

Audio file

[authoritarian-constitutionalism-podcast.mp3](#)

Transcript

Hello and welcome to conventions, a podcast about the history of constitutions brought to you by the Quill project, Pembroke College, Oxford.

My name is Grace Mallon and I'm your host.

In contemporary Western Europe and North America, along with many other parts of the

World constitutionalism is something we associate with limited government and the protection of the rights of citizens.

We even use the term constitutional government as a near synonym for liberal democracy.

But democracies aren't the only governments with constitutions.

Since the age of revolutions, many of the world most repressive regimes have drafted and promulgated constitutions that claim to protect the rights of the people, preserve the separation of powers, and minimise the reach of the executive branch.

In this episode I'll be talking to Paul Fischer, a practising barrister and academic lawyer whose research focuses on constitutional amendment in the Russian Federation and other post Soviet regimes.

Together, we'll explore why so many historical, non democracies as well as their contemporary counterparts have spent so much time and state energy on producing and distributing these constitutional documents.

What, if anything, do these texts have to do with the actual practise of government in non democratic regimes?

And what can studying these regimes teach us about the relationship between democracy and constitutionalism?

Paul, thank you so much for coming on the Convention podcast.

My pleasure, I'm happy to be here.

Thank you, grace.

Your career is quite interesting because you are practising as a barrister at the same time as undertaking your research.

So my question for you is how did you know how did you get here? How did you get interested in constitutionalism?

And what is your sort of research focus? If you could introduce our audience to your sort of research?

Yes, of course, perhaps.

I start with the last of those points grace my. My research is primarily into constitutional amendment in non democratic regimes and particularly how constitutional amendment is used by non democratic leaders to address threats to the longevity of their regime.

And I, uh, I came by this. Really it quite a quite a long journey for me. I I started out as a as an academic lawyer when I was.

Uhm, at universities. I did an undergraduate and postgraduate degree in in law, but a huge component of that was jurisprudence.

And one thing that always interested me was rules and the nature of obligation and, and that's particularly interesting in the context of non democratic base sheets.

Because we often assume that particular constitutions, but law in general in non democracies don't really give rise to obligation we see.

Presidential administrations and authoritarian leaders are sitting above the law and the the clash between these two principles. That law must have some obligatory force in order.

To be law.

And the use of law in non democratic regimes.

And the the power, the political power of non democratic leaders. This tension gave rise to a number of questions that I could only really answer if I embarked upon my my research and as a practising.

Lawyer, I do a mix of public and commercial law both here and abroad, so I have the ability to see how principles like the rule of law apply in the English jurisdiction. But I also see the operation of law in in jurisdictions that we.

That we wouldn't regard as being democratic, and that that that contrast has always fascinated me.

To be working across jurisdictions and to be able to essentially be doing that sort of comparison just in your day to day work.

Is really, really interesting, and so I'll I'll tell you a little bit about how I came to be interested in authoritarian constitutionalism, because in a sense I don't have any sort of first hand experience of those regimes at all, and I work on the United States. I spend a lot of time in the United States talking to Americans.

About how their constitution works.

And something that Americans understand constitutions to do is to limit government and and to protect rights and to stop the government from infringing rights essentially. And that's sort of what they would understand the principle.

Function of a constitution to be and so coming across the fact. Learning relatively recently. Shockingly recently, that many authoritarian regimes do have.

Written constitutions really made me think rethink what it is that constitutions do, which I think is what you're getting at when you're talking about the law and obligations and and the fact that essentially do do even do even authoritarian leaders.

Have to essentially obey the law in some sense. So my first question for you then about that in a in a sort of broad way.

Why would a non democracy or an authoritarian regime promulgate a constitution?

Yes, I mean this is a. It's a really interesting starting point and I think it must be the starting point. Grace and I'm glad you raised it, because just taking a step back and looking at.

The United States Constitution and its development in the late 18th century, you see, after a the founding fathers created this document and it was a foundational document. It was. It was then used as a blueprint.

For, uh, a developing phenomena of the nation state.

During the 19th century, as you know there was this explosion of written constitutions, and as an English lawyer, that's always been interesting to me, because of course, the de facto position when it comes to having a Constitution is now the codified or written form.

Rather than the uncodified English constitution that we have here in this jurisdiction, and it's largely because of the history that you study, the history of the United States and its impact on the globe. So the starting point to your question is.

Is the de facto status quo position for new republics. Certainly since the 19th century has been to have a written constitution, and if we just pause there, it's always an important starting point to remind ourselves that actually most.

Nation states need a constitution indeed all.

Forms of organisation in civil society need a constitution of sorts, even if it's an unwritten one. So the Constitution in a non democratic regime performs a very similar function to the Constitution in a democratic regime. In this sense that it is an organising framework.

For government to use the expression used by Ginsberg and Simms.

It becomes a blueprint for government and it becomes the organising document because even non democratic leaders need to be able to pinpoint where power resides. So that's the starting point. But the more unique factor.

I would suggest in non democratic regimes is what's sometimes referred to as its coordinating function and particularly its coordination of elite networks.

