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## RUSSIA'S DRAFT CONSTITUTIONS: HOW DEMOCRATIC ARE THEY?

### INTRODUCTION

Russia's road to democracy has not been an easy one. The stunning success of President Boris Yeltsin and his democratic allies in sweeping away the Soviet totalitarian state has given way to political warfare between the president and the hard-line Congress of People's Deputies.<sup>1</sup> This struggle has limited the efforts to create democracy and a market economy in Russia. The gridlock and political paralysis generated by Russia's constitutional crisis have distracted reformers and slowed the process of reform.

The battle between Yeltsin and the Congress is now being waged over competing visions for Russia's new constitution. The hard-liners in the Congress support the constitution inherited from the Soviet era, a cumbersome and confusing document which was never intended to be the basis for a democratic state. Meanwhile, Yeltsin wants a new constitution that will abolish the remaining Soviet institutions and establish a constitutional basis for a stable democracy.

Yeltsin published his draft of a new Russian constitution on April 30, 1993,<sup>2</sup> after his unexpectedly decisive victory in the national referendum the week before.<sup>3</sup> This referendum showed that the Russian people strongly support Yeltsin and his policy of economic and democratic reforms. Aware that his enemies in the Congress would never accept a constitution that would remove them from power, Yeltsin called a constitutional assembly on June 5 to debate and finalize his draft and to prepare for its ratification even over the objections of the Congress.

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1 The Congress of People's Deputies is a 1,065-member Russian superparliament that elects from its members the standing legislature, called the Supreme Soviet.

2 *Izvestia*, April 30, 1993.

3 This was a logical direction for Yeltsin to take and had been suggested by several commentators. See Sergei Alexeev, "Drama Vlasti V Rossii", *Izvestia*, April 29, 1993, p. 6; Ariel Cohen, "After Yeltsin's Victory: What Next?" Heritage Foundation *Executive Memorandum* No. 354, April 29, 1993.

**Competing Constitutions.** The Yeltsin draft is not the only constitutional proposal. Another important document is the so-called Rumiantsev draft,<sup>4</sup> which has been under consideration by the Constitutional Commission of the Supreme Soviet of Russia for over three years. The draft is named after its chief author, Oleg Rumiantsev, the chairman of the Commission. This version originally began with Yeltsin's blessing, but it has long since come under the control of the hard-line leaders of the Congress. Although they would prefer to retain the current Soviet-era constitution, hard-liners in the Congress and the regularly meeting Supreme Soviet (or Parliament) have rallied around the Rumiantsev draft to stop Yeltsin's bid for a constitutional assembly to draft a new Russian constitution. The constitutional battle is now fully engaged, with the Supreme Soviet Chairman Ruslan Khasbulatov declaring that Yeltsin's draft is illegitimate. Meanwhile, Yeltsin is threatening to ignore the Congress altogether and to present his constitution to a popular referendum, to a vote of a democratically elected Constitutional Assembly, or to a vote of a newly elected parliament.

This power struggle between the President and the Congress has distracted attention from the contents of the competing constitutional drafts. This is unfortunate. Whatever final shape it will take, Russia's new constitution will create a lasting legal framework for her future economic and political systems. A poorly conceived constitution could make it impossible for democracy and a market economy to take root in Russia.

To assess the various constitutional drafts, they should be examined according to a set of long-standing democratic and market principles. These are:

- ✓ Protection of individual rights;
- ✓ Protection of property rights;
- ✓ Separation of powers;
- ✓ Federalism and limits on the central government;
- ✓ Limitation of entitlements on so-called social rights to work, leisure, free education, free medical care, among other things.

A pro-democratic and market reform constitution must respect these principles. Without them, a Russian constitution will do little to advance democracy and economic growth in Russia.

## **RUSSIA'S CONSTITUTIONAL DRAFTS: THE OPTIONS**

The current Russian constitution was adopted in 1978, when Leonid Brezhnev ruled the Soviet Union, and the Russian Soviet Federated Socialist Republic was an integral part of it. This constitution was drafted to ensure communist rule and was never intended to be the legal basis for an independent or democratic country. Amended over 250 times, this constitution is little more than a patchwork of democratic reforms stretched over a totalitarian frame.

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<sup>4</sup> Constitutional Commission Draft Constitution, *FBIS Central Eurasia Daily Report Supplement*, FBIS-SOV-93-091-S, May 13, 1993.

