

【Research Article】

Russia's Constitutional Amendments of 2020 Read through the Post-Colonial Lens: Do the Amendments Pave the Way for Russia to Become a Colonial Power Again?

Herbert Küpper *

Abstract

The 2020 amendments of the Russian Constitution have triggered an extensive academic discussion both within and outside Russia. The prevailing Western interpretation in the light of democratic constitutionalism states the fact of an authoritarian roll-back but cannot really explain why Russia falls back into old patterns of autocracy and isolationism. A post-colonial reading of the amendments can provide for a comprehensive explanation which does not replace, but adds to the post-authoritarian perspective. Putin's Russia wants to become again the imperial centre that Tsarist Russia and the Soviet Union were in their time. For this purpose, the concentration of all state power in a 'strong-man president' serves – inter alia – the purpose of making Russia internally fit for its neo-imperial role; the redefinition of Russia's role in the world glorifies bygone 'greatness' and thus paves the way for colonial ambitions; and also the negation of the binding force of international law is not just a relapse into traditional isolationism and exceptionalism but has the potential to rid Russia from international legal duties that may hamper its expansive colonial intentions. A closer post-colonial look reveals, however, that nothing of this is new: tendencies of imperialism and isolationism date back to the Yeltsin years and were intensified under Putin. By elevating these tendencies onto the constitutional level, the 2020 amendments are a quantitative, but not so much a qualitative change.

Contents

- I. Introduction**
- II. The post-colonial lens and the former colonial centre**
- III. The Russian constitutional amendments of 2020**

* Director of the Institute for East European Law in Regensburg, www.ostrecht.de. E-mail: herbert.kuepper@ostrecht.de.

IV. Russia on its way to become a colonial power again?

1. **The Yeltsin years: ending external and upholding internal colonialism**
2. **The Putin years: aiming at the re-establishment of a ‘Russian empire’**

V. Making Russia internally fit for imperialism: the ‘strong state’ embodied by a ‘strong man’

1. **What do the amendments contain?**
2. **How can we interpret the amendments?**
 - (1) **Democratic constitutionalism**
 - (2) **Post-colonial theory**

VI. Russia’s position in the world: imperial past and imperial future

1. **What do the amendments contain?**
2. **How can we interpret the amendments?**
 - (1) **Democratic constitutionalism**
 - (2) **Post-colonial theory**

VII. The link between the internal and the external legal world: the domestic position of international law

1. **What do the amendments contain?**
2. **How can we interpret the amendments?**
 - (1) **Democratic constitutionalism**
 - (2) **Post-colonial theory**

VIII. Conclusion

I. Introduction

The Russian constitutional amendments invited considerable academic attention and will probably continue to do so. Whereas the Russian president and in his suit many Russian legal scholars tend to downplay the impact of the amendments and paint them as ‘business as usual’, foreign scholarly works tend to interpret the amendment as the end of Russia’s post-authoritarian era and its slide-back into autocracy. I would like to suggest an additional perspective: the post-colonial theory of constitutions and of law ¹.

¹ This perspective is laid out in more detail by William Partlett and Herbert Küpper, *The Post-Soviet as Post-Colonial. A New Paradigm for Understanding Constitutional Dynamics in the Former Soviet Empire* (Cheltenham: Elgar, forthcoming).

Before discussing the Russian constitutional amendments in the light of post-colonial theory, I would like to raise the question of how this subject fits into the overall scope of the seminar “The Identity and Dynamics of Contemporary Asian Constitutionalism in the Context of Globalisation”?

Colonialism may be seen a form of globalisation, though a very one-sided one. When one country tries to establish itself as a colonial power to the detriment of other countries and/or societies, this can be understood as a process of globalisation both for the colonising state and its society as well as the colonised subalterns. Insofar, colonialism is one form of globalisation. When we analyse Russia's constitutional amendments under this perspective, we raise the question of which position the constitution of Eurasia's largest country takes with view to globalisation. The thesis of this paper is that one function of the constitutional amendments is to make Russia fit for playing the role of an imperial, colonising centre again. If this is true, it means that Russia – which so far has always been seen as one of the losers of globalisation – seeks to play a more active role in the self-same globalisation.

II. The post-colonial lens and the former colonial centre

Usually, post-colonial theory (theories) in general and post-colonial theory (theories) of constitution and law in particular focus on the effect of (bygone) colonial rule on the colonised, the subaltern. Yet, Russia (both in its Tsarist and its Soviet phase) was not a colony but the centre of a colonial empire and – this is my thesis – wishes to assume such a role again. Therefore, the post-colonial lens on Russia is that of a former metropolis.

In post-colonial theory, there are relatively few studies on the effect of former colonialism and decolonisation on the former centre and its constitutional dynamics. There is some literature on France where the transition from the 4th to the 5th Republic with an entirely new, more presidential constitutional design in 1958 was intended to help the French government to gather the strength to let go of its colonies, especially Algeria. As a more recent example, the Brexit is interpreted also in a post-colonial perspective: as a British move away from Europe and back to the former colonies (imperial nostalgia) – a feeling that is hardly reciprocated by the former colonies, as Britain's failure to negotiate favourable trade agreements with those countries show. Apart from France and Great Britain, there is practically no research on how decolonisation influences constitutional development in the other former colonial powers, including ‘non-overseas’ imperial structures such as the Ottoman and the Russian (Tsarist) empires.