And Henry Hill's written quite extensively about this in his book on comparative constitutions, particularly the post Soviet space. He talks about how constitutions.

Deriv to provide an information effect and a focal effect and what it means by that is you may have, for example, an institution of the President.

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Within the political system, but it also has a focal effect in this sense that actually it serves going forward prospectively to identify officeholder X as being the individual around whom networks should coordinate and coalesce.

If they want to survive, if they want to gain from the distribution of rents within that political system, so you have their coordinating function as well. And also it may serve to.

They provide policy commitments. This is perhaps one of the other unique features of non democratic regimes more than democratic regimes that that constitutions sometimes provide commitments on economic.

And social policy.

And the Soviet Union was a.

Good example of that.

Primarily because ideology becomes a cohesive factor.

Uhm, within the survival of the regime, and particularly in the case of the Soviet Union, where economic and social policy was the justice cateri ideology for the continuation of the regime.

So there are lots of different functions that constitutions serve, and there is a Venn diagram if you like.

When we're looking at democratic and non democratic regimes, sometimes they serve very similar purposes as with the blueprint principle that I've mentioned.

But but other.

Functions are quite distinctive to non democratic regimes.

This point about policy, you raise a number of really interesting points there. The point about the the Constitution as a sort of policy platform is one that I found particularly interesting in looking particularly at those constitutions of the Soviet Union and China, and the idea that after a certain amount of time to demonstrate.

That you were in a particular phase of of social development of communist development, for example, that you would you would need to draught a new Constitution to demonstrate sort of which phase you were in.

Or or that particular leaders would feel that it was their duty to to lay out their particular policy goals through drafting a constitution. Which is this? This really interesting.

Way of thinking about constitutions that that contrast quite strongly with the sort of Western liberal tradition in certain ways. But you also mention sort of the role of institutions.

That you know the sort of operative role of institutions because these regimes aren't just anti are not in fact.

Made up of only one person, so could you talk a little and also the role of party which I really want to come back to in a second.

Could you talk about then you use the word coordination. The role of these constitutional blueprints in coordinating the interests of different individuals within a given.

Non democratic regime.

Yes, absolutely. I mean the a good example.

Of this, this process of coordination is actually the the latest reforms that we've seen. The latest amendments we've seen in the Russian Federation and and let's just look at the chronology. Russian President Vladimir Putin was elected in 2018. Re elected, and he was elected.

To his second consecutive term of office, I say consecutive because as you know he'd already served three terms prior with a gap in between having having been having had his seat kept warm by Dmitry Medvedev.

So in 2018, following his presidential election.

The whispers began. People started talking about the so called 2024 problem. What was Putin going to do at the end of his second consecutive term at given that Article 81 three of the Russian Federation's constitution stipulated.

That you couldn't serve a further term consecutively and that 2024 problem and the whispers that I've discussed inevitably creates a problem for any leader. Uhm, of course that depends upon their political strength, but immediately.

These networks that exist around the leader and upon which the leadership depends start asking themselves who is going to be in the hot seat.

Who is going to be in the Presidency following 2024? And uh, if it is to be Putin, how quickly is he going to act to ensure that all of our interests are protected?

Because we're wedded, we're wedded to his leadership. And so, uh, the. The rumours began at circling that perhaps.

Constitutional amendment was afoot and eventually come January 2020. Putin announces that he's going to embark upon a process.

Constitutional amendment it wasn't until well into the legislative process that somebody on the floor of the House that the first woman in space in fact telescope A, decided to introduce an amendment that would, if it was not known as the zeroing amendment that would effectively restart the clock.

For President Putin and Medvedev come the presidential elections in 2024, so that signals to the elite networks around the president that he is likely to stay in power for the foreseeable and that show.

Calls up his position and it gets rid of or at least mute the so called lame duck dilemma, which is that the closer you come to the end of that second consecutive term, the more likely you will be seen as someone from whom the power is leaking. So that's that's the first element.

Elite Coordination due to term limits, the other potential reason why constitutions and more specifically constitutionalism, may be of use to non democratic leaders.

Is what?

And men refers to as institutionalised pacts of rent distribution. What does this mean?

It means that sometimes a leader will exceed 2 limitations on their power. Even an authoritarian 1 where they see the alternative as being unpalatable.

And the alternative to accepting restraints on government or leadership might be full blown mutiny by elite networks, and they may mutiny because they are concerned about information asymmetries between them and the autocrat and them or the autocrat.

And do to assuage their fear that they are entirely omnipotent. It the better for the leadership because these networks know that they can resort ultimately to formal processes. If if absolutely Ness.

To either get rid of them or balance out their power. A good example of that might be the creation of a vice Presidency. It could be the creation of powerful ministries like a defence ministry to balance out political power.

Or it could be through accepting formal mechanisms.

To either get rid of the president or to ensure that the legislature and the elites that govern can obtain influence over government appointments, let's say. So that's another example of why an authoritarian or an autocrat may resort to using constitutionalism.

To their benefit.

You mentioned, so your work is on the process of constitutional amendment, and so I wanted to ask you a couple of questions.

