

# 2020 Constitutional Reform as the Problem of Legitimacy Theory<sup>1</sup>

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## ABSTRACT

The legitimacy is one of the key resources of stability for all political regimes but its importance growing still much in regimes under transformation. The general legitimacy theory exposes why and how the dominant political class disposes the trust of society to stay in power by using available symbolic, moral and legal resources of self-legitimization. In contemporary law-based state the ground of the legitimacy is normally associated with the national constitution — its fundamental values, principles and norms as well as with general public agreement on mode of their application by government institutions and officials. Thus, each important constitutional revision means both the challenge to the established legitimacy and an attempt to reconstruct it in new forms. The author analyses the impact of Russian 2020 constitutional reform in the transformation of the Russian political regime legitimacy. He exposes the reciprocal inter-connections between legitimacy and constitutionalism, regarding such items as positive and negative law-making impulses; substantive and instrumental aspects of reform; national, regional and local dimensions; constitutional and meta-constitutional parameters of the legitimization process as well as declared and undeclared reasons, motives, arguments and political technologies of amending process. According his conclusion, the main result of the Russian constitutional reform consists in the reconstructed legitimacy formula as a legal ground for consolidation of power under transition process and a fresh start for the new form of constitutional authoritarianism.

**Keywords:** Legitimacy, Russian Constitution, 2020 Russian constitutional reform, constitutional amendments, positive and negative legitimacy, substantial and instrumental legitimacy, national, regional and local dimensions of legitimacy, constitutional and meta-constitutional legitimacy, amending process, legitimacy formula reconstructed, constitutional authoritarianism

Observations of changes in the forms of life reveal the relationship between permanent and temporary factors that determine the ways of society and state power. According to the Chinese “Book of Changes”, the analysis of metamorphoses generally explains the “laws of constancy” — it shows how “the beginning necessarily comes to an end and then a structure is formed”, allowing us to understand that the process of movement “resides in cycles”, which represent the successive change of similar phases, and “the cycles of metamorphoses are what hurries time”<sup>2</sup>. From the standpoint of the cognitive gnosology, these metamorphoses reflect the general property of human consciousness in adapting to changes, mastering the meaning and logic of changes by constructing social reality — by the formation and consolidation of new values, principles and norms, concepts that express them, psychological and behavioral attitudes of social and cognitive adaptation, as well as patterns of behavior in a changing social environment.

These new ideas and behavioral practices can have both a completely spontaneous and directed character, being established in legal documents as completed products of the human mind. The metamorphoses of the legal organization of society especially clearly reflect the dynamics of its development, allowing us to talk about constitutional cycles that include the phases of rejection of old forms (deconstitutionalization), adoption of new ones (constitutionalization) and their transformation under the influence of the social context (reconstitutionalization)<sup>3</sup>. The directed construction of social reality is expressed in constitutional values, principles and norms (or amendments to them), which receive legal consolidation, since they have the highest normative status, are binding, and their effect extends to the entire society and determines the prerogatives of power and obedience to it.

The implementation of the program of constitutional changes in Russia in 2020, which became the most radical revision of the Constitution of 1993 for the entire time of its existence, caused diametrically opposite assessments in the expert community — from its presentation as a modernization of the Basic Law to recognition of it as a “constitutional coup”<sup>4</sup>. It is obvious that the resolution of this dispute

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<sup>2</sup> Yi Ching. Book of Changes [Kniga peremen]. Saint Petersburg : Azbuka-klassika, 2008. Pp. 234–245. (in rus)

<sup>3</sup> Medushevskiy A. Theory of constitutional cycles [Teoriya konstitutsionnykh tsiklov]. 2-nd edition. Moscow — Berlin : Direkt-Media, 2015. (in rus)

<sup>4</sup> See a number of round tables on the discussion of amendments in 2020 in leading journals: articles of the section “Metamorphoses of the Russian Constitution” [“Metamorfozy Konstitutsii Rossii”] // Comparative Constitutional

is impossible within the formal legal approach only, since the parties are guided by a fundamentally different view of both the values in law and the understanding of the formal aspects of changes of constitutional norms. This makes it appropriate to evaluate the amendments from the standpoint of the theory of legitimacy, which allows us to correlate legal changes with their social effect. The issue of their adoption has three sides — the interests of the authorities, the consent of citizens and the adequacy of the procedures for adopting norms to the views of society.

In this article, we will consider, first of all, the general question of applying the theory of legitimacy to constitutional changes, identifying the most important mechanisms of their correlation; then we will reconstruct the content parameters of changes introduced by constitutional amendments; we will analyze the procedural aspects of legitimation of amendments. This will, in our opinion, allow us to assess the contribution of the constitutional reform to ensuring the legitimacy of the Russian political power.

## 1. Legitimacy theory and constitutionalism: correlation parameters

Legitimacy is a concept of political and moral philosophy that means the consent of the governed to accept the power that governs them, based on the belief that this power ultimately corresponds to their ideas of what is due and fair. This consent, expressed in the assessment of power, can be explicit or implicit, and its origin is determined by the general picture of the world and ideas about the nature of power. Being of western origin, the idea of legitimacy goes back to the natural law theories of Antiquity and the concepts of the social contract of Modern age, links the exercise of power with its observance of certain fundamental laws and rights of citizens, the violation of which leads to the declaration of this power as illegitimate — tyrannical, even allowing the right of civil disobedience to it. Thus, legitimacy is the expression of a consensus between society and power, the source of which, at different times and in different societies, was the dominant idea of a fundamental law rooted in the nature of things, the divine will or reason. At the same time, the legitimizing formula (expressed and supported by the dominant official doctrine) is the justification for the rule of the governing class, and radical changes in this formula are evidence of its transformation<sup>5</sup>. In modern political science, the concept of legitimacy is interpreted as the acceptance by society (citizens) of the ruling political regime, whose right to rule is based primarily on consent, rather than on violence and suppression — consent expressed in constitutional and legal principles, norms and procedures.

In the classical concept of the legitimacy of power, developed by M. Weber as part of his sociology of religion, it was associated not so much with law as with various motives of social behavior. The three ideal types of legitimacy of power included: traditional (relying on historical tradition, customs, and habits); rational (relying on intelligently constructed norms, institutions, and procedures); and charismatic (relying on the exceptional qualities of a person in charge — a prophet, leader, or statesman who introduces new institutions in the form of prophecy or example). The basis of the rational type of legitimation is that “submission is now based not on faith and devotion to the charismatic personality of the ruler”, but on the definition of the right for power “through rationally established norms (laws, regulations, rules) in such a way that the legitimacy of supremacy is expressed in the legality of general, purposefully thought out, correctly formulated and promulgated rules”<sup>6</sup>. In this classification, the rational type of legitimation of power most closely corresponds to the model of a legal or constitutional state, being able to reproduce political stability within the legal forms (i.e., legality), due to their acceptance by society on the basis of reason, and not traditions or emotions.