Despite this lack of substantiated research, it stands to reason that the end of a colonial empire has effects on the former metropolis as well. Therefore, applying the post-colonial lens to the constitutional amendments of present-day Russia may deepen our understanding of constitutional life in Russia. At the same time, it adds another case study to post-colonial theory and may therefore enrich it by new insights.

III. The Russian constitutional amendments of 2020

Russia's constitutional amendments of 2020 affected a considerable part of the constitutional text. It has been the largest and most extensive amendment of the Russian Constitution since its enactment in 1993. The central part of the amendments and probably their driving motive was the so-called 'obnulenie' ('setting to zero'). This 'obnulenie' is to set back the counting of Putin's number of presidencies to zero so that the – still limited – number of allowed presidential offices of the same person starts to count anew in his case. As a result, Putin's former presidencies do not count, and he can remain in office until 2036².

Apart from the 'obnulenie', the amendments of 2020 bring about numerous changes in the power arrangements, but also certain additions to the basic rights and several changes and additions to the state identity norms. Most of these changes are not really new. They existed before 2020 in statutory law, sub-statutory norms and / or political practice. Yet, now they are enshrined in the Constitution, which may make a symbolic difference.

If we apply the post-colonial perspective to this wide range of amendments, we will find that not all of them are meaningful under the post-colonial lens. The new or widened social rights, to give just one example, are quite neutral in terms of post-colonial constitutional dynamics. Their main function was to serve as a bait for the people to give a positive vote on the amendments in the consultation (plebiscite).

For analytical reasons, I classify the amendments that do have a bearing under a post-colonial perspective in three groups:

- internal provisions: they relate to the power architecture in the Russian Federation and create or reinforce a 'strong state' embodied by a 'strong man' at the top, i.e., enhance the autocratic element;

² Article 81 (3.1) Russian Constitution as amended. On the 'obnulenie' as part of Putin's strategy to consolidate his power see Sergej A. Denisov, "Das Wesen und die Bedeutung der Änderungen der russischen Verfassung im Jahr 2020," in *Die Reform der russischen Verfassung*, ed. Rainer Wedde (Berlin: Berliner Wissenschafts-Verlag, 2020), S.25–42, 30–32.

- external provisions: they relate to Russia's position in the world and its relationship to bygone Tsarist / Soviet colonialism;

- provisions on the position of international law within Russia: they form the link between the internal and the external provisions.

Before we analyse the amendments thus classified under the perspective of post-colonial constitutional theory, we first take a look at constitutional realities: Do we find any political or factual indications that Russia is pursuing a policy to become the centre of a colonial empire again?

IV. Russia on its way to become a colonial power again?

Whether Russia or, to be more precise, Russia's leadership aims at the role of a colonial metropolis is a political rather than a constitutional or legal question. Therefore, we will briefly look at the political course of the Russian Federation.

1. The Yeltsin years: ending external and upholding internal colonialism

Russia in the 1990s appeared to have accepted the end of the Soviet empire. It recognised the former Soviet republics as independent states and conducted its foreign policy towards them on the basis of the (formal) equality of states as enshrined in the most basic principles of international law, inter alia in the Charter of the United Nations. In this respect, Russia gave up its imperial role and ambitions and integrated into the international community and international political and legal life as a 'normal' state.

At the same time, Russia after 1991 fiercely opposed the dissolution of the Russian Federation, as is best illustrated by the Chechen wars and their bloodshed. Thus, in the 1990s, Russia let go of external colonies but still pursued a colonial regime within the borders of the Russian Federation. Just as in Tsarist and Soviet times, in the post-1991 Russian Federation, we can clearly differentiate between the dominant (ethnically) Russian centre and the subaltern non-Russian periphery. The Russian centre bases its dominance over the non-Russian subalterns at least partly on racial grounds and mechanisms, and its dominance is inherently violent, as is best exemplified by the Chechen wars: the Russian dominance over its non-Russian periphery answers perfectly the usual definitions of colonialism. The fact that the colonised territories are not overseas but adjacent to the centre in itself does not question the colonial nature of that rule. This internal colonialism, for which the German language has the very appropriate word '*Binnenkolonialismus*' (internal or inner colonialism), is

constitutionally veiled by constitutional language about the ‘multinational people of the federation’ and by an asymmetrical federalism. On the other hand, other constitutional text is more outspoken about the ongoing colonial nature of centre-periphery relations in the Russian Federation. As a start, the state name ‘*Rossiiskaya Federatsiya*’ defines the federation as ‘*rossiiskii*’ which means Russian not in an ethnic sense (that would be ‘*russkii*’) but in an imperial tradition of a Russian state much larger than the area inhabited by ethnic Russians, and at the same time under the dominance of the ethnic Russian element. The 1993 constitution reflects this dominance, apart from the state name, in clauses on the leading role of the Russian (‘*russkii*’) people and the Russian (again ‘*russkii*’) language.

