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Institutionalizing Personalism: The Russian Presidency after Constitutional Changes

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Abstract

The 2020 constitutional changes considerably increase presidential powers while sending mixed signals about presidential transition. The main driver of the amendments were term limits. The “zeroing” of Putin’s presidential terms enhances certainty for himself by fostering uncertainty for others. But there is more to the amendments: Numerous changes are not new, they simply align the constitutional text with subconstitutional powers the presidency had been accumulating. The embedding of term limit circumvention in a comprehensive constitutional overhaul is a risk-hedging strategy to avert resistance by weakening the signal about Putin’s intentions. Constitutional changes are therefore an instrument of elite coordination. The amendments also increase presidential flexibility. This expedited regime personalization is detrimental to governance and will make repression more prevalent. But it also creates more risks for Putin. Regardless of how presidential succession will play out, Putin’s legacy will be a highly personalized authoritarian regime with a constitutionally unconstrained presidency.

Keywords

Russia – constitutional reform – semi-presidentialism – presidency – term limits – executive politics – State Council – authoritarianism

The 2020 constitutional overhaul has expanded presidential powers. If Putin had intended to step down, he would have sought to achieve the exact

opposite and redistributed powers away from the presidency. The main purpose of constitutional amendments became only obvious on 10 March, about two months after the reform was initiated on 15 January. By “zeroing” his current presidential terms, Putin now has the opportunity to run again for president in 2024.

Avoidance of term limits is a common phenomenon in polities with directly elected presidents. However, the Russian case is special: The norm of term limits and alternation of power has been eroding since 2008 when Dmitrii Medvedev was handpicked as a successor. Medvedev immediately extended presidential terms from four to six years. Moreover, term limit circumvention was embedded in the comprehensive 2020 constitutional overhaul which includes articles ranging from social rights, national sovereignty, conservative ideology to executive-legislative and federal relations. This begs the question: Why such a long, winding and complicated process? Why not simply amend the one article on term limits? Taking into account the complexity of the changes, I focus on the major amendments with regard to the president, the relations of the president to the assembly, the federal Government (cabinet of ministers), and the State Council.

I argue that these amendments should not only be interpreted in relation to Putin’s *future*. They are as much about the *past* as well as the *present*. *First*, not all of the amendments are new. Many of them align the constitutional text with powers that the presidency had been accumulating on the subconstitutional level in recent decades. The changes are therefore instrumental in reducing discrepancies between various levels of Russia’s legal framework. *Second*, embedding the avoidance of term limits in a comprehensive overhaul is a conscious risk-hedging strategy that attests to the constraint exerted by term limits. By weakening the signal of what constitutional changes are about, Putin sowed confusion and reduced the risk of counter-mobilization by elite actors and the broader population. Even though the changes were implemented in a preemptive top-down manner, Putin sought to draw in many loyal interest groups and allowed for limited bottom-up lobbying for certain provisions. Constitutional changes were therefore an instrument of elite coordination: By soliciting the support of numerous actors, Putin made them complicit in the potential prolongation of his rule. *Third*, numerous amendments increase presidential discretion and might be used in the future to personalize politics even further. By interlocking tasks of other branches of power while leaving the presidency unchecked, Putin enhances certainty for himself by fostering uncertainty for others.

1 **Russia's Paradox of Governance: Strong Presidency— Weak Capacity**

The Russian presidency defies traditional classifications of systems of government. While most comparative scholars tend to classify the system as semi-presidential,¹ the 1993 constitution defines a presidency that is not compatible with the democratic system of semi-presidentialism. The notion of “superpresidentialism”² reflects these excessive constitutional powers of the president by codifying “separation of powers without checks and balances”.³ This “constitutionalized presidential supremacy”⁴ serves as the legal basis for authoritarianism. Cross-national indices confirm that already in 1993, Russia boasted one of the most powerful presidencies in terms of formal constitutional provisions.⁵

Compared to other post-Soviet states, presidential powers have not changed on the constitutional level up until 2008. This is puzzling: In the same period, Russia had transitioned from a more pluralist, albeit defective democracy to an electoral authoritarian regime. These circumstances propelled the argument that it was mainly informal power networks⁶ which helped Putin to buttress his power while formal institutions have been largely irrelevant.

On closer inspection, however, the Russian presidency has continuously accumulated formal powers by means of federal laws, presidential decrees and Constitutional Court rulings on the subconstitutional level.⁷ This is important:

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- 1 Petra Schleiter and Edward Morgan-Jones, “Russia: The Benefits and Perils of Presidential Leadership,” in *Semi-Presidentialism in Central and Eastern Europe*, ed. Robert Elgie and Sophia Moestrup (Manchester: Manchester University Press, 2008), 159–79.
 - 2 Stephen Holmes, “Superpresidentialism and Its Problems,” *East European Constitutional Review* 3 (1994): 123–26.
 - 3 William Partlett, “Separation of Powers without Checks and Balances: The Failure of Semi-Presidentialism and the Making of the Russian Constitutional System, 1991–1993,” in *The Legal Dimension in Cold-War Interactions: Some Notes from the Field*, ed. Tatiana Borisova and William Simons (Leiden; Boston: Martinus Nijhoff Publishers, 2012), 105–40.
 - 4 Petra Stykow, “The Devil in the Details: Constitutional Regime Types in Post-Soviet Eurasia,” *Post-Soviet Affairs* 35, no. 2 (2019): 122–39.
 - 5 Timothy Frye, “Presidents, Parliaments, and Democracy: Insights from the Post-Communist World,” in *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*, ed. Andrew Reynolds, Oxford Studies in Democratization (Oxford, UK; New York: Oxford University Press, 2002), 81–103.
 - 6 Alena V. Ledeneva, *Can Russia Modernise? Sistema, Power Networks and Informal Governance* (Cambridge; New York: Cambridge University Press, 2013).
 - 7 Fabian Burkhardt, “The Institutionalization of Relative Advantage: Formal Institutions, Subconstitutional Presidential Powers, and the Rise of Authoritarian Politics in Russia, 1994–2012,” *Post-Soviet Affairs* 33, no. 6 (2017): 472–95.