In addition to the current Soviet-era constitution, there are three competing drafts for a new constitution. They are:

- 1) **The Yeltsin draft.** This is the closest to a Western-style constitution, providing more protection to individual rights than any other draft.
- 2) **The Rumiantsev draft.** This combines socialist and democratic features, and is favored by many members of the anti-Yeltsin coalition.
- 3) **The Communist draft.** Framed by representatives of the Russian Communist Party, this draft would turn back time and re-create a communist regime in Russia.

To prepare his constitutional draft, Yeltsin assembled a distinguished group of experts under the supervision of Vice Premier Sergei Shakhrai, a legal scholar and politician experienced in nationalities issues.<sup>5</sup> Among the legal scholars contributing to the Yeltsin draft were Sergei Sergeevich Alexeev, former chairman of the now defunct Committee for Constitutional Control of the Soviet Congress of People's Deputies, and August Alexeevich Mishin, an expert in American constitutional law.<sup>6</sup> On May 21, 1993, Yeltsin issued a decree calling for a constitutional assembly to meet on June 5 to write a final version of the constitution based on the president's draft.<sup>7</sup> This currently is under discussion by the Constitutional Assembly, which will also propose many amendments to it. The draft is to be completed by June 26, 1993.

The Rumiantsev draft has a different history. The Congress of People's Deputies, which was elected under the supervision of the Communist Party in 1990, created its Constitutional Commission in June that same year under the chairmanship of Yeltsin, with Ruslan Khasbulatov as deputy chairman and Oleg Rumiantsev as executive secretary.<sup>8</sup> The members of the Commission include many Soviet stalwarts, such as former Communist Party apparatchiks, regional KGB and police chiefs, and military officers.<sup>9</sup>

Although initially inspired by democratic values, the Rumiantsev draft now includes a number of disturbing provisions, such as the abolition of autonomy for ethnic minorities. Not surprisingly, it aims to preserve the interests of the old Soviet elite (or *nomenklatura*), which comprises the majority of the Congress and its smaller standing legislature, the Supreme Soviet.<sup>10</sup> The Rumiantsev draft, for example, seeks to protect "collective" property, preserve the

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5 Alexander N. Dachyeyev and Vladimir B. Razmustov, *Russian Leaders Profiles* (Moscow: Russian Public Political Center, 1993), pp. 24-27.

6 Alexeev and St. Petersburg's Mayor Anatoly Sobchak authored their own constitutional project for the Democratic Movement for Reforms; Mishin did so under the auspices of the Reform Foundation. Alexeev is currently proposed to head the Constitutional Assembly.

7 "Yeltsin issues decree calling constitutional meeting," *RFE-RL Daily Report*, No. 97, May 24, 1993, p. 1.

8 Oleg Germanovich Rumiantsev, at the time of his election to the Supreme Soviet, was researcher at the Institute of Eastern Europe and International Studies of the U.S.S.R. Academy of Science. Source: *Proyekt Konstitutsii Rossiyskoy Federatsii (Sbornik Materialov)* (Moscow: Supreme Soviet, 1992). He was also among the leaders and founders of the Russian Social Democratic Party.

9 This commission includes Sergei Baburin and Vladimir Isakov, the most outspoken nationalist hard-liners in the Parliament.

vast state-run systems of distribution of goods and services, and to curb individual rights. Even so, despite three years of work, the Commission has yet to approve a finalized version.

A third draft constitution circulating in Moscow was prepared by former Communist Party apparatchiks, KGB generals, and representatives of the Soviet military. Their draft pays lip service to human rights, reintroduces the concept of "people's property managed by the state," and declares Russia a "Soviet socialist" republic.

## Options for Adopting the Constitution

The Russian president has four options for gaining approval of a Russian constitution.

**Option #1: Adoption by the Congress of People's Deputies.** According to the 1978 constitution, currently still in force, only the Congress of People's Deputies can amend the existing constitution. Doing this will require a two-thirds vote in the Congress. Yeltsin raised this possibility in his speech at the opening of the Constitutional Assembly on June 5.<sup>11</sup> The Speaker of the Parliament and Yeltsin's hard-line opponent, Ruslan Khasbulatov, seems determined to sabotage any effort by Yeltsin to use this route. However, the leadership of the Supreme Soviet is currently split, and many deputies, such as those led by Deputy Speaker Nikolay Ryabov, have indicated they may be open to compromise.

