

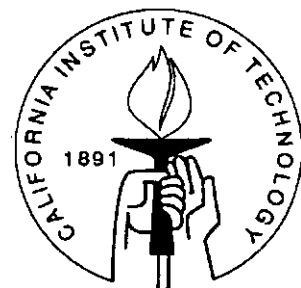
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Russia's Transition to Democracy: Essays 11-18

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# **Russia's Transition to Democracy: Essays 11-18**

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## **Abstract**

The eight essays contained herein are the second in a series prepared for translation into Russian and publication in Moscow's *Independent Gazette*. Their translation into Russian will incorporate a number of details particular to Russia that are not included in the current English versions. In any event, these essays are predicated on the assumption that Russians know democracy only in superficial and sometimes inaccurate ways - that they fail to appreciate the interrelationships of constitutional institutions, of extra-constitutional structures, and of the give-and-take of democratic process that sometimes seems chaotic to those unaccustomed to the interplay of these institutions and structures. Support for this project was provided by the University of Maryland's project on Institutional Reform and The Informal Sector (*IRIS*). We also would like to thank Olga Shvetsova for her suggestions on topics that require coverage and her comments on the essays' specific content.

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# Russia's Transition to Democracy: Essays 11-18

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## 11. Emergency Clauses: Essential Precautions or A Lack of Faith?

Few persons question that Russia is in crisis. The rate of increase in crime is exceeded only by the rate of decline in the economy. Hyperinflation threatens the experience of Weimar Germany in which postage stamps came in denominations of billions of marks. Things are no more stable in politics: Threats of referenda cause some to fear the next coup, republics claim secession, and ethnic conflicts continue in parts of the Federation. So, unsurprisingly, a considerable number of people demand that someone or something seize the reigns of power and lead Russia in a direction (any direction) away from the today's events. There are those who point to mainland China or Taiwan as models to follow -- authoritarian control of a state that allows for the gradual development of a market economy. Others say to hell with market economies or gradual transitions to democracy; dictatorship and central planning wasn't so bad (despite the fact that Russian dictatorships often found an especially effective way to disenfranchise "troublesome voters").

We will not enter into the debate over authoritarianism versus democracy, or over rapid versus measured transitions to a market economy. We do not understand economics sufficiently to think we know the most effective route to a productive and socially just economy; and our sympathies obviously lie with democracy, if only because the time has come for Russia to emerge from the dark ages of political process. Instead, our focus here is the advisability of constitutional emergency clauses designed to deal with crises of different types.

One reason for this focus is the considerable attention given to states of emergency in the various draft constitutions that have been proposed for Russia. We understand the motives of those who believe that provision for emergencies is essential. Emergency clauses seek to establish a firm hand and its corresponding efficiency of decision, while constraining that hand by some components of democratic process. Thus, they seek a compromise between authoritarian efficiency and democratic values. However, we argue here that not only is no such compromise possible, but also that no such compromise is necessary.

The most evident problem with emergency clauses is their potential for abuse. Indeed, it takes a good many fingers to count those "democracies" that have been transformed into something else

under the cover of a declared emergency. Our purpose here, though, is to emphasize a different point -- that avoiding any abuse of power requires that government function with some internal checks and balances. The power of those authorized to declare a state of emergency must be controlled by the other parts of government, lest power be usurped. But, as we shall argue, if we can restrain the abuse of power in an emergency, then no such clauses are required. If a normally functioning democratic state cannot accommodate emergencies, then the aggregation of power in a few hands during an emergency will threaten democracy regardless of the controls a constitution tries to establish.

The opportunities for an abuse of power arise, of course, from the fact that a declaration of emergency allows the state (the president in the Romyantsev draft; the president or the legislature in the Sobchak version) to do unusual things such as delay or otherwise cancel elections, incarcerate persons indefinitely, or abrogate specified and even some unspecified rights. Each such action threatens a dangerous precedent, and so all constitutional drafts try to ensure the existence of checks on emergency powers that can be applied by the legislature, regional governments, or the courts.

The difficulty here, though, is that constitutional checks on abuse operate only if, aside from the special circumstances of the emergency, the state otherwise functions normally. Indeed, the necessity for normal operation is recognized in the Sobchak draft, when it requires that "No changes in the structure, function, and competence of state bodies established by the Constitution are permitted in the period of a state of emergency" [Article 36, Section 4]. Although this clause is included to ensure that the constitution is not rewritten during a declared emergency, it has the effect of reaffirming the view that even the auxiliary checks that a emergency clause establish cannot work unless all normal checks on abuse of power are maintained.

This fact, which we discuss in more detail shortly, should be kept in mind as we examine the things that an emergency clause is designed to treat. Briefly, the Romyantsev draft seeks to provide insurance against "attempts at a foreseeable change in the constitutional system, mass unrest inter-ethnic conflict,... [and] natural disasters, epidemics, epizootic diseases, arid major accidents" whereas the Sobchak draft seeks to protect us from "aggression natural disasters, direct threats to the free democratic constitutional systems, mass unrest ... threats to the people's safety, and under circumstances provided for by organic law." Thus, we can identify four general categories of emergencies: natural disasters, economic disintegration (the current state of affairs), outside threats (invasion), and internal threats (insurrection). Of these four categories, only the second and fourth would seem to require any special attention. The first, natural disasters, unless of such an unprecedented magnitude that they threaten the human species itself, are likely to be localized events and, therefore of no threat to the normal operation of the state. What special or unusual powers does the state require to treat floods or epidemics? If such events cannot be anticipated and provided for

by normal legislation and treated with some measure of consensus, then no constitution, regardless of form, is viable.

The third possibility, invasion, threatens not only the state but the nation, and as with natural disasters, it is difficult to imagine a society that cannot act to meet such calamities or that cannot reach a consensus on appropriate procedures, even "extra-constitutional" ones. This type of emergency is perhaps the least ambiguous and is the one most easily treated in that part of the constitution that enumerates the powers of the legislature — for example, by including the clause "[the legislature] shall make provision for the functioning of the state in the event that a state of war exists between the Russia Federation and any other foreign power."

Returning now to the reasons for supposing that a normally functioning state can be expected to handle invasions and floods, we should of course recognize that states may be required from time to time to do unusual things with respect to, say, civil liberties. People may have to be quarantined, barred from entering territory, moved without immediate compensation, or prohibited from revealing military preparations. But our willingness to turn such matters over to "the authorities" -- to the military, the police, and the courts -- and to allow them some freedom of action, requires the existence of internal checks. If the legislature and the courts are able to oversee and regulate these authorities, if the president and the legislature are able to ensure that the courts are impartial, and if the courts and the president can focus public attention on the legislature to ensure that its actions are timely and constitutional, then a consensus on appropriate responses to an emergency is likely to be forthcoming.

Democracies, then, allow various parts of the government to temporarily assume special powers to the extent that people are certain that they can be restrained from overstepping the bounds of reasonable action. And, most importantly, the thing that acts as the constraint on action is the *normal* system of internal checks and balances that a well-designed constitution establishes. In this way, a constitutional democracy becomes something other than a system of inflexible rules that require special provisions to handle every unusual circumstance and to treat every crisis. No one has yet discovered the trick to writing such rules, and indeed, there are probably theorems in mathematics that tell us that such rules cannot exist. So instead, we rely on the existence of a "balance of powers" within the state, where the interests of the state's component parts are formed by each part's different connection to those the state is supposed to serve, the people.

Of course, if there is a test of this "theory of democratic government," it lies in the area of the second and fourth categories of emergencies -- economic disintegration (or equivalently, 'a period of radical reform'), and domestic insurrection. These circumstances appear to be a wholly different

species of animal, requiring separate treatment in a constitution. So let us consider these two categories, beginning with domestic insurrection.

Presumably, this type of emergency concerns an attempted secession by one of Russia's republics, or an intra- or inter-republic armed conflict. Such emergencies may initially be confined to a small region. But, as Britain's experience with the Irish Republican Army illustrates, they are unlike natural disasters in that they can be exported throughout Russia so as to endanger everyone. And whether localized or exported, such conflicts are often accompanied by the wholesale breakdown of law and order, and in the most extreme cases, by the takeover of a region by undemocratic forces. In this event, we cannot rely on regional authorities to resolve matters *or* to call for timely intervention by the national government.

Because unilateral action by Moscow, without the constitutional authority that an emergency provision might offer, appears to violate federal principles, a true "constitutional emergency" seems inescapable. Nevertheless, the granting of special authority to the president through the normal actions of the legislature should be adequate. In particular, if a constitution guarantees a democratic government to all parts of Russia, then the national government can justify intervention on the basis of an appeal to a part of the constitution that does not explicitly reference emergencies. Moreover, the protection afforded Russia's constituent parts against unwarranted actions and unreasonable interpretations of "democratic government" is the normally functioning national government itself, as a consequence of the fact that the legislature, in addition to representing people, also represents the Federation's parts.

Turning finally to economic emergencies, this is, of course, the arena that affords us an almost daily view of the inability of the state to formulate policies that are coherent, consistent, and timely. With so much effort devoted to political maneuver and conflict, the case for 'strong leadership' seems the only course: "Give \_\_\_\_\_ [you fill in the blank] the authority to reshape the economy, our political and judicial system, and our system (or non-system) of property rights." What choice do we have, some people can ask, but to take a temporary step back from the incoherence of democratic process when all that process can yield here is chaos?

But what reasons do people have for supposing that such chaos is endemic to Russia? Do we have some large sample of democratic experiments on her territory that all resulted in the same thing? Should we plan a constitution on the assumption that chaos will persist into the indefinite future?

Regardless of the answers we give to these questions, we want to argue that this apparent chaos is not without beneficial consequences. Despite assertions to the contrary, no one knows with certainty what policies will move Russia to prosperity with the least pain. There are no economic messiahs, no "quick fixes," and no paths to progress that only the insincere or stupid cannot see. The best we can hope for is that intelligent people will press their arguments upon each other and upon

the rest of us, and that out of this debate, however incoherent, will come compromises, experiments (both successful and unsuccessful), and, hopefully, a few new ideas.

But if no one knows what's best or if they know it only accidentally, what is the advantage of authoritarian rule, however temporary? Certainly we cannot be assured that our choice of "temporary dictator" is that person who knows best. So what is it that an emergency provision is supposed to provide in the context of economic crises? We have rejected the idea that authoritarian rule instituted by some emergency provision guarantees the selection of correct policies. And we have also argued that contentious debate, which the implementation of emergency provisions can foreclose, can yield a clearer view of alternatives. Is there, then, any proper role for some form of constitutional emergency clause?

In fact, there is a role -- the *coordination* of the state's parts to a policy that results in outcomes that are better than what currently prevails. The particular problem with emergencies, especially complex economic ones, is that there are numerous competing alternative policies, each one vying for the title "best." And because each of these policies will give special advantage to someone, it may be difficult to use the ordinary processes of government to select any one of these policies if only because the ordinary processes work too slowly. Owing to disagreements within it, the legislature may be unable to organize itself appropriately or the legislature and president, although appreciating the need for timely action, may be unable to agree between themselves as to the best course of action.

Viewing crises this way tells us how to fashion an emergency clause that avoids the dangers of an excessive concentration of power. Specifically, we need to give some part of government the ability to coordinate or to initiate those actions that will lead the different parts of the state to concerted action. For example, instead of granting a president the power of decrees, suppose we give him the right to call the legislature into special session and to require that it consider only the temporary emergency legislation he proposes. The special power of the president in this instance is the authority to focus public debate and to set the legislative agenda -- to require that his proposals take precedence in legislative deliberations. There cannot be any usurpation of power since the legislature can continue to negotiate with the president over details. And since the state continues to function normally, there is no need to abrogate rights or at least no need to abrogate them in a way that sets dangerous precedents.

