

**THE RUSSIAN CONSTITUTION OF 1993  
AND THE CONSTITUTIONALIZATION OF FEDERAL LEGISLATION:  
DATA ANALYSIS**

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*The Constitution of the Russian Federation of 1993 provided the basis and tools for large-scale societal transformations in Russia. Still, the question of whether the results of political and socio-economic reforms are irreversible and in line with constitutional ideas and norms is open to discussion. This study investigates the temporality of the process of the “constitutionalization” of Russian law using the statistics of Federal laws and Federal constitutional laws for the period 1994–2018. The article presents the outcome of the quantitative analysis as well as a discussion of the findings involving the approaches of the legal and political sciences. The research leaves open the question of the relationship between the durability of the democratic constitution and the quality and irreversibility of democratic transformations of the social system. Monitoring the dynamics of the adoption of primary laws and laws on amendments gives evidence that even a “rigid” democratic constitution can become “elastic” with age since its ideas and meanings can often be “stretched” to apply to current cases without the need to make any changes to existing constitutional norms. The authors propose considering the conceptual possibilities of adaptive governance theory to explain the features of modern Russian lawmaking (“adaptive lawmaking,” “agile lawmaking”).*

*Keywords: constitution; Russia; legal statistics; legal policy; legal stability; adaptive governance.*

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## Introduction

This work is part of a study on the role of the constitution in large-scale transformations of society. We understand the constitution both as a basis for the transformation of political and economic regimes and as a tool for the management of societal changes.

It is evident that a new constitution cannot change, in an instant, the whole existing legal framework, which was at the same time a reflection, a “creator” and a guarantor of a previous social order. The “old law” keeps functioning and directly affects social relations. Some of the old laws may be neutral for democratic change, but for the most part they are unable either to regulate new institutions and social relations or to contradict the new model of society.

So, for social systems under transformation the *time factor* plays a crucial role. This factor affects the nature and range of possible political and legal events,<sup>1</sup> limits the spectrum of political and legal opportunities as well as determines the choice of options for action. Also, the time factor acts on the possibility of reaching the “point of no return,” the transition through which ensures the irreversibility of democratic change. For these reasons, the analysis of the dynamics of the adoption of new (primary) laws directly prescribed by the constitution, as well as the analysis of the timeliness of the abolition of the “old legislation,” contrary to new principles and ideas, is of interest. This kind of research could provide evidence-based data with which to assess the quality of social, political and economic changes boosted by the adoption of the new democratic constitution and ensure that new legislation renders the democracy irreversible.

Russian researchers in constitutional law do not see any particular difficulties in determining the content and periodization of the processes that took place in the system of Russian law after the adoption of the democratic Constitution of 1993 and relate to the implementation of constitutional principles and models. For instance, academician Taliya Khabriyeva calls the ongoing transformations “the constitutionalization of modern Russian legislation” and identifies three main stages in this process:

During the “formation” stage, in the first seven years of the Constitution [’s operation] ... the foundations of legislative regulation of the new socio-economic formation were created. Codes and other legal acts were developed that revealed the content and ensured the operation of constitutional values and norms ...

At the second – “adaptation” – stage, which covered the first decade of the new [i.e. twenty-first] century, lawmaking was aimed at solving urgent problems of political and socio-economic development and adjustment of legal regulators.

In recent years, the third – “modernization” – stage of development of constitutional values and norms has come. At this stage, the task of the radical transformation of the legislation has not been set longer. However, this process is not limited to the current improvement of legislation. Modernization is distinguished by the scale and method of solving problems, which requires

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<sup>1</sup> Ruth B. Collier & David Collier, *Critical Junctures and Historical Legacies* (Princeton: Princeton University Press, 1991); Antoni Z. Kamiński, *Stracony moment konstytucyjny w pokomunistycznej Polsce: skutki dla jakości rządzenia dwadzieścia lat później* in *Modernizacja Polski. Struktury, agencje, instytucje* [A Lost Constitutional Moment in post-Communist Poland: Implications for Quality Management, Twenty Years Later in Poland's Modernization. Structures, Institutions, Organizations] (Warsaw: Scientific and Professional Publishing House, 2010).

the adoption of not only new laws but also the improvement of methods and means of legal influence.<sup>2</sup>

We decided to investigate in more detail the conclusion that after the entry into force of the new Constitution of 1993 there is a period during which the adoption of new laws (basic, primary laws) dominates, after which legislators pay more attention to the clarification and improvement of already adopted legal acts. In this paper, we will call these laws the “new laws” or “primary laws” (the individual units related to the primary regulation). As for the laws used as a tool for modification of existing legislation, we will call them “laws on amendments,” although, of course, both types of the mentioned legal acts are the newly adopted laws. At the same time, our aim was to analyze the dynamics of the adoption of new laws in comparison with the dynamics of the adoption of laws on amendments. The question that we hoped to clarify through this analysis centered on the relationship between the durability and stability of the democratic Constitution and the quality and irreversibility of democratic transformations of the social system.

Why are we interested in issues related to statistical studies of different types of Federal laws? Many observations and expert judgments on the development of Russian legal policy motivated us to direct our attention to this subject, but two stimuli are perhaps the most potent.

The first stimulus was the many academic papers and media reports that noted the rapid and uncontrolled growth of the laws on amendments in Russia. Their authors argue that this practice makes law enforcement and an understanding of legislation quite tricky.

The second stimulus was the papers and the expert positions accusing the current Constitution of the Russian Federation of vagueness in respect of norms. Some experts go further and claim the Constitution of 1993 has a sham nature. The critics base their reasoning on the observation that the constitutional views on the state order and economic system, as well as the political model, are still not implemented one hundred percent.<sup>3</sup>

<sup>2</sup> Хабриева Т.Я. Конституционные основы, тенденции и проблемы развития российского законодательства: 20-летний опыт и современное состояние // Журнал зарубежного законодательства и сравнительного правоведения. 2013. № 4. С. 556–558 [Taliya Ya. Khabriyeva, *Constitutional Foundations, Trends and Problems of Russian Legislation Development: 20 Years of Experience and Current State*, 4 Journal of Foreign Legislation and Comparative Law 556 (2013)].

<sup>3</sup> Аничкин Е.С. Фикции в конституционном праве Российской Федерации: особенности, виды, действие // Научный ежегодник Института философии и права УрО РАН. 2018. Т. 18. № 2. С. 87–105 [Eugene S. Anichkin, *Fictions in the Constitutional Law of the Russian Federation: Features, Types, Action*, 18(2) Scientific Yearbook of the Institute of Philosophy and Law of the Ural Branch of the Russian Academy of Sciences 87 (2018)]; Умнова-Конюхова И.А. Конституция Российской Федерации 1993 года: оценка конституционного идеала и его реализации сквозь призму мирового опыта // Lex Russica. 2018. № 11. С. 23–40 [Irina A. Umnova-Konyukhova, *The Constitution of the Russian Federation of 1993: Evaluation of the Constitutional Ideal and Its Implementation Through the Prism of World Experience*, 11 Lex Russica 23 (2018)]; Хабриева Т.Я. Конституционная реформа в современном мире [Taliya Ya. Khabriyeva, *Constitutional Reform in the Modern World*] (Moscow: Nauka, 2016); Авакьян С.А. Конституционно-правовые реформы:

Many authors note that a quarter of a century after the adoption of the democratic Constitution Russia still retains the “antinomic symbiosis of democracy and authoritarianism,”<sup>4</sup> since power is exercised both by democratic and formally undemocratic methods. Such judgments apply equally to the current period and the time of the “democratic years of the 1990s.” It is well known that the first President of Russia Boris Yeltsin was repeatedly accused both by politicians and by experts of authoritarian methods of governance.<sup>5</sup> In particular, one of the reasons was that Yeltsin initiated and performed many reforms by decree, without waiting for the consent of the legislators or openly against their will.<sup>6</sup>

From 1990 to the present day, a large number of enthralling discussions covering the legal and political assessment of the style of government of Russian leaders have taken place, as well as on the most accurate scientific definition of the essence of the current Russian political regime.<sup>7</sup> Neil Robinson, for example, argues that accurate evaluations are not yet possible, because Russia has “far from finished either state or regime building.”<sup>8</sup>

Some researchers believe that the basic cause of the “incompleteness” and inconsistency of Russian democracy is the Constitution of 1993 itself. For example, political scientist Andrey Medushevskiy argues that the new Russian Constitution

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объективные и субъективные факторы // Журнал зарубежного законодательства и сравнительного правоведения. 2016. № 1. С. 142–148 [Suren A. Avakian, *Constitutional and Legal Reforms: Objective and Subjective Factors*, 1 Journal of Foreign Legislation and Comparative Law 142 (2016)]; Неведов Д.В. Экономическая теория как основание конституционного толкования // Известия вузов. Правоведение. 2013. № 5. С. 215–223 [Dmitry V. Nefedov, *Economic Theory as the Basis of Constitutional Interpretation*, 5 Izvestiya vuzov. Pravovedenie 215 (2013)].

<sup>4</sup> Красин Ю.А. Российская демократия: коридор возможностей // Полис. 2004. № 6. С. 125–135 [Yuri A. Krasin, *Russian Democracy: Corridor of Opportunities*, 6 Polis 125 (2004)].

<sup>5</sup> Гельман В.Я. «Transition» по-русски: концепции переходного периода и политическая трансформация в России (1989–1996) // Общественные науки и современность. 1997. № 7. С. 64–81 [Vladimir Y. Gelman, “Transition” in Russian: Concepts of Transition and Political Transformation in Russia (1989–1996), 7 Social Sciences and Modernity 64 (1997)]; Умланд А. Постсоветская Россия между демократией и авторитаризмом: Критика сравнения ельцинского и путинского периодов из исторической перспективы // Научный общественно-политический журнал <БЕЗ ТЕМЫ>. 2009. № 1 (11). С. 5–11 [Andreas Umland, *Post-Soviet Russia Between Democracy and Authoritarianism: Criticism of the Comparison of the Yeltsin and Putin Periods from a Historical Perspective*, 1 Scientific Socio-Political Journal <NO TOPIC> 5 (2009)].