**Option #2: Adoption by popular referendum.** According to the Russian Constitutional Court, a majority of all eligible voters would be needed to make the results of such a referendum legally binding. Khasbulatov has demanded that, if this route is used, not only Yeltsin's proposed draft, but also that of the Congress, be included in a referendum. Khasbulatov hopes that by providing a number of proposals, no single draft will get a majority of registered votes, leaving the current constitution in force.

**Option #3: Adoption by a new parliament after its election.** Yeltsin has proposed elections for a new parliament to be held in October. Pro-reform elements in the Congress want to dissolve the current parliament. Their plan is to persuade at least 350 deputies—or more than one-third of the total—to resign and thereby permanently deny the Congress the two-thirds vote needed for a quorum. Once this were done, Yeltsin could call for new elections without obstruction. This new parliament, he hopes, then would approve his Constitution.

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10 S.S. Alexeyev, *Demokraticheskie Reformy i Konstitutsia* (Moscow: Pozitsia, 1992), p. 24, quoting *Pravda*, April 14, 1992.

11 "O demokraticheskoy rossiyskoy gosudarstvennosti i proyekte novoy konstitutsii. Doklad Borisa Yeltsina na konstitutsionnom soveshchanii" ("On democratic Russian statehood and project of the new constitution. Yeltsin's report at the Constitutional Assembly"), TASS, June 5, 1993.

**Option #4: Adoption by the Constitutional Assembly.** The current Constitutional Assembly may declare itself a legitimate body to adopt the new constitution. In fact, Yeltsin supporters have proposed holding new elections for a new Constituent Assembly that would then supersede the authority of the intransigent Congress of People's Deputies.

## ASSESSING THE CONSTITUTIONAL DRAFTS: FIVE PRINCIPLES

These various draft proposals represent competing visions for Russia's future. In order to know whether they advance democracy and the market economy in Russia, they need to be assessed according to a set of democratic and free market principles. They are:

### Principle #1: Protection of individual rights.

The tragedy of life under communism can be summed up in five words: "the trampling of individual rights." After decades of tyranny, the establishment of a post-communist society requires a political system that promotes and protects individual liberty. There are a number of prerequisites for such protection to be effective, but among the most important is the safeguarding of individual civil and economic rights.<sup>12</sup>

Both the Yeltsin and Rumiantsev drafts declare that numerous individual rights will be constitutionally protected. Among them: equality before the law, equality for the non-Russian ethnic minorities, and freedom of speech, press, religion, and movement. Some of the enumerated rights are in response to Russia's history of totalitarianism. Among these are a prohibition against torture and a ban on involuntary "medical, scientific or other" experiments on humans.<sup>13</sup>

Despite their exhaustive listing of individual rights, however, the Yeltsin and Rumiantsev drafts both undermine the protection they promise. They do this by granting the government the ability to limit these rights. For example, the Yeltsin draft declares that "the conditions and order of the implementation of rights and liberties can be set only by law."<sup>14</sup> This seemingly innocuous language could prove to be significant limitation on individual freedom. Former Soviet judges still on the bench could interpret this clause to mean that the exercise of any rights not prescribed by law is prohibited. The same article also allows for the limitation of rights in cases of the "defense of rights and legally protected interests of other persons, protection of state order, ensuring security and protection of public order, protection of health and morality." Such broad language gives significant power to the legislature to limit or negate altogether some or all of the constitutionally guaranteed freedoms. By passing a regular law—not even a constitutional amendment—the legislature may abolish a constitutionally guaranteed freedom, such as the right of free assembly or freedom of speech.

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12 Bernard H. Siegan, *Drafting a Constitution for a Nation or Republic Emerging into Freedom* (Fairfax, VA: The Locke Institute, 1992), p. 7.

13 Yeltsin Draft, Articles 8-20; Rumiantsev Draft, Articles 13-15, 20-34.

14 Article 24.

The Rumiantsev draft is less specifically protective of individual rights than the Yeltsin draft. It allows numerous liberties to be restricted "by federal law,"<sup>15</sup> including freedom of expression and information.<sup>16</sup>

One example is the continuation of restrictions on the freedom of movement, including retention of the *propiska*, which is a residence permit issued by the police.<sup>17</sup> The parliamentarians want the right of Russian citizens to choose their residence to be phased in over a period of ten years.