We understand that it may be hard to convince readers that so weak a provision can accomplish much of anything, especially in light of Russia's current economic distress. Indeed, what we propose leads to a process that is not much different from what occurred in the first two weeks of December. But only because those events were new to Russia and only because they occurred in the context of an unsettled system of political institutions, they gave the appearance of chaos and threatening coups.

The fact nevertheless remains that compromises were reached, the political system survived, and, unlike what occurred in the past, no one was suddenly given a free but unwanted tour of Siberia. It is not unreasonable to suppose that this process will work more smoothly once it is grounded in better defined political institutions.

Those who fear that such processes can only lead to further chaos and eventual dictatorship should keep in mind that stronger emergency provisions in the constitutions of other countries are more often than not the source of emergencies and not their solution. The most effective "emergency clause" is a well-written constitution itself that establishes a viable balance of powers among the different parts of the government and that gives those parts a clear connection to the people.

## 12. A New Constitution: Should We Cut Trees to Even Print It?

As people prepare to add their voice to the creation of a new constitution, certainly more than a few of them are asking why they should expect anything different from a new one than from the old one. The old one, after all, also promised freedom of speech, of assembly, the right to vote, a free press, the right to express one's grievances, guaranteed pensions, health care, housing, vacations, and so on ... and look what happened! What can possibly be written on paper that will change anything of substance?. Why should we regard the promises contained in a new constitution as anything more than a part of the fraud being perpetrated on the Russia people by a political elite that is concerned solely with maintaining its position? Wouldn't it be better and less deceitful to dispense with this farcical experiment in democracy, return to political structures more in keeping with Russian tradition (monarchy, autocracy, dictatorship?), and get the economy functioning so that it is no longer the object of world-wide derision?

Regardless of whether such questions are framed seriously or cynically, they require answers. Otherwise, there is no reason to suppose that anyone will pay much heed to any new document, however well-crafted and however noble the intentions of those who craft it. And in that event, the prediction that the constitution is meaningless will become a self-fulfilling prophesy.

But the lessons to be drawn from Russia's experience with "constitutionalism" should not result in pessimism or cynicism. What we want to explore here is the possibility that that experience should either be deemed as merely irrelevant to the current debate over constitutions, or interpreted to give us confidence that democratic constitutionalism will in fact work in Russia. Indeed, when we explore the difference between earlier constitutions and current proposals, we see that the fundamental flaws of the past have are in fact being corrected.

Of course, in offering the hypothesis that the past is as much a source of confidence as it is of pessimism might be taken to indicate that we have smoked or drunk too much of some foreign substance. Nevertheless, focusing on the '77 constitution in particular, adopted with great fanfare



throughout the USSR innumerable people wrote letters offering their input, the fault of that document was not that it "failed," but rather that it worked precisely as designed.

Those who believe it failed owing to the gap between promise and reality are correct to argue that merely setting words to paper about social goals and rights did not and, in general, cannot accomplish much. But this supposition of failure is based a preoccupation with only one of three questions we can ask about a constitution when evaluating its performance. In this instance the question being asked is: Did the constitution lead to the realization of stated individual rights and social guarantees? The answer to this question, evident to everyone but the most diehard apologist of the old regime, is NO, and therein lies the source of pessimism about the prospects in-Russia for a democratic society guided by constitutional principles.

That question, though, is not the only one with which to evaluate the prospects for democracy, because it focuses on but one of the things we want from a constitution. Before we can reach any conclusions, we must also ask and answer two additional questions. The second question is: Did the constitution legitimize or contribute to the stability of the political institutions it proscribed for society? And, third: Were those institutions appropriate for the realization of the rights and social guarantees identified as goals within the constitution? Only if our answers to these questions are NO and YES can we deem a constitution a failure. In fact, our answers are exactly the opposite.

The problem with Soviet constitutions was that they were based on an invalid social theory that assumed that people are perfectible and that beliefs and values can be changed fundamentally so that social goals become private ones. Thus, they enshrined a political system and set of institutions that could not realize those goals. However, although they failed to do what no constitution can do directly -- guarantee the realization of lofty principles by simply identifying them as goals -- both the '36 and '77 constitutions (but the '77 one in particular) succeeded to the extent that the system and institutions they legitimized did in fact function as described. Setting Marxist-Leninist principles at the core of Soviet social organization, both the '36 and, even more forthrightly, the '77 constitutions did one thing -- they legitimized the dictatorship of the Communist Party -- and having done that, all the rest they offered became mere window dressing.

This is not to say, of course, that constitutions played any important role in generating Soviet political structures -- those structures existed prior to the writing of either document. Nevertheless, they did give legal sanction to what existed. Moreover, what existed passed into history only after the '77 constitution was amended to allow for such a possibility. Thus, with respect to our second question about their influence on political structures, these facts should cause us to regard Soviet constitutions as either irrelevant to events or reason to believe that they contributed to the strength of existing institutions. In either case, the answer to our second question ought to be YES.

Turning to our third question, about the adequacy of that structure for realizing stated goals, the social theory upon which the '77 constitution in particular was based (the '36 version, regardless of its words, was little more than a cover for Stalin's dictatorship) failed to appreciate that a top-down command and control economy cannot function in a world where prosperity and security depend on a vibrant consumer economy, high technology, and efficiently operating financial markets rather than on simple directives concerning the manufacture of steel, tractors, and tanks. More importantly, that social theory also failed to anticipate the inevitable consequences of the unchecked political power of the CPSU -- inefficiency and corruption -- which appear regardless of whether that power is entrusted to some committee or to an individual.

Nevertheless, this was the political structure that Soviet constitutions sought to legitimize, and this was the structure that prevailed. And herein lies the reason why they failed to deliver on their promises. Put simply, they (and the '77 constitution in particular) legitimized a political system that may have tried initially to fulfill its promises -- and it may even have succeeded in doing so for a time — but that eventually succumbed to the fact that it did not contain any mechanism for ensuring that the pursuit of self-interest would serve the public interest. Thus, the answer to our third question is NO. So, if there is a lesson to be learned from Russia's constitutional experience, it is not that constitutions cannot work. Rather, that lesson is either that the experience is irrelevant to the current debate or that even bad constitutions can, for a time at least, be stable.

Of course, this argument does not challenge the view that history would have been unchanged if any of these constitutions was a wholly democratic document or even a blank piece of paper (arguably, the equivalent of the '36 constitution). It need not convince anyone that a new constitution can lead to something other than what exists. It does not contradict the assertion that Russia must proceed along a historical path that can only be interrupted but not negated by attempts at developing a constitutional democracy. To counter these arguments requires consideration of the more general matter of how constitutions in fact influence political processes, how they ensure rights, and how they facilitate the establishment of stable political systems.

We cannot address all of these issues here. But we can indicate how we can avoid the excesses and failures that occurred previously. Briefly, the core of any constitution, aside from the rights and guarantees it lists, is a specification of a governmental structure that defines the relations of the different parts of the government (the executive, legislature, and judiciary) to each other and to the people. Their varied relations to the people determine the extent to which each part will find it in its interest to reflect a different feature of society and to facilitate the realization of constitutional rights and guarantees. The president in a presidential system, for example, is elected by everyone and thereby summarizes the general aspirations of society; each member of a State Duma represents the particular interests of his or her constituents; members of a Federal Council represent the interests

of their constituents and those of their republics, krays, oblasts, and so on; and members of high courts, freed from excessive political control but, hopefully, living in the shadow of history, search for those general principles we must follow if we are to be something more than a discordant mob.

It goes without saying that the ultimate constraint on the state derives from these different relations with society's ultimate sovereign, the people. However, this fact has been a source of great confusion and has resulted in the erroneous belief that to vote is to be democratic. Because it is necessary to grant government the power to coerce us into doing things we might not otherwise do (for example, pay taxes), and because public officials can sometimes act before we can successfully challenge those actions, even a popularly elected state can threaten to our liberties. Hence, being democratic also requires that we construct a government whose parts will each check the excessive accumulation of power by its other parts and the illiberal actions that accompany such an accumulation.

It is, then, this combination of relationships -- between citizens and the state and among the parts of the state -- and not just one of them that determines whether the political system can detect and make adjustments for incorrect or ineffective policy, for policy that undermines the rights and social goals established elsewhere in a constitution, and for policy that might ultimately undermine the state's very stability. The relation of different parts to the people gives those parts a different interest and thus ensures that they will not collude against the people; the relation of those parts to each other ensures that no one part and no single interest within society can dominate all the rest.

Of course, Soviet constitutions, following the usual template of democratic governments, provided for a variety of representative assemblies and courts. But, operating under the assumption that the Communist Party would know and would necessarily act in the interests of society, those constitutions set this fourth part of government above all others, without also giving the people any direct or meaningful control over its actions. Hence, the label "democratic socialism" was little more than a sham -- the more appropriate label was "authoritarian socialism."

Democratic systems, although differing in details, contrast sharply with this picture, because they place no part of the government in a superior position. Parliamentary systems make all parts initially subservient to the legislature by giving it strong powers of appointment and dismissal. But a check on these powers is provided by allowing the prime minister (or a president) to dissolve the legislature and to call for new elections. Presidential systems tolerate a less direct relation between voters and public officials (thus members of one legislative branch are often appointed by regional governments, and presidents are elected indirectly through such devices as America or Finland's electoral colleges), but they compensate by requiring a "balance of power" among the different agencies of government.

Since it is evident that Russia will have a president and since the only undecided issue in this respect is the relative powers of that office, it is especially useful to focus for a moment on the construction of this balance of power. Briefly, a balance is achieved by implementing a separation of powers among the three primary branches of government, where the critical element of this separation is to ensure that any pair of branches is able to check the excesses of the third when that branch fails to act appropriately. Thus, if the president fails to execute or administer to laws in a constitutionally proscribed way, the courts can direct the executive to act otherwise and the legislature can use its control of the state budget to do the same. If the court fails its responsibilities, the executive and the legislature, together, can influence the court's direction by their joint power of appointment. Finally, if the legislature itself performs its duties poorly, the courts can block unconstitutional laws and the executive, in addition to vetoing legislation, can use the prestige of the office to bring public pressure to bear on this branch of government.

These checks on power, though, point to a practical difficulty with presidential government that is especially salient given the current political debate in Russia. A complete separation of powers is impossible -- each branch of government must have an interest in and some authority over the jurisdictions of the other branches. We cannot have the legislature treating issues that do not concern the courts or the executive; and by definition, the courts and the executive must implement the laws that legislatures pass. So a stable constitution must allow some overlap in the jurisdictions afforded to each of these parts.

However, in engineering this overlap, we merely create chaos if we allow the overlap to be too great -- as when we give legislative power to the president or the courts or when we give executive power to the legislature. Much of the conflict we observe in Moscow today derives not merely from political ambition but also from the fact that the powers of these two branches impact on each other too greatly and too consistently. On the one hand, the president has legislative powers through his ability to issue decrees that have the power of law. On the other hand, the Congress holds executive power by way of its ability to dictate the composition and policies of the cabinet. Taken together, these powers conflict and cancel so as to reenforce the stalemate that so often characterized presidential-legislative relations.

Too much overlap, then, creates confusion; too little threatens autocracy. A stable constitution requires a balance between too little and too much overlap, too much and too little joint authority, and too much and too little reciprocal power.

So, what precisely is the optimal balance? Should the legislature, for example, have the power to influence or even dictate the selection of the heads of ministries? Should the president be empowered to dissolve the legislature rather than merely being empowered to veto legislation? Should members of a Supreme or Constitutional court be subject to periodic review and reappointment? Unfortunately

these questions are not easily answered. Our prejudice, though, is for overlap to be minimized but kept just great enough to ensure against the dominance of any one branch of government. In this event, each branch must act more responsibly, because it is less able to blame its failings on the actions of others. And with focused responsibilities, each branch becomes more amenable to control by the primary relationship a constitution establishes -- the relationship between government and the people.