<sup>6</sup> Лучин В.О. «Указное право» в России [Victor O. Luchin, “Decree-Law” in Russia] (Moscow: Veles, 1996); Лукьянова Е.А. Указное право как российский политический феномен // Журнал российского права. 2001. № 10. С. 55–67 [Elena A. Lukyanova, *Decree-Law as a Russian Political Phenomenon*, 10 Journal of Russian Law 55 (2001)].

<sup>7</sup> Mikael Wigell, *Mapping “Hybrid Regimes”: Regime Types and Concepts in Comparative Politics*, 15(2) Democratization 230 (2008); Моммзен М. Российский политический режим: неосоветский авторитаризм и патронажное президентство // Неприкосновенный запас. 2010. № 6(74) [Margaret Mommsen, *Russian Political Regime: Neo-Soviet Authoritarianism and Patronage Presidency*, 6 Emergency Ration (2010)] (Aug. 10, 2019), available at <http://magazines.russ.ru/nz/2010/6/mm10.html>.

<sup>8</sup> Neil Robinson, *State, Regime, and Russian Political Development*, Limerick Papers in Politics and Public Administration, No. 3 (2008) (Aug. 10, 2019), available at [https://www.ul.ie/ppa/content/files/Robinson\\_state.pdf](https://www.ul.ie/ppa/content/files/Robinson_state.pdf).

is initially not able to determine the political regime rigidly since its provisions are “unclear, misleading,” “deliberately vague” and “can be interpreted in different ways.”<sup>9</sup> One of the co-authors of the Constitution of 1993 Professor Sergey Shakhrai does not share this point of view. He believes that attempts to “blame” the constitutional act for the observed failures of democracy

are the result of naïve faith in the magic power of the written word that is capable, only by its existence, automatically to change the mentality of the elites and the prevailing political practices.<sup>10</sup>

Therefore, our present interest is related to consideration of the dynamics of the adoption and clarification of Federal constitutional laws and Federal laws for the period 1994–2018 as a first step to investigation of how the temporality and other characteristics of Russian lawmaking influence the irreversibility of key social transformations, prescribed by the models contained in the provisions of the Russian Constitution of 1993.

## 1. Materials and Methods

We conducted the quantitative analysis of various information on Federal constitutional laws and Federal laws adopted after the entry into force of the Constitution of the Russian Federation of 1993 using the official Database “Federal Legislation.” This online database is part of the State System of Russian Legal Information “Official Internet Portal of Legal Information” that can be found at <http://pravo.gov.ru> (in Russian).

As of 1 January 2019, the Database “Federal Legislation” contained 195,025 Federal acts adopted since 1 January 1994.

We carried out a general search in the Database “Federal Legislation” using the tag of “Federal law OR Federal constitutional law,” with the interval of dates from 1 January of each selected year to 1 January of the following year. In each annual array of laws (legislative acts adopted by the Federal Assembly of the Russian Federation and signed by the President of the Russian Federation during the analyzed year), we did a new sampling search using the additional search criteria (in Russian) for the field of “Act Name” such as “amendments,” “changes,” “additions,” “addenda” and so on.

To find the rate of change in the number of laws in percentages, we used the compound annual growth rate. Compound annual growth rate (CAGR) is a specific

<sup>9</sup> Медушевский А.Н. Российская конституция в мировом политическом процессе: к десятилетию Конституции Российской Федерации 1993 г. // Мир России. 2003. № 3. С. 81 [Andrey N. Medushevskiy, *Russian Constitution in the World Political Process: To the Decade of the Constitution of the Russian Federation of 1993*, 3 *World of Russia* 62, 81 (2003)].

<sup>10</sup> Шахрай С.М. О Конституции: Основной закон как инструмент правовых и социально-политических преобразований [Sergey M. Shakhrai, *Towards the Constitution: Basic Law as an Instrument for Legal and Socio-Political Change*] 241 (Moscow: Nauka, 2013).

term widely applied for describing the geometric progression ratio that provides a constant rate of return over the period. Also, this term is often used to describe a number of the elements of the process (in our case, the legislative process), for example, laws adopted.

$$\text{CAGR}(t_0, t_n) = \left( \frac{V(t_n)}{V(t_0)} \right)^{\frac{1}{t_n - t_0}} - 1$$

Where  $V(t_0)$  is the initial value,  $V(t_n)$  is the end value and  $t_n - t_0$  is the number of years.

For our calculations, we chose to take the data from 1 January of each selected year to 1 January of the following year for two reasons. First, the Constitution of the Russian Federation entered into force at the end of 1993 (25 December 1993) and, therefore, logically, the laws were adopted after that date. Second, our choice aimed at ensuring that the average annual rate of change in the number of laws was correctly calculated, so this required data for the full calendar year.

## 2. Results

### 2.1. General Statistics

The results of the search conducted in the Database “Federal Legislation” showed that the total number of Federal constitutional laws and Federal laws adopted in the period from 1 January 1994 to 1 January 2019 amounted to 7,912. More than 5,000 of them (5,451) are the laws on amendments and additions to previously adopted legislation. Thus, the number of laws aimed at amending or clarifying existing legislation accounts for almost 69% of the total number of Federal constitutional laws and Federal laws enacted during the study period.

### 2.2. Dynamics of Adoption of Laws

According to the results of the analysis, about 47% of the total number of laws available in the Database “Federal Legislation” were adopted in the period from 1 January 1994 to 1 January 2010, that is, during the first sixteen years following the entry into force of the new Constitution of the Russian Federation.

More than 53% of the total number of laws available in the Database “Federal Legislation” were adopted in the period from 1 January 2010 to 1 January 2019, that is, during eight years. At the same time, a quarter of the laws available in this database were adopted over the past four years – from 1 January 2015 to 1 January 2019.

These results show that the total number of laws increased with acceleration, and the rate of change in this indicator continually increased, especially in the last few years.

A comparison of the dynamics of the adoption of primary laws and the dynamics of the appearance of laws on amendments shows the following results: during 2010–2018, compared with the period 1994–2009, the average annual rate of the adoption

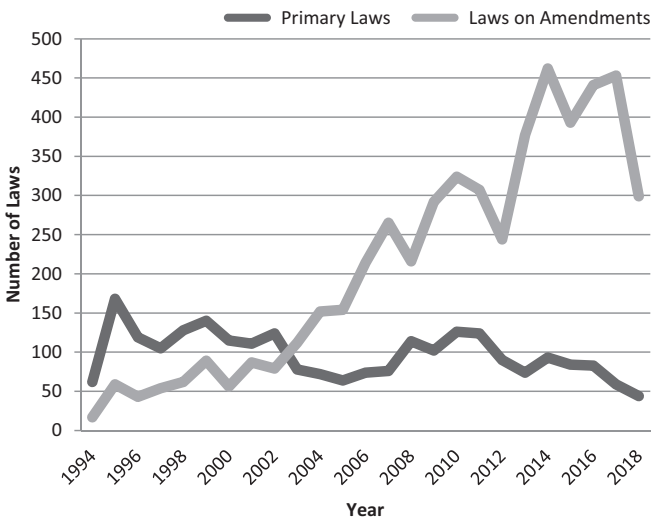
of primary laws decreased by about a third, and the annual average rate of the adoption of laws clarifying the then current legislation increased by 2.75 times (see Table 1 below for more details).

**Table 1:** The Average Annual Rate of Increase in the Number of New Laws and Laws on Amendments

Average annual rate of increase in the number of Federal constitutional laws and Federal laws	01.01.1994–01.01.2010	01.01.2010–01.01.2019
New laws	11%	4%
Laws on amendments	8%	11%

We made a comparison of the number of primary laws and the laws on amendments over the years. The graphical representation of the results obtained (see Figure 1 below) shows that since 2003 the number of laws on amendments adopted annually far exceeds the number of primary laws.

**Figure 1:** Dynamics of Adoption of Primary Laws and Laws on Amendments (Units per Year)



**2.3. Dynamics of Adoption and Modification of Laws That Are Directly Provided by Articles of the Constitution of the Russian Federation**

Table 2 below provides information on the temporal characteristics of the processes related to the adoption of Federal constitutional laws and Federal laws that



are directly provided by the provisions of the Russian Constitution of 1993. The presented data show that the laws, which are very important for new state-building and democracy-establishment, were adopted with a noticeable delay.

For example, the Federal Constitutional Law "On the Government of the Russian Federation" was adopted only in December 1997, that is, four years after the nationwide vote for passing the Constitution of 1993.<sup>11</sup>

Federal constitutional laws on the symbols of the new Russian state (laws on the state coat of arms, flag and anthem) passed at the end of December 2000, that is, seven years after the adoption of the democratic Constitution.<sup>12</sup>

The Federal Constitutional Laws "On the State of Emergency" and "On Martial Law," which were urgently needed in the context of the escalation of regional conflicts, were passed only in May 2001<sup>13</sup> and January 2002,<sup>14</sup> respectively. Until their passage, the law of the Russian Soviet Federative Socialist Republic (RSFSR), adopted in 1991, was in force.

The Federal Law "On the Citizenship of the Russian Federation" was adopted by the Parliament only in May 2002.<sup>15</sup>

Some of the acts provided for in the Constitution of the Russian Federation of 1993 are still pending. These are Federal constitutional laws on changing the status of a constituent entity of the Russian Federation (part 5 of Art. 66 of the Constitution of the Russian Federation) and on convening a Constitutional Assembly (Art. 135(2) of the Constitution of the Russian Federation).<sup>16</sup>

<sup>11</sup> Федеральный конституционный закон от 17 декабря 1997 г. № 2-ФКЗ «О Правительстве Российской Федерации» // Собрание законодательства РФ. 1997. № 51. Ст. 5712 [Federal Constitutional Law No. 2-FKZ of 17 December 1997. On the Government of the Russian Federation, Legislation Bulletin of the Russian Federation, 1997, No. 51, Art. 5712].

