincere public com[illegible] Agents of the regime should be encouraged to expose crimes in which they participated or which they witnessed. This can be done through granting them a relief from criminal liability in exchange for testi[illegible]

persecutions of 1991, one of its goals was to ensure
IV IzWZLIJTM TM^MT WN KWUXMV[I\QWV NWZ LIUIOM
QVÆQK\ML WV \PW[M ^QK\QU[<PQ[KTI][M WV IzWZLIJTM

called the Brussels Declaration, in favor of creating an international tribunal for the crime of aggres [QWV ;W \PMZM Q[ITZMILa ^WQKM QV :][[QI NWZ []KP IV initiative to address this crime.

Question:

;M^MZIT aMIZ[IOW 1 _I[\PM ^QK\QU WN I KZQUM QV ;\ Petersburg and the crime was reported to the police and the police came and investigated it. But all of Ua IKY]IQV\IVKM[QV ;\ 8M\MZ[J]ZO \WTL UM VW\ \W expect anything from the investigation…that the criminal would be able to bribe his way out of any prosecution. Do you believe that bribery is an issue QV \PM R]LQKQIT [a[\MU QV :][[QI'

Kathryn Hendley:
The answer is yes,

Peter Solomon:
Yes, but it's not as serious an issue as pressure from chairs of courts and the power vertical. The extent WN KWZZ]X\QWV IVL \PM KW]Z\[^IZQM[[QOVQÅKIV\Ta with region. It's much more common in the south and in the Far East than it is in the north and west. But when it occurs, it tends to be more often in civil cases of high value. There's very little bribery at all in criminal cases, because it simply doesn't work. You can get exposed…if you bribe, and the judge acquits, then there'll almost certainly be an appeal. It'll go to higher levels of the courts, and an inquiry may follow. It's just dangerous for everybody involved. One of the other problems, even in civil cases, is if you want to bribe to get a certain result, you ha, and an inquiry ca 720 73205 TiuE05 Tm /P <<g[(y)25otE004B00 wanp10.2N (xposed…if)-144 (y)27.4 (ou bribe)-

My question will be to Nikolai, because he made quite a strong statement, about justice against groups. And I have question about that, because we know that, for example, the Nurenberg Tribunal had a very clear provisions about such organiza

Kathryn Hendley:
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and doesn't really deal with how people are en
gaged with legal institutions.

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

Ekaterina Mishina:
Thank you so much. When we watch the news,
when we read judicial decisions, we feel that many
:][[QIV R]LOM[IZM P]OMTa]VÅ\ NWZ \PM W{KM 6W\
only because they're poorly educated, not only
JMKI][M \PMa¼ZM IzMK\ML Ja \PMQZ XZM^QW][KIZMMZ
not only because they underwent professional de
formation, but because they lack certain qualities
which are absolutely necessary to make a good
R]LOM ;W Ua Y]M[\QWV Q[_PI\ LW aW] \PQVS IJW]\
the idea of psychological evaluation of candidates
NWZ R]LQKQIT XW[Q\QWV['

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

I think it's a very telling quote because it expos

I think that while it was intended well to learn from the experience of other countries, that kind of thing has really made it very challenging to make sure that procedural rules are properly followed, because almost everything is happening in the shadows in the timeframe that is not related to that [illegible] example of something where you could change [illegible]

Question:

Two short questions. Question number one is do you know if Russian lawyers are engaged in the development of any mechanisms for further repa [illegible] justice for so many victims, both inside Russia and outside. What makes you think that this time there will be something that would favor these changes, given that even with the change of several people in Kremlin, the overall apparatus of oppression [illegible]

Question:

My question relates to the relations, or the prospect of relations of Russia and the European Court of Human Rights. There is no more dodging Russia's infringement of the minimum standards of the European Convention of Human Rights. What do [illegible] independence and whether rulings of the courts will be based on the standards of the European [illegible]

Grigory Vaypan:

[illegible] in addition to what we are already aware of. Why is [illegible] that. My point is just if we don't try, it's not going to work. If we try, it might work. It might not work, but it might work, and that's why we should be working on that.