2. The Putin years: aiming at the re-establishment of a ‘Russian empire’

A few years after Putin’s take-over of power, it became more and more obvious that Russia wanted to be a world power again, that it claimed a position in the world such as the Soviet Union had enjoyed. Russia fancied and fancies itself on the same level as the US and China which is, of course, an illusion and an aspiration which is not born by facts. Compared to the two super-powers US and China, Russia lacks political attractiveness and economic substance as well as soft power – an important difference to the Soviet Union that, with its ‘progressive’ Marxist-Leninist ideology, could present itself as an attractive alternative to Western capitalism. With the collapse of that imperial ideology, the Soviet empire itself had collapsed.

Where Yeltsin’s Russia acquiesced to the loss of the empire and was self-contained in its internal colonialism, Putin’s Russia has aspirations that go beyond its own borders. First, Russia reasserts the former Soviet space, which it defines as its ‘near abroad’, as its own zone of influence where it tolerates no influence of other countries. Putin’s demand that NATO must refrain from accepting former Soviet republics as member states reflect the Russian claim to an exclusive zone of influence. In this near abroad, Russia no longer accepts the former colonies’ sovereignty, as exemplified by the wars in East Ukraine, the annexation of the Crimean peninsula and the aggressive war against Ukraine that started in March 2022, as well as by the presence of Russian troops in Moldova and Georgia against the will of the Moldovan and Georgian governments and also by Russia’s role of the neutral arbiter between Armenia and Azerbaijan or of the helping friend in Kazakhstan in the unrest in January 2022³.

³ The unrest in Kazakhstan does not seem to be a ‘decision of orientation’ as in Ukraine or Moldova but probably a fight for power between several cliques: Andreas Steininger and Joachim Schramm, “Eine erste Einschätzung der Lage in Kasachstan: Demokratiebewegung oder der banale Kampf der Cliquen um die Macht,” *Wirtschaft und Recht in Osteuropa* 31, no. 2 (2022): S.33-36.

Beyond the former Soviet space, Russia under Putin wants to be a world power again and, perhaps even more important still, to be accepted as such. Russia's interventions in Syria since 2015 or in Libya, Russian mercenaries in various African states, as well as the Russian claim that NATO must withdraw from its East European member states show Russian power aspirations beyond its 'near abroad', show that Russia wants to play a central role in world-wide international politics which includes the subordination of other states' interests under the Russian interests. Putin certainly wants Russia to be an imperial power of global importance, and Russia's disrespect for the sovereignty of other states is colonial by nature.

Therefore, it is safe to say that Russia's colonial aspiration no longer remain within the RF, but go to the outside, into the 'near abroad' and beyond. Yeltsin's self-contained internal colonialism has turned into aspirations for an expansive external colonialism. Russian's intention is to become again the centre of a colonial empire, to re-imperialise itself. This is well reflected by Putin's often-quoted statement that 'the collapse of the Soviet Union was the greatest geopolitical catastrophe of the 20th century'.⁴

We will now see how the constitutional amendments of 2020 help these neo-imperial aspirations of the Russian leadership.

V. Making Russia internally fit for imperialism: the 'strong state' embodied by a 'strong man'

The first group of amendments, the amendments that we call 'internal provisions', concern the power architecture within the Russian Federation.

1. What do the amendments contain?

The amendments affecting the balance between the supreme state organs strengthen the position of the President. One example is the additional presidential powers in Article 83 (as amended). Some of the new rules appear at a first reading to boost the role of the parliament vis-à-vis the President. However, a more detailed analysis reveals that these changes as well strengthen the President⁵. Thus,

⁴ As far as we know, it was first pronounced in Putin's Address on the State of the Nation on 25th April 2005.

⁵ Denisov and the other papers in Wedde (n 2). European Commission for Democracy through Law (Venice Commission), *Russian Federation Interim Opinion on Constitutional Amendments and the Procedure for their Adoption* (19–20 March 2021) CDL-AD(2021)005 Or. Engl., no 68–109. Otto Luchterhand, "Präsident Putins Verfassungsänderungsvorschläge: Vorbereitung des letzten Umbaus seines Regimes," *Jahrbuch für Ostrecht* 60 (2020): S.13–53. William Partlett, "Russia's 2020 Constitutional Amendments: A Comparative Analysis," *Cambridge Yearbook of European Legal Studies* 23 (2021): pp.311–342. Partlett and Küpper, *The Post-*

the new rules on the supreme federal organs concentrate even more power in the President, reducing the other federal organs more and more to a mere façade of a constitutional state. It must be noted that the hyper-presidential concentration of power started as early as under Yeltsin and was intensified by Putin even before the amendments 2020. However, now the constitution itself spells out the super-powers of the president which adds a new quality to the until then extra-constitutional ‘crown presidentialism’⁶.

