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Procedure as a Guarantee of Democracy: The Legacy of the Perestroika Parliament

*Frances H. Foster**

ABSTRACT

In this Article, the author chronicles the rise and fall of the “perestroika parliament.” While Gorbachev’s reforms were ultimately unsuccessful in producing effective democratic representation, the author believes that the history of these reforms provides some valuable lessons for post-Soviet Russia. Specifically, Professor Foster concludes that current reformers in Russia should learn from the failed perestroika parliament that a democratic, “rule-of-law” state requires uniform lawmaking procedures with constitutional safeguards to guarantee their integrity.

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This Article is a substantially revised and enlarged version of my chapter entitled *The Soviet Legislature: Gorbachev’s “School of Democracy,”* in TOWARD THE “RULE OF LAW” IN RUSSIA?: POLITICAL AND LEGAL REFORM IN THE TRANSITION PERIOD 115 (Donald D. Barry ed., 1992). I thank M.E. Sharpe, Inc. for permission to reprint portions of the chapter in this Article. I am grateful to Gray Dorsey and Louise Shelley for their helpful comments on earlier drafts and to Sieglinde Talbott for her research assistance.

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I. INTRODUCTION

On December 21, 1991, eleven former republics of the USSR pledged to build "democratic, law-governed states."¹ The transition from autocracy to democracy,² from rule by man to rule of law,³ obviously will be

1. *Alma-Atinskaiia Deklaratsiia* [Alma-Ata Declaration] (Dec. 21, 1991), PRAVDA, Dec. 23, 1991, at 1.

2. Vast political science literature exists dealing with the process of transition from authoritarianism to democracy. Guillermo O'Donnell and Philippe Schmitter have de-

long and hard fought. Recent events reveal just how stubbornly persistent are traditional authoritarian methods of government. Since late 1991, new states of what was once the Soviet Union have instituted in rapid succession broad executive powers to respond to national crisis.⁴

Demokratizatsiia and *pravovoe gosudarstvo* are terms startlingly familiar to observers of recent Soviet history. It was under these very stan-

defined "transition" as "the interval between one political regime and another," the period between an institutionalized authoritarian regime and "the installation of some form of democracy, the return to some form of authoritarian rule, or the emergence of a revolutionary alternative." GUILLERMO O'DONNELL & PHILIPPE SCHMITTER, *TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES* 6 (1986). See Dankwart Rustow, *Transitions to Democracy: Toward a Dynamic Model*, 2 COMP. POL. 350 (1970).

Scholars have concentrated their research largely on Latin American and Southern European case studies. See, e.g., *DEMOCRACY IN THE AMERICAS: STOPPING THE PENDULUM* (Robert A. Pastor ed., 1989) [hereinafter *DEMOCRACY IN THE AMERICAS*]; GEOFFREY PRIDHAM, *THE NEW MEDITERRANEAN DEMOCRACIES: REGIME TRANSITION IN SPAIN, GREECE AND PORTUGAL* (1984); *DEMOCRATIZING BRAZIL: PROBLEMS OF TRANSITION AND CONSOLIDATION* (Alfred Stepan ed., 1988). More recently, however, they have turned their attention to political developments in Central and Eastern Europe. See, e.g., Rudolf L. Tökes, *Hungary's New Political Elites: Adaptation and Change, 1989-90*, 39 PROBS. COMMUNISM 44 (Nov.-Dec. 1990); Stephen White, *Democratizing Eastern Europe: The Elections of 1990*, 9 ELECTORAL STUD. 277 (1990). Scholars are beginning to make similar evaluation of political reforms in the former USSR. See, e.g., Gavin Helf & Jeffrey W. Hahn, *Old Dogs and New Tricks: Party Elites in the Russian Regional Elections of 1990*, 51 SLAVIC REV. 511 (1992).

3. See generally FRIEDRICH A. VON HAYEK, *THE RULE OF LAW* (1975); Gianmaria Ajani, *The Rise and Fall of the Law-Based State in the Experience of Russian Legal Scholarship: Foreign Patterns and Domestic Style*, in *TOWARD THE "RULE OF LAW" IN RUSSIA?: POLITICAL AND LEGAL REFORM IN THE TRANSITION PERIOD* 3 (Donald D. Barry ed., 1992) [hereinafter *TOWARD THE "RULE OF LAW"*]; E.V. Kuznetsov & B.F. Savel'ev, *Pravovoe Gosudarstvo (iz istorii russkoi pravovoi mysli)* [*The Law-Governed State (From the History of Russian Legal Thought)*], 4 PRAVOVEDENIE, no. 1, 49 (1991).

4. See, e.g., *Postanovlenie Verkhovnogo Soveta RSFSR Ob Organizatsii Ispolnitel'noi Vlasti v Period Radikal'noi Ekonomicheskoi Reformy* [*RSFSR Supreme Soviet Resolution On the Organization of Executive Power During the Period of Radical Economic Reform*] (Nov. 1, 1991), ROSSIISKAIA GAZETA, Nov. 5, 1991, at 1; *Postanovlenie Verkhovnogo Soveta RSFSR O Pravovom Obespechenii Ekonomicheskoi Reformy* [*RSFSR Supreme Soviet Resolution On Legal Support for the Economic Reform*] (Nov. 1, 1991), ROSSIISKAIA GAZETA, Nov. 5, 1991, at 1; *Law of Ukraine On Changes and Additions to the Constitution (Fundamental Law) of Ukraine* (Feb. 14, 1992), translated in F.B.I.S.-USR, May 1, 1992, at 76; *Law of Azerbaijan Republic on State of Emergency* (Feb. 4, 1992), translated in F.B.I.S.-USR, May 5, 1992, at 152; M. Zaripov, *Prezident Poprosil Polnomochii* [*President Requests Powers*], SOV. ROSSIJA, Dec. 4, 1991, at 2 (reporting that Tatarstan president was granted additional powers until January 1993).

dards that Gorbachev launched his program for comprehensive political and legal reform.⁵ Similarly, the contemporary justifications for sweeping presidential rule raise the specter of Gorbachev. The death knell for the evolving Soviet democratic, law-governed state was precisely that now invoked by Gorbachev's successors—"national emergency."⁸

5. See *Tezisy Tsentral'nogo Komiteta KPSS K XIX Vsesoiuznoi Partiinoi Konferentsii* [Theses of the CPSU Central Committee For the Nineteenth All-Union Party Conference] (May 23, 1988), PRAVDA, May 27, 1988, at 1 [hereinafter *May Theses*].

6. The first major use of "national emergency" to justify enhanced executive authority at the expense of the new legislature occurred on October 2, 1989. Prompted by the blockade of the Trans-Caucasian and Azerbaijan railways, the Council of Ministers submitted a resolution asking the Supreme Soviet to grant it broad emergency powers to ban all strikes and to introduce order in railway transport and vital sectors of the economy. See L.A. Voronin, *Speech to USSR Supreme Soviet* (Oct. 2, 1989), Moscow Domestic Service, Oct. 2, 1989, translated in F.B.I.S.-SOV, Oct. 3, 1989, at 58. Supreme Soviet deputies rejected the government proposal, adopted a less sweeping compromise version, and called for swift preparation of a comprehensive law regulating state of emergency situations. See M. Rostarchuk & L. Telen, *No Delays Tolerated*, SELSKAIA ZHIZN', Oct. 4, 1989, at 1, translated in F.B.I.S.-SOV, Oct. 4, 1989, at 74. The approved resolution, despite its substitution of the term "urgent" for "emergency" measures and less restrictive strike prohibition, nonetheless transferred extensive and largely undefined powers to the Council of Ministers. *Postanovlenie Verkhovnogo Soveta SSSR O Neotlozhnykh Merakh Po Obespecheniiu Besspereboinogo Funktsionirovaniia Zheleznodorozhnogo Transporta i Bazovykh Otrastei Narodnogo Khoziastva* [USSR Supreme Soviet Resolution On Urgent Measures to Ensure the Uninterrupted Functioning of Railroad Transport and Basic Sectors of the National Economy] (Oct. 3, 1989), IZVESTIIA, Oct. 5, 1989, at 1. Soviet commentators and deputies did not ignore the potential ramifications of this delegation of legislative authority. For example, in an interview published the following week, a *Sotsialisticheskaia Industriia* correspondent queried whether these measures could possibly intensify "calls . . . from both the right and left to step up authoritarianism, . . . give special powers to the President and dissolve the Supreme Soviet." E. Leont'eva, *U Cherty Chrezvychainykh Mer* [At the Limit of Extraordinary Measures], SOTS. INDUSTRIIA, Oct. 10, 1989, at 2, 3. Her words proved prophetic indeed.

Constitutional amendments of March and December 1990 (*Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik Ob Uchrezhdenii Posta Prezidenta SSSR i Vnesenii Izmenenii i Dopolnenii v Konstitutsiiu (Osnovnoi Zakone) SSSR* [USSR Law On Establishing the Post of USSR President and Making Amendments and Additions to the USSR Constitution (Fundamental Law)] (Mar. 14, 1990), 12 *Vedomosti SSSR*, item 189 (1990) [hereinafter *March 1990 Constitutional Amendments Law*]; *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik Ob Izmeneniiakh i Dopolneniiakh Konstitutsii (Osnovnogo Zakona) SSSR v Sviazi s Sovershenstvovaniem Sistemy Gosudarstvennogo Upravleniia* [USSR Law On Amendments and Additions to the USSR Constitution (Fundamental Law) in Connection with the Improvement of the System of State Management] (Dec. 26, 1990), PRAVDA, Dec. 27, 1990, at 2) established a strong presidential system with virtually unlimited emergency powers. See KONST. SSSR arts. 127/3 & 127/5 (as amended Dec. 26, 1990). They resulted in the effective disintegration of the Soviet legislature. See *infra* part IV.C.3.

This chilling repetition of the past is perhaps not surprising. In the rubble of the USSR, leaders and citizens alike grapple with the day-to-day problems of survival rather than the morals of history. To most, the legacy of the Gorbachev era is deterioration of the economy, fragmentation of the political system, breakdown of social stability and order, and erosion of spiritual values. Unfortunately, with this wholesale condemnation of the Soviet socialist past are lost its lessons for the post-Soviet democratic future.

One of the most maligned experiments of the Gorbachev era was the "perestroika parliament."⁷ Hailed as a "school of democracy"⁸ at its inception in May 1989, it ended its days thoroughly discredited for its failure to defend democracy against authoritarian challenges first from Gorbachev⁹ and then from the August 1991 coup organizers.¹⁰ This focus on its inglorious conclusion, however, obscures its promising beginnings. During its first year of existence the reformed Soviet legislature burst the functional and structural confines established for it by the Gorbachev leadership. With more enthusiasm than experience, federal

For an interesting discussion of the relationship between "national emergency" and Stalinism, see G. Bordiugov & V. Kozlov, *Vremia Trudnykh Voprosov: Istoriia 20-30kh Godovi Sovremennaiia Obshchestvennaia Mysl'* [A Time of Difficult Questions: The History of the Twenties and Thirties and Contemporary Social Thinking], PRAVDA, Oct. 3, 1988, at 3. The authors concluded that the coercive, authoritarian Stalinist system entered "through the gates of emergency measures." They identified several distinct periods of social and economic chaos that beset the young Soviet state during the 1920s and 1930s. They argued that in each of these so-called "crisis points" the Soviet leadership and people confronted two basic alternatives, resort to emergency measures or "preservation of democratic traditions." By consistently opting for the former, the communist party and country made the "wrong choice" with far-reaching tragic consequences. *Id.*

7. Iurii Feofanov, *Vzlet i Padenie Perestroichnogo Parlamenta* [Rise and Fall of the Perestroika Parliament], IZVESTIIA, Sept. 3, 1991, at 2.

8. K. Vitaliev et al., *Smotrit i Slushaet Vsia Strana* [The Whole Country Is Watching and Listening], IZVESTIIA, May 30, 1989, at 1.

9. See, e.g., *At the Crossroads—For the Umpteenth Time*, MOSCOW NEWS, Jan. 6-13, 1991, at 5; Aleksei Emel'ianov, *Pochemu Ia Vyshel Iz Verkhovnogo Soveta* [Why I Left the Supreme Soviet], LITERATURNAI A GAZETA, Jan. 9, 1991, at 2; L. Shevtsova, *Recoil; Postscript to the Fourth USSR Congress of People's Deputies*, KOMSOMOL'SKAIA PRAVDA, Jan. 8, 1991, at 2. But see Iurii Kalmykov, *Izbirateli, Deputaty, Parlament . . .* [Voters, Deputies, Parliament . . .], PRAVDA, June 6, 1991, at 3 (countering criticism of Supreme Soviet as "submissive").

10. See, e.g., Aksar Akaiev, Speech to USSR Supreme Soviet (Aug. 26, 1991), Moscow Central Television, Aug. 26, 1991, translated in F.B.I.S.-SOV, Aug. 28, 1991, at 28; Iurii Iu. Boldyrev, Speech to Extraordinary Congress of USSR People's Deputies (Sept. 4, 1991), in IZVESTIIA, Sept. 7, 1991, at 4; Aleksandr Bovin, *Pobeda! Chto Dal'she?* [Victory! What Next?], IZVESTIIA, Aug. 24, 1991, at 1.

deputies developed the embryo of a genuinely representative, professional, and independent legislature, a body that increasingly threatened the authority of Gorbachev himself.¹¹

The early efforts of the Soviet legislature produced both theoretical and practical lessons. They present a case study for examining the abstract notions of democratic institutionalization,¹² transition,¹³ and consolidation¹⁴ that are hotly debated in Western political science literature. They offer insights into the evolution of political interest groups and their impact on legislative decisionmaking, a central focus of current United States legal scholarship.¹⁵ They provide concrete precedent and guidance for today's reformers in their quest for optimal mechanisms to introduce into post-Soviet systems meaningful popular representation and participation in the political process, effective separation of govern-

11. In fact, as I argue elsewhere, "it was the success, not the failure, of the federal legislature that dictated Gorbachev's return to authoritarian methods of rule." Frances Foster-Simons, *The Soviet Legislature: Gorbachev's "School of Democracy,"* in TOWARD THE "RULE OF LAW," *supra* note 3, at 115, 117.

12. The seminal work on institutionalization is SAMUEL P. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* (1968). For an examination of the Soviet legislature in light of Huntington's model, see Thomas F. Remington, *Parliamentary Government in the USSR, in PERESTROIKA-ERA POLITICS: THE NEW SOVIET LEGISLATURE AND GORBACHEV'S POLITICAL REFORMS* 175 (Robert T. Huber & Donald R. Kelley eds., 1991) [hereinafter PERESTROIKA-ERA POLITICS].

13. For information on transitions literature, see *supra* note 2.

14. The term "democratic consolidation" refers generally to the period between the first "founding" election of a democratic government and the establishment of a stable democracy. See White, *supra* note 2, at 286. See also Giuseppe DiPalma, *Parliaments, Consolidation, Institutionalization: A Minimalist View, in PARLIAMENT AND DEMOCRATIC CONSOLIDATION IN SOUTHERN EUROPE* (Ulrike Liebert & Maurizio Cotta eds., 1990). Political scientists have suggested a wide variety of frameworks and standards by which to judge completion of a democratic consolidation. These include "objective conditions" (e.g., rotation of political parties in government), popular acceptance of democratic norms and institutions, and elite strategies. See, e.g., GIUSEPPE DIPALMA, *TO CRAFT DEMOCRACIES* 137-44 (1990); Adam Przeworski, *Some Problems in the Study of the Transition to Democracy, in TRANSITIONS FROM AUTHORITARIAN RULE: COMPARATIVE PERSPECTIVES* 47 (Guillermo O'Donnell et al. eds., 1986); Laurence Whitehead, *The Consolidation of Fragile Democracies: A Discussion with Illustrations, in DEMOCRACY IN THE AMERICAS, supra* note 2, at 76. An outstanding review of political science literature on democratic transitions and consolidations appears in Juliet Kaarbo, *Coalition & Opposition Parties in Democratic Consolidation: Hungary's First Year of Democracy* 1-6 (1992) (paper delivered at Midwest Slavic Conference, Columbus, Ohio, May 1-3, 1992, on file with author).

15. An outstanding symposium on public choice appears in 74 VA. L. REV. 167-518 (1988). For a thoughtful critique of public choice, see DANIEL A. FARBER & PHILIP P. FRICKEY, *LAW AND PUBLIC CHOICE* (1991).

mental powers, and enforceable guarantees of fundamental human rights and liberties.¹⁶

This Article's concern is an equally important but more subtle legacy of the perestroika parliament—the discovery of an integral relationship between legislative procedure and democracy. From 1989 to 1990, Soviet deputies gradually realized through trial and error that a critical prerequisite for legislative independence and legitimacy is a set of binding, regularized rules created by the legislature. This experience has serious implications for the future of democratic, law-governed states in the former USSR. It suggests that current reformers must direct their attention not merely to the content and enforcement of laws but also to the very lawmaking process itself.

This Article, then, is more than a chronicle and evaluation of legislative development in the Gorbachev era. It is also a call for change. Drawing on recent decisions by the new Russian Constitutional Court¹⁷ and writings by Hans Linde¹⁸ and Laurence Tribe,¹⁹ it recommends the adoption of a constitutional standard of "due process of lawmaking."²⁰ This linkage of Russian and United States legal theory and practice is not as outlandish as it might appear at first blush. After all, when Sergei Stankevich announced in December 1989 that he and his fellow deputies

16. A recent collection of essays on the Soviet legislature contains relevant studies of each of these key points. See PERESTROIKA-ERA POLITICS, *supra* note 12.

17. See *infra* part V. The founding legislation of the Russian Constitutional Court was enacted on July 12, 1991. *Zakon RSFSR O Konstitutsionnom Sude RSFSR* [RSFSR Law On the RSFSR Constitutional Court] (July 12, 1991), *Vedomosti RSFSR*, no. 30 (1991). The Fifth Congress of Russian People's Deputies elected and swore into office thirteen justices on October 29-30, 1991. See Tamara Zamiatina, TASS, Oct. 30, 1991, in F.B.I.S.-SOV, Oct. 31, 1991, at 50. The Constitutional Court decided its first case on January 14, 1992. *Postanovlenie Konstitutsionnogo Suda RSFSR Po Delu o Proverke Konstitutsionnosti Ukaza Prezidenta RSFSR ot 19 Dekabria 1991 Goda No. 289 "Ob Obrazovanii Ministerstva Bezopasnosti i Vnutrennykh Del RSFSR"* [Decision of the RSFSR Constitutional Court On the Constitutionality of RSFSR Presidential Decree No. 289 of December 19, 1991 "On the Establishment of the Ministry of Security and Interior of the RSFSR"] (Jan. 14, 1992), ROSSIISKAIA GAZETA, Feb. 4, 1992, at 3.

18. Hans A. Linde, *Due Process of Lawmaking*, 55 NEB. L. REV. 197 (1976).

19. These works include LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW, ch. 17 (2d ed. 1988); Laurence H. Tribe, *Policy Science: Analysis or Ideology?*, 2 PHIL. & PUB. AFFS. 66 (1972) [hereinafter Tribe, *Policy Science*]; Laurence H. Tribe, *Structural Due Process*, 10 HARV. C.R.-C.L. L. REV. 269 (1975).

20. Linde, *supra* note 18. Farber and Frickey have identified three "strands" of due process of lawmaking: "institutional legitimacy," "legislative deliberation," and "procedural regularity." FARBER & FRICKEY, *supra* note 15, at 118-31. In this Article, the term "due process of lawmaking" refers solely to the third, procedural strand.

had "learned the value of procedure as a guarantee of democracy"²¹ surely one could hear the echoes of Justice Frankfurter's statement forty-five years earlier that "[t]he history of American freedom is, in no small measure, the history of procedure."²²

II. RULE BY LAW: GORBACHEV'S VISION OF THE DEMOCRATIC, LAW-GOVERNED STATE

In his first appearance as General Secretary of the Communist Party of the Soviet Union [CPSU] in March 1985, Mikhail Gorbachev proclaimed as his "fundamental goal" the "further improvement and development of democracy and of the entire system of socialist self-government."²³ Subsequent speeches revealed that the cornerstone of this reform process was to be the creation of a democratic, professional, yet distinctively socialist lawmaking body.

Gorbachev chose as the prototype for his new federal legislature the "Leninist"²⁴ tradition of soviets of people's deputies. The soviet system had a long and tumultuous history.²⁵ It had been forged on the anvil of revolution in 1905, refined and embellished by Lenin in the early years of communist rule, and subsequently disfigured by Stalin and his successors. In the ideal, it consisted of a network of broadly representative,

21. *Narodnye Deputaty: Slovo Pered S'ezdom* [People's Deputies: Words Before the Congress], SOV. KULTURA, Dec. 12, 1989, at 3, 3 (comment by Sergei Stankevich).

22. *Malinski v. New York*, 324 U.S. 401, 414 (1944) (Frankfurter, J. separate opinion).

23. Mikhail S. Gorbachev, Speech to Plenary Session of CPSU Central Committee (Mar. 11, 1985), PRAVDA, Mar. 12, 1985, at 3.

24. Although Gorbachev and many Soviet commentators have described the soviets as a "Leninist" model, in fact, these representative bodies originated in the Revolution of 1905. See A.A. Sentsov, *Razvitie Formy Rossiiskogo Gosudardstva v Nachale XX v.* [Development of the Form of the Russian State in the Beginning of the Twentieth Century], PRAVOVEDENIE, no. 4, 88 (1990).

This insistence on "Leninist" origins extended to the entire complex of Gorbachev reform proposals. See generally John Gooding, *Lenin in Soviet Politics, 1985-91*, 44 SOV. STUD. 403 (1992). On the "Leninist" bases of legal reforms see, e.g., MIKHAIL S. GORBACHEV, *PERESTROIKA 105-06* (1987); E. Chekharin, *Pravo i Perestroika* [The Law and Restructuring], PRAVDA, Mar. 1, 1988, at 3.

25. For background information on the history of soviets, see generally A.P. Butenko, *Politicheskaiia Vlast' i Borba Za Nee Pri Sotsializme* [Political Power and the Struggle for It At Socialism], SOV. GOS. I PRAVO, no. 3, 121 (1989); A.V. Ivanchenko, *Demokraticheskie Instituty v Istorii Sovetskogo Gosudarstva* [Democratic Institutions in the History of the Soviet State], SOV. GOS. I PRAVO, no. 1, 118 (1989); Alexander Rabinowitch, *The Evolution of Local Soviets in Petrograd, November 1917-June 1918: The Case of the First City District Soviet*, 46 SLAVIC REV. 20 (1989).

independent assemblies with supreme legislative, administrative, and supervisory authority at their respective levels. In practice, however, it deteriorated into a scheme of purely ornamental legislative bodies convened briefly each year to rubber-stamp laws prepared in advance by CPSU authorities.²⁶

In 1988 the soviets entered a decisively new phase of development. On July 5, the Nineteenth All-Union Party Conference followed Gorbachev's lead and approved a blueprint for comprehensive political reform. This dramatic plan sought to restore the soviets as the "bases of socialist statehood and self-management."²⁷ The party program received official legal status five months later when the Soviet legislature amended the Constitution to provide for a wholesale reorganization of the political structure and process at the federal level.²⁸ This set the stage for unprecedentedly open, competitive elections in March 1989 and, finally, the historic inauguration in May 1989 of the new supreme governing organ of the USSR, the USSR Congress of People's Deputies.

A. *The Impetus for Legislative Reform*

Gorbachev proposed democratization not as an end in itself but rather as an instrument to further rapid development of the Soviet economy.²⁹

26. See generally JOHN A. ARMSTRONG, *IDEOLOGY, POLITICS AND GOVERNMENT IN THE SOVIET UNION* 164 (4th ed. 1978); MARY MCAULEY, *POLITICS AND THE SOVIET UNION* 204 (1977); *Demokratia, Zakonnost', Vlast'* [Democracy, Legality, Power], *IZVESTIIA*, May 31, 1988, at 2. But see Stephen White, *The USSR Supreme Soviet: A Developmental Perspective*, in *COMMUNIST LEGISLATURES IN COMPARATIVE PERSPECTIVE* 125, 155 (Daniel Nelson & Stephen White eds., 1982) (arguing Supreme Soviet was of "more considerable . . . importance . . . than the 'rubber-stamp' stereotype").

27. *Rezoliutsii XIX Vsesoiuznoi Konferentsii KPSS: O Demokratizatsii Sovetskogo Obshchestva i Reforme Politicheskoi Sistemy* [Resolutions of the Nineteenth All-Union Party Conference: On the Democratization of Soviet Society and the Reform of the Political System] point 2 (July 1, 1988), *PRAVDA*, July 5, 1988, at 2 [hereinafter *Political Reform Resolution*].

28. *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik O Izmeneniakh i Dopolneniakh Konstitutsii (Osnovnogo Zakona) SSSR* [USSR Law On Amendments and Additions to the USSR Constitution (Fundamental Law)] (Dec. 1, 1988), *PRAVDA*, Dec. 3, 1988, at 1 [hereinafter *Constitutional Amendments Law*].

29. For example, Gorbachev unambiguously stated this proposition in an April 1985 report: "We must always bear in mind Lenin's idea that socialist democracy cannot be understood in the abstract. It has been and remains a tool for the development of the economy, the growth of man's activeness and the communist upbringing of the masses." Mikhail S. Gorbachev, *On Convening the Regular 27th CPSU Congress and the Tasks Connected with Preparing and Holding It*, *PRAVDA*, Apr. 24, 1985, at 1, translated in 37 *CURRENT DIGEST OF THE SOVIET PRESS* [CDSP], May 22, 1985, at 1.

This linkage of political and economic change explains the emphasis placed on the USSR legislative system. To the Soviet leadership, a reformed legislature could serve as an effective mechanism to combat two fundamental causes of economic stagnation under the Stalinist system: public apathy and alienation; and regulation of the economy by arbitrary, inconsistent administrative and party regulation. Accordingly, from 1985 to 1988, two³⁰ main objectives drove Soviet legislative reform policies and, ultimately, laws. These were political participation of the citizenry and professionalization of the lawmaking process.

Beginning in 1985 the first and most significant goal of legislative reform was to provide a democratic stimulus to energize the masses for the monumental task of modernizing the Soviet economy. Official speeches, party resolutions, and press commentaries all advocated the strategy of economic mobilization through political participation. The basic argument was that if the Soviet citizenry had a real stake in political decisionmaking, it would be more likely to give its enthusiastic backing and creative contribution to the process of economic restructuring.³¹

Initially, Soviet leaders and commentators expressed this participation goal in broad, hortatory terms. They harked back to Lenin to explain the inextricable connection between socialist democracy and economic reform, the critical importance of encouraging citizens' active involvement in state and public administration, and the longstanding communist party commitment to realizing genuine democracy and socialist self-government in the form of soviets of people's deputies.³²

With the drafting of a new CPSU program in the latter half of 1985,³³ discussion of political and legislative reform shifted in a more concrete direction. As a result, the Soviet party and state leadership reinterpreted participation to encompass increased public input into and information about the legislative process. The enhancement of actual public influence on the staffing of legislative bodies, however, remained

30. A third, less important goal, expansion of the administrative and monitoring functions of soviets also existed. See Foster-Simons, *supra* note 11, at 119.

31. See, e.g., E. Klopov, *Glavnaia Sotsial'naia Sila Uskoreniia* [The Main Force for Acceleration], PRAVDA, Oct. 24, 1986, at 2.

32. See, e.g., Mikhail S. Gorbachev, Speech to the Third Session of the Eleventh USSR Supreme Soviet, PRAVDA, July 3, 1985, at 1; I. Ilinsky & I. Rozhko, *Questions of Theory: The Democratism of the Soviet Political System*, translated in 37 CDSP, Nov. 6, 1985, at 24.

33. Gorbachev chaired the committee that drafted the CPSU program. See *V Politbiuro TsK KPSS* [At the CPSU Central Committee Politburo], PRAVDA, June 30, 1985, at 37. He summarized the basic provisions and goals of the program in a report to the CPSU Central Committee in mid-October 1985. PRAVDA, Oct. 16, 1985, at 1.

largely unaddressed. Thus, the February 1986 Political Report of the CPSU Central Committee to the Twenty-Seventh Party Congress directed the Supreme Soviet to "place greater emphasis on discussing proposals submitted by trade unions, the Komsomol, and other social organizations" and called for a system of regular reports by soviet executive committees to work collectives and general meetings.³⁴ While it recognized the need for "corrections" in election procedures, the Report stated that the party would "continue to see to it that deputies are elected from among the worthiest people who are capable of effectively running state affairs."³⁵

The January 1987 Plenum of the CPSU Central Committee formally extended the participation objective of legislative reform from indirect to more direct public involvement in the political process. In a dramatic opening speech, Gorbachev called for a series of radical political reforms, including multicandidate elections.³⁶ The Plenum responded by endorsing experimental elections in June 1987,³⁷ which allowed approximately five percent of local-level soviet deputies to be chosen in competitive elections.³⁸ After a year of intense political debate, the CPSU approved the introduction of multicandidate elections at the federal level as part of a total overhaul of the USSR government structure.³⁹

The overarching aim, however, was to create a legislative body that would represent all social strata and interests in a way consistent with basic Leninist theory and practice. Thus, the leadership did not favor direct, independent election by the Soviet citizenry of all federal deputies. Rather, it advocated continued control of the electoral process from above

34. *Political Report of the CPSU Central Committee to the 27th Congress of the Communist Party of the Soviet Union* (Feb. 25, 1986), in MIKHAIL S. GORBACHEV, *POLITICAL REPORT OF THE CPSU CENTRAL COMMITTEE TO THE 27TH PARTY CONGRESS* 70, 72 (1986).