First, the growing asymmetry of formal powers in favor of the presidency is indicative of broader regime dynamics of rising authoritarianism. Second, despite these extensive subconstitutional changes, the Russian leadership had shown restraint with regard to constitutional amendments. The discrepancy between these two levels of the legal hierarchy had been widening. Hence, one of the preconditions for the constitution's overhaul in 2020 was the necessity to achieve convergence between presidential powers amassed on the subconstitutional level and the constitutional text.

Overall, Henry Hale's concept of "patronal presidentialism" is most perceptive to the dualism of formal constitutional rules in structuring informal pyramids of rent-distributing elite networks with the president at the top. Term limits are a particularly important formal institution as a focal point for elite coordination⁸ towards the end of the last presidential term. Therefore, even when constitutional provisions do not constrain authoritarian rulers, sweeping changes are important signals where formal and informal power is located and what trajectory the regime takes.

Lastly, while the tremendous accumulation of presidential power has enabled personalist authoritarian rule, it has also led to a paradox of governance:⁹ While the presidency has accumulated more powers, state capacity has been weakened. Even the implementation of the President's own orders, such as national socioeconomic goals, remains patchy as long as they do not relate to core interests of Putin and the ruling elite itself. Despite formidable presidential powers, Russia remains stuck in a vicious circle of "bad governance".¹⁰

2 The Presidency after Constitutional Changes

2.1 *Mixed Signals as Risk-Hedging—Presidential Term Limits and Immunity*

The constitutional changes regarding the eligibility for the presidency as well as the period after incumbency send mixed signals. While restricting the mandate of future presidents to two terms in Art. 81(3) (deleting the

8 Henry E. Hale, "Formal Constitutions in Informal Politics: Institutions and Democratization in Post-Soviet Eurasia," *World Politics* 63, no. 4 (2011): 581–617.

9 Fabian Burkhardt, "Institutionalising Authoritarian Presidencies: Polymorphous Power and Russia's Presidential Administration," *Europe-Asia Studies*, <https://doi.org/10.1080/09668136.2020.1749566>.

10 Vladimir Gel'man, "Constitution, Authoritarianism, and Bad Governance: The Case of Russia," *Russian Politics* 6, no. 1 (2021): 71–90.

addition “consecutive” that formally allowed Putin to return to the presidency in 2012), but at the same time including an exception for former presidents (read Dmitrii Medvedev) and the incumbent Vladimir Putin in Art. 81(3), the amendment created the opportunity for Vladimir Putin to run again in 2024 by “zeroing” his time in presidential office. On the other hand, the constitutional amendments introduce enhanced immunity for former presidents and grant them the opportunity to become senator for life in the Federation Council, the parliament’s upper chamber. This appears to suggest that Putin might also plan to retire soon.

Nonetheless, the “zeroing amendment” clearly demonstrates that the constitutional changes are a case of *continuismo*,¹¹ the avoidance of term limits in a personalist authoritarian regime without a succession mechanism. As around one quarter¹² of directly elected presidents have attempted to overstay their terms, the Russian case fits a broader pattern of rulers contravening constitutional rules. However, the Russian case is special: Why was the term limit avoidance initiated more than four years before the end of Putin’s second term in January 2024? Additionally, why was it not achieved in a parsimonious way by simply abolishing Article 81(3), but instead was accompanied by a constitutional overhaul that encompassed 206 amendments? And lastly, what does the avoidance of term limits tell us about the role of formal rules such as constitutions in Russia? If constitutional rules can be overturned at the whim of an authoritarian ruler, it would be a useless exercise to examine constitutional changes, particularly with regard to presidential succession.

Putin’s view on constitutional amendments has changed. While up until 2008, he categorically denied intentions to amend the constitution, recently he appears to have moved closer to the view of Constitutional Court chairman Valerii Zorkin of a “living constitution”. Since Duma speaker Viacheslav Volodin demanded more prerogatives for the State Duma on 06 April 2019, the public debate about constitutional amendments had been opened.¹³

Three general models on term limit circumvention shed some light on why Putin chose to circumvent term limits. In an actor-centered approach, presidents overstay in contexts where rent-seeking is prevalent and where a

11 Alexander Baturo, “Continuismo in Comparison,” in *The Politics of Presidential Term Limits*, ed. Alexander Baturo and Robert Elgie (Oxford, New York: Oxford University Press, 2019), 75–100.

12 Alexander Baturo, *Democracy, Dictatorship, and Term Limits* (Ann Arbor, MI: University of Michigan Press, 2014), 1.

13 Gosudarstvennaia Duma, “O Khostelakh, Goszakupkakh i Izmeneniyakh v Konstitutsiiu: Viacheslav Volodin Dal Eksklyuzivnoe Interv’iu Saitu GD,” duma.gov.ru, April 6, 2019, <http://duma.gov.ru/news/44450/>.

strategic decision is made that spoils can only be kept while in office as immunity for person and property is not guaranteed.¹⁴ In another approach that looks at power asymmetries and electoral uncertainty, term limits are more likely to be relaxed when electoral competition is low or declining.¹⁵ Lastly, in Hale's prominent framework of regime cycles under patronal presidentialism, presidents in their second terms with sinking approval ratings are more likely to attempt the circumvention of term limits in order to prevent becoming a "lame duck" by elite defections from the main presidential patronal network to those of potential competitors.

Each of these explanatory frameworks captures important facets of the 2020 "zeroing" of term limits: Putin, his family and closest business tycoons have amassed enormous wealth. As the protection of property rights is linked to political power, the "collective Putin" is necessarily concerned about Putin's post-presidency period. Moreover, Putin has managed to manufacture landslide victories at the 2012 presidential and 2016 Duma elections that, despite evidence of election falsification, fulfilled its purpose to signal to the elite and the broader population, that Putin was going to remain the uncontested patron at the helm of the presidency. On the other hand, with the "rally round the flag"-effect, following the annexation of Crimea subsiding, approval ratings of Putin have plummeted after the unpopular pension reform in 2018 and reached low points of around 60 percent.