<sup>12</sup> Федеральный конституционный закон от 25 декабря 2000 г. № 1-ФКЗ «О Государственном флаге Российской Федерации» // Собрание законодательства РФ. 2000. № 52 (ч. 1). Ст. 5020 [Federal Constitutional Law No. 1-FKZ of 25 December 2000. On the State Flag of the Russian Federation, Legislation Bulletin of the Russian Federation, 2000, No. 51 (part 1), Art. 5020]; Федеральный конституционный закон от 25 декабря 2000 г. № 2-ФКЗ «О Государственном гербе Российской Федерации» // Собрание законодательства РФ. 2000. № 52 (ч. 1). Ст. 5021 [Federal Constitutional Law No. 2-FKZ of 25 December 2000. On the State Coat of Arms of the Russian Federation, Legislation Bulletin of the Russian Federation, 2000, No. 51 (part 1), Art. 5021]; Федеральный конституционный закон от 25 декабря 2000 г. № 3-ФКЗ «О Государственном гимне Российской Федерации» // Собрание законодательства РФ. 2000. № 52 (ч. 1). Ст. 5022 [Federal Constitutional Law No. 3-FKZ of 25 December 2000. On the National Anthem of the Russian Federation, Legislation Bulletin of the Russian Federation, 2000, No. 51 (part 1), Art. 5022].

<sup>13</sup> Федеральный конституционный закон от 30 мая 2001 г. № 3-ФКЗ «О чрезвычайном положении» // Собрание законодательства РФ. 2001. № 23. Ст. 2277 [Federal Constitutional Law No. 3-FKZ of 30 May 2001. On the State of Emergency, Legislation Bulletin of the Russian Federation, 2001, No. 23, Art. 2277].

<sup>14</sup> Федеральный конституционный закон от 30 января 2002 г. № 1-ФКЗ «О военном положении» // Собрание законодательства РФ. 2002. № 5. Ст. 375 [Federal Constitutional Law of the Russian Federation No. 1-FKZ of 30 January 2002. On Martial Law, Legislation Bulletin of the Russian Federation, 2002, No. 5, Art. 375].

<sup>15</sup> Федеральный закон от 31 мая 2002 г. № 62-ФЗ «О гражданстве Российской Федерации» // Собрание законодательства РФ. 2002. № 22. Ст. 2013 [Federal Law No. 62-FZ of 31 May 2002. On the Citizenship of the Russian Federation, Legislation Bulletin of the Russian Federation, 2002, No. 22, Art. 2013].

<sup>16</sup> The draft Federal Constitutional Law "On the Constitutional Assembly" was submitted to the State Duma of the Federal Assembly of the Russian Federation in September 2000.

**Table 2:** Chronology of the Adoption of Federal Constitutional Laws Directly Mentioned by the Constitution of the Russian Federation (1993)

The Substance of the Act and Reference to the Constitution of the Russian Federation	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
State of emergency (Art. 56(2), Art. 88)	Act of the RSFSR 1991 <sup>1</sup>							PL <sup>2</sup>															A		
Creation of a new subject of the Russian Federation (Art. 65(2))								PL <sup>3</sup>				A													
Change the status of the subject of the Russian Federation (Art. 66(5))																									
Symbols of the state (National symbols) of the Russian Federation (Art. 70(1))																									
– The state flag							PL <sup>4</sup>		A	A	A	A			A		2A				A				
– The state coat of arms							PL <sup>5</sup>		A	A						A	A	A		A	A			A	
– The state anthem							PL <sup>6</sup>	A												A					

<sup>1</sup> Закон РСФСР от 17 мая 1991 г. 1253-I «О чрезвычайном положении» // Ведомости СНД и ВС РСФСР. 1991. № 22. Ст. 773 [Law of the RSFSR No. 1253-I of 17 May 1991. On the State of Emergency, Gazette of the Congress of People's Deputies of the RSFSR and the Supreme Soviet of the RSFSR, 1991, No. 22, Art. 773] (no longer valid); Постановление Верховного Совета РСФСР от 17 мая 1991 г. № 1254-I «О порядке введения в действие Закона РСФСР «О чрезвычайном положении»» // Ведомости СНД и ВС РСФСР. 1991. № 22. Ст. 774 [Ruling of the Supreme Council of the RSFSR No. 1254-I of 17 May 1991. On the Procedure to Put the Law of the RSFSR "On the State of Emergency" in Force, Gazette of the Congress of People's Deputies of the RSFSR and the Supreme Soviet of the RSFSR, 1991, No. 22, Art. 774] (no longer valid).

<sup>2</sup> Federal Constitutional Law of 30 May 2001 No. 3-FKZ "On the State of Emergency."

<sup>3</sup> Федеральный конституционный закон от 17 декабря 2001 г. № 6-ФКЗ «О порядке принятия в Российскую Федерацию и образования в ее составе нового субъекта Российской Федерации» // Собрание законодательства РФ. 2001. № 52 (ч. 1). Ст. 4916 [Federal Constitutional Law No. 6-FKZ of 17 December 2001. On the Procedure of the Admission to the Russian Federation and the Creation in It of a New Subject of the Russian Federation, Legislation Bulletin of the Russian Federation, 2001, No. 52 (part 1), Art. 4916].

<sup>4</sup> Federal Constitutional Law of 25 December 2000 No. 1-FKZ "On the State Flag of the Russian Federation."

<sup>5</sup> Federal Constitutional Law of 25 December 2000 No. 2-FKZ "On the State Coat of Arms of the Russian Federation."

<sup>6</sup> Federal Constitutional Law of 25 December 2000 No. 3-FKZ "On the National Anthem of the Russian Federation."

Continuation of Table 2

The Substance of the Act and Reference to the Constitution of the Russian Federation	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Referendum (Art. 84(c))									PL <sup>8</sup>				A		A						A	A		A	
The regime of martial law (Art. 87(3))									PL <sup>9</sup>								2A							A	
Commissioner for human rights (Art. 103(f))				PL <sup>10</sup>									A		A			A			2A	A	A		
Government of the Russian Federation (Art. 114(2))				PL <sup>11</sup>							2A	A				2A		3A			A	A	2A	2A	
The judicial system (Art. 118(3))				PL <sup>12</sup>						A		A					A		A	2A					A

<sup>7</sup> Федеральный конституционный закон от 10 октября 1995 г. № 2-ФКЗ «О референдуме Российской Федерации» // Собрание законодательства РФ. 1995. № 42. Ст. 3921 [Federal Constitutional Law No. 2-FKZ of 10 October 1995. On the Referendum of the Russian Federation, Legislation Bulletin of the Russian Federation, 1995, No. 42, Art. 3921] (no longer valid).

<sup>8</sup> Федеральный конституционный закон от 28 июня 2004 г. № 5-ФКЗ «О референдуме» // Собрание законодательства РФ. 2004. № 27. Ст. 2710 [Federal Constitutional Law No. 5-FKZ of 28 June 2004. On the Referendum, Legislation Bulletin of the Russian Federation, 2004, No. 27, Art. 2710].

<sup>9</sup> Federal Constitutional Law of 30 January 2002 No. 1-FKZ "On Martial Law."

<sup>10</sup> Федеральный конституционный закон от 26 февраля 1997 г. № 1-ФКЗ «Об Уполномоченном по правам человека в Российской Федерации» // Собрание законодательства РФ. 1997. № 9. Ст. 1011 [Federal Constitutional Law No. 1-FKZ of 26 February 1997. On the Commissioner for Human Rights in the Russian Federation, Legislation Bulletin of the Russian Federation, 1997, No. 9, Art. 1011].

<sup>11</sup> Federal Constitutional Law of 17 December 1997 No. 2-FKZ "On the Government of the Russian Federation."

<sup>12</sup> Федеральный конституционный закон от 31 декабря 1996 г. № 1-ФКЗ «О судебной системе Российской Федерации» // Собрание законодательства РФ. 1997. № 1. Ст. 1 [Federal Constitutional Law No. 1-FKZ of 31 December 1996. On the Judicial System of the Russian Federation, Legislation Bulletin of the Russian Federation, 1997, No. 1, Art. 1].

Continuation of Table 2

The Substance of the Act and Reference to the Constitution of the Russian Federation	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
The judicial power of the Russian Federation (part 3 of Art. 128)																									
– Constitutional Court	PL <sup>13</sup>						2A				A	A		2A		A	2A		A		2A	A		A	A
– Supreme Court																					PL <sup>14</sup>	A		A	A
– Higher Arbitration Court	Act 1991 <sup>15</sup>																				2A				
Federal Constitutional Law 1995 <sup>16</sup>																									
RF Arbitration courts		PL <sup>17</sup>								A	A		A		2A	2A	2A	A			2A				A
Admission and the creation of new subjects of the Russian Federation (Art. 137 (1))							PL <sup>18</sup>					A													
Note: PL – Primary Law; nA – number of Amendments Colors: ■ – Existing Law; ■ – Law that has ceased to apply																									

<sup>13</sup> Федеральный конституционный закон от 21 июля 1994 г. № 1-ФКЗ «О Конституционном Суде Российской Федерации» // Собрание законодательства РФ. 1994. № 13. Ст. 1447 [Federal Constitutional Law No. 1-FKZ of 21 July 1994. On the Constitutional Court of the Russian Federation, Legislation Bulletin of the Russian Federation, 1994, No. 13, Art. 1447].

<sup>14</sup> Федеральный конституционный закон от 5 февраля 2014 г. № 3-ФКЗ «О Верховном Суде Российской Федерации» // Собрание законодательства РФ. 2014. № 6. Ст. 550 [Federal Constitutional Law No. 3-FKZ of 5 February 2014. On the Supreme Court of the Russian Federation, Legislation Bulletin of the Russian Federation, 2014, No. 6, Art. 550].

<sup>15</sup> Закон РСФСР от 4 июля 1991 г. «Об арбитражном суде» // Ведомости СНД и ВС РСФСР. 1991. № 30. Ст. 1013 [Law of the RSFSR of 4 July 1991. On the Arbitration Court, Gazette of the Congress of People's Deputies of the RSFSR and the Supreme Soviet of the RSFSR, 1991, No. 30, Art. 1013] (no longer valid); Постановление Верховного Совета РСФСР от 4 июля 1991 г. № 1544-1 «О введении в действие Закона РСФСР «Об арбитражном суде» // Ведомости СНД и ВС РСФСР. 1991. № 30. Ст. 1014 [Ruling of the Supreme Council of the RSFSR No. 1544-1 of 4 July 1991. On the Procedure to Put the Law of the RSFSR "On the Arbitration Court" in Force, Gazette of the Congress of People's Deputies of the RSFSR and the Supreme Soviet of the RSFSR, 1991, No. 30, Art. 1014] (no longer valid).