35. *Id.* at 71-72.

36. *O Perestroike i Kadrovoi Politike Partii: Doklad General'nogo Sekretar'ia TsK KPSS M.S. Gorbacheva na Plenum TsK KPSS 27 Ianvar'ia 1987 Goda* [On Perestroika and the Party's Personnel Policy: Speech by M.S. Gorbachev, General Secretary of the CPSU Central Committee, at the Plenary Session of the CPSU Central Committee on January 27, 1987], *IZVESTIIA*, Jan. 28, 1987, at 1-5.

37. *See Postanovlenie Plenuma Tsentral'nogo Komiteta Kommunisticheskoi Partii Sovetskogo Soiuzo O Perestroike i Kadrovoi Politike Partii* [CPSU Central Committee Plenum Resolution On Perestroika and the Party's Personnel Policy], *PRAVDA*, Jan. 29, 1987, at 1; *TASS*, Feb. 17, 1987, in *F.B.I.S.-SOV*, Feb. 19, 1987, at R18.

38. For a detailed description and evaluation of the June 1987 elections, see Jeffrey W. Hahn, *An Experiment in Competition: The 1987 Elections to the Local Soviets*, 47 *SLAVIC REV.* 434 (1988).

39. *Political Reform Resolution*, *supra* note 27, point 2.

through such mechanisms as selection of a portion of deputies by established social organizations rather than by the Soviet populace at large.⁴⁰ Moreover, as the Nineteenth All-Union Party Conference stated clearly in an official resolution, any reform of the political system, including changes in electoral procedures and increased public participation in government, "must correspond in content and method with Lenin's idea of the party's leading role in society."⁴¹ As a concrete method to assure continued party dominance over the new legislative structure, the CPSU approved Gorbachev's proposal to nominate for the posts of chairmen of soviets, as a rule, the first secretaries of the corresponding party committees.⁴²

The second major goal of Soviet legislative reform was to create effective bodies capable of producing an appropriate statutory framework for successful accomplishment of Gorbachev's *perestroika* program. The leadership placed particular emphasis on reform at the highest, federal level, highlighting the special responsibility of the Supreme Soviet to "improve" legislation.⁴³ In reviewing the past, Soviet officials and commentators attributed many of the country's current economic woes to the de facto shift of lawmaking authority historically from the legislature to administrative organs.⁴⁴ This resulted in unpredictable, inconsistent regulation of the economy by ad hoc normative acts and instructions.⁴⁵ The proposed solution was a genuine working legislature with the authority, influence, and professional competence to replace the labyrinth of administrative regulations with a comprehensive and coherent legislative scheme.

To ensure a legitimate and effective legislature, the Soviet leadership called for eradication of the Stalinist command-administrative system of economic and political management. Initially, Gorbachev and his adherents levelled their attack on government agencies and personnel.⁴⁶ They

40. See, e.g., *May Theses*, *supra* note 5.

41. *Political Reform Resolution*, *supra* note 27, point 7.

42. *Id.* point 2. See V. Liubitskii, *Sovet: Vchera i Zavtra* [*The Soviet: Yesterday and Tomorrow*], PRAVDA, July 26, 1988, at 2; I. Shvets, *Chto Dast Sovmeshchenie Postov . . .* [*What Will the Combination of Posts Provide . . .*], PRAVDA, Sept. 27, 1988, at 2.

43. See, e.g., Gorbachev, *supra* note 32.

44. See, e.g., Iurii Feofanov, *Sovety: Vozvrashchenie K Sebe* [*Soviets: Return to Themselves*], IZVESTIYA, Feb. 16, 1988, at 1.

45. See, e.g., Iurii Feofanov, *Esli By Moi Sobesednik Byl Direktorom* [*If My Interviewee Was a Director*], IZVESTIYA, Jan. 3, 1986, at 3; *Priznany Ultrativshimi Silu* [*Deemed to Be No Longer in Force*], EKONOMICHESKAIA GAZETA, no. 12, 4 (1988).

46. See, e.g., Editorial, *Byt' Khoziannom, a Ne Gostem v Svoem Dome* [*Be Master, Not Guest, in Your Own Home*], PRAVDA, Oct. 2, 1986, at 1.

advocated the transfer to soviets of effective control over all matters arising within their respective jurisdictions as a "powerful antidote to the viruses" of "bureaucratism, parochialism and departmentalism."⁴⁷ This policy led to the adoption by the CPSU Central Committee, the Presidium of the Supreme Soviet, and the USSR Council of Ministers of the July 1986 resolution entitled On Measures to Enhance Further the Role and Increase the Responsibility of Soviets of Workers Deputies for Accelerating Social and Economic Development in Light of the Decisions of the Twenty-Seventh CPSU Congress.⁴⁸ Throughout 1985 and 1986, the leadership placed particular emphasis on the role of soviets as watchdogs over the activities of the administrative apparatus that was now both practically and formally to be subordinated to them. For example, in an October 1986 speech, Gorbachev praised Supreme Soviet deputies for giving the highest officials of the Ministry of Heavy and Transport Machinery "a good hiding, figuratively speaking—and they deserved it."⁴⁹

Beginning in late 1986, Gorbachev and his supporters broadened their assault to include individual party organs and members.⁵⁰ Under this new line, they traced many of the "deformations" of the past to a gradual usurpation by local party committees and cadres of the powers that Lenin had properly assigned to the elective organs.⁵¹ Accordingly, the CPSU leadership proposed a drastic reform of the political structure to revive the soviets as full-fledged, autonomous bodies of people's power and to institute a strict demarcation of party and state functions.⁵² As

47. Ilinsky & Rozhko, *supra* note 32, at 24.

48. See *V Politbiuro TsK KPSS [At the CPSU Central Committee Politburo]*, PRAVDA, July 30, 1986, at 1. *But see* TASS, *V Prezidiume Verkhovnogo Soveta SSSR [At the USSR Supreme Soviet Presidium]*, PRAVDA, Mar. 7, 1988, at 3 (detailing failure to implement the July 1986 resolution).

49. Mikhail S. Gorbachev, *Rech' Na Vstreche s Partiinym Aktivom Krasnodarskogo Kraia [Speech at a Meeting with the Krasnodar Party Aktiv]*, PRAVDA, Sept. 20, 1986, at 1 [hereinafter Gorbachev, *Krasnodar Speech*].

50. See, e.g., *V Politbiuro TsK KPSS [At the CPSU Central Committee Politburo]*, PRAVDA, Nov. 21, 1986, at 1 (noting that the Politburo formally criticized Perm Province Party Committee and its leaders for "serious failings"). See also O. Gusev et al., *Strozhie Sprashivat': S Plenuma TsK Kompartii Ukrainy [Make Stricter Demands: From the Plenary Session of the Ukraine Communist Party Central Committee]*, PRAVDA, Dec. 10, 1986, at 2; Editorial, *Oblastnoi Komitet Partii [Oblast' Party Committee]*, PRAVDA, Dec. 5, 1986, at 1.

51. See, e.g., *Vystuplenie Tovarishcha Gorbacheva M.S. [Speech by Comrade M.S. Gorbachev]*, IZVESTIYA, July 1, 1988, at 7; *May Theses, supra* note 5, part 6. For a use of the term "deformations," see Dmitrii Kazutin, *A Guide to Inaction*, MOSCOW NEWS, Mar. 13, 1988, at 12 (quoting Gorbachev).

52. *Political Reform Resolution, supra* note 27, points 2 & 7.

Gorbachev himself stressed on numerous occasions, however, this call to liberate the soviets from local party dictate by no means signalled a corresponding reduction of central party influence on the political process, let alone a renunciation of the CPSU's role and significance as the vanguard ruling party.⁵³

B. *The Constitutional Framework*

One month after the Nineteenth All-Union Party Conference the executive body of the Supreme Soviet, the Presidium, created two working groups to translate into constitutional and legislative form the directives for political reform set forth in the Conference resolutions.⁵⁴ These groups, composed of legal specialists and "responsible workers" from the Presidium and the CPSU Central Committee, devoted two months to formulating amendments to the USSR Constitution of 1977 and a new Electoral Law to conform with Gorbachev's *perestroika* and democratization policies. According to first-hand reports, the drafters based their texts primarily on the broad principles stated in the Conference resolutions and the more concrete instructions issued by CPSU Central Committee members and Gorbachev's closest advisors.⁵⁵ Apparently, there was intense debate throughout the period regarding the appropriate contours and powers of legislative organs.⁵⁶ Nevertheless, the working groups eventually hammered out a set of compromise statutory provisions, embodied in the draft Constitutional Amendments Law⁵⁷ and Electoral Law⁵⁸ of October 22, 1988. One month of "nationwide discus-

53. See, e.g., Gorbachev, *Krasnodar Speech*, *supra* note 49, at 1; Mikhail S. Gorbachev, Report to the USSR Supreme Soviet, *K Polnovlastiiu Sovetov i Sozdaniiu Sotsialisticheskogo Pravovogo Gosudarstva* [Toward Full Power For Soviets and Creation of a Socialist Law-Governed State] part V, PRAVDA, Nov. 30, 1988, at 1 [hereinafter Gorbachev, *Report to the Supreme Soviet*]. Accord TASS, *Stroit' Otnosheniia Sovetov s Predpriiatiami Na Novykh Nachalakh* [To Build Relations Between Soviets and Enterprises on New Principles], PRAVDA, Feb. 3, 1988, at 2 (speech by A.A. Gromyko).

54. For a detailed description of the drafting of the Constitutional Amendments Law and the Electoral Law, see MICHAEL E. URBAN, MORE POWER TO THE SOVIETS: THE DEMOCRATIC REVOLUTION IN THE USSR 46-53 (1990). See also M. Kushtapin, *Kto Prinimaet Popravki?* [Who Adopts the Amendments?], IZVESTIIA, Nov. 25, 1988, at 2.

55. See URBAN, *supra* note 54, at 48.

56. *Id.* at 48-53.

57. *Proekt Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik O Izmeneniakh i Dopolneniakh Konstitutsii (Osnovnogo Zakona) SSSR* [Draft USSR Law On Amendments and Additions to the USSR Constitution (Fundamental Law)] (Oct. 22, 1988), PRAVDA, Oct. 22, 1988, at 1.

58. *Proekt Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik O Vyborakh Narodnykh Deputatov SSSR* [Draft USSR Law On Elections of USSR People's Depu-

sion" followed during which journalists, legal scholars, officials, legislators, and citizens subjected many of the key elements of the proposed legislation to close scrutiny and sharp criticism.⁵⁹ These public comments had minimal impact, however, on the final versions of the Constitutional Amendments Law⁶⁰ and the Electoral Law,⁶¹ which the Supreme Soviet adopted on December 1, 1988.

1. Codification of *Demokratizatsiia*

The Constitutional Amendments Law expressly stated as its primary aim the "development of socialist democracy, self-government by the people."⁶² Article 108, which introduced a new "supreme body of state authority," the USSR Congress of People's Deputies, most directly reflected this emphasis on popular political rule. According to Gorbachev, this supralegisature was designed to "represent all social strata and shades of public opinion," "guarantee what Lenin called 'full democracy of the center'" and constitute "socialist pluralism of opinions in action."⁶³

The text of the Constitutional Amendments Law, as supplemented and reinforced by the Electoral Law, appeared to support Gorbachev's assertions. Article 109 promoted the goal of broad popular representation in the political process by providing for a Congress composed of 2,250 deputies elected in equal numbers from three constituencies: territorial okrugs, national-territorial okrugs, and all-union social organizations. In so doing, it determined voting by density, geographical distribution, and "specific interests, aspirations, and needs"⁶⁴ of the populace.

The new scheme offered numerous guarantees for enhanced public involvement in the federal government. It expanded opportunities to choose and to serve as people's deputies. The 1988 legislation stipulated that all elections from territorial and national-territorial electoral okrugs were to be conducted "on the basis of universal, equal, and direct suffrage by

ties] (Oct. 22, 1988), PRAVDA, Oct. 23, 1988, at 1.

59. See URBAN, *supra* note 54, at ch. 4. For an example of criticisms of the nationwide discussion and specific provisions of the drafts, see, e.g., A. Pol'shakov, *Komu Vydvigat' Kandidatov* [Who Should Nominate Candidates], SOTS. INDUSTRIIA, Oct. 28, 1988, at 3.

60. *Constitutional Amendments Law*, *supra* note 28.

61. *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik O Vyborakh Narodnykh Deputatov SSSR* [USSR Law On Elections of USSR People's Deputies] (Dec. 1, 1988), PRAVDA, Dec. 4, 1988, at 1 [hereinafter *Electoral Law*].

62. *Constitutional Amendments Law*, *supra* note 28, pmb1.

63. Gorbachev, *Report to USSR Supreme Soviet*, *supra* note 53, part III.

64. *Id.* part VI.

secret ballot."⁶⁵ Moreover, in sharp contrast to past practice, it expressly prescribed multicandidate competitive races.⁶⁶

Other major changes encouraged increased public knowledge, interest, and participation in the electoral process. Thus, Chapter VII of the Electoral Law, entitled 'Glasnost' in the Preparation and Conduct of Elections of USSR People's Deputies, required electoral authorities to supply citizens with information about candidate registration and background, voting results, and election outcomes. It also asserted the extensive powers of the media to publicize election developments. To facilitate campaign efforts, the Electoral Law established important guarantees for both voters and candidates, including the rights to campaign freely through meetings, rallies, and the mass media.⁶⁷

The Constitutional Amendments Law also addressed the question of popular input into and information about the decisions and activities of the Congress of People's Deputies. Article 94 contained a blanket statement that all soviets (including the Congress) must "take into account public opinion, submit the most important questions of nationwide . . . significance for discussion by citizens, and systematically inform citizens about their work and the decisions adopted." Articles 102 and 107 provided two other constitutional mechanisms by which voters and social organizations could influence the Congress: the so-called "mandate" and the right to recall "[d]eputies who fail to justify the trust of voters." Article 107 promoted popular information about the performance of their elected officials. It required deputies to report to voters, collectives, and social organizations regarding their own work and the activities of the Congress.

These promising indications of a formal constitutional commitment to enhanced public political participation should not be overstated, however. Even without the advantage of hindsight, it was doubtful that the Congress of People's Deputies could in fact fulfill its destiny as supreme organ of power. With its unwieldy numbers of deputies and infrequent sessions,⁶⁸ the Congress most likely would become as much of a facade of

65. KONST. SSSR art. 95 (as amended Dec. 1, 1988).

66. *Id.* art. 100.

67. *Electoral Law*, *supra* note 61, arts. 44 & 47. Chapter 7 of the Electoral Law also provided Soviet citizens, labor collectives, and social organizations the "opportunity to discuss freely and comprehensively the political, professional, and personal qualities" of candidates and to campaign both for and against candidates. In turn, it guaranteed candidates the rights to obtain all "necessary" information, to operate their campaigns at state expense, to employ up to ten campaign workers, and to be released from work for campaign events without any reduction in salary.

68. Article 110 of the amended Constitution provided for the Congress to meet only

popular self-government as its predecessor, the Supreme Soviet.

A closer look at the 1988 reforms revealed that it was the reconstituted and restructured Supreme Soviet, not the Congress, that had the greater potential to develop into an effective legislature. Under the new constitutional scheme, the Supreme Soviet was a virtually permanently functioning body, meeting twice yearly for three to four-month periods.⁶⁹ While still large, it was less than one-quarter of the Congress' size.⁷⁰ Yet, despite these obvious advantages of the Supreme Soviet, there was no opportunity for direct election of its deputies by the Soviet citizenry. Rather, pursuant to Article 111 of the amended Constitution, the Congress of People's Deputies had the sole authority to determine the membership of the Supreme Soviet by secret vote from among congressional deputies.

Furthermore, the legislative reforms of 1988 contained internal "filters"⁷¹ to constrain popular influence and participation in government. The most obvious filter provided for one-third of congressional deputies to be elected by social organizations.⁷² Because, at the time, the CPSU refused to acknowledge rival political parties, the few social organizations officially recognized for electoral (and other) purposes were the communist party, its youth group (the Komsomol), and other organizations that were unlikely to deviate from CPSU directive.⁷³ This resulted in a constitutional guarantee of significant communist party presence in both federal legislatures.

once a year unless the Supreme Soviet, its Presidium, its Chairman, one-fifth of the people's deputies, or a republic legislature called for additional extraordinary sessions. KONST. SSSR (as amended Dec. 1, 1988).

69. *Id.* art. 112.

70. The Supreme Soviet consisted of 542 deputies, divided equally into two chambers, the Soviet of the Union and the Soviet of Nationalities. Pursuant to Article 111 of the amended Constitution, the Congress had the power each year to replace one-fifth of the membership of the Supreme Soviet.

71. Both Western and Soviet commentators have used the term "filter" in their descriptions of USSR legislative reforms. *See, e.g.,* URBAN, *supra* note 54, at 29; Bill Keller, *Soviet People Go to Polls Today; For Many, a Real Choice Awaits*, N.Y. TIMES, Mar. 26, 1989, at 1, 14; A. Nazimova & V. Sheinis, *Vybor Sdelan [Choice Has Been Made]*, IZVESTIYA, May 7, 1989, at 3.

72. KONST. SSSR art. 109 (as amended Dec. 1, 1988).

73. ROBERT SHARLET, *SOVIET CONSTITUTIONAL CRISIS: FROM DE-STALINIZATION TO DISINTEGRATION* 93 (1992). A list of social organizations appeared in KONST. SSSR art. 95 (as amended Dec. 1, 1988). *See* Editorial, *Demokratiia i Initsiativa [Democracy and Initiative]*, PRAVDA, Dec. 27, 1987, at 1 (criticizing unofficial, grassroots organizations and concluding, "There is only one criterion here: Everything that benefits socialism and democracy should be supported 'from above.'").

The system of electoral commissions, bodies formed for each constituency by the corresponding soviets to supervise and direct the election of deputies, constituted an additional filter in the 1988 scheme.⁷⁴ These organs had significant powers to control the electoral process. This was particularly apparent at the stage of registration of candidate deputies. Chapter VI of the Electoral Law gave electoral commissions broad discretion to determine whether to approve or reject candidates nominated by voters' meetings or social organizations for inclusion on the final ballot.⁷⁵ In fact, in cases with more than two nominees, the Electoral Law expressly allowed electoral commissions to hold preelection meetings, question the candidates, and then eliminate even properly nominated individuals.⁷⁶

Another filter had the greatest potential to ensure control of the Soviet legislative process from above—the post of Chairman of the USSR Supreme Soviet. As discussed earlier,⁷⁷ despite constitutional provisions for election of the Chairman by congressional deputies,⁷⁸ in actuality the office was reserved for the General Secretary of the CPSU (i.e. Mikhail Gorbachev). Notwithstanding the clear dangers of concentrating chief state and party authority in the hands of a single individual, the Constitutional Amendments Law provided virtually no limits on the Chairman's authority in the form either of carefully defined and circumscribed legal powers or of institutional checks and balances.⁷⁹ Thus, the 1988 reforms gave constitutional legitimacy not only to Gorbachev's democratization program but also to his own status as architect and leader of the Soviet state.

74. *Electoral Law*, *supra* note 61, arts. 22, 24 & 26.

75. *Id.* arts. 37-42.

76. *Id.* art. 38.

77. *See supra* text accompanying note 42.

78. KONST. SSSR arts. 108(7) & 120 (as amended Dec. 1, 1988).

79. *See id.* arts. 120 & 121. For criticisms of the constitutional provisions regarding the Chairman, see, e.g., A. Alistratov et al., *Vybory: Sostizatel'nost' Kandidatov i Pozitsiia Izbiratelei* [Elections: Candidates' Competition and Voters' Position], *IZVESTIIA*, Nov. 23, 1988, at 2; O. Losoto & G. Ovcharenko, *Perestroika i Vlast'. Beseda v "Pravde"* [Perestroika and Power. Discussion at Pravda], *PRAVDA*, Jan. 31, 1990, at 1; *Passages From an Article, which the Government Newspaper Izvestiia Refused to Publish*, by Leonid Batkin, Member of the Moscow Tribune Informal Group: *Diversion to Democracy?*, *PROFIL*, Dec. 5, 1988, at 5, translated in *F.B.I.S.-SOV*, Dec. 6, 1988, at 103.

2. Professionalization of the Lawmaking Process

The 1988 Constitutional Amendments Law introduced significant changes into every stage of the legislative process.⁸⁰ Originally only the highest federal and republic legislative and executive organs, USSR Supreme Soviet deputies, the USSR Supreme Court, the USSR Procurator General, and social organizations could initiate legislation.⁸¹ Article 114 of the 1988 amendments expanded this list to include the Chairman of the USSR Supreme Soviet, the Constitutional Oversight Committee, the USSR Committee for People's Control, the USSR Chief State Arbitrator, and the USSR Academy of Sciences.

The Constitutional Amendments Law expressly covered preparation of draft statutes, the critical stage unaddressed in the 1977 Constitution. Articles 122 and 123 assigned the tasks of drafting laws and conducting "preliminary discussion" of drafts to the standing commissions and committees of the Soviet of the Union and the Soviet of Nationalities, the two chambers of the USSR Supreme Soviet. The original and revised versions of the 1977 Constitution treated draft publication and amendment nearly identically. Neither contained an automatic, guaranteed opportunity for public consideration and comment regarding draft laws. Committees could submit laws for nationwide discussion only with the specific permission of the Supreme Soviet.⁸² As a general rule, they would send drafts directly to the federal legislature for debate and approval.⁸³ The 1988 amendments made two interesting changes, however. First, the Supreme Soviet now had the exclusive power to decide whether to allow nationwide discussion.⁸⁴ Previously it had shared that right with the USSR Supreme Soviet Presidium, the small executive organ of the Su-

80. For a detailed description of the five basic stages of the legislative process and the early reforms instituted by Gorbachev, see Frances Foster-Simons, *Towards a More Perfect Union? The "Restructuring" of Soviet Legislation*, 25 STAN. J. INT'L L. 331 (1989).

81. KONST. SSSR art. 113 (1977).

82. *Id.* art. 114; KONST. SSSR art. 115 (as amended Dec. 1, 1988). On June 30, 1987 the Supreme Soviet enacted a statute to define and govern the nationwide discussion process. *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik O Vsenarodnom Ob-suzhdenii Vazhnykh Voprosov Gosudarstvennoi Zhizni* [USSR Law On Nationwide Discussion of Important Questions of State Life] (June 30, 1987), 26 *Vedomosti SSSR*, item 387 (1987). The law and its initial implementation are analyzed in Foster-Simons, *supra* note 80, at 345-51.

83. KONST. SSSR art. 114 (1977); KONST. SSSR art. 115 (as amended Dec. 1, 1988). See V.N. Kudriavtsev, *Demokratizatsiia i Pravovaia Reforma* [Democratization and Legal Reform], *IZVESTIIA*, June 1, 1988, at 4.

84. KONST. SSSR art. 115 (as amended Dec. 1, 1988).

preme Soviet.⁸⁵ Second, the amendments authorized a new body elected by the Congress,⁸⁶ the Constitutional Oversight Committee, to intervene in the drafting process. One of its prescribed duties was to assure that all draft statutes submitted to the federal legislature for official endorsement were consistent with the Constitution and the laws of the USSR.⁸⁷

Legislative approval of draft laws closely tracked past practice regarding Supreme Soviet adoption of statutes. Under the amended text the two chambers of the Supreme Soviet examined, discussed, and voted on draft laws at separate or joint sessions.⁸⁸ Any law was "deemed adopted" if passed by a majority of each chamber's deputies.⁸⁹ Where the Soviet of the Union and the Soviet of Nationalities failed to agree on approval of a draft, they would submit the law first to a so-called "conciliation commission" and then to both chambers for reconsideration at a joint sitting.⁹⁰ If there was still no resolution of the question, then the USSR Congress of People's Deputies would determine the fate of the draft law.⁹¹

This scheme, however, did represent some change from its 1977 predecessor. The amended version of the Constitution no longer expressly stipulated that drafts debated by the Supreme Soviet chambers "[w]here necessary, . . . may be referred to one or more commissions for preliminary or additional consideration."⁹² Another dissimilarity appeared in the last step for settling disagreements between the two legislative chambers. While the 1977 Constitution envisioned ultimate resolution either by the Supreme Soviet or by nationwide referendum,⁹³ the amended version assigned this duty to the new USSR Congress of People's Deputies.

Enactment and publication, the final stage of the legislative process, also received revised treatment in the Constitutional Amendments Law. Unlike the 1977 Constitution, the new text designated the Chairman of the Supreme Soviet, not the Chairman and Secretary of the Presidium, as the signatory of USSR laws and other acts adopted by the Congress, Supreme Soviet, and Presidium.⁹⁴ Moreover, it significantly expanded

85. KONST. SSSR art. 114 (1977).

86. KONST. SSSR art. 125 (as amended Dec. 1, 1988).

87. *Id.* art. 125(1).

88. *Id.* art. 115.

89. *Id.* Congress' laws and resolutions required adoption by a majority of votes of the total number of people's deputies. *Id.* art. 108(13).

90. *Id.* art. 117.

91. *Id.*

92. KONST. SSSR art. 114 (1977).

93. *Id.* art. 115.

94. Compare KONST. SSSR art. 121(1) (as amended Dec. 1, 1988) with KONST.

the category of laws requiring publication to include not only enactments of the Supreme Soviet but also those of the Congress of People's Deputies, the Supreme Soviet chambers, the Presidium, and the Chairman of the Supreme Soviet.⁹⁵

Despite the major modifications of the Soviet legislative structure and process introduced in 1988, there remained serious questions as to their practical value in creating an effective, professional legislature. Historically, the system contained five flaws, none of which was completely eradicated by the new legislation.

First, the federal legislature traditionally had little meaningful impact on the formulation of statutes. Rather, its prime function was to give official imprimatur to CPSU-proposed and approved laws.⁹⁶ Structural factors contributed to this impotence of the Supreme Soviet. The highest federal legislative body met only twice a year, usually for a total of two to three days per session, and, thus, was unable to play a major role in the drafting and discussion of legislation.⁹⁷ As discussed above,⁹⁸ the 1988 scheme targeted this structural problem by transforming the Supreme Soviet into a permanent legislative body. At the same time, however, it undermined this reform by establishing two federal legislatures whose respective jurisdictions and responsibilities in the formulation and adoption of legislation were not clearly defined or demarcated.⁹⁹

Second, the Soviet legislative process lacked opportunities for public input and access.¹⁰⁰ The Constitutional Amendments Law made some positive changes in this area. Articles 122, 115, and 119(15) provided greater specificity regarding the drafting, discussion, and publication of laws, respectively. Nonetheless, even in its revised version, the Constitution failed to guarantee the Soviet citizenry real influence or direct information regarding the initiation, preparation, or amendment of legisla-

SSSR art. 116 (1977).

95. Compare KONST. SSSR art. 119(15) (as amended Dec. 1, 1988) with KONST. SSSR art. 116 (1977).

96. See OLYMPIAD S. IOFFE & PETER B. MAGGS, *SOVIET LAW IN THEORY AND PRACTICE* 98-101 (1983); *Demokratiia, Zakonnost', Vlast'*, *supra* note 26; F.J.M. Feldbrugge, *Legislation*, in *ENCYCLOPEDIA OF SOVIET LAW* 477, 480 (2d ed. 1985).