The reinforcement of presidential autocracy vis-à-vis the other state organs is not the only centralisation that the amendments have brought about. They also reduce the impact of federalism⁷ and local autonomy⁸ – both institutions that, if taken seriously, have the potential of decentralising the political system and of adding additional layers of checks and balances. The amendments reduce this potential, inter alia by introducing the new institution of the ‘organs pertaining to the uniform systems of public power’ which is guaranteed by the President.⁹ Thus, the ‘uniform system of the organs of public power’ centralises all state power on the federal level (as opposed to the subjects of the federation and the local government) and within the federal level in the office and the person of the President (as opposed to other federal organs such as the bicameral parliament or the government).

This hyper-centralised power arrangement corresponds to traditional Russian state philosophy. In this traditional view, the Russian state has to be strong in order to protect Russia from an outside world which is basically perceived as inimical and always conspiring against Russia. The Russian state, in this view, is strong if it has a strong man (not: woman) at its top, embodying and leading the state. This was the prevalent view in Tsarist times and also during some parts of the Soviet period, e.g., during Stalinism. It is obvious that a state that depends existentially from the one man at the top is anything but strong, it is the weakest and most fragile form that statehood may adopt. This weakness is well illustrated by the numerous crises of the Tsarist and Soviet reign. Nevertheless, the need for a strong state guaranteed by a strong man is the classical Russian position which is also the position of President Putin¹⁰.

Soviet as Post-Colonial (n 1), 36–60. Rainer Wedde, “Russland: Die jüngsten Verfassungsänderungen und die Gewaltenteilung,” *Jahrbuch für Ostrecht* 61 (2021): S.54–63.

⁶ William Partlett, “Crown-Presidentialism,” *I-Con* (2022), forthcoming.

⁷ See, e.g., the amendments in Article 67(1)2 and the new federal powers in Articles 71 and 72.

⁸ See, e.g., the amendments in Article 131 (1.1).

⁹ See, e.g., Articles 80(2) and 132(3), as amended. The Venice Commission translates the formula in Article 80(2) (as amended) with “unified system of public authority”: European Commission for Democracy through Law (n 5), no 100–108. For more detail see Herbert Küpper and Antje Himmelreich, “Article 132,” in *Handbuch der russischen Verfassung, Ergänzungsband*, ed. Bernd Wieser (Vienna, Verlag Österreich, 2022, forthcoming), no 32–34.

¹⁰ On this aspect of traditional and present Russian state philosophy see Markku Kangaspuro, ed., *Russia: More different than most* (Helsinki: Kikimora, 1999). Katlijn Malfliet, *Rusland na de Sovjet-Unie: een normaal land?* (Leuven: lannoo campus, 2004). Gerhard

2. How can we interpret the amendments?

Before applying the post-colonial lens, we will analyse how the traditional reading of democratic constitutionalism interprets the hyper-centralisation of all power in the president.

(1) Democratic constitutionalism

Democratic constitutionalism interprets the concentration of all power in the head of state, combined with the reduction of both checks and balances and avenues for democratic participation, as a post-authoritarian roll-back. In this perspective, Russia tried, in the 1990s, to free itself from both Tsarist and Soviet traditions of authoritarian autocracy and tried to create a system of democratic constitutionalism. This view quotes as a witness the Russian constitution of 1993 before its amendment.

Compared to the original version of the 1993 constitution, the 2020 amendments cannot but appear as a relapse into pre-democratic autocracy. The reason that democratic constitutionalism can identify is tradition. In the end, ancient traditions and views, inter alia on what a proper Russian state should look like, turned out to be stronger than 'new', post-authoritarian, democratic and constitutional ideas.

(2) Post-colonial theory

Post-colonial theory points out that the increasing concentration of power in the President does not only intensify the autocratic nature of the regime by enhancing Putin's personal power. In addition, it puts the Russian state into a position where it is – in the perspective of the traditional-new Russian state philosophy – an efficient instrument to achieve geopolitical imperial and super-power aspirations. In a Russian understanding, the Russian state can play an important international role only if it can act without obstacles and impediments from the inside. And when we say the Russian state can act, this means that the strong man at the top can act freely.

Therefore, the constitutional amendments reduce all internal mechanisms that may restrict the President's freedom of external activity: separation of powers, checks and balances, federalism and local autonomy are all seen as obstacles that may stand in the President's way. Therefore, their abolition or at least weakening is seen as 'strengthening' the state, thus making it fit for playing the role of a(n imperial or colonial) centre of world-wide importance. Autocracy as the leading principle

Simon, "Die Russen und die Demokratie: Zur politischen Kultur in Rußland," in *Politische und ökonomische Transformation in Osteuropa*, ed. Georg Brunner (Berlin Verlag: Berlin, 3rd ed., 2000), S.133-152.

of the inner organisation of the state is interpreted as the prerequisite for an active and successful global role of the Russian state.