<sup>16</sup> Закон Российской Федерации о поправке к Конституции Российской Федерации от 5 февраля 2014 г. № 2-ФКЗ «О Верховном Суде Российской Федерации и прокуратуре Российской Федерации» // Собрание законодательства РФ. 2014. № 6. Ст. 548 [Law of the Russian Federation on Amendment to the Constitution of the Russian Federation No. 2-FKZ of 5 February 2014. On the Supreme Court of the Russian Federation and the Prosecutors Office of the Russian Federation, Legislation Bulletin of the Russian Federation, 2014, No. 6, Art. 548].

<sup>17</sup> Федеральный конституционный закон от 28 апреля 1995 г. № 1-ФКЗ «Об арбитражных судах в Российской Федерации» // Собрание законодательства РФ. 1995. № 18. Ст. 1589 [Federal Constitutional Law No. 1-FKZ of 28 April 1995. On Arbitration Courts in the Russian Federation, Legislation Bulletin of the Russian Federation, 1995, No. 18, Art. 1589].

<sup>18</sup> Federal Constitutional Law of 17 December 2001 No. 6-FKZ "On the Procedure of the Admission to the Russian Federation and the Creation in It of a New Subject of the Russian Federation."

#### **2.4. Chronology of Modification of Several Laws Adopted in Pursuance of Constitutional Provisions / Data on the Increase in the Number of Laws**

The analysis showed that many laws adopted in pursuance of the provisions of the Constitution of the Russian Federation in the field of new state-building and political development almost immediately became the object of the introduction of amendments. Also, the volume of their texts was permanently/consistently increasing.

For example, after the entry into force of the Constitution of 1993 and to date, three Federal Laws “On the Procedure for Forming the Federation Council of the Federal Assembly of the Russian Federation” were passed sequentially one after another.

The first version of this law, the law of 1995,<sup>17</sup> was in effect for five years with no changes or additions. The volume of its text was 943 characters.

In 2000, the second version of this Federal law was adopted. During its effective period until 2012, legislators amended and modified this law eleven times. Legislators modified this act six times by passing laws on amendments to this law directly. Five more times changes were made through the Federal Law of 14 February 2009 “On the Modification of Individual Legal Acts of the Russian Federation in Connection with the Change of the Order of Formation of the Federation Council of the Federal Assembly of the Russian Federation” (No. 21-FZ) and by the laws of amendments to the mentioned act. The initial version of the 2000 law contained a little more than 8,000 characters, but after all of the changes and additions, the length of the text increased to almost 16,000 characters.

The third Federal law regulating the formation of the Federation Council was adopted in December 2012 and is still in force.<sup>18</sup> During the six and a half years of the law’s operation, legislators modified it nine times. The length of the original text was slightly more than 17,500 characters. To date, with all introduced amendments, it exceeds 30,000 characters.

Thus, for all of the years of the existence of the Federation Council in the contemporary history of Russia, the volume of the law regulating an order of formation of this state body has grown by a factor of about 32.5.

We noted similar trends (an increase in the number of amendments and the length of the text) concerning other acts significant for the new Russian state-building. Tables 3, 4 and 5 below provide the data on the year of the law’s adoption, the number of modifications and the length of the text, respectively.

For example, the Federal Constitutional Law “On the Government of the Russian Federation,” adopted in 1997, is still in force. Over the course of time, legislators passed twenty laws on amendments and additions to this legal act, with the result

<sup>17</sup> Федеральный закон от 5 декабря 1995 г. № 192-ФЗ «О порядке формирования Совета Федерации Федерального Собрания Российской Федерации» // Собрание законодательства РФ. 1995. № 50. Ст. 4869 [Federal Law No. 192-FZ of 5 December 1995. On the Procedure for Forming the Federation Council of the Federal Assembly of the Russian Federation, Legislation Bulletin of the Russian Federation, 1995, No. 50, Art. 4869] (no longer valid).

<sup>18</sup> Федеральный закон от 5 августа 2000 г. № 113-ФЗ «О порядке формирования Совета Федерации Федерального Собрания Российской Федерации» // Собрание законодательства РФ. 2000. № 32. Ст. 3336 [Federal Law No. 113-FZ of 5 August 2000. On the Procedure for Forming the Federation Council of the Federal Assembly of the Russian Federation, Legislation Bulletin of the Russian Federation, 2000, No. 32, Art. 3336].

that the text of the law on the Russian Federation government today has increased by more than a quarter in comparison with its initial text.

After the adoption of the Constitution of 1993 and up to the present, three Federal Laws "On the Election of the President of the Russian Federation" have been adopted, successively replacing each other.

The first Federal law<sup>19</sup> was in force from 1995 to 1999 and had no changes.

The second Federal law<sup>20</sup> was in force from 2000–2002. Amendments and additions were made one time.

The third Federal law<sup>21</sup> came into force in January 2003. As of 1 January 2019 legislators have changed the law thirty-eight times. The length of the text has increased by about 14%.

Comparing the length of the first Federal Law and the latest version of the third Federal Law "On the Election of the President of the Russian Federation," we can see that the first Federal Law was more than four times more compact than the current legal act.

With regard to an act of the utmost importance for any democratic state so as to guarantee the right of citizens to express their will and participate freely in elections, we may refer to two Federal laws that were adopted in succession following the entry into force of the Constitution of the Russian Federation of 1993.

The first Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation"<sup>22</sup> was in effect from 1997 to 2002. Legislators amended this law two times.

The current (second) version of the Federal law was adopted on 12 June 2002.<sup>23</sup> From then to 1 January 2019, legislators modified this act 102 times. During the period 2002–2018 the length of the text of the law increased almost 1.6 times. If we compare the current version with the text of the first Federal Law of 1997, we can see that the number of characters of the current version is four times larger.

<sup>19</sup> Федеральный закон от 17 мая 1995 г. № 76-ФЗ «О выборах Президента Российской Федерации» // Собрание законодательства РФ. 1995. № 21. Ст. 1924 [Federal Law No. 76-FZ of 17 May 1995. On the Election of the President of the Russian Federation, Legislation Bulletin of the Russian Federation, 1995, No. 21, Art. 1924] (no longer valid).

<sup>20</sup> Федеральный закон от 31 декабря 1999 г. № 228-ФЗ «О выборах Президента Российской Федерации» // Собрание законодательства РФ. 2000. № 1. Ст. 11 [Federal Law No. 228-FZ of 31 December 1999. On the Election of the President of the Russian Federation, Legislation Bulletin of the Russian Federation, 2000, No. 1, Art. 11] (no longer valid).

<sup>21</sup> Федеральный закон от 10 января 2003 г. № 19-ФЗ «О выборах Президента Российской Федерации» // Собрание законодательства РФ. 2003. № 2. Ст. 171 [Federal Law No. 19-FZ of 10 January 2003. On the Election of the President of the Russian Federation, Legislation Bulletin of the Russian Federation, 2003, No. 2, Art. 171].

<sup>22</sup> Федеральный закон от 19 сентября 1997 г. № 124-ФЗ «Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации» // Собрание законодательства РФ. 1997. № 38. Ст. 4339 [Federal Law No. 124-FZ of 19 September 1997. On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation, Legislation Bulletin of the Russian Federation, 1997, No. 38, Art. 4339].

<sup>23</sup> Федеральный закон от 12 июня 2002 г. № 67-ФЗ «Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации» // Собрание законодательства РФ. 2002. № 24. Ст. 2253 [Federal Law No. 67-FZ of 12 June 2002. On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation, Legislation Bulletin of the Russian Federation, 2002, No. 24, Art. 2253].

**Table 3:** Dynamics of Changes in the Federal Constitutional Law “On the Government of the Russian Federation”

	Number of acts that introduced amendments to the initial law, by year																					
	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Law	PL A							2A	A		2A	2A		3A		A	2A	A	2A	3A		
Number of acts that introduced amendments to the initial law, total	20																					
Length of text	Initial version – 40,285 characters										Latest version – 50,954 characters											
Note: PL – Primary Law; nA – number of Acts on amendments Colors: <div></div> – Existing Law																						

Law: Federal Constitutional Law of 17 December 1997 No. 2-FKZ “On the Government of the Russian Federation”

**Table 4:** Dynamics of Changes in the Federal Law "On the Election of the President of the Russian Federation"

		Number of acts that introduced amendments to the initial law, by year																							
		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Law 1		PL																							
Number of acts that introduced amendments to the initial law, total		0																							
Length of text		Initial version – 106,762 characters										Latest version – 106,762 characters													
Law 2						PL			A																
Number of acts that introduced amendments to the initial law, total		1																							
Length of text		Initial version – 358,950 characters										Latest version – 358,872 characters													
Law 3											PL	A	4A	3A		5A	4A	5A	A	4A	5A	A	A	3A	A
Number of acts that introduced amendments to the initial law, total		38																							
Length of text		Initial version – 389,311 characters										Latest version – 444,008 characters													
Note: PL – Primary Law; nA – number of Acts on amendments																									
Colors: <div></div> – Existing Law; <div></div> – Law that has ceased to apply																									

Law 1: Federal Law of 17 May 1995 No. 76-FZ "On the Election of the President of the Russian Federation" (no longer valid)

Law 2: Federal Law of 31 December 1999 No. 228-FZ "On the Election of the President of the Russian Federation" (no longer valid)

Law 3: Federal Law of 10 January 2003 No. 19-FZ "On Presidential Elections of the Russian Federation"



**Table 5:** Dynamics of Changes in the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum"

		Number of acts that introduced amendments to the initial law, by year																						
		1997	1998	1999	2000	2001	A	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Law 1	PL			A																				
Number of acts that introduced amendments to the initial law, total		2																						
Length of text		Initial version – 225,701 characters										Latest version – 299,585 characters												
Law 2								PL 2A	5A	5A	3A	5A	6A	7A	8A	8A	8A	5A	10A	11A	6A	6A	2A	5A
Number of acts that introduced amendments to the initial law, total		102																						
Length of text		Initial version – 414,262 characters										Latest version – 656,328 characters												
Note: PL – Primary Law; nA – number of Acts on amendments																								
Colors: <div></div> – Acting Law; <div></div> – Law that has ceased to apply																								

Law 1: Federal Law of 19 September 1997 No. 124-FZ "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" (no longer valid)

Law 2: Federal Law of 12 June 2002 No. 67-FZ "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum"

### 3. Discussion and Conclusions

#### **3.1. Why Was the Pace of Adoption of the Laws Prescribed by the Constitution Slow in the 1990s and Accelerating After 2000?**

It is evident that the pace and quality of implementation of the principles and models that the Russian Constitution of 1993 contains depended and continue to rely on the impact of a complex set of various factors. We believe the critical factor is the recognition and acceptance by political elites of the value of a democratic Constitution, as well as their determination and ability to enact the necessary laws based on constitutional ideas so that the new legislation will contribute to the transformation of social reality in strict accordance with the constitutional intent. However, it is clear that in practice a full consensus of elites is an unattainable state, especially for transforming societies.