### 13. Should We Be Concerned With a New Constitution When We Are Hungry?

Because both the '36 and '77 Soviet constitutions embodied a concept of government that was inherently flawed and incapable of securing the rights and social guarantees they promised, we argued in our last essay that the unsatisfactory performance of these documents is not a basis for predicting that constitutional democracy is infeasible in Russia. Nevertheless, we suspect that few readers will be convinced by our argument that they ought to pay any attention to the content of a new constitution or referenda that deal with them. Rather than concern themselves with what appears to be little more than an extension of the conflict between the Congress and Yeltsin, most people are understandably preoccupied with personal survival. A few people may find ways to prosper, but the majority must be concerned that they not waste a single bread crumb or damage further any of their threadbare clothing. Such circumstances are hardly ones that place arguments about new constitutions at center stage.

But while worrying and thinking about politics cannot put food on the table or shoes on our feet, the design of a new constitution and the maneuvers of political-leaders over its content warrant attention if only because of a constitution's role in a democracy. A constitution should not be thought of as some piece of paper that, once written, can be filed away in some drawer to be used by public officials as justification for their actions and as a basis for securing political advantage over opponents. Instead, it ought to be a statement of society's highest aspirations, political values, and preferred forms of political organization. Constitutions are not prepared to give legitimacy to some predetermined governmental structure or to justify the actions of any particular faction within the government. They are written so people can organize and coordinate themselves to political purpose. Many of the things we want out of life -- good schools for our children, a prosperous economy, a peaceful society -- cannot be realized without coordinated social action. A written constitution is one of the things -- one of the most important things -- we must have if we are to rule ourselves and achieve those ends.

Primitive villages and tribes organized through custom and tradition by accepting the leadership of elders and chieftains. Later, people gave their sanction (not always voluntarily) to kings and

monarchs who may have ruled in their personal interest but who were expected to coordinate their subjects for some common purpose. Communist ideology rejected the idea of the divine right of kings, but following earlier traditions, it substituted the dictatorship of the Party for that of the autocrat.

People in a democracy reject the idea that any single individual or part of society has the right to rule. We seek to rule ourselves. However, this idea of self-rule does not materialize automatically merely by asserting the desire to do so. It requires that we carefully construct some aids that were unnecessary when the power of the state was in the hands of an autocrat or self-appointed oligarchy.

The nature of those aids is determined, first, by the fact that we must accept the idea that there will always be disagreements and honest differences of opinion as to how to best achieve social ends, and that there will even be disagreements over ends themselves. We make no assumption of unanimity over anything except for the idea that people prefer to proceed peacefully as long as doing so promises them, their family, and their friends with a reasonably rewarding life. The character of those aids are determined also by the fact that we cannot try to reinvent procedures for resolving conflict every time we are called upon to make a decision. This approach -- not too dissimilar from what currently characterizes politics in the Kremlin -- leads simply to endless debate over the methods for making decisions, over the method for making decisions about methods of making decisions, and so on.

Of all the aids we might construct, none is more important than a constitution. This is the principle device whereby we coordinate our actions so as to select some set of rules and procedures for making social decisions. A constitution accomplishes these tasks in three ways. First, it lists those basic values (rights) that are to remain unquestioned throughout our political debates. Second, it defines the legitimate domain of government and the relations of different levels of government to each other. And third, it proscribes the rules of legitimate political process, the rules whereby we select our leaders, and the ways in which those leaders are to organize themselves to serve us. Thus, the writing and adoption of a constitution is the ultimate act of self-organization and coordination.

So, the answer to the question the forms the title of this essay is simply that we have no choice. We cannot abdicate the task of finding some way to coordinate to some well-defined rules, unless we prefer to let some small oligarchy do it for us -- an unknown oligarchy with unknown purposes.

Of course, it is not unreasonable for people to remain skeptical about a piece of paper and to ask: "How can we ever hope to enforce its provisions when abiding by written democratic constitution is not part of Russian tradition?" If there is a Russian tradition, this argument continues, it is that of having constitutions enforced by an autocrat or, as in the Soviet case, by the Party.

Moreover, trying to understand how a democratic constitution is enforced seems incomprehensible. Such a document cannot be enforced by a legislature, a chief executive, or the courts, since it is the constitution itself that defines the rules under which these parts of the government operate. If they have the ultimate power of enforcement, then they also have the power to change a constitution to suit their purposes. This is not to say that we do not hope to create institutions that make it in the self-interest of politicians to act to honor the provisions of a constitution. But seeing this as the ultimate source of constitutional stability merely pushes the problem back a step so that we must then ask: "Who enforces the provisions of a constitution that establish and define the self-interest of politicians?"

In fact, if there is a higher authority in a democracy and an ultimate source of enforcement, it can only be the people themselves. If constitutions are to guide our political deliberations and if they are to restrict our political leaders to act in our interest, then the people must consensually agree to abide by a constitution's terms. If the people are unwilling to act in accordance with it and to sanction those who fail to do so, then no special words, clauses, edicts, decrees, or governmental forms will do the job for them. There is no precise relationship between a president and the legislature or between national government and regional governments that will guarantee constitutional stability. A constitution serves its purpose and endures only if the people -- voters, soldiers, civil servants, and public officials -- are willing to abide by **it** and if they believe that others will do the same.

A constitution can accomplish this task in only one way -- it must become a part of society's moral and spiritual fabric. As we have argued elsewhere, acting "constitutionally" must become equivalent to acting in accordance with other social norms such as respecting and honoring one's parents, abiding by one's sense of patriotism, or aiding strangers in peril. The great "trick" of democratic transition, then, is finding a way through public debate, through trial and error, and through continual deliberation, to render constitutional principles a part of our thinking about legitimate political process. Once this is done, a constitution's enforcement becomes a self-fulfilling prophesy.

Of course, we understand that this argument may seem like **Utopian** thinking. Shouldn't we first try to get the economy functioning in some minimally acceptable way, even if that means accepting temporary autocratic rule, since only then can we begin to see what forms of political organization are best suited to our purposes? And even if we are forced to begin thinking about a constitution now, shouldn't **we** leave the determination of things to **specialists** since Russians have had so little experience with democracy?

The answer to neither question should be "yes". In fact, we can use the view that democratic constitutions are like social norms as a basis for offering some general guidelines for evaluating constitutional proposals that ought to be understandable to nearly everyone. Because these suggestions

apply regardless of whether Russia adopts a presidential or parliamentary systems, regardless of whether members of a court serve fixed or life terms, regardless of whether Russia chooses to be a centralized or decentralized federalism, and regardless of what choices are made with respect to the myriad of other decisions that go into the construction of a constitution, people can use these rules to evaluate any of the proposals set before them.

First, any survey of social norms reveals that they do not arise from any single source — they are simply "there" and we attribute their existence and persistence to custom and tradition. Similarly, just as no single part of the government can be the exclusive guardian of a constitution's content, none can be the master of admissible changes in it. Allowing any part of the government the exclusive right to amend a constitution threatens political instability. So, when designing the procedures under which such a document can be amended, even if we choose to require the involvement of our legislature (since it is an important repository of relevant expertise and is a valuable forum for debating the wisdom of any change), we should also involve the people directly (through referendum) or indirectly (via the acceptance of change by regional and republic governments). Social norms work because they are "generally accepted" -- constitutions and constitutional changes work the same way.

Second, social norms sustain themselves only if people expect others to abide by them and if they anticipate sanctions when they fail to do so. But abiding by norms and customs is impossible if these rules of social conduct are themselves confusing **or** poorly understood. Hence, a constitution should not be drafted with the idea that it will be a tool of lawyers or politicians. Long convoluted clauses of uncertain meaning are wholly inappropriate; brevity is essential. Plain language of common meaning provides a surer protection for society and a more effective device for coordinating their opposition to those who would violate the spirit of a constitution than any number of clauses replete with concerns for extraordinary contingencies.

A corollary to this rule is that people, when evaluating a proposed constitution, should resist the temptation to demand elaborate statements of rights that give the appearance of making those rights immediately enforceable. Doing so merely compounds the problem of enforcement by adding additional layers to the document that require interpretation and legislation. The temptation, regrettably common to many countries, is to view such documents as contracts that seek to leave nothing to chance. But just as contracts can only be enforced by a higher authority, writing a constitution in this form tempts us to begin a futile search for the philosopher-king or to the dangerous creation of the dictator. People must instead begin placing their faith in the representative institutions and courts that a constitution establishes.

Third, social norms are practical. They do **not** require people or society to do impossible things. The content of a constitution should not be obscured by **Utopian** requirements that the state accomplish things that may or may not be feasible. Certainly there are policies we may want the state



to pursue and a constitution ought to direct the state to pay special attention to them. But a constitution should focus on the institutions and rights that are sufficient to ensure society's ability to coordinate for the realization of policy goals as expressed through democratically elected legislatures, governors, and presidents.

Fourth, social norms guide our lives because we all understand, implicitly or explicitly, those actions that violate them. But to assert within a constitution, for example, that "the highest value is man and his life, liberty, honor and dignity ..." does not direct the state to anything in particular and serves no purpose. Such sentiments take on meaning only when we include within the body of a constitution specific prohibitions on state-action or requirements to positive action, devaluating a draft constitution, then, we should treat such lofty sentiments as redundant or irrelevant verbiage. Such sentiments require explicit phrasing that allow the courts to judge any infringement of them and that direct the legislature to specific action.

Fifth, although a constitution seeks to add to society's social organization, it does so only within the limited domain of politics. Including requirements that children care for their parents, that parents care for their children, or that people care for the environment and for their cultural heritage are entirely out of place in such a document. Other norms of social behavior will attend to such matters — a constitution is not the place to attempt to structure all of society.

Finally, social norms are adaptable and timeless, and a constitution should be crafted from the same perspective. It is, of course, difficult to avoid paying special attention to those problems that are of immediate concern -- housing, ethnic tensions, inflation, and so on. It is also difficult to avoid thinking about how the allocation of political power within a constitution will impact the resolution of these issues. But if we attempt to solve every contemporary problem within the body of a constitution, we are unlikely to generate a document of much lasting value. This is not to say that matters such as ethnic conflict or demands for regional autonomy should be ignored. But we should try to differentiate between the search for temporary solutions and the design of procedures that will allow for lasting resolutions of these problems and any others that may arise.

This task is illustrated by card players who must choose the game to be played. If they choose before the cards are dealt, different players may hold different preferences, depending on which game best matches their beliefs about their comparative advantages in skill. But agreement should be possible if each values the mere pleasure of playing. On the other hand, if they must choose after the cards are dealt, then each person will prefer a game that makes his hand a likely winner. Agreement will be reached only if the players allow their long term interests to overcome their short-term ones.

The situation is not much different in the transition to democracy. Although we may prefer to redeal the cards, this alternative is not wholly practical. So each of us must somehow overcome our

short-term concerns and try, as best we can, to look to the future. That is the task that confronts Russia today. That Russians have endured so much these past few years in the desire to achieve a more just and prosperous state should give us confidence that there is the will to make democratic process part of society's social fabric. Politicians who fail to honor this will should be advised that they do so at their own peril.

#### 14. What Is This Thing Called A "Fair and Competitive Election"?

Throughout its history, the Soviet Union required that its citizens march to the polls so it could announce that the victorious (and only) candidate had won with a turnout exceeding ninety nine percent. In this way Andrei Vyshinsky could assert in 1937 that "never in a single country did the people manifest such activity in elections as did the Soviet people. Never has any capitalist country known nor can it know such a high percentage of those participating in voting as did the USSR."

The democratic world laughed derisively, and brushed aside the assertion of democratic legitimacy and superiority. However, although we may believe we know an unfair or uncompetitive election when we see it, can we recognize its opposite? Are only those elections in which all candidates or their parties have an equal chance of winning fair and competitive? Must the candidates all have equal access to the media. Must a constitution ensure that all parties have equal financing? Must all voters have equal access to the polls? Must turnout exceed fifty percent? Must political parties be required to represent a cross section of society, mirroring its ethnic, linguistic, and cultural diversity?