Concerns about post-exit immunity, nominally high electoral support and a decreasing approval rating therefore form the background of Putin's decision to pursue *continuoismo*. The question remains why Putin chose to embark on a comprehensive constitutional overhaul instead of amending just the one article on term limits. The reason lies in the informational effects of term limits.¹⁶ These constitutional provisions are plain and simple, a violation can be detected easily by the elite and broader population, and amendments or abolition clearly signal intentions of the ruler.

The signaling property of term limits entails trade-offs that Putin needed to weigh. Retaining the 2024 term limit would create a race among would-be

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- 14 Alexander Baturo, "The Stakes of Losing Office, Term Limits and Democracy," *British Journal of Political Science* 40, no. 3 (2010): 635–62.
 - 15 Kristin McKie, "Presidential Term Limit Contravention: Abolish, Extend, Fail, or Respect?," *Comparative Political Studies* 52, no. 10 (2019): 1500–1534.
 - 16 Alexander Baturo and Robert Elgie, "Presidential Term Limits," in *The Politics of Presidential Term Limits*, ed. Alexander Baturo and Robert Elgie (Oxford, New York: Oxford University Press, 2019), 1–16.

successors¹⁷ and might eventually endanger Putin and his entourage. Yet, abolishing term limits had risks, too: A 2018 survey shows that respondents agreeing a person should not be president more than two terms are more likely to take part in peaceful protests.¹⁸ An independent survey¹⁹ conducted on 20 March 2020 just ten days after the “zeroing amendment” revealed that while 46 percent of respondents would like to see Putin as president after 2024, a staggering 40 percent wanted him to step down from the presidency. The Putin majority was gone. Embedding the avoidance of term limits in an opaque constitutional reform was instrumental in weakening the signal. Hence, the risk of counter-mobilization by *continuoismo* opponents could be mitigated.

Overall, the drawn-out process of Putin undermining term limits appears to demonstrate that the constitutional provision constrains more than might be assumed in a personalist authoritarian regime. Rather than abolishing term limits at once, Putin has been gradually chipping away at the provision: In 2008, Putin nominated Dmitrii Medvedev as a successor who initiated a constitutional amendment that extended presidential terms from four to six years. Putin’s return to the presidency in 2012 contradicted if not the letter, but the spirit of the 1993 constitution. From a different angle, Putin’s return in 2012 implies that it was not enough to retain informal control within the “tandem” as Prime Minister because most formal and informal power was tied to the presidency. A second presidential term of Medvedev would have necessarily exacerbated the splits with regard to personnel and policy that had become all too visible already by 2011.²⁰

The amendment process of the 2020 constitutional changes also demonstrates that term limits do retain a constraining effect: First, the “zeroing amendment” was not included in the first amendment draft bill from 20 January. Only in mid-February, public statements by Kremlin insiders like Vladislav Surkov²¹ implied that such comprehensive constitutional changes entailed the “zeroing” of Putin’s current presidential terms. In this logic, the Constitutional Court

17 RIA Novosti, “Putin Prizval Rabotat’, a Ne Iskat’ Preemnikov,” *ria.ru*, June 21, 2020, <https://ria.ru/20200621/1573259498.html>.

18 Paul Chaisty and Stephen Whitefield, “The Political Implications of Popular Support for Presidential Term Limits in Russia,” *Post-Soviet Affairs* 35, no. 4 (2019): 323–37.

19 Levada-Tsentr, “Obnulenie Prezidentskikh Srokov,” *Levada.ru*, March 27, 2020, <https://www.levada.ru/2020/03/27/obnulenie-prezidentskih-srokov/>.

20 Fabian Burkhardt, “The Institutionalization of Personalism? The Presidency and the President after Putin’s Constitutional Overhaul,” *Russian Analytical Digest* 250 (2020): 5–10.

21 Aktual’nye Kommentarii, “Surkov: Mne Interesno Deistvovat’ Protiv Real’nosti,” *actualcomment.ru*, February 26, 2020, <http://actualcomment.ru/surkov-mne-interesno-deystvovat-protiv-realnosti-2002260855.html>.

would find in its review of the amendment bill that the reform essentially created a new presidency necessitating the zeroing of Putin's presidential terms. Putin's problem was that his intentions were shrouded in subterfuge and secrecy to such a degree that the signal was broken. Speculations about Putin stepping down from the presidency and heading the State Council gained traction in January and February. The amendments in February that strengthened presidential power, as well as Tereshkova's "zeroing amendment" in March rectified the signal: Putin attempted to increase presidential powers for himself, and it was far too early for the elite and public to speculate about the "Putin transit" and potential successors.

Nonetheless, Putin did not abolish term limits altogether, but reinforced them for a future president. This is a tribute to the associated risks of a conspicuous defiance of the norm of alternation of power that might engender resistance. The main signal of constitutional changes was that Putin created a multitude of opportunities for himself while formally retaining the option to heed term limits. But even if the reform was mainly about the prolongation of Putin's personal power at the helm of the presidency, Russia's political class and the population nominally approved of it and are therefore complicit. Paradoxically, the constitutional term limit provision therefore exerted a constraint that forced Putin to employ a risk-hedging strategy of embedding the "zeroing" of his terms into a comprehensive constitutional overhaul.

The two amendments on the future of former presidents should not be understood as an alternative strategy to *continuoismo*, but as an essential part of risk-hedging to weaken the strong signal that the zeroing of presidential terms sends to those discontent with personalism. For Putin, including provisions on lifetime senatorship in the Federation Council and enhanced immunity is a win-win-strategy: If circumstances force him to step down from the presidency in 2024, Putin enjoys enhanced security. More importantly, this potential alternative future immediately reduces the incentives for counter-elites and oppositional citizens to mobilize against Putin remaining in power after 2024 by enciphering the signal about Putin's intentions.