97. JEAN BLONDEL, *COMPARATIVE LEGISLATURES* 56-60 (1973).

98. See *supra* text accompanying notes 69 & 70.

99. See Fedor Burlatskii, *Zakonodateli [Legislators]*, *SOV. KULTURA*, Apr. 6, 1989, at 2.

100. See IOFFE & MAGGS, *supra* note 96, at 107; A.S. Pigolkin, *Sovershenstvovanie Sovetskogo Zakonodatel'stva Na Sovremennom Etape [Perfection of Soviet Legislation at the Present Stage]*, *SOV. GOS. I PRAVO*, no. 1, 12, 17 (1988); V. Shipilov, *Pisma " . . . Ne Dlia Pechati" [Letters " . . . Not For Publication"]*, *IZVESTIIA*, Mar. 2, 1988, at 6.

tion. For example, the much-vaunted "nationwide discussion" of laws remained contingent upon Supreme Soviet approval.¹⁰¹

Third, the previous system gave the Presidium the dangerous constitutional authority to issue binding decrees and resolutions.¹⁰² In the past, the Presidium routinely had exploited this prerogative to amend, supplement, and repeal officially enacted laws on an ad hoc basis.¹⁰³ Despite this serious problem, the Constitutional Amendments Law continued to assign the Presidium broad legislative powers.¹⁰⁴ It tried to limit abuses by introducing potential checks in the form of mandatory publication of Presidium acts¹⁰⁵ and Constitutional Oversight Committee monitoring of Presidium decrees for conformity with the Constitution and laws of the USSR.¹⁰⁶

Fourth, the bureaucracy historically was a major impediment to achieving an independent, professional legislature. At the highest level, administrative organs and personnel regularly dictated the specific language and content of federal laws, obstructed the passage of "unacceptable" statutes, and flouted constitutional prescriptions by unilaterally amending Supreme Soviet enactments.¹⁰⁷

The revised version of the Constitution appeared to contain an impressive array of safeguards to ensure federal legislative primacy over the highest administrative apparatus. While continuing to recognize the Council of Ministers' rights to initiate federal legislation¹⁰⁸ and to issue binding resolutions and orders,¹⁰⁹ it provided express limitations on exercise of these legislative powers. Thus, Article 131 restricted the Council of Ministers to matters of USSR state administration not specifically assigned to the federal legislature (and Chairman of the Supreme Soviet). Article 133 stipulated that all acts must be "[o]n the basis and in execution of USSR laws and other decisions of the USSR Congress of People's

101. KONST. SSSR art. 115 (as amended Dec. 1, 1988).

102. KONST. SSSR, arts. 122 & 123 (1977).

103. See Feldbrugge, *supra* note 96, at 479; ARYEH L. UNGER, CONSTITUTIONAL DEVELOPMENT IN THE USSR 101-104, 210 (1981).

104. KONST. SSSR art. 119 (as amended Dec. 1, 1988).

105. *Id.* art. 119 (15).

106. *Id.* art. 125. The Presidium was not mentioned by name but it fell under the rubric of "organs or officials accountable to them [the Congress and Supreme Soviet]" by virtue of Article 118. Article 118 specifically described the Presidium as "an organ accountable to the USSR Supreme Soviet." *Id.* art. 118.

107. See Iurii Rytov, *Pobedit' Biurokrata* [Besting the Bureaucrat], IZVESTIYA, Mar. 1, 1988, at 2; *Zakon Dlia Vsekh Odin* [The Law Is the Same for All], PRAVDA, July 7, 1988, at 1.

108. KONST. SSSR art. 114 (as amended Dec. 1, 1988).

109. *Id.* art. 133.

Deputies and the USSR Supreme Soviet." Articles 108 and 113 mandated legislative ratification of the most important administrative documents, including the state plan and the state budget,¹¹⁰ and provided for Supreme Soviet repeal of unconstitutional acts issued by the Council of Ministers.¹¹¹ Article 125 provided the most far-reaching check on administrative lawmaking. It empowered the Constitutional Oversight Committee to monitor the constitutionality and legality of all laws and resolutions issued by the USSR Council of Ministers, union republic councils of ministers, and other state organs.¹¹²

Similarly, the 1988 text contained a number of articles specifically addressing the problem of administrative interference in the creation and enforcement of legislation. It attempted to limit intrusion by bureaucrats into federal legislative decisionmaking by prohibiting members of the Council of Ministers from serving simultaneously as people's deputies¹¹³ and by generally forbidding any interference in the electoral process.¹¹⁴ Moreover, it sought to enhance legislative control over bureaucratic personnel by requiring the Congress and the Supreme Soviet to appoint and to ratify the highest administrative officials¹¹⁵ and by guaranteeing people's deputies the right to question members of the Council of Ministers during formal legislative sessions.¹¹⁶ Finally, it assigned extensive powers to monitor administrative enforcement of laws to three legislative bodies—the Supreme Soviet,¹¹⁷ Supreme Soviet commissions and committees,¹¹⁸ and the Committee for People's Control, an organ established by

110. *Id.* arts. 108(5) & 113(10). Article 108(5) contained a particularly comprehensive grant of authority. It gave the Congress the power to ratify "highly important all-Union programs for the economic and social development of the USSR." Article 113(10) also empowered the legislature to amend the state plan and the state budget "whenever necessary."

111. *Id.* art. 113(18). Article 113(19) assigned the Supreme Soviet, in addition, the right to repeal union republic council of ministers' acts that were not in conformity with the USSR Constitution and USSR laws.

112. *Id.* art. 125(3).

113. *Id.* art. 96.

114. *Id.* art. 99. *See also Electoral Law, supra* note 61, art. 13 (providing for liability of officials of state bodies and social organizations for violations of Electoral Law).

115. KONSr. SSSR arts. 108(9) & 113(2) (as amended Dec. 1, 1988).

116. *Id.* art. 124.

117. Under Article 113, the Supreme Soviet had the express authority to "monitor progress in the implementation of the plan and the budget" and to hear regular reports by the Council of Ministers and any other organs or officials appointed by it. *Id.* art. 113(5), (10).

118. The Constitution empowered Supreme Soviet committees and commissions, among others, to investigate appointees to the Council of Ministers, to promote the implementation of laws and decisions adopted by the Congress and the Supreme Soviet, and

and accountable to the Supreme Soviet.¹¹⁹

On paper, then, the revised version of the Constitution appeared to institute numerous devices to protect the federal legislature from administrative interference. In fact, however, nearly every mechanism had an analogue in the original version of the 1977 Constitution. The powers to appoint the Council of Ministers, repeal its decisions, ratify and supervise the state plan and state budget, and monitor by direct and indirect means the execution of laws and administrative activities of the Soviet bureaucracy all predated the 1988 legislative reforms.¹²⁰ In the past, these provisions had amounted to mere illusions of federal legislative supremacy rather than effective restraints on administrative organs and officials.

Fifth, the communist party constituted by far the greatest threat to establishment of a competent, sovereign federal legislature. Despite constitutional provisions to the contrary, the CPSU, not the Supreme Soviet or its Presidium, traditionally exercised chief legislative authority.¹²¹ Party policy operated as the major impetus for new or amended legislation. Party officials either drafted statutes or participated as advisors in the process. The highest party body, the Politburo, determined when or even if a specific draft was suitable for submission to the public and the legislature. Once the Politburo approved a draft for formal enactment, the Supreme Soviet swiftly and unanimously endorsed it.

It is not surprising, therefore, that Soviet reformers dismissed the formulation and adoption of USSR legislation as a "stage-managed process."¹²² What is remarkable is that the 1988 amendments did not directly mention party involvement in lawmaking or, for that matter, the CPSU itself. The communist party appeared only indirectly under the general rubric of "social organization." As described above,¹²³ the 1988 Constitutional Amendments Law gave the CPSU as a social organization significant constitutional power to shape the composition and decisions of both federal legislatures. Moreover, it permitted the party to

to monitor the activities of state organs and organizations. *Id.* arts. 122 & 123.

119. The Committee for People's Control had the responsibilities to "verify the fulfillment of the requirements of legislation and state programs and targets; combat violations of state discipline, manifestations of parochialism and a departmental approach to the task, thriftlessness and extravagance, red tape, and bureaucracy." *Id.* art. 92.

120. See KONST. SSSR arts. 108, 121(7), 122(34), 129 & 130 (1977).

121. See Foster-Simons, *supra* note 80, at 335-38, 343-44, 372-73.

122. Iurii Shpakov, *Pervyi Etazh Vlasti [The First Level of Power]*, PRAVDA, Apr. 28, 1988, at 1.

123. See *supra* text accompanying note 73.

retain its official right to initiate legislation.¹²⁴ Similar to the treatment of the bureaucracy, the new scheme introduced one possible but weak check on party lawmaking—Constitutional Oversight Committee supervision of the “normative acts” of social organizations.¹²⁵

Thus, the Constitutional Amendments Law did not adequately address any of the fundamental defects in the Soviet legislative structure or process. In fact, its end result was the creation of a new, even more formidable rival to the federal legislature in the person of the Chairman of the Supreme Soviet. Article 121 of the amended Constitution guaranteed the Chairman the rights to initiate legislation; to “exercise overall leadership over the preparation of questions subject to examination by the USSR Congress of People’s Deputies and the USSR Supreme Soviet”; to sign laws; to nominate the first deputy Chairman of the Supreme Soviet, members of the Constitutional Oversight Committee, and highest administrative and legal officials; and to issue “orders.”¹²⁶ These broad powers amounted to a constitutional license for the Chairman to supplant the federal legislature in every lawmaking stage.

C. *Legislative Reform in Theory and Practice*

Gorbachev’s interpretation of *demokratizatsiia* and *pravovoe gosudarstvo* clearly was neither “government by the people” nor “rule of law.” His reform program featured a legislature more reflective of popular interests yet still fundamentally responsive to central party directive and guidance. Both theoretical underpinnings and structural design promoted outside domination.

In initial proclamations and justifications for legislative change, the adjective “socialist” invariably preceded the noun “democracy.”¹²⁷

124. KONST. SSSR art. 114 (as amended Dec. 1, 1988).

125. *Id.* art. 125(4).

126. *Id.* art. 121.

127. See, e.g., A. Eberlin, *Democracy and Public Order*, BAKINSKII RABOCHII, Mar. 12, 1988, at 2, translated in F.B.I.S.-SOV, Mar. 28, 1988, at 64; Gorbachev, *supra* note 29; Mikhail S. Gorbachev, Address to Fourth All-Union Congress of Kolkhoz Members (Mar. 23, 1988), PRAVDA, Mar. 24, 1988, at 1, 1; TASS, *Vysokoe Napriazhenie—Kazhdomu Dniu Perestroiki* [Great Effort—For Every Day of Perestroika], PRAVDA, Feb. 2, 1988, at 2. For an explanation of a similar use of “socialist” to modify “pluralism,” see Andrei Vinogradov, *The CPSU Expresses the Interests of All Working People*, RUDE PRAVO, Mar. 23, 1988, at 6, translated in F.B.I.S.-SOV, Mar. 31, 1988, at 49-50:

One still comes across the view that expressions of pluralism (in all kinds of issues) are something harmful and alien to socialism . . . I think that here it is appropriate to recall the principled clarification made during M. Gorbachev’s

Gorbachev's democracy was not an independent public good but an instrument of ideology. Its purpose was to advance Soviet socialism along the new path marked out by the current CPSU leadership.¹²⁸ This approach made the definition of democracy and its translation into action the exclusive preserve of Gorbachev and the party elite. It also set the stage for continuous CPSU supervision and intervention in the day-to-day operations of the new Soviet legislature to ensure conformity with changing policies and objectives of the party leadership. Gorbachev's "socialist democracy," like Stalin's "socialist law,"¹²⁹ was nothing short of a

meeting with the representatives of the French people last September. I am thinking of the importance of the adjective "socialist," which—as the CPSU Central Committee general secretary stressed—it is essential to add to the term "pluralism." Socialist pluralism, the absence of which under the one-party system is so often deplored, is based on socialist values. A frank exchange of views does not multiply problems—it crystallizes them, and helps alternative solutions to be found and the very best to be selected. After all, the exclusive nature of the Communist Party in our society has never been a purpose in itself. The system of several parties was maintained during the post-revolutionary years, and the members of the first All-Russian Central Executive Committee were not only Bolsheviks, but also left-wing Socialist Revolutionaries (SRs), Maximalist SRs, Mensheviks-Internationalists, and Ukrainian Socialists. It was not the Bolsheviks who removed them from the political arena—they themselves failed to pass the test of devotion to the ideas of the socialist revolution.

See generally Archie Brown, *The Soviet Leadership and the Struggle for Political Reform*, 1 HARRIMAN INST. F. 1, 3 (Apr. 1988); Thomas F. Remington, *A Socialist Pluralism of Opinions: Glasnost' and Policy-Making Under Gorbachev*, 48 RUSSIAN REV. 271 (1989).

128. See *supra* part II.A.

129. In the 1930s, Joseph Stalin dramatically departed from Marxist-Leninist orthodoxy when he proclaimed the need for a strong socialist state and stable legal system during the Soviet Union's transition to communism. See, e.g., Joseph Stalin, *Political Report of the Central (Party) Committee to the XVI Congress, 1930*, translated in SOVIET LEGAL PHILOSOPHY 235 (Hugh W. Babb trans. & ed., 1951); Joseph Stalin, *On the Draft Constitution of the USSR* (Nov. 25, 1938), translated in LENINISM 564-65 (1940). E.B. Pashukanski provided the most succinct definition of the Stalinist notion of socialist law in a 1936 recantation of his earlier views: "the law of the proletarian state [that] serves as an instrument for the construction of socialism." E.B. Pashukanski, *Gosudarstvo i Pravo Pri Sotsializme [State and Law Under Socialism]*, SOV. GOSUDARSTVO, no. 3, 3 (1936), translated in SOVIET POLITICAL THOUGHT: AN ANTHOLOGY 315, 321 (Michael Jaworskyj trans. & ed., 1967). Andrei Ia. Vyshinskii, the leading exponent of the new "permanent socialist law," see W.E. BUTLER, SOVIET LAW 35 (2d ed. 1988), went even further to exalt socialist law precisely because it emphasized "the interests and needs of the proletarian revolution . . . rather than the formal element, the wording, or legal formula." ANDREI IA. VYSHINSKII, REVOLUTIONARY LEGALITY ON THE PRESENT STAGE 16 (1933). See generally ANDREI IA. VYSHINSKII, THE LAW OF THE SOVIET STATE (Hugh W. Babb trans., 1948). This interpretation rationalized

formula for control.

The reform program buttressed theory with practical mechanisms to ensure subordination of the restructured legislature to central party command. Key examples appeared in the process for selection of deputies. As has been shown above,¹³⁰ the 1988 legislation reserved one-third of the seats in Congress for representatives of CPSU-sanctioned social organizations, introduced various electoral "filters" to screen out politically "unsuitable" candidates, and denied direct popular selection of the most significant legislators, Supreme Soviet deputies. Similarly, the new scheme provided two internal institutional constraints on legislative action in the form of the Presidium and the omnipotent Chairman of the Supreme Soviet.¹³¹ Finally, it carefully insulated the lawmaking process from outside influence by the popular electorate. Even in its revised version, the Soviet Constitution continued to offer virtually no avenues for meaningful public participation or impact on the initiation, formulation, and enactment of legislation.¹³² This isolation of power blunted any possible danger of competition between popular and party interests and demands.

The reform program did not promise institution of "rule of law" any more than it did "people's power."¹³³ While it created a more effective, professional lawmaking body, the basic function of this restructured legislature remained largely unchanged—to codify the policy directives of highest party authorities. Gorbachev recognized that the economic and political exigencies of the time required greater attention to the content and enforcement of statutes. Accordingly, to promote economic modernization, he called for rapid creation of comprehensive, predictable legal norms and rules.¹³⁴ At the same time, to counter the most likely threats to the future of *perestroika* and of Gorbachev himself, he insisted on strict observance and subordination of administrative and party personnel and organs to the law.¹³⁵ Unfortunately, his new scheme provided no

and licensed Stalin's extensive resort to both legal and extralegal means to crush popular resistance and political opposition. For accounts of Stalinist terror, see generally ROBERT CONQUEST, *THE GREAT TERROR: STALIN'S PURGE OF THE THIRTIES* (1968); PETER JUVILER, *REVOLUTIONARY LAW AND ORDER: POLITICS AND SOCIAL CHANGE IN THE USSR* (1976); NIKITA KHRUSHCHEV, *CRIMES OF THE STALIN ERA* (1962); ROY MEDVEDEV, *LET HISTORY JUDGE* (G. Shriver trans., 1989) (1972).

130. See *supra* notes 70-76 and accompanying text.

131. See *supra* notes 77-79, 102-106, 126 and accompanying text.

132. See *supra* notes 80-95, 100-01 and accompanying text.

133. Editorial, *Doverie Naroda [The People's Trust]*, PRAVDA, May 24, 1989, at 1.

134. See *supra* notes 29, 43-45 and accompanying text.

135. See *supra* notes 46-53 and accompanying text.

detailed blueprint regarding the nuts and bolts of the lawmaking process. Nor did it establish concrete devices to ensure administrative and party compliance.

In short, Gorbachev prescribed a system of "rule by law" rather than "rule of law."¹³⁶ His ideal "[p]arliament was not the representative organ of the people but an organ supporting [his] legislative power . . ."¹³⁷ The practical potential and limits of this legislative model readily became apparent in the early 1989 elections for the USSR Congress of People's Deputies.

In 1989 the Soviet leadership for the first time in history allowed its citizens genuine involvement in the selection of their legislative representatives.¹³⁸ The Soviet populace accepted this invitation with an enthusiasm that captured national and international attention. For four months, voters attended meetings and rallies by the thousands,¹³⁹ launched a veritable war of political posters, leaflets, and flyers,¹⁴⁰ and sported colorful campaign buttons.¹⁴¹ During this period, the USSR entered the age of electronic campaigning. Vans with loudspeakers patrolled city streets proclaiming the virtues and latest platforms of candidates.¹⁴² Radio and television provided extensive coverage of campaign events and fora for candidates to debate their views and answer voters'

136. This distinction between "rule by law" and "rule of law" is drawn from Noriho Urabe, *Rule of Law and Due Process: A Comparative View of the United States and Japan*, 53 LAW & CONTEMP. PROBS. 61, 63 (1990).

137. *Id.* at 63 (describing the nature of Japanese legislature under the Meiji Constitution but equally applicable to the "perestroika parliament" proposed by Gorbachev).

138. Editorial, *Nash Grazhdanskiy Dolg: Ispolnim Ego, Priniav Uchastie v Vyborakh* [Our Civic Duty: Let's Fulfill it by Participating in the Elections], PRAVDA, Mar. 26, 1989, at 1. For in-depth analyses of the 1989 elections, see Peter Lentini, *Reforming the Electoral System: The 1989 Elections to the USSR Congress of People's Deputies*, 7 J. COMMUNIST STUD. 69 (1991); Max E. Mote, *Electing the USSR Congress of People's Deputies*, 38 PROBS. COMMUNISM 51 (Nov.-Dec. 1989); Stephen White, *The Elections to the USSR Congress of People's Deputies, March 1989*, 9 ELECTORAL STUD. 59 (1990).

139. See, e.g., AFP, Mar. 19, 1989, in F.B.I.S.-SOV, Mar. 20, 1989, at 62; A. Davydov, *Moskva*, IZVESTIYA, Mar. 27, 1989, at 1.

140. See V. Drobotov, *Komu Doverit' Vlast': Debaty vo Dvore Vokrug Kandidatov i Ikh Programm* [Those To Whom Power Should Be Entrusted: Debates in the Main Square on Candidates and Their Programs], SOV. ROSSIIA, Mar. 12, 1989, at 1; A. Murtazaev, *Izbrany Narodnom* [Elected by the People], PRAVDA, Apr. 5, 1989, at 2; TASS, Mar. 17, 1989, in F.B.I.S.-SOV, Mar. 20, 1989, at 62.

141. Walter Isaacson, *A Long Mighty Struggle*, TIME, Apr. 10, 1989, at 52.

142. See N. Kishkin, *Vybory i Vybor* [Elections and the Choice], TRUD, Apr. 7, 1989, at 1.

questions.¹⁴³ The Soviet electorate also experienced the most negative aspects of political campaigns all-too-familiar to Western counterparts—outrageous campaign promises¹⁴⁴ and slander of opponents.¹⁴⁵

When Soviet voters went to the polls in late March, they demonstrated that they took their expanded, constitutional right of franchise as seriously as their new campaign guarantees. Nearly ninety percent of the electorate cast ballots.¹⁴⁶ They dealt a series of defeats to party loyalists

143. For example, the popular television program *Dobryi Večer, Moskva* [Good Evening, Moscow] featured debates among candidates for Moscow's twenty-six okrugs. See also, Bill Keller, *In Moscow's TV Political Debates, the Unspeakable Is Now Routine*, N.Y. TIMES, Mar. 22, 1989, at 1, 8; Katrina Vanden Heuval, *Counting the Votes and the Dead*, THE NATION, Apr. 17, 1989, at 523. See V. Dolganov, *Komplimentarnye Pomekhi v Debatakh* [Complimentary Obstacles in Debates], IZVESTIYA, Mar. 10, 1989, at 7.

There were problems with televised broadcasts, however, which included too limited time for candidates to describe their programs and to answer questions, biased questions from reporters, and frequent intervention by moderators to prevent real dialogue among candidates. See *id.*; Sergei Lomakin & Artem Borovik, Moscow Television Service, Mar. 17, 1989, translated in F.B.I.S.-SOV, Mar. 20, 1989, at 63. Moreover, there was occasional censorship of broadcasts even to the point of refusing to air some candidates' debates. See Vladimir Tikhonov et al., *Ban on Criticism: One Incident in the Lives of Candidates for Election to People's Deputies in the Epoch of Glasnost*, MOSCOW NEWS, Mar. 12-19, 1989, at 14.

144. See Editorial, *Otvetstvennost' Pered Izbirateliami* [Responsibility to the Voters], PRAVDA, Feb. 15, 1989, at 1, translated in 41 CDSP, Mar. 15, 1989, at 20, 20:

However, it sometimes happens that voters are promised everything but the moon. They suddenly find out that one candidate is promising that enterprises in his district will be environmentally clean in three years (!), while another intends to "increase purchases of imported manufactured goods until Soviet-made goods of equal quality are available." (Though he has nothing to say about when and how they will appear.) Some argue for immediate introduction of a convertible ruble, evidently ignoring our multibillion-ruble budget deficit. Some are demanding that all state apartments be sold to their occupants, forgetting to ask, however, whether the latter want and have the means to buy them.

Id. Accord A. Belousov, *Ia—Za Dostatochnost' Khleba i Oborony* [I—For Enough Bread and Defense], KRASNAIA ZVEZDA, Apr. 29, 1989, at 1.

145. See N. Volynskii & V. Loginov, *Zatianuvshaiasia Pauza. Razmyshleniia O Nekotorykh Urokakh Vyborov v Leningrade* [A Prolonged Pause: Reflections on Some Lessons of the Elections in Leningrad], PRAVDA, Apr. 20, 1989, at 2. A well-publicized example of such negative tactics was the so-called "smear campaign" against Boris El'tsin. See AFP, Mar. 24, 1989, in F.B.I.S.-SOV, Mar. 27, 1989, at 47; Boris El'tsin, *A Crisis Program Is Needed, Gorbachev!*, DAGENS NYHETER, Aug. 8, 1989, at 5, translated in F.B.I.S.-SOV, Aug. 10, 1989, at 52, 53.

146. See A. Plutnik & V. Shchepotkin, *Moskva, 25 Maia. Kremlevskii Dvoretz S'ezdov* [Moscow, 25 May. Kremlin Palace of Congresses], IZVESTIYA, May 26, 1989, at 1; *Soobshchenie Tsentral'noi Izbiratel'noi Komissii Ob Itogakh Vyborov Narodnykh*

and conservative officials so stunning as to surprise even the Gorbachev leadership.¹⁴⁷ In competitive races, they consistently favored the candidates espousing progressive political views and policies.¹⁴⁸ Where entrenched CPSU functionaries ran unopposed, Soviet voters protested these "elections without choice"¹⁴⁹ by crossing out the sole names on the ballot.¹⁵⁰ In so doing, they prevented unacceptable candidates from receiving the legal requisite for election of over fifty percent of votes cast.¹⁵¹ In the end, USSR citizens rejected thirty-four regional CPSU secretaries, the mayors of Moscow, Leningrad, and Kiev, and the former commander of Soviet forces in East Germany.¹⁵² They elected prominent political, religious, and nationalist reformers committed to radical changes far beyond those proposed by Gorbachev.¹⁵³

Deputatov SSSR v 1989 Godu [Report of the Central Electoral Commission on the Results of the 1989 Elections of USSR People's Deputies], IZVESTIIA, Apr. 5, 1989, at 1 [hereinafter *Central Electoral Commission Report*].

147. See B. Buchialis & G. Savitskas, *Discoveries and Lessons of Elections*, SOV. LITVA, Mar. 30, 1989, at 1, translated in F.B.I.S.-SOV, Apr. 13, 1989, at 54; Editorial, *Narod Sdelal Vybor* [The People Have Made Their Choice], PRAVDA, Apr. 1, 1989, at 1; Viktor Khatuntsev, *Vybory Prodolzhaitsia* [Elections Continue], PRAVDA, Apr. 9, 1989, at 3.

148. See, e.g., discussion of Moscow elections in URBAN, *supra* note 54, at 112.

149. N. Baklanov, *Kiev*, IZVESTIIA, Mar. 28, 1989, at 1, 1.

150. Such voting tactics had an enormous impact. In 195 districts, candidates failed to obtain the required majority of votes. In three other districts (all in Armenia), less than the requisite half of voters (*Electoral Law*, *supra* note 61, art. 55) participated in an expression of their displeasure with "elections without a choice." See S. Bablumian, *Erevan*, IZVESTIIA, Mar. 28, 1989, at 1. This necessitated repeat elections on May 14, 1989 in these 198 districts (and in one additional district where the elected deputy died). See TASS, May 13, 1989, in F.B.I.S.-SOV, May 15, 1989, at 62.

In some areas, unofficial organizations posted signs encouraging voters to cross out names of single candidates. For example, in Kalingrad, the Solidarity Society's posters read: "When you are deprived of a vote, vote against." A. Pilipchuk, *Shumikha Na Perekrestke, Ili Kakimi Metodami Deistvuiut "Neformaly" iz Kalingradskogo Obshchestva "Solidarnost'"* [Ballyhoo at the Crossroads, or the Methods Used by "Informals" from the Kalingrad "Solidarity" Society], KRASNAIA ZVEZDA, Mar. 11, 1989, at 1.

151. *Electoral Law*, *supra* note 61, art. 55.

152. Harry Anderson, *A Message to Moscow*, NEWSWEEK, Apr. 10, 1989, at 34. See also URBAN, *supra* note 54, at 112-14; Viktor Danilenko, *Electoral Reform*, in PERESTROIKA-ERA POLITICS, *supra* note 12, at 33, 48.

For a discussion of party losses, see Editorial, *Komu Liudi Doveriaiat. Avtoritet Partiinykh Rabotnikov Utverzhaetsia Delom* [Whom the People Trust: Party Workers' Authority Is Affirmed by Deeds], PRAVDA, Apr. 13, 1989, at 1.

153. See Bill Keller, *Soviet Voters Deal Humiliating Blow to Party Officials*, N.Y. TIMES, Mar. 28, 1989, at A1. For a complete list of elected candidates, see IZVESTIIA, Apr. 5, 1989, at 2-12.

Despite Gorbachev's claims to the contrary,¹⁵⁴ the dramatic, unexpected votes in the 1989 elections by no means reflected *demokratizatsiia* in action. Rather, they represented the well-publicized exceptions to an otherwise successful "road test"¹⁵⁵ of the prescribed model of "apparatus democratization"¹⁵⁶—democratic reform within the strict definition and control of Gorbachev and the party elite. The reality of *demokratizatsiia* was an electoral process that generally offered few contested races,¹⁵⁷ limited candidate information and access to voters,¹⁵⁸ licensed extensive outside interference with popular efforts to participate as candidates and voters,¹⁵⁹ and, ultimately, produced a legislature with substantially increased CPSU representation.¹⁶⁰

154. See, e.g., Mikhail Gorbachev, *Zakliuchitel'noe Slovo M.S. Gorbacheva na Plenum TsK KPSS 25 Aprelia 1989* [Concluding Speech of M.S. Gorbachev to the CPSU Central Committee Plenum on April 25, 1989], *IZVESTIIA*, Apr. 27, 1989, at 1.

155. Editorial, *Golosuem za Perestroiku: Segodnia—Vybory Narodnykh Deputatov SSSR* [We Vote for Restructuring: Elections of USSR People's Deputies Are Today], *KRASNAIA ZVEZDA*, Mar. 26, 1989, at 1.

156. Viktor Danilenko, *Kakim Vizhu Sovetskii Parlament* [How I Envision the Soviet Parliament], *LITERATURNAAIA GAZETA*, May 17, 1989, at 10.

157. Of the 1500 district races, a total of 384 were uncontested. The record of social organizations was even more dismal, with only 871 candidates for the 750 seats. The CPSU showed its support for democratic competition by nominating exactly 100 candidates for its 100 seats. See I. Karpenko, *Dorogi, Kotorymi My Vybiraem: Nakanune Poslednego Etapa Izbiratel'nomoi Kampanii* [The Ways We Choose: On the Eve of the Final Stage of the Election Campaign], *IZVESTIIA*, Mar. 8, 1989, at 2; *Central Electoral Commission Report*, *supra* note 146. For justifications of the CPSU approach, see Viktor Belousov, *Nazvany Partiei* [Nominated by the Party], *PRAVDA*, Feb. 25, 1989, at 2; TASS, *M.S. Gorbachev: Vybory 1989-90 Prodvigaiut Nas Daleko Vpered* [M.S. Gorbachev: The 1989 Elections Are Taking Us a Long Way Forward], *PRAVDA*, Mar. 27, 1989, at 1.