The Russian constitutionalist Professor Marat Baglay has repeatedly pointed out that constitutional law is more closely related to politics than other branches of law, because it directly interacts with the principles of democracy and the issues of the political order. This cause

gives rise to the struggle of various political actors around the Constitution, laws, judicial decisions, and other legal acts that constitute the sources of constitutional law.<sup>24</sup>

So, it is not surprising that the dynamics of the appearance of new laws that can create a new social order under the ideas of a democratic Constitution directly depend on the ability of political actors, opposed to each other, to impact the legislative process and its results.

The essential feature of the “era of change,” which began in Russia at the end of the twentieth century, was that several large-scale transformation processes *simultaneously* took place in the country. They influenced each other in extremely complex and unpredictable ways. As Professor Sergey Shakhrai notes:

... along with the change in the economic and social system, along with a deep macroeconomic and financial crisis, in Russia in the late 1980s and early 1990s, a full-scale political revolution was undergoing. Moreover, all this systemic transformation took place under conditions of the collapse of the state and its institutions.<sup>25</sup>

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<sup>24</sup> Баглай М.В. Конституционное право Российской Федерации [Marat V. Baglay, *Constitutional Law of the Russian Federation*] (Moscow: NORMA, 2007).

<sup>25</sup> Shakhrai 2013, at 241.

To bring the country out of the destructive socio-economic crisis in the shortest possible time, the new Russian government led by Boris Yeltsin began “shock reforms,” the first step of which was the deep liberalization of both political and economic life. It was assumed that a free market would start the engine of sustainable economic development, and the maximum possible level of political freedom would ensure the transition to a sustainable “self-enforcing” democracy. However, as history shows, the absolutization of any solution is risky technology: the pendulum, swung too far in one direction, is sure to swing back in the opposite direction. Today, we see many cases where states face the need to correct both “market failures” and “failures of democracy.”

The broadest possible implementation of the principles of political liberalism in Russia in the early 1990s led to ambiguous results: the parties and social movements, supporting the course of President Boris Yeltsin and his Government, failed to gain a significant majority in the Russian State Duma.

Table 6 below shows statistic data related to the elections to the State Duma on party lists in the first years after the adoption of the new Russian Constitution. The figures show how many parties and electoral blocs expressed and realized their intention to participate in the elections, and how badly the Deputy Corps of the State Duma was politically fragmented.

**Table 6:** Results of the First Three Elections to the State Duma of the Federal Assembly of the Russian Federation (1993–1999)

Indicator	The year of the election		
	1993	1995	1999
The number of electoral associations, blocs and political parties that ...			
– planned to participate in the elections	35	69	93
– admitted to the elections	13	43	28
– elected (with more than 5% of votes)	8	4	6
Number of political party factions in the newly elected State Duma	8	4	6
Number of Deputy groups in the newly elected State Duma	2	3	3

As another illustration, the results of the elections to the State Duma on party lists of 1993 (party-list proportional representation principle), presented on the official website of the Central Election Commission of the Russian Federation, can be cited (Table 7 below).

**Table 7:** Results of Elections of Deputies of the State Duma on the Federal District (Party Lists) on 12 December 1993<sup>26</sup>

Names of electoral associations	Votes (%)	Number of Deputy mandates
Agrarian Party of Russia	7.99%	21
Bloc: Yavlinsky – Boldyrev – Lukin	7.86%	20
Future of Russia – New Names	1.25%	–
Russia's Choice	15.51%	40
Civil Union for Stability, Justice, and Progress	1.93%	–
Democratic Party of Russia	5.52%	14
Dignity and Charity	0.70%	–
Communist Party of the Russian Federation	12.40%	32
Constructive-ecological movement of Russia "Kedr"	0.76%	–
Liberal Democratic Party of Russia	22.92%	59
Party of Russian Unity and Accord	6.73%	18
Political Movement "Women of Russia"	8.13%	21
Russian Democratic Reform Movement	4.08%	–

The Parliament, elected on 12 December 1993, consisted of many political factions that opposed each other, as well as the President and the Government. So, this main legislative body of Russia was not too efficient for implementing the new constitutional ideas in legislation. It is not surprising that throughout the second half of the 1990s the adoption of new laws to ensure political, economic and social reform, as well as the implementation of the constitutional provisions, went forward with great difficulty and delay. This fact is noted in many papers.<sup>27</sup>

<sup>26</sup> Source: Центральная избирательная комиссия Российской Федерации [The Central Election Commission of the Russian Federation] (Aug. 10, 2019), available at [http://www.cikrf.ru/banners/vib\\_arhiv/gosduma/1993/1993\\_itogi\\_FS\\_obshefed\\_okrug.php](http://www.cikrf.ru/banners/vib_arhiv/gosduma/1993/1993_itogi_FS_obshefed_okrug.php).

<sup>27</sup> Зорькин В.Д. Цивилизация права и развитие России [Valery D. Zorkin, *The Civilianization of Law and Development of Russia*] (Moscow: NORMA; Infra-M, 2016); Peter B. Maggs et al., *Law and Legal System of the Russian Federation* (6<sup>th</sup> ed., Huntington, N.Y.: Juris Publishing, 2015); *Legal Systems in Transition: A Comparison of Seven Post-Soviet Countries* (H.-G. Heinrich & L. Lobova (eds.), Frankfurt am Mein: Peter Lang GmbH, Internationaler Verlag der Wissenschaften, 2012); Хабриева Т.Я., Чиркин В.Е. Теория современной конституции [Taliya Ya. Khabriyeva & Veniamin E. Chirkin, *The Theory of the Modern Constitution*] (Moscow: NORMA, 2007).

For example, one of the co-authors of the Russian Constitution of 1993, directly involved in governing the political and legal transformations of the 1990s, Sergey Shakhrai emphasizes:

... the lack of a mature political culture and the “revelry” of the multi-party system led to the de facto paralysis of Parliament and legislative work in the 1990s, as has been repeatedly noted.

As a result of this situation, the roles of the head of state and the Constitutional Court of the Russian Federation (which were, on objective grounds, forced to repair the “failures” in the activities of legislative bodies) have disproportionately increased and, as a consequence, the influence of Parliament has decreased.<sup>28</sup>

However, statistics show that beginning at the turn of the twentieth century, the pace of passing Federal laws and their overall number began to grow steadily. Many acts of recent years have been adopted with remarkable swiftness.

A number of facts illustrate this conclusion. For example, in the 1990s the process of consideration and adoption of the Land Code of the Russian Federation took seven years: the government of the Russian Federation submitted the first version before the State Duma in 1994; the legislators adopted the final release of the law, after lengthy discussions, in 2001.<sup>29</sup> In 2012, the Federal law establishing criminal liability for the dissemination of intentionally false information to harm someone’s reputation (the “Law on Defamation”<sup>30</sup>) passed all the procedures (it was adopted in three readings by Deputies of the State Duma, approved by the Federation Council and signed by the President of the Russian Federation) in twenty-four days.

Many hypotheses exist to explain the fact of the increasing quickness of adoption of laws and the overall increase in the number of Russian regulations by different reasons, including legal, technological and political factors, the needs of economic regulation and risk management in a fast-changing world, and even psychological causes. However, evidence-based studies are required to verify and support these tentative conjectures. In the meantime, we can only rely on the qualified opinions of experts.

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<sup>28</sup> Shakhrai 2013, at 199.

<sup>29</sup> Земельный кодекс Российской Федерации от 25 октября 2001 г. № 136-ФЗ // Собрание законодательства РФ. 2001. № 44. Ст. 4147 [Land Code of the Russian Federation No. 136-FZ of 25 October 2001, Legislation Bulletin of the Russian Federation, 2001, No. 44, Art. 4147].

<sup>30</sup> Федеральный закон от 28 июля 2012 г. № 141-ФЗ «О внесении изменений в Уголовный кодекс Российской Федерации и отдельные законодательные акты Российской Федерации» // Собрание законодательства РФ. 2012. № 31. Ст. 4330 [Federal Law No. 141-FZ of 28 July 2012. On Amendments to the Criminal Code of the Russian Federation and Separate Legal Acts of the Russian Federation, Legislation Bulletin of the Russian Federation, 2012, No. 31, Art. 4330].

For example, we can explain the increase in the quickness of passing laws by the fact that

most of the legislative acts adopted today are the documents on amendments, addenda to the existing legislation, but not new independent units that belong to the primary regulation.<sup>31</sup>

As a result, legislators need less time to discuss conceptual and substantive issues when they are working with draft laws on amendments than in situations concerning the consideration of the large primary acts.