I would like to stress again that this post-colonial interpretation does not replace, but supplements the prevailing post-authoritarian reading of Russian constitutional dynamics. The gradual abolition of democratic constitutionalism first in constitutional practice and 2020 in constitutional text first of all serves to consolidate Putin's personal power. However, Putin's agenda is not limited to internal despotism. He wishes to restore Russia's imperial role beyond a self-contained internal colonialism; he wants to be – and even more so: to be accepted as – one of the world leaders. For this external ambition, he needs to make the Russian state fit so that it can be the instrument Putin needs.

VI. Russia's position in the world: imperial past and imperial future

The Russian constitutional amendments are not limited to inner power arrangements. An important set of amendments refers to the external part of Russian statehood.

1. What do the amendments contain?

Russia's 1993 constitution was widely interpreted as a good-bye to traditional Russian and Soviet exceptionalism and self-isolation from the world. It expressed Russia's wish to become a member of the international community. Therefore, it embraces the rules of international life, accepts the country's convergence into international legal life. This text is still there, the amendments did not abolish it, but added new text with a different impetus.

First, the new Article 67.1(1) declares the Russian Federation to be the legal successor of the Soviet Union on its territory and to continue the Soviet Union in international relations. This means that Russia now officially steps into the legal shoes of the previous colonial centre. Before 2020, it did so without express constitutional authority, e.g., by assuming the Soviet veto seat in the UN Security Council. International practice never questioned Russia's self-styled role as a political and partly legal successor to the Soviet Union, but accepted it tacitly. Therefore, there is no external reason to stress Russia's claim for succession to the Soviet Union right now. Consequently, there must be internal reasons for introducing Article 67.1(1) into the Russian Constitution.

Referring to the Soviet Union as the imperial predecessor of today's Russian Federation may be read as imperial nostalgia, as a wish to continue Soviet 'greatness'. This nostalgic longing for past 'greatness' is even more obvious in the new constitutional text on World War II. Now, Russia protects

the memory of the Soviet or Russian victory in that war¹¹. The new text does not identify that victory as Soviet or Russian but leaves the appropriation of the victory by today's Russia open to interpretation.

Second, under the new Article 69(3), Russia assumes responsibility for 'compatriots', i.e., ethnic Russians and/or former Soviet citizens abroad. This is not limited to the former Soviet space (the so-called 'near abroad') but may refer to Russians everywhere in the world. Before 2020, this responsibility was (and still is) enshrined in statutes. In practice, care for 'compatriots' has been used as a leverage for what Russia defined as 'humanitarian interventions' in the 'near abroad', e.g., during its attacks on Georgia. In its aggressive war against Ukraine, one Russian argument is that Russia protects its citizens whose human rights are allegedly violated by the Ukrainian state. In this argument, Russia has reverted to traditional Tsarist and Soviet exceptionalist by claiming rights that it denies others: Russia claims to have the right to intervene into other states under the title of 'humanitarian intervention' but strictly denies the existence of such an instrument in international law when anybody else wants to do so, e.g., when Russia denied the NATO to have the right to intervene to stop the genocide in Kosovo.

Third, new text stresses strongly the Russian Federation's sovereignty and territorial integrity¹² and the principle of non-interference in the internal affairs of the state¹³. Although the text does not say so explicitly, the principle of non-interference in internal affairs is designed as a one-way street, fighting off foreign interference into Russian affairs, but not forbidding Russia to interfere elsewhere. This is highlighted by Russia's aggressive war against Ukraine because the reasons Russia gives are that both Russian and Ukrainian citizens need to be protected against alleged human rights violations by the Ukrainian state and that Russia needs to bring about a regime change in Ukraine, the present government being allegedly a 'Nazi' regime.

Next to being the basis for a more 'robust' foreign policy, the stress on Russian sovereignty and integrity has also an internal meaning. It is designed to prevent the dissolution of the Russian Federation. This dissolution is not a question of actuality right now because since the end of the Chechen wars, there have been no more secessionist or irredentist tendencies worth mentioning. Nevertheless, the new rules make it clear to the outside world as well as to potential secessionists within Russia that the Russian state is willing to keep its empire together. This internal aspect is addressed also by strengthening the role of the ethnic Russian within the federation, combined with

¹¹ Article 67.1(3) as amended.

¹² See Articles 67(2.1), 67.1(1), and 83 lit. zh) as amended.

¹³ See Article 79.1 as amended.

lip-service to the role of the other, non-Russian ethnic entities as part of the ‘multinational’ Russian people¹⁴.

New constitutional text forbids high-ranking officials to hold dual citizenship, foreign residency or money and other valuables abroad¹⁵. Before 2020, statute contained these restrictions but collided with the constitution. Since 2020, the statutory provisions have been elevated to constitutional level, thus terminating their unconstitutionality. These restrictions reflect the traditional Russian distrust against the outside world. Furthermore, they reduce, in a Russian perspective, the leverage that foreign countries may exercise on Russian officials, thus making Russia more independent from the outside world and enhancing its capacity to become a colonial centre again.