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

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

[illegible] Rights, it's already been a tough relationship. In the last years of Russia's membership in the Council of Europe, so many important judgements were not implemented beyond the payment of compen [illegible] an interim measure ordering the Russian govern ment to release Alexei Navalny, were not complied with in 2021 while Russia was still a member and was formally obliged to implement those rulings. Certainly Russia's expulsion from the Council of Europe makes things even worse. What's left is the [illegible] domestic human rights situation in Russia. It's not a judicial mechanism, but it's a nam ing-and-shaming mechanism that may have certain diplomatic consequences around the world.

Question:

[illegible]

Question:

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UMV\ IJW]\ \PM TM^MT WN KWZZ]X\QWV QV =SZIQVM \PI\
it's worse than in Russia. It hurts me a bit. Ac
cording to international research, the index of the
XMZKMX\QWV WN KWZZ]X\QWV QV LQzMZMV\ [XPMZM[[PW_[

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

Angela Stent:
?MTKWUM \W \PM ÅVIT XIVMT <WLIa _M _QTT PI^M I very important discussion about the constitutional parameters of the future Russian democratic-transit. We have a very distinguished, excellent panel here to speak.

4M\ UM R][\ QV\ZWL]KM \W aW] W]Z ÅVIT XIVMT)T though I think none of them need an introduction, \PMa LMÅVQ\MTa _QTT OM\ WVM 5QSPIQT 3PWLWZSW^[Sa as you know, was the former head of the Yukos Oil company. He was a political prisoner for 10 years. He's a leading member of the Russian opposition and organizing groups to think 637.8Ec44 (t)0.5 (6of)->129.4 <0014>5 <0003>]TJ ET EMC /P <</Lang (en-US (tiand or)

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

We also need to know that his successors may agree [illegible] and more charismatic younger people are not going [illegible] have to use a policy of carrots and sticks, and we should be using sanctions wisely, including economic sanctions.

[illegible] should be giving them the promise of something positive coming out of certain little steps that they can take. Maybe this would help them to move closer to democratic elections. And I think it should be the majority elections, something that happened during Gorbachev. I remember the 1990's, I remember the movement, Democratic Russia, and we won the election. It was a peaceful transfer of power in 1990. We had a peaceful democratic [illegible] perhaps a step-by-step process. And then later on, if we were to have the majority elections, then we have to have political parties.

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

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

[illegible] choices that were made when the 1993 constitution [illegible] as Ekaterina Mishina mentioned this morning. There's a certain degree of path dependence in which institutions evolve at any given time. It's important to think therefore that how the constitution changes or is rewritten is also going to depend on who is going to be drafting it and what the political conditions are at the time. For example, the fact that we are all very concerned about the fact that the presidency or the executive branches may be much more powerful than the other branches will [illegible] tution is drafted.

[illegible] of the moment on the decisions that are made. I would also say that it's important to remember that the people who are interested in undermining documents or regulations or constitutions are usually the ones that are not in the room when the negotiations are taking place. I remember when I was studying pharmaceutical corruption and markets in Russia in the 1990s(her)105C004 EMC /v79 >>(neg6 (xamp

[illegible]

[illegible]

that want not only for Russia not to exist, but for
Russia to be defeated and humiliated and parti
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William Pomeranz:

William Pomeranz:

We have experience with this and it's not a really good experience. That's why I'm not optimistic \P I\ \P M =; _P M V _M K I V¼\ Å V L K W V [M V [ ] [W V I Q L \W =S Z I Q V M I V L W V I P W [\ W N W \ P M Z Q [ ] M [W V] L be willing to create a new Marshall Plan for Russia or would want to engage in this. I don't [M M \P I\ I[IV IK\]IT XW[[QJQT \W _QTT -]ZWXM WV a IN\MZ _M LMIT _Q\P =SZ _M¼ZM OWQVO \W JM LMITQVK TWVO TWVO \QUM ;W 1 LWV¼\ \PQVS \PI\ \PMZM Q[I =; to take the lead.