In fact, the description and characteristics of fair and competitive have undergone considerable modification over time -- so much so that there need not be any general agreement about their content. "Democracy" began in the 18th and 19th centuries with property requirements that kept large portions of their populations from voting. Elections that excluded the participation of women were deemed fair in most of the world until World War I and until only recently in Switzerland, as were elections that did the same to blacks in America and Indians throughout most of Latin America. Elections that kept certain philosophies from being represented at the polls -- separatists movements, religious movements, and ideological ones -- were also regarded as otherwise fair and competitive. And elections in which incumbent politicians enjoy as much a one hundred to one advantage in financing relative to their challengers are commonplace today throughout the world's democracies.

Despite our apparent willingness to tolerate considerable variation in standards, we worry about perceptions of fairness and unfairness for the simple reason that if candidates believe that elections are unfair or uncompetitive, then they become less likely to operate under democratic rules and more likely to prefer unconstitutional actions. And if voters believe the same, then the legitimacy of the entire system is undermined and people become more acceptant of the demagogue who threatens

constitutional stability. Unlike a Soviet regime that used elections to register solidarity with the CPSU's leadership and philosophy, elections in a democracy are the means whereby the people exercise their ultimate act of sovereignty -- replacing one set of leaders with another. Stripped of this right, democracy becomes a sham and the stability of the political system becomes dependent on its ability to coerce its subjects.

Of course, since societies have prospered and been stable under a variety of definitions of fairness and competitiveness, the question we should ask is: What definition is appropriate for Russia — what standards would facilitate a stable democratic regime?

This question is important since the time is drawing near when people must consider the election of a new president, a new legislature, and countless other local and regional public officials. New constitutional provisions must be implemented, and the concepts of fair and competitive must be given specific meaning. It is unwise to have a new regime begin its tenure with the perception of gross violations of these definitions, especially if we want that tenure to extend into the indefinite future.

Naturally, there are some criteria that all elections ought to satisfy. The first, over which there is little dispute, is that no one above the age of responsibility should be denied the right to vote or should confront excessive obstacles to voting (for example, registration fees). An equally important corollary, though, is that no one should be compelled to vote either by force or by fines. Even though a number of democracies compel participation, this practice reflects little more than the naive view that high turnout is "good" and low turnout is "bad." People choose to vote or to abstain for a great many reasons, but compelling them to vote does not make an election and fairer or more competitive. It merely gives the state another excuse to interfere in our personal lives, and another way for it to tax us.

Second, only voters should judge the appropriateness or inappropriateness of a candidate's qualifications, the quality of his or her campaign, and the right to organize a party. Let the anti-semitic run, let the fascist campaign, let unrepentant communists organize to offer their challenge to the current regime. Once we allow public officials to pass judgment on "seditious," "inflammatory," or "immoral" candidacies, once we allow the state to deem certain parties legal and others illegal, we have compromised our democracy and have opened the door to state dictatorship. If people themselves cannot dispense with extremists by simply not supporting them, then no amount of state regulation will do it for them. Indeed, such regulation will only exacerbate the problem and legitimize extremism.

This second characteristic of fair and competitive elections is profoundly important. It requires the relatively easy entry of new parties and candidates who can contest the reigns of power with those who currently hold that power. Just as the threat of competition in markets can keep a firm from

charging a monopoly price for its product, it is often merely the threat of political competition that keeps those in power working in the interests of society. But this characteristic is also the most difficult to maintain since those in power will always try to bend or wholly abrogate the rules that subject themselves to the threat of competition. Just as every manufacturer prefers to be a monopolist, every politician prefers that no one contests his right to govern. Once the right of free political entry disappears, all other rights are jeopardized.

Third, the media must have the right to publish any opinion regarding a candidate's qualifications and a party's activities. Public officials will always try to use the power of their office to protect themselves from opposition. Allowing incumbents to wrap themselves in the protective cloak of official position precludes the possibility of fair and competitive elections. A wholly free press able to investigate and report on the failings and accomplishments of incumbents and challengers alike is essential to democratic process.

Fourth, no area of policy should be deemed out of bounds for electoral politics. All manner of issues should be allowed, and the only criteria for their selection should be the electorate's willingness to listen to candidates who choose to campaign on them.

Fifth, voters should be free from coercion and the voting booth should be off-limits to candidates and their supporters. It would be especially useful if organizations could form -- civic groups and social clubs -- whose express purpose is to oversee the honesty of voting procedures and whose charter is explicitly non-partisan.

Finally, elections should be regularly scheduled and not thrust suddenly upon the electorate as a surprise. If Russia opts for a parliamentary system in which the prime minister or president can call for new elections, the opposition should be given time to organize and form strategies to compete against incumbents.

We could extend this list, but it is more useful to consider something that a fair and competitive election isn't by confronting directly the supposition that all candidates must share equal resources (money) in a campaign. This supposition arises naturally out of the fear that unrestricted democratic process gives too great an advantage to the rich, to monied interests within society, or to those who are willing to sell themselves to those interests. These concerns arise in Russia owing to the perception (and to the fact) of excessive corruption and of a government in which favors can be bought and sold as in a market. There is the temptation, then, to restrict the ability of candidates and parties to raise money; and there is the parallel temptation to require the public financing of campaigns so as to equalize matters.

Admittedly, this argument has merit. These concerns exist in established democracies to perhaps an even greater degree than elsewhere, if only because they have developed well-defined channels whereby money can flow to politicians. However, against these concerns we have to balance the idea

that people participate in politics in many ways. They contribute not only money, but also time, energy, and ideas. Do these contributions, and people's different abilities to make them, also violate any principle of fairness? And if we try to equalize resources across candidates, do we do so for all candidates and parties -- crazy extremists, those who can secure only their own vote, those who advocate morally reprehensible positions?

Clearly, any idea can be carried to extremes. We cannot eliminate the influence of money or wholly equalize its availability to candidates. But there is in any argument for public financing of campaigns an implicit assumption that goes to the heart of stable democratic process and that, unless uncovered and examined, allows a naive view of that process. That assumption-is that money operates in only one direction -- to the disadvantage of those who do not have it.

In examining this assumption, though, we are reminded of the words of James Madison, the principle architect of the American constitution: "the most common and durable source of [political] faction has been the various and unequal distribution of property." From this excerpt we might infer that Madison foresaw the same class struggle as did socialist or Marxist theorists. To the contrary, though, he went on to note that "a landed interest, a manufacturing interest, a mercantile interest, a monied interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views." Thus, rather than seeing money operate in any simple way so as to divide society into separate and permanent classes, Madison foresaw that the clash of interests that the state would be called upon to mediate and that would simultaneously exert their influence upon the state would be multi-faceted and would divide society in innumerable ways.

For the most part, this has in fact been the course of history in stable democracies. Workers, businessmen, bankers, or the "middle class" rarely if ever vote with anything approaching unanimity. The trade policies of one party aid some sectors of the economy and workers in them, but damage and are opposed by others. The state subsidies that a candidate advocates may aid one industry, but they do this at the expense of those other parts of society that must pay for those subsidies. Farm policy assists one part of the agricultural sector, but often does so at the expense of another sector. An administration's decision to regulate prices and entry in one industry so as to bar competition injures those other industries that use the output of the first as their input. Allowing banks special privileges increases the costs of capital to those who would use the bank's assets as a source of investment capital.

Politics in a stable democratic society, then, is not dominated by the clash of class interests. There are far too many interests for any category to predominate over the rest. Most of these interests, moreover, cut across society in so many different ways that they make that society look less like a layer cake and more like scrambled eggs. Workers hold investments in firms directly or through their

pensions funds and thus are concerned about stock prices. Bankers are as concerned as anyone else with the cost of financing a new home or automobile. Trade policies that hurt one industry and aid another help form alliances that cut across divisions of management and labor. And regional interests cut across almost any set of interests that do not correlate with geography. Moreover, if a policy aids one clearly definable segment of society at the expense of the rest, then generally that segment is too small to sustain itself as a winning coalition. And in the event that this segment is large -- for example, pensioners, veterans, or farmers -- there are other issues that divide these segments into opposing interests.

It is in this scramble that political parties and candidates must attempt to form their winning coalitions during a campaign and it is here that we find an important source of stability in democratic politics. We begin with the fact that the complexity of modern society makes any coalition of voters or of legislators inherently vulnerable to disruption. Regardless of what combination of interests a party might seek to put together in crafting a winning coalition, the opposition can always chip away at this support by offering some additional advantage to elements of that coalition by appealing to an issue that divides the groups within that coalition. This "chipping away," though, occurs in all directions and along all dimensions -- no coalition is invulnerable to disruption from any direction.

This is not to say that some interests will not side in large numbers with one party or with one side of an issue. But political victories are always won at the margin, and there is no reason to suppose that any reasonable interest within society will not be appealed to for support by all parties and candidates in an election. Thus, the instability of coalitions in a democracy makes all groups and interests potentially pivotal for the formation of a winning coalition. Indeed, once a winning coalition is formed, all of its components can claim to be as critical to its existence as any other, thereby giving all an equal claim to a share of the spoils of victory.

However, this coalitional instability need not translate into any fundamental instability for the regime itself. In fact, it can strengthen it. Winners in today's debate, uncertain that they will not become losers tomorrow, and are thereby confronted with two choices. First, once in control of the state, they can try to disrupt democratic process and maintain power by extra-constitutional means. This choice is a viable one, though, only if a significant part of society implicitly or explicitly supports such actions.

The second choice is to treat one's adversaries as they would wish their adversaries to treat them. In fact, coalitional instability tells everyone that even if one loses power, there is a reasonably good chance of regaining it in the future. And to the extent that the prospect of regaining power moderates the actions of those out of power, it also moderates the actions of those in power. All victories and all defeats are temporary, and in this way coalitional instability facilitates overall political stability.

This coalitional instability facilitates overall political stability in another way. If society consists of a complex array of cross-cutting interests, then the salience of those appeals that are especially disruptive of political stability -- ethnic and racial matters -- diminishes. If members of different ethnic, linguistic, or racial group share economic and social concerns, then coalitions based on emotional appeals to these dangerous cleavages can be disrupted and voters who are on different sides of some ethnic cleavage can find themselves courted by the same candidates and parties. In this way ethnic and racial appeals are kept from achieving permanent ascendancy on the ladder of salient political issues.

Nothing we have said, however, applies if elections are not fair and competitive. Voters must be willing and able to shift their political support so that as many sides as possible seek their support in a campaign. Voters must also be able to implement the threat of punishing those who violate the norms of democratic process, including punishing those who would violate the rights of others for the sake of forming some temporary majority coalition. So once again, as we have said elsewhere, democracy remains stable only if society has a consensual will to preserve it.

#### 15. Economics or Politics: Which is the Chicken and Which the Egg?

Freed from authoritarian rule and the heavy hand of state control of nearly everything, the government of the newly formed democracy proceeds down the path of economic reform, basking in the glow of successful revolution and enthusiasm over new-found political freedoms. But reforms quickly generate undesirable side-effects -- unemployment, inflation, and disparities in the distribution of wealth. Enthusiasm is replaced by public dissatisfaction and impatience, especially when the anticipated foreign investment and aid fails to materialize. Hoping to dampen discontent, the government makes bold promises it cannot keep; but dissatisfaction grows and champions of alternative policies multiply like rabbits. Fearing a loss of power, the government vacillates between issuing new decrees (some undemocratic) and seeking accommodation with its politically strongest critics. In the first instance, reform policy is clear and decisive (though not necessarily correct); in the second, it is blurred by confusion and indecision. But vacillation between dictatorial decrees and soothing compromise, between policies formed by technocrats and policies formed by political holdovers from the previous regime, and between rapid reform and no reform at all, erodes the government's authority and its ability to generate public support for any new decisive economic action.

Although this scenario presumably describes Russia and other members of the CIS, it also describes any number of countries in Eastern Europe and Latin America that have attempted political and economic reform simultaneously. And no small number of these countries have seen their

transition to democracy derailed by a military dictatorship or a "palace coup" that seizes power with the argument that only it can stabilize events and pull the country out of chaos.