Fourth, new rules intensified the expansive character of the Russian Federation. Since 1993, Article 65(2) has allowed the adoption of new federal units into the federation. In 2014, Russia made use of this provision for the first time when it took the Crimean Peninsula away from Ukraine and converted it into two new federal units of the Russian Federation¹⁶. A new expansive element was introduced into Article 81(2) which contains the prerequisites for presidential candidates. Since 2020, the President – just as holders of many other public offices, as was mentioned in the previous paragraph – has been banned from holding foreign citizenship or residence. In the case of a presidential candidate, this restriction extends to the past as well: a former foreign citizenship or residence disqualifies the person from running for the office of the president. However, the new Article 81(2)2 makes it clear that Russian territory that was not always part of the Russian Federation does not qualify as abroad; thus, anyone who lived in Crimea before 2014 is not excluded from becoming a Russian President just because Crimea became Russian only in 2014. Obviously, this rule is not designed to ease Putin’s staying in office¹⁷ but can only be interpreted as reinforcing Russia’s claim for its ‘new territories’.

Just as the amendments of the internal power arrangements, these amendments on Russia’s position in the world are in line with traditional Russian state philosophy. This traditional view requires that Russia must not only be strong, but also be big. In order to protect the (ethnic) Russian core, the Russian state must possess or at least dominate a ‘cordon sanitaire’ of non-Russian territories which protects Russia against the outside world. This special understanding explains the peculiar nature of Russian colonialism. Russian colonies were not settlement colonies, or only to a very small extent in

¹⁴ See Articles 68(1), (4) and 69(3) as amended.

¹⁵ The general rule is laid down in Article 71 lit. t) as amended. Numerous provisions throughout the constitution specify these requirements for various public offices.

¹⁶ These two units are the ‘Republic of Crimea’ and the ‘City of Federal Importance Sevastopol’, as enumerated in Article 65 (1) as amended in 2014.

¹⁷ If the new Article 81(2)2 of the Constitution were taken seriously, Putin may be disqualified because of his former residence in East Germany in the 1980s: As a junior KGB officer, he resided several years in the GDR.

the narrow strip between the Central Asian drylands and the Siberian taiga forests. Nor were the colonies a target of economic exploitation. Russian colonies represented a third form of colonialism. Russia held its colonies for political and military domination, as a buffer zone against the outside world which, as described before, is seen as inimical and always conspiring to destroy Russia. Returning to this traditional Russian world interpretation, it is obvious that Russia wants to re-erect this buffer zone. This concerns mainly the 'near abroad', but extends beyond the former Soviet space, e.g., to Eastern Europe where Putin demands that all NATO troops should be removed.

2. How can we interpret the amendments?

Here again, we will compare what the two different lenses show.

(1) Democratic constitutionalism

In the perspective of democratic constitutionalism, the new text on Russia's position in the world has an isolationist tendency and thus opposes the post-authoritarian 'convergence' text of 1993. Stressing the continuity with the imperial and isolationist Soviet Union as well as Russia's sovereignty and territorial integrity and isolating the higher echelons of the public service from foreign economic and other contacts remove the country a bit from general international life. The rules on 'compatriots' seem to address residual questions of the dissolution of the Soviet Union into 15 successor states. Finally, strengthening the expansionist character of the federal constitution appears in the eyes of democratic constitutionalism as a violation of principles of international law, at least if the new territories are acquired against the will of the former possessor and/or the local populations.

Democratic constitutionalism cannot really explain why Russia finds it necessary to incorporate rules on state succession and 'compatriots' into its constitution three decades after the fact – especially since both the partial Russian succession into the position of the Soviet Union and Russia's care for co-ethnic and ex-Soviet groups had been settled satisfactorily for and by Russia right in 1991. Nor can it explain why Russia thinks it necessary to elevate the ban on foreign residency, money accounts etc for higher state officials from statute to a constitutional level; a constitutional interpretation might be that the constitutional amendments end the existing doubts about the constitutionality of the statutory provisions, but again, the question of 'why now' remains unanswered by democratic constitutionalism.

(2) Post-colonial theory

Post-colonial theory sees in the constitutional amendment a clear re-orientation of Russia's self-definition. Whereas the constitutional text of 1993 had defined Russia as a self-contained,

internationally integrated state that has accepted the loss of (part of) its colonial empire, the amendments of 2020 paint Russia as a state that wants to re-establish its old empire and perhaps even create a new and larger one. Therefore, it steps into the legal shoes of the old empire (Soviet Union)¹⁸, uses ‘compatriots’ as a leverage to interfere into other states, especially the former colonies in the ‘near abroad’, and at the same time strongly opposes any foreign interference into internal Russian affairs. It isolates its leading civil service cast from foreign contacts to reduce the possibility of external influence on them.

In brief, these amendments as well serve to make Russia fit for its new role as an imperial centre. This also explains the timing: It is not unusual for former colonial centres to accept the loss of its empire in the first years or decades after this loss, but to revert to imperial nostalgia a generation later. This explains the timing of the Brexit as well as of the Russian wish to return to the glory of bygone imperialism.