The current Rumiantsev draft states that individual rights and liberties can be limited "for the purpose of protection of the constitutional order of the Russian Federation, public morality, rights and liberties of other persons."<sup>18</sup> American Bar Association experts have already criticized this as an open door for limitations on individual rights and liberties.<sup>19</sup> The draft would allow the parliament to abolish a protected right with a simple parliamentary majority. Individual rights are also hemmed in by broad language in other articles. For example, the Rumiantsev draft proclaims that "the State is the official representative of society."<sup>20</sup> The legal implications of this statement are far from clear, but the potential for abuse by the government acting in the name of society is undeniable. For example, courts could interpret it as justifying actions by a bureaucrat, a police officer, or a KGB operative that violate the rights of an individual.

The communist draft pays lip service to individual and human rights, but what it gives with one hand, it takes away with the other. Rights are "granted" by the constitution, and thus are not treated as inalienable liberties.<sup>21</sup> All constitutional rights, therefore, can be limited by the parliament or by local governments in the interests of state security, public morality, and social good.<sup>22</sup>

## Principle #2: Protection of property rights.

As the framers of the American Constitution understood, political freedom cannot be guaranteed without economic freedom. The secure right of property is not only the foundation of a market economy, but of individual liberty as well.

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15 See, for example, Articles 21(3), 23(1), 24(3), 25(3), etc.

16 Article 25, par.1 of the Rumiantsev draft states: "Everybody has a right to freedom of thought, expression and uninhibited expression of opinions and beliefs." Par. 2: "Everybody has the right to uninhibited search, receiving, producing and spreading of information by any lawful means." Par. 3: "Limitations of these rights can be set by federal law in order to protect... state and bureaucratic service (*sluzhebnye*) secrets and public morals." Taking into account the Soviet tradition of wide reading of authorities' rights, this legislative latitude seems excessive.

17 Article 24, par. 1: Everybody has a right to the freedom of movement and choice of residence in the Russian Federation. Par. 2: Everybody can leave the RF freely. RF citizens can return to the RF. Par. 3: Restrictions of the rights stipulated by this chapter can be set by the federal law.

18 Article 13.

19 *Analysis of the Draft Constitution of the Russian Federation* (Washington, D.C.: The American Bar Association Central and East European Law Initiative (CEELI), 1993), p. 6.

20 Article 1, par. 4.

21 Article 24

22 Article 26

Unfortunately, all three drafts fail to provide sufficient protection to private property. Not only is an open-ended role for the state in the economy preserved, but the same type of broad and vague language which poses a threat to individual rights is applied to property and economic rights. For example, Article 27 of the Yeltsin constitution severely limits economic freedom by declaring a vague ban on "monopolitization" and "malignant competition."

Both Yeltsin and Rumiantsev drafts declare the right of an individual to own property. Article 21 of the Yeltsin draft proclaims the inviolability of private property, which is called a "natural right of man." Article 22 calls for economic freedom; Article 23 prohibits forced labor while protecting the "freedom of labor." Article 34 of Rumiantsev's draft calls for "economic liberty" realized in the "right of ownership" and the "right to free enterprise." Article 35 of the Rumiantsev draft proclaims the "right to inheritance." Article 43(3) of the same draft grants a right to compensation in case of unlawful damage to one's property.

There are numerous examples of restrictions on property rights in the Yeltsin draft. It is not clear from Article 62 whether the federal government will only regulate or directly own and manage the nuclear, space, transportation, and telecommunications industries. Article 62 allows the federal government to establish "price policy foundations." It is unclear what this means, but it could imply the regulation of prices. It also is unclear how the Yeltsin draft affects private and foreign businesses. Article 63 provides for the right to introduce "temporary" limits on the circulation of goods, services, and financial means "if these are needed to provide for security, protection of life and health, protection of nature and cultural values."

In Article 27, the Yeltsin draft promises that the ownership and use of natural resources can be exercised freely by the owners. Such vague language will make investors wary, and thus hinder economic development and discourage investment.

Even more disturbing are some of the provisions of the Federal Treaty, an integral part of the Yeltsin constitution that governs relations with the republics. The treaty states that "land, its depths, flora and fauna, are the patrimony of the peoples of each republic. Questions of ownership, usage, and administration of these resources are regulated by the fundamental laws of the federation and laws of the republic. The status of federal natural resources is defined by mutual agreement between federal organs of the Russian Federation and organs of state power of the republics."<sup>23</sup>

Such vague language is often intentionally introduced to allow the local authorities maximum control over economic activity by domestic and foreign investors. Such control can easily be translated into opportunities for graft and unlawful enrichment by the local politicians. Moreover, since property rights over natural resources are poorly defined, Russian and foreign investors will gain little confidence from the Yeltsin draft.