We're sort of leading towards that. The first question being you, what is the Russian process for constitutional amendment as as sort of provided for in the Constitution and a second connected question.

Which is really about the shape of the codified Constitution itself. Because something I've found interesting in looking at a relatively recent codified constitution in non democracies such as Russia.

Is the considerable resemblance it bears to any other sort of relatively recent constitution that's been drafted, or just superficially, at least in terms of the provisions, it looks like a moderately solid kind of instrument.

In in the in, almost in a sort of liberal tradition, so I sort of wonder.

And you know you mentioned the difference between a constitution and constitutionalism.

You know what are the sort of hallmarks of an authoritarian constitution in its text? Or is it really a matter of the political culture, the sort of governs?

The regime and how does your work on constitutional amendment fit into that?

Yeah, absolutely. Let's let's start with the the second of these two questions. Because if if we go back 20 or 30 years before what might be regarded as the institutional turn in the academic literature, it was often thought that constitutions really play out.

A very small part in understanding authoritarian and non democratic regimes, and that actually you saw academics if not explicitly then impliedly exuding to Lenin's view on constitutions.

You might remember that Lenin and I know that's quite a bold statement for me to make, but sometimes it's necessary.

You may remember that Lenin talked about what he called constitutional illusions. He was of the opinion that constitutions fundamentally were reflection of power. They didn't constrain it or shape it.

You then see a development this institutional turn in the academic literature where people start realising not just that constitutions, but institutions more general.

And that includes legislatures, it includes judicial organs of power, are worthy of study if we want to understand how non democratic regimes work, and if you have a look at my the topic of my research, which is how constitutional amendments are used to address threats to leadership.

Longevity, the starting point is to look at recent history, particularly in the post Soviet space, and history tells us that authoritarians or non Democrats embark upon.

Constitutional amendment, when they're worried about the stability of their leadership. They may do other things and you take Lukashenka's regime as an example after August 2020, when he was widely criticised for having defrauded the electorate.

He noticed that he couldn't quell public protest.

A very quickly or easily he did resort to coercion outright.

But he also very, very speedily after the election results.

Announced a plan of constitutional reform. Now the details weren't really worked through for a number of months, and we're only really seeing the product of that in the beginning of 2022, but we see that non Democrats like Lukashenka do resort to amendment.

When they fear for the stability of their regimes, so that must provoke a question from people like me and from academics, which is well, why? What unique utility this constitutional amendment have for individuals such as Lukashenka and for President Putin?

The other point to note though, is that.

Constitutional amendment is often used to address different kinds of threat, and I've I've analysed amendment in the former Soviet space since the dissolution of the USSR, and it seems to me that there are two overarching.

Potential threats that that amendment is used to address. The first of the classic term limits that we've discussed in the case of President Putin, those are internal internal threats that arise from the constitutional itself. The second are the external, the the public protests. The public unrest, uh?

Which sometimes precipitate.

Amendment in the former case, when we look at internal threats, I often get the response from people. Well, you ask what the strategic utility of amendment is, Paul, but isn't it obvious?

It's intuitive, isn't it? That if you have a presidential term limit, you must amend it in order to.

Get around it and to avoid it. But actually it's not quite as intuitive as it seems, because although Putin embarked upon reform in 2020

The similar example that we see in 2008 in in which he was facing at the end of his second consecutive term in office did not provoke amendment, and he explicitly stated that he effectively didn't want to fiddle with the Constitution.

The alternative strategy that he developed then was what Versteeg and others have called.

The faithful agent.

Strategy and he put in place, and although there's a degree of argument about the degree of control he exercised over him, he certainly.

Especially encouraged Medvedev into the post of the Presidency, and Medvedev, as I say it, kept the seat warm for him for four, for four.

Is so we can see there that amendment may have strategic utility to these leaders, both to address internal and and external threats.

We mentioned earlier the sort of.

The role of party uhm.

Obviously looking at the former communist or current communist regimes.

And the the role within the party is, as was more important, of course, than role within the Constitution. Insofar as leadership roles were in fact represented in the constitutional text in the way that they actually worked in reality. What, in your experience of the post Soviet space?

And has has been the.

The interaction between party and the Constitution in governing power relationships in the state.

Yeah, this is a really interesting question because inevitably one has to one has to be very careful when you're talking about non democratic regimes.

That is a very large spectrum and within individual non democratic regimes we would expect to see a variation on.

Political power and the strength of political power and that in turn is often reflected in.

Party politics

So let's just take two case studies as an example. If we have a look at President Putin in the Russian Federation since the 4th convocation of the State Duma. Uhm, in the early 2000s Putin has had a constitutional majority.

And that constitutional majority is absolutely essential to the passage of constitutional amendments and the the critical thing here, then, is that you have a party of power and a party of strength.

That is, passing the threshold of legitimacy among the population as a whole such that you have control over the state or federal legislature. So having that domination is absolutely key if we take.

Surge suction as another example in Armenia.

So John had a very different degree of political power in Armenia than President Putin, and he was however also able to rely upon his own party in Armenia to endorse constitutional amendment, but.