The structure of legitimacy in a constitutional state (as opposed to an unconstitutional one) is more complex and includes at least three components: the consent of the sovereign (people) to delegate

Review [Sravnitel'noe konstitutsionnoe obozrenie], 2020. No. 3 (136). (in rus) p. 33–96; Round Table: “Changes in the Constitution of the Russian Federation and Public Policy”, February 27, 2020 [Kruglyi stol: “Izmeneniya v Konstitutsii RF i publichnaya politika”, 27 fevralya 2020] // Public Policy [Publichnaya politika], 2020. (in rus) v. 4. No. 1. p. 9–42; Transcript of the Joint Meeting of the Constitutional Club and the Commission of the Association of Lawyers of Russia for the Development of Constitutional Legal Awareness Dated January 21, 2020 [Stenogramma sovmestnogo zasedaniya Konstitutsionnogo kluba i Komissii Assotsiatsii yuristov Rossii po razvitiyu konstitutsionnogo pravosoznaniya ot 21 yanvarya 2020] // Constitutional Bulletin [Konstitutsionnyi vestnik], 2020. No. 5 (23). (in rus) p. 55–75; Resetting and the Spirit of the Constitution: discussion [Obnuliye i dukh Konstitutsii: diskussiya] // Zakon, 2020. No. 3. p. 23–37. (in rus)

<sup>5</sup> Mosca G. Storia delle dottrine politiche. Bari : Laterza e Figli, 1945.

<sup>6</sup> Weber, M. An Attempt of Comparative Research in the Sociology of Religion [Popytka sravnitel'nogo issledovaniya v oblasti sotsiologii religii] // Weber, M. Favorites. The Image of Society [Izbrannoe. Obraz obshchestva] Moscow : Lawer [Yurist], 1994. p. 71. (in rus)

power to certain institutions and representatives; the government's understanding that it has a popular mandate to govern; and the agreement of both parties on the rules and procedures for maintaining this balance over time. Among these rules, constitutional norms on constitutional review and amendments play a decisive role, since they theoretically ensure the reproduction of the consensus of civil society and political power over time, as well as institutions and procedures for civil control over power (referendums, periodic elections, legal and political accountability of the government to parliament, transparency in the exercise of power, its turnover, etc.). However, in a weak or unstable constitutional system, there are many ways to circumvent these restrictions by presenting the will of the ruling regime as a constitutional solution. Problems with legitimacy begin when one of these three components, for one reason or another, begins to fail, but if they act synchronously, there is no obstacle to ensuring agreement on the reproduction of the legitimacy of power on a new legal basis.

The concept of legitimacy, therefore, is broader than the concept of legality, and the nature of their relationship in a modern state can receive a different configuration: legitimacy appears as an extra-legal concept (associated with justice) that underlies legality (the constitutional system), it can enter into a confrontation with it, demonstrating a conflict of justice and legality, or, finally, manifest itself in constitutional norms, amendments to them or their changing interpretation. The key problem was formulated by K. Schmitt during the collapse of the Weimar Republic in the form of a well-known dilemma — legitimacy or legality?<sup>7</sup> This dilemma later was repeatedly reproduced in crises of a legal systems, and it was resolved in two diametrically opposite ways — by a radical change in the legality (of the old constitutional order) in favor of a new legitimacy — a system of values, rejecting the old positive law, or, conversely, by the denial of a new political legitimacy from the standpoint of the inviolability of the existent legality — established constitutional and legal order. A compromise solution is a partial adjustment of legality (constitutional norms), taking into account the change in the legitimizing formula of power.

The main task of the developers of constitutions or amendments to them is to regulate the focus of power — its institutions, functions and prerogatives, on the one hand, and to determine their relationship with society and its expectations, on the other<sup>8</sup>.

This leads to the question of constitutional amendments as a tool for reproducing the legitimacy of the political system, especially in a situation where the previous methods of ensuring it lose their effectiveness and the power (the ruling class) feels the growing erosion of its own legitimacy.

## 2. Legitimation as a process and strategy of law policy

Since legitimacy as an expression of the priorities of public consciousness is not an immutable constant, it can be interpreted as a dynamic process. The essence of this process is determined by the struggle of the forces of legitimization and delegitimization of this political regime, which make directed efforts to support faith in existing institutions in society or, conversely, to discredit them. This conflict is especially clearly presented in the context of social changes, when the fate of the political regime is determined — its collapse or, on the contrary, its preservation with the reproduction of the legitimizing formula in an updated form. The fate of legitimacy depends on a number of variables — social, institutional, and procedural. Almost all of these variables in the modern state are reflected in the constitutional principles and norms, and their directed adjustment expresses the strategy of legitimization of power.

In modern conditions, when the vast majority of states have adopted a rational legal type of legitimacy of power and constitutionalism as a form of its expression and provision, the classical theory of legitimacy requires revision or, at least, clarification — the introduction of a more detailed classification of types of legitimacy and conflicts related to its legal provision. If all political regimes, at least formally, are legal, and the constitution is the basis for the legitimacy of any government, then how to classify their options in terms of the specifics of the implementation of legal norms and their changes? What are the different types of constitutionalism — liberal-centric and state-centric; hybrid versions of political regimes that combine constitutional, historical and personalist legitimacy? In what classification series should we put the numerous variants of imitative democracy, limited or imaginary constitutionalism? How to determine the legitimacy of the political system of constitutional authoritarianism, based on the formal legal consolidation of the unlimited power of the leader?

In this context, it is important to distinguish between such forms of constitutional legitimacy as negative and positive (rejection of certain values or adoption of new ones); external and internal (from the standpoint of international and national law); substantive (based on values) and instrumental (based

<sup>7</sup> Schmitt C. *Legalität und Legitimität*. Berlin : Dunker und Humblot, 1968.

<sup>8</sup> *Finer S. E., Bogdanor V., Rudden B. Comparing Constitutions*. Oxford : Clarendon Press, 1995. P. 1.

on institutions); legal and extra-legal (constitutional and meta-constitutional) legitimacy of the regime. The parameters of extra-legal legitimacy should be recognized as the factors of historical, ideological, social, functional and personalized legitimacy of the regime. From the standpoint of the contribution of legitimacy to the stability of the state, it is divided into stable and unstable, democratic and authoritarian, national and regional (local); institutional and procedural (electoral, judicial, administrative, etc.)<sup>9</sup>. Ultimately, legitimacy acts as a dynamic process of reproduction of public confidence in the government, and, consequently, its viability is determined by the relationship of public expectations and results, law and politics, and the interaction of all actors in constitutional reform.