While Yeltsin's draft has certain limitations, the Rumiantsev draft is far worse. It speaks of Russia being a "social" state.<sup>24</sup> The Rumiantsev draft also proclaims that the basis of the economy of the Russian Federation is a social market, which places private, communal, and state ownership on an equal footing. By so doing, it downgrades the primacy of private property needed for a market economy. According to this draft, the state regulates economic life in the

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23 Federal Treaty, Article III, par. 3. Where are these natural resources defined? Such limitations will be protested by mineral-rich republics.

24 Article 1, par. 1.

interest of the individual and society,<sup>25</sup> while economic relations consist of a social partnership between the individual and the state, between workers and employers, and between producers and consumers.<sup>26</sup>

Under the Rumiantsev approach, property rights cannot contradict the “social good”;<sup>27</sup> forced expropriation is allowed if there is a “proven social necessity.”<sup>28</sup> Only what the authors call “fair competition” is allowed.<sup>29</sup> This vague term would invite the state to interfere in economic activity.

Both the Rumiantsev and communist drafts claim to accept the principle of economic pluralism.<sup>30</sup> “Economic pluralism” and “equality of all forms of property” are operational code words to preserve state ownership and limit the development of private property. By allowing the property rights to go unchanged, the drafts preserve the domains of the former communist *apparatchicks* and their vast sources of income. While the Rumiantsev draft allows for private property, albeit with significant limitations, the communist draft bans it and maintains that “people’s property managed by the state” will be the foundation of the economy, directed by both central planning, as well as a “regulated market.”

The communist draft declares that Russia will be a “soviet socialist” state. The land will be distributed between the collective farms owned in common by the members (*kolkhozes*) and state-owned farms (*sovkhozes*). “Garden plots” will be allowed and distributed to citizens by the state “in the sizes stipulated by law.”<sup>31</sup> The draft bans production “based on exploitation of man by man,”<sup>32</sup> meaning private property and ownership. It promises “progressive taxation” and other means of ensuring a “progressively rising standard of living.”<sup>33</sup>

### Principle #3: Separation of powers.

Given Russia’s authoritarian heritage and lack of established democratic traditions, the concentration of power in the hands of a single individual or group of individuals poses a serious threat to liberty. A series of checks and balances on the major institutions—the presidency, the parliament, and the judiciary—is an essential requirement to prevent the rise of autocracy, even in the name of democracy.

According to the Yeltsin draft, among the president’s powers is the ability to dissolve the legislature if it rejects his nominee for prime minister, or if a political crisis “cannot be overcome by other procedures set out in the constitution.” Under the Yeltsin draft, the legislative

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- 25 Article 9, par. 2. One wonders who is in charge of such regulations—the bureaucrats? The lawmakers? Will the constitutional court be called upon to decide?
- 26 Article 9, par. 3. It is unclear how the supreme court will test laws and government activities in light of this guidance by the lawmakers.
- 27 Article 9, par. 1
- 28 Article 57, par. 3. This will clearly discourage foreign investors because the article does not provide the standard expropriation protection clause. Who will decide that the social necessity is “proven”? What if the reason for expropriation was not specified by law? If this is a protected constitutional right, why limit it by a “regular” state law?
- 29 Article 9, par. 1. While anti-trust regulation can be legislated, it should not be done in a constitution.
- 30 Rumiantsev draft, Article 5; the communist draft, Article 12 proclaims “diversity” of forms of property but immediately cancels it by Article 13.
- 31 Article 14
- 32 Article 12.
- 33 Article 18



powers of the Federal Assembly (the Parliament) are limited. For example, only the president and the executive branch of the government, and not members of the lower house of parliament (the State Duma), are entitled to propose legislation that involves taxation or expenditure.<sup>34</sup> However, the upper house will have wider powers than the lower one. For example, it will confirm such selected presidential appointees as the prime minister, supreme court justices, the chairman of the Central Bank, and the prosecutor general. The lower house will initiate and pass laws that must also be adopted by the upper house and signed by the president.