Unsurprisingly, then, an especially salient question in Russia today is whether it is better to implement democratic reforms as quickly as possible along with market reforms, or whether it is better to postpone political changes so that the move to a market economy can be directed by a "temporary" autocrat who is free to take decisive action. Which should come first -- political or economic change? Can a transition to democracy facilitate a prosperous economy or is a prosperous economy a necessary condition for ensuring a stable democracy? Is democracy possible when inflation exceeds 2000% and prices are quoted in foreign currencies that only a small elite can earn? Should a new constitution be imposed from above after the economy is reformed or should it be considered along with economic changes?

These questions do not arise merely because Russia's continuing political turmoil appears only to exacerbate her economic difficulties. They arise also because at almost the same time as the Soviet Union implemented the policies of glasnost and perestroika, China began its economic reforms but rejected political ones. Today China is whole and experiencing one of the highest economic growth and development rates in the world. The Soviet Union has passed into history, and each of her former republics is being subjected to double digit rates of economic decline. These questions arise also because opponents of political liberalization point to the economic "miracles" of South Korea, Chile, Taiwan, and Japan, all of which had their economies directed by a dictator or a party that did not confront competitive elections until recently if at all. Each of these countries (and there are others) illustrate successful economic development without recourse to the incoherence of Russia's erstwhile democratic politics.

In one sense, then, the answer to all of our questions about the direction and order of reform is simple -- if economic reform is to proceed along a well-defined path, then it is not unreasonable to postpone the transition to democracy in favor of the enlightened despot who does "democratic things" when such things are required and who transgresses on democratic rights only when there is no alternative.

Unfortunately, this answer poses practical difficulties. First, what if there is no consensus about economic reform? What if some want to proceed slowly and others quickly; what if some want to privatize everything -- industries, collective farms, and retail stores -- while others want only to privatize particular things; what if some want to protect against the threat of massive unemployment while others are more concerned about the prospect of hyperinflation; and what if some see the necessity for deep sacrifice among urban and rural poor while others are willing to trade such sacrifice for a less severe but more uncertain package of economic reforms?



Second, what guarantee do we have that the postponement of political reform favors the selection of an enlightened despot who will relinquish power and implement democracy at the appropriate time? China's leaders protected their despotism by killing and jailing opponents without expressing regret for their abuses; authorities are still looking for the victims of Pinochet's repressions in Chile and the military's in Argentina; Taiwan's Kuomintang Party jailed its political adversaries and, in its early history on the island, acted much like its Communist counterpart on the mainland; news reporters can continue to cover student riots in South Korea and ruling elites must live in the shadow of an unsavory past; and official corruption at the highest levels seems a way of life in Japan.

It should also be kept in mind, moreover, that these "economic miracles" owe as much to the early (and continuing) role of the United States in these economies as it does to any inspired leadership. Even today, China's growth could not be sustained without investment from and trade with Taiwan, Japan, and the United States that reflects wage rates and labor practices that would repulse most Russians.

All we have said thus far, though, establishes that there are dangers along any path to reform. So, let us look at the fundamental problem that confronts economic reform in Russia and begin from there. Briefly, that problem is the almost complete absence of property rights as they are understood in capitalist societies. Without property rights — without the right of ownership and the corresponding right to buy, sell, and trade -- markets cannot develop. With poorly defined property rights, with rights that the state is empowered to abrogate at its discretion, and with contracts that are unenforceable in any court of law, markets cannot function efficiently. Without these things, economic reform remains but another version of state ownership and central planning, with all of the economic inefficiencies and threats to individual liberties that exist in such systems.

This is not to say that Russians do not feel a sense of ownership. Apartments can be traded, goods and services can be bought in open (if inefficient) markets, and workers and management can capture some of the profits (if there are any) from their employment. But Russia's legal system for defining, monitoring, and protecting these rights is primitive. A system of property rights is something more than a set of labels that say "I own this," or "You own that." It also includes political and legal institutions whereby people, firms, collectives, and corporations can defend these labels against expropriation, whereby they can resolve disputes over labels, whereby new rights can be defined as technology, opinion, and circumstances change, and whereby (sad to say) the state can monitor and tax private profit gained from the trading of rights so as to implement fair and efficient allocations of resources and social services.

Without these rights, without ways to assign them so that they are productive, and without ways to protect them once they are assigned, markets cannot develop, capital accumulation will not occur, investments will not be made, and new technologies will not be developed. The transition to a market

economy, then, is something more than the privatization of state property and the issuance of vouchers. That transition, at least in a democracy, also requires political institutional development - - legislatures to create the laws that will define and protect rights, legislation that will create coherent tax codes and policy, courts to interpret and enforce those laws, elections to direct the legislature, and political parties to mobilize the population to political action and give their preferences a voice.

But now we come to the core question of economic and political transition: Are there policies that democratic systems are inherently incapable of implementing but that are necessary for successful economic reform? Is a democracy capable of creating the system of property rights that a market economy requires, or must those rights and the institutions associated with their evolution and enforcement be set in place by an autocratic regime?

The problem, of course, is that the path of economic reform is never smooth and is accompanied by unpleasant things -- unemployment, sagging investment, a decline in living standards for all but a select few, the erosion of savings through inflation, and the deterioration of social services. And, as in the scenario which introduces this essay, these dislocations create political demands to stall or to reverse reforms that governments, especially democratic ones, find difficult to resist. In contrast, the authoritarian state -- one that controls the military or internal security police -- seems better equipped to resist these pressures, to pursue reform with single-minded determination, and to substitute state power for market incentives whenever necessary. Thus, although we may have to sacrifice on the issue of human rights, it seems reasonable to suppose that the authoritarian state is better positioned to implement the bitter medicine of reform.

But before we accept the superiority of authoritarian rule, let us examine more closely the presumed failings of democracy. In particular, we want to argue that the fault is not with democracy per se, but with incompletely formed democratic institutions. If economic and political reform proceed simultaneously, then the democratic transition is incomplete by definition at the time economic reforms are initially begun. Constitutions are not yet drafted, or if drafted, they are poorly understood and their provisions have not yet been implemented by legislative action. Thus, political leaders and public officials have at best only a weak relationship to the different interests in society, and these interests are often too poorly organized to exert political pressure in any but the crudest way.

The best organized interests in a newly emerged democracy are those whose only common interest was their opposition to the old regime. And these interests are dominated by those with weak or non-existent preferences for successful reform: bureaucrats with little incentive to compromise on anything that requires fewer resources being committed to the public sector, managers of state subsidized firms that prefer anything but competitive markets, and leaders of specialized unions that represent but a small percentage of workers.

Thus, of the two approaches that a government commonly takes in a newly formed democracy — decrees and accommodation -- the first, after revealing the true costs of transition too quickly, exacerbates the problem of support by focusing all responsibility on a small subset of technocrats who lack the power or will to force compliance to its actions. The second course, accommodation, cannot work simply because it seeks an alliance of contradictory forces.

The usual failure of simultaneous political and economic reform, then, is not too much democracy but too little. With political institutions that do not yet accommodate the full range of social interests, with fundamental property rights still undefined and the institutions for defining them ill-formed, and with electoral institutions that do not yet allow voters to sanction and reward public-officials, the policies that emerge from accommodation are equivalent to policy by decree, except that now no one holds responsibility for its failure.

Although they have the appearance of democratic compromise, these policies have not been formed in a democratic way. The product of temporary alliances among elites with contradictory preferences, they have little long-term economic or political justification. They are not policies designed by leaders of political parties with long-term goals of reelection and developing a broad base of mass political support. If they are the correct policies, they are correct by accident. Those party to the accommodation do not confront the necessity of having to explain their decisions to anyone but other elites. Their arena of conflict is among themselves. Because they lack electoral responsibility, they lack democratic responsibility. Their primary objective is to position themselves for succession to power. The incompletely formed democracy, then, combines the worst of both worlds -- authoritarian rule by a committee that answers only to itself.

But those who oppose a full move to democracy -- a new constitution, regularly scheduled elections, a new legislature, new courts, new laws -- will object that "The people are unprepared for democracy. They do not yet understand the give-and-take of such politics and they will be too easily led astray by demagogues." Wouldn't a more concerted move to democracy during a period of economic turmoil merely result in a replay of Weimar Germany's experience with Hitler?

However, Germany in fact illustrates our argument that incomplete democracy poses special dangers. Hitler's accession to power was not the result of simple mass unrest; rather it was also the product of a poorly designed political system that was incapable of accommodating social tensions and implementing coherent policy. Hitler was selected as Chancellor by precisely those elites who would have objected most strongly to complete democratic freedom.

In fact, warnings of the unavoidable dangers of democracy are too often uttered by those who know little about democracy. Why should we suppose that aparatchicks and members of the nomenklatura can judge what is required for democracy? How do they know that the "masses" are too ignorant to learn and act on their own definitions of self-interest? What is the evidence for such

assertions? Where is it proved that acting democracy is more difficult to understand than running a tractor, fixing an automobile, or maintaining a household? Are we better prepared beforehand to raise children than to vote? Why are those "ignorant and easily misled masses" who emigrate to democracies from countries with no democratic tradition whatsoever able to grasp so quickly the essentials of organizing in their self-interest -- is there something in the waters of Israel, the United States, Canada, or Germany that made them suddenly wiser? Do people become somehow more intelligent when they are better fed?

The assertion of ignorance and lack of preparation, we should remind ourselves, too often serves the self-interest of those who make such arguments. It is perhaps better to ask: What preparations are being made to inform people about democracy? What institutions of self-rule at the local and regional levels are being provided so as to "train" voters and new political elites? Is it better to have a constitution that refers to a country that no longer exists and drafted for wholly different purposes than the representation of society's interests or is it better to have a constitution drafted with new realities in mind? Should we wait to draft a new constitution for a time when economic and political interests will be even more firmly established and when those interests will be able to dictate a constitution that wholly serves their purpose?

None of this is to say, of course, that democratic transition in periods of economic turmoil do not pose great risks. Too many democracies have been launched with disastrous consequences to proceed with unrestrained optimism. But there are risks also to abiding by the assumption that there exists a self-evident correct economic policy and that an autocrat will know and choose that policy. And none of the dangers of democracy suggest that plans extending from the local to the national levels should not be laid now for a more complete political transition.

#### 16. Constitutions: Who Can and Should Write Them?

Russia stands at the threshold of one of society's defining moments -- a "constitutional moment." Just as heroic acts of self-sacrifice are called for in times of war, people must act similarly when they form a democratic government. When crafting a constitution under which they and future generations will live, people must restrain immediate self-interest in favor of society's interests without any guarantee of success. And if those who would lead them act nobly and wisely, history honors them; if they act otherwise we forget them or hold them up for ridicule. Students of government continue to read Madison, Jay, and Hamilton's "Federalist Papers," Simon Bolivar's "Angostura Address," and Charles de Gaulle's "Bayeux Manifesto;" they ignore or disparage those who failed to contribute to our understanding of self-governance or who impaired its development.

Constitutional moments are characterized not only by sacrifice but also by the choices people must make and the questions they must answer. What rights are fundamental and immutable? Should

society be governed by a presidential or a parliamentary system? Should elections be held today or tomorrow? Should political reform be postponed in favor of economic reform? Who should write a constitution -- who should play the role of Constituent Assembly? Should voters ratify a constitution directly? What role should the individual republics and regions play?

Some of these questions may be answered April 11th when voters are asked to approve abolition of the People's Congress in favor of a two-house legislature. But what remains unanswered is the role of the legislature, old or new, in drafting a new constitution in its entirety. That Russia requires a new constitution in some form is self-evident, if only because she is trapped in a transitional process with a political structure designed for a republic of a country that no longer-exists. But what is the appropriate route to this basic and potentially disruptive reform?