At the intersection of legal and political factors of ensuring the legitimacy of power, the importance of the strategy of law policy increases — the use of directed technologies that can transform an unstable balance in favor of one or the other option — ensuring the legitimacy of power or its destruction. One of the types of such technology can be considered the adoption of constitutional amendments aimed at resetting or reproducing the legitimacy of the political regime. The key value for the results of such actions of the law policy is the ratio of goals and means to achieve them, and the result depends on the reaction of society, the political intuition of the authorities and the art of developers.

In this logic, the block of constitutional amendments of 2020 appears as an attempt to systematically reconstruct the legitimacy of a political regime that is aware of the growing threat to its position from the standpoint of external and internal challenges. This allows us to explain the mechanism of constitutional revision in Russia, which combined the formal preservation of constitutional continuity with its actual revision at the level of values, principles, norms and institutions<sup>10</sup>. The contradiction between the two aspirations — to preserve the constitutional norms on amendments (which have a fundamental legitimizing value) and the need for their actual revision — was removed by balancing the developers on the verge of constitutionality, although without formally abandoning it. Technically, the problem was solved by the “amendment withdrawal” (“revision-abrogation”, following the French formula) — simultaneous rupture of constitutional continuity with its immediate reproduction within the adoption of the draft Law on the amendment<sup>11</sup> with the simultaneous recognition of its constitutionality by the Constitutional court of the Russian Federation — the project empowers the CC the right to determine its constitutionality<sup>12</sup>.

### 3. Constitutional values: positive and negative legitimacy

Legitimacy depends on the parameters set and accepted by society for the cognitive construction of social reality, expressed in normative attitudes of both positive and negative nature. Their balance expresses a conflict of values, but determines the degree of support, stability and effectiveness of a certain system of government, as well as the idea of the right of the elite to power.

The amendments demonstrate a revision of the ratio of positive and negative legitimacy in relation to globalization. During the adoption of the 1993 Constitution, the consensus on globalization as a process of promoting the transnational values of liberal democracy, which emerged with the end of the Cold War and the collapse of the USSR, dominated. This legitimizing principle has found consistent expression in the theory of universal humanitarian values — internationally recognized human rights, granting inter-

<sup>9</sup> *Hermet G., Badie B., Birnbaum P., Braud Ph.* Dictionnaire de la science politique et des Institutions politiques // Legitimite. Paris : Armand Colin, 1994. P. 141–142.

<sup>10</sup> *Medushevskiy A. N.* Constitutional reform in Russia: content, directions and methods of implementation [Konstitutsionnaya reforma v Rossii: sodержaniye, napravleniya i sposoby osushchestvleniya] // Social sciences and today's world [Obshchestvennyye nauki i sovremennost], 2020. No. 1. p. 39–60 (in rus)

Idem: Constitutional Amendments in Russia in 2020 as a Political Project of State Reconstruction [Konstitutsionnye popravki 2020 kak politicheskii proekt pereustroistva gosudarstva] // Public Policy [Publichnaya politika], 2020. V. 4. No. 1. p. 43–66. (in rus)

Idem: Rebirth of the Empire? Russian Constitutional Reform 2020 Against the Background of Global Changes [Vozrozhdenie Imperii? Rossiiskaya konstitutsionnaya reforma 2020 na fone global'nykh izmenenii] [Electronic resource] // Bulletin of Europe [Vestnik Evropy], 2020 v. 4 URL: <http://www.vestnik-evropy.ru/issues/the-revival-of-the-empire-russian-constitutional-reform-2020-against-the-background-of-global-change.html> (date of reference: 05.10.2020). (in rus)

<sup>11</sup> On improving the regulation of certain issues of the organization and functioning of public power: the Law of the Russian Federation on the amendment of the Constitution of the Russian Federation.

<sup>12</sup> The conclusion of the constitutional court 16.03.2020 No. 1–3 “On the compliance of the provisions of chapters 1, 2 and 9 of the Constitution of the Russian Federation, the provisions of the law of the Russian Federation on the amendment of the Constitution of the Russian Federation “On improving the regulation of certain issues of the organization and functioning of public power” pending its entry into force, and also about compliance of the procedure for the entry into force of article 1 of this Law to the Constitution of the Russian Federation in connection with the request of the President of the Russian Federation”.

national courts the status of supreme arbitrators in resolving disputes on human rights, the concept of the so-called “democratic transit”, which has become both an explanation for the adoption of new constitutions and a justification for their value content. Subsequently, these values were seriously challenged from the standpoint of revising the processes of globalization (the ratio of integration and fragmentation of regions in favor of the latter), the right turn in public thought (which actualized the search for national identity) and changing the relations of society and the state in favor of the latter (shifting the center of gravity from liberal-oriented to state-centric models of ensuring social consensus). The 2020 amendments marked the end of the “transition period”, establishing these trends in a new interpretation of legitimacy — in the parameters of space, time and the meaning of existence.

*In the spatial dimension* — it is a building of a new balance of international and constitutional law, as well as international and national courts. Without disputing the priority of international law (Article 15, Part 4), the developers included its “pragmatic” adjustment (controversial in view of Article 46) — the recognition of “non-interference in the internal affairs of states” and the separation of ratified international treaties and their interpretation in decisions of interstate bodies, rejecting the need for that part of them that contradicts the Constitution (Article 79). The central arbiter in resolving contradictions in that respect is the Constitutional Court, which now has the prerogative to resolve the issue of the possibility of executing decisions of interstate bodies if they contradict the “fundamentals of public law and order of the Russian Federation” (Article 125, Part 5.1).

In the *chronological dimension*, the legitimacy of Russian statehood is corrected by the addition of its rational and legal foundations by an appeal to tradition. The amendments emphasize the historical aspect of the justification of the state — it is not limited to the post-communist period, but includes its entire centuries-old history. The amendments reflected an emotional appeal to “the memory of ancestors who passed on ideals and faith in God”, restoring the “continuity in the development of the Russian state” torn by the revolution, postulating the immutability of “historically formed unity” and introducing the safeguarding principle of “protection of historical memory”. In their entirety, these norms establish a new understanding of the historical legitimacy of the state as the “legal successor of the USSR” and at the same time of the Russian Empire, the continuity of which is determined in the categories of culture, religion and history (Article 67). These guidelines are formulated in the spirit of restoration logic and are exclusively retrospective in nature, although they can effectively influence the current and future policy of law.

In the interpretation of the *meaning of the existence* of the state, the amendments focus on its identity, which is revealed in the concepts of community of destinies, nationalism and territorial integrity. These ideas are concentrated in the interpretation of the principle of sovereignty, which now acquires clear national characteristics. This attitude is expressed in the constructed concept of the historical right to the territory associated with the traditional type of legitimacy. The amendment reflects the existence of “all-Russian cultural identity”, but the priority is given to national identity: the Russian people is defined as “constituent”, it belongs “to a multinational Union of equal peoples of the Russian Federation” and the Russian language is defined as “state language” (articles 68 and 69).