Under the Yeltsin draft the president would appoint ministers, mostly without parliamentary approval,<sup>35</sup> and could dismiss them at will. If the Council of the Federation (the proposed upper house of parliament) casts a vote of no confidence in any cabinet minister, the president and the prime minister can accept or reject its decision. If the vote is against the entire cabinet, the parliament must then choose to accept whatever new government is proposed or be disbanded and face new elections.<sup>36</sup>

According to this model, the president will be able to call extraordinary elections, announce referenda,<sup>37</sup> and call for no-confidence votes in the government. The chief executive will also enjoy a line-item veto. In addition, he will have the authority to introduce nation-wide states of emergency, although these must be approved by the legislature. The president can nominate high military commanders and personal representatives in the provinces.

According to the Yeltsin draft, the president is the guarantor of the constitution.<sup>38</sup> This article would in effect give the president a quasi-judiciary function, thus violating the principle of separation of powers. Additional and unspecified judicial functions are bestowed in Article 80, which states that the president arbitrates between ministries and other government offices of the Russian Federation. This same article specifies that the president will have the authority to suspend unconstitutional laws or regulations passed by the federal government or the republic and local governments. He can do so as well if human rights and liberties are violated by those governments.

By contrast, the Rumiantsev draft gives substantially more powers to the parliament and limits those of the president. The parliament has the right to propose and adopt constitutional changes by a two-thirds majority, pass laws, direct domestic and foreign policy, set taxes, and supervise their collection. The parliament calls elections of the president, approves nominations of the prime minister, his deputy, and the ministers of economy, finance, internal affairs, foreign relations, defense, and security. It nominates judges of the supreme and constitutional courts, the chairman of the Central Bank, and the prosecutor general. The parliament also has the right not only to dismiss the prime minister and members of the cabinet, but to impeach all high officials of the land, to declare war, peace, and amnesty for crimes.<sup>39</sup>

The Rumiantsev draft provides a presidential veto that can be overridden by a two-thirds majority of each house or a three-quarters vote in the State Duma. It also would allow for lim-

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34 Article 101.

35 Article 107.

36 Articles 106 and 112.

37 Article 74.

38 Article 70.

39 Article 86(1), Article 95(2).

ited referenda to be called by one-third of the parliament's members, by the president (supported by one-third of deputies), or by petition of one million people.<sup>40</sup>

The communist draft, while paying lip service to the separation of powers, subjugates the executive and the judiciary to the Supreme Soviet. It creates an all-powerful Presidium of the Supreme Soviet, headed by a chairman who becomes a virtual dictator.<sup>41</sup> No checks and balances are envisioned by the communist drafters. A "fourth branch" of government, a spurious supervision by "workers' collectives" of local governments and the media, is also introduced.

**The Judiciary.** A major feature of the Yeltsin draft is the introduction of four supreme courts instead of one. In addition to a "regular" Constitutional Court (deciding constitutional questions), a Supreme Court (for civil cases), and a Supreme Arbitral Court (for business conflicts), it also establishes a Supreme Judicial Assembly. The Supreme Judicial Assembly can be appealed to by the president, the parliament, and the other supreme courts, but not by citizens. The Supreme Judicial Assembly will thus become a quasi-legislative "supercourt" that will interpret the constitution and decide the constitutionality of laws and court decisions. The Supreme Judicial Assembly will consist of chairmen of the three courts and their deputies, and three federal justices.<sup>42</sup>

A similar supercourt (constitutional court) is created in the Rumiantsev draft.<sup>43</sup> The authors believe that since Russia does not have a common law system, it needs a tribunal that will define and interpret the law of the land and the constitution.

Russia would be better off with only one Supreme Court that would have the power and expertise to decide constitutional, criminal, civil, and administrative matters. Such an arrangement will provide both finality of the law and easier management of the judicial process.

#### **Principle #4: Federalism and limits on the central government.**

Centralized rule from Moscow has been the norm during much of Russia's history. This tradition has been ruinous to liberty and has stifled the entrepreneurial culture that is now needed to spur economic growth. To be sure, some central control is necessary to ensure that the emerging Russian economy is not divided up by regional governments. But seven decades of Soviet totalitarianism, and the centuries of Tsarist authoritarian rule preceding it, have shown the disadvantage of an over-centralized state. Whatever constitution is finally adapted in Russia, a stable relationship between Moscow and the various regions and republics desiring greater autonomy will have to be established. Moreover, a lasting constitutional system will require a clear delineation of powers between the federal and regional or local governments.