158. A public opinion questionnaire conducted by the All-Union Center for Study of Public Opinion revealed the most dramatic evidence of this. This poll indicated that three weeks before the elections, more than half the voting population still did not know who the candidates were. See N. Popov, *Obshchestvennoe Mnenie i Vybory* [Public Opinion and Choices], *IZVESTIIA*, Apr. 22, 1989, at 6. See also I. Karpenko, *Dorogi, Kotorymi My Vybiraem* [The Ways We Elect], *IZVESTIIA*, Mar. 21, 1989, at 1; Viacheslav Shchepotkin, *Volna i Krugi* [The Wave and the Ripples], *IZVESTIIA*, Feb. 9, 1989, at 2.

159. See *infra* notes 161-180, 188 and accompanying text.

160. CPSU representation rose from 71.4% in 1984 to 87.6% in 1989. However, only 31% of the full members of the CPSU Central Committee and 26% of its candidate members were elected to the Congress. Nazimova & Sheinis, *supra* note 71. In contrast to the CPSU, other groups, including workers and peasants, experienced reduced legislative representation as a result of the 1989 elections. See Iurii Kurbatov, *Gde Zhe Rabochie Kandidaty?* [But Where Are The Worker Candidates?], *SOTS. INDUSTRIIA*, Mar. 4, 1989, at 2 [hereinafter Kurbatov, *Worker Candidates*]; Iurii Kurbatov, *Proba Golosa* [A Sample of the Vote], *SOTS. INDUSTRIIA*, Apr. 4, 1989, at 1 [hereinafter

Indeed, in every phase of the electoral process the extralegal and legal filters "operated rigidly and impeccably."¹⁶¹ In nomination of candidates the longstanding practice of prior CPSU clearance and approval remained prevalent. Reports abounded of open "instructions" from party authorities regarding appropriate slates of candidates,¹⁶² "comrade to comrade" talks with "unsuitable" potential nominees to persuade them to withdraw their names from consideration,¹⁶³ and direct summons of nominating organizations to local CPSU headquarters for criticism and correction of their "unplanned" nominations.¹⁶⁴

Official electoral organs reinforced and supplemented this unofficial manipulation of the nomination process. Thus, social organizations used their legal authority to disqualify prominent reformists from their lists of candidates.¹⁶⁵ Electoral commissions directly¹⁶⁶ and indirectly¹⁶⁷ pre-

Kurbatov, *A Sample of the Vote*].

The number of female deputies decreased by more than half, a disturbing development. Commentators have generally attributed this drop to negative societal attitudes toward women and to lack of electoral experience and "boldness" of women's councils and female candidates. See T. Khudiakova, *Prekrasnii Pol: Shansy Stat' Deputatom* [*The Fair Sex: Chances to Become a Deputy*], *IZVESTIIA*, Dec. 30, 1989, at 2; Latinform Report, *Democracy for All is the Foundation of Restructuring*, *SOV. LATVIA*, Mar. 19, 1989, at 1, translated in *F.B.I.S.-SOV*, Apr. 7, 1989, at 59, 60. Mikhail Poltaranin suggested, however, that the low representation of women might not be entirely negative: "[W]e should not push them [women] into politics by force; after all, in our country they are still doing most of the housework and, therefore, have less free time." Kerstin Witt, *The Dictatorship of the Apparatus Is Over*, *PROFIL*, Apr. 3, 1989, at 54, translated in *F.B.I.S.-SOV*, Apr. 4, 1989, at 44, 45 (comment by Mikhail N. Poltaranin).

161. Nazimova & Sheinis, *supra* note 71, at 3.

162. See, e.g., Viacheslav Liubitskii, *Vydvizhenie Kandidatov: Uroki i Vyvody* [*Nomination of Candidates: Lessons and Conclusions*], *PRAVDA*, Jan. 28, 1989, at 3.

163. See, e.g., A. Davydov et al., *Kandidaty Nazvany—Bor'ba Vpered* [*The Candidates Are Nominated—the Struggle Lies Ahead*], *IZVESTIIA*, Jan. 25, 1989, at 2; G. Dildiaiev, *Pervye i . . . Edinstvennye?* [*The First and . . . Only Ones?*], *PRAVDA*, Mar. 21, 1989, at 2; Editorial, *supra* note 144; Kurbatov, *Worker Candidates*, *supra* note 160.

164. See, e.g., Kishkin, *supra* note 142 (noting that *Chernomorskaia Zdravnitsa* reporters summoned to city party committee and criticized for their "immaturity" in nominating a candidate without party approval).

165. For example, the USSR Academy of Sciences' Presidium refused to include Andrei Sakharov (and other reformists) on its slate of nominees on January 18, 1989. More than fifty-five scientific institutes had supported Sakharov's candidacy. See A. Davydov, *Zavershaetsia Pervyi Etap. Mandatov Bol'she Chem Pretendentov* [*First Stage Coming to a Close: More Mandates Than Contenders*], *IZVESTIIA*, Jan. 20, 1989, at 2. Academy research associates responded by organizing a protest rally, by establishing the Interinstitute Committee for Democratic Elections in the USSR Academy of Sciences, and by approving only eight of the twenty-three candidates in the March 21 Academy elections.

vented independent citizens groups from meeting to nominate candidates, disqualified nominees on specious procedural grounds,¹⁶⁸ and, in some cases, even forced withdrawal of would-be candidates to guarantee victory for party members.¹⁶⁹

In the postnomination phase, electoral commissions exercised even more substantial control. They demonstrated the practical application of the preregistration meetings stipulated in Article 38 of the 1988 Electoral Law.¹⁷⁰ If more than two nominees sought a legislative seat, electoral commissions routinely called preelection meetings to screen out undesirable candidates. These sessions often consisted of only limited questioning of candidates and consideration of their respective qualifications and platforms.¹⁷¹ In some instances, organizers even went so far as to estab-

This forced the Presidium to nominate on April 10 new candidates for the twelve vacant seats. The Presidium named Sakharov, who was ultimately elected as a deputy on April 20. See V. Dolganov & M. Kushtapin, *Deputaty ot Akademii Nauk SSSR [Deputies from the USSR Academy of Sciences]*, IZVESTIIA, Apr. 21, 1989, at 3; Valerii Kadzhaia, *Those Who Decided to Enter the Political Struggle in Earnest Should Earnestly Learn the Art of the Struggle: The Science of Choosing, Some Lessons From the Election Struggle of A. Sakharov, B. Yeltsin and V. Korotich*, NEDELIA, Apr. 10-16, 1989, at 7, translated in 41 GDSP, May 10, 1989, at 14; Gennady Zhavoronkov, *For Peace and Progress*, MOSCOW NEWS, Feb. 12-19, 1989, at 8 (interview of Andrei Sakharov).

166. For examples of outright bans on nomination meetings see, e.g., *Krainiaia Mera [Extreme Measure]*, KOMSOMOL'SKAIA PRAVDA, Jan. 24, 1989, at 2; Viacheslav Liubitskii, *Schet v Pol'zu Demokratii [Balance in Favor of Democracy]*, PRAVDA, Feb. 3, 1989, at 1. See generally M. Kushtapin, *Chto v Tsentral'noi Izbiratel'noi Komissii [What They Discussed at the Central Electoral Commission]*, IZVESTIIA, Jan. 14, 1989, at 2.

167. Indirect means included refusal to provide premises, belated announcement of meetings, deliberate selection of inconvenient times for sessions, and last-minute relocation of meetings without adequate notice to the public. See, e.g., Drobotov, *supra* note 140, at 1; Editorial, *supra* note 144; Kurbatov, *Worker Candidates*, *supra* note 160.

168. See, e.g., Kishkin, *supra* note 142; I. Korol'kov, *My Tak Schitaem . . . Zaiavili Izbirateliam v Raiispolkome i Sobranie Zakryli [Because We Think So . . . That Was What the Raiispolkom Told Voters, and the Meeting Was Closed]*, IZVESTIIA, Jan. 17, 1989, at 2.

169. See, e.g., AFP, Feb. 10, 1989, in F.B.I.S.-SOV, Feb. 10, 1989, at 49 (noting that Voronezh electoral commission withdrew Gavril Popov's name to ensure victory for Vitalii Vortnikov, a Politburo member and President of the RSFSR).

170. *Electoral Law*, *supra* note 61, art. 38. The Electoral Law did not mandate such meetings. It only stipulated that they "may be held." The statute barred election meetings "if no more than two candidates have been nominated for the okrugs . . ." *Id.* For a discussion of the ambiguous and incomplete legal provisions on preelection meetings that could be manipulated by electoral commissions, see Viacheslav Shchepotkin, *Pod Strogii Kontrol' Izbiratelei [Under Voters' Strict Control]*, IZVESTIIA, Jan. 23, 1989, at 1.

171. See Kishkin, *supra* note 142 ("Thus, the discussion is not the important thing,

lish "checkpoints" to restrict access to approved nominees.¹⁷² Not surprisingly, this resulted in a significant reduction in the number and diversity of candidates on the final slates.¹⁷³ For example, in one electoral okrug, the commission ultimately permitted registration for only one out of eleven original nominees—the first secretary of the oblast' party committee.¹⁷⁴

In preelectoral campaigns as well, there were major obstacles to full, independent participation by the citizenry. Party, administrative, and electoral authorities exploited their legal and practical controls over printing houses,¹⁷⁵ duplicating technology,¹⁷⁶ scheduling, location, and procedures of candidate meetings with voters,¹⁷⁷ access to the mass media,¹⁷⁸ and the like to favor some candidates at the expense of others. Similarly, national and local government officials used their regulatory

only the desire to reduce the number of candidates.".) *Accord* Interview with Vitalii Korotich, BBC, Feb. 27, 1989, in F.B.I.S.-SOV, Mar. 10, 1985, at 30.

The composition of meeting participants contributed to the pro forma nature of many preelection meetings. Although the Electoral Law provided for nominating organizations to select appropriate delegates. *Electoral Law*, *supra* note 61, art. 38, electoral commissions often handpicked delegates deemed most likely to vote for the nominees favored by local party authorities. See G. Barabashev & V. Vasil'ev, *Etapy Reformy* [Stages of Reform], PRAVDA, May 7, 1989, at 3; Karpenko, *supra* note 157; Iurii Nikolaev, *Izbitateli i Kandidaty* [Voters and Candidates], Sov. Rossiia, Feb. 28, 1989, at 1.

172. See, e.g., V. Liubitskii & A. Cherniak, *Voskhozhdenie K Demokratii: Po Stupeniam Predvybornoi Kampanii* [Ascent Toward Democracy: On the Rungs of the Election Campaign], PRAVDA, Apr. 4, 1989, at 3 (describing experience in Kiev City National-Territorial Okrug No. 33). *Accord* T. Boikova, *Difficult Lessons of Democracy*, SELSKAIA ZHIZN', Feb. 23, 1989, at 2, translated in F.B.I.S.-SOV, Feb. 28, 1989, at 44.

173. Electoral commissions used other techniques to refuse registration to properly nominated individuals. The most popular was invocation of an absolute residency requirement, which in fact did not appear in the Electoral Law. See, e.g., Liubitskii & Cherniak, *supra* note 172, at 3; G. Ovcharenko, *Povtornye Vybory* [Repeat Elections], PRAVDA, May 14, 1989, at 1; TASS, May 13, 1989, in F.B.I.S.-SOV, May 15, 1989, at 62.

174. See Shchepotkin, *supra* note 158. For a similar experience in the social organization context, see V. Dolganov, *Izbrany Pervye Narodnye Deputaty SSSR* [Selecting the First USSR People's Deputies], IZVESTIIA, Mar. 12, 1989, at 1.

175. See Kishkin, *supra* note 142; Shchepotkin, *supra* note 158.

176. See Kurbatov, *Worker Candidates*, *supra* note 160.

177. See Kishkin, *supra* note 142.

178. See Kurbatov, *A Sample of the Vote*, *supra* note 160. In some cases, local authorities used their control over information to discredit "unsuitable" opponents. See Lidia Grafova, *Effekt Bumeranga, Ili Nochnye Razgovory s Neugodnym Kandidatom* [The Boomerang Effect, or Nighttime Conversations with an Undesirable Candidate], LITERATURNIAIA GAZETA, Apr. 12, 1989, at 10; Lomakin & Borovik, *supra* note 143; Shchepotkin, *supra* note 158; Liubitskii & Cherniak, *supra* note 172, at 3.

power over "meetings, rallies, street processions, and demonstrations"¹⁷⁹ to limit or even ban rallies in support of opposition candidates.¹⁸⁰ This overall lack of "equal opportunities"¹⁸¹ seriously compromised opportunities for genuine competition among candidates.

Finally, in the election of deputies, the prearranged filters also revealed their value in practice. The scheme for selection of representatives from social organizations clearly inhibited the emergence of legislative interest groups or parties that might rival CPSU domination. Two

179. See *Ukaz Prezidiuma Verkhovnogo Soveta SSSR: O Poriadke Organizatsii i Provedenia Sobranii, Mitingov, Ulichnykh Shestvii i Demonstratsii v SSSR* [Decree of the USSR Supreme Soviet Presidium: On the Procedure for Organizing and Holding Meetings, Rallies, Street Processions and Demonstrations] (July 28, 1988), *IZVESTIIA*, July 29, 1988, at 2. For reports on other demonstration regulations, see, e.g., I. Pudalov, *In the Interests of Muscovites*, *VECHERNIAIA MOSKVA*, Sept. 1, 1987, at 2, translated in 39 *CDSP*, Oct. 7, 1987, at 8 (reporting on Moscow City Soviet Executive Committee's Decision On Gatherings, Rallies, Processions, Demonstrations and Other Events on Streets, Squares and Prospects and in Parks, Gardens and Other Public Places in the City of Moscow); *TASS*, July 29, 1988, in *F.B.I.S.-SOV*, Aug. 1, 1988, at 55 (reporting on RSFSR Law on Demonstrations). See generally Ralph Ruebner, *Public Demonstrations and the Rule of Law in the Age of Glasnost and Perestroika*, 5 *AM. U. INT'L L. & POL'Y* 13 (1989).

180. See, e.g., A. Davydov, *Manifestatsiia i Informatsiia* [Demonstration and Information], *IZVESTIIA*, Mar. 20, 1989, at 2. But see V. Dolganov, *Agitatsiia Bez Agitpunktov. Kakie Prava Predostavleny Kandidaty i Ego Izbirateliam v Predvybornoi Bor'be* [Agitation Without Agitation Stations. What Rights Are Given to Candidates and Their Constituents in the Election Campaign], *IZVESTIIA*, Feb. 4, 1989, at 2, translated in *F.B.I.S.-SOV*, Feb. 9, 1989, at 48, 50:

I want to emphasize in particular that the decree which you mentioned [demonstration decree] should not be applied in any circumstances in the election campaign, when it really is a question of preparation for elections. I am certain that no special permission is required. The law states bluntly: A candidate people's deputy can conduct meetings at rallies and in any other form convenient for the voters. In other words, a spontaneous rally can be held in a microrayon, near an apartment block, in a park or a small public garden . . . You can argue, discuss, and campaign for your candidate in the way this is done in a civilized society. Just bear in mind the conditions we mentioned earlier: legality and safety.

Id. (comments of Evgenii M. Koveshnikov, Chief of the Central Electoral Commission Juridical Group).

181. Kishkin, *supra* note 142; Liubitskii & Cherniak, *supra* note 172, at 3. On December 20, 1989, the government amended the Constitution to provide explicitly for "equal conditions" for all candidates. *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik Ob Izmeneniakh i Dopolneniakh Konstitutsii (Osnovnogo Zakona) SSSR Po Voprosam Izbiratel'noi Sistemy* [USSR Law On Amendments and Additions to the USSR Constitution (Basic Law) On Questions of the Electoral System] art. 100 (Dec. 20, 1989), *IZVESTIIA*, Dec. 23, 1989, at 1 [hereinafter *1989 Constitutional Amendments on the Electoral System*].

mechanisms accomplished this goal: limitation of electing bodies to legally established entities with "all-union organs;"¹⁸² and imposition of quotas for representation.¹⁸³ The first requirement successfully prevented organized representation of informal, independent groups potentially critical of leadership policies. Thus, in the 1989 elections voters chose official spokespeople for the All-Union Society of Philatelists, the All-Union Volunteer Society of Bibliophiles, and the All-Union Society Fighting for Sobriety, but had no opportunity to select deputies from religious communities, ecological organizations, nationalist fronts, or bodies championing the rights of the disabled or of Afghan War veterans.¹⁸⁴

The second element, the quota system, was equally effective in promoting party primacy. Norms of representation varied according to the political reliability of each social organization. For example, the communist party, USSR trade unions, and cooperative societies each elected one hundred deputies, and the Komsomol chose seventy-five legislators.¹⁸⁵ In contrast, journalists were permitted a mere ten congressional seats.¹⁸⁶ Philatelists received a greater voice in the new legislature than public educators.¹⁸⁷ This latter example provided particularly telling evidence of the major aim of social organization elections—representation of party rather than popular interests and needs.

The general elections further solidified CPSU influence over the new legislature. There were isolated reports of informal, illegal intervention in the voting process by party, administrative, and electoral commission personnel to guarantee the victory for preferred candidates.¹⁸⁸ In fact,

182. *Electoral Law*, *supra* note 61, art. 4.

183. *Id.* art. 17.

184. See Kurbatov, *A Sample of the Vote*, *supra* note 160, at 1.

185. *Electoral Law*, *supra* note 61, art. 18.

186. See V. Krichko, *Kontrol' Nad Vlast'iu* [Control Over Authorities], SOTS. INDUSTRIIA, May 17, 1989, at 1. The Electoral Law provided only general guidelines for social organization representation. It left determination of the specific quotas to "joint sitting[s] of the leading elected organs of these organizations or their agents, convened by the Central Electoral Commission, or, in the event of disagreement, [to] the Central Electoral Commission." *Electoral Law*, *supra* note 61, art. 18. This imprecise provision prompted numerous calls for reform. See, e.g., G. Popov, *cited in* Krichko, *supra*, at 1.

187. Krichko, *supra* note 186, at 1.

188. These tactics included direct pressure on voters (see, e.g., TASS, Interview with E.M. Kovesnikov, *IZVESTIIA*, Feb. 17, 1989, at 1), posting of "authorized agents" at polling stations to supervise and intimidate voters (see, e.g., Liubitskii & Cherniak, *supra* note 172), creation of fictitious requirements to void ballots (see, e.g., V.P. Zhdanov, *Kak My Budem Golosovat'* [How We Will Vote], *TRUD*, Mar. 18, 1989, at 4), and votes on behalf of citizens without their prior approval or knowledge (see, e.g., Arturas

however, there was no need for such individualized manipulation because the overall electoral scheme was heavily stacked in favor of CPSU control. For example, the provision for elections on a national territorial basis followed the social organization approach by allocating legislative seats according to officially determined geographical boundaries rather than actual nationality of voters.¹⁸⁹ This created effective barriers to representation of potentially troublesome minority ethnic groups, such as Crimean Tatars¹⁹⁰ and Germans.¹⁹¹ Even more importantly, the combination of the social organization and territorial election systems afforded CPSU members multiple opportunities to select deputies.¹⁹² The ultimate outcome of the 1989 elections was predictable. Eighty-seven percent of the new legislators were members of the communist party.¹⁹³

The real significance of the 1989 elections was not the successful formation of a party-dominated Congress of People's Deputies, however. More far-reaching was the fundamental gap revealed between leadership and popular notions of democracy and legislative reform. Gorbachev designed and instituted a malleable legislative body that would identify, transmit, and reflect a wide spectrum of public views through the constricted channels of CPSU-designated and controlled representative groups and personnel. Yet, the actual experience of selecting legislative deputies sent a decidedly contradictory message about the future of the new Soviet legislature. Through its active grassroots participation and unexpectedly independent voting, the Soviet populace expressed an un-

Grigaliunas, *Was Every Voter's Voice Truly Counted?*, TIESA, Apr. 7, 1989, at 2, translated in F.B.I.S.-SOV, July 14, 1989, at 49, 50).

189. See *Electoral Law*, *supra* note 61, art. 17; Popov, cited in Krichko, *supra* note 186, at 1.

190. Stalin forcibly exiled the Crimean Tatars to Soviet Central Asia during World War II. They engaged in open defiance of the Gorbachev regime. For example, they held a large demonstration in Moscow in July 1987. See Archie Brown, *Ideology and Political Culture*, in *POLITICS, SOCIETY, AND NATIONALITY INSIDE GORBACHEV'S RUSSIA* 1, 20 (Seweryn Bialer ed., 1989).

191. Soviet Germans originally lived in a separate Volga German Autonomous Republic within the Russian Republic. Stalin, however, ordered Soviet Germans to be transported to eastern parts of the USSR and their autonomous republic formally abolished. A 1948 decree prohibited Germans from returning to their original homeland and even established prison sentences for leaving resettlement areas without official approval. See V. Auman & V. Chernyshev, *Sovetskie Nemtsy Pered Voinoi i Segodnia* [*Soviet Germans Before the War and Today*], PRAVDA, Nov. 4, 1988, at 8.

192. See Valentin G. Rasputin, Speech to USSR Congress of People's Deputies (June 6, 1989), translated in F.B.I.S.-SOV (Supp.), June 7, 1989, at 20; *Uchit'sia Parlamentarizmu!* [*To Learn Parliamentarianism!*], LITERATURNAYA GAZETA, June 7, 1989, at 1 (interview with Anatolii I. Luk'ianov)

193. See Nazimova & Sheinis, *supra* note 71.

mistakable desire to have a greater voice in governance of their country. With the convocation of the first Congress of People's Deputies in May 1989, it soon became obvious that "apparatus democratization" was intrinsically incompatible with the aspirations of Soviet citizens and their legislators for nothing short of political self-determination. Over the next year, the prescribed leadership models of *demokratizatsiia* and *pravovoe gosudarstvo* increasingly clashed with emerging popular ideals of "democracy" and "rule of law."

III. THE STRUGGLE FOR LEGISLATIVE AUTONOMY

On the eve of the first elections for the Congress of People's Deputies, a *Pravda* editorial appealed for "precise observance of so-called procedural 'technicalities.'"¹⁹⁴ What was "at stake" was not merely election results, it explained, but "the establishment of trust in the future organs of power and in their ability to build a life for society based on the principles of social justice."¹⁹⁵

The 1989 election experience, especially the machinations of electoral commissions,¹⁹⁶ revealed that outside control over procedure was tantamount to control over the democratic process itself. At the same time, it showed that popular mastery and manipulation of procedural niceties, such as voter participation requirements,¹⁹⁷ could serve as an effective, if limited, counterweight to official dominance. These lessons and their implications for legislative reform were not lost on Soviet reformers.¹⁹⁸

194. See Editorial, *Golosuem Za Perestroiku. Zavtra Nachinaiutsia Vybery Narodnykh Deputatov SSSR Ot Obshchestvennykh Organizatsii* [We Vote in Favor of Restructuring. Elections of USSR People's Deputies From Public Organizations Begin Tomorrow], PRAVDA, Mar. 10, 1989, at 1.

195. *Id.*

196. The activities of electoral commissions, particularly the use of preelection meetings to limit nominees, were frequently criticized. See, e.g., sources cited in notes 166-74, 177, 188, *supra*. Commentators, voters, and deputies were concerned about the possible parallels between preelection meetings and legislative sessions. See, e.g., Danilenko, *supra* note 156, at 10; I.O. Bisher, Comments at USSR Congress of People's Deputies (May 26, 1992), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 25; A.I. Konovalov, Comments at USSR Congress of People's Deputies (May 26, 1992), *in id.* at 19.

197. See *supra* notes 150 & 151 and accompanying text.

198. For an outstanding summary of needed legislative reforms, see Danilenko, *supra* note 156. The author warned that conservative deputies would attempt "to subject the rules of parliamentary procedure to their own interests." He advocated the creation of "democratic procedure," which he defined as "rules and norms formulated and approved by the deputies themselves." He argued that this was the only possible way to ensure "real democratization" and "real leadership by deputies." *Id.*

From May 25, 1989, deputies joined battle over the previously "undivided domain of the apparatus"¹⁹⁹—parliamentary procedure.

A. "Consolidation Within the Framework of Pluralism":²⁰⁰ *The First Congress of People's Deputies*

For two weeks in late May and early June 1989, the Soviet populace and the world sat riveted to their television sets enthralled by the extraordinary spectacle unfolding on the very floor of the Kremlin Palace of Congresses. Before an audience of millions, Soviet legislators unabashedly criticized their colleagues,²⁰¹ system,²⁰² Constitution,²⁰³ "vanguard party,"²⁰⁴ and highest leaders.²⁰⁵ One deputy stood on the rostrum and openly denounced the fearsome KGB.²⁰⁶ Congressional voting was just as unrestrained and unpredictable. In a far cry from the "sham unanimity and fake concord"²⁰⁷ of the past, deputies abstained and dissented from officially sponsored measures,²⁰⁸ protested balloting irregularly-

199. V. Nadein, *Den' Pervyi [Day One]*, IZVESTIYA, May 26, 1989, at 1.

200. V. Shchepotkin, *Ogliadyvaias' Nazad i Zagliadyvaia Vpered [Looking Back and Looking Ahead]*, IZVESTIYA, May 20, 1989, at 3 (comment by K. Lubenchenko).

201. See, e.g., Iurii N. Afanas'ev, Comments at USSR Congress of People's Deputies (May 27, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 54; Muslim R. Mamedov, Comments at USSR Congress of People's Deputies (May 25, 1989), translated in *id.* at 4.

202. See, e.g., Iurii D. Chernichenko, Speech to USSR Congress of People's Deputies (June 1, 1989), translated in F.B.I.S.-SOV (Supp.), June 5, 1989, at 2-5.

203. See, e.g., Anatolii V. Gorbunov, Speech to USSR Congress of People's Deputies (May 31, 1989), translated in F.B.I.S.-SOV (Supp.), June 1, 1989, at 19-21; Aleksandr M. Obolenskii, Speech to USSR Congress of People's Deputies (May 25, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 9-11.

204. See, e.g., Boris N. El'tsin, Speech to USSR Congress of People's Deputies (May 31, 1989), translated in F.B.I.S.-SOV (Supp.), June 1, 1989, at 24-26; Aleksei M. Emel'ianov, Speech to USSR Congress of People's Deputies (June 8, 1989), in PRAVDA, June 9, 1989, at 3.

205. See A. Cherniak & A. Chernenko, *Ekzamen Na Vlast'. Ego Glasno Derzhali Kandidaty Na Vysshie Posty v Nashem Gosudarstve [Examination To Exercise Power: Candidates for Highest Posts in Our State Took It in Public]*, PRAVDA, June 12, 1989, at 2. Even Mikhail Gorbachev was not immune from public criticism. See TASS, May 25, 1989, in F.B.I.S.-SOV (Supp.), May 26, 1989, at 31. In fact, at the first session, Gorbachev had to defend himself from direct attacks on both his policies and personal life. See Mikhail S. Gorbachev, *Vystuplenie Tovarishcha Gorbacheva M.S. [Speech of Comrade M.S. Gorbachev]* (May 25, 1989), in PRAVDA, May 26, 1989, at 4.

206. Iurii P. Vlasov, Speech to USSR Congress of People's Deputies (May 31, 1989), translated in F.B.I.S.-SOV (Supp.), June 1, 1989, at 33-34.

207. Editorial, *Razmyshliaia o S'ezde [Reflecting on the Congress]*, PRAVDA, June 12, 1989, at 1.

208. For example, on May 26, deputies voted on a proposal to suspend demonstra-

ties,²⁰⁹ and even boycotted voting sessions.²¹⁰

For all its drama and novelty, however, the first meeting of the Congress of People's Deputies, like the elections, was a mere mirage of democracy. An *Izvestiia* commentator aptly likened it to a symphonic performance with Gorbachev as "the conductor . . . managing to extract a common tune from an orchestra even when soloists might be out of tune."²¹¹ Indeed, central party authorities carefully orchestrated the Congress. Following traditional patterns, the CPSU formulated the agenda, procedures, and goals without consultation or endorsement of newly elected legislators.²¹² In fact, deputies did not have an opportunity to review in advance preliminary materials or documents, including basic rules for election of the USSR Supreme Soviet, the major assignment of the first Congress.²¹³

On May 22 the CPSU Central Committee Plenum finalized arrangements for the Congress. It approved draft standing orders and a slate of nominees for the new Supreme Soviet, recommended selection of Gorbachev as Chairman of the reformed Supreme Soviet, and explained "the responsibility that communist deputies bear for the businesslike and constructive nature of the upcoming debate."²¹⁴ Attendees learned an early lesson in party-legislative relations. At the Plenum, Boris El'tsin

tion decrees for the duration of the Congress. The final vote was 831 in favor, 1,261 opposed, and 30 abstentions. See F.B.I.S.-SOV (Supp.), May 30, 1989, at 15.

209. See Vladimir A. Zubanov, Comments at USSR Congress of People's Deputies (May 27, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 2.

210. The Lithuanian delegation, which boycotted votes on election of Supreme Soviet deputies and formation of a Constitutional Oversight Commission, provides two illustrations. See Vitautas V. Landsbergis, Speech to USSR Congress of People's Deputies (May 26, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 35-36; Romas V. Gudaitis, Speech to USSR Congress of People's Deputies (June 8, 1989), translated in F.B.I.S.-SOV (Supp.), June 12, 1989, at 34-35.