VII. The link between the internal and the external legal world: the domestic position of international law

The third analytical group of constitutional amendments provides for the link between the previous two groups of the internal power architecture on the one hand and Russia’s role in the world on the other hand: the rules on the position of international law within the Russian domestic legal system.

1. What do the amendments contain?

The 1993 Constitution accepts international law as a source of law of domestic relevance and integrates into the international community. This text is still there, but the 2020 amendments have added a new layer.

Article 79 as amended decrees the priority of domestic (Russian) over international law. If a decision of an international organ that that organ takes on the basis of an international treaty signed by the Russian Federation is contrary to the Russian constitution, this decision cannot be executed in Russia. This clause aims primarily at the European Court of Human Rights and its decisions, but it has already been applied in bilateral double taxation agreements as well. Russia notified its treaty partners

¹⁸ In the Russian debate on the constitutional amendments, the argument of linking today’s Russia to the imperial traditions of the Soviet Union by including text on the state succession into the constitution was used quite openly: Suren Adibekovič Avak’ân, “Das Wort ‘Macht’ sollte nicht erschrecken,” *Jahrbuch für Ostrecht* 61 (2021): S.13–25, 17.

that it now claims to have the right to change these bilateral taxation agreements unilaterally, relying on the new powers given by Article 79 in its amended version¹⁹. The new rule reverses the role of national and international law, which ultimately questions the very existence of international law which can only exist if a 'domestic exception' is not allowed, not even in the case of domestic constitutional law.

The new Article 125(5.1) lit. b) formalises this priority of Russian constitutional over international law by making the Constitutional Court the watchdog. The Constitutional Court is given the power and the procedural rules to examine whether such a decision of an international organ is in contravention of a clause of the Russian Constitution. Since 2015, this power of the Constitutional Court has existed on statutory level²⁰.

2. How can we interpret the amendments?

(1) Democratic constitutionalism

In the traditional light of democratic constitutionalism, the amendments terminate Russia's integration into the rule-based international community. By allowing its constitution to override the obligations it assumed under international law, Russia questions the binding nature of international law and, finally, denies the rule-based character of international political life. Russia no longer feels bound by the international rules of the game but aspires to dictate its own rules to the world.

Democratic constitutionalism can state this fact and interpret it as another roll-back, this time not so much authoritarian but rather isolationist. But it cannot explain why Russia has decided to draw back from international legal life.

(2) Post-colonial theory

Post-colonial theory can offer additional insight. Russia wants to become an empire again. In order to do so, it concentrated state power in a 'strong man-president' and re-defined its political position in the world. As was seen before, all these measures can be read in the light of the endeavour to remove all obstacles that may stand in the way of the imperial aspirations of the Russian state and its leader.

¹⁹ Javid Damirov, "Auswirkungen der Verfassungsreform und der Maßnahmen gegen die Covid-19-Pandemie auf das Steuersystem der RF," *Wirtschaft und Recht in Osteuropa* 29 (2020): S.328.

²⁰ Herbert Küpper, "Die Bedeutung der EMRK in Demokratien im Umbruch," in *Demokratie und Europäische Menschenrechtskonvention*, ed. Magdalena Pöschl and Ewald Wiederin (Vienna: Manz, 2019), S.119–181, 146–148.

The same pattern applies to the termination of the binding role of international law. International law, too, may be seen as an impediment to neo-imperial ambitions. International law is based on the formal equality and equal sovereignty of all states and protects the state's integrity against external interference. International law as it stands to-day is inherently inimical to a super-power status above the (international) law. It is certainly inimical to neo-colonialism and the definition of a certain region of the world as one state's exclusive zone of influence, as that state's own 'backyard', with limited sovereignty of the states therein and no rights of outside states to 'interfere' into this backyard by maintaining relationships with those states.

Therefore, international law has the tendency to restrict Russia's super-power and neo-colonial aspirations. As a consequence, the amendments subordinate it to Russian (constitutional) law. Now, Russia can formally do as it pleases because whenever international law protects the targets of Russian neo-imperial ambitions, Russia can rely on the constitutional provisions on the dynamic nature of its territory (i.e., on the possibility to accept new territories as federal units), on the protection of 'compatriots' or other provisions in order to put aside opposing international law. The price Russia pays is isolation, but isolationism has been an integral part of Russia's colonialism for most parts of Russian history.

VIII. Conclusion

The post-colonial lens that sees Russia as a country that once was an imperial centre and wants to return to this role, provides for a coherent reading of large parts of the 2020 constitutional amendments. Nevertheless, the post-colonial aspect is not the central or most important one to understand the Russian constitutional amendments. The amendments do not culminate all state power in a crown-president for the sole purpose of making Russia fit for neo-imperialism, but the presidential autocracy serves genuinely domestic purposes as well, such as to further consolidate President Putin's personal power base.