We can also agree with the opinion of political scientists that a significant factor affecting the quickness of adoption and increasing the number of laws is the features of the political profile of the State Duma of the last convocations (after 2000). As it is widely known, political forces belonging to the so-called “party in power” get a steady majority in the modern Russian Parliament.<sup>32</sup> Therefore, the situation, typical for the mid-1990s when the Deputies practiced delaying or blocking the adoption of legal acts submitted to the State Duma by the President of the Russian Federation or the Government, is unlikely to return.

Indirectly, the results of an express analysis of the Database of Federal Bills hosted on the official website of the State Duma of the Federal Assembly of the Russian Federation<sup>33</sup> confirm this conclusion. We conducted the search on an array of bills submitted to the State Duma by the President of the Russian Federation and compared the statistics of “presidential” bills rejected or withdrawn from consideration by the State Duma with the statistics of “presidential” laws passed (see Table 8 below for more details).

The results show that during 1993–1999, the Deputies rejected on average every seventh bill submitted to the State Duma by the President of Russia Boris Yeltsin. Since 2000, the Deputies have declined just over one percent of the bills initiated by Presidents Vladimir Putin (2000–2008, 2012 to present) and Dmitry Medvedev (2008–2012). The data also show that since April 2012 the State Duma has not rejected any “presidential” bills.

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<sup>31</sup> Пронина М.П. Юридическая техника внесения изменений в действующее уголовное законодательство // Адвокатская практика. 2016. № 1. С. 23–28 [Maria P. Pronina, *The Juridical Technique of Amendments to the Acting Criminal Legislation*, 1 Law Practice 23 (2016)].

<sup>32</sup> У «Единой России» в Госдуме конституционное большинство, новички не прошли // РИА Новости. 19 сентября 2016 г. [The “United Russia” Has a Constitutional Majority in the State Duma; Newcomers Have Not Passed, RIA Novosti, 19 September 2016] (Aug. 10, 2019), available at <https://ria.ru/20160919/1477299900.html>.

<sup>33</sup> The website of the State Duma of the Federal Assembly of the Russian Federation (Aug. 10, 2019), available at <http://www.gosduma.net/systems/law/>.

**Table 8:** Statistics of Bills Submitted to the State Duma by the President of the Russian Federation During 1993–1999 and 2000–2018

Parameters of searching the Database of Federal Bills	1993–1999	2000–2018
Bills rejected or withdrawn from consideration by the State Duma, where the initiator is the President of the Russian Federation (units)	20	9
Bills that were adopted by the Federal Assembly and signed by the President of the Russian Federation, where the initiator is the President of the Russian Federation (units)	128	729
The percentage of rejected and adopted bills, where the initiator is the President of the Russian Federation	15.6%	1.2%

Interesting observations can also be reported regarding the findings in the study of Federal laws statistics for the period from 1 January 1994 to 31 July 2016, realized by the Center for Strategic Research<sup>34</sup> and the Company GARANT. The study notes that along with the overall trend of increasing the number of Russian laws, there is a correlation between the highs and lows in the number of Federal laws adopted during the year with the dates of Federal elections (correlation coefficient – 0.41).

... the elections of the State Duma of the Federal Assembly of the Russian Federation affect the growth of the number of Federal laws adopted by the State Duma of present convocation in the final year before new elections (correlation coefficient – 0.24).

... the elections of the President of the Russian Federation affect the reduction in the number of Federal laws adopted in the presidential election year (correlation coefficient – 0.33).<sup>35</sup>

The same study indicates that when analyzing each of the various legal branches separately, the individual dynamics of the appearance of the new laws has its specifics and differs from the overall picture. However, there are branches of law whose rhythms coincide with the general dynamics. In particular, the study talks about such legal

<sup>34</sup> The Center for Strategic Research (CSR) is a Moscow-based think tank with a focus on strategy and policy development and implementation.

<sup>35</sup> Ткаченко Н. Статистический анализ федерального законодательства [Natalya Tkachenko, *Statistical Analysis of Federal Legislation*] 6 (Moscow: Center for Strategic Research; GARANT, 2017).

sectors as “Grounds of the State-Legal System,” “Legislation on Taxes and Fees,” “Defense, Military Duty, and Military Service, Weapons,” “Regulation of Certain Types of Economic Activity” and “Criminal Law, Criminal Procedure, Criminal-Executive Law.”<sup>36</sup>

We can assume that the observed effect is associated with the implementation of constitutional ideas about the new principles of the state, law and economy design. The political needs for the early establishment of the foundations of a new social order, as well as its protections, stimulated the development of legal branches that are directly related to the performance of these tasks.

### ***3.2. Why Was 2003 a Milestone After Which the Number of Annually Adopted Laws on Amendments Began to Steadily Exceed the Number of Annually Passed Primary Laws?***

The fact that around 2003 the trend towards the predominance of the adoption of new acts gave way to the trend towards the prevalence of the legislative policy of amendments and additions to the existing legislation (*see* Figure 1 above) was recorded not only by us, but also by other authors who have studied legislative statistics.

At the same time, the statistics show that in each separate branch of law a turning point comes at its unique moment, which does not coincide with the average date found for the entire array of Federal legislation. Researcher in Federal laws statistics Natalia Tkachenko writes:

Within each specific branch of legislation, the change of the predominating legislative policy [*i.e. the transition from the adoption of primary laws to the legal policy aimed at modifying existing legislation*] occurs, as a rule, after the passage of the Basic sectoral law (Code). However, the time interval between the adoption of the Basic sectoral law and the transition to the policy of amendments, as a dominating one, may vary significantly in different sectors.<sup>37</sup>

Tkachenko explains the phenomenon of the “turning point of 2003” with the suggestion that in that year a new stage of legal policy replaced the previous one:

At the first stage ... accumulation of legal norms with their simultaneous interconnection [happens]; at the second stage (conditionally, starting from 2002–2004) the development of the legislative system as a result of its interaction with the economic and social system and the system of society as a whole [happens], and this development is manifested in the form of changes in legislation.<sup>38</sup>

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<sup>36</sup> Tkachenko 2017, at 6.

<sup>37</sup> *Id.* at 7.

<sup>38</sup> *Id.* at 45.



It seems that the phenomenon of the crossover point of 2003 on our graph (Figure 1 above) illustrating the overall dynamics of the adoption of “new” laws and laws on amendments can also be explained by the fact that it was in 2003 that the Russian authority launched large-scale reforms in almost all spheres of society. In particular, Russia began administrative and Federation reforms, reform of the court system, local government system, the budget and tax system, the system of political parties, education and science, as well as the transformation of specific sectors of the economy. We can assume, since all these changes were evolutionary, that the legal support for the reforms did not require the abolition of previously existing laws, but their modification by the introduction of numerous amendments and addenda.

However, all these hypotheses require evidence-based verification using a detailed analysis of the content of the laws and the study of their temporal characteristics.

### ***3.3. Why Is the Number of Laws on Amendments More Than Twice the Number of Primary Laws in Current Russian Legislation?***

The predominance of the legal policy aimed at modifying existing legislation over the primary regulation of social relations has been called a core trend of modern Russian lawmaking by many researchers. As we noted earlier, acts on amendments make a significant contribution to the rapid growth of the total number of Russian regulations and constitute today more than two-thirds of the total number of Federal laws.

For example, according to Maria Pronina, a researcher in issues of legal technique in modern Russia, we can regard many laws on amendments as an auxiliary tool designed for a single application. After completing its mission to clarify the text of the primary legislation, the law on amendments turns into a so-called “empty shell”:

... the main task of the “law-shell” on amendments and additions is the inclusion of changes to the current law, and then it should self-destruct.<sup>39</sup>

Since in practice self-destruction does not occur, “empty shell” laws continue to exist (i.e. remain in effect) and affect the increase of the total amount of legislation. It follows then that the data showing a significant increase in the number of laws can be adjusted downwards if we exclude “empty shells” (laws on amendments that have fulfilled their purpose) from the array of existing laws. However, in the Russian Federation there is no official state practice now aimed at providing the legal acts in an up-to-date form. Only private legal information providers allow their users to see the digital copy of the law in the actual state with all amendments included in the text of the original act. Nevertheless, digital resources may contain errors and therefore are not entirely reliable. So, we have to continue taking into account the “empty shells” among the existing (in effect) laws.

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<sup>39</sup> Pronina 2016, at 24.

Based on the analysis of the literature and our observations, we can offer several hypotheses that explain why the laws on amendments are dominant in current Russian legislation.

The significant increase in the number of laws on amendments may be the result of pragmatic reasons and the routine needs of the legislative process. In case of detection of errors in the current law, or the new phenomena of social life demanding a legal regulation, the improvement of the law has to occur in short forms. Practice (including the experience of many other countries) shows that “short” laws that cover a narrow range of issues require less time and fewer resources to pass. For example, the UK House of Commons Political and Constitutional Reform Committee notes in its report “Ensuring Standards in the Quality of Legislation” that the Government

... on the whole does not like big bills because the scope is broad, and amendments can come in on any subject ... amendments can come in on new subjects late in a bill’s passage, and that is quite often an area where mistakes creep in, so you might see more of that in a multi-purpose bill than in a small confined bill.<sup>40</sup>

Agreeing to the discussion of short, narrowly focused laws on amendments is an effective way to make their passage easier and faster, but in the end this practice leads to an increase in the total number of Federal acts of this type.

In a number of publications we also found a hypothesis that one might call a “conspiracy theory.” This concept assumes that the endless introduction of changes to existing legislation (first of all, using the acts that amend several laws that differ in subject matter) allows for purposeful modification of the basic ideas underlying the primary laws, or even gives a new reading of the constitutional principles. These conclusions should not be discounted, as experts cite real cases of how amendments have led to a transformation in the meaning of the original concepts or legal provisions.

For instance, Svetlana Boshno and Galina Vasyuta, civil law researchers, describe in detail how the original meaning of the small- and medium-sized business concept was changed due to the amendments to the Federal law on the licensing of arms trafficking.<sup>41</sup> And the judge of the Constitutional Court of the Russian Federation Doctor of Law Gadis Gadzhiev gives an example of the change in understanding

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<sup>40</sup> Ensuring Standards in the Quality of Legislation: First Report of Session 2013–2014, House of Commons Political and Constitutional Reform Committee (2013), at 7–8 (Aug. 10, 2019), available at <https://publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/85/85.pdf>.