211. E. Gonzal'ez, *Den' Tretii* [Day Three], *IZVESTIIA*, May 28, 1989, at 1.

212. See AFP, May 21, 1989, in F.B.I.S.-SOV, May 22, 1989, at 68; Oleg V. Chernyshev, Speech to USSR Congress of People's Deputies (May 29, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 38, 39.

213. See Gennadii I. Fil'shin, Comments at USSR Congress of People's Deputies (May 27, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 19; Gavril K. Popov, Speech to USSR Congress of People's Deputies (May 27, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 54-55.

214. Editorial, *supra* note 133, at 1. See *Informatsionnoe Soobshchenie o Plenumе Tsentral'nogo Komiteta Kommunisticheskoi Partii Sovetskogo Soiuzа* [Information Report on the CPSU Central Committee Plenum], *PRAVDA*, May 23, 1989, at 1; V. Chichin, *Five Days to Go. How the Leningrad Delegation of USSR People's Deputies Is Preparing for the Congress*, *LENINGRADSKAIA PRAVDA*, May 20, 1989, at 1, translated in F.B.I.S.-SOV, June 19, 1989, at 68.

questioned the appropriateness of considering a single candidate, the General Secretary of the CPSU, for the highest position in the new legislature. The party leadership roundly criticized him and reminded him of his duty as a party member to uphold the resolutions of the Nineteenth Party Conference.²¹⁵

Up to the last moment, the communist party in general and Gorbachev in particular exercised firm control over Congress preparation. On May 23 Gorbachev chaired a session of the Supreme Soviet Presidium, which gave legal imprimatur to the Plenum decisions.²¹⁶ That same day, in his capacity as CPSU General Secretary, he convened a special meeting of the communist party "group" of deputies to communicate and to reinforce central CPSU directives and policies.²¹⁷ Not until the day before the opening of Congress were legislators formally invited to participate in organizational matters, and even then only in a subordinate role under Gorbachev's watchful eye.²¹⁸

215. See Boris N. El'tsin, Comments at USSR Congress of People's Deputies (May 25, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 11; Bill Keller, *New Soviet Congress Set For Opening Debates*, N.Y. TIMES, May 25, 1989, at A5. Accord Boris V. Kryzhkov, Comments at USSR Congress of People's Deputies (May 25, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 6 (discussing pressure on communist members of Gorkii delegation to follow 19th Party Congress line regarding combination of posts).

216. See TASS, *Zasedanie Prezidiuma Verkhovnogo Soveta SSSR [USSR Supreme Soviet Presidium Session]*, PRAVDA, May 24, 1989, at 1.

217. See TASS, *Sobranie Partiinoi Gruppy S'ezda Narodnykh Deputatov SSSR [Meeting of the Party Group of the USSR Congress of People's Deputies]*, PRAVDA, May 24, 1989, at 1; Interview with Mikhail S. Gorbachev, Moscow Domestic Service, May 23, 1989, translated in F.B.I.S.-SOV, May 24, 1989, at 34; TASS, May 23, 1989, in F.B.I.S.-SOV, May 23, 1989, at 43.

218. On May 24, 446 representatives of regional groups of deputies assembled in the Kremlin for a 9-hour preliminary examination and discussion of issues to be considered by the Congress. Gorbachev presided over the meeting. See TASS, *Sobranie Predstavitelei Grupp Narodnykh Deputatov SSSR [Meeting of the Representative Group of USSR People's Deputies]*, PRAVDA, May 25, 1989, at 1. Nursultan A. Nazarbaiev formally presented the proposals of the conference of representatives at the opening session of Congress. For text, see F.B.I.S.-SOV (Supp.), May 26, 1989, at 3. The fundamental irrelevance of this session became painfully obvious the next day when members of the Congress of People's Deputies were presented with the original party-drafted and approved standing orders rather than the amended version prepared by their official representatives. *Vremennyi Reglament Zasedanii S'ezda Narodnykh Deputatov SSSR [Provisional Standing Orders of the USSR Congress of People's Deputies]* (May 25, 1989), PRAVDA, May 26, 1989, at 2 [hereinafter *Provisional Standing Orders*]. See Gavril K. Popov, Speech to USSR Congress of People's Deputies (May 25, 1989), translated in F.B.I.S.-SOV (Supp.), May 26, 1989, at 4-5; Antanas Y. Burachas, Comments at USSR Congress of People's Deputies (May 26, 1989), translated in F.B.I.S.-SOV (Supp.),

Mikhail Gorbachev remained the commanding figure throughout the official meetings of the Congress of People's Deputies. He asserted his claim to leadership from the very start in unmistakable fashion. He insisted on chairing the opening session in direct violation of the recently amended Constitution²¹⁹ and over the strong objections of elected deputies.²²⁰ This blatant disregard of established norms and rules characterized the entire two weeks that followed.

Gorbachev routinely ignored or unilaterally changed rules regarding such crucial matters as voting,²²¹ working hours,²²² recognition of speakers,²²³ presentation of written questions from deputies,²²⁴ time limits on congressional debates and speeches,²²⁵ and order of proceedings.²²⁶ Moreover, he manipulated procedural language to solidify further his personal control over the legislature. As a result, deputies found themselves compelled to vote "according to a mechanical majority"²²⁷ for a Supreme Soviet, Constitutional Oversight Commission, and the highest legislative officials that had all been handpicked by Gorbachev and the party elite.²²⁸

May 30, 1989, at 37.

219. See KONST. SSSR art. 110 (as amended Dec. 1, 1988) ("The first sitting of the USSR Congress of People's Deputies following the elections is chaired by the Chairman of the Central Electoral Commission for the Elections of USSR People's Deputies and subsequently by the Chairman of the USSR Supreme Soviet or his deputy."). Despite this provision, Gorbachev presided over sessions prior to his formal election as Supreme Soviet Chairman.

220. See, e.g., A.V. Levashev, Comments at USSR Congress of People's Deputies (May 25, 1989), translated in F.B.I.S.-SOV (Supp.), May 26, 1989, at 10.

221. See, e.g., Mikhail S. Gorbachev, Comments at USSR Congress of People's Deputies (June 8, 1989), translated in F.B.I.S.-SOV (Supp.), June 12, 1989, at 41. See, e.g., Iurii E. Burykh, Speech to USSR Congress of People's Deputies (May 29, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 37.

222. See, e.g., Karasev, Comments at USSR Congress of People's Deputies (May 27, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 59.

223. See, e.g., Fil'shin, *supra* note 213, at 19.

224. Comment from unidentified deputy at USSR Congress of People's Deputies (May 27, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 61.

225. See, e.g., Interchange Between Gorbachev and Popov at USSR Congress of People's Deputies (May 27, 1989), translated in *id.* at 54.

226. See, e.g., Nikolai A. Strukov, Speech to USSR Congress of People's Deputies (May 29, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 40 (noting that Gorbachev departed from fixed agenda in calling for establishment of a commission to investigate actions of Telman K. Gdlian).

227. Popov, *supra* note 213, at 55. Accord A. Iablokov, cited in *Uchityvaia Golos Izbiratelei [Taking the Voice of the Voters Into Account]*, PRAVDA, June 2, 1989, at 1.

228. See Afanas'ev, *supra* note 201, at 54; Andrei D. Sakharov, Speech to USSR Congress of People's Deputies (June 9, 1989), translated in F.B.I.S.-SOV (Supp.), June

In the course of the two weeks, Gorbachev also developed a set of masterful techniques to constrain and influence deputy discussion and votes. At times he resorted to direct curtailment of "unsuitable" speech and speakers. He interrupted deputies at will²²⁹ and, in extreme cases, turned off their microphones.²³⁰ On other occasions, however, he preferred more indirect methods of control. These included unsolicited personal summary, commentary, and clarification of deputies' remarks,²³¹ recommendations regarding appropriate resolution and voting on issues,²³² and denigration of progressive legislators' procedural questions and criticisms.²³³ At his most subtle, Gorbachev communicated his views

12, 1989, at 65-67.

229. *See, e.g.*, Interchange Between Gorbachev and Stankevich at USSR Congress of People's Deputies (May 26, 1989), *translated in* F.B.I.S.-SOV (Supp.), May 26, 1989, at 36-37. *See* Tolpeshnikov, Comments at USSR Congress of People's Deputies (May 26, 1989), *translated in* F.B.I.S.-SOV (Supp.), May 30, 1989, at 56.

230. *See, e.g.*, Interchange Between Gorbachev and Sakharov, USSR Congress of People's Deputies (June 9, 1989), *translated in* F.B.I.S.-SOV (Supp.), June 12, 1989, at 67. *See* Iurii Rost, *Akademik A.D. Sakharov: S'ezd Ne Mozhet Sdelat' Vse Srazu . . .* [Academician A.D. Sakharov: "The Congress Cannot Do Everything Right Away . . ."], LITERATURNIAIA GAZETA, June 21, 1989, at 11 (interview with Andrei Sakharov).

231. *See, e.g.*, Mikhail S. Gorbachev, Comments at USSR Congress of People's Deputies (June 1, 1989), *translated in* F.B.I.S.-SOV (Supp.), June 6, 1989, at 8-9; Mikhail S. Gorbachev, Comments at USSR Congress of People's Deputies (June 8, 1989), *translated in* F.B.I.S.-SOV (Supp.), June 12, 1989, at 39-41. *See* Vladimir D. Iudin, Speech to USSR Congress of People's Deputies (May 29, 1989), *translated in* F.B.I.S.-SOV (Supp.), May 31, 1989, at 44.

232. *See, e.g.*, Mikhail S. Gorbachev, Comments at USSR Congress of People's Deputies (May 26, 1989), *translated in* F.B.I.S.-SOV (Supp.), May 30, 1989, at 14-15 (speaking on proposal to suspend demonstration decree during Congress). *See* A. Plutnik, *Den' Deciatii [Day Ten]*, IZVESTIIA, June 8, 1989, at 1 (reporting that Gorbachev "gently" persuaded deputies not to abstain).

233. *See, e.g.*, Mikhail S. Gorbachev, Comments at USSR Congress of People's Deputies (May 29, 1989), *translated in* F.B.I.S.-SOV (Supp.), May 31, 1989, at 25 (characterizing questions regarding procedure as "putting a spoke in the wheels of the Congress"). *See also* Mikhail S. Gorbachev, Comments at USSR Congress of People's Deputies (May 26, 1989), *translated in* F.B.I.S.-SOV (Supp.), May 30, 1989, at 53 ("I think gradually you are beginning to see that we work better when there are no interruptions, and so on."). Several deputies criticized Gorbachev for such behavior. *See, e.g.*, Sergei V. Belozertsev, Speech to USSR Congress of People's Deputies (May 29, 1989), *translated in* F.B.I.S.-SOV (Supp.), May 31, 1989, at 41:

To go on, Mikhail Sergeyevich, I call on you to give up the formula—Let's talk about it—after which come references to the time, working on the people in the hall by saying that resolving questions is being delayed by discussing procedural matters of the congress, and references to the need to postpone discussion, by saying that now there are objections. Why should all the pros and cons not be clearly

by reading from the podium notes; requests, and letters from deputies. For example, on May 26 he presented a note attributed to Deputies Kislitsyn, Karpochev, and Gorinov that stated, "Mikhail Sergeievich, when will the Moscow group of deputies stop causing disorganization and confusion in the congress' work? The standing orders should be applied to them too. They are dragging out the work of the congress. Is this not deliberate?"²³⁴ Gorbachev responded: "That is for the deputies from Moscow to think about. I do not think this is some kind of reprimand or anything of that nature. It is information, for consideration."²³⁵

Gorbachev's individual domination of Congress' proceedings was only one impediment to legislative independence. In addition, a number of institutions worked behind the scenes to shape and suppress legislative action. The Congress itself contained two of the key organs—the Presidium and the Secretariat. These bodies, created during the first two days of the Congress,²³⁶ had extensive but completely undefined and unchecked powers to expedite and supervise internal organizational matters. During congressional proceedings, they consistently played a role similar to that of electoral commissions in the spring elections. They operated as screens to limit participation by deputies disfavored by central party authorities. They often misplaced or failed to register progressive deputies' formal written requests to address Congress or to present alternative proposals for legislative consideration.²³⁷ They also effectively

formulated and the congress then decide itself by a vote what to adopt and what to reject?

234. F.B.I.S.-SOV (Supp.), May 30, 1989, at 18.

235. *Id.* Accord Mikhail S. Gorbachev, Comments at USSR Congress of People's Deputies (May 25, 1989), translated in F.B.I.S.-SOV (Supp.), May 26, 1989, at 12 (reading and commenting on deputies' letter describing efforts by some legislators to "divert" Congress with procedural matters as "very pernicious").

236. The Congress officially approved a Presidium and Secretariat on May 25 and May 26 respectively. For reports on voting and lists of members, see F.B.I.S.-SOV (Supp.), May 26, 1989, at 2 and F.B.I.S.-SOV (Supp.), May 30, 1989, at 49. Legislators did not formally discuss candidates or their powers. Gorbachev provided a brief description of these two bodies at the May 27 and May 29 sessions. The Secretariat's major function was to "assist" the Presidium in the organization and registration of deputies' documents, notes, proposals, procedural criticisms, and requests to address the Congress. See Mikhail S. Gorbachev, Comments at USSR Congress of People's Deputies (May 27 and 29, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 7, 22, 25; V. Liubitskii et al., *Dela u Nas Neotlozhnye . . .* [Our Business Is Urgent . . .], PRAVDA, June 11, 1989, at 4.

237. See Belozertsev, *supra* note 233, at 41; V. Mikhailov, *All Power—To Whom?*, SOV. LITVA, June 1, 1989, at 2, translated in F.B.I.S.-SOV, June 20, 1989, at 75, 76 (interview with Vitautas V. Landsbergis); Popov, *supra* note 213, at 55; V. Smetanikov, *Ship Is Following Right Course*, SOV. LATVIA, June 3, 1989, at 2, translated in

prevented dissemination of minority views by refusing to duplicate or circulate materials that did not conform with the official line.²³⁸

As the Congress progressed, its executive bodies increasingly preempted legislative discussion and determination of procedural questions. Presidium "reports" on issues soon became conclusive resolutions unchallengeable by elected legislators.²³⁹ Deputy Sergei A. Tsypliaiev was justified in being "very concerned about apparatus-style organs maturing here and there."²⁴⁰

The Presidium and the Secretariat, in conjunction with the mass media, also had a significant impact on legislative deliberations through their control over information. Official documents submitted for final endorsement by the Congress often did not reflect the actual language or policies approved by deputies. For example, the slate of nominees for the Supreme Soviet included the names of two candidates that had not in fact been selected by the Nagorno-Karabakh Autonomous Oblast²⁴¹ and deleted altogether the chosen representative from the Mari Republic.²⁴² Moreover, the formal stenographic accounts and media reports of Con-

F.B.I.S.-SOV, June 20, 1989, at 56 (comments by Viktor Alksnis). Note that similar problems occurred with proposals submitted to the Supreme Soviet Presidium prior to the convocation of the Congress. See *Glasnost' Vo Imia Perestroiki* [*Glasnost in the Name of Restructuring*], PRAVDA, May 30, 1989, at 1, 1-2.

238. See, e.g., Konovalov, *supra* note 196. In these actions, Congress administrative bodies followed the lead of the Supreme Soviet Presidium. For example, during the pre-Congress period, the Supreme Soviet Presidium refused to provide "deputies of democratic orientation" with paper, meeting facilities, or duplicating services. See Popov, *supra* note 213, at 54.

239. See, e.g., Anatolii S. Luk'ianov, Report to USSR Congress of People's Deputies (May 26, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 33-34 (reporting on Presidium "conclusions" regarding procedures for forming Supreme Soviet and legislative committees) [hereinafter Luk'ianov, *May 26 Report*]; Anatolii S. Luk'ianov, Report to USSR Congress of People's Deputies (June 9, 1989), translated in F.B.I.S.-SOV (Supp.), June 12, 1989, at 57-59 (providing an example of Presidium changing Congress agenda).

240. Sergei A. Tsypliaiev, Comments at USSR Congress of People's Deputies (May 26, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 33. Deputies also criticized two other administrative bodies, the Credentials Commission and the Tellers' Commission, for procedural irregularities and control by the party apparatus. See, e.g., Strukov, *supra* note 226, at 41.

241. See Genrikh A. Pogosian, Comments at USSR Congress of People's Deputies (May 27, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 61.

242. See Sergei V. Iastrebtsov, Comments at USSR Congress of People's Deputies (May 29, 1989), translated in F.B.I.S.-SOV, May 31, 1989, at 40. Similarly, names of deputies chosen to serve on legislative commissions "accidentally" disappeared. See Andrei L. Plotnikov, Comments at USSR Congress of People's Deputies (June 6, 1989), translated in F.B.I.S.-SOV (Supp.), June 7, 1989, at 27-28.

gress sessions regularly censored or misrepresented the proceedings. In one instance, the official transcript omitted a full paragraph of a speech by Aleksandr Obolenskii that contained criticisms of Gorbachev.²⁴³ To make matters worse, *Izvestiia's* daily summary designated Obolenskii as "heckling from the hall," a claim he vehemently denied later on the floor of the Congress.²⁴⁴

The communist party constituted the most significant institutional barrier to legislative autonomy. The CPSU effectively controlled and influenced Congress decisions on both the micro and macro levels. Party first secretaries, who dominated regional and organizational delegations, inhibited free choice and discussion by legislators by issuing guiding directives and keeping a close eye on individual votes.²⁴⁵ The party center made its presence known throughout the sessions with frequent references to the pivotal, binding resolutions of the Nineteenth Party Conference.²⁴⁶ It even convened a special plenum of the Central Committee on June 2 to evaluate the first week's developments and to recommend appropriate actions for upcoming Congress and Supreme Soviet meetings.²⁴⁷

243. See Aleksandr M. Obolenskii, Speech to USSR Congress of People's Deputies (May 29, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 42.

244. *Id.*

245. See Aleksandr V. Minzhurenko, Comments at USSR Congress of People's Deputies (May 26, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 23.

246. See, e.g., Mikhail S. Gorbachev, Report to USSR Congress of People's Deputies (May 30, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 47; *Otvetstvennost' Za Perestroiku [Responsibility for Restructuring]*, PRAVDA, June 7, 1989, at 1 (reference by Anatolii I. Luk'ianov to 19th Party Conference decision). In fact, in its concluding resolution, the Congress formally asserted its support for 19th Party Conference decisions. See *Postanovlenie S'ezda Narodnykh Deputatov SSSR Ob Osnovnykh Napravleniakh Vnutrennei i Vneshnei Politiki SSSR [Resolution of the USSR Congress of People's Deputies On the Basic Guidelines for the Domestic and Foreign Policy of the USSR]* (June 9, 1989), PRAVDA, June 25, 1989, at 1-2 [hereinafter *Basic Guidelines*].

On June 9, Aleksandr N. Kraiko proposed the following provision: "At the Congress of People's Deputies and in the Supreme Soviet, people's deputies are guided only by the law, the will of the electorate, and by their convictions, and are autonomous with regard to other state, political and public bodies." Aleksandr N. Kraiko, Speech at USSR Congress of People's Deputies (June 9, 1989), translated in F.B.I.S.-SOV (Supp.), June 12, 1989, at 62. He cited Lenin's statement that "all members of the party faction have the right and obligation to vote according to conscience, and not on instructions from the Central Committee." *Id.* Kraiko's proposal was rejected by the Congress. See F.B.I.S.-SOV (Supp.), June 12, 1989, at 63. For an outstanding criticism of party control over communist deputies, see Emel'ianov, *supra* note 204.

247. See TASS, June 2, 1989, in F.B.I.S.-SOV (Supp.), June 5, 1989, at 28, 28-29.

The CPSU ensured continued dominance of the legislature in the future by securing the selection of party loyalists to staff the reconstituted Supreme Soviet²⁴⁸ and parliamentary commissions and committees.²⁴⁹ It guaranteed that even the one constitutional check on legislative authority, the Constitutional Oversight Commission, would likely serve CPSU interests. Deputies received a slate of nominees composed entirely of party members one hour before voting.²⁵⁰ This moved one deputy to ask, "Are there any specialists in the sphere of state and law who are not members of the party?"²⁵¹

During the two-week convocation of the Congress of People's Deputies, legislators came to realize that they themselves were significant contributors to their "control from above."²⁵² They discovered that their disorganization and unprofessionalism, indeed their very pluralism, severely impeded their development into an effective, independent political force.²⁵³ Some suspected that congressional authorities directly encouraged and manipulated deputies' inexperience and emotionalism²⁵⁴ to strengthen the hand of Gorbachev and the party leadership.²⁵⁵

Legislators' unfamiliarity with parliamentary practice and rhetoric clearly redounded to their Chairman's benefit. As one observer of Congress proceedings reported, "It is curious that Gorbachev is the only person here who can formulate a genuine argument. . . . At this congress he

248. See Bill Keller, *Soviet Dissenters Denied Major Role in New Parliament*, N.Y. TIMES, May 28, 1989, at 1; Andrei D. Sakharov, Speech to USSR Congress of People's Deputies (June 9, 1989), translated in F.B.I.S.-SOV (Supp.), June 12, 1989, at 65.

249. See, e.g., Chernichenko, *supra* note 202, at 3 (noting that CPSU Central Committee compiled lists of commission members).

250. See Iurii Iu. Boldyrev, Comments at USSR Congress of People's Deputies (June 8, 1989), translated in F.B.I.S.-SOV (Supp.), June 12, 1989, at 36 (describing Constitutional Oversight Committee as a "political tool" of the party and calling for postponement of election of its members). On June 9 the Congress elected a twenty-three member commission to prepare the USSR Draft Law on Constitutional Oversight in the USSR. See PRAVDA, June 11, 1989, at 1.

251. Nikolai N. Vorontsov, Comments at USSR Congress of People's Deputies (June 8, 1989), translated in F.B.I.S.-SOV (Supp.), June 12, 1989, at 34.

252. See Burykh, *supra* note 221, at 37; Kononov, *supra* note 196, at 19.

253. See A. Kozlov, *Ves' Spektr Problem i Nastroenii* [*The Whole Spectrum of Problems and Feelings*], SOTS. INDUSTRIIA, June 3, 1989, at 1; Rost, *supra* note 230; Vladislav A. Shapovalenko, Comments at USSR Congress of People's Deputies (June 9, 1989), translated in F.B.I.S.-SOV (Supp.), June 12, 1989, at 64. See also N. Betaneli et al., *Mnenie Deputatov . . .* [*Deputies' Opinions . . .*], IZVESTIIA, May 31, 1989, at 7 (listing organizational reforms deputies viewed as essential to fulfill their duties).

254. Editorial, *Razmyshliaia o S'ezde* [*Reflecting on the Congress*], PRAVDA, June 12, 1989, at 1; Anatolii Sobchak, cited in Kozlov, *supra* note 253.

255. See El'tsin, *supra* note 145; Strukov, *supra* note 226.

has brilliantly created the impression of someone standing above the skirmish listening to and guiding the debate."²⁵⁶

Similarly, deputies' inexperience and inability to reach consensus on basic issues of legislative and state policy and structure served the interests of their "puppeteer,"²⁵⁷ the central party apparatus. In fact, by its conclusion on June 9, the Congress had failed to adopt a single constructive proposal drafted and presented independently by legislators.²⁵⁸ Despite its open, unprecedented criticism of the CPSU, the Congress ultimately approved virtually unchanged every resolution and personnel decision predetermined by party authorities.²⁵⁹ In so doing, it fulfilled its assigned role to perfection. After all, from the very start, party and legislative leaders called for an "orientation toward consolidation,"²⁶⁰ insisting that "pluralism of views" must eventually yield to "unity of action."²⁶¹ According to plan, the Congress articulated the diverse interests, needs, and concerns of the Soviet populace. As prescribed, however, the CPSU, not the legislature, harmonized, coordinated, and translated these

256. X. Smiley, reprinted in *Mnenie "Deili Telegraf"* [*The Daily Telegram's Opinion*], PRAVDA, June 2, 1989, at 6.

257. Chernichenko, *supra* note 202, at 4.

258. Boris N. El'tsin, Comments at USSR Supreme Soviet (June 10, 1989), translated in F.B.I.S.-SOV (Supp.), June 12, 1989, at 81-82 (citing Congress' failure to adopt proposals regarding amendment of Constitution, alternative candidates, and annual national referendum on confidence in Supreme Soviet Chairman); E. Gonzal'ez, *Den' Odinnadtsatyi* [*Day Eleven*], IZVESTIYA, June 9, 1989, at 1. For criticisms of Congress' failure to adopt constructive proposals see P. Bunich, cited in Kozlov, *supra* note 253, at 1; E. Sorokin, *Eto Tol'ko Nachalo Korennykh Peremen v Zhizni Strany* [*This Is Only the Beginning of Fundamental Changes in the Country's Life*], PRAVDA, June 20, 1989, at 2.

259. For example, despite numerous criticisms and suggested changes, deputies adopted the Provisional Standing Orders, *supra* note 218, in the original form presented by the CPSU. See F.B.I.S.-SOV (Supp.), May 26, 1989, at 16. See generally Sakharov, *supra* note 228. But see Editorial, *Porucheniia S'ezda* [*Congress Instructions*], IZVESTIYA, June 27, 1989, at 1 (reporting delay in publication of Basic Guidelines due to numerous comments and suggested amendments of its draft version, which represented a "deviation from recent traditions").

260. Vadim A. Medvedev, cited in Moscow Television Service, May 23, 1989, translated in F.B.I.S.-SOV, May 24, 1989, at 36, 36. For other uses of the term "consolidation," see, e.g., N. Bodnaruk, *Den' Vtoroi* [*Day Two*], IZVESTIYA, May 27, 1989, at 1; Shchepotkin, *supra* note 200; N. Zhelnorova & L. Novikova, *Ot Imeni Naroda* [*In the Name of the People*], ARGUMENTY I FAKTY, June 10-16, 1989, at 1 (comments by Aleksandr S. Kapto). In fact, even the Basic Guidelines issued by the Congress formally recognized the "full importance of the consolidating role of the CPSU." *Basic Guidelines*, *supra* note 246, part VI.

261. Evgenii N. Meshalkin, Comments at USSR Congress of People's Deputies (May 27, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 58.

goals into "sensible" decisions.²⁶²

Progressive legislators soon recognized that the "way out" of this "mess"²⁶³ was a set of regularized rules and structures formulated by the deputies themselves. During official sessions, legislators repeatedly invoked procedure as a democratic talisman to criticize and, to a limited degree, restrain their Chairman from dictating congressional policy and action.²⁶⁴ They achieved some successes with this technique, including limited consideration of alternative candidates,²⁶⁵ preelection discussion of nominees for legislative and administrative position,²⁶⁶ and postponed formation of the party-selected Constitutional Oversight Commission.²⁶⁷

262. See Gorbachev, *supra* note 246, at 56, 61.

263. Anatolii Sobchak, Comments at USSR Congress of People's Deputies (May 27, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 1, 2.

264. See, e.g., Burykh, *supra* note 221, at 37; Chernyshev, *supra* note 212, at 38; Mikhail I. Chimpoi, Speech to USSR Congress of People's Deputies (May 29, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 39-40.

265. See G. Alimov & A. Stepovoi, *Moskva, 26 Maia. Kremlevskii Dvoretz S'ezdov [Moscow, May 26. Kremlin Palace of Congresses]*, IZVESTIIA, May 27, 1989, at 1, 3 (describing efforts to introduce multiple candidates for Supreme Soviet seats). This strategy backfired in the case of Supreme Soviet elections. To demonstrate their support for the principle of alternatives (*printsip alternativnosti*), Moscow deputies nominated fifty-five candidates for their quota of twenty-nine positions. Because the entire Congress, rather than individual delegations, voted for Supreme Soviet deputies, this gave conservatives an unanticipated opportunity to eliminate troublesome Moscow reformists from the final list of Supreme Soviet members. As a result, Boris El'tsin failed to obtain sufficient votes to be included in the Moscow quota of deputies. See Report of the Tellers Commission of the USSR Congress of People's Deputies (May 27, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 53. This decision provoked a major outcry by progressive deputies and Moscow residents. See Burykh, *supra* note 221, at 37; Aleksandr N. Kraiko, Comments at USSR Congress of People's Deputies (May 27, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 14. Ultimately, the problem was resolved when Aleksei I. Kazannik, one of the victorious Moscow nominees, voluntarily resigned in favor of Boris El'tsin. Aleksei I. Kazannik, Speech to USSR Congress of People's Deputies (May 29, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 44-45. See L. Novikova, *Kak Slovo Nashe Otozvet'sia? [What Will the Response Be to Our Word?]*, ARGUMENTY I FAKTY, June 17-23, 1989, at 1 (interview of Kazannik).