These two amendments also enhance the asymmetry among branches of power in favor of the presidency. The amended article 95(2)(b) on the prerogative of ex-presidents to become senators for life is accompanied by another article 95(2)(v) that grants the president the right to appoint 30 senators to the Federation Council, including seven lifetime senators. The first part builds upon constitutional changes from 21 July 2014 and increases the previous presidential quota of 10 percent of the Federation Council to 30 senators. Since 2014, Putin has not made use of the prerogative to appoint senators, but this quota further increases the potential for presidential patronage, for example

by offering sinecures or parliamentary immunity to close allies. These amendments offer the president discretion to further deinstitutionalize relations between branches by undermining the autonomy of the Federation Council.

Per a 2001 law, former presidents already enjoy immunity. Constitutional changes to Art. 93 are notable for two reasons: The stripping of former presidents of their immunity is equalized to the impeachment process of incumbent presidents. After changes, a criminal or administrative prosecution of a former president is only possible after supermajorities in the State Duma and the Federation Council as well as opinions from the Supreme Court and the Constitutional Court. The federal law on presidential immunity from 22 December 2020 goes even further: The immunity for ex-presidents is now for life as it extends beyond the incumbency. It also applies to criminal and administrative offenses committed in periods before and after presidential terms.

2.2 *Interlocking Branches of Power to Boost Presidential Supremacy: The President and the Federal Assembly*

In the Address to the Federal Assembly on 15 January 2020, Putin declared that one of the aims of constitutional changes was to “enhance the role and significance of the country’s parliament”. As Putin announced that the State Duma would not only continue to approve the Prime Minister, but also deputy PMs and ministers, some early analyses assumed that while in the short-term, the effect of these changes for the balance of power between the legislature and executive would be marginal, any “dilution of hyper-presidentialism” and a stronger parliament could have “positive effects” and would be a good thing with unintended benefits in the long run.²²

On closer inspection, however, Putin shores up presidential supremacy while introducing mutual checks between the executive (*excluding* the presidency) and the legislature as well as between the two chambers of the assembly. Intraexecutive²³ and intralegislative constraints help mitigate negative consequences associated with increasing regime personalization while leaving the presidency essentially unconstrained.

First, the “dual executive” structure of the cabinet of ministers where five ministries are subordinate to the president and the remaining ministries to the

22 Mark Galeotti, “Two Cheers, Maybe, for Putin’s ‘January Revolution?’,” *Raam op Rusland*, January 17, 2020, <https://www.raamoprusland.nl/dossiers/kremlin/1506-two-cheers-maybe-for-putin-s-january-revolution>.

23 Ben Noble, “Authoritarian Amendments: Legislative Institutions as Intraexecutive Constraints in Post-Soviet Russia,” *Comparative Political Studies* 53, no. 9 (2020): 1417–54.

PM is replicated in the assembly. This “dual legislature” creates checks and balances between the upper and lower chambers with complementary responsibilities in the government formation process. Second, some minor additional competences in cabinet formation and oversight should not be interpreted as an empowerment of the legislature. Quite to the contrary, this (small) shift of responsibility creates opportunities for the President and the federal executive to shift blame to the Duma for potential blunders in policy making when the economic situation is worsening by the year.

Irrespective of the weak constitutional powers of the legislature and the simple or even constitutional majority of the pro-presidential party United Russia since 2003, a number of instruments of parliamentary oversight exist such as parliamentary interpellations (*parlamentskie zaprosy*) or governmental hour (*pravitel'stvennyy chas*). With the first substantial constitutional changes in 2008, an annual report of the Government before the State Duma was introduced. While it is reasonable to assume that in an electoral authoritarian regime, the parliament is not able to hold the executive accountable, some oversight mechanisms do retain functions such as legitimation, or clientelism and rent-seeking for interest groups or politicians.²⁴ On 06 March 2019, for example, the Duma chairman Viacheslav Volodin grilled Minister of Economy Maksim Oreshkin and requested a second oral report because Oreshkin was unprepared to answer questions on the implementation of the National Projects during Government Hour. Forms of such loyal activism are even encouraged to help the President overcome information asymmetry, a characteristic malfunction of highly personalized regimes that reward loyalty and flattery.

Constitutional changes also introduce a new Art. 103(1) on parliamentary control that enables both chambers of the legislature to direct questions to heads of state bodies and bodies of local self-administration. Furthermore, while according to the former Art. 101, the Audit Chamber was entirely an organ of parliamentary control of the State Duma, the amended constitution creates two patrons for the financial oversight body: The President presents the chairperson and half of the auditors to the Federation Council while the deputy chairperson and the other half of the auditors are presented to the State Duma for approval. Moreover, even though President Putin has had to veto legislation only on extremely rare occasion, the presidency has received a “super veto”: the Constitutional Court can be called upon to review bills even after they have been voted upon by the State Duma or the Federation Council.

24 Sarah Whitmore, “Parliamentary Oversight in Putin’s Neo-Patrimonial State. Watchdogs or Show-Dogs?,” *Europe-Asia Studies* 62, no. 6 (2010): 999–1025.

As a counterweight, the Federation Council can now dismiss Constitutional Court judges upon the initiative of the President for “behavior that is not compatible with judiciary activity”. Before, Constitutional Court judges were virtually unassailable.²⁵ In sum, the amendments introduce mutual checks for all branches except the presidency.