<PM Y]M[\QWV Q[_QTT -]ZWXM WV a And I don't think Europe is in the mood to do that either. They have decided that they're not going to import oil and gas. They have decided that they're not a part of the Council of Europe, they're not a part of the European Court of Human Rights. The list goes on. I don't think there's an appetite for Europe to immediately forgive Russia or engage with Russia. Obviously, there are reasons to do so in terms of nuclear weapons and national security, et cetera. But I think Europe will be very circumspect IN\MZ \PQ[KWVÆQK\ IVL \PMa _QTT VW\ OQ^M :][[QI \PM same kind of free pass that largely happened after \PM MVL WN \PM ;W^QM\ =VQWV

Alexandra Vacroux:

1 IOZMM _Q\P ?QTT 1 LWV¼\ \PQVS \PI\ \PMZM Q[I =; government policy solution that's going to come in and sort of make things better and extend American QKIV QVÆ]MVKM QV\W :][[QI 1 LW \PQVS \PI\ \PMZM Q[the possibility to engage more soft power methods, which I think in the end are more productive because they don't undermine those Russians that are cooperating with American universities, think tanks, negotiators, policies, experts, and things like that. I would also not underestimate the extent to which business opportunities could play a critical role in reestablishing ties with a new Russia. ;W \PMZM¼[IT_Ia[JMMV IV QV\MZM[\ QV QV^M[\QVO in Russia. Right now it's impossible and very unattractive, but people will come back and once people come back, investors come back. They also _IV\ \W PI^M \PM SQVL[WN W{KQIT ZMTI\QWV[PQX[\PI\ make investment more protected, the protection of property rights, and things like that. Those might be the best advocates for real change, rather than heavy-handed government policies or some sort of Marshall Plan, which I also agree is completely unrealistic.

One other thing that you mentioned is that Russia may [ZQVMZIJTa ZMVMO\MI\M _M\P\ MVMZOa _Q\P \PM [Q\I\QWV _Q\P TWVO TWVO \QUM ;W 1 LWV¼\ \PQVS \PI\ \PMZM Q[I [QOVQ=QI\ZQ[ZWVO =SZ _M¼ZM OWQVO \W JM LMITQVK WV \PM [Q\I\QWV _Q\P is stabilized. I think that that means the situation in Russia is also improved. There is a great willingness to go back to talking to Russia, because China is still seen as a much more important threat. I think that will be a dynamic on Russia W^MZ \PM TWVO \MZU UIaJM QV \PM Å^M when the regime is changing.

Question:

But in 2021, would you have said that the bright
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William Pomeranz:
I would say it was further away. It was further away because Putin had made his plan known, and he was not going to implement positive liberal legal reforms. He just wasn't going to do it. Maybe others disagree.

Vasily Gatov:
I would probably give another argument to that. I also don't have a year, technically a male Russian person born in 1952 is likely to die in the next four
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cine is much better. He doesn't drink and so on.

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

Alexandra Vacroux:
The fundamental question is: did the war hasten
\PM LMKTQVM WN \PM ZMOQUM' 1[\PM MVL KTW[MZ VW_
\PIV Q\ _I[JMNWZM \PM _IZ' .WZ UM TWWSQVO I\ \PM
deep silence while Prigozhin was marching on
5W[KW_ IVL \PM MTQ\M _MZM \ZaQVO \W ÅO]ZM W]\ PW_
this was going to end, and their unwillingness to come forward and support Putin, suggests that the fragility of the system is more extensive than we had thought before. It might have been fragile before, but it wasn't under as much pressure. Now not only is it more fragile, but we know that it's fragile. That's where we begin to see that the end is possible.

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

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vince everybody that there would be no war. And I remembered that was true even the day before,

Mikhail Khodorkovsky:
When we say constitution, what kind of constitu
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remarks about when Putin's regime will go away, but it's very important how it will go away. Will it go away by itself, or will it be forced to go away.