Certainly, if the Congress and president had taken more seriously the job of the Constitutional Commission, if that commission had been perceived universally as a true Constituent Assembly with the active participation of all those concerned about a new constitution, and if the compromises necessary to produce a document had been made that, by the concreteness of its construction and felicity of its word, compelled all to accept, the job would be done. Instead we have an official commission at odds with its ostensible head, a variety of competing and not wholly compatible drafts that require refinement, and no coherent forum for debating general principles.

It can be argued, then, that referenda like the one to be held April 11 not only open the door to democratic elections and promise a resolution of what would otherwise be an unending dispute between the Congress and Yeltsin, but that it is also an important first step toward meaningful constitutional reform. On the other hand, given the current state of the economy, the absence of any serious public debate over constitutional matters, and the public's general ambivalence to such issues, people will convert any referendum into a referendum over Yeltsin versus Congress. Thus, there is only a slight chance that they will vote on a proposal's merits.

In fact, we cannot imagine people casting an informed vote on so little notice and empowering any amendment to the current constitution or wholly new constitution with the legitimacy it requires. The viability of a democratic constitution depends at least as much on the process whereby it is formed and ratified as it does on its content. Forming constitutions and constitutional amendments behind closed doors, thrusting them upon a public preoccupied with other things, and calling for a sudden vote of approval may merely reenforce the suspicion that any change in the status quo serves a single interest and may only increase public cynicism about politics and about the very meaning of constitutional democracy.

An April 11th referendum also threatens an undesirable precedent -- 'presidential constitutions' created for whoever holds that office. Just as the current constitution is seen as a wholly impermanent document, a constitution or part of one presented to the electorate for approval as part

of a political compromise about economic matters is not likely to be any more secure. Here, then, we want examine ways to form a Constituent Assembly, to draft a new constitution, and to ratify it once it is written.

We appreciate, of course, that the people are sovereign in a democracy and only they can choose the form of government under which they will live. But this view does not provide much practical guidance, since we cannot have everyone participating in such a process simultaneously. Thus we must ask: Is it possible to imagine a Constituent Assembly's role being filled by any existing institution, does Russia require an Assembly that is wholly independent of those institutions, or should Russia simply postpone drafting a new constitution and proceed only with incremental changes to the existing structure?

In answering this question we should not underestimate the complexity of the task that confronts those who would draft a new constitution. A viable constitution is "a machine that must go of itself," and its construction requires skill, experience, and considerable good fortune. But because that machine's direction depends on its internal structure, different people will prefer different directions and thus different structures. Republics will prefer a decentralized state verging on confederation; politicians in Moscow will prefer a strong national state; a legislature will be prejudiced in favor of a state in which it plays the central role; others will prefer a strong presidency. Those who prepare such documents, then, must contend with all of these preferences simultaneously and achieve a compromise that all can accept.

There are also important questions concerning the role of the republics. Should we choose a process that allows republics to implicitly secede from the Federation by refusing to ratify? Is it better to offer a new constitution as a *fait accompli* in order to avoid divisive debate or demands for greater autonomy and special treaty status? Should the final determination of a federal structure be postponed until after viable market relationships linking the republics have been formed? Nor can we ignore the matter of ethnic unrest. Should Russia operate under the existing constitution, amended to suit current circumstances, in order to avoid elections that destabilize Russia by giving ethnic and nationalistic extremists a forum in which to operate? Can the very process of trying to get people to agree to a unitary state lead to the dissolution of that state?

Regardless of how we answer these questions, a Constituent Assembly should be something other than what it has become -- an assortment of groups that include an "official" Commission, a collection of St. Petersburg lawyers, presidential advisors, cabals seeking to reinstate an earlier regime, and a Supreme Soviet incrementally amending the current constitution. Although we may want those who draft society's fundamental law to represent a broad a cross-section of society and to include all available expertise, such documents cannot command respect if they are written by a miscellany of

persons competing in the media for political advantage. The competition for ideas should occur in reasoned and coherent debate in which opponents confront each other directly. Confidence in the process gives people confidence in the product. Just as we devote incalculable resources to ensure that a few cosmonauts can return safely from orbit, we should expect those who would set constitutional principles to devote at least as much attention and expertise to designing society's fundamental political and legal instrument.

We can, in fact, imagine at least four alternative routes to constitutional reform: (1) simply amend the current constitution to refine legislative and electoral structures, guarantees of rights, and so on; (2) call for new elections with the understanding that the reconstituted legislature will be empowered to create a new Constituent Assembly or to amend the current constitution; (3) allow the president, with the Congress, to create a new Constituent Assembly out of members of the current Constitutional Commission, responsible representatives of Russia's regions and nationalities, and other experts; and (4) elect a Constituent Assembly directly and by republic, leaving all other institutions, including the current Congress, temporarily in place.

The first two possibilities run afoul of the fact that legislators, like presidents, have a special interest in the government's design. Regardless of their other views, their position makes them too sympathetic to legislative control, too unappreciative of the necessity for a separation of powers, and too likely to seek a form of government, parliamentary government, that will sustain the conflict between executive and legislative branches. Also, although members of Congress may be expert in political maneuver and they may sincerely seek a prosperous and democratic Russia, because they have not yet felt the imperatives of competitive elections and the order such elections impose on legislative deliberations, experience and good intentions are not sufficient. Just as we would not assume that an experienced and well-intentioned pilot can design an airplane, there is no reason to suppose that the current legislature is equipped to draft a document that will define the limits and structure of an entire state.

Nevertheless, the first alternative does have advantages over all others. First, it opens the door least to divisive debate over autonomy and secession. And because it does not require an explicit ratification process, it does not give anyone the right of refusal with respect to joining the federation. Instead, it places upon them the more onerous burden of choosing explicit acts of secession -- choices we believe that economic rationality will keep them from making (although not threats that they will fail to utter). It is easier for a republic to refuse to join a federation (since refusal requires doing nothing) than it is for one to secede from it, and this alternative first does not offer any formal opportunity to refuse anything.

Second, because maintaining the status quo postpones elections, this alternative postpones the activities of those who would take advantage of ethnic and nationalistic hostilities. It is not

unreasonable to suppose that, in several republics at least, elections would merely give extremists a platform with which to increase the salience of divisive and destabilizing issues.

Finally, this first alternative allows for the incremental adjustment of the constitution until it reaches a form that matches what would otherwise be regarded as appropriate. It can be argued, of course, that incremental change cannot result in a document that will command respect or can do anything other than reenforce a tradition of constitutions that are no more permanent or binding than shadows on the wall. On the other hand, it is not unreasonable to want to avoid any massive political disruption and to allow Russia to proceed gradually along the route of democratic reform — an appropriate course for a society with fully developed local and regional 'democratic political structures.

The second alternative, electing a new legislature, is similar to the first except that it proposes a specific first amendment to the current constitution — the formation and election of an entirely new legislature. This alternative, of course, is the one that matches the April 11th referendum, and its presumed advantage over the first alternative is that it allows for new elections when there seems to be no other way to break the impasse between Yeltsin and the Congress.

However, aside from the fact that voters are unlikely to be prepared to evaluate this alternative fully, there is one thing that concerns us especially about it -- the fact that the uncertainties associated with elections in the current unsettled political and economic environment do not guarantee that any of its theoretical advantages would be realized. Indeed, we can easily envision a scenario in which new elections fail to select people expert in constitutional matters, in which ethnic hostilities become the salient issue of the campaign, and in which endless debate between Moscow and the republics over special treaty status and concessions on autonomy threatens overall stability. Finally, like the first alternative, this one does little to reduce the likelihood that legislators will ultimately choose a constitution structure that protects their positions further. In fact, once they believe they have a secure electoral mandate, members of a new legislature may feel even more committed to parliamentary government, which we have argued elsewhere is an especially problematical governmental form for Russia.

The essential tradeoff between the first and second alternatives, then, is between a continuance of the current political impasse versus premature elections. Of the two, impasse seems the less dangerous possibility, and so any implementation of the April 11th referendum, if approved, should be approached with care and without any naive beliefs about their advantages or disadvantages.

The third alternative -- a reconstituted Constituent Assembly -- allows for the participation of those most familiar with constitutional issues, allows those who are most committed to democratic construction to negotiate their differences, and ensures a draft that can be considered for ratification in a rational way. Divisive issues concerning regional autonomy can be addressed directly by the



Assembly, thereby increasing the likelihood that a viable federalism can be negotiated before ratification is considered. And since this alternative leaves open the possibility of postponing elections until 1995, it avoids the potential instabilities that the second alternative admits with respect to ethnic conflicts and extremists that would use such issues to gain public notice.

On the other hand, like the first alternative, this one does not provide any definitive resolution of the debate between Yeltsin and the Congress. In fact, because we have not specified how the president and the Congress will choose members of a new Assembly, this alternative may only exacerbate the current political stalemate. Moreover, the population as a whole might reasonably regard the process it sanctions as merely "more of the same." Only if a reconstituted Assembly produces a document that protects all legitimate interests and otherwise commands society's respect would these disadvantages become insignificant.

The fourth alternative takes the formation of a new Constituent Assembly out of the hands of those currently in power in Moscow and places it directly in the hands of the people. Thus, it has the advantage of combining direct citizen involvement and republic representation. Also, it also avoids prejudicing things in the direction of a parliamentary government, because it avoids an Assembly with reelection and legislative power as its primary concerns. What is less clear, though, is the quality of representation that will result and its ability to negotiate an acceptable federal structure. Because republic elections will only concern the formation of a Constituent Assembly, the opportunities for candidates to campaign on divisive ethnic issues is reduced. On the other hand, emboldened by their ostensible democratic selection, republic representatives may feel free to make wholly outrageous demands with respect to special status for their regions. And finally, there is the matter of selecting procedures for electing representatives and determining the weight each republic and region will have in a Constituent Assembly. Opening these matters up for debate forces immediate consideration of issues that we might prefer to postpone.

There is no alternative, then, without disadvantages. The second concerns us because we are uncertain whether new legislative elections at this time are wise; on the other hand, they may be necessary to resolve the logjam between Yeltsin and the Congress and to give a national legislature public legitimacy. The first and third alternatives are the least radical and, thereby, the least disruptive of the status quo. The first might seem the safest route, but we suspect that a coherent federal structure that treats all regions and republics equally would not arise out of an incremental process. This alternative, then may merely make a final constitutional resolution more difficult to achieve. We would prefer the third alternative -- an newly appointed Constituent Assembly -- if it were not likely to be viewed as merely a "warmed over" choice. On the other hand, since constitutional matters, as opposed to economic ones, are hardly the focus of most people's concerns, we may lose little by relegating the drafting of a constitution to yet another specially formed

commission. There is, though a feature of the fourth alternative that keeps us from unambiguously preferring any of the first three. Because elections to a Constituent Assembly are not likely to be as divisive as those for president or a new legislature, conducting such elections may be a painless way to begin developing a system of competitive elections and national parties. And confronting the nature of representation here may allow the creation of some precedents in a context that is less potentially divisive than others.

It may seem, then, that we have failed in our objective -- that of identifying an unambiguously best way to proceed. Alas, that is the character of the problem we confront when treating matters as fundamental as constitutional design -- there are no such alternatives. <sup>i</sup>\*The best we can do is proceed in as democratic and as open a way as is possibly, and hope that that sincerity and openness will convince the populace that there are no simple or perfect solutions.

None of these alternatives, moreover, confronts the issue of how a new constitution, once written, ought to be ratified. Ratification, though, is an issue for the future, and if a new constitution is to be implemented, then primary attention should be paid to the process whereby it is drafted. A well-crafted document carries its own weight, so at this stage it is more important that a new constitution be well-written, that it anticipate the major sources of opposition and makes a sincere effort at addressing their concerns, and that it be drafted by those whom the population trusts to protect their interests.