2.3 *The President as Chief Executive*

The constitutional changes with regard to the relationship between the President and the Government (Cabinet of Ministers)—and the executive branch more broadly—are significant: they resolve a fundamental contradiction of the 1993 Constitution relating to the branches of power. While Art. 10 stipulates the separation of state power in the legislature, executive and judiciary, Art. 11 states that the President, the Federal Assembly, the Government as well as the Court exercise state power. The former Art. 110 states that executive power is exercised by the Government. As the President is the guarantor of the Constitution and ensures the coordinated functioning and interaction of all bodies of state power according to Art. 80(2), a widely accepted opinion among Russian scholars therefore has been that the presidency does not belong to any of the three branches in Art. 10, in particular the executive, but is located *above* all other branches of power as an arbiter.²⁶

The amended Art. 111 clearly places the presidency on top of the executive branch: Executive power is exercised by the Government “under the general leadership of the President of the Russian Federation”. On the one hand, this changes little in the overall institutional framework and in political practice for two reasons. First, even in the 1993 constitution, the President already had a number of executive prerogatives. The president could preside over cabinet meetings (very common), could cancel decisions and orders of the Government (practiced in the 1990s, but obsolete since the 2000s), and generally has acted on the basis of presidential normative decrees²⁷ (very common). Second, in political practice, the presidency already maintained *de facto* leadership over the government which was buttressed by gradual subconstitutional changes by federal (constitutional) laws such as the 1997 law “On the Government”, presidential decrees and decisions of the Constitutional Court. The inclusion of the provision on the general leadership of the presidency of the executive

25 Ivan Grigoriev, “What Changes for the Constitutional Court with the New Russian Constitution?” *Russian Politics* 6, no. 1 (2021): 27–49.

26 Oleg Kutafin and Ekaterina Kozlova, *Konstitutsionnoe Pravo Rossii* (Moscow: Iurist, 2004), 132.

27 Thomas Remington, *Presidential Decrees in Russia: A Comparative Perspective* (New York: Emory University, 2014).

is therefore not a new presidential power, but the climax of a gradual process that has been going on since 1993.²⁸

The Prime Minister has been considerably weakened. While the President can still pick and dismiss the PM as before, now the President is entitled to dismiss the PM without stripping the whole cabinet of its duties. In the event of a major crisis or disagreement, the President may sack the PM while stability is maintained by retaining the deputy ministers and ministers. This dwindling power is underscored by the PM's "personal responsibility before the President" (Art. 113) for all the tasks the Government is charged with. After constitutional changes, the PM becomes an even more technical and politically dependent figure than before.

Lastly, the Duma has been granted the right to give its consent (plenum votes with a simple majority) not only to the PM presented to it by the President, but also to deputy PMs and ministers nominated by the PM. This, however, should be seen as an attempt to weaken the PM by introducing further checks on the PM via Duma votes on cabinet members while the President remains in full control both of the Government and the Duma. The crucial provision which cements presidential supremacy over the Duma is located in the amended Art. 112(4). If the Duma rejects a deputy PM or a minister three times, the President is nonetheless entitled to appoint them. What is more, if the Duma rejects more than one third of the candidates, the President is authorized, but not obliged, to dismiss the Duma. In sum, the Presidency gains an additional check upon the PM while the Duma slightly gains leverage over the Government while remaining utterly vulnerable to the President.

The constitutional changes also further underpin several other previous characteristics of the executive. The dualism of the federal executive acquires constitutional status for the first time. According to Art. 110(3), the Government oversees all federal executive bodies except those that are overseen by the President. This dual executive was formalized in 1997 with the Federal Constitutional Law (FCL) "On the Government". The law stipulated that the President oversees federal executive bodies dealing with defense, security, internal affairs, foreign affairs, and emergency situations, even though the President had exerted informal control over these policy domains before. This "Presidential Block" in the federal executive has been expanding over the years. In 1998, Boris El'tsin added the Ministry of Justice as a fifth ministry to the "Presidential Block". This technical bureaucratic process was only reflected

28 Burkhardt, "The Institutionalization of Relative Advantage: Formal Institutions, Subconstitutional Presidential Powers, and the Rise of Authoritarian Politics in Russia, 1994–2012."

in an amendment to the FCL in 2004 that required a legislative supermajority that El'tsin did not have in 1998. Finally, in 2016, the newly founded National Guard was added to the list of bodies overseen by the president. The 2020 constitutional changes therefore mark the climax of presidential institutional gardening on a lower level that has been going on for years.

The 2020 amendments codify this dual executive. Commonly, those bodies controlled by the President are referred to as “power ministries” dominated by *siloviki*, with other bodies subordinate to the Government referred to as the “economic block” with civilian technocrats responsible for socioeconomic policy making. This system of dual dependency among cabinet ministries and other federal executive bodies is a typical example of how checks and balances within—rather than between—branches of the state are introduced while overall presidential supremacy is maintained or reenforced. This presidential dominance is further corroborated by the new cabinet appointment mechanism in the legislature. While the State Duma approves cabinet members by voting on each deputy PM and minister, the Federation Council only conducts “consultations” on candidates in the corresponding committees without a plenum vote, and the outcome is not binding. Accordingly, the constitutional changes introduce an additional check to the “Prime Ministerial Block” of the government, while the changes in relation to the “Presidential Block” remain merely symbolic.

A last noteworthy change to the basic logic of the executive was introduced with the new Art. 4(2) of the FCL “On the Government”: Deputy PMs and cabinet ministers may simultaneously assume other positions in the federal and regional executive, civil service and municipalities. This “personal union” was initially introduced in 2010 as an exception to the general ban mainly for presidential representatives in federal districts (*polpredy*). Art. 4(2) of the FCL reverts the previous version from a general ban to a general permission with reference to federal law. The established bureaucratic practice indicates that this dual function has been rare and reserved for strategic geographical areas such as the North Caucasus (Aleksandr Khloponin) or the Far East (Iurii Trutnev). At this point, it remains unclear whether this practice would be used in the future to combine positions in the cabinet only with the duty of presidential representatives in federal districts, or whether the practice will be extended to other state functions such as governors or mayors. If anything, this vagueness attests to the increased flexibility and personalism of the presidency.

2.4 The State Council Remains Dependent on the Presidency

The State Council (*Gosudarstvennyi Sovet*) was created by presidential decree on 01 September 2000 as an advisory body to the President. At the outset of

his first presidency, Putin strove to strengthen the proverbial “power vertical” while improving feedback mechanisms between the regions and the center. The regional governors and presidents (*Vysshie dolzhnostnye litsa sub’ekta Rossiiskoi Federatsii*) lost their seat in the Federation Council, and therefore their influence on national law-making in the Federal Assembly.