266. For example, late in the May 27 evening session, Gorbachev proposed Anatolii I. Luk'ianov as first deputy chairman of the Supreme Soviet, the second highest USSR legislative post, and called for immediate election. Legislators successfully postponed the vote until May 29 to permit extensive interrogation of Luk'ianov prior to his election. See Relay of USSR Congress of People's Deputies, Moscow Domestic Service, May 27, 1989, translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 18-20. For a discussion of deputies' questioning of Luk'ianov, see *Glasnost' Vo Imia Perestroiki*, *supra* note 237.

267. See Relay of USSR Congress of People's Deputies, Moscow Television Service, June 8, 1989, translated in F.B.I.S.-SOV (Supp.), June 12, 1989, at 33-43. *Pravda* subsequently described this as a "truly wise decision." Sorokin, *supra* note 258, at 2.

On the whole, however, their efforts amounted to little more than an irritant, rather than an effective counterweight, to Gorbachev and the party elite.²⁶⁸

The source of their failure became readily apparent—the fluid legislative process imposed from outside the Congress. With few concrete standards and rules to govern legislative deliberation and decisionmaking,²⁶⁹ deputies were consistently frustrated in their attempts to hold legislative leaders and organs to a procedural yardstick. Congressional and party authorities could easily run roughshod over minority views and objections and obtain decisive, if not unanimous, endorsement of CPSU policies and personnel.²⁷⁰

Two party-drafted documents served as the guiding regulations for the first Congress of People's Deputies: the amended Constitution²⁷¹ and the Provisional Standing Orders.²⁷² Neither adequately addressed fundamental issues of procedure and structure, such as formation of legislative committees, preparation of draft resolutions and statutes, voting mechanisms and tabulation, legal status and rights of deputies, and even differ-

268. Legislative and party leaders denigrated deputies' preoccupation with procedural matters as an annoying distraction of Congress from its more important functions. See, e.g., sources cited *supra* notes 233-35. Interestingly, on May 15, Anatolii Luk'ianov, the future first deputy chairman of the Supreme Soviet, made a clear distinction between "consolidation" and "procedure." He queried whether the first Congress of People's Deputies "will be a Congress of society's consolidation that will work out the most pressing solutions, or whether it [will] be a Congress that will get bogged down in discussion of many procedural and other such matters." Anatolii I. Luk'ianov, Moscow Domestic Service, May 15, 1989, translated in F.B.I.S.-SOV, May 16, 1989, at 51.

269. To make matters worse, the legislature easily disregarded or modified the few existing procedures in practice. See *supra* notes 219-26 and accompanying text; Konstantin D. Lubenchenko, Comments at USSR Congress of People's Deputies (May 25, 1989), translated in F.B.I.S.-SOV (Supp.), May 26, 1989, at 16 ("The Congress possesses such supreme juridical force that, on the whole, temporary standing orders are no obstacle. And during examination of whatever questions, we can instantly and immediately introduce changes to it if they bother us.").

270. See P. Gutionov, *Den' Dvenadtsatyi [Day Twelve]*, IZVESTIYA, June 10, 1989, at 1; Iudin, *supra* note 231; Aleksandr Tikhomirov, Interview with Boris N. El'tsin, Moscow Television Service, May 25, 1989, translated in F.B.I.S.-SOV, May 25, 1989, at 56. For a defense of Congress leadership's treatment of minority views, see N. Bodnaruk & V. Zakhar'ko, *S'ezd, Obshchestvo, Vlast' Sovetov [The Congress, Society, Power of the Soviets]*, IZVESTIYA, June 24, 1989, at 2 (interview with Anatolii I. Luk'ianov).

271. See *Constitutional Amendments Law*, *supra* note 28.

272. *Provisional Standing Orders*, *supra* note 218. Several deputies protested the speed with which Congress adopted these crucial regulations. See, e.g., Anatolii N. Saunin, Comments at USSR Congress of People's Deputies (May 25, 1989), translated in F.B.I.S.-SOV (Supp.), May 26, 1989, at 15.

entiation of Congress and Supreme Soviet functions and jurisdiction.²⁷³ These gaps provided fertile ground for control of Congress' discussions and determinations.²⁷⁴

For deputies intent on establishing a rule-of-law state, these early brushes with Gorbachev-style procedure boded ill for the future development of the Soviet legislature as a genuinely autonomous, professional lawmaking body.²⁷⁵ Accordingly, by the end of the Congress on June 9, they had resolved to play an active role in the formulation of the new procedures and machinery that would henceforth govern Congress and Supreme Soviet legislative work.²⁷⁶ They planned to devise a set of de-

273. For a discussion of these omissions, see Evgeich (?), Comments at USSR Congress of People's Deputies (May 25, 1989), *translated in F.B.I.S.-SOV (Supp.)*, May 26, 1989, at 10-11.

274. The most significant leadership manipulation of procedural lacunae was the formation of the Supreme Soviet. Neither the Constitution nor Provisional Standing Orders provided any concrete stipulations regarding choice of such deputies from among the ranks of Congress. Thus, Gorbachev was able to dictate selection and voting mechanisms that ensured creation of "a Supreme Soviet which [sic] heeds the will of the apparatus." Popov, *supra* note 213, at 55. In protest and frustration, progressive deputies from the Moscow delegation officially founded on May 27 an interregional, independent deputy group and invited participation of all like-minded legislators. *Id.*

275. See Saunin, *supra* note 272, at 15.

[R]egarding the standing orders: We want to build a state based on the rule of law, and so presumably we want to live in accordance with laws and decisions. Any haste in adopting standing orders and other documents could mean that we will again have to return to them, to their imperfectness and their unfinished state, just as we did before. And, therefore, I believe that the democratic process is a difficult one. We have to gather our patience, and thoughtfully and attentively listen to all points of view—both for and against—and then make the decision. See also Kazannik, *cited in Kozlov, supra* note 253, at 1 (positing that deputies' disorganization will make it "easy . . . to erode the Congress' future decisions and in the end adopt resolutions that suit the bureaucratic apparatus.")

276. There was a serious formal impediment, however, to progressive deputies' participation in the upcoming drafting activity. Pursuant to a Congress resolution, the Supreme Soviet had the legal authority to draft procedural laws for Congress and Supreme Soviet work. See *Postanovlenie S'ezda Narodnykh Deputatov Soiuza Sovetskikh Sotsialisticheskikh Respublik O Podgotovke Proektov Nekotorykh Zakonov SSSR Reguliruiushchikh Poriadok Deiatel'nosti S'ezda Narodnykh Deputatov SSSR, Verkhovnogo Soveta SSSR i Ikh Organov* [Resolution of the USSR Congress of People's Deputies On Preparation of Certain USSR Draft Laws Governing the Procedure of the Activity of the USSR Congress of People's Deputies, the USSR Supreme Soviet, and Their Organs], PRAVDA, June 11, 1989, at 1 [hereinafter *Resolution on Procedural Laws*]. Many of the dissident legislators had been denied seats in the Supreme Soviet. See *supra* notes 248, 265, 274 and accompanying text. While all deputies were promised the opportunity to work (but not vote) in Supreme Soviet commissions and committees, see *supra* note 246, at 61 and Luk'ianov, *May 26 Report, supra* note 239, at 34, no concrete legal guidelines

tailed, orderly rules and structures that would limit outside influence on the lawmaking process, protect minority interests, and produce effective legislation.²⁷⁷ Thus, creation of procedural "regulations [that would] themselves reflect democracy in its living form"²⁷⁸ became the major task for the new Supreme Soviet.

B. *The First Supreme Soviet Lawmaking Scheme*

The new Supreme Soviet began its tenure inauspiciously. From June 3 to June 10, the leadership asked deputies to approve uncontested²⁷⁹ and preselected²⁸⁰ nominees for the top positions in the two legislative

or guarantees ensured that nonmembers of the Supreme Soviet would have a meaningful voice in drafting activities. See *Postanovlenie S'ezda Narodnykh Deputatov Soiuzo Sovetskikh Sotsialisticheskikh Respublik O Podgotovke Proektov Zakonov SSSR o Statuse Narodnykh Deputatov v SSSR* [Resolution of USSR Congress of People's Deputies On the Preparation of Draft USSR Laws On the Status of People's Deputies in the USSR], PRAVDA, June 16, 1989, at 3 [hereinafter *Resolution on Deputy Status*] (broad statement of deputies' rights).

277. See, e.g., Iurii N. Afanas'ev, June 8, 1989, in F.B.I.S.-SOV, June 14, 1989, at 57; Kashnikov, Comments at USSR Congress of People's Deputies (May 29, 1989), translated in F.B.I.S.-SOV (Supp.), May 31, 1989, at 38; Viktor A. Pisarenko, Speech to USSR Congress of People's Deputies (May 26, 1989), translated in F.B.I.S.-SOV (Supp.), May 30, 1989, at 27-28.

278. Chernyshev, *supra* note 212, at 38.

279. For deputy criticisms of the lack of alternative candidates, see Vladimir D. Iudin, Comments at USSR Supreme Soviet (June 7, 1989), in IZVESTIIA, June 9, 1989, at 6; Ledzher M. Veiser, Comments at Soviet of Nationalities session (June 10, 1989), in IZVESTIIA, June 12, 1989, at 3. But see Fedor M. Burlatskii, Comments at USSR Supreme Soviet (June 7, 1989), in IZVESTIIA, June 9, 1989, at 6 (arguing that choice of candidates "deprives the president of his right and violates the constitutional principle"). Burlatskii, however, did not support a broad interpretation of the USSR Supreme Soviet Chairman's right to propose single candidates. He believed that chairmen of committees and commissions should be determined first by those bodies and then submitted for confirmation by the full USSR Supreme Soviet. See Fedor M. Burlatskii, *Zametki Deputata. Pervyi, No Vazhnyi Shag* [Notes of a Deputy—A First, but Important Step], LITERATURNIAIA GAZETA, June 14, 1989, at 1.

Deputies successfully introduced additional candidates for one of the positions as deputy chairman of the Soviet of Nationalities. As a result, no candidate received sufficient votes for election. See Soviet of Nationalities session (June 10, 1989), in IZVESTIIA, June 12, 1989, at 2-4.

280. The Councils of Elders of the Soviet of the Union and Soviet of Nationalities considered nominees for chairmen of the Supreme Soviet chambers on June 3. See Evgenii P. Velikhov, Report of the Council of Elders to Soviet of the Union session (June 3, 1989), in IZVESTIIA, June 5, 1989, at 1; Rimadzhon M. Khudaibergenova, Report of the Council of Elders to Soviet of Nationalities session (June 6, 1989), in IZVESTIIA, June 8, 1989, at 7. Gorbachev, in consultation with CPSU leaders, selected

chambers,²⁸¹ legislative commissions and committees,²⁸² and highest executive²⁸³ and judicial organs.²⁸⁴ Once again, the communist party played the major role in designation of candidates.²⁸⁵ Similarly, deputies received lists of commission and committee assignments compiled by the Presidium and chamber chairmen supposedly on the basis of personal requests of deputies and in consultation with deputy groups.²⁸⁶ As subsequent speeches by Supreme Soviet legislators revealed, however, committee membership failed to reflect actual deputy preferences²⁸⁷ or discus-

the prospective chairmen of the Council of Ministers, see Mikhail S. Gorbachev, Speech to USSR Supreme Soviet (June 7, 1989), in *IZVESTIYA*, June 9, 1989, at 2, and Committee of People's Control, see Mikhail S. Gorbachev, Speech to USSR Supreme Soviet (June 7, 1989), *id.* at 4. He chose the chairman of the USSR Supreme Court at a meeting of the party group of deputies. See Mikhail S. Gorbachev, Speech to USSR Supreme Soviet (June 7, 1989), *id.* at 9. The chairmen of the two Supreme Soviet chambers proposed candidates to serve as deputy chairmen of the chambers, see Evgenii M. Primakov, Speech to Soviet of the Union session (June 10, 1989), in *IZVESTIYA*, June 11, 1989, at 9, and as chairmen of legislative commissions and committees, see Anatolii I. Luk'ianov, Comments at Soviet of the Union session (June 10, 1989), *id.* at 11. These practices led one deputy to protest that "the leadership was chosen by the apparat principle and no agreement was sought from the deputy groups." Mikhail A. Bocharov, Comments at Soviet of the Union session (June 10, 1989), *id.*

281. For transcripts of Supreme Soviet selection of the chairmen and deputy chairmen of the Soviet of the Union and the Soviet of Nationalities, see *IZVESTIYA*, June 5, 1989, at 1-2; *IZVESTIYA*, June 8, 1989, at 7-9; *IZVESTIYA*, June 11, 1989, at 9-10; *IZVESTIYA*, June 12, 1989, at 2-3.

282. See *IZVESTIYA*, June 11, 1989, at 10.

283. For discussion of Ryzhkov's candidacy for Chairman of the Council of Ministers, see *IZVESTIYA*, June 9, 1989, at 2-4.

284. See *id.* at 9 (discussing election of Evgenii A. Smolentsev as Chairman of the USSR Supreme Court).

285. For example, Gorbachev publicly acknowledged that he had consulted with the CPSU Central Committee about the nomination of Ryzhkov as Chairman of the USSR Council of Ministers. See Gorbachev, June 7 Speech, *supra* note 280, at 9.

286. See Anatolii I. Luk'ianov, Speech to Soviet of the Union session (June 3, 1989), in *IZVESTIYA*, June 5, 1989, at 2; Evgenii M. Primakov, Speech to USSR Supreme Soviet (June 10, 1989), in *IZVESTIYA* (evening ed.), June 12, 1989, at 2. The plan instituted four standing commissions in each chamber and fourteen committees formed on a parity basis by both chambers. See Luk'ianov, *supra*. For a list of approved committees, see *IZVESTIYA*, June 9, 1989, at 9.

287. See, e.g., Comment by unidentified deputy at USSR Supreme Soviet (June 10, 1989), in *IZVESTIYA* (evening ed.), June 12, 1989, at 2. The deputy was a retired Estonian military officer who "suddenly ended up on the Committee on Glasnost' and Citizens Rights and Appeals [hereinafter Glasnost' Committee]," rather than the Committee on Defense and State Security [hereinafter Defense Committee], he complained that he "ha[d] nothing to do with this."

sion with groups unsympathetic to leadership views.²⁸⁸

The early June Supreme Soviet sessions, like their Congress counterparts, contained numerous procedural glitches. The most obvious problems arose in election of candidates, where there were no settled rules regarding the conduct²⁸⁹ or tabulation of votes.²⁹⁰ The Supreme Soviet leadership resolved most of these procedural debates in its favor through the simple expedient of requiring deputies to abide by the standing orders that had governed previous Supreme Soviets.²⁹¹ Not surprisingly, then, presiding chairmen followed Gorbachev's example at the Congress of People's Deputies²⁹² by strongly dominating Supreme Soviet proceedings. There were all-too-familiar interruptions, recapitulations, and terminations of deputy discussion²⁹³ and allegations by legislators of outside manipulation, deceit, and control.²⁹⁴

When the Supreme Soviet reconvened on June 19 to consider candidates for government ministry and department posts, informality and disorganization remained the standard.²⁹⁵ According to first-hand observ-

288. See, e.g., Bocharov, *supra* note 280 (noting that the Moscow deputy group was never consulted). But see Evgenii M. Primakov, Comments at Soviet of the Union session, *IZVESTIYA*, June 11, 1989, at 11 (claiming discussions with several Moscow representatives).

289. The lack of specifications regarding use of secret versus open ballots posed one basic problem. See *IZVESTIYA*, June 9, 1989, at 6.

290. For an example of difficulties with the actual process of counting votes and the interpretation of results, see *IZVESTIYA*, June 11, 1989, at 10 (reporting the failed candidacy of Nodar M. Mgaloblishvili as deputy chairman of the Soviet of the Union).

291. See Anatolii I. Luk'ianov, Comments at Soviet of the Union session (June 10, 1989), *id.* Sergei M. Riabchenko unsuccessfully attempted to prevent this imposition of the preexisting procedural rules, arguing that "[a] major shortcoming in our chamber's actions is that we have not adopted generally even any initial procedural steps and for this reason . . . we are not stuck on this question . . ." Sergei M. Riabchenko, Comments at Soviet of the Union session (June 10, 1989), *id.*

292. See *supra* notes 219-35 and accompanying text.

293. See Comments by unidentified deputy at Soviet of the Union session (June 3, 1989), in *IZVESTIYA*, June 5, 1989, at 3 (critizing Primakov's interference in deputy discussion); Interchange between Primakov and unidentified deputy, Soviet of the Union session (June 10, 1989), in *IZVESTIYA*, June 11, 1989, at 11 (addressing Primakov's ad hoc termination of debate).

294. See, e.g., Bocharov, *supra* note 280; Comments by unidentified deputy at USSR Supreme Soviet (June 10, 1989), in *IZVESTIYA* (evening ed.), June 12, 1989, at 2; Sakharov, cited in Rost, *supra* note 230; Veiser, *supra* note 279. The leadership of the Supreme Soviet vigorously denied these claims. See, e.g., Comments by Evgenii M. Primakov and Anatolii I. Luk'ianov at USSR Supreme Soviet (June 10, 1989), in *IZVESTIYA* (evening ed.), June 12, 1989, at 2.

295. The hearings on appointment of the Minister of Culture provided a prime illustration of these deficiencies. Three hours into the discussion one of the commissions in-

ers, the preliminary review of nominees by commissions and committees operated "virtually without any fixed procedural rules or any restrictions on the list of speakers."²⁹⁶ Discussion of prospective officials was also significantly complicated by the lack of advance information on the nominees²⁹⁷ and the vagaries of a scheduling system imposed from outside the committee structure. Those in charge made no attempt to coordinate the times and candidate lists with the actual committees involved in the process.²⁹⁸ As a result, committee members often found themselves assigned to simultaneous hearings²⁹⁹ or, alternatively, excluded from the very sessions of most direct interest to them.³⁰⁰ Many deputies viewed these "foulups" as deliberate attempts to subject the legislature to "administrative will apparatus work methods."³⁰¹

Despite these impediments, Supreme Soviet deputies ultimately had a discernible impact on government appointments. For nearly three weeks, first in commissions and committees and then in full sessions of the Supreme Soviet,³⁰² legislators grilled candidates about their qualifications,

involved "suddenly" realized that its membership had never been formally approved by the Supreme Soviet. This raised a serious question about the legal validity of any decision it might reach on the nominee. The commission ultimately resolved to proceed with the vote with the understanding that its decision could subsequently become void if the Supreme Soviet failed to approve the commission. Several deputies refused to participate in the final voting with the result that the candidate was unable to obtain sufficient votes for recommendation as Minister of Culture. See T. Iakhlakova, *Neprostaia Nauka—Demokratiia* [A Complicated Science—Democracy], SOV. KULTURA, June 24, 1989, at 2.

296. V. Dolganov & A. Stepovoi, *V Komitetakh i Komissiiakh Verkhovnogo Soveta SSSR. Kto Voidet v Pravitel'stvo?* [In the USSR Supreme Soviet Committees and Commissions: Who Will Be in the Government?], IZVESTIIA, June 22, 1989, at 1, 1.

297. See E. Gonzal'ez et al., *Khoroshee Nachalo—Poldela. Komitety i Komissii Verkhovnogo Soveta SSSR Pristupili k Rabote* [A Good Beginning Is Half the Job: USSR Supreme Soviet Committees and Commissions Have Set to Work], IZVESTIIA (evening ed.), June 20, 1989, at 1; A. Vasinskii, *Glasnost' Pod Zashchitoi* [Glasnost' Defended], IZVESTIIA, July 1, 1989, at 2.

298. See Iakhlakova, *supra* note 295.

299. See *id.*; Miroslav Buzhkevich, *Parlamentskaia Nedelia* [The Week in Parliament], PRAVDA, July 23, 1989, at 1. In some instances this led to the ludicrous result of candidates being forced to nominate themselves. See Iakhlakova, *supra* note 295.

300. For example, the Committee on Science, Public Education, Culture, and Upbringing was not invited to participate in the hearings regarding appointment of the Minister of Culture. Committee members attended the sessions and took part in discussion of the nominee but had no voting rights. See Iakhlakova, *supra* note 295.

301. *Id.*

302. On June 26, 1989, the Supreme Soviet began its formal consideration of nominees recommended by commissions and committees.

views, and programs³⁰³ in a "parliamentary purgatory."³⁰⁴ Supreme Soviet deputies rejected numerous candidates.³⁰⁵ Even ad hoc leadership changes in procedure failed to save those nominees deemed unsuitable by legislators.³⁰⁶ By the end of the process, Prime Minister Ryzhkov had

303. See generally G. Alimov et al., *Ispytanie Demokratii* [Trial by Democracy], *Izvestiia* (evening ed.), June 30, 1989, at 1; Dolganov & Stepovoi, *supra* note 296; Interview with Anatolii I. Luk'ianov, Moscow Television Service, Aug. 7, 1989, translated in F.B.I.S.-SOV, Aug. 9, 1989, at 26.

304. TASS, June 19, 1989, in F.B.I.S.-SOV, June 21, 1989, at 44.

305. See Moscow Domestic Service, June 21, 1989, translated in F.B.I.S.-SOV, June 23, 1989, at 32, 34 (reporting rejection of Gramov for Chairman of USSR State Committee for Sport); L. Grafova, *Poka Eshche Diletanty, No . . .* [For Now, Beginners, But . . .], *LITERATURNAI A GAZETA*, June 28, 1989, at 10 (reporting rejection of "procurator with more than a quarter century in tenure [who] said cheerfully that he had never been aware of or known about such rule ['rule by telephone call from on high']"); A. Murtazaiev et al., *Ministry i Vremia. Razmyshleniia Pri Obsuzhdenii Kandidatov v Chleny Pravitel'stva* [Ministers and the Times: Reflections on the Discussion of Candidates for Members of the Government], *PRAVDA*, June 30, 1989, at 1 (reporting rejection of Rozenova for Chairman of State Committee for Prices).

306. On June 30, only 246 deputies voted in favor of Vladimir Kamentsev, Ryzhkov's chosen appointee for deputy chairman of the USSR Council of Ministers and Chairman of the State Foreign Economic Commission. This number constituted a majority of deputies in attendance but a minority of the full Supreme Soviet membership. See Marina Novitskaia, Moscow Domestic Service, July 4, 1989, translated in F.B.I.S.-SOV, July 5, 1989, at 53. As a result, on July 3, 1989, the Supreme Soviet formally amended its regulations to provide for approval of candidates for high government positions based on the majority of voters present rather than the total number of Supreme Soviet deputies. See TASS, July 3, 1989, in F.B.I.S.-SOV, July 3, 1989, at 53. Operating under this new rule, the Supreme Soviet reconsidered Kamentsev's candidacy on July 3. In a result that was "truly dramatic," deputies once again failed to elect him. Novitskaia, *supra*, at 53.

Supreme Soviet leaders interfered in the discussion of nominees through the use of numerous techniques. These included ad hoc changes in the order of candidate consideration, see, e.g., Alimov, *supra* note 303, and "some invisible hand [that] was periodically switching the [microphones] off." A. Liutyy et al., *Formiruet'sia Sovetskoe Pravitel'stvo. Korrespondenty "Pravdy" Rasskazyvaiut O Rabote Komitetov i Komissii Verkhovnogo Soveta SSSR* [The Soviet Government Is Being Formed. Pravda Correspondents Report on the Work of USSR Supreme Soviet Committees and Commissions], *PRAVDA*, June 23, 1989, at 1.

The most notorious example of leadership intervention in legislative consideration and selection of officials was the case of Nikolai Konorev. Less than one month after the Supreme Soviet rejected Konorev for the position of Minister of Railways, Prime Minister Ryzhkov reinstated his candidacy in a letter read by Gorbachev to the assembled deputies. The legislators then responded by approving Konorev by a more than two-thirds margin. See Egor Iakovlev, *Learning to Hold Counsel*, *MOSCOW NEWS*, Aug. 20, 1989, at 4 (expressing concern "over the precedent of revision of the Supreme Soviet decision").

begun to consult commissions and committees directly for recommendations of appropriate appointees.³⁰⁷ With the formation of the Soviet government, the legislature finally embarked on the critical "second stage, the stage of lawmaking."³⁰⁸

Gorbachev himself provided the initial impetus for the 1989 reforms of the federal lawmaking process. At the Congress of People's Deputies he proclaimed that "[a] renewed society should rely on renewed legislation."³⁰⁹ Use of traditional lawmaking methods during Gorbachev's first four years in office had resulted in legislation that had actually deteriorated in quality, clarity, consistency, and effectiveness.³¹⁰ This led Soviet reformers to conclude that successful implementation of *perestroika* and establishment of a rule-of-law state required a fundamentally new lawmaking process.³¹¹ As Sergei Alekseev, Chairman of the Committee for Questions of Legislation, Legality, and Law and Order (Legislation Committee), remarked, "We must begin making laws virtually from scratch."³¹²

The Congress of People's Deputies provided only the broad outlines for a new legislative system. In its Basic Guidelines for the Domestic and Foreign Policy of the USSR it directed that:

[T]he main bulk of legislative acts should be drafted, discussed, and adopted by the permanently operating USSR Supreme Soviet with the active participation of its committees and the commissions of the chambers, in conformity with the carefully formulated democratic procedure providing for glasnost' and openness in discussion and presentation of al-

307. See Iakovlev, *supra* note 306.

308. Anatolii I. Luk'ianov, Report of USSR Supreme Soviet Presidium to USSR Supreme Soviet (July 19, 1989), translated in F.B.I.S.-SOV, July 20, 1989, at 59, 63.

309. Gorbachev, *supra* note 246.

310. See Iurii Kh. Kalmykov, in Gonzal'ez et al., *supra* note 297 (citing laws on state enterprise, cooperatives, and individual labor activity as examples).

311. See, e.g., Aleksandr M. Obolenskii, cited in Zhelnorova & Novikova, *supra* note 260, at 3: "[I]n our country, restructuring's cutting edge runs through the legislative sphere. It is necessary to lay a foundation for a rule-of-law state, for we now are practically without rights, and each bureaucrat does as he wishes." *Accord* Editorial, *Stanovalenie Narodovlastiia* [Establishing People's Power], PRAVDA, June 21, 1989, at 1; V. Danilenko, *Vybiraem Demokratiu* [We Opt for Democracy], IZVESTIIA (evening ed.), June 15, 1989, at 3; S. Shishkin, *Zakonna Li Zabastovka? Neobkhodima Iuridicheskaiia Reglamentatsiia* [Is a Strike Legal? Legal Regulation Needed], IZVESTIIA (evening ed.), July 14, 1989, at 3.

312. L. Shinkarev, *Zhit' Po Zakonu* [Living by the Law], IZVESTIIA (evening ed.), June 30, 1989, at 3 (comment by Sergei Alekseev).

ternative versions of decisions and proposals.³¹³

In a separate resolution on deputy status,³¹⁴ the Congress set forth general guarantees to ensure the "active participation" of committee members. These included rights of legislative initiative, amendment, and approval,³¹⁵ receipt of draft documents at least two weeks prior to their formal consideration,³¹⁶ and access to essential information³¹⁷ and support services.³¹⁸ Unfortunately, the Congress failed to offer a similar elaboration of what precisely it envisioned as a "carefully formulated democratic procedure." On the contrary, it explicitly delegated full responsibility to the Supreme Soviet to devise appropriate standing orders for both legislative bodies.³¹⁹

The Supreme Soviet responded immediately when it reconvened on June 26. In separate sittings, both the Soviet of Nationalities and the Soviet of the Union examined an agenda prepared by the Supreme Soviet Presidium for the upcoming session that included consideration of several draft laws and Presidium decrees.³²⁰ Per custom, the chambers formally endorsed the agenda as submitted.³²¹ It was clear, however, that this was not intended as precedent for future legislative work. For example, when Anatolii Luk'ianov presented the official report on the agenda he emphasized that henceforth the Presidium would have no legal authority to issue binding legislative norms. Instead, this right would pass "wholly and entirely to the Supreme Soviet."³²² Deputies followed this statement by agreeing to a new approach for the discussion and enactment of the proposed laws. They decided that, "as a rule," they would examine the drafts in two readings. The plan was for the deputies to submit the drafts after the first reading to the relevant committees and commissions for "finalization" and to publish them simultaneously in the

313. *Basic Guidelines*, *supra* note 246, part IV.

314. *Resolution on Deputy Status*, *supra* note 276.

315. *Id.* points 4 & 5.

316. *Id.* point 7.

317. *Id.* points 6 & 7.

318. *Id.* points 9, 10 & 11.

319. *See Resolution on Procedural Laws*, *supra* note 276.

320. For a discussion of Supreme Soviet Presidium preliminary approval of the agenda, see TASS, June 23, 1989, in F.B.I.S.-SOV, June 26, 1989, at 40.

321. *See* M. Buzhkevich & G. Ovcharenko, *Vremia Peremen. Na Pervoi Sessii Verkhovnogo Soveta SSSR* [Times of Change: At the First Session of the USSR Supreme Soviet], PRAVDA, June 29, 1989, at 1; TASS, June 26, 1989, in F.B.I.S.-SOV, June 27, 1989, at 33.