Both the Rumiantsev and Yeltsin drafts declare the supremacy of federal law over those of the republics and local governments.<sup>44</sup> Moreover, both drafts stipulate that the federal government retain control over a large number of policy issues, including state, economic, ecological, cultural, and national development,<sup>45</sup> federal transportation, roads, information and com-

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40 Articles 89(5), 90.

41 Articles 72-78

42 Article 125.

43 Article 100.

44 Rumiantsev draft: Article 77; Yeltsin draft: Federal Treaty, Chapter II (2), (3).

munications and space exploration.<sup>46</sup> Finally, both drafts proclaim Russian to be the official language. Other languages are allowed alongside Russian only when stipulated "by federal law."<sup>47</sup>

Of special importance is the role granted, and protections afforded, to such non-Russian ethnic minorities as Chukchi, Khanty, and Komi. Both drafts abound with references to ethnic autonomy, the "right of nations to self-determination," and other formulations from the Soviet past.<sup>48</sup> Many of these peoples have their own republics within the Russian Federation, and many of them regard themselves as sovereign powers. At present, many of them are locked in a struggle with the central government over the division of powers.

All three constitutional drafts deny a republic the right to secede even if it was annexed "under duress." An example would be the Republic of Chechnia in the Caucasus. This mountainous country fought a 150-year war against Russia and the Soviet Union, and to this day the Sunni Muslim Turks (Tatars) refuse to sign the 1992 Federal Treaty.<sup>49</sup> Other republics, such as Tuva, Komi, and Buriatia, want to negotiate local autonomy as well.

Tatarstan has declared itself an "associate state" inside the Russian Federation, with full sovereign powers, including the right of secession. Komi, Yakutia, and other sparsely populated, mineral-rich territories have adopted constitutional provisions that contradict provisions of the existing Soviet-era constitution. For example, they proclaim themselves sovereign states and refuse to give Moscow any authority over such natural resources as diamonds in Yakutia or gold in the Chukchi region.

The contest for power extends to many areas. Taxes have become a divisive issue between the federal and the local governments. The republics and local governments are protesting high levels of taxation. As their subsidies from Moscow dwindle, they are increasingly demanding that the federally collected taxes in their regions be spent locally and not passed on to the central government, where they will be wasted or given to some other region.

Article 66 of the Yeltsin constitution declares that the local executive branch of a region (or *oblast*) and the government of a republic are part of the unified executive system of the Russian Federation. In addition, Article 73 would create regional presidential representatives who will surely come into conflict with elected regional authorities.

Federalism may hold the key to Russia's future as a state. Russia has little experience in federalism, and all too often the assertion of local autonomy is equated with the dissolution of the federation. However, a healthy federalist system with significant devolution of power to the lower levels of government is not only one of the best methods for preventing a return to autocracy, it also allows the aspirations of regional and ethnic groups for greater control over their lives. To this end, the framers of the Russian Constitution would do well to follow the examples of James Madison and the authors of the U.S. Constitution: to delegate as much au-

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45 Article 77-I par. (f).

46 Rumiantsev draft, Article 77-I par. (i); Yeltsin draft, Article 62(e).

47 Rumiantsev draft, Article 83 par. 2-5; Yeltsin draft Article 59. The presidential draft is more restrictive concerning the use of non-Russian languages in official business than the Rumiantsev draft.

48 Rumiantsev draft, Article 7; Yeltsin draft, Federal Treaty, Preamble.

49 Rumiantsev draft, Article 74; Yeltsin draft, article 56; Federal Treaty.

thority as possible to the republics and regions, while articulating a clear procedure for the settling disputes between regions and the federal government.

This would not mean an end to the Russian state. In fact, it may be the only way to save it.

### **Principle #5: Limitation of entitlements.**

Each of the constitutional drafts includes numerous "social rights" or entitlements. The Yeltsin draft grants constitutional rights to education, social protection at a "subsistence minimum," medical care, housing, safe labor conditions, a minimum wage, ecological security, and equal participation in cultural life.<sup>50</sup> The draft imposes the obligation to pay taxes<sup>51</sup> and also the duty to protect the environment.<sup>52</sup> Such privileges and duties cannot be imposed without the state heavily regulating the lives of citizens, and without giving significant powers to bureaucrats. The communist oppression thus could be replaced by the omnipotence of a new welfare state.