The creation of the State Council is yet another prime example of changing the constitutional setup without amending the constitutional text itself. The “unconstitutional” status attested to the observation that membership in the State Council for all chief executives of the 89 federal subjects fell short of an adequate compensation and amounted to an “honorary capitulation”²⁹ of regional executives to the President. Among others, the encompassing reform of federalism was accompanied by a federal law from 29 July 2000 that granted the President the power to dismiss heads of Russian regions. From this point forward, the President could dismiss governors as members of the State Council while previously, regional heads only forfeited their seat in the upper chamber of the parliament once they lost governor elections.

The main function of the State Council as a consultative body attached to the presidency according to its statute was to guarantee the coordinated functioning and interaction between organs of state power (*organy gosudarstvennoi vlasti*). This task included not only the coordination of relations between the federal center and the regions, but also with the other organs of state power: the legislature, judiciary, and executive. In addition to regional chief executives, as of 2012 the chairpersons of the State Duma and the Federal Assembly, the leaders of the State Duma factions, and the plenipotentiary representatives in the eight federal districts had been members of the State Council. The key body of the State Council has been the presidium, which consists of the President as its chairperson as well as seven State Council members, typically regional governors. Presidium membership rotates twice a year with the President remaining the only permanent member as chair. This institutional setup gives the President leverage for patronage by trading proximity to the presidency for loyalty from regional chief executives.

The 2020 constitutional changes granted the State Council constitutional status. Early commentary on the same day of 15 January 2020 interpreted the upgrade as a sign Putin would step down: At first glance, some presidential powers were also devolved to the legislature and the executive. Therefore, it appeared to many observers that the basic scenario for regime transformation

29 Andrei Zakharov and Aleksandr Kapishin, “Gosudarstvennyi Sovet vo Vlastnoi Sisteme Rossiï,” *Obshchaia Tetrad’. Vestnik Moskovskoi Shkoly Politicheskikh Issledovaniï* 3, no. 18 (2001): 36–40.

was that Putin would not seek to circumvent term limits, but rather step down from the presidency before 2024 and remain in power at the helm of the State Council.³⁰

While Putin's address left room for speculation, the draft bill that was introduced into the State Duma on 20 January 2020 provided some more clarity while still containing one major ambiguity that would only be resolved with the draft bill on the State Council introduced on 14 October 2020. The new Article 84(e)(5) of the Constitution only stated that the President forms the State Council, but it remained silent about the Council's chairperson. By contrast, the passage on the Security Council unambiguously states that it is the President who both forms and chairs the Security Council. By delegating the provision on the State Council chairpersonship to federal law, there remains a theoretical possibility in the future that the position of the President and the State Council chairperson are to be split as one potential avenue for regime transition. Nonetheless, both the new article in the constitution and the subsequent federal law either mirror presidential powers or increase presidential flexibility.³¹

The new Article 84(e)(5) ascribes three main functions to the State Council. The first function mirrors the previous task of coordinated functioning and interaction between organs of *public power* (*organy publichnoi vlasti*), therefore replacing the old concept of "state power" with the new "public power". The second function of determining the main directions of domestic and foreign policy of the Russian Federation copies the presidential power stipulated in Article 80(3). The third function of determining the priority directions of socioeconomic development merely repeats provisions of the 2014 law "On Strategic Planning": The President has the overall leadership in socioeconomic strategic planning, the President's Annual Address to the Federal Assembly is defined as the overarching strategic document, and presidential decrees are the core instrument for implementing goals of strategic planning.

In sum, the new article duplicates presidential powers rather than granting the State Council new powers. With the President as chairperson, the State Council remains a body at the discretion of the President with limited autonomy of its own. A few days before the "zeroing amendment", Putin said he had no plans to step down from the presidency to become the chairman of the

30 Grigori Golosov, "V Kachestve Bazovoi Modeli 'Tranzita Vlasti' Rassmatrivaetsia Kazakhstanskii Variant," Facebook, January 15, 2020, <https://www.facebook.com/grigori.golosov/posts/2298157380286096>.

31 Fabian Burkhardt, Ben Noble, and Nikolai Petrov, "Rebooting the State Council Increases Putin's Power," Chatham House, October 28, 2020, <https://www.chathamhouse.org/2020/10/rebooting-state-council-increases-putins-power>.

State Council. This constellation would create a “diarchy” that would lead to an “absolutely pernicious situation” in the country. A “strong presidential vertical” was “absolutely necessary” for Russia.³²

The State Council bill adopted on 08 December 2020 was much more conservative in nature than anticipated. This appears to suggest that at least since the “zeroing amendment” in March, the strategic outlook of Putin and his administration had been final.

In addition to defining the new concept of “public power,” the key provision with regard to the future regime transition is Article 8(1), which stipulates that the President is the chairman of the State Council. As federal law can be amended with a simple parliamentary majority compared to the two-thirds majority for constitutional changes, this provision is less firmly set in stone than if it had been included in the constitution. For the time being, the bill renders a diarchy involving the State Council and the presidency impossible. The State Council will not be a new Politburo, but an auxiliary and consultative body attached to the presidency. Officially, it is supposed to support the head of state as an arbiter between the federal government and the regions, and should serve as a “generator of ideas”³³ for the President.

A comparison of the tasks and functions of the State Council in the previous decree and the new federal bill reveals that the *core function* remains unaltered: The State Council assists the President in acting as an arbiter above all other state bodies beyond any checks while it provides the President with an additional forum to check and monitor regional executives. In return, the body also provides the federal vertical with a feedback mechanism and a consultation regime built on the reduction of conflict due to extensive coordination with an—at least a formal—opportunity for regional executives to influence federal policy.

But there are also a number of notable changes to functions and tasks. Even though the changes to the State Council have been mainly interpreted with regard to Putin’s post-presidency plans, the new tasks are primarily about aligning the regulatory framework with established past practices in public management, most importantly performance management.