The hierarchy of constitutional values emphasizes the priority of the *principle of sovereignty* in relation to international law, the norms of which are now valid only by virtue of their recognition by the state, and its interpretation is determined by the national judicial system. Russia — “the legal successor of the USSR on its territory, as well as in relation to international obligations” (previously only succession in international relations was emphasized), provides “protection of sovereignty and territorial integrity”, and actions and appeals aimed at alienating part of the territory of the state are not allowed (Article 67), which rejects the claims of other states (or their supporters within the country) to the disputed territories, even if they are supported by international courts, assuming a harsh reaction to them.

Concentrated expression of these legitimizing parameters is represented in the constitutional provisions on the “nationalization of elites” by imposing restrictions on holding state and municipal offices in connection with the foreign citizenship, a residence permit, possession of accounts and holding funds in foreign banks, albeit with no mention of ownership of property in foreign states (article 71). The expected consequences of this measure are seen in the weakening of the cosmopolitan aspirations of the elite, increasing its dependence on the state and regulatory authorities, as well as cutting off opposition members abroad from power.

Thus, the amendments, even in their rhetorical part, establish an important turn in the ratio of positive and negative aspects of legitimacy, in fact changing their places: they oppose sovereignty to globalization, traditionalism to modernity; historical legitimacy to rational; strengthening national structures to transnational; national-oriented elite to cosmopolitan. This cognitive turn defines a new interpretation of the axiological parameters of Russian constitutionalism.



#### 4. Social consensus: substantive and instrumental legitimacy

An important criterion for the classification of legitimacy is its division into substantive (based on values) and instrumental (based on institutions). The first of these parameters presupposes the existence of a certain social consensus — a “social contract” of society and government, the second considers institutions and measures to ensure it.

Constitutional amendments have proposed a new version of such a contract — an interpretation of the principle of the social state. If at the time of the adoption of the constitution, the social state (Article 7) was interpreted in the context of the dominant concept of a market economy based on the “free play of market forces” and the idea of a “minimal state”, the amendments establish its new understanding from the standpoint of the ideology of solidarism, consciously using elements of Soviet rhetoric. This refers to the concept of “social responsibility of the state”, which includes the constitutional consolidation of “economic, political and social solidarity”. It is described as ensuring “a balance of rights and obligations”, “respect for the working man”, and the creation by the State of conditions for “social partnership” and “sustainable economic growth” (Article 75). This emphasizes the regulatory role of the state and does not exclude restrictions on business in socially significant issues.

But the substantive legitimacy of the ideology of solidarism is reduced to three instrumental parameters — guarantees of certain social obligations of the state, the revival of elements of social paternalism and the formation of institutions that can give a certain mobilization effect in relations between society and the state. The *first parameter* is reflected in the form of state guarantees of “minimum wage not less than the minimum of subsistence of the working-age population”, “indexation of pensions at least once a year”, as well as social insurance, targeted social support, indexation of social benefits and other social payments (Article 75) — norms that theoretically do not need constitutional regulation, the implementation of which depends rather on the level of economic development. The *second parameter* is expressed in a number of norms that resemble the stereotypes of Soviet state paternalism: the protection of traditional social institutions — solidarity of generations, the institution of marriage as a “union of a man and a woman”, the family, motherhood, fatherhood and childhood with the definition of children as “the most important priority of state policy” (which reflects the trends of the demographic situation). The *third parameter* is the expansion of the social functions of the state responsible for maintaining “sustainable economic growth”, the introduction of common standards of “youth policy”, education and upbringing, including the formation of feelings of patriotism, citizenship and respect for elders (Articles 67, 72).

The ideology of solidarism as an alternative to liberalism becomes the basis of social consensus-relations between society and the state, but its interpretation tends to reproduce the traditional ideas of social responsibility, state paternalism and vertical communications, which are specific to the neoconservative (neocorporatist) type of legitimization of power.

#### 5. Center and regions: National, territorial and local dimensions of legitimacy

In complex states that include territorial entities formed on a national basis, the independent dimensions of legitimacy are national, regional and local. The Constitution of the Russian Federation originally laid the model of cooperative federalism, the implementation of which faced competition of different-vector processes of decentralization and centralization, expressed in terms of contractual and constitutional models of federalism. However, the overall dynamics of its development was in the direction of absorption of the powers of the subjects of the Federation and local self-government by the Center. This allowed the experts to formulate a thesis about the predominance of the processes of unification, centralization and unitarianism, which have reached the level of “deconstitutionalization of the federalism principle”<sup>13</sup>.

This result is enshrined in the amendments that introduce a new legitimizing principle of “a single system of public power” into the Constitution: the sovereign power of the political union extends to the entire territory of the country and functions as a single system whole in specific organizational forms defined by the constitution. This concept is implemented in three directions: expanding the powers of the federal center, limiting the powers of subjects and integrating local self-government into a single vertical of power.

The *first direction* is expressed by the provision that the organization of public authority is wholly within the jurisdiction of the Federation, expanding the extensive amendments of the powers of the Centre in a number of new areas — the establishment of foundations of Federal policy for scientific and technological development, health, education, security of individuals, society and the state, particularly in an important field of application “of information technology, the circulation of digital data” (article 71).

<sup>13</sup> Constitutional principles and ways to implement them: the Russian context. Analytical report [Konstitutsionnyye printsipy i puti ikh realizatsii: rossiyskiy kontekst. Analiticheskiy doklad]. Moscow : IPPP, 2014.

Further, the area of joint competence of the Russian Federation and the subjects is expanding (in fact, leading to the dominance of the central government), which now includes a wide area of social policy (including a whole block of amendments related to the social package of regulation of family protection, wages, pensions and social insurance), as well as various areas of regulation — from agriculture to youth policy (Article 72). Finally, it provides for the possibility of territorial exemptions in favor of the Center — “the creation of federal territories on the territory of the Russian Federation, the organization of public power in which is established by federal law” (Article 67).

The *second direction* is a set of innovations for the incorporation of subjects into a single system of public power with a simultaneous restriction of their powers. In this context, the change in the interpretation of bicameralism is significant — the positioning of the Federation Council as the Senate (and not the Chamber of Regions) — an institution of public power, which is endowed with a number of new important powers and consists of senators. They now include up to 30 senators (previously — 17) from the Russian Federation, appointed by the president, seven of whom, including former presidents, are for life (Article 95): together with representatives of the executive bodies of subjects subordinate to the president in the FC, this gives the president a numerical advantage (more than half of the votes) in the chamber, making it quite manageable. The constitutional and legislative legitimacy of the constituent entities of the Federation is severely restricted. Now the CC, at the request of the President, “shall examine the constitutionality of laws of subjects of the Russian Federation prior to their publication by the higher official of the subject of the Russian Federation”, and “acts or their individual provisions recognized as constitutional in interpretation given by the CC shall not be applied in a different interpretation” (article 125). These provisions lead to a significant restriction of the prerogatives of the constitutional and statutory courts of the constituent entities of the Federation, significantly weakening their legitimacy.