322. *See* TASS, *Na Pervoi Sessii Verkhovnogo Soveta SSSR* [At the First Session of USSR Supreme Soviet], Sov. ROSSIA, June 27, 1989, at 1.

press for public information and comment.³²³

On July 19 the Supreme Soviet fleshed out its skeletal framework for lawmaking when it enacted the Temporary Rules for Presenting to the USSR Supreme Soviet and Examining in the Committees of the Supreme Soviet and in the Standing Commissions of its Chambers Drafts of USSR Laws and Proposals for the Adoption of USSR Laws (Temporary Rules).³²⁴ This document, which was intended to guide lawmaking activity until formulation of new Supreme Soviet standing orders,³²⁵ set out a general six-stage process: (1) initiation of legislation; (2) preparation of the draft in commissions and committees; (3) first reading of the proposed measure in the Supreme Soviet; (4) return of the document to committee for revision and possible publication for national comment and criticism; (5) second reading of the bill by the Supreme Soviet; and (6) adoption.

In the first stage, organs or individuals with the formal constitutional right of legislative initiative³²⁶ presented to the chairmen of the chambers or Supreme Soviet Presidium a copy of the draft law and supporting

323. See *id.* at 1; TASS, June 26, 1989, translated in F.B.I.S.-SOV, June 26, 1989, at 39.

324. *Postanovlenie Verkhovnogo Soveta SSSR O Vremennykh Pravilakh SSSR i Rassmotreniia v Komitetakh Verkhovnogo Soveta SSSR i Postoiannykh Komissiiakh Ego Palat Proektov Zakonov SSSR i Predlozhenii o Priniatii Zakonov SSSR* [USSR Supreme Soviet Resolution On Temporary Rules for Presenting to the Supreme Soviet and Examining in the Committees of the Supreme Soviet and in the Standing Commissions of its Chambers Drafts of USSR Laws and Proposals for the Adoption of USSR Laws] (July 19, 1989), 7 *Vedomosti SSSR*, item 171 (1989) [hereinafter *Temporary Rules*]. Anatolii Luk'ianov introduced the draft Temporary Rules at the July 19 morning session of the Supreme Soviet and urged their immediate approval to "permit us to conduct our legislative work more precisely and consistently, even before standing orders have been adopted." Anatolii I. Luk'ianov, Report to USSR Supreme Soviet (July 19, 1989), translated in F.B.I.S.-SOV, July 20, 1989, at 59, 62. After several criticisms and suggestions, the Supreme Soviet at its afternoon session approved the Temporary Rules and a separate resolution that officially accepted and submitted eighteen draft laws to specified committees and commissions for examination. *Postanovlenie Verkhovnogo Soveta SSSR O Peredache Na Predvaritel'noe Rassmotrenie Komitetam Verkhovnogo Soveta SSSR i Postoiannykh Komissiiam Ego Palat Proektov Zakonov SSSR* [USSR Supreme Soviet Resolution On the Submission of Drafts of USSR Laws for Preliminary Examination by Committees of the USSR Supreme Soviet and Standing Commissions of Its Chambers] (July 19, 1989), 7 *Vedomosti SSSR*, item 172 (1989) [hereinafter *Preliminary Examination Resolution*]. For a report on adoption of these measures, see Moscow Domestic Service, July 19, 1989, in F.B.I.S.-SOV, July 20, 1989, at 70.

325. *Temporary Rules*, *supra* note 324, preface.

326. *Id.* point 1. These bodies and persons could also present drafts prepared by private individuals or by government and social organs not possessing the right of legislative initiative. *Id.*

documentation regarding such matters as the necessity for the law, its goals, tasks, and relationship to existing and future statutes, and anticipated socioeconomic and other consequences.³²⁷ The Secretariat then officially registered the draft.³²⁸

Following registration, the Presidium or chamber chairmen either submitted the draft directly to the Supreme Soviet for consideration or sent it to the "appropriate" committees and commissions, including the Legislation Committee, for examination and preparation.³²⁹ During this second stage, the assigned committees had extensive authority to devise relevant procedures and structures for their work. According to the Temporary Rules, the committees could "independently" determine their own rules and schedule.³³⁰ Moreover, they had full discretion to create preparatory subcommittees, which could be composed of not only committee members but also other people's deputies, representatives of government agencies, social organizations, and scientific institutes, specialists, and scholars.³³¹ Similarly, when several committees or commissions (or both) had responsibility for a single statute, they could form a joint preparatory committee.³³² Finally, if desirable, preparatory committees had the option of sending the draft law to outside labor, academic, social, or citizens' groups for discussion and criticism.³³³

After the committee or commission prepared the draft, the Temporary Rules called for its submission to the Presidium.³³⁴ The Presidium then determined the appropriate point in the Supreme Soviet agenda for consideration of the statute and distributed copies of the text and supporting materials to people's deputies no later than two weeks prior to the scheduled examination session.³³⁵ The third stage, the so-called "first reading" of the draft, began at this point.³³⁶ During this period, deputies heard speeches by the draft initiators and preparatory committees, discussed the text, supplementary reports, and other materials,³³⁷ and then either approved the law in principle and set a date for its second reading, re-

327. *Id.* points 1 & 2.

328. *Id.* point 2.

329. *Id.*

330. The only restriction was that these arrangements had to conform with the existing USSR legislation and the Temporary Rules. *Id.* point 3.

331. *Id.*

332. *Id.*

333. *Id.* point 4.

334. *Id.* point 5.

335. *Id.*

336. *Id.* point 6.

337. *Id.*

jected it altogether, or formally enacted it as USSR legislation.³³⁸

If legislators chose the first option (approval in principle), they commenced the fourth stage of the lawmaking process, *dorabotka* or "refinement" of the statute. The legislators could choose to return the draft to the original preparatory committees, additional committees, or entirely new committees for supplementary examination and rewriting.³³⁹ Simultaneously, they could order publication of the text for nationwide discussion and criticism.³⁴⁰

Once the Presidium (or chamber chairmen) and the main drafting committee deemed the law suitably revised, they presented it to the Supreme Soviet for a second reading.³⁴¹ During this fifth stage, legislators could choose to consider the text as a whole or on a clause-by-clause basis.³⁴² Moreover, at any point during discussion of the draft, they could return individual clauses or the text in its entirety to the appropriate committees for additional refinement.³⁴³

At the conclusion of this second reading, the Supreme Soviet settled the fate of the draft law. In this sixth and final stage, legislators "adopt[ed] the USSR law, reject[ed] it or reach[ed] a decision about the procedure for its subsequent examination."³⁴⁴ The deputies then determined in each case whether to conduct the vote on the text in its entirety or on an individual clause-by-clause basis.³⁴⁵ The Temporary Rules contained neither further information on the enactment process nor any guidance whatsoever regarding subsequent publication or entry into force of the new USSR statute.³⁴⁶

The Temporary Rules, therefore, represented a notable improvement over prior Soviet lawmaking schemes. They offered a degree of detail

338. *Id.* point 7.

339. *Id.*

340. *Id.*

341. *Id.* point 8.

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.*

346. On July 31, the Supreme Soviet passed a law dealing specifically with issues of publication and entry into force. *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik O Poriadke Opublikovaniia i Vstupleniia v Silu Zakonov SSSR i Drugikh Aktov, Priniatykh S'ezdom Narodnykh Deputatov SSSR, Verkhovnym Sovetom SSSR i Ikh Organami* [USSR Law On Procedures for the Publication and Entry Into Force of USSR Laws and Other Acts Adopted by the USSR Congress of People's Deputies, the USSR Supreme Soviet, and Their Organs] (July 31, 1989), PRAVDA, Aug. 4, 1989, at 1 [hereinafter *Law on Publication and Entry into Force*]. See *infra* notes 377-81 and accompanying text.

and specificity conspicuously absent in both the pre-Gorbachev³⁴⁷ and the 1988 amended constitutional provisions.³⁴⁸ The rules placed unprecedented emphasis on legislative preparation and refinement of drafts³⁴⁹ and expanded the opportunities for deputy and public participation in the lawmaking process.³⁵⁰ They significantly enhanced the stature and role of legislative commissions and committees, granting these bodies broad authority and discretion over the organization and completion of their assigned tasks.³⁵¹

Unfortunately, however, the Temporary Rules also contained a number of linguistic and conceptual flaws that promised to undercut the effectiveness and autonomy of the new Supreme Soviet as lawmaker. Most disturbing was the presence of several built-in loopholes for bypassing stages of the formal legislative process. Thus, the Temporary Rules stipulated that the legislature could adopt a law after only one reading³⁵² or even, if the Supreme Soviet Presidium or chamber chairmen so decided, immediately upon its initiation and registration.³⁵³ This effectively reduced or, in the latter instance, eliminated committee and commission participation in the lawmaking process. Yet the Temporary Rules failed to provide any concrete definition or restriction on the exercise of these options.

Similarly, the new scheme offered only possibilities, not guarantees, for public involvement in legislative activity. The Temporary Rules did not mandate consultation with citizens' groups or dissemination of drafts in the mass media. Rather, they permitted the Supreme Soviet and its committees to enlist outside organizations and individuals in preparatory work³⁵⁴ and to publish drafts in preliminary³⁵⁵ or approved forms,³⁵⁶ or both. Another related problem was the continued fluidity of lawmaking procedures. For example, the Temporary Rules contained only vague guidelines regarding the preparation of drafts, giving committees and commissions virtually complete discretion to determine their own rules,

347. See Foster-Simons, *supra* note 80.

348. See *supra* notes 81-126 and accompanying text.

349. In fact, the Temporary Rules devoted more space to draft preparation and refinement than to any other stage of the legislative process. See *Temporary Rules, supra* note 324, points 3, 4 & 7.

350. See *id.* points 1-4 & 7.

351. See *id.* points 3, 4 & 7.

352. *Id.* point 7.

353. *Id.* point 2.

354. *Id.* points 3-4.

355. *Id.* point 4.

356. *Id.* point 7 (publication after first reading).

agendas, and structures.³⁵⁷ In addition, they gave no explanations as to when the legislature should properly refer a draft for *dorabotka* to its original preparatory committees, additional committees, or new committees.³⁵⁸ Moreover, the Temporary Rules did not delineate the appropriate instances in which to discuss or vote for a statute in its entirety or on a clause-by-clause basis.³⁵⁹ If the Congress of People's Deputies was any guide,³⁶⁰ such imprecise procedural provisions were likely to lead to serious delays and outside domination of the upcoming Supreme Soviet legislative work.

In fact, the Temporary Rules expressly licensed extensive control of the lawmaking from above. Most notably, they gave the Presidium broad supervisory and decisive powers throughout the process. Presidium involvement could potentially³⁶¹ include receipt of the initiated draft,³⁶² assignment of the appropriate preparatory committees,³⁶³ determination of the schedule for the first and second readings,³⁶⁴ distribution of the text and supporting materials to deputies,³⁶⁵ and final judgment regarding the draft's suitability for formal Supreme Soviet enactment.³⁶⁶

Finally, the Temporary Rules failed to address many of the most criticized aspects of the lawmaking process. They made no inroads into the longstanding practice of anonymous, secret drafting of legislation.³⁶⁷ They dealt in only the most cursory manner with the origination of legislation³⁶⁸ and did not require identification of draft authors by name as urged by Soviet reformers.³⁶⁹ The Temporary Rules also contained no

357. *Id.* point 3.

358. *Id.* point 7.

359. *Id.* points 7 & 8.

360. *See supra* part III.A.

361. The word "potentially" is appropriate because in many instances the Presidium shared these powers with the chairmen of the chambers.

362. *Temporary Rules, supra* note 324, point 2.

363. *Id.*

364. *Id.* point 5.

365. *Id.*

366. *Id.* points 2 & 8.

367. *See Foster-Simons, supra* note 80, at 336, 340-44.

368. The only mention of the preinitiation development of legislation appeared in point 1, which described formal presentation to the Supreme Soviet of drafts prepared either by bodies with the right of legislative initiative or by organs or private citizens without such right. There was no discussion of drafting procedures or techniques prior to official presentation and registration. *Temporary Rules, supra* note 324, point 1.

369. *See, e.g.,* Comments by deputies at USSR Supreme Soviet session (July 19, 1989), *cited in* Moscow Domestic Service, July 19, 1989, *translated in* F.B.I.S.-SOV, July 20, 1989, at 67 [hereinafter Comments by Deputies]; Danilenko, *supra* note 156.

mention, let alone formal guarantee, of legislative consideration of alternative versions of draft laws. Thus, official departmental drafts were likely to remain the determinative basis for new Soviet legislation.³⁷⁰

Moreover, because of their lack of a detailed, binding timetable for draft preparation and approval, the Temporary Rules provided little relief for party and administrative "mothballing"³⁷¹ of prospective legislation. The sole time requirements appeared in points five and six, which mandated respectively that deputies receive draft texts and supporting materials "as a rule" no later than two weeks prior to the first reading and that they consider a law for its first reading within six months after its original presentation to the Presidium or chamber chairmen. Even this first requirement had two serious defects. Like a similar provision in the Provisional Standing Orders of the Congress of People's Deputies that had been attacked by legislators,³⁷² it offered deputies inadequate time for examination of crucial documents. Exacerbating the situation, the Temporary Rules qualified the minimal two-week period with the phrase "as a rule." The dangers of such language were well known by Soviet legislators and citizens. As one Supreme Soviet deputy remarked at the first Soviet of the Union session on June 3, "[t]he quality of the law will depend on these formulas. You and I have been convinced, I hope, that the essence suffers, the cause suffers because of all these 'as a rule's' and various reservations."³⁷³

Two other significant problems remained untreated by the Temporary Rules: ad hoc amendment of formally enacted statutes³⁷⁴ and lack of public access to Soviet legislative acts.³⁷⁵ The new scheme failed to indicate whether its procedures applied to amendment as well as to original adoption of legislation. This left the extent of possible deputy involvement in the amendment process unsettled.³⁷⁶ Similarly, the Temporary

370. See Comments by deputies at USSR Supreme Soviet (July 19, 1989), cited in Moscow Domestic Service, July 19, 1989, translated in F.B.I.S.-SOV, July 20, 1989, at 70; L. Nikitinskii, *Ploshchad' Pered Parlamentom: Volia Narodom Ili Emotsii Tolpy?* [Parliament Square: The Will of the People or the Emotions of the Mob?], KOMSOMOL'SKAIA PRAVDA, July 11, 1989, at 2 (interview with Sergei S. Alekseev).

371. V. Gatov & V. Dolganov, *Diskussii Obostriaiutsia* [The Debate Intensifies], IZVESTIIA (evening ed.), Sept. 28, 1989, at 1 (citing A.S. Pavlov).

372. *Provisional Standing Orders*, *supra* note 218, art. 19. For an example of deputy criticism, see Pisarenko, *supra* note 277, at 27.

373. Viktor A. Shekhovtsov, Speech to Soviet of the Union session (June 3, 1989), in IZVESTIIA, June 5, 1989, at 3.

374. See Foster-Simons, *supra* note 80, at 337.

375. *Id.* at 337, 352.

376. See Comments by Deputies, *supra* note 369.

Rules did not mention any official mechanisms for statutory publication and entry into force of laws and acts. This second gap was eliminated on July 31 when the Supreme Soviet passed legislation specifically covering these issues.³⁷⁷ The new law mandated publication of USSR laws and acts no later than seven days after their adoption by the Congress of People's Deputies, Supreme Soviet, Constitutional Oversight Committee, or Supreme Soviet Chambers, Presidium, and Chairman.³⁷⁸ It stipulated that all such acts would become legally effective ten days after their publication unless otherwise specified by the enacting body.³⁷⁹ To ensure the increased dissemination of legislation to the Soviet citizenry, the July 31 law required publication in two sources: the official bulletin of the legislature³⁸⁰ and the newspaper *Izvestiia*.³⁸¹

The Supreme Soviet adjourned only two weeks after enactment of the Temporary Rules. By August 4, 1989, it had adopted nearly one hundred decisions.³⁸² This activity by no means reflected a concrete application of the lawmaking reforms, however. Deputies generally followed the familiar, truncated legislative process by endorsing acts drafted and prepared in outside channels.³⁸³ Two unanticipated developments delayed

377. *Law on Publication and Entry Into Force, supra* note 346.

378. *Id.* art. 1. It should be noted, however, that the law exempted Supreme Soviet Presidium decrees and resolutions "with no general significance" from publication requirements. *Id.* art. 4.

379. *Id.* art. 3.

380. *Vedomosti S'ezda Narodnykh Deputatov SSSR i Verkhovnogo Soveta SSSR. See id.* arts. 1-2, 6-7.

381. *Id.* arts. 1-2.

382. See A. Krutov & L. Shvedova, Interview with Anatolii I. Luk'ianov, Moscow Television Service, Aug. 7, 1989, translated in F.B.I.S.-SOV, Aug. 9, 1989, at 26, 32-33. For a list of Presidium decrees approved by the Supreme Soviet, see *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik Ob Utverzhdenii Ukazov Prezidiuma Verkhovnogo Soveta SSSR i Vnesenii Izmenii i Dopolnenii v Zakonodatel'nye Akty SSSR [USSR Law On Approving USSR Supreme Soviet Presidium Decrees and Making Amendments and Additions to USSR Legislative Acts]* (July 31, 1989), IZVESTIIA, Aug. 5, 1989, at 1.

383. A prime illustration was Supreme Soviet treatment of the Council of Ministers Law amendments. *Zakon Souiza Sovetskikh Sotsialisticheskikh Respublik O Vnesenii Izmenenii v Zakon SSSR "O Sovete Ministrov SSSR"* [USSR Law On Making Amendments to the USSR Law "On the USSR Council of Ministers"] (June 27, 1989), PRAVDA, July 6, 1989, at 1. Even *Pravda* commentators criticized the "ineffective" discussion and abbreviated time for committee elaboration of the draft. Buzhkevich & Ovcharenko, *supra* note 321. For deputy criticisms of first session Supreme Soviet law-making procedures, see, e.g., Fedor Burlatskii, cited in A. Kozlov, *Metod Prob i Oshibok Nedopustim [The Trial and Error Method Is Intolerable]*, SOTS. INDUSTRIIA, June 6, 1989, at 1; M. Novitskaia, Moscow Domestic Service, June 26, 1989, translated in

Soviet legislative activity: the unexpectedly lengthy Supreme Soviet examination of government candidates³⁸⁴ and the Donbass miners strike, a national crisis that required immediate governmental and legislative response.³⁸⁵ Thus, any full exploration, trial, and readjustment of the new

F.B.I.S.-SOV, June 26, 1989, at 40; TASS, *supra* note 322.

One possible counter-example was the Supreme Soviet's discussion and approval on its first reading of the draft Law On the Economic Autonomy of the Lithuanian SSR, the Latvian SSR, and the Estonian SSR [hereinafter Draft Baltic Autonomy Law]. At the Congress of People's Deputies, the Lithuanian and Estonian Supreme Soviets formally exercised their right of legislative initiative in proposals to introduce a system of economic accountability into their republics. The Congress formally instructed the Supreme Soviet to consider these proposals, which were then assigned to the Economic Reform Committee and other "relevant" commissions. On July 26, the Economic Reform Committee presented a draft law to the Supreme Soviet for its first reading. After a stormy debate and discussion, legislators approved the draft on July 27 and scheduled a second reading for no later than October 1. See TASS, *Na Pervoi Sessii Verkhovnogo Soveta SSSR [At the USSR Supreme Soviet First Session]*, SOV. ROSSIIA, July 27, 1989, at 1; Ludmila Semena, Moscow Domestic Service, July 27, 1989, translated in F.B.I.S.-SOV, July 28, 1989, at 46. Although Anatolii Luk'ianov described the procedures as "correspond[ing] to the provisional regulations on passing draft bills recently adopted by the Soviet parliament." TASS, July 27, 1989, translated in F.B.I.S.-SOV, July 27, 1989, at 35, in fact there were some serious discrepancies. Most notably, deputies had no opportunity to consider copies of the text and supporting documents in advance of formal legislative deliberations. They received only an oral report on the law because the draft was completed literally on the very day of its first reading. See Anatolii I. Luk'ianov, Speech to USSR Supreme Soviet (July 26, 1989), translated in F.B.I.S.-SOV, July 27, 1989, at 40. Not surprisingly, deputies were critical of this hasty submission. See, e.g., Vitalii I. Vorotnikov, Speech to USSR Supreme Soviet (July 26, 1989), translated in *id.* at 42.

384. On July 3, Gorbachev chided deputies for their overly detailed examination of candidates and called upon legislators to be more "rational" in their "use of the working time of the Supreme Soviet" and more "focused" in their questions. See Mikhail S. Gorbachev, Speech to USSR Supreme Soviet (July 3, 1989), translated in F.B.I.S.-SOV, July 5, 1989, at 39. See Remington, *supra* note 12, at 195.

385. For a brief description of the strikes and their impact on the Soviet legislature, see URBAN, *supra* note 54, at 138-39. The strikes were responsible for two important changes in the legislative agenda: (a) preparation of the draft Strike Law, *Postanovlenie Verkhovnogo Soveta SSSR O Proekte Zakona SSSR O Poriadke Razresheniia Kollektivnykh Trudovykh Sporov [Resolution of the USSR Supreme Soviet On the Draft Law On Procedures for Resolving Collective Labor Disputes]* (Aug. 2, 1989), PRAVDA, Aug. 3, 1989, at 1; and (b) amendment of the State Enterprise Law, *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik O Vnesenii Izmenenii i Dopolnenii v Zakon SSSR "O Gosudarstvennom Predpriatii (Ob'edinenii)" [USSR Law On Making Amendments and Additions to the USSR Law "On the State Enterprise"]* (Aug. 3, 1989), PRAVDA, Aug. 11, 1989, at 1. For information on the Strike Law, see Shishkin, *supra* note 311; TASS, July 18, 1989, translated in F.B.I.S.-SOV, July 18, 1989, at 97. On the State Enterprise Law amendments, see A. Pankov, *Zakon Est', Nado Deistvovat'* [The Law Is

lawmaking scheme in practice had to await the next Supreme Soviet session.

IV. THE FEDERAL LEGISLATURE AS LAWMAKER

The official legislative reforms transferred the major responsibility³⁸⁶ for law creation to bodies that initially were unequal to the task. Supreme Soviet commissions and committees began their consideration and preparation of draft legislation with only a vague idea of their functions,³⁸⁷ competence,³⁸⁸ and organization.³⁸⁹ They had no budget³⁹⁰ and,

There, We Must Act], TRUD, Aug. 6, 1989, at 1. An unnamed *Pravda* commentator praised the revision of the agenda to accommodate the Strike Law as an example of the "living, creative process of the democratic exercise of power." *Will and Law*, PRAVDA, July 19, 1989, at 1, translated in F.B.I.S.-SOV, July 20, 1989, at 84, 85. Similarly, Gorbachev cited the unscheduled changes in the State Enterprise Law as demonstrating that the legislature was "sensitive to impulses proceeding from life outside." Mikhail S. Gorbachev, *Rech' M.S. Gorbacheva Po Zavershenii Raboty Pervoi Sessii Verkhovnogo Soveta SSSR* [Speech of M.S. Gorbachev On the Conclusion of the Work of the First USSR Supreme Soviet Session] (Aug. 4, 1989), PRAVDA, Aug. 5, 1989, at 1. In marked contrast, Fedor Burlatskii warned of "a danger of improvising laws." Fedor Burlatskii, *Speech to USSR Supreme Soviet* (July 25, 1989), translated in F.B.I.S.-SOV, July 25, 1989, at 50, 51.

386. See Igor Beliaiev, *Akademik E.M. Primakov: "S'ezd Pozvolil Nashemu Narodu Luchshe Poznat' Sebia"* [Academician E.M. Primakov: "The Congress Made It Possible for Our People To Understand Themselves Better"], LITERATURNIAIA GAZETA, June 21, 1989, at 10.

387. See V. Tolstov, *Reshenie Sotsial'nykh Problem—Neotlozhno* [The Solution of Social Problems Is Crucial], IZVESTIIA (evening ed.), July 20, 1989, at 3 (interview with Boris N. El'tsin regarding Committee for Questions of Construction and Architecture).

388. A particular problem existed with overlapping competence of committees. As a result, drafts would be submitted simultaneously to several committees with no clear delineation of responsibilities or rights. See E. Leont'eva, "Ostat'sia v Storone Ia Ne Mog . . ." ["I Could Not Remain On the Sidelines . . ."], SOTS. INDUSTRIIA, Aug. 16, 1989, at 2 (interview with Sergei B. Stankevich); Vasinskii, *supra* note 297, at 2. Anatolii Luk'ianov warned of the dangers of just such a development at the June 6 Soviet of Nationalities session: "[P]ractice shows that as soon as a contentious issue falls within the competence of two commissions, the situation that arises is that 'everyone's business is no one's business.'" Anatolii I. Luk'ianov, *Comments at Soviet of Nationalities session* (June 6, 1989), in IZVESTIIA, June 8, 1989, at 10.

389. For discussions of committee disorganization and lack of procedures, see *supra* notes 295-301 and accompanying text. See also A. Pankov, *Bol'she Dela* [More Work], TRUD, Aug. 1, 1989, at 2 (interview with Boris N. El'tsin). Another serious difficulty was the inadequate time allotted to committee sessions. See V. Dolganov, *Obsuzhdaitsia Plan i Biudzheth Strany* [The Country's Plan and Budget Are Discussed], IZVESTIIA, Sept. 20, 1989, at 3.

390. See Buzhkevich, *supra* note 299.

despite formal guarantees to the contrary,³⁹¹ poor support services³⁹² and access to information.³⁹³ Few committee members had the specialized legal training required for formulation of sophisticated, precise statutory norms and rules.³⁹⁴ Even the Legislation Committee, the "coordinating center of all lawmaking in the country,"³⁹⁵ contained only twenty lawyers.³⁹⁶

Deputies' personal lives were fraught with uncertainty and material deprivation. They arrived at the first Supreme Soviet session with their employment status unsettled.³⁹⁷ They worked nearly a mile away from the Supreme Soviet in offices that remained under construction throughout the summer of 1989.³⁹⁸ They labored long hours with inadequate food³⁹⁹ and compensation.⁴⁰⁰ Some deputies claimed that these hardships undermined Supreme Soviet authority and independence by making legislators susceptible to leadership "taming and feeding."⁴⁰¹

Poor living and working conditions constituted only one threat to deputies' lawmaking autonomy, however. In fact, through a combination of indirect and direct powers, party and legislative authorities could poten-

391. See *supra* notes 317-18 and accompanying text.

392. Deputies operated largely without staff, consultants, advisers, printing facilities, computers, or fax machines. See V. Dolganov & R. Lynev, *Sdelan Vazhnyi Shag [A Major Step Has Been Made]*, *IZVESTIYA* (evening ed.), Aug. 7, 1989, at 1; Pankov, *supra* note 389.

393. See Buzhkevich, *supra* note 299; Leont'eva, *supra* note 388.

394. See Grafova, *supra* note 305. According to an *Izvestiia* correspondent, an all-too-familiar refrain at committee meetings became "Oh, would that we had a qualified lawyer to help us formulate amendments with the utmost accuracy . . ." V. Dolganov, *Zaglianem v Zavtra [Looking Ahead to Tomorrow]*, *IZVESTIYA* (evening ed.), Nov. 9, 1989, at 1.

395. Sergei Alekseev, *cited in* TASS, *supra* note 385.

396. See Shinkarev, *supra* note 312, at 3.

397. Deputies generally had no notion of whether they were to be part-time or permanent legislators or of the impact of their Supreme Soviet service on their regular employment. See Gonzal'ez et al., *supra* note 297; Iu. Sorokin, *Ischezaet Defitsit Lichnosti [The Shortage of Personalities Is Disappearing]*, *KOMSOMOL'SKAIA PRAVDA*, June 7, 1989, at 1. Committee chairmen, deputy chairmen, and secretaries were expected to devote themselves full-time to legislative activity. See Anatolii I. Luk'ianov, Comments at Soviet of Nationalities session (June 6, 1989), in *IZVESTIYA*, June 8, 1989, at 11.

398. See URBAN, *supra* note 54, at 137; TASS, *supra* note 322, at 2.

399. See TASS, July 13, 1989, in *F.B.I.S.-SOV*, July 13, 1989, at 49.

400. See *id.*

401. Iurii Iu. Boldyrev, *cited in* TASS, *supra* note 399. See Mikhail S. Gorbachev, Speech to USSR Supreme Soviet (July 13, 1989), Moscow Domestic Service, July 13, 1989, translated in *F.B.I.S.-SOV*, July 14, 1989, at 46; Moscow Domestic Service, July 13, 1989, translated in *id.* at 45.

tially create a stranglehold on the legislative process. The CPSU center's control of party members ensured it a decisive voice in the formulation and adoption of statutes. A *Pravda* editorial in August reminded communist deputies that they were not "exempt from party discipline Their duty [was] to take the same stance as the Central Committee . . . and to pursue and to implement the party line" in the legislature.⁴⁰² The chilling effect on Soviet lawmaking was evident. Deputies frankly acknowledged that, even under the reformed system, draft laws would "continue to go by way of Staraiia Ploshchad"⁴⁰³ (CPSU headquarters).