What we see developing after the amendment process is the complete collapse of his authority because.

Well, I'm not for a moment suggesting that United Russia, which was the party party of power in Russia, had.

Necessarily any greater objective democratic legitimacy, but its political strength among the electorate was ultimately proven to be far greater than that of the Republican Party in Armenia and the result for Saxon.

Was devastating because having passed the amendment, having got through the formal process of amending the Constitution.

There was a.

Revolution in April of 2018. In response to his attempt to capture a new newly instituted Parliamentary Republic and so we see that party politics has an impact. Firstly, on the passage of constitutional amendment.

But secondly, also in the longevity of the amendment itself and the regime's ability to survive what might be seen as flaws in the legitimacy of that amendment process.

And you make a crucial point there, but obviously we can't generalise about these regimes any more than we can generalise about the regimes that we would normally categorise as democracies. But a question that that you sort of lead me to then is is the question of popular constitutionalism.

How important is the concept of constitutionalism to the quote unquote people?

In the regimes that you've studied and how much do they follow these kinds of shifts and the way that that ruling parties and leaders interact with the Constitution?

Yes, let's adopt then if we think about popular constitutionalism in the classic sense that was adopted by people like Larry Kramer in the United States and we see popular constitutionalism as being.

And understand that the Constitution is owned and potentially also enforced by the public because of that sense of ownership.

I think this is really really quite critical at both ends of the timeline that.

I've just discussed.

So the the process of amending the Constitution and also thereafter once the amendment is passed.

The process of the can you hear me grace sorry.

Oh perfect, yeah, I can hear peffley.

There are, so let's start again. It's it's very important.

Uhm ex ante. Prior to passing a constitutional amendment.

Uh, because.

If if amendments are seen to be owned by the population at large and and the public is seen as a stake.

Older there is potentially a greater chance that it would be adopted and a greater chance that will be seen as legitimate, but it's also really, really important ex post facto because the survival of the regime in part depends upon the ability to mimic.

To mimic features of democratic accountability.

And to mimic features of.

Constraint on government features of constitutionalism. So just looking at the ex ante factor first.

When we look at Putin's reforms in 2020, we see what Paul Good is referred to as a patriotic legitimation, coming to the four of these amendments.

So you see.

The entrenchment of principles.

And commitment to the Russian Federation's or Russia religious history and Orthodox history. Coming into the amendment process and there are now passages within the Russian Constitution that talk about its thousand year old history and its connexion to Russian.

In addition, you see an increasing culture war being brought into the amendment process, so we also saw a commitment to marriage being between a man and a woman in the Russian constitution, potentially rendering.

Same sex marriages and.

Institutional within the Russian setting. So why is this relevant to popular constitutionalism? Well, it was seen as an attempt by Putin to shore up his support among certain sections of the Russian population, and there's no doubt that those measures may well find support within.

More conservative

Of corners of public opinion. So the populist angle was certainly very important, especially in circumstances where Putin was putting this to a public vote. A nationwide vote in in 2020.

When we look at the ex post facto situation, this is a really dangerous moment for the authoritarian we we often think that non Democrats can simply institute reform and we almost accept as an inevitability.

That these amendments will pass and that their longevity is.

Secured, but that's.

Not always the case and we saw this in surge sanctions example.

Having created a new parliamentary Republic, Surgam was faced with a popular uprising because although elements of this new, a parliamentary Republic were endorsed by the population, they were not willing to endorse him as.

The Prime Minister, and so that's where ownership. The sense of ownership of the Constitution may actually also be dangerous as well as supportive of non democratic leaders.

This idea of mimicking democratic regimes in certain respects is a really interesting one. That makes me think about sort of the you know, the the extent of a sort of global normalisation of certain ways of conducting government.

All sort of appearances of conducting government, but in the interest of time, what I want to get onto is the question of legislatures and judiciaries.

And so, as as you pointed out, we spend a lot of time thinking about.

We spend a lot of time thinking about. Leaders in these types of regimes but, but as you're also saying, these other institutions can be very significant, and so how significant is it for a President Putin to have control over the Duma and and?

The judiciary in Russia.

Yeah, the the the control over the State Duma, for example is is is critical in order to pass constitutional amendments, you need a constitutional majority within the Federal Assembly and and having control over the State Duma as Putin effectively does through.

The United Russia Party of Power, as it's called it, is a very critical factor, and it's really interesting that we've discussed the 2024 problem.

But there are. There are some commentators who believe that the 2021 problem was just as much of an obstacle for Putin precipitating the reforms early in 2020.

What do I mean by the 2021 problem? While there were dummar elections in 2021 and.

At the back end of 2019 early 2020.

And it was not taken for granted that United Russia would obtain that majority. Now, in hindsight, because we've we've seen the 2021 elections were actually far more favourable for United Russia than we thought. And whether by.

Hook or by crook. A Putin has managed to obtain that constitutional majority again. In hindsight, that was not an issue, but looking at things prospectively, Putin may not have been certain that if he delayed in the reform process he would have been able to pass his.

So we've looked at the legislature, but let's think also about the judicial organs of power because we see in both the Russian Federation and in Belarus.