The changes are indicative of the transformation of federal relations in the twenty years of Vladimir Putin’s reign. The previous presidential decree states that the State Council discusses issues related to the implementation of,

32 TASS, “Putin Protiv Nadeleniia Sovbeza i Gossoveta Polnomochiiami Prezidentskogo Kharaktera,” tass.ru, March 10, 2020, <https://tass.ru/politika/7938203>.

33 TASS, “Pavel Krashenninikov: Popravki v Konstitutsiiu Ubiraiut Vozmozhnost’ Krizisa Vlasti,” tass.ru, July 13, 2020, <https://tass.ru/interviews/8946037>.

and compliance with, federal legislation, as well as directives by the President (*ukazy, rasporyazheniia*) and the government (*postanovleniia, rasporyazheniia*). The new provisions in the 2020 federal law, however, stress the need to discuss public state and municipal public management with regard to the effectiveness of regional executives and municipalities, the criteria and indicators (*Key Performance Indicators, KPI*) to measure this effectiveness, the monitoring of the implementation of these KPI, as well as rewards for achieving this pre-defined effectiveness compared to other regions.

The early phase of Putin's first presidential term marked the swinging of the pendulum from the "authoritarian decentralization"³⁴ of the 1990s with a weak center and a variety of subnational authoritarian regimes to "new centralism"³⁵ as Putin's main project to wrest back control from the regions. The presidential decree on the State Council effective until 2020 (Art. 4 para 3) very much reflected this early concern with legal compliance of the regions with federal law.³⁶

Centralization, however, brought about another problem: While political and legal control was established, this centralized model did not improve governance and spur economic development in the regions, and therefore on the national level. The ensuing incentive system benefited those governors who demonstrated loyalty to the federal center by delivering satisfactory results for the incumbent president and the ruling party United Russia, while economic performance has been either irrelevant or negatively associated with reappointment or a sufficient protection from dismissal of governors.³⁷

While this incentive system clearly demonstrates the center's dominant preference for control and loyalty, attempts to link budget spending, national strategies and projects—such as the 2012 May Decrees or the 2018 National Projects—to performance have been part and parcel of public management in Russia. Since 2004, the Russian federal executive has attempted to apply principles of performance management and measurement as well as results-based management to incentivize the implementation of federal goals in and by

34 Grigorii Golosov, "The Regional Roots of Electoral Authoritarianism in Russia," *Europe-Asia Studies* 63, no. 4 (June 1, 2011): 623–39.

35 Vladimir Gel'man, "Leviathan's Return. The Policy of Recentralization in Contemporary Russia," in *Federalism and Local Politics in Russia*, ed. Cameron Ross and Adrian Campbell (London; New York, NY: Routledge, 2009), 1–24.

36 Jeffrey Kahn, Alexei Trochev, and Nikolay Balayan, "The Unification of Law in the Russian Federation," *Post-Soviet Affairs* 25, no. 4 (October 1, 2009): 310–46.

37 Ora John Reuter and Graeme Robertson, "Subnational Appointments in Authoritarian Regimes: Evidence from Russian Gubernatorial Appointments," *The Journal of Politics* 74, no. 4 (October 1, 2012): 1023–37.

the regions.³⁸ The first presidential decree on the performance evaluation of regional chief executives (Decree Nr. 825 “*Ob otsenke effektivnosti deiatel’nosti organov ispolnitel’noi vlasti sub’ektov Rossiiskoi Federatsii*”) was published on 28 June 2007, with the list of indicators used to evaluate regional governors amended by separate decrees in 2012 and 2019.

To make sense of the 2020 constitutional changes with regard to the State Council and the concept of “public power”, it is crucial to recall that already in 2008, a similar performance evaluation was introduced for municipalities that are—at least in theory—independent and not subject to directives from the federal and regional executives. Local self-administration bodies of city districts and municipal areas are obliged to report to regional executives about the annual implementation of KPI. Hence, the new concept of “public power” only formalizes the *de facto* integration and subordination of local self-administration into the regional, and therefore the federal executive that has been practiced before at least since 2008.

While this application of performance management and measurement appears to suggest that the Russian government is concerned with improving performance, the reality is different: It is well-established that implementation discipline has been weak. Targets laid down in the Strategy-2020 were, on average, implemented only by 29,5%.³⁹ Between 2000 and 2012, only slightly more than half of all presidential assignments (*porucheniia*) were implemented by the respective addressees.⁴⁰ The 2012 May Decrees demonstrate a similar picture. But even when targets are formally met, the overarching aim of the indicators is often missed. Higher salaries for medical staff, for instance, did not necessarily improve healthcare.⁴¹ Subordinates revert to a multitude of practices to deal with compliance: These range from coping strategies due to

38 Andrei Klimenko and Alexander Kalgin, “Strategic Planning in the Russian Federal Government: Implementation, Costs, and Conditions of Effectiveness,” Higher School of Economics Research Paper No. WP BRP 17/PSP/2018 (Moscow, April 9, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3158988.

39 Mikhail D. Dmitriev, “Analiz Faktorov Realizatsii Dokumentov Strategicheskogo Planirovaniia Verkhnego Urovnia” (Tsentr Strategicheskikh Razrabotok, December 27, 2016), 12, <https://www.csr.ru/ru/news/analiz-faktorov-realizatsii-dokumentov-strategicheskogo-planirovaniya-verhnego-urovnya/>.

40 Fabian Burkhardt, “Institutionalising Authoritarian Presidencies: Polymorphous Power and Russia’s Presidential Administration,” *Europe-Asia Studies*, May 6, 2020, <https://doi.org/10.1080/09668136.2020.1749566>, 24–25.

41 Schetnaja Palata RF, “Uroven’ Zarplat Meditsinskogo Personal v Rossiiskoi Federatsii—Poiasneniia Schetnoi Palaty,” June 7, 2019, <https://ach.gov.ru/news/uroven-zarplat-medicinskogo-personala-v-rossijskoj-federacii-poyasneniya-schetnoj-palaty-37286>.

lack of regional funding⁴² to outright data manipulation⁴³ to shift blame and dodge responsibility.