#### 17. Fools or Geniuses: What Are Voters Like In A Democracy?

A new constitution has been adopted, democracy is in place, and elections have been scheduled. Candidates from the right and left are emerging from under their rocks to press their positions, opposed by the usual characters from the establishment center. Some are aparatchiks proclaiming that only they understand "the system" and can make it work; others are technocrats who argue that they have discovered truth and are uncorrupted by a system we should all forget. Political parties proliferate like weeds, each with the word "Democratic," "People," or "Worker" in its name and each with a membership small enough to fit in your kitchen. Candidates promise instant solutions, while proclaiming their honesty, and devotion to family and country. And there you sit, trying to decide what to think, how to vote, and whether to give a damn.

The fear is that millions of voters, out of apathy or ignorance, will elect candidates who will drive Russia further into the ground or who will ride to victory on divisive ethnic or nationalistic appeals. How can voters make sense of this rhetoric and act reasonably? How can one be certain that others will not act unreasonably, so that the only protection is to abide by a counter-balancing extremism?

Such questions have no simple answer. Democracy comes without guarantees, including ones against our own folly. However, despite the centuries of undemocratic rule, there is no reason to

suppose that voters in Russia will behave differently than those elsewhere. If there are differences, they lie in the political institutions that direct the self-interest of people and their leaders, in combination with the pre-existing interests of people as determined by economic and social structures. And so, to gauge how Russia might respond to importing similar institutions, it is useful to see how voters act in other democracies, both new and old.

We begin by dispensing with three myths about voters, the first being that, after carefully studying the issues and candidates, they vote for whoever best serves their interest. Of course, few people believe this myth for the simple reason that it can't possibly be true. Most voters have better things to do than study politics.- Given that one's vote is so unlikely to determine anything, it is far more reasonable for people to learn about things they can influence — how to earn some extra income or where to go in search of lower prices.

Most people, in fact, accept a myth of the opposite sort -- that voters are easily baffled by the meaningless promises of candidates. Confused by politics, they vote for the candidate with the best smile, the most money, or the most emotionally satisfying appeal. In this way democracies, especially new ones, become vulnerable to dangerous demagogues and vile extremists. But this myth is no more generally true than the first. Some voters will search for extreme solutions if they think the "the system" has failed -- voters everywhere can delude themselves for a time into believing that there are simple solutions to complex problems or that only the existence of "evil forces" explains their plight. But just as voters are not genius policy analysts, they are not fools. Voters make mistakes, but often on the basis of criteria that makes it obvious that they have acted unwisely only after the fact,

The third myth is that money is the only important thing and that elections are won by whoever spends the most. Money is anything but unimportant. Certainly it is critical in determining a candidate's ability to get his or her message across to voters. But a candidate must first have a message and voters must be susceptible to receiving it. If voters are satisfied, even well-financed challengers face difficult prospects; if voters are dissatisfied, a challenger can be victorious even if outspent.

The reality of stable democracies is that voters do make rational decisions and that they do so by relying on three relatively accessible sources of information. The first is their personal experiences. If voters believe that their welfare has improved and will continue to do so, they tend to vote for incumbents; otherwise they search for alternatives. A voter's second source of information is the opinions of friends and the endorsements of people and organizations he or she trusts. People operate with the reasonable assumption that by looking at the experiences of those in similar circumstances, they gain a better sense of a government's competence.

Naturally, what we have said refers only to tendencies. Candidates must still find ways to mobilize people who are largely disinterested in politics and to disseminate information about themselves. That "way" is the voter's third source of information -- the political party.

Political parties in a new democracy do not always form, of course, to mobilize voters and to elect candidates. Some are merely ways for specific individuals to secure public visibility. Others are remnants of alliances that sought to overthrow an old regime. When such alliances disintegrate (which they commonly do since their members often have little in common other than opposition to a regime), the fragments, for lack of a better label, call themselves parties. And yet others are protest groups formed around a single issue.

Regardless of their genesis, parties are universal fixtures of democracies for two reasons, one having to do with voters and the other with candidates. First, parties are the link between political activists and the great mass of people for whom politics is a secondary concern. They give voters their voice through the ballot box in a normally functioning democracy, or they spur them to more violent action in an abnormally functioning one. In stable democracies, though, parties do additional things. Voters need a way to give structure to their political information and experiences. Party labels, much like the sections of a file cabinet, are such a device. Using these labels, voters learn which parties are responsible and which nominate candidates that serve their interests. Over time, they begin to identify with specific parties and vote for their candidates unless presented with a compelling reason to act otherwise -- scandal, economic depression, the mishandling of an international crisis. In fact, party identifications can become so strong that, even when compelled to defect, a voter will do so only temporarily.

Party labels, then, are the primary device whereby voters organize the sometimes incoherent political information to which they are subjected before, during, and after an election. In turn, politicians soon learn that success requires being associated with something other than a mere social club or protest group. One way or another, a democratic system cannot remain in a situation that presently describes Russia -- countless parties maneuvering for position, constantly dividing, subdividing, recombining, and changing labels. If a democracy survives, the parties that survive with it are those that establish brand labels for themselves like the brand labels of consumer products. People eat at MacDonald's or purchase Japanese electronics because of their reputations for quality or efficiency. Similarly, people support parties that succeed in associating desirable policies, political philosophies, and candidates with their labels.

But now the imperatives of electoral competition exert two pressures on parties. The first leads them to consolidate; the second dictates the form of this consolidation. Because parties must try to establish their identities as brand labels, they must show some initial successes and they must grow and compete for a broader range of public offices. This leads some parties with similar philosophies

to combine under the same label in much the same way as companies with similar products competing in different markets combine to take advantage of their mutual strengths.

At this point, though, the form of consolidation depends on whether the political system is parliamentary or presidential. In a parliamentary system, the first priority of a party is to secure legislative representation and to play a role in the formation of a government. Thus, party leaders may be satisfied with controlling only a few seats, especially if they believe that compromising their positions or abandon their identities will cost them support. Voters as well may be satisfied by being represented by a specialized party, especially if that party can influence the policies of a government formed in parliament and if that government is dependent on parliament for its survival. In this-way, consolidation under parliamentary government will leave a number of parties scattered across the political spectrum -- parties that will coalesce and collude only occasionally as when the formation of a government is being debated.

In presidential systems, on the other hand, parties must focus on the main prize of the presidency, and they must consolidate further if they hope to win. Voters, in fact, lose interest in those that have little chance of winning -- few want to waste their vote by casting it for someone who cannot be anything but a footnote in some history book. Thus, the actions of voters alone will tend to eliminate weak parties.

This consolidation, moreover, will draw parties toward the center of opinion on most issues rather than leaving them, as in a parliamentary system, scattered across the political landscape. If either the right or left fails to coalesce or does so by adopting extreme positions, then their opposite number has too easy a time controlling the government. In the long run, then, neither side can resist failing to consolidate under brand labels that sets both the left and right parties near the center of public opinion.

Of course, consolidation and convergence take time, possibly decades, and if there is one thing that can derail this otherwise relentless process it is the dangerous issues of ethnicity and nationalism. If politicians are preoccupied with one thing it is the search for or the creation of issues that will work to their advantage, that will mobilize voters to their side. Some candidates will appeal to class, others to urban-rural conflicts, some will try to gain entry by championing environmental matters, and some will take up that cause of pensioners, workers, and so on. In stable democracies, this search accounts for nearly all domestic legislation and new governmental programs.

Unfortunately, ethnicity and its dual, nationalism, are too obvious for politicians to ignore, especially in a country in which regional governments have incentives to distance themselves from Moscow's control. And if ethnicity correlates with both territoriality and class, then the contours of political competition are predetermined. In gauging the evolution of democracy in Russia, then, we must learn how the major parties will respond to ethnicity and to ethnic extremists. Will ethnicity

cause these parties to splinter, to become more radical; or can they absorb and blunt ethnic and nationalist agitation?

We can answer this question by first noting that another myth of democracy is that if majority rule dictates outcomes, then the majority will control the state to the detriment of minorities. This has, of course, been the pattern in a great many "democracies," but only because those systems were designed to ensure such control either through manipulation of electoral laws or representation formulas. One of the great advantages of a well-designed presidential system, though, is that the few parties that survive in it are forced to compete at the margin for minority support. In their search for ways to form or maintain winning coalitions, these parties have strong incentives to seek internal resolutions of ethnic conflicts.

With ethnic Russians comprising approximately eighty percent of the population, Russia's major parties will in fact be "Russian." But there will be more than one of them who will compete against each other, and they will be forced to seek support from other groups, other nationalities, and other regions. Thus, our earlier question becomes: How successful will Russia's national parties be at co-opting the parties and leaders that form around ethnic minorities?

We cannot understate the importance of co-optation. Martin Luther King's civil rights movement in America, for example, succeeded without creating instability, because, rather than militant opposition, he instead advocated only the extension of constitutional guarantees to blacks while offering his political support to either major party. Both parties, as a product of the competition between them and also wanting to avoid splits within their structures, responded by colluding to pass the civil rights legislation of the 1960's. By legitimizing his movement, both parties blunted the appeal of more militant leaders. Of course, King anticipated this response -- he anticipated that, although both black and white extremists would oppose him, "the establishment," acting in its own self-interest, would support him. Peaceful, non-violent resistance, then, was more than mere ideological conviction -- it was part of a strategy that induced the major parties to give him what he wanted.

Naturally, one could object to the extension of this scenario to Russia with the argument that it applies only to an established, stable democracy. Here different groups will believe that past injustices ought to be corrected, even at the expense of innocents, and that the only correction is secession, independence, and the repatriation of lands lost in some distant past. This will be especially true among groups that have never experienced democracy, that have no reason to believe that their opposition will abide by democratic process, and who will use any relaxation of central state control and as opportunity to participate in vendettas and violence.

Ethnic conflicts, though, are rarely purely irrational even if events make them appear so. They have causes that can sometimes be treated with appropriate preparations, including a decentralized

and symmetric federal system that invests regional and local governments with real power and a legislative chamber, the Federal Chamber, that gives coalitions of republics and regions (but not individual ones) a veto over legislation. But if we look again at voters, we see that just as few of them gather detailed information about normal politics, few will act to secede or instigate violence unilaterally. Secession and violence must be organized, which occurs most easily when there are no ethnic leaders who, by aspiring to position within the major parties and legitimate political institutions, can be a viable alternative to extremists. Thus, Russia's parties, as elsewhere, must find it in their interest to co-opt a significant number of those who would lead.

This attempt to co-opt, though, must be sincere and automatic, because even inattentive voters will learn if it is otherwise. A good deal of this sincerity, as we've already noted, will come from the competition among national parties seeking to form their winning coalitions, and the construction of presidential government in particular is one of the primary precautions Russia can take against the disruptions of extremism. But this precaution can be reenforced by noting that just as the Russian majority is not homogeneous, minorities are rarely so either (unless, through overt isolation and discrimination, ethnicity correlates with all other issues). Heterogeneity, in turn, opens the door to political competition within ethnic groups. And since the different sides to that competition will seek allies at the national level, the door is open as well to national parties that will try to extend their coalitions to these different ethnic groups and nationalities.

Local political competition, then, should be encouraged, and this is best done by ensuring that governments there control real and valued resources and by allowing voters there to direct the distribution and use of these resources. So, democratic reform that encourages competition must do so at all levels of government, not just at the national level. Reiterating an argument made in an earlier essay, the danger is too little democratic political reform rather than too much. Reform must give local political leaders an opportunity to compete, it must give them an avenue to participate in national organizations, and it must give national leaders incentives to encourage this participation. If "reform" does otherwise, this fact will ultimately be learned by voters and it will thereby loosen or destroy the connection between national parties and ethnic minorities. Once this connection is destroyed, political extremist will be only too happy to fill the void and mobilize people to political action or a different sort.

#### 18. Can Russia Be a Democracy?

The question that forms this essay's title is the most basic that can be asked, even though for many people, especially those who must count their money daily to see if they have enough for a meal, the answer must be "Who cares -- bring back the old days when we could at least afford whatever was available!" And for those who follow politics in Moscow, ethnic disturbances on the fringe of the

Federation, the state of the economy, and threats of secession, the only reasonable answer seems to be NO. Other questions certainly look more relevant: "Will there be another coup? or When will our anarchic politics require the intervention of a new authoritarian ruler? and Why do we need democracy in the first place?"