Pretty soon into discussions about potential reform, the chairman.

Of constitutional courts and supreme courts begin to rear their heads, and a good example of that was vallieres Orkin in in Russia, soon after the presidential elections in 2018, Zalkin begins talking about the need for reform for constitutional reform.

Within Russia now one.

Can't easily make conclusions about whether he was making those comments independently of the presidency, and I wouldn't encourage anyone to engage in this sort of active Putin aladji or kremlinology up. Who knows who was really influencing talking, or whether he was.

Looking independently, but we do see pretty soon after the election, Zalkin talking about the need for reform. And one thing that will be interested in my research is seeing the extent to which his proposals, particularly in relation to greater legislative oversight of the Presidency, really made it in.

To the Eventuating amendments, but.

The other good.

Example is lukashenka. It's pretty soon after the fraudulent elections in August of 2020, and the emergence of public protests on the streets of Minsk you suddenly see Lukashenko sitting down in a public forum.

That is filmed and reported on widely in the state owned media. Him sitting down with the chairman of the Constitutional Court and discussing the prospect of reform so.

Judicial what might be called judicial capture or judicial cooperation may well be, to varying degrees, an important part of this process of using amendment to the leadership's advantage.

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If they want to survive, if they want to gain from the distribution of rents within that political system, so you have their coordinating function as well. And also it may serve to.

Speaker 3

They provide policy commitments. This is perhaps one of the other unique features of non democratic regimes more than democratic regimes that that constitutions sometimes provide commitments on economic.

Speaker 3

And social policy.

Speaker 3

And the Soviet Union was a.

Speaker 3

Good example of that.

Speaker 3

Primarily because ideology becomes a cohesive factor.

Speaker 3

Uhm, within the survival of the regime, and particularly in the case of the Soviet Union, where economic and social policy was the justice cateri ideology for the continuation of the regime.

Speaker 3

So there are lots of different functions that constitutions serve, and there is a Venn diagram if you like.

Speaker 3

When we're looking at democratic and non democratic regimes, sometimes they serve very similar purposes as with the blueprint principle that I've mentioned.

Speaker 3

But but other.

Speaker 3

Functions are quite distinctive to non democratic regimes.

Speaker 2

This point about policy, you raise a number of really interesting points there. The point about the the Constitution as a sort of policy platform is one that I found particularly interesting in looking particularly at those constitutions of the Soviet Union and China, and the idea that after a certain amount of time to demonstrate.

Speaker 2

That you were in a particular phase of of social development of communist development, for example, that you would you would need to draught a new Constitution to demonstrate sort of which phase you were in.

Speaker 2

Or or that particular leaders would feel that it was their duty to to lay out their particular policy goals through drafting a constitution. Which is this? This really interesting.

Speaker 2

Way of thinking about constitutions that that contrast quite strongly with the sort of Western liberal tradition in certain ways. But you also mention sort of the role of institutions.

Speaker 2

That you know the sort of operative role of institutions because these regimes aren't just anti are not in fact.

Speaker 2

Made up of only one person, so could you talk a little and also the role of party which I really want to come back to in a second.

Speaker 2

Could you talk about then you use the word coordination. The role of these constitutional blueprints in coordinating the interests of different individuals within a given.

Speaker 2

Non democratic regime.

Speaker 3

Yes, absolutely. I mean the a good example.

Speaker 3

Of this, this process of coordination is actually the the latest reforms that we've seen. The latest amendments we've seen in the Russian Federation and and let's just look at the chronology. Russian President Vladimir Putin was elected in 2018. Re elected, and he was elected.

Speaker 3

To his second consecutive term of office, I say consecutive because as you know he'd already served three terms prior with a gap in between having having been having had his seat kept warm by Dmitry Medvedev.

Speaker 3

So in 2018, following his presidential election.

Speaker 3

The whispers began. People started talking about the so called 2024 problem. What was Putin going to do at the end of his second consecutive term at given that Article 81 three of the Russian Federation's constitution stipulated.

Speaker 3

That you couldn't serve a further term consecutively and that 2024 problem and the whispers that I've discussed inevitably creates a problem for any leader. Uhm, of course that depends upon their political strength, but immediately.

Speaker 3

These networks that exist around the leader and upon which the leadership depends start asking themselves who is going to be in the hot seat.

Speaker 3

Who is going to be in the Presidency following 2024? And uh, if it is to be Putin, how quickly is he going to act to ensure that all of our interests are protected?

Speaker 3

Because we're wedded, we're wedded to his leadership. And so, uh, the. The rumours began at circling that perhaps.

Speaker 3

Constitutional amendment was afoot and eventually come January 2020. Putin announces that he's going to embark upon a process.

Speaker 3

Constitutional amendment it wasn't until well into the legislative process that somebody on the floor of the House that the first woman in space in fact telescope A, decided to introduce an amendment that would, if it was not known as the zeroing amendment that would effectively restart the clock.

Speaker 3

For President Putin and Medvedev come the presidential elections in 2024, so that signals to the elite networks around the president that he is likely to stay in power for the foreseeable and that show.