Yet, the post-colonial lens adds new aspects of understanding that classical constitutional theory cannot yield. It can explain why Russia reverts to old patterns of autocracy and reduces democratic constitutionalism, or why it finds it necessary to constitutionalise its so far unchallenged role as a successor of the Soviet Union thirty years after the fact.

The post-colonial lens may even shed some additional light on the amendments designed to strengthen the 'traditional' family structures. Obviously, the 'preservation of traditional family values',

as Article 114 lit v) (as amended) puts it, is not directly linked to reverting Russia into an imperial centre again. But it is a conscious abdication to 'modernity', to the 21st century, and at the same time a conscious turning towards times when (Tsarist, Soviet) Russia was imperial. The social structures of every-day life of the citizens, too, should go back to these times. Insofar, the 'traditional' family structures are part and parcel of the comprehensive anti-modernism that the 2020 amendments carry, and as such may reinforce the neo-colonial self-definition of becoming a colonial centre again – which as such may be qualified as an anti-modern anachronism in the early 21st century.

The post-colonial aspect is not something totally new and unprecedented in Russia's constitutional culture. Russia never gave up colonialism entirely, neither in or after 1991 nor in its constitution of 1993. Since the end of the Soviet Union and Russia's independence, an ethnic Russian centre has continued to dominate the non-Russian, subaltern periphery. The change that the 2020 amendments make is that Russia's colonial aspirations no longer remain within the borders of the Russian Federation but go to the outside, to the 'near abroad' – with a special target on Ukraine – and perhaps beyond, as Russia's involvement in, e.g., Syria and Libya illustrates. Insofar, the 2020 amendments and their colonial aspects are not entirely new, but are much rather an intensification and widening of tendencies that were never really abandoned. They are quantitative rather than qualitative.

As a conclusion, we can state that applying the post-colonial lens to Russia's constitution and its amendments adds more insight into the country's constitutional dynamics than the traditional lens of democratic constitutionalism yields. Mutatis mutandis, the analysis of the Russian case can add to the general post-colonial theory of constitutional dynamics because it is one more case-study of a former metropolis under the influence of its colonial past, with the most open and violent roll-back into neo-colonialism so far.

Bibliography:

Avak'ân, Suren Adibekovič. "Das Wort 'Macht' sollte nicht erschrecken." *Jahrbuch für Ostrecht* 61 (2021): 13–25.

Damirov, Javid. "Auswirkungen der Verfassungsreform und der Maßnahmen gegen die Covid-19-Pandemie auf das Steuersystem der RF," *Wirtschaft und Recht in Osteuropa* 29 (2020): 328.

European Commission for Democracy through Law (Venice Commission). *Russian Federation Interim Opinion on Constitutional Amendments and the Procedure for their Adoption*. (19–20 March 2021) CDL-AD(2021)005 Or. Engl.

Kangaspuro, Markku, ed. *Russia: More different than most*. Helsinki: Kikimora, 1999.

Küpper, Herbert. “Die Bedeutung der EMRK in Demokratien im Umbruch.” In *Demokratie und Europäische Menschenrechtskonvention*, edited by Magdalena Pöschl and Ewald Wiederin, 119–181. Vienna: Manz, 2019.

Küpper, Herbert, and Antje Himmelreich. “Article 132.” In *Handbuch der russischen Verfassung, Ergänzungsband*, edited by Bernd Wieser. Vienna, Verlag Österreich, 2022, forthcoming.

Luchterhand, Otto. “Präsident Putins Verfassungsänderungsvorschläge: Vorbereitung des letzten Umbaus seines Regimes.” *Jahrbuch für Ostrecht* 60 (2020): 13–53.

Malfliet, Katlijn. *Rusland na de Sovjet-Unie: een normaal land?* Leuven: lannoo campus, 2004.

Partlett, William. “Russia’s 2020 Constitutional Amendments: A Comparative Analysis,” *Cambridge Yearbook of European Legal Studies* 23 (2021): 311–342.

Partlett, William. “Crown-Presidentialism,” *I-Con* (2022), forthcoming.

Partlett, William, and Herbert Küpper. *The Post-Soviet as Post-Colonial. A New Paradigm for Understanding Constitutional Dynamics in the Former Soviet Empire*. Cheltenham: Elgar, forthcoming.

Simon, Gerhard. “Die Russen und die Demokratie: Zur politischen Kultur in Rußland.” In *Politische und ökonomische Transformation in Osteuropa*, edited by Georg Brunner, 133-152. Berlin Verlag: Berlin, 3rd ed., 2000.

Steininger, Andreas, and Joachim Schramm. “Eine erste Einschätzung der Lage in Kasachstan: Demokratiebewegung oder der banale Kampf der Cliques um die Macht.” *Wirtschaft und Recht in Osteuropa* 31, no. 2 (2022): 33-36.

Wedde, Rainer, ed. *Die Reform der russischen Verfassung*. Berlin: Berliner Wissenschafts-Verlag, 2020. Wedde, Rainer. “Russland: Die jüngsten Verfassungsänderungen und die Gewaltenteilung.” *Jahrbuch für Ostrecht* 61 (2021): 54–63.