<sup>41</sup> Бошно С.В., Васюта Г.Г. Поправки к законопроекту и пределы трансформации концепции закона // Право и современные государства. 2017. № 3. С. 16 [Svetlana V. Boshno & Galina G. Vasyuta, *Amendments to the Bill and Limits of Transformation of the Concept of Law*, 3 Law and Modern States 9, 16 (2017)].

the constitutional principle which states the recognition and protection equally of private, state, municipal and other forms of property (Art. 8(2) of the Constitution of the Russian Federation):

In several laws, the Federal legislator proposed a new interpretation of this principle, suggesting the emergence of a new unity due to the unification of Federal property and property of the subjects of the Russian Federation. State property was considered by the legislator as a single property complex of the Federal state as a whole, as the material basis of the Russian state, which, according to the authors of the new interpretation, should meet the state integrity of the Russian Federation and strengthen the unity of the system of state power. From our point of view, the authorship of this interpretation of the constitutional principle belongs to the developers of the Budget Code of the Russian Federation and the legislation on the delimitation of authority.<sup>42</sup>

... The new interpretation of the above constitutional principle was accepted by the Federal legislator and led to a distortion in non-core laws of the basic legal principles underlying the legal regulation of property relations in the Civil Code of the Russian Federation.<sup>43</sup>

Also, one of the reasons for the predominance of laws on amendments in the Russian legal ecosystem may be the fact that legislators objectively cannot foresee all the new political, economic and social phenomena that continually arise due to the effects of the fast-changing world and which require proper regulations. Additionally, the entry into force of the new law changes social reality inevitably and causes various consequences, including unforeseen ones. So the legal framework needs to be refined and updated continually.

The research direction related to the subject under discussion is the assessment of the impact of the growth in the number of laws on amendments on the state of the Russian legal framework as a whole. Experts agree that the abundance of laws on amendments and addenda makes law enforcement difficult:

First, the reader studying the law published in the official source, or a separate brochure, or in the collection, cannot be sure that this edition is relevant, and must verify this; secondly, the amendment has to publish in the official printed issue of the law collection of the Russian Federation. The pace

<sup>42</sup> This refers to the delimitation of authority between the Federal and regional levels of government.

<sup>43</sup> Гаджиев Г.А. Экономическая Конституция. Конституционные гарантии свободы предпринимательской (экономической) деятельности // Конституционный вестник. 2008. № 1. С. 253–254 [Gadis A. Gadzhiev, *Economic Constitution. Constitutional Guarantees of Freedom of Entrepreneurial (Economic) Activity*, 1 Constitutional Bulletin 249, 253–254 (2008)].

between the official publication of the original law and publishing of changes to this law can range from several months to several decades.<sup>44</sup>

It is evident that the expansion of the practice of the adoption of laws on amendments negatively impacts on the stability of the Russian legal system as a whole, as well as on the integrity and efficiency of vital legislative acts:

Thus, the stability of legislation in the field of tax law does not exceed two weeks. Forest Code changes every 22 days, Land Code and Criminal Procedure Code – once a month. The Code of Administrative Offenses “lives” without amendments on average no more than ten days a year.<sup>45</sup>

### **3.4. Why Does the Total Number of Laws Increase as Well as the Length of the Text of Primary Laws?**

In modern legal literature, we can find various explanations about why the number of laws is growing and the text of primary laws is lengthening.

Academician Taliya Khabriyeva links the extensive growth of laws with objective processes of constitutionalization of legislation, the emergence of new legal branches and the complications of the structure of the traditional branches of Russian law, and the tasks of adaptation and modernization of the legal system to new political, economic and social realities. Khabriyeva points out that,

With the increase in the number of laws, there is a problem of loosening the role of legislation as the most important regulator of public life.<sup>46</sup>

Legal researcher Elena Lukyanova sees the reason for the accelerated growth of the number of Federal laws in the strengthening of political centralization in Russia:

Against the background of the ongoing political centralization, we can observe the processes of centralization of legal regulation, the curtailment of the regional and judicial lawmaking. One of the notable trends in the development of law, at the end of the twentieth century, was the change in the system of law sources (forms): the emergence and spread in the Russian legal system of legal precedent, in the role of which were, in particular, the

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<sup>44</sup> Pronina 2016.

<sup>45</sup> Бerezина З. «Изменения в законы об изменении законов»: как усмирить «бешеный принтер» // РИА Новый День. 13 февраля 2017 г. [Zoya Berezina, “Amendments to the Laws on Amendment Laws”: How to Subdue a “Mad Print Device,” New Day, 13 February 2017] (Aug. 10, 2019), available at <https://newdaynews.ru/policy/594155.html>.

<sup>46</sup> Khabriyeva 2013, at 556–559.

decisions of the European Court of Human Rights as well as decisions and other acts of the Highest Courts of the Russian Federation.

... Today, in the transformation of sources (forms) of law in the Russian Federation [we can observe] a reverse trend: the strengthening of the position of the normative legal act (law) in comparison to other sources (forms) of law, in particular, judicial precedent. The normative legal act is the most convenient form for the implementation of the centrist policy, thus in the development of the normative legal act (law) can be observed negative trends: its politicization and unreasonableness, forced adoption.<sup>47</sup>

Regarding the tendency to increase the number of laws, we can put forward several hypotheses that require further exploration and confirmation.

To begin with, the increase in the number of laws can be caused by the enlargement in the amount of the social life phenomena, which, according to legislators, are of direct concern to society (for instance, they can cause harm to society or a threat to the public security). Accordingly, the area covered by public law is continually enlarging. This trend is not typically Russian, but global.

As we know, in public law mandatory rules prevail. Also, state-made legislation, based on the concept of “everything which is not allowed is forbidden,” is objectively more detailed and requires clarification and updating frequently. The need for dynamic updating comes from the fact that new phenomena of life occur more often than the legislator can foresee, and, more so, have time to impose a ban or give permission. Therefore, the total number of laws and the overall length of their texts are growing for reasons of *harmonizing* legislation with fast-changing life. We are talking about the so-called “Red Queen Effect”:

... we must run as fast as we can, just to stay in place. And if you wish to go anywhere, you must run twice as fast as that.<sup>48</sup>

Another reason may be a global commitment to risk management and control, which leads to increased over-regulation worldwide. As an illustration, the results of a study by the David Levi-Faur group, which analyzed data on the growth in the number of regulatory agencies in 48 countries (16 sectors) over 88 years (1920–2007), can be cited. If, before the end of the 1960s, rarely were more than 5 to 6 agencies created, since the beginning of the 1990s more than 25 agencies were being created

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<sup>47</sup> Лукьянова Е.Г. Правовая система России: современные тенденции развития // Труды Института государства и права РАН. 2016. № 6. С. 6–23 [Elena G. Lukyanova, *The Legal System of Russia: Modern Trends*, 6 Proceedings of the Institute of State and Law of the RAS 6 (2016)].

<sup>48</sup> The famous quote from the book “Alice’s Adventures in Wonderland” by Lewis Carroll.

annually. By the end of 2007, there were more than 600 such institutional regulators in the 48 countries under study.<sup>49</sup>

Many commentators state that modern societies live in an era of “regulatory governance” or “regulatory capitalism.”<sup>50</sup> As the American political scientist Steven Vogel noted in the mid-1990s, “The freer the markets, the more rules.”<sup>51</sup>

The tendency to increase the length of the texts of laws is also widespread. For example, British experts are no less concerned than Russian experts about the increase in the volume of legislation:

Whilst the number of Acts has decreased since the 1980s, the mean average number of pages per Act has increased significantly, from 37 and 47 pages during the 1980s and 1990s respectively, to 85 in the past decade. This continues a trend of an increasing number of pages decade on decade since the 1950s when the average was.<sup>52</sup>

Additionally, the poor quality of the bills, especially the laws on amendments, can be the reason for the increase in the number of regulations. This factor is often spoken of by Russian legislators when they openly recognize that they “hurried” the adoption of a law, and “as a result, since the adoption of the document, a single year has not passed, and there are already a lot of amendments to it.”<sup>53</sup> They are echoed by those who must comply with the requirements of the law:

The document is so raw that each company understands it in its way. Moreover, each new explanation gives rise to more questions than answers. And in the autumn, new amendments will be introduced in the law that is unlikely to simplify life.<sup>54</sup>

<sup>49</sup> Jacint Jordana et al., *The Global Diffusion of Regulatory Agencies: Institutional Emulation and the Restructuring of Modern Bureaucracy*, 44(10) Comparative Political Studies 1343 (2011).

<sup>50</sup> John Braithwaite, *Regulatory Capitalism: How It Works, Ideas for Making It Work Better* (Cheltenham: Edward Elgar Publishing, 2008); Martin Minogue & Ledivina Cariño, *Regulatory Governance in Developing Countries* (Cheltenham: Edward Elgar Publishing, 2008); David Levi-Faur, *The Global Diffusion of Regulatory Capitalism*, 598(1) Annals of the American Academy of Political and Social Science 12 (2005); Martin Minogue, *Governance-Based Analysis of Regulation*, 73(4) Annals of Public and Cooperative Economics 649 (2002); Голодникова А.Е., Ефремов А.А., Соболев Д.В., Цыганков Д.Б., Шклярчук М.С. Регуляторная политика в России: основные тенденции и архитектура будущего [Anna E. Golodnikova et al., *Regulatory Policy in Russia: Key Trends and Architecture of the Future*] (M.O. Komin (ed.), Moscow: Center for Strategic Research, 2018).

<sup>51</sup> Steven K. Vogel, *Freer Markets, More Rules: Regulatory Reform in Advanced Industrial Countries* (Ithaca, N.Y.: Cornell University Press, 1996).

<sup>52</sup> Ensuring Standards, *supra* note 40, at 7.

<sup>53</sup> Почему наши законы не работают? // Аргументы и факты. 16 февраля 2011 г. [Why Don't Our Laws Work?, Arguments and Facts, 16 February 2011] (Aug. 10, 2019), available at <https://aif.ru/money/corruption/23462>.