Speaker 3

Calls up his position and it gets rid of or at least mute the so called lame duck dilemma, which is that the closer you come to the end of that second consecutive term, the more likely you will be seen as someone from whom the power is leaking. So that's that's the first element.

Speaker 3

Elite Coordination due to term limits, the other potential reason why constitutions and more specifically constitutionalism, may be of use to non democratic leaders.

Speaker 3

Is what?

Speaker 3

And men refers to as institutionalised pacts of rent distribution. What does this mean?

Speaker 3

It means that sometimes a leader will exceed 2 limitations on their power. Even an authoritarian 1 where they see the alternative as being unpalatable.

Speaker 3

And the alternative to accepting restraints on government or leadership might be full blown mutiny by elite networks, and they may mutiny because they are concerned about information asymmetries between them and the autocrat and them or the autocrat.

Speaker 3

And do to assuage their fear that they are entirely omnipotent. It the better for the leadership because these networks know that they can resort ultimately to formal processes. If if absolutely Ness.

Speaker 3

To either get rid of them or balance out their power. A good example of that might be the creation of a vice Presidency. It could be the creation of powerful ministries like a defence ministry to balance out political power.

Speaker 3

Or it could be through accepting formal mechanisms.

Speaker 3

To either get rid of the president or to ensure that the legislature and the elites that govern can obtain influence over government appointments, let's say. So that's another example of why an authoritarian or an autocrat may resort to using constitutionalism.

Speaker 3

To their benefit.

Speaker 2

You mentioned, so your work is on the process of constitutional amendment, and so I wanted to ask you a couple of questions.

Speaker 2

We're sort of leading towards that. The first question being you, what is the Russian process for constitutional amendment as as sort of provided for in the Constitution and a second connected question.

Speaker 2

Which is really about the shape of the codified Constitution itself. Because something I've found interesting in looking at a relatively recent codified constitution in non democracies such as Russia.

Speaker 2

Is the considerable resemblance it bears to any other sort of relatively recent constitution that's been drafted, or just superficially, at least in terms of the provisions, it looks like a moderately solid kind of instrument.

Speaker 2

In in the in, almost in a sort of liberal tradition, so I sort of wonder.

Speaker 2

And you know you mentioned the difference between a constitution and constitutionalism.

Speaker 2

You know what are the sort of hallmarks of an authoritarian constitution in its text? Or is it really a matter of the political culture, the sort of governs?

Speaker 2

The regime and how does your work on constitutional amendment fit into that?

Speaker 3

Yeah, absolutely. Let's let's start with the the second of these two questions. Because if if we go back 20 or 30 years before what might be regarded as the institutional turn in the academic literature, it was often thought that constitutions really play out.

Speaker 3

A very small part in understanding authoritarian and non democratic regimes, and that actually you saw academics if not explicitly then impliedly exuding to Lenin's view on constitutions.

Speaker 3

You might remember that Lenin and I know that's quite a bold statement for me to make, but sometimes it's necessary.

Speaker 3

You may remember that Lenin talked about what he called constitutional illusions. He was of the opinion that constitutions fundamentally were reflection of power. They didn't constrain it or shape it.

Speaker 3

You you then see a development this institutional turn in the academic literature where people start realising not just that constitutions, but institutions more general.

Speaker 3

And that includes legislatures, it includes judicial organs of power, are worthy of study if we want to understand how non democratic regimes work, and if you have a look at my the topic of my research, which is how constitutional amendments are used to address threats to leadership.

Speaker 3

Longevity, the starting point is to look at recent history, particularly in the post Soviet space, and history tells us that authoritarians or non Democrats embark upon.

Speaker 3

Constitutional amendment, when they're worried about the stability of their leadership. They may do other things and you take Lukashenka's regime as an example after August 2020, when he was widely criticised for having defrauded the electorate.

Speaker 3

He noticed that he couldn't quell public protest.

Speaker 3

A very quickly or easily he did resort to coercion outright.

Speaker 3

But he also very, very speedily after the election results.

Speaker 3

Announced a plan of constitutional reform. Now the details weren't really worked through for a number of months, and we're only really seeing the product of that in the beginning of 2022, but we see that non Democrats like Lukashenka do resort to amendment.

Speaker 3

When they fear for the stability of their regimes, so that must provoke a question from people like me and from academics, which is well, why? What unique utility this constitutional amendment have for individuals such as Lukashenka and for President Putin?

Speaker 3

The other point to note though, is that.

Speaker 3

Constitutional amendment is often used to address different kinds of threat, and I've analysed amendment in the former Soviet space since the dissolution of the USSR, and it seems to me that there are two overarching.

Speaker 3

Potential threats that that amendment is used to address. The first of the classic term limits that we've discussed in the case of President Putin, those are internal internal threats that arise from the constitutional itself. The second are the external, the the public protests. The public unrest, uh?

Speaker 3

Which sometimes precipitate.

Speaker 3

Amendment in the former case, when we look at internal threats, I often get the response from people. Well, you ask what the strategic utility of amendment is, Paul, but isn't it obvious?