So, accuse us of excessive optimism or unrealistic idealism, but our answer to this essay's question is YES! Our argument, in fact, is that Russia is close to being a democracy -- a messy one, an incomplete one, and one to which a goodly number of persons are only weakly committed -- but it is very nearly a democracy nevertheless. And to this answer we add one further assertion — that democracy is essential for a stable and prosperous Russia.

The assumption that Russia is not now a democracy or that it is not about to become one rests in part on the belief that any political system that is so incoherent and so inefficient cannot possibly be democratic. Democracies -- at least stable ones -- are supposed to be orderly things in which the courts protect civil liberties, people vote on a regularly scheduled basis, legislators deliberate, politicians abide by constitutional limits on their power, and policy making proceeds according to well-defined procedures and a predictable calendar. Arguments over fundamental political structures, public officials who agree to a referenda but cannot agree on its content, shoving and pushing on the floor of the legislature, ministers who contradict each other daily -- these, it is assumed, cannot be the elements of a stable democracy or of a democracy the promises to be stable in the future. Instead, these things can only be part of a system that is collapsing upon itself.

But those who believe this are unaware of history and cannot know much about democracy. The creation of a democratic state is rarely, if ever, a simple process. This fact is self-evident in Latin America, Africa, and Southeast Asia; but it is true elsewhere as well. America took two centuries to resolve the relationship between its national and state governments; Canada's future today hangs in the balance with Quebec threatening secession; France's constitution has been likened to a periodical; Belgium's unity strains under linguistic conflicts; and Italy in forty years has had more governments than America has had presidents in two hundred.

It is true that Russia does not possess many of the components of a normal stable democracy -- political parties with national organizations and comprehensive policy agendas, a firmly established constitution, smoothly functioning courts, a well-defined system of property rights, an economic infrastructure that allows for rational macro-economic planning, democratic local self-government, a professional legislature with a clear internal structure, and the complex array of citizen interest groups that mobilize people in an orderly way to influence state policy.

No one can deny the importance of these things. But the fact that they do not exist now is no reason to predict that they cannot exist or that Russia has not already begun to operate, albeit in a primitive way, with the normal rules of democratic process. One of the things that should impress



us is how quickly the state has transformed itself to begin operating in accordance with the rule of law. The state may continue to rely too greatly on decrees as a method of promulgating policy, it may continue to control the media and the press to an extent greater than we might prefer, and bribery and corruption may have become too pervasive and too readily accepted as a way to do business. But public officials of all political persuasions have made heroic efforts at abiding by constitutional principles.

These principles are often ill-formed and desperately in need of revision. Nevertheless, the Constitutional Court has ruled, the government has responded, and legislators and the government have accommodated each other according to fixed procedures. In decades past, these principles merely codified decisions made in the Kremlin and constrained almost no one. But today public officials feel compelled to justify their actions using constitutional language, and a judgement of unconstitutionality nullifies actions, however uncomfortable that decision might be.

We cannot deny that government policies continue to vacillate between contradictions. However, vacillation and contradiction only reflect the fact that no one knows the appropriate course of economic transformation. It is hard to believe that the same confusion and contentiousness would not characterize any democracy undergoing similar upheaval. Europeans cannot agree among themselves about interest rates, America seems incapable of controlling its budget deficits or developing a workable and comprehensive health care system, and all that appears to emerge today out of Japan's government is revelations of scandal and immobilization in foreign policy.

An additional source of optimism is the fact that there has emerged a commitment to individual rights in Russia that parallels that commitment elsewhere. This is not to say that every public official shares this commitment or that everyone understands rights in the same way. Nevertheless, people are free to express their views, the media is free to publish any opinion, citizens can initiate any petition, and there is gradually emerging a judicial process whereby these rights and other can be protected. There is, in fact, as close an acceptance of those rights as we would expect to see in most democracies. A xenophobic Japan still discriminates against its minorities, even those who have lived there for generations; Western Europe struggles against fascist and Nazi nostalgia; both Canada and America negotiate with their native indian and eskimo populations; and reports of incidents of police violence directed at blacks in America have hardly disappeared from the media. Nothing is ever perfect, elsewhere as well as Russia.

Nothing we have said, though, means that the job of political reconstruction is nearly done. Certainly no one believes that all that remains is to lead the economy to recovery and to wait for democracy to develop on its own. We have argued thus far only that democracy is not impossible; but we have not argued that its maturity or survival are certain or even probable. A great many attitudes and natural reflexes must change before democracy is firmly established. People must stop looking

for the "right" leader to lead them out of the current morass; they must look instead to the political institutions they themselves create.

The things Russia requires before it becomes a mature democracy are well-known. She needs a new constitution this is written exclusively for it as an independent state, that summarizes her fundamental principles and highest aspirations, and that gives unambiguous guidance to the state's function. Now, when new political traditions are emerging, is the time to give specific direction to those traditions rather than wait for some optimal moment that may never arrive. Second, all of Russia -- its republics, krais, oblasts and so on -- require new democratic constitutions. Without firm local roots, democracy cannot flourish at any level. Russia must escape the tradition of having political-economic initiatives originate in Moscow. Finally, a meaningful federal structure should be erected that replaces bilateral treaties negotiated between Moscow and individual republics with a consistent and symmetric federalism that allows the negotiation of conflicts as part of "normal politics." No treaty can anticipate all potential issues, and reliance on them merely provides the republics with an excuse for claiming special status or for demanding the "equalization" of some alleged inequity.

Although it is generally accepted that these things must be made a part of Russia democracy, many people have already soured on this idea and see our suggestions for institutional reforms as at best irrelevant and at worst a gross distortion of the form of government that would best serve Russia. With crime seemingly out of control, with daily reports of official corruption, and with children coming home with ideas their parents cannot comprehend, democracy's promise seems not only unfulfilled but unfulfillable. For many persons, their attitude today is "If this is democracy, then give us so good old-fashioned dictatorship."

However, although we have claimed that Russia is a democracy, being a new one is not the same thing as being a mature one. A new democracy should not be expected to produce the same things as one that has existed for ten or twenty years. A baby has little control over what emerges from either of its ends, it cannot dress or feed itself, it operates largely by instinct, it relies on the paternalism of those around it for survival, and it can hardly explain or comprehend why all of this is so. It cannot move furniture, solve math problems, or raise a family. But these facts do not mean that a baby is not a person. We merely understand that to raise this person through childhood to adulthood requires having the right expectations about its capabilities at each stage of its development. So it is with democracies.

A one or two year old democracy is unlikely to produce instant guarantees of rights, well ordered and smoothly functioning political institutions, coherent policy, or even political leaders who understand why things work as they do. Certainly no previously established democracy has done these things -- not a one!

But if this is true, then what of the question "Who needs this thing called democracy?" "Why don't we dispense with all this nonsense, and merely adopt a political system compatible with Russia's traditions -- autocracy or, minimally, a strong leader who can rule by decree?"

The answers to these questions are contained in part in democracy's definition. People must have leaders because society must be coordinated to act. And democracy is merely a method of government whereby the people are empowered to choose their own leaders and the directions of public policy in an orderly and prespecified way. All the rest -- bicameral versus unicameral legislatures, presidential versus parliamentary systems, federal versus unitary states, direct versus indirect elections -- is designed merely to allow the smooth functioning of the state and to guarantee that democracy's first principle, that the people alone are sovereign, is sustained.

The principle of citizen sovereignty is primary, of course, because we know of no other way to ensure a government that remains accountable to society's interests and that does not act only in its own interests. This does not mean that a monarchy, autocracy, or even a dictatorship cannot for a time produce the same policies as a democracy or that it cannot produce those policies more efficiently. History is replete with examples of benevolent dictators who have advanced their societies in honored ways. But no one has developed a way to ensure benevolence or even the general competence of the autocrat or dictator. Thus, democracy is but a modest human invention — albeit an invention replete with human frailties -- that seeks to resolve this dilemma of leadership.

The resolution of this dilemma, though, places a strain on the democratic state that frequently makes it appear to be the least useful form of government to achieve specific results. In addition to the principle of citizen sovereignty, democracy also seeks to abide by a number of normative principles, including the ideas that "all men are created equal" and that "each person is endowed with the right to life, liberty, and justice." Taken together, these two principles place constraints on the actions of the democratic state that rarely apply even to the benevolent despot and which cause democracy itself to function in what sometimes seems to be a less than perfect way.

On the one hand, the principle of citizen sovereignty, when combined with the principle of equality, implies using majority rule in some form for selecting leaders and policies. On the other hand, honoring the individual's right to life, liberty, and justice compels us to protect minorities against the tyranny of the majority. The great dilemma of democracy, then, is finding ways to give both the majority and minority their rights simultaneously. In what might otherwise appear to be an unresolvable contradiction, we must decide when the majority ought to rule and when the minority should prevail, and then we must design institutions that guarantee outcomes in conformity with these constraints.

The first step in the resolution of this "contradiction" is acceptance of the assumption that minorities ought to be protected against majorities when the minority's interests are intense and when

the interests of the majority are weak. The practical difficulty here, though, is that we have no direct or simple way to measure these intensities — indeed, people have incentives to lie when asked. Worse still is the fact that even if some tell the truth, we cannot readily distinguish them from the liars.

To overcome this difficulty, the second part of a resolution begins with constitutional guarantees of individual rights that are to be applied regardless of intensity. Thus, we do not ask a person how much he or she is willing to pay for freedom of speech -- we simply grant that right to everyone. But mere words on paper cannot ensure anything. Those rights can be ensured only through the operation of institutions that establish incentives for people to sustain the democratic state. Unfortunately, regardless of how we design a particular institution — a legislature, a court, an election -- it seems unwise to disallow majority rule, lest we violate the principle of citizen sovereignty at that point in the democratic process. Thus, we elect presidents and representatives using majority rule; legislatures, except in special circumstances, proceed in accordance with majority rule, as do our highest courts which are themselves appointed using majority rule or by representatives elected in accordance with that rule.

It appears, then, that in designing our institutions we are back to the original problem of finding a way to protect minority rights against majority tyranny. However, there is a solution -- requiring that to change a policy or to initiate a new one, the majority must sustain itself through all processes and institutions. It must first elect a majority of representatives (usually to each of two legislative chambers) who will pass legislation in its interest; it must elect a president who will sustain this legislation without a veto; and that legislation must be deemed constitutional by a majority of members of some court that oversees the constitutionality of legislation. Each of these stages gives minorities the opportunity to block changes in the status quo that threaten their interests or violate their rights. And experience has taught us that, with appropriately designed institutions, an intense majority can prevail against indifferent majorities.

Given that Russia will abide by democratic process in some form, it follows from this argument that it cannot be content with some incomplete or simplified version of this process. If democracy is to fulfill its full promise -- and, in particular, if it is to provide a guarantee of individual rights - - it must be developed in its entirety. Admittedly, this development and even the operation of mature institutions will give it the appearance from time to time of inefficiency and indecision. Because it imposes a requirement on itself that despots and autocrats need not meet -- that policies opposed by minorities progress through numerous hurdles before they are accepted -- it often seems incapable of making definitive and timely choices. The temptation will be great, then, to short-circuit democratic process in favor of expediency. But we have at least two facts in support of the argument that Russia should sustain its course to democratic transition. First, democracies have in fact survived and even prospered through eras no less trying than the one that Russia currently confronts. Second,

we have innumerable examples of democracies that, when called upon to make the right moral choice, have done so even though majorities initially opposed such decisions. They have not always worked perfectly and their record is not unassailable. But on average, they have worked better than any other form of government. They are, to paraphrase Whinston Churchill, the worst form of government invented by man, with the exception of all the other forms that have been tried.

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