)N\MZ \PI\" \PM LQ[K][[QWV IJW]\ \PM LM 6IbQÅKI\QWV of Germany showed that took more than 20 years after occupation of Germany. That is why the crit ical question for any constitutional design critically depends on the political landscape that would exist at that particular time. The question is whether you can see free democratic, law abiding, federal, non-aggressive Russia even absent the military defeat of Putin's regime.

Mikhail Khodorkovsky:
Firstly, regarding how the regime could leave, I've already touched on this, but I would also suggest reading my book for a comprehensive exploration. I've extensively covered the various possibilities, including some rather challenging scenarios. Do I JMTQM^M QV LMUWKZI\QK NZMM NMLMZI\Q^M :][[QI'

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

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

Now the attempt to make Russia democratically]VQÅML W^MZVQOP\ 1 JMTQM^M KW]TL WVTa TMIL \W I LQK\I\WZ[PQX /Q^MV \PM ^I[\ LQzMZMVKM[IUWVO TWKIT communities, bringing them to the same den omi nator could only be accomplished by federal dem ocratic system and bureaucracy. However, as you may know our federal bureaucracy tends to estab lish a rigid, uncompromising vertical power struc ture, with a leader at the helm who always needs an M`\MZVIT MVMUa ;W KWV[QLMZQVO \PM LQ^MZ[M VI\]ZM WN \PM [Q\]I\QWV 1 JMTQM^M \]â ”ñ \ànat0 0 00560014000300d4C0051005E>19.1 27p83

Vasily Gatov:
First and foremost, Russia should stop the war.
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the population is concerned, we've seen that in
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Communist Party in numbers approaching 99.9
percent, in just in three years, they changed. After
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;W XMWXTM¼[WXQVQWV[KPIVOM IVL XZWXIOIVLI Q[
VW\ \PM WVTa \PQVO \PI\ IzMK\ \PMU

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that hypnotizes people. People choose conformity
because they understand that they are alone. Even
if they oppose what is happening. I don't know
what messages will work. It needs constant eheck
ing, and it needs constant change. Everybody tries
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\PW[M M`Q[\QVO QV =SZIQVM IVL WV \W \PW[M M`Q[\QVO QV
other countries that try to message Russians. One
day it could come to fruition.

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

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

Irina Alebastrova (Zoom)

1ZQVI)TMJI[\Z ^I PWTL[I ,WK\WZ of Law degree with a thesis on social solidarity in constitutional law. An alumna of Lomonosov

Kathryn Hendley

Kathryn Hendley is a professor at the University of Wisconsin-Madison, specializing in law and politics with a focus on legal and economic reforms in the former Soviet Union and post-Soviet Russia. Hendley's research includes an in-depth analysis of the Russian legal profession as well as business conduct and law's role in the everyday lives of Russians, backed by prominent institutions like the World Bank and the National Center for Russia, East Europe, and Central Asia, Hendley is a consultant on Russian legal reforms for major international agencies.

Mikhail Khodorkovsky

Mikhail Khodorkovsky, a former prominent businessman, is a transformative figure in Russia's philanthropic and political landscape. Founder of the Open Russia Foundation, he ardently champions civil society strengthening and democratic governance in Russia. Arrested in 2003 after critiquing government corruption, Khodorkovsky, an Amnesty-recognized prisoner of conscience, was released in 2013. He is at the forefront of advocating for a parliamentary republic model in Russia, envisioning a state committed to human rights, free elections, and rule of law. Through Open Russia and the Khodorkovsky Foundation, he continues to campaign for democratic reforms.

Pavel Khodorkovskiy

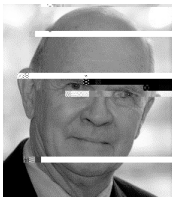
Pavel Khodorkovskiy is the founder of the Khodorkovsky Foundation, an organization focused on advancing parliamentary democracy and federalism through engaging policy experts, academics, and civil society leaders. He is also the president of the Institute of Modern Russia, an organization that seeks to promote the development of civil society development in Russia through reinforcing the rule of law and strengthening relationships between Russia and other countries. Pavel serves as the Executive Director of Open Russia for Change, a non-profit organization dedicated to supporting tech sectors to assist individuals in need and advocate for peace and democracy. Before joining Open Russia for Change, Pavel was the Chief Executive Officer of Enertiv, a company that provides operations and energy management solutions for buildings.