The *third direction* is the integration of the institution of local self-government into the system of public power, which completes the trend towards the nationalization of local self-government. The amendments do not provide for a direct formal rejection of the fundamental constitutional norm that “local self-government bodies are not included in the system of state authorities” (Article 12). The problem is solved by combining two types of bodies (state and municipal) into a single system of public power, where they “interact for the most effective solution of tasks in the interests of the population living in the relevant territory” (Article 132). Within this “interaction”, state authorities are given the legitimate opportunity to change the borders of the respective territories, participate in the “formation of local self-government bodies, the appointment and dismissal of local self-government persons” (Article 131).

The potential conflict of legitimacy of three levels — federal, regional and local, which really took place earlier in an acute form, is removed by amendments within the new constitutional principle of unity of public power. This formally completed the building of a single vertical of power. The Federal Center sets “restrictions for holding state and municipal offices, positions of state and municipal service” (Article 71), and the President appoints prosecutors of the subjects of the Russian Federation without subjects’ consent. The most clear institutional expression of the principle of unity of public power is the new constitutional institution — the State Council, formed by the President “in order to ensure the coordinated functioning and interaction of public authorities” at all levels, the status of which has yet to be determined by federal law (Article 83).

As a result, the previously existing balance of three types of legitimacy — national, regional and local — is sharply shifted in favor of the first, not only in fact, but also formally<sup>14</sup>. Instead of a divided legitimacy (generally inherent in federalism), a single legitimacy of public power is formed. In this construction of neo-imperial statehood, the powers of the regions and the autonomy of local self-government institutions are dissolved. Conflicts of different types of legitimacy at three levels can now hardly receive an adequate constitutional or judicial resolution, but they presuppose mainly a political solution. The constitutional doctrine of the unity of public power absorbs federalism, consistently linking its legitimacy with the principle of “functional unity” of all levels of government and administration.

## 6. Public authority: the aims and means of institutional revision

The legitimacy of public power is determined by the goals for which it exists and the means to achieve them. The goals should be divided into declared and implied, and the means should be grouped according to the degree of legal acceptability and effectiveness. The constitutional reform initially de-

<sup>14</sup> Rumyantsev, O. G. Constitutional Reform 2020 in the Russian Federation: Biased Assessment [Konstitutsionnaya reforma 2020 v RF: pristrastnaya otsenka] // Constitutional Bulletin [Konstitutsionnyi vestnik], 2020. No. 5 (23). p. 6–32. (in rus)

clared the expansion of the parliamentary component as a socially significant goal to increase the flexibility of the political system, but in reality, it significantly adjusted the mechanism of separation of powers in the direction of centralization of power. This result was achieved due to the combination of individual corrective amendments in relation to each of the branches of government, the overall effect of which was to weaken their influence in relation to the institution of the head of state.

On the one hand, the amendments do establish a certain expansion of the powers of all three branches of government horizontally, their balancing in relation to each other to give the system more flexibility. The State Duma “approves” (previously used an indefinite formula about “giving consent»), on the proposal of the President, the candidacy of the Prime Minister, and on the proposal of the latter — his deputies and part of the federal ministers (Article 103). The Prime Minister is appointed by the President after “approval” of his candidacy by the Duma (Article 111 Part 1), and the President “does not have the right to refuse” the appointment of relevant officials (Deputy Prime Ministers), “whose candidacies are approved by the State Duma” (Article 112 Part 3). The Federation Council is also given (in the amended version of Article 102) a number of new important powers — it appoints the Chairman, deputies and judges of the Constitutional and Supreme Courts, as well as the chairmen and judges of the cassational and appeal courts and, in principle, carries out the termination of their powers; holds consultations on the candidates of federal ministers of the security wing proposed by the President, the candidates of the Prosecutor General, his deputies, regional prosecutors, military prosecutors and other specialized prosecutor’s offices equated to the prosecutors of the constituent entities of the Russian Federation, but they are appointed by the president. The Constitutional Court is endowed with a number of new important powers related to granting it the competence of preliminary control over the constitutionality of legislation, including assessing the constitutionality of draft laws on amendments to the Constitution of the Russian Federation, federal constitutional laws and federal laws before they are signed by the President; resolving the issue of the possibility of implementing decisions of interstate bodies from the standpoint of their compliance with the constitution; checking the constitutionality of laws of subjects of the Russian Federation before they are published by the head of the supreme executive body of the subject (art. 125). In addition, if the chambers of the Federal Assembly reverse the president’s veto, it is the verdict of the court that determines the fate of the bill — whether it shall be signed by the president or returned to the Duma without a signature (Articles 107, 108). These provisions allowed the developers to talk about the growth of the parliamentary component of the political system.

On the other hand, the amendments significantly weaken the powers of all branches of government in relation to the President. The parliamentary responsibility of the government remains impracticable: the candidacies of the Prime Minister and his members are not nominated by the parliamentary majority, but are proposed by the President; a parliamentary vote of no confidence in the government or a question of confidence on the part of the Prime Minister (including repeated) does not entail his automatic resignation, the President still has the right to choose — to dismiss the government or to call parliamentary elections (Article 117). Outside the control of the Duma and the government remains virtually the entire security wing, formed directly by the president within the “consultations” with the Federation Council (the new order of formation of which, as noted, makes it more dependent on the president). Finally, the amendments sharply limit the autonomy and independence of the Constitutional Court in the political system — the resolution of issues of preliminary control of the constitutionality of draft laws, as well as the suspension of their adoption (in case of reversal of the presidential veto) is considered by the court only on the proposal of the president, the number of judges has been reduced from 19 to 11 (Article 125), and the procedure for their appointment and removal (undermining the principle of irremovability of judges) is entrusted to the Federation Council on the proposal of the President, which creates prerequisites for a system of controlled justice.

In this context, the innovation on the transfer of the function of government management to the President with the expansion of the existing order of responsibility of the government to the president established by the amendments is essential. The President “exercises general management of the Government of the Russian Federation” (Article 82), the government exercises executive power “under the leadership of the President” (Article 110, part 1), and the Chairman of the Government organizes its work in accordance with the “orders” and “instructions” of the President and bears “personal responsibility to the President for the exercise of the powers entrusted to the Government” (Article 113). The Government directs the activities of only a part of the federal executive bodies, with the exception of those whose activities are managed by the President personally (Article 110 Part 3). The leadership of the security wing — issues of defense, security and foreign policy — is carried out directly by the head of state.