<sup>54</sup> Бурковская Н. Закон каждый видит по-своему. Очередные правки в 214-ФЗ подпортили кровь застройщикам // Деловой Петербург. 22 августа 2018 г. [Natalia Burkovskaya, *Everyone Sees*

We should recognize that the adoption of poor-quality legislation, which in the Russian tradition is figuratively called “raw” (a closer in meaning term – “undercooked”), is observed everywhere.

As an example, Deputies of the Republic of Kazakhstan, criticizing the state of national legislation that was incessantly “swelling” because of the adjustments, have attested:

More than once, the laws whose “ink has not yet dried” were massively amended. We have not yet got rid of this legislative disease. Alas, most of the amendments – because initially the law was adopted hastily, without proper study.<sup>55</sup>

Also, the earlier cited report of the UK House of Commons Political and Constitutional Reform Committee on the need to improve the quality of legislation notes that Parliament often has to adopt a large number of poorly prepared laws in a short time because of political pressure from the government and ministries:

The Constitution Society<sup>56</sup> told us that the primary reason for poor-quality legislation was political: “There are very strong political pressures on governments, and individual ministers, to push through large quantities of new legislation on tight timetables and with insufficient preparation.”<sup>57</sup>

However, it seems that the adoption of “undercooked” legislation, which entails a lot of amendments and, consequently, an increase in the total number of laws, cannot be adequately explained by the haste and lack of professionalism of Deputies, government pressure or other subjective factors.

We believe that this phenomenon occurs due to the increasing influence of the challenges of the *VUCA-world*, which is characterized by *volatility, uncertainty, complexity and ambiguity*. From the desire to put growing uncertainty under control, strategies based on the principle of so-called *adaptive governance* have emerged.

There is extensive and controversial literature relevant to the understanding and conceptualization of adaptive management. Without delving into this subject, which

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*the Law in His Way. Regular Amendments to the 214-FZ Caused Much Worry to Developers*, Business Petersburg, 22 August 2018] (Aug. 10, 2019), available at [https://www.dp.ru/a/2018/08/21/Zakon\\_kazhdij\\_vidit\\_posvo](https://www.dp.ru/a/2018/08/21/Zakon_kazhdij_vidit_posvo).

<sup>55</sup> Еще чернила не высохли: Депутаты критикуют качество законопроектов // Sputnik Казахстан. 8 февраля 2008 г. [The Ink Has Not Yet Dried: The Deputies Criticized the Quality of the Bills, Sputnik Kazakhstan, 8 February 2008] (Aug. 10, 2019), available at <https://ru.sputniknews.kz/politics/20180208/4520079/eshche-chernila-ne-obsohli-deputaty-kritikuyut-kachestvo-zakonoproektov.html>.

<sup>56</sup> One of the witnesses who provided information for the Committee’s report.

<sup>57</sup> Ensuring Standards, *supra* note 40, at 9.

since the 1990s “continues to attract considerable interest in academic and policy circles,”<sup>58</sup> we prefer to talk about a structured, iterative decision-making process based on systematic, multilevel monitoring of changes.<sup>59</sup> In our opinion, this approach could help, simultaneously, *to research and to transform* the uncertain situation purposefully: the new information accumulated as a result of monitoring becomes the basis for the next step to improve governance and provide legal certainty.

From these ideas, we can assume that in Russia, as in other countries, the legislators consciously or unconsciously are increasingly beginning to use the strategy of adaptive governance. At the first stage, the problem “of keeping up with a fast-changing world” is solved by sacrificing the quality of the law that needs to pass. At the next stage, the legislators begin to finalize the law to return the proper level of quality, for which they use the iterative process based on the analysis of the negative consequences of the application of this law and consideration of the comments of the stakeholders.

This iterative strategy is close to the so-called agile practices that are used for creating software and other new products. This approach includes adaptive planning, evolutionary development, early product “delivery” and its continual improvement. Therefore, we could call this kind of legislative process “adaptive lawmaking” or “agile lawmaking.”

As an example we can cite the previously mentioned Federal Law “On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation,” which, during 2002–2018, was amended more than one hundred times to update and fine-tune this act in harmony with the changing political realities.

#### 4. Final Remarks

These pages present the results of a quantitative analysis of the array of Federal Laws and Federal Constitutional Laws for the period of 1994–2018. It is clear that quantitative methods, allowing us to analyze the statistics and to fix the dynamics of the development of different types of laws, are not able to describe the observed

<sup>58</sup> See, e.g., Frances Cleaver & Luke Whaley, *Understanding Process, Power, and Meaning in Adaptive Governance: A Critical Institutional Reading*, 23(2) *Ecology & Sociology* 49 (2018).

<sup>59</sup> Gemma Carey et al., *Adaptive Policies for Reducing Inequalities in the Social Determinants of Health*, 4(11) *International Journal of Health Policy & Management* 763 (2015); Graham R. Marshall, *Polycentricity and Adaptive Governance*, paper prepared for the 15<sup>th</sup> Biennial Global Conference of the International Association for the Study of the Commons, Edmonton, Canada, 25–29 May 2015 (Aug. 10, 2019), available at [https://www.researchgate.net/publication/277598119\\_Polycentricity\\_and\\_adaptive\\_governance](https://www.researchgate.net/publication/277598119_Polycentricity_and_adaptive_governance); George H. Stankey et al., *Adaptive Management of Natural Resources: Theory, Concepts, and Management Institutions*, General Technical Report PNW-GTR-654, U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station (August 2005) (Aug. 10, 2019), available at [https://www.fs.fed.us/pnw/pubs/pnw\\_gtr654.pdf](https://www.fs.fed.us/pnw/pubs/pnw_gtr654.pdf).



effects and explain their underlying reasons. As we showed in the section “Discussion and Conclusions” above, the obtained quantitative results can be interpreted in various ways in the subject fields of law, political science, psychology and other sciences as well.

However, we can already draw several conclusions based on the evidence. In particular, our data show that the “formation” stage of the process of the constitutionalization of Russian law (in the terminology of academician Khabriyeva) can be extended to 2003 when the trend for the modification of then current legislation became steadily prevalent over the adoption of primary laws.

The average annual rate of change in the number of laws is constantly growing, with a particularly significant increase in the last few years. This acceleration needs explanation.

The phenomenon of the increasing total number of laws, more than two-thirds of which are laws on amendments, including “empty-shells,” also requires conceptualization and in-depth study. The causes of this phenomenon, as well as the consequences for the stability and integrity of the legal system, the state and society, need to be analyzed in detail with the involvement of various sources of information and conceptual approaches of the social sciences. This subject is especially important because according to a number of experts, numerous amendments can uncontrollably modify the essential principles laid down in the original act and (what is more critical) in the Constitution also.<sup>60</sup>

The question of the relationship between the durability and stability of the democratic Constitution and the quality and irreversibility of democratic transformations of the social system remains open. Observations show that even a “rigid” democratic constitution can become more “flexible” with age due to legislators’ opportunities to interpret the constitutional provisions in legislation and give them a sense different from the initial one. Although formally the Russian Constitution of 1993 is not flexible, but rigid, practice shows that we can call it, rather, an *elastic* Constitution, since its ideas and meanings can often be “stretched” to apply to current cases without the need to make any changes to existing constitutional norms.

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<sup>60</sup> Авакьян С.А. Надо ли принимать и применять положенные законы: конституционно-правовые подходы // Журнал конституционного правосудия. 2018. № 6. С. 28–45 [Suren A. Avakian, *Do We Need to Adopt and Apply the Prescribed Laws: Constitutional and Legal Approaches*, 6 Journal of Constitutional Justice 28 (2018)]; Boshno & Vasyuta 2017, at 9–20; Батюшкина М.В. К вопросу об определении субжанра текстов законов о внесении изменений // Вестник Брянского государственного университета. 2016. № 2. С. 118–124 [Marina V. Batushkina, *To the Question About the Definition of the Subgenre of Texts of Laws on Amendments*, 2 Bulletin of Bryansk State University 118 (2016)]; Пайгина Д.Р., Стрельников П.А. Поиск эффективных решений проблем правотворчества // Журнал российского права. 2014. № 6. С. 141–145 [Dina R. Paygina & Pavel A. Strelnikov, *Search for Effective Solutions to the Problems of Lawmaking*, 6 Journal of Russian Law 141 (2014)]; Примаков Д. Много законов – это правовой нигилизм и «минус» для экономики и судов // Право.ru. 5 июля 2010 г. [Denis Primakov, *Too Much of Laws, It Is a Legal Nihilism and a “Minus” for the Economy and Courts*, Pravo.ru, 5 July 2010] (Aug. 10, 2019), available at <https://pravo.ru/review/view/33363/>.

It seems to us that the concept of adaptive governance looks quite promising as a means to describe the features of the modern legislative process, which can be called *adaptive lawmaking*.

The obtained quantitative results and observations have allowed us to put forward some hypotheses that need to be verified during the next stages of the project. These stages involve the use of qualitative research methods such as, in particular, grounded theory, systematic content analysis of legal acts,<sup>61</sup> diachronic approaches to primary law analysis and comparative historical analysis of political and legal events.

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### References

Carey G. et al. *Adaptive Policies for Reducing Inequalities in the Social Determinants of Health*, 4(11) International Journal of Health Policy & Management 763 (2015). <https://doi.org/10.15171/ijhpm.2015.170>

Cleaver F. & Whaley L. *Understanding Process, Power, and Meaning in Adaptive Governance: A Critical Institutional Reading*, 23(2) Ecology & Sociology 49 (2018). <https://doi.org/10.5751/es-10212-230249>

Maggs P.B. et al. *Law and Legal System of the Russian Federation* (6<sup>th</sup> ed., Huntington, N.Y.: Juris Publishing, 2015).

Salehijam M. *The Value of Systematic Content Analysis in Legal Research*, 23(1) Tilburg Law Review 34 (2018). <https://doi.org/10.5334/tlr.5>

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<sup>61</sup> Maryam Salehijam, *The Value of Systematic Content Analysis in Legal Research*, 23(1) Tilburg Law Review 34 (2018).