Stanislav Kucher

Stanislav Kucher is a political analyst, lecturer, media manager and motivational speaker with 25 years experience of work for Russian and American print and electronic media, including Forbes Russia. Kucher serves as Chief Content Officer for Patreon, a membership platform, writes as special contributor for The Messenger and CNN Opinion and hosts a

she is known for her participation in landmark legal cases and public law disputes, fostering a robust]VLMZ[\IVLQVO IVL XZIK\QKM WN TI_ QV :][[QI ;PM K]ZZMV\Ta [MZ^M[I[I KW ZMK\WZ WN .ZMM =VQ^MZ[Q\a (*Z...=\ôQ^MZ[Q\ô\M

Peter Maggs



Peter B. Maggs, a Harvard alumnus and Research Professor I\ \PM =VQ^MZ[Q\a WN 1TTQVWQ[College of Law, is a renowned expert in intellectual property and comparative law with a focus on the Russian legal system. He has lectured globally, authored pivotal books, and contributed extensively to intellectual property law discourse. 0Q[_WZS[XZW^QLM [QOVQÅKIV\ QV[QOP\ QV\W \PM TMOIT TIVL[KIXM[WN ^IZQW][NWZUMZ ;W^QM\ [\I\M[5IOO[Q[a member of the District of Columbia bar and has been engaged in around 250 court and arbitration cases as an expert consultant or witness.

Lauren Mccarthy

Lauren McCarthy is an Associate 8ZWNM[[WZ WN 4MOIT ;\]LQM[IVL 8WTQ\QKIT ;KQMVKM I\ \PM =VQ^MZ[Q\a WN 5I[[IKP][M\\[ )UPMZ[\ ;PM was a recipient of the Fulbright fellowship, the Kennan Institute and the Aleksanteri Institute. Her research focuses on the relationship between law and society in Russia, police and law enforcement institutions, citizen oversight, repressive and authoritarian law, IVL \PM Q[[]M WN P]UIV \ZI{KSQVO 5K+IZ\Pa¼[book, <ZI{KSQVO 2][\QKM" 0W_ :][[QIV 8WTQKM =[M 6M_ Laws, from Crime to Court (2015) explores how Russian law enforcement agencies have implement

Stanislav Stanskikh

constitutional scholar in exile, a Diplomacy, Harvard's Davis Center Associate and a CEO of the New England Institute for Country Conditions Expertise, LLC. served as the Executive Director of the Russian Foundation for Constitutional Reforms and as the founding Deputy Editor-In-Chief of the Russian Constitutional Court's academic law review, among collection of documents on the Russian constitutional process in 1990-1993. Author of the 2020 petition against amendments to Russia's Constitution with over 250,000 signatories. In 2023, Democratic Forces and the Brussels Declaration of Russian lawyers, legal scholars and human rights defenders, endorsing the creation of an international tribunal to investigate the crime of aggres

Angela Stent

the Center for Eurasian, Russian Professor Emerita of Govern of Peace. From 2004-2006 she served as National National Intelligence Council. From 1999 to 2001,

ty-First Century for which she won the American Academy of Diplomacy's Douglas Dillon prize for the best book on the practice of American Diplomacy. Her latest book is Putin's World: Russia Against the West and With the Rest for which she

Internationale Politik

Alexandra Vacroux

Alexandra Vacroux is Executive Director of the Davis Center for ly work addresses Russian and Eurasian policy issues, including for the Davis Center's MA program in regional

program. While living in Moscow (1992-2004), Vacroux was a consultant for the Russian Privatization Agency, partner and head of sales at the active While completing her dissertation on corruption in


Wilson
Center