Thus, the amendments present a *contradiction between the publicly stated goals* (expansion of parliamentarism) *and the means used* — the delegation of a significant part of the powers of all three



authorities to the head of state, who performs not only the functions of an arbitrator, but also the legitimate center of coordination and direction of their activities. The general vector of changes consists in further revision of the model of the mixed form of government with the system of separation of powers inherent in it (originally laid down in the Russian constitution, although with significant deviations) in the direction of the presidential form of government. It should be noted that the key innovation in this way is the formal granting of the function of management of the government (which fate is decided in president's sole discretion) to the head of state, which is an element of the presidential government, but with the full elimination of the inherent checks and balances (classical presidential system does not provide for the dissolution of Parliament by the President). This allows us to draw a conclusion about the transition from one type of institutional legitimacy (dualistic presidential-parliamentary) to another — a monistic quasi-presidential regime, with virtually unlimited powers of the head of state.

## **7. Head of State: constitutional and meta-constitutional foundations of the legitimacy of power**

The distinction between the constitutional and meta-constitutional foundations of the legitimacy of power is a traditional way of determining the degree of its legal and political (functional) autonomy. This criterion is especially important for regimes where the head of state is both the formal and informal embodiment of power. The constitutional parameters of legitimacy derive from the legally regulated powers of the head of state or their interpretation by the judiciary, which can have an expansive character (so-called explicit and hidden powers derived from the totality of constitutional norms). Meta-constitutional powers are those that rely on the role of the President as a symbolic figure in the public space, the highest representative of the state in international relations, and a mediator in resolving social, national, and political conflicts.

These two types of legitimacy often enter into complex relationships and contradictions with each other. There are situations when rational-legal (formal-constitutional) and meta — constitutional (informal-personal) forms of legitimacy complement each other, come into conflict, or one of them absorbs the other. The latter option is typical mainly for authoritarian systems, where constitutional and legal legitimacy is limited or even included in the dominant meta-constitutional legitimizing formula of the head of state, who personifies the will of the nation. The Constitution of 1993 created certain prerequisites for this trend in the form of securing the enormous powers of the presidential power, but did not predetermine its result. The 2020 constitutional amendments obviously establish it. The five main innovations introduced by the amendments serve to achieve this goal.

First, giving the head of state a new symbolic status. Previously, the constitution defined the president exclusively as “the guarantor of the Constitution of the Russian Federation, human rights and freedoms.” The drafters of the amendments went further: the president is defined as the guarantor of “civil peace and harmony in the country”, which ensures the coordinated functioning and interaction of all bodies that are part of the “unified system of public power” (Article 80 in the new version).

Secondly, the concept of a single system of public power implies a new level of their integration: all branches of government and institutions are incorporated into a single system of public power, the top and embodiment of which is the head of state. In this concept, the head of state performs not only symbolic, but also quite real functions of the center of public power, rising above the system of separation of powers, directing the executive power, forming the agenda and determining the structure of political institutions, coordinating and directing their activities, determining the meaning and dynamics of the political process. The President turns from an arbiter in relations between the authorities into their center, while receiving new powers of the head of the government and of the entire vertical of executive power.

Third, the mechanism of conflict resolution in the relations of the authorities is closed to the president. All levels and branches of government, represented by the Duma, the Federation Council, the Constitutional Court and the Government, receive, as noted, significant new powers that “balance” their positions in relation to each other. However, potential conflicts between them are removed not through the separation of powers mechanism, but by delegating the right to a final decision to the highest political level of government, from regions to the centre, from Parliament to the government or its security components, and through that — to the President.

Fourth, granting the President lifetime immunity from prosecution. The norms are presented that make it impossible for the President to be responsible after his resignation. Not coincidentally, on the model of many post-Soviet countries (which reacted in that way to the change of their government during

the “color revolutions”), the Russian amendments include detailed recording of guarantees to the Presidents, who cease to perform their powers, they receive the life status of senators (art 95) and the appropriate immunity (article 98), “have immunity” (article 92) and the procedure of deprivation of immunity by the chambers of the Federal Assembly is almost the same as the impracticable procedure of impeaching the current President (article 93, 102, 103).

Fifth, the introduction of a new interpretation of the principle of succession of power and giving the current leader exclusive rights to re-election. The amendment to Part 3 of Article 81 included in the Constitution expresses the continuity and rupture of the constitutional system, inconsistently combining different types of legitimation of power — legal (regular) and personalistic (exclusive). The first is reflected in the reproduction of the principle of the alternation of power, even to strengthen the sternness of the wording — “one and the same person cannot hold the office of President of the Russian Federation more than two terms” (in the new edition the word “consecutive”, which has already played its role to grant Putin a third and fourth mandate, is removed). The second is presented in the “reservation” to the same rule, according to which this restriction does not apply to a person who holds (or previously held) this position at the time of entry into force of this amendment. Thus, a “transitional position” is constructed from the old constitutional norm to the new one, which opens up prospects for the incumbent leader to participate as a candidate in the presidential election and hold this position, regardless of the number of terms that he held office before the entry of this amendment into force. This is an assertion of personal legitimacy over constitutional legitimacy.

Thus, the constitutional amendments provide the basis for a reconstruction of legitimacy of the head of state to unify the legal and extra-legal components with strengthening their meta-constitutional understanding — in the form of a new symbolic status of the President. Introducing a formal establishment of the virtually unlimited power of the head of state, the amendments simultaneously include an expanded interpretation of presidential immunity from prosecution, change the balance between legal and personalistic legitimacy in favor of the latter, and open up the prospects of an unlimited staying in power of the current leader. In the aggregate of all these parameters, this system can be defined by the concept of a constitutional authoritarianism<sup>15</sup> or a constitutional dictatorship<sup>16</sup>, which is used to describe situations of establishing unlimited power in a formally constitutional way (in contrast to the usual dictatorship, which is usually indifferent to the constitutional framework).

## 8. Managing Public Opinion: Constructing Legal Legitimacy in the Media Scene

The society's request for constitutional reform was stated by sociologists several years before its implementation. However, the structure of this request showed completely different motives for supporting the reform in different segments of society — from liberal to conservative and collectivist-equalizing. These motives, of course, were taken into account by the developers both when formulating amendments and presenting them to the public. The goals and results of the PR campaign to promote the amendments are presented in the VTsIOM (Russian Public Opinion Research Center) analytical review on the attitude of the population to the constitutional amendments of 2020.<sup>17</sup>

This survey was conducted on January 24, 2020, i. e. immediately after the publication of the concept of amendments in the President's Message to the Federal Assembly, but before their subsequent detailing and adjustment. It was attended by 1,600 citizens aged 18 and over, taking into account social and demographic parameters, and the method used was a telephone interview based on a stratified two-base random sample of landline and mobile numbers. The survey organizers note that for this sample, the maximum error size with a 95% probability does not exceed 2.5%. Nevertheless, distortions are possible given the very wording of the questions. They were put on the basis of known public expectations, did not include topics or formulations that could cause rejection of respondents, as well as, of course, the final amendment — about the resetting of presidential powers. This allows us to be critical of the results obtained, but does not make them less informative for clarifying public attitudes and the parameters of their directed construction.