The Rumiantsev draft proclaims that the "social goal of the Russian federation is to provide equal and just opportunities for the development of the personality, and the achievement of the well-being of man and society."<sup>53</sup> The Rumiantsev draft proclaims an even stronger welfare system than Yeltsin's, making the constitutional burden upon the state even heavier.<sup>54</sup> The same article also talks about the state conducting a "humane demographic policy," creating "necessary conditions for the cultural development of man and society, and providing ecological safety and rational utilization of nature."<sup>55</sup>

Chapter IV<sup>56</sup> of the Rumiantsev draft reiterates numerous economic, social, and cultural "rights and liberties." Among them are free medical care, paid vacations, pensions, "ecologically pleasant surroundings," "compensation for damage caused to one's health or property by [some] environmental transgression," the right to free housing for the "needy and other citizens specified by law," and education (including free tuition for universities). Moreover, according to this draft, the state will be obliged to ensure freedom of artistic and technical creativity, along with an entitlement to participation in cultural life and to the enjoyment of state and local cultural institutions.

These are broad and largely meaningless declarations. But they nonetheless commit the government to an open-ended role in virtually all areas of life. They are poorly conceived declarations put forward without regard for their impact on the society or government. Not even a society as rich as the U.S. can provide a fraction of benefits promised in the Russian constitutional drafts. With soaring medical and education costs, Russia will be bankrupt long before it can implement these noble promises. Furthermore, it is the creative energy of the citizens, not the welfare bureaucracy, that is necessary to provide a reasonable standard of living. In fact, these declarations betray a lack of confidence in the people, who are deemed unable to take care even of their own culture without guidance from the state.

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50 Yeltsin draft, Articles 43-49.

51 Article 50.

52 Article 53.

53 Article 8.

54 Article 8, par. 2

55 Article 8, par. 3

56 Chapter IV. Economic, Social, and Cultural Rights and Liberties; Articles 34-42.

## CONCLUSION

The seven hundred deputies of the Constitutional Assembly meeting in the Kremlin's Marble Hall have a once-in-a-thousand-years opportunity to adopt a constitution to lay a secure foundation for democracy and economic prosperity in Russia. That task will not be an easy one.

Although called into being by President Boris Yeltsin to overcome the political paralysis of the hard-line-dominated parliament, the Assembly has a higher responsibility: the writing of a constitution which can carry Russia safely into the distant future, not simply overcome the problems of the present.

As such, the Assembly must go beyond the draft constitution put forward by Yeltsin. There are in fact several competing texts to consider, the most prominent being the Rumiantsev draft advanced by the parliament, as well as an unabashedly communist one produced by loyalists of the old Soviet Union.

Although the Yeltsin and Rumiantsev drafts have a number of positive features, neither adequately addresses a range of issues which are central to Russia's future. These include protection of individual rights, protection of property rights, the separation of powers in the federal government, the establishment of a federalist system which limits the central government's power, and the problem of entitlements. Although Yeltsin's is far superior to that of Rumiantsev—and certainly when compared with that of the communists—it nevertheless has some worrisome aspects that the Assembly must address.

Among the most important are the overconcentration of power in the office of the president. While that may be an appropriate remedy to the current standoff between the reformist president and the hard-line parliament, it would not be a positive development for Russia's long-term future. As he has repeatedly demonstrated, Yeltsin can be trusted with the exercise of great power. But in creating such an institution, thought must be given not to those who use the power well but to those who are likely to abuse it.

There are problems in both drafts in other areas as well. Both the Yeltsin and Rumiantsev drafts grant open-ended entitlements which may prove to be either impossible to honor or ruinous in execution. They also impose too many restrictions on individual liberty that future governments could exploit to silence political opponents. Correcting these problems now certainly will be far less trouble than attempting to correct them later, if they can then be corrected at all.

With little experience, facing enormous pressures, and desiring to move quickly to rescue their country from its current difficulties, the delegates to the Constitutional Assembly ultimately bear an inescapable responsibility for the future of their country and its role in the world. In the final analysis, a constitution is a device to protect the people from their own government, and must be seen in this light if it is to be effective in ensuring liberty. It is essential, therefore, that the Assembly's deliberations be focused not just on the current political crisis, but on the long-term goal of ensuring democracy, liberty, and prosperity in Russia.

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