Speaker 3

It's intuitive, isn't it? That if you have a presidential term limit, you must amend it in order to.

Speaker 3

Get around it and to to avoid it. But actually it's not quite as intuitive as it seems, because although Putin embarked upon reform in 2020

Speaker 3

The similar example that we see in 2008 in in which he was facing at the end of his second consecutive term in office did not provoke amendment, and he explicitly stated that he effectively didn't want to fiddle with the Constitution.

Speaker 3

The alternative strategy that he developed then was what Versteeg and others have called.

Speaker 3

The faithful agent.

Speaker 3

Strategy and he put in place, and although there's a degree of argument about the degree of control he exercised over him, he certainly.

Speaker 3

Especially encouraged Medvedev into the post of the Presidency, and Medvedev, as I say it, kept the seat warm for him for four, for four.

Speaker 3

Is so we can see there that amendment may have strategic utility to these leaders, both to address internal and and external threats.

Speaker 2

We mentioned earlier the sort of.

Speaker 2

The role of party uhm.

Speaker 2

Obviously looking at the former communist or current communist regimes.

Speaker 2

And the the role within the party is, as was more important, of course, than role within the Constitution. Insofar as leadership roles were in fact represented in the constitutional text in the way that they actually worked in reality. What, in your experience of the post Soviet space?

Speaker 2

And has has been the.

Speaker 2

The interaction between party and the Constitution in governing power relationships in the state.

Speaker 3

Yeah, this is a really interesting question because inevitably one has to be very careful when you're talking about non democratic regimes.

Speaker 3

That is a very large spectrum and within individual non democratic regimes we would expect to see a variation on.

Speaker 3

Political power and the strength of political power and that in turn is often reflected in.

Speaker 3

Party politics

Speaker 3

So let's just take two case studies as an example. If we have a look at President Putin in the Russian Federation since the 4th convocation of the State Duma. Uhm, in the early 2000s Putin has had a constitutional majority.

Speaker 3

And that constitutional majority is absolutely essential to the passage of constitutional amendments and the the critical thing here, then, is that you have a party of power and a party of strength.

Speaker 3

That is, passing the threshold of legitimacy among the population as a whole such that you have control over the state or federal legislature. So having that domination is absolutely key if we take.

Speaker 3

Surge suction as another example in Armenia.

Speaker 3

So John had a very different degree of political power in Armenia than President Putin, and he was however also able to rely upon his own party in Armenia to endorse constitutional amendment, but.

Speaker 3

What we see developing after the amendment process is the complete collapse of his authority because.

Speaker 3

Well, I'm not for a moment suggesting that United Russia, which was the party party of power in Russia, had.

Speaker 3

Necessarily any greater objective democratic legitimacy, but its political strength among the electorate was ultimately proven to be far greater than that of surge sanctions. Republican Party in Armenia and the the result for Saxon.

Speaker 3

Was devastating because having passed the amendment, having got through the formal process of amending the Constitution.

Speaker 3

There was a.

Speaker 3

Revolution in April of 2018. In response to his attempt to capture a new newly instituted Parliamentary Republic and and so we see that party politics has an impact. Firstly, on the passage of constitutional amendment.

Speaker 3

But secondly, also in the longevity of the amendment itself and the regime's ability to survive what might be seen as flaws in the legitimacy of that amendment process.

Speaker 2

And you make a crucial point there, but obviously we can't can't generalise about these regimes any more than we can generalise about the regimes that we would normally categorise as democracies. But a question that that you sort of lead me to then is is the question of popular constitutionalism.

Speaker 2

How important is the concept of constitutionalism to the quote unquote people?

Speaker 2

In the regimes that you've studied and how much do they follow these kinds of shifts and the way that that ruling parties and leaders interact with the Constitution?

Speaker 3

Yes, let's let's adopt then if we think about popular constitutionalism in the classic sense that was adopted by people like Larry Kramer in the United States and we see popular constitutionalism as being.

Speaker 3

And understand that the Constitution is owned and potentially also enforced by the public because of that sense of ownership.

Speaker 3

I think this is really really quite critical at both ends of the timeline that.

Speaker 3

I've just discussed.

Speaker 3

So the the process of amending the Constitution and also thereafter once the amendment is passed.

Speaker 3

The process of the can you hear me grace sorry.

Speaker 3

Oh perfect, yeah, I can hear peffley.

Speaker 3

There are, so let's start again. It's it's very important.

Speaker 3

Uhm ex ante. Prior to passing a constitutional amendment.

Speaker 3

Uh, because.

Speaker 3

If if amendments are seen to be owned by the population at large and and the public is seen as a stake.

Speaker 3

Older there is potentially a greater chance that it would be adopted and a greater chance that will be seen as legitimate, but it's also really, really important ex post facto because the survival of the regime in part depends upon the ability to mimic.

Speaker 3

To mimic features of democratic accountability.

Speaker 3

And to mimic features of.

Speaker 3

Constraint on government features of constitutionalism. So just looking at the ex ante factor first.

Speaker 3

When we look at Putin's reforms in 2020, we see what Paul Good is referred to as a patriotic legitimation, coming to the four of these amendments.