<sup>15</sup> Partlett, W. Russia's 2020 Constitutional Amendments [Popravki k Konstitutsii Rossii 2020 goda] // Comparative Constitutional Review [Sravnitel'noe konstitutsionnoe obozrenie]. 2020. No. 3 (136). p. 51–62. (in rus)

<sup>16</sup> Medushevskiy A. N. The Russia's Move to Constitutional Dictatorship: Reflections on 2020 Constitutional Amendments [Perekhod Rossii k konstitutsionnoi diktature: razmyshleniya o znachenii reformy 2020] // Comparative Constitutional Review [Sravnitel'noe konstitutsionnoe obozrenie]. 2020. no. 3 (136). p. 33–50. (in rus)

<sup>17</sup> Amendments to the Constitution: Meaning and Attitude. Analytical Review of VTsIOM [Popravki v Konstitutsiyu: znachenie i otnoshenie. Analiticheskii obzor VTsIOM] (date of circulation February 3, 2020) [Electronic resource]. URL: <https://wciom.ru/index.php?id=236&uid=10146> (date of reference: 05.10.2020). (in rus)

A contradiction is the fact that the majority of the population, who previously showed a stable apathy to the constitution and did not agree to see it as a real tool for protecting rights (as evidenced by previous polls of the Levada Center and FOM), generally supported the reform and reacted positively to the potential of amendments to the constitution (79%). The highest percentage of support is found in million cities (86%), the lowest – among young people (from 18 to 24 years) and in both capitals (72%)<sup>18</sup>. The explanation of this fact most likely consists in the consolidation of public sentiment in support of constitutional reform, formed and supported by an intensive information campaign of the official media with an emphasis on those priorities that were most accessible and understandable to the mass consciousness (without becoming legally more meaningful)<sup>19</sup>.

First of all, absolute support (90–91%) was given to the idea of constitutional consolidation of social guarantees (indexation of pensions, allowances and other social payments and establishing the minimum wage not lower than the subsistence minimum). Further, amendments that were positioned as strengthening the Russian national statehood received a high level of approval — changing the criteria for a candidate for the post of president: increasing the qualification for living in the country to 25 years (87%) and limiting presidential mandates to two terms (66%); introducing a ban on foreign citizenship or residence permits for State Duma deputies, senators and municipal employees (68% vs. 14%).

Finally, the amendments for the “restoration of sovereignty” and for changing the configuration of institutions, asserted as steps towards democratization, received solid support: presidential appointment of heads of ministries, departments and public prosecutors of regions with the participation of the Council of Federation (66% vs. 12%); the priority of the Russian Constitution over international treaties or decisions of international associations (63% vs 14%); a proposal to expand the powers of the Federation Council, and also the idea to give the Duma the right to approve the Prime Minister, Deputy Prime Ministers and Ministers (60–62%)<sup>20</sup>. A particularly high level of support for amendments about reforming the constitutional court, the functions and activities of which the Russians have a very vague idea, is surprising — there was almost unanimous (81%) approval of the proposal to give the CC a function of pre-checking bills at the request of President in conformity with the Constitution.

It is obvious that we are talking about a public request for constitutional reform formed by the government itself, by articulating the meaning of the most attractive amendments in clear terms and omitting the most controversial ones. The success of the constitutional PR campaign is indirectly evidenced by the surprisingly low percentage of respondents who answered “I find it difficult to answer” regarding all questions (at the level of 3–5%): this is surprising, given that transformations of such complexity were evaluated by citizens, most of whom previously admitted to ignorance or vague knowledge of the constitution. The determining factor in the success of legitimation of constitutional amendments, therefore, should be recognized as the *information monopoly of the authorities*, the organization of a detailed PR campaign and its well-thought-out *targeted orientation*.

## 9. Legitimation of the political regime as a basis for the consolidation of power

The concept of legitimacy, as shown earlier, expresses the degree of agreement between society and the authorities, based on faith (or disbelief) in the legitimacy of the latter’s actions. It links together a number of elusive parameters of the organization of the political system — prevailing moods, public expectations, the normative status of institutions, formal procedures for legal changes and technologies of power. The process of legitimizing of a political regime through constitutional amendments therefore involves a combination of rules (constitutional amendments), institutionalized procedures, and political technologies. The constitutional reform in Russia demonstrates their clear interaction, indicating the planned nature of the preparation and the desire to achieve the goals set. The 2020 constitutional amendments pursued precisely this goal — to reproduce the legitimacy of the Russian political regime in the face of the erosion of public trust in it, combined with a combination of external and internal

<sup>18</sup> For more information, see the table on the question: For you personally, are these possible changes important or rather not important? [Electronic resource [Dlya Vas lichno eti vozmozhnyye izmeneniya vazhny ili skoreye ne vazhny?]. URL: <https://wciom.ru/index.php?id=236&uid=10146> (date of reference: 05.10.2020). (in rus)]

<sup>19</sup> E. g. see: Opros VTsIOM pokazal mneniye rossiyan o popravkakh k Konstitutsii 3 fevralya 2020 g. [The VTsIOM poll showed the opinion of Russians about the amendments to the Constitution on February 3, 2020.] [Electronic resource]. URL: <https://russian.rt.com/russia/news/714520-wciom-opros-popravki> (date of reference: 05.10.2020). (in rus)]

<sup>20</sup> See the table data for the question: How do you feel about the possibility of the following amendments to the Constitution [Kak Vy otnosites k vozmozhnosti sleduyushchikh izmeneniy k Konstitutsii?] [Electronic resource]. URL: <https://wciom.ru/index.php?id=236&uid=10146> (date of reference: 05.10.2020). (in rus)]

challenges. The problem was solved in the form of reconstruction of the legitimizing formula of power on new value and institutional-organizational principles. This explains the correlation between the form, content and mechanisms of constitutional reform.

*The legal form of reproduction of legitimacy* was chosen to be not the adoption of a new constitution, but a systematic adjustment of its fundamental principles by the adoption of a block of partial amendments to less protected sections of the Basic Law. The amendments do not formally go beyond the limits of procedural restrictions (in accordance with Articles 136 and 108) and do not affect the most protected chapters of the Constitution, which made it possible to avoid launching the procedure for convening a Constitutional Assembly. They do not contradict Federal Law "On the procedure of adoption and entry into force of the amendments to the Constitution of the Russian Federation" (dated 04.03.1998), which does not allow to combine amendments of different content in one block, because, contrary to the critics, actually show a single logic and internal relationships — in the revision of legitimizing foundations of the political system. At the same time, however, the scale of the changes was so significant that it allows us to talk about the transformation of the meaning of the fundamental constitutional principles. The contradiction of the basic constitutional principles with their reduced interpretation by amendments is obvious (in violation of Article 16, paragraph 2), which does not exclude further conflicts of interpretation of legislative norms in judicial practice. This decision is legally ambiguous, but it allowed to tackle three political challenges at a time: to guarantee the stability of the situation, not allowing uncontrolled public debate on the legal contents and prospects of the political system; to preserve the constitutional legitimacy of the regime (concerned with the reaffirmation of the current changes in the political system in relation to the Constitution of 1993, on the basis of which it has been formed) and at the same time to fill this legitimacy with different (even contradictory) conservative restoration sense.