While most tasks and functions assigned to the State Council in the Constitution and the subsequent federal law are not new and merely codify established practice, the membership and internal rules of procedures were adapted to grant the President more discretion over the composition of the State Council. Members of the State Council *ex officio* are the President as its chairman, the Prime Minister, the Federation Council Chairperson, the State Duma Chairperson, the Chief of Staff of the Presidential Administration as well as the governors. By excluding the Presidential Plenipotentiaries in the Federal Districts (*Polpredy*) as well as the head of the Duma factions, but adding the PM and the Presidential Administration chief of staff as *ex officio* members, the composition of the State Council is upgraded with more executive heavyweights. The federal law permits the President vast discretion: In addition to representatives from the State Duma factions and local self-administrations, the President can grant any other person membership. The composition of the main executive body—the Presidium—also becomes more flexible. While previously it consisted of eight members—the President and seven other members, typically governors—the new provision remains silent on the composition, rotation and frequency of meetings. For the first time, the federal law defines expanded meetings of the presidium to which members of the Government can be invited, but also heads of other federal and regional executive bodies, local self-administrations and other unspecified organizations. The status of the Secretary is also upgraded: Previously, the position was held *ex officio* by a presidential aide (Aleksandr Abramov from 2000 to 2012, and the former Minister of Transport Igor’ Levitin from 2012 to present), a third-tier official in the hierarchy of the Presidential Administration. After the amended legislation, any member of the State Council can be appointed secretary. As virtually any person can become member of the State Council, the position could be filled with a political or bureaucratic heavyweight. But the personnel composition of the State Council announced on 21 December 2020 as well as the reappointment of Levitin suggests continuity.⁴⁴

42 Iaroslav Kuz’minov and Andrei Zhulin, “Administrativnaia Reforma i Sokrashchenie Kontrol’no-Nadzornykh Funktsii. Tezisy Doklada ‘Perspektivy Administrativnoi Reformy’” (HSE April Conference, Moscow, 2016).

43 Alexander Kalgin, “Implementation of Performance Management in Regional Government in Russia: Evidence of Data Manipulation,” *Public Management Review* 18, no. 1 (2016): 110–38.

44 Ben Noble and Nikolay Petrov, “From Constitution to Law: Implementing the 2020 Russian Constitutional Changes,” *Russian Politics* 6, no. 1 (2021): 130–152.

The federal law is vaguer than the previous decree on the State Council with regard to how decisions are formalized. While the decree stated that State Council decisions are formalized as decrees, directives or assignments of the President, the law only states that decisions are signed by the chairman of the State Council. The decree assigned the right to legislative initiative of decisions to the President while the law only states that decisions can be introduced to the Duma. Nonetheless, the State Council was not granted legislative initiative. But the vagueness of the new law compared to the previous decree is noteworthy.

Since the launch of the National Projects by presidential decree in May 2018, the format of the State Council has been rebooted. On 27 December 2018, 16 working groups were created that roughly correspond to the main spending priorities of the 12 national priority areas. In this new format, two-day expanded meetings of the presidium were held once a year that included representatives from the federal and regional executives as well as from state companies.

The State Council therefore proved to be a useful public management body both during normal times for the 2018 National Projects as well as in crisis mode to negotiate federal strategy during the Covid-19 pandemic⁴⁵ before the constitutional amendments came into force. The question that these constitutional changes do not answer is whether the State Council could play an important role in future regime transition scenarios. On many parameters, it remains weak compared to the Presidential Administration, the Security Council, and even the Government Cabinet. To date, the State Council is not an attractive body for Putin to chair after stepping down from the presidency.

3 Conclusions

On 10 March 2020, Putin addressed parliamentarians in the State Duma before they voted on “zeroing” his presidential terms and other expansions of presidential powers in the second reading. Putin argued that changes in the world and in Russia entail considerable “risks” and “challenges” for Russia. The President was not only the “guarantor” of security and internal stability, but also must ensure an “evolutionary”—in contrast to revolutionary—path for Russia in a long, historical perspective. Therefore, it was too early to depersonalize

45 Fabian Burkhardt, “Executive Politics in Russia in Times of the Pandemic: Shifting Responsibility and Blame as a Technology of Governance,” PEX Network, May 28, 2020, <https://pex-network.com/2020/05/28/executive-politics-in-russia-in-times-of-the-pandemic-shifting-responsibility-and-blame-as-a-technology-of-governance/>.

the Russian presidency: For the time being, the institution should be wedded to himself.

By creating the opportunity for term limit circumvention, Putin aimed to reduce uncertainty for himself, and the regime. Even though he stays in power for now, it would be wrong to assume that presidential politics remain the same. Constitutional changes underpin the further personalization of the regime. By postponing the decision on presidential transition, associated uncertainty and risks are not only deferred to the future, but are also amplified.

Three trends associated with progressing regime personalization are noteworthy in the run-up to the 2024 focal point. *First*, as I demonstrate in the section on the State Council, even though changes stress performance and efficiency, governance is unlikely to improve precisely because of the negative externalities associated with extensive presidential powers and excessive centralization. *Second*, an increase in personalization implies that repression is likely to become more prevalent.⁴⁶ The host of repressive laws that was rushed through the State Duma in late 2020 attests to this trend. And *third*, personalist rulers are much more likely to lose office through irregular means such as coups or mass protests and are more likely to end up in jail or exile than other types of rulers.⁴⁷ Therefore, by attempting to perpetuate his rule, Putin inevitably raises the stakes for his own future. But even if Putin stepped down in 2024 or before, his legacy will be a highly personalized authoritarian regime with a constitutionally unconstrained presidency.

46 Erica Frantz et al., “Personalization of Power and Repression in Dictatorships,” *The Journal of Politics* 82, no. 1 (2019): 372–77.

47 H.E. Goemans, “Putin’s Peers,” in *The Policy World Meets Academia: Designing U.S. Policy toward Russia*, ed. Timothy Frye, Timothy Colton, and Robert Legvold (Cambridge MA: American Academy of Arts and Sciences, 2010), 79–91.