Speaker 3

So you see.

Speaker 3

The entrenchment of principles.

Speaker 3

And commitment to the Russian Federation's or Russia religious history and Orthodox history. Coming into the amendment process and there are now passages within the Russian Constitution that talk about its thousand year old history and its connexion to Russian.

Speaker 3

In addition, you see an increasing culture war being brought into the amendment process, so we also saw a commitment to marriage being between a man and a woman in the Russian constitution, potentially rendering.

Speaker 3

Same sex marriages and.

Speaker 3

Institutional within the Russian setting. So why is this relevant to popular constitutionalism? Well, it was seen as an attempt by Putin to shore up his support among certain sections of the Russian population, and there's no doubt that those measures may well find support within.

Speaker 3

More conservative

Speaker 3

Of corners of public opinion. So the populist angle was certainly very important, especially in circumstances where Putin was putting this to a public vote. A nationwide vote in in 2020.

Speaker 3

When we look at the ex post facto situation, this is a really dangerous moment for the authoritarian we we often think that non Democrats can simply institute reform and we almost accept as an inevitability.

Speaker 3

That these amendments will pass and that their longevity is.

Speaker 3

Secured, but that's.

Speaker 3

Not always the case and we saw this in surge sanctions example.

Speaker 3

Having created a new parliamentary Republic, Surgam was faced with a popular uprising because although elements of this new, a parliamentary Republic were endorsed by the population, they were not willing to endorse him as.

Speaker 3

The Prime Minister, and so that's where ownership. The sense of ownership of the Constitution may actually also be dangerous as well as supportive of non democratic leaders.

Speaker 2

This idea of mimicking democratic regimes in certain respects is a really interesting one. That makes me think about sort of the you know, the the extent of a sort of global normalisation of certain ways of conducting government.

Speaker 2

All sort of appearances of conducting government, but in the interest of time, what I want to get onto is the question of legislatures and judiciaries.

Speaker 2

And so, as as you pointed out, we spend a lot of time thinking about.

Speaker 2

We spend a lot of time thinking about. Leaders in these types of regimes but, but as you're also saying, these other institutions can be very significant, and so how significant is it for a President Putin to have control over the Duma and and?

Speaker 2

The judiciary in Russia.

Speaker 3

Yeah, the the the control over the State Duma, for example is is is critical in order to pass constitutional amendments, you need a constitutional majority within the Federal Assembly and and having control over the State Duma as Putin effectively does through.

Speaker 3

The United Russia Party of Power, as it's called it, is a very critical factor, and it's really interesting that we've discussed the 2024 problem.

Speaker 3

But there are. There are some commentators who believe that the 2021 problem was just as much of an obstacle for Putin precipitating the reforms early in 2020.

Speaker 3

What do I mean by the 2021 problem? While there were dummar elections in 2021 and.

Speaker 3

At the back end of 2019 early 2020.

Speaker 3

And it was not taken for granted that United Russia would obtain that majority. Now, in hindsight, because we've we've seen the 2021 elections were actually far more favourable for United Russia than we thought. And whether by.

Speaker 3

Hook or by crook. A Putin has managed to obtain that constitutional majority again. In hindsight, that was not an issue, but looking at things prospectively, Putin may not have been certain that if he delayed in the reform process he would have been able to pass his.

Speaker 3

So we've looked at the legislature, but let's think also about the judicial organs of power because we see in both the Russian Federation and in Belarus.

Speaker 3

Pretty soon into discussions about potential reform, the chairman.

Speaker 3

Of constitutional courts and supreme courts begin to rear their heads, and a good example of that was Vallieres Orkin in Russia, soon after the presidential elections in 2018, Zalkin begins talking about the need for reform for constitutional reform.

Speaker 3

Within Russia now one.

Speaker 3

Can't easily make conclusions about whether he was making those comments independently of the presidency, and I wouldn't encourage anyone to engage in this sort of active Putin aladji or kremlinology up. Who knows who was really influencing talking, or whether he was.

Speaker 3

Looking independently, but we do see pretty soon after the election, Zalkin talking about the need for reform. And one thing that will be interested in my research is seeing the extent to which his proposals, particularly in relation to greater legislative oversight of the Presidency, really made it in.

Speaker 3

To the Eventuating amendments, but.

Speaker 3

The other good.

Speaker 3

Example is lukashenka. It's pretty soon after the fraudulent elections in August of 2020, and the emergence of public protests on the streets of Minsk you suddenly see Lukashenko sitting down in a public forum.

Speaker 3

That is filmed and reported on widely in the state owned media. Him sitting down with the chairman of the Constitutional Court and discussing the prospect of reform so.

Speaker 3

Judicial what might be called judicial capture or judicial cooperation may well be, to varying degrees, an important part of this process of using amendment to the leadership's advantage.

Speaker 2

Thank you for listening to conventions, a podcast about the history of constitutions brought to you by the Quill project at Pembroke College, Oxford.

Speaker 2

I'm Grace Malan and I've been talking to lawyer and academic researcher Paul Fisher about the conundrum of authoritarian constitutionalism.