The *content* of the amendments expresses a single internal logic of the transformation of Russian constitutionalism in the direction of limiting its authentic liberal basis. The amendments provided an answer to a number of systemic challenges — globalization, threats of internal destabilization, split of the elite and transfer of power. Globalization (the priority of international law over national law) is opposed by state sovereignty; rationalism — by historical continuity; modernism — by protection of traditional values and national priorities; human rights ideology — by patriotism and their state-centered interpretation; destabilization (alienation of power and society) — by a new construction of the "social contract" from the positions of solidarism and paternalism; the threat of territorial disintegration — by a revision of federalism in the direction of centralization; loss of systemic flexibility — by adjustment of the entire balance of power in the direction of functional unity; cosmopolitanism of the elite — by its "nationalization"; the problem of continuity of the supreme power — by ensuring its preservation for the current leader for an indefinite period. The unifying concept for all these innovations was the new constitutional doctrine of "unity of the system of public power" headed by the president as its symbol, guarantor and guiding force.

*The mechanism of the constitutional reform* consisted in combining procedural, institutional and technological tools in the context of the information monopoly of power. The key element of the whole construction was the revision (extended interpretation or correction) of the method of revision of the current constitution itself at the time of its change by a special law and the set of principles of their interpretation from the perspective of the changed legal and political reality. Procedurally, the greatest doubt was the constitutionally controversial linking of the adoption of the law on the amendment and the complex of the whole amendment block (especially about resetting the previous presidential mandates) with the message of the President to the constitutional court, which is not provided by the Constitution and applicable law on the constitutional court directly (as well as his repeated statements about the illegality of doing it). The other controversial point was the actual (but not legal) revision of the procedures for the adoption of amendments associated with the introduction of the unprovided for by the constitution additional Institute — the "All-Russian vote", which corresponds neither to the referendum, nor even to the nation-wide vote in the sense of the 1993 Constitution (as the criterion of its success was not the support for the initiative by the majority of citizens, but by a simple majority of vote participants). The developers' dilemma, as shown, was the need to comply with the constitutional provisions on amendments with the need for their simultaneous revision. It was solved at the political level by the unanimous support of the Law on the Amendment and the methods of its adoption by all branches of government — the State Duma and all regional legislative assemblies, the Federation Council and the Constitutional Court (which is not surprising due to the dominance of one party in power).

*Political technologies of constitutional reform* — are an independent factor in promoting and legitimizing amendments in society. They included: the secret nature of their development; an information

campaign to prepare public opinion; the exact choice of the form and time of proposing amendments (in the President's Message to the Federal Assembly, postponed for this purpose to the beginning of the year); rapid progress of amendments and of passing the formal stages of their "discussion" and adoption (within three months); inclusion of elements of corrective or distracting PR (in the form of the idea of the State Council); metered supply to society in three separate blocks (social, institutional and related to the extension of the presidential mandate); timely involvement of the "public" to make ideological amendments; involvement of the Constitutional Court in the assessment of amendments and, above all, the most important of them — on resetting the terms of office of the current president; holding a quasi-constitutional all-Russian vote with subsequent approval of its results as an additional legitimizing action.

As a result, the *combined or cumulative legitimacy of the amendments* was formed as a synthesis of legal, institutional-political and factual arguments.

## 10. Results of the constitutional reform: the reconstructed legitimizing formula of power and its significance

In general, the amendments ensured the achievement of a number of vital political *objectives* of the ruling regime — a deep revision of the content of the constitutional principles with their external immutability; reproduction of legitimacy of the political regime on a new basis; demonstration of the unity of all branches of government to external and internal challenges; the prolongation of the mandate of the incumbent head of state for an indefinite period; support for these decisions by a plebiscite (whether real or simulated) and, crucially, the implementation of all these changes within the formal constitutional legality, which ensures the legal continuity of the current government.

This construction of the legitimacy of the government is quite consistent with the restoration historical periods, summing up the entire post-Soviet constitutional cycle and its final phase — the re-institutionalization (i. e., the revision of the meaning of the previously adopted constitution from the standpoint of restoration logic). It constitutionally records all the major changes of the previous decades in the direction of a conservative revision of the liberal potential of the 1993 Constitution, completing this process by recognizing the legal reality of a neo-imperial state with an authoritarian-plebiscite political regime.

The *formula of legitimacy* introduced by the 2020 amendments and established in the course of their promotion is internally contradictory: it combines legal and extra-legal forms of legitimation — combines the constitutional and democratic basis of the political system with non-legal (cultural) parameters, including history, nation, solidarity, the priority of public power over society, and the symbolic (meta-constitutional) status of the head of state. The system of constitutional values is revised by changing the balance of positive and negative legitimacy, and authentic goals are reduced to the means of achieving them. Within this formula, the sovereign (people) democratically delegates its power to the head of state, who thereby performs the function of its permanent and sole representative.

The *balance of advantages and disadvantages of this solution* does not look clear: the advantages include the reproduction of legitimacy as a guarantee of relative stability of the regime in the short term; overcoming the growing contradiction between its constitutional form and real content by reflecting the latter in the norms of positive law; reproduction of the mandate of the current leader in the face of growing international rivalry and internal problems. The disadvantages include the internally contradictory nature of the legitimizing formula, composed of different legitimizing principles (constitutional and meta-constitutional); the threat of stagnation due to the hyper-centralization of state power, which remains the only arbiter in resolving social conflicts; the lack (outside of formal constitutional procedures) of clear (and legitimate) mechanisms for the transition of power, the problem of transfer of which has been postponed in time, but will inevitably arise in the future, provoking the threat of a split of the elites.

The most accurate definition of the current political regime is the concept of *constitutional authoritarianism (constitutional dictatorship)* — a system of government in which, on the basis of the constitution, with the consent of society (confirmed by a plebiscite) and with the unanimous approval of all branches of government, takes place the establishment of virtually unlimited power of the institution of the head of state, personified in the figure of the current leader. The stability of the legitimizing formula, the viability of the political regime and its effectiveness in overcoming external and internal challenges are now determined mainly by one factor — the success of the leader to whom the people have entrusted their fate.



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