As amply demonstrated by early Supreme Soviet sessions, the leadership could also influence the lawmaking process through official legislative and governmental, as well as party, channels. It retained significant powers to determine such key matters as committee composition,⁴⁰⁴ functions,⁴⁰⁵ scheduling,⁴⁰⁶ draft preparation assignments,⁴⁰⁷ and media coverage.⁴⁰⁸ Some suspected that party and legislative authorities actually manipulated the committee structure to "drown" controversial issues and laws.⁴⁰⁹ For example, members of the potentially troublesome Commit-

402. Editorial, *Partiia i Sovety [Party and Soviets]*, PRAVDA, Aug. 8, 1989, at 1. See also Mikhail S. Gorbachev, *Perestroika Raboty Partii—Vazhneishaia Kliuchevoiaia Zadacha Dnia. Doklad M.S. Gorbacheva na Soveshanii v TsK KPSS [The Restructuring of the Party's Work Is a Most Important Key Task of the Day: M.S. Gorbachev's Report at the CPSU Central Committee Conference]*, PRAVDA, July 19, 1989, at 1, part II ("We naturally cannot consider communist deputies free from party discipline or fulfillment of party decisions.").

403. Nikitinskii, *supra* note 370, at 2.

404. See, e.g., Boris N. El'tsin, *cited in* Tolstov, *supra* note 387, at 3: "[A]s chairman I had no involvement in the committee's formation. I still do not know who selected the deputies or on what basis. I was presented with a ready-made list by the Supreme Soviet Presidium apparatus."

405. For a description of the officially designated functions of commissions and committees, see Anatolii I. Luk'ianov, Speech to Soviet of Nationalities session (June 6, 1989), in *IZVESTIIA*, June 8, 1989, at 10.

406. See *supra* notes 298-300 and accompanying text.

407. See *supra* note 363 and accompanying text.

408. See, e.g., Grafova, *supra* note 305, at 10 (reporting that militsiia were posted at doors of Glasnost' Committee session "to protect the deputies from an 'unnecessary' correspondent"). Officials substantially restricted media coverage of Supreme Soviet meetings. See Moscow Domestic Service, June 26, 1989, *translated in* F.B.I.S.-SOV, June 26, 1989, at 36. Their justification was that the extensive broadcasts of Congress of People's Deputies proceedings had had a negative impact on the Soviet economy. "People stopped working and sat in front of televisions or loudspeakers." Buzhkevich & Ovcharenko, *supra* note 321, at 2.

409. See, e.g., Boris N. El'tsin, Speech to USSR Supreme Soviet (July 24, 1989), *translated in* F.B.I.S.-SOV, July 25, 1989, at 33, 34. *But see* Mikhail S. Gorbachev, Speech to USSR Supreme Soviet (July 24, 1989), *translated in* F.B.I.S.-SOV, July 25,

tee for Questions of Glasnost' and Citizens' Rights and Appeals (Glasnost' Committee) repeatedly protested apparatus attempts to turn them into a "complaints bureau."⁴¹⁰ They alleged that the leadership had deliberately prevented them from addressing fundamental reforms in the human rights area by assigning them the overwhelming and unnecessary responsibility for the "avalanche" of citizens' letters and appeals to the legislature.⁴¹¹

Despite these formidable obstacles, deputies made major strides toward becoming "fully empowered parliamentarians"⁴¹² in subsequent months. They pressed for reorganization and subordination of the legislative administrative bodies traditionally appointed by and answerable to the party leadership rather than the legislature.⁴¹³ They formed political groups independent of the CPSU that vigorously asserted minority rights and views in committee and full Supreme Soviet sessions.⁴¹⁴ They devel-

1989, at 39, 42-43 (rejecting El'tsin's claims).

410. Grafova, *supra* note 305, at 10.

411. *Id.* Note that a special Department of Letters already existed within the Supreme Soviet Presidium to handle the literally thousands of letters. *Id.*

412. Eugenii M. Primakov, *cited in* Sorokin, *supra* note 397, at 1.

413. Their particular target was the Secretariat, which they sought to transform into an organ that would "work for the deputies, under the deputies, under their control, and not vice versa." Anatolii I. Luk'ianov, *cited in* Krutov & Shvedova, *supra* note 382, at 32. *But see* Iu. Nikolaev, *S Vershiny Goda [From the High Point of the Year]*, Sov. ROSSIA, Dec. 28, 1989, at 1 (noting continued Secretariat and Presidium control over distribution of deputies' statements).

414. From the very beginning, deputies resisted Gorbachev's scheme for controlled identification and representation of interest groups. They organized their own independent legislative groups along territorial, professional, and ideological lines. *See generally* Evgenii Panov, *Ot Ch'ego Imeni [On Behalf of Whom?]*, SOTS. INDUSTRIIA, June 3, 1989, at 2. The first evidence of this spontaneous formation of legislative groups was offered at the Congress of People's Deputies. The so-called "new Moscow deputies," with Boris El'tsin as their main spokesperson, announced their presence with a flourish by publicly condemning the Congress agenda as prepared and approved by the CPSU. *See* AFP, May 21, 1989, *in* F.B.I.S.-SOV, May 22, 1989, at 68. The new Moscow deputies spawned and actively supported numerous other independent legislative collectives, placing special emphasis on "effective enlightenment work" with Baltic and other republic groups. V. Mikhailov, *Let's Be Optimistic*, SOV. LITVA, June 1, 1989, at 1, *translated in* F.B.I.S.-SOV, June 19, 1989, at 58 (interview with Kazimera Prunskene).

On May 27, deputies from the Moscow delegation officially declared the creation of the "Interregional Deputies Group." *See supra* note 274. This organization took concrete form on July 29 when nearly 400 progressive deputies from throughout the USSR met in Moscow to determine the basic goals, platform, and leadership of their group. *See* Andrei Romanov & Vladimir Shevelev, *The Minority Closes Rank*, MOSCOW NEWS, Aug. 6, 1989, at 10; TASS, July 30, 1989, *in* F.B.I.S.-SOV, July 31, 1989, at 52. This group represented the first official, independent political association established in the

oped their own procedures,⁴¹⁵ structures,⁴¹⁶ and agenda,⁴¹⁷ and they acquired the rudiments of professional legislative support services.⁴¹⁸ In the process, Supreme Soviet deputies radically transformed and improved every phase of the approved lawmaking scheme.

Soviet Union since Lenin's 1921 prohibition of factionalism in the CPSU. Francis Curta, AFP, July 31, 1989, in F.B.I.S.-SOV, Aug. 1, 1989, at 42.

During the second session of the Supreme Soviet, deputies' groups multiplied and played an increasingly active role in the work of the legislature. They initiated and drafted laws, prevented approval of unacceptable resolutions through such techniques as public boycotts of voting sessions, and ensured representation of alternative, nonofficial positions and interests. See A. Davydov et al., *Sila Argumentov Ili Argument Sily* [*Force of Arguments or Argument of Force*], IZVESTIIA (evening ed.), Oct. 11, 1989, at 1; Marina Dimova et al., Moscow World Service, Oct. 23, 1989, in F.B.I.S.-SOV, Oct. 25, 1989, at 59; L. Shevtsova, *Oppozitsiia. Novoe Slovo v Nashem Politicheskome Slovare* [*Opposition—A New Word in Our Political Vocabulary*], IZVESTIIA (evening ed.), Feb. 27, 1990, at 3.

415. See, e.g., Dolganov & Stepovoi, *supra* note 296 (first roll call vote).

416. See, e.g., Gonzal'ez et al., *supra* note 297 (creation of subcommittees by International Affairs Committee); TASS, *supra* note 385 (formation of five subcommittees by Legislation Committee). Legislative committees also decided to determine their own membership composition. See, e.g., Tolstov, *supra* note 387, at 3.

417. See, e.g., E. Gonzal'ez et al., *Obsuzhdaiutsia Ukazy v Komitetakh Verkhovnogo Soveta SSSR i Komissiiakh Ego Palat* [*Decrees Are Being Discussed in USSR Supreme Soviet Committees and Its Chambers' Commissions*], IZVESTIIA, July 20, 1989, at 4 (discussing the Legislation Committee's formulation of a long-range plan for its lawmaking activity).

418. See, e.g., Dolganov, *supra* note 389, at 3; Eugene Huskey, *Legislative-Executive Relations in the New Soviet Political Order*, in PERESTROIKA-ERA POLITICS, *supra* note 12, at 153, 164. On November 14, legislators proposed the formation of the so-called "People's Deputies' Club." The goal was to improve their professional expertise through lecture and roundtable discussions of foreign and domestic drafting procedures, development of analytical skills, and examination of key immediate and long-term legal, political, social, and economic problems. See Miroslav Buzhkevich, *Klub Narodnykh Deputatov* [*People's Deputies' Club*], PRAVDA, Nov. 15, 1989, at 3. In February 1990 the Supreme Soviet announced the formation of a new Center for Analysis and Forecasting, which was supposed to become the equivalent of the United States Congressional Research Service. See G. Alimov, *Komanda Parlamentskikh Ekspertov Pri Verkhovnom Sovete Strany Sozdaetsia Tsentri Analiza i Prognozov* [*A Team of Parliamentary Experts: A Center for Analysis and Forecasting Established Under the Supreme Soviet of the Country*], IZVESTIIA, Feb. 2, 1990, at 3.

A. Supreme Soviet Reforms of the Legislative Process

1. Generation of Prospective Legislation

In the latter half of 1989, there were dramatic changes in the initial creation of legislation, a stage ignored by all formal Soviet lawmaking schemes. The rigid CPSU monopoly on origination and preparation of statutes yielded to a more spontaneous, open, and participatory process. The impetus for legislation—once virtually the exclusive responsibility of the party and its General Secretary—rapidly extended to a wide variety of official and unofficial sources. Thus, Supreme Soviet committees,⁴¹⁹ independent deputy groups,⁴²⁰ academic institutes,⁴²¹ and private citizens⁴²² proposed and developed many of the drafts subsequently considered by the Soviet legislature.

Equally remarkable was the partial lifting of the “veil of secrecy”⁴²³ that had long obscured early preparation of statutes. In marked contrast with the previous submission of anonymous drafts,⁴²⁴ there started to be public disclosure of authorship in legislative sessions and in the mass

419. See, e.g., Miroslav Buzhkevich, *Bez Kanikul* [No Vacation], PRAVDA, Jan. 25, 1990, at 2 (reporting the Economic Reform Committee's proposed concept of the Law on Joint Stock Companies).

420. See, e.g., *O Razrabotke Antiinflatsionnogo Zakona* [On Developing an Anti-Inflation Law], TRUD, Dec. 16, 1989, at 1 (reporting trade union deputies appeal for preparation of anti-inflation law).

421. See, e.g., V. Liashenko, *Source of All Blessings*, SOV. ROSSIIA, Nov. 7, 1989, at 1, translated in F.B.I.S.-SOV, Nov. 8, 1989, at 34 (draft Fundamentals of USSR and Union Republic Legislation On Land [hereinafter Land Law] prepared by A.I. Lenin All-Union Academy of Agricultural Sciences).

422. See, e.g., V. Dolganov, *Odobren Proekt Zakona o Pechati* [Draft Press Law Approved], IZVESTIYA, Sept. 21, 1989, at 1 (reporting that three legal scholars “for the first time in Soviet legal practice” drafted and published their own proposed Law on the Press and Other Mass Information Media [hereinafter Press Law]); Valentin Liashenko, *Debate on Land. Committee on Agrarian Questions and Food Concludes Work on New Guidelines for Land Use*, SOV. ROSSIIA, Oct. 10, 1989, at 1, translated in F.B.I.S.-SOV, Oct. 13, 1989, at 44 (reporting that peasant teacher formulated and published in *Sovetskaia Rossiia* a draft land law); Nikolai I. Ryzhkov, *Strategii Uglubleniia Ekonomicheskoi Reformy—Novuiu Zakonodatel'nyiu Osnovu. Doklad N.I. Ryzhkova Na Vtoroi Sessii Verkhovnogo Soveta SSSR* [New Legislative Basis for the Strategy of Deepening Economic Reform: Report by N.I. Ryzhkov at the Second Session of the USSR Supreme Soviet], PRAVDA, Oct. 3, 1989, at 2, 3 (noting that citizens' “new forms of economic operation” inspired draft Socialist Enterprise Law).

423. Sergei S. Alekseev, cited in Nikitinskii, *supra* note 370, at 2.

424. See Foster-Simons, *supra* note 80, at 336.

media.⁴²⁵ In fact, a member of the Legislation Committee revealed in mid-August that the Supreme Soviet intended to codify this practice in its new rules.⁴²⁶ His committee planned to introduce a requirement that all draft laws must contain a list of authors to be accepted formally for Supreme Soviet consideration.⁴²⁷

Similarly, there began to be extensive, unprecedented involvement of outside experts and interest groups in the initial drafting process. For example, in preparing its draft Law on Principles of Economic and Social Government in the Union Republics (Law on Republic Government), the Council of Ministers “[m]aybe for the first time in [Soviet] legislative practice”⁴²⁸ created a working group of republic leaders, federal government officials, scientists, and specialists.⁴²⁹ Some drafting bodies also solicited and incorporated citizens’ comments and criticisms,⁴³⁰ even publishing early proposals and drafts for public discussion.⁴³¹ Other significant changes included preparation and consultation of alternative draft variants⁴³² and direct reference and use of foreign laws and

425. See, e.g., Evgenii M. Primakov, Speech to USSR Supreme Soviet (Nov. 21, 1989), translated in F.B.I.S.-SOV, Nov. 24, 1989, at 55, 55 (listing by name major individual and institutional participants in drafting new Standing Orders).

426. Sergei B. Stankevich, cited in Leont’eva, *supra* note 388.

427. *Id.*

428. Leonid I. Abalkin, Speech to USSR Supreme Soviet (Oct. 10, 1989), translated in F.B.I.S.-SOV, Oct. 11, 1989, at 49.

429. *Id.* For other examples of expert involvement in preliminary drafting, see V. Voronetskii, *Pravovaia Baza Strany [The Legal Basis of the Country]*, ARGUMENTY I FAKTY, Aug. 5-11, 1989, at 1 (discussing involvement of scientists in drafting Fundamental Principles of USSR and Union Republic Legislation On Leaseholding [hereinafter Lease Law]); Moscow Television Service, Nov. 1, 1989, translated in F.B.I.S.-SOV, Nov. 2, 1989, at 57 (report of USSR Academy of Sciences President Gurii Marchuk on his institute’s reports for government on economic reform drafts).

430. See, e.g., Moscow International Service, Sept. 30, 1989, translated in F.B.I.S.-SOV, Oct. 10, 1989, at 50 (reporting religious community involvement in Freedom of Conscience Law preparation); TASS, *Gotovitsia Pensionnaia Reforma [Pension Reform Is Being Prepared]*, PRAVDA, Oct. 14, 1989, at 2.

431. See, e.g., Abalkin, *supra* note 428 (discussing publication and nationwide debate of Law on Principles of Economic and Social Government in the Union Republics [hereinafter Law on Republic Government] proposals and drafts).

432. See, e.g., Ryzhkov, *supra* note 422, at 55 (reporting that the Council of Ministers made “maximum use” of alternative variants in preparing laws on ownership, land, leasing, tax, and socialist enterprise); Nikolai I. Ryzhkov, *Pensionnomu Obesnecheniiu Grazhdan—Nadezhdye Pravovye i Sotsial’nye Garantii. Doklad N.I. Ryzhkova na Sessii Verkhovnogo Soveta SSSR [Reliable Legal and Social Guarantees for Pension Provision for Citizens: Report by N.I. Ryzhkov at USSR Supreme Soviet Session]*, PRAVDA, Nov. 3, 1989, at 1 (Pension Law).

experiences.⁴³³

Despite these positive developments, there remained serious problems in the early formulation of legislation, especially in the human rights area. Administrative agencies, most notably the Council of Ministers and Ministry of Justice, continued to prepare these sensitive laws behind closed doors. They refused to disclose to the general public or even the relevant legislative committees the list of authors, the content, and the concrete provisions of preliminary drafts or to offer explanations for their delayed submission to the Supreme Soviet.⁴³⁴ Those drafts that were eventually publicized had major flaws. Generally, they were incomplete, superficial, and "in line with the command-and-administer tradition."⁴³⁵ Thus, an early version of the law on unofficial organizations, in direct violation of the USSR's recent international law commitments,⁴³⁶ enhanced state authority by granting administrative bodies comprehensive powers to regulate all activities and matters affecting the interests of social organizations.⁴³⁷ These experiences led progressive deputies to advocate a new legislative procedure far beyond that set forth in the Tem-

433. See, e.g., Moscow Television Service, Nov. 2, 1989, translated in F.B.I.S.-SOV, Nov. 3, 1989, at 59 (reporting on the Law on Appealing to the Courts Unlawful Actions by State Organs and Officials Infringing Citizens' Rights [hereinafter Official Interference Law]).

434. See Gatov & Dolganov, *supra* note 371; I. Korol'kov, *Den'gi Dlia Respublik. Delit' Mozhno Tol'ko To, Chto Zarabotano* [Money for the Republics: One Can Only Share What Has Been Earned], *IZVESTIYA* (evening ed.), Oct. 12, 1989, at 1; A. Ostal'skii, *Zakony Zapazdyvaiut. Mnenie Odnogo iz Komitetov Verkhovnogo Soveta SSSR O Khode Vypolneniia Nashei Stranoi Venskikh Dogovorennostei* [Laws Lagging Behind: Opinion of One of the USSR Supreme Soviet Committees on the Progress of Our Country in Fulfilling the Vienna Accords], *IZVESTIYA* (evening ed.), Oct. 19, 1989, at 3.

435. Nina Beliaeva, *Form Unions According to the Law. An Attempt at an Open Commentary on a Hushed-Up Draft Law*, *MOSCOW NEWS*, Aug. 20, 1989, at 12. For discussion of problems with human rights laws, see, e.g., M. Kozhukov, *O Prave Na Vyezd i V'ezd v SSSR* [On the Right of Exit From and Entry Into the USSR], *IZVESTIYA* (evening ed.), Oct. 19, 1989, at 3 (draft Exit-Entry Law); Leont'eva, *supra* note 388 (draft Press Law).

436. On January 1, 1989, the USSR and other members of the CSCE signed the so-called Vienna Accords, pledging to bring all internal legislation into conformity with international human rights treaties by the end of 1989. See Gatov & Dolganov, *supra* note 371. The draft law on unofficial organizations violated the Universal Declaration of Human Rights because it expanded the exhaustive list of limitations on exercise of citizens' rights and freedoms. Beliaeva, *supra* note 435. See Sergei Kosenko, *Znat', Poniimat', Vynolnial'* [Know, Understand, Implement], *LITERATURNAYA GAZETA*, Dec. 13, 1989, at 14 (arguing that few Soviet citizens know the fundamental international human rights agreements and, thus, are unable to understand or enforce their "real rights and duties").

437. See Beliaeva, *supra* note 435.

porary Rules. They called for nothing short of a complete transfer of all drafting responsibility to Supreme Soviet commissions and committees.⁴³⁸ Under this recommended approach, government departments could participate in the process only under the firm control of legislative committees.⁴³⁹

2. Initiation

Most of the statutes considered by the second session of the Supreme Soviet had been formally initiated and accepted during the first meetings of the Congress of People's Deputies⁴⁴⁰ and Supreme Soviet.⁴⁴¹ As a result, they generally derived from traditional administrative channels, such as the Council of Ministers,⁴⁴² Supreme Court,⁴⁴³ and Ministry of Justice.⁴⁴⁴ In at least one case, the October 2 Council of Ministers' request for broad emergency powers,⁴⁴⁵ authorities failed to observe even the minimal requirements for initiation of legislation. As Andrei Sakharov reported, "[w]ho was the initiator of these measures [was] not entirely clear and the mechanism for [their] appearance [was] unknown."⁴⁴⁶

There was, however, a promising increase in the number of drafts originating within the legislature itself. Legislative committees⁴⁴⁷ and,

438. See Ostal'skii, *supra* note 434 (comments of Fedor M. Burlatskii).

439. *Id.*

440. See, e.g., *Basic Guidelines*, *supra* note 246; *Postanovlenie S'ezda Narodnykh Deputatov Soiuza Sovetskikh Sotsialisticheskikh Respublik O Podgotovke Proektov Nekotorykh Zakonov SSSR, Reguliruiushchikh Poriadok Deiatel'nosti S'ezda Narodnykh Deputatov SSSR, Verkhovnogo Soveta SSSR i Ikh Organov* [Resolution of the USSR Congress of People's Deputies on the Preparation of Several USSR Laws Regulating the Procedure of the Activity of the USSR Congress of People's Deputies, USSR Supreme Soviet, and Their Organs], *IZVESTIIA*, June 11, 1989, at 1 [hereinafter *Resolution on Procedural Laws*].

441. *Preliminary Examination Resolution*, *supra* note 324.

442. See, e.g., Vladislav Fliarkovskii, Moscow Television Service, Oct. 19, 1989, translated in *F.B.I.S.-SOV*, Oct. 20, 1989, at 26 (draft Exit-Entry Law).

443. See G. Ovcharenko, *Kakoi Sud Nam Nuzhen* [The Kind of Court We Need], *PRAVDA*, July 16, 1989, at 2.

444. See V. Iakovlev, *From Instructions to Law*, *EKONOMICHESKAIA GAZETA*, Dec. 1989, at 9, translated in *F.B.I.S.-SOV*, Jan. 5, 1990, at 97.

445. See *supra* note 6.

446. Andrei D. Sakharov, cited in Leont'eva, *supra* note 6.

447. See Buzhkevich, *supra* note 419; S. Karkhanin, *Formula Initsiativy* [Formulation of Initiative], *SOV. ROSSIIA*, Oct. 19, 1989, at 1; *TASS*, Oct. 26, 1989, translated in *F.B.I.S.-SOV*, Oct. 30, 1989, at 49.

most significantly, unofficial deputy groups⁴⁴⁸ were credited with several of the draft statutes and resolutions discussed by the Supreme Soviet. Among the influential associations were groups representing agrarian, ecological, nationalist, veterans', workers', women's, and youth concerns.⁴⁴⁹ Not surprisingly, there began to be a groundswell of support for formal legal recognition of such groups and guarantees for their participation in the legislative process.⁴⁵⁰

3. Preparation

The most remarkable innovations in the Soviet lawmaking process occurred at the stage of preparation of actionable drafts. Here, the "center of gravity"⁴⁵¹ shifted to Supreme Soviet commissions and committees to a degree unanticipated by framers of the Temporary Rules. Deputies freely criticized, modified, or even rejected once sacrosanct governmental drafts.⁴⁵² In sharp contrast to past practice, the preferred approach was

448. See Interview with Anatolii I. Luk'ianov, Moscow International Service, Dec. 8, 1989, translated in F.B.I.S.-SOV, Dec. 11, 1989, at 102, 103 (draft resolutions and laws initiated by deputy groups).

449. See *id.*; Marina Dimova et al., Moscow World Service, Oct. 23, 1989, in F.B.I.S.-SOV, Oct. 25, 1989, at 59. Ironically, the Interregional Deputies Group, which had been predicted to become a major opposition force to the CPSU, played virtually no role in initiation (and formulation) of legislation. See S. Karkhanin, *Zakon Surov, No On—Zakon* [The Law Is Stern, but It Is the Law], SOV. ROSSIIA, Dec. 20, 1989, at 2; Andrei D. Sakharov, cited in Per Dalgard, *Old Fighter*, DET FRI AKTUELT, Nov. 25, 1989, at 2, translated in F.B.I.S.-SOV, Dec. 1, 1989, at 94.

450. See, e.g., Igor N. Griazin, Speech to USSR Supreme Soviet (Nov. 21, 1989), Moscow Television Service, Nov. 21, 1989, translated in F.B.I.S.-SOV, Nov. 24, 1989, at 58; Aleksei Kazannik, cited in *Narodnye Deputaty: Slavo Pered S'ezdom*, supra note 21. See also Marina Shakina, Interview with Eduard Ivanian, MOSCOW NEWS, Nov. 26-Dec. 2, 1989, at 10 (discussing proposal to legalize legislative lobbying).

451. V. Doglanov & A. Stepovoi, *Sessia Zavershilas'. Vpered—S'ezd*. [The Session Is Over: The Congress Lies Ahead], IZVESTIIA, Nov. 30, 1989, at 1. It should be noted that there was extensive committee involvement in the review and formulation of treaties as well as statutes. See O. Losoto & A. Cherniak, *Shag K Narodovlastiiu* [Step Toward People's Power], PRAVDA, Dec. 1, 1989, at 4; TASS, July 22, 1989, translated in F.B.I.S.-SOV, July 24, 1989, at 71.

452. See, e.g., Valerian S. Advadze, Speech to USSR Supreme Soviet (Oct. 16, 1989), Moscow Television Service, Oct. 16, 1989, translated in F.B.I.S.-SOV, Oct. 17, 1989, at 65 (detailing reasons Soviet of Nationalities Commission On Social and Economic Development of Union and Autonomous Republics, Autonomous Oblast's and Okrugs rejected government draft Law on Republican Government); N.A. Pivovarov, Report to USSR Supreme Soviet (Oct. 18, 1989), in IZVESTIIA, Nov. 23, 1989, at 2 (reporting rejection of Council of Ministers draft Law On the General Principles of Local Self-Management and Local Economy in the USSR [hereinafter Draft Self-Management Law] by the Committee on the Activity of Soviets of People's Deputies and the

to consult not one but a variety of proposed drafts and then to choose the best single or combined option.⁴⁵³ In some instances, committees found all versions unsuitable and elected to create their own draft virtually from scratch.⁴⁵⁴

Committees began to make extensive use of specialists, especially lawyers, economists, and sociologists.⁴⁵⁵ Furthermore, they consulted foreign examples in preparing draft laws. For example, they based the self-government law in part on Canadian, British, French, Italian, German, and United States precedent.⁴⁵⁶

In the spirit of *glasnost*' and *demokratizatsiia*, committees involved both the general and concerned publics in the formulation of legislation. They accomplished this through open hearings,⁴⁵⁷ publication of early

Development of Management and Self-Management [hereinafter Self-Management Committee]).

453. See, e.g., TASS, Sept. 29, 1989, in F.B.I.S.-SOV, Oct. 2, 1989, at 43. "[F]or the first time a parliamentary committee, alongside a draft law tabled by the country's government analyzed on an equal basis other draft laws worked out by research institutes, associations of enterprises, and groups of scientists" (on Economic Reform Committee's work on draft Law On Ownership [hereinafter Ownership Law]).

454. See, e.g., Liashenko, *supra* note 421 (Land Law); TASS, Sept. 27, 1989, translated in F.B.I.S.-SOV, Sept. 28, 1989, at 35 (Self-Management Law).

455. See, e.g., TASS, Oct. 12, 1989, in F.B.I.S.-SOV, Oct. 13, 1989, at 50 (Language Law). Committees and commissions were entitled to call upon any expert, specialist, or consultant to assist them in their legislative work. There were reports of practical problems, however. Chairmen complained of a "complicated" procedure for obtaining the services of experts, including the lack of a fee provision for single appearances. See Dolganov, *supra* note 394.

456. See M. Buzhkevich, *Kakoi Byt' Vlasti Na Mestakh* [What Power Should Be Like at the Local Level], PRAVDA, Nov. 13, 1989, at 2; Moscow Television Service, Oct. 18, 1989, translated in F.B.I.S.-SOV, Oct. 20, 1989, at 20. But see Moscow Domestic Service, Dec. 5, 1989, translated in F.B.I.S.-SOV, Dec. 6, 1989, at 57, 58 (Evgenii M. Primakov "stress[ing] the significance of learning from foreign models in the legislative sphere while not necessarily taking on board everything that is done in other countries").

457. See, e.g., Dolganov, *supra* note 422, at 1 (noting that all interested parties could participate in committee hearings on draft Press Law).

Committee hearings often were characterized by tough, uncompromising questioning of administrative officials regarding the specific details of proposed drafts. This was particularly evident in hearings on draft Laws on the State Plan and Budget. For example, the Defense Committee closely scrutinized (in closed hearings) the military budget and report submitted by Defense Minister Dmitrii Iazov and demanded a specific breakdown of figures. See S.P. Golovin, cited in Moscow Domestic Service, Oct. 6, 1989, translated in F.B.I.S.-SOV, Oct. 10, 1989, at 55. Similarly, in a joint session, three of the notorious "strictest examiners," Gatov & Dolganov, *supra* note 371, at 1, including the Soviet of the Union Commission on Labor, Prices, and Social Policy [hereinafter Labor Commission], the Committee on Women's Affairs, and Family, Mother, and Child Protection, and the Committee on Veteran and Invalid Affairs, interrogated at length Gosplan and

draft proposals and variants,⁴⁵⁸ and predictive tools, such as forecasting and opinion polling.⁴⁵⁹ In some cases, deputies even travelled to obtain directly the views of affected constituents.⁴⁶⁰

The product of these labors was a noticeable improvement in the quality of drafts submitted for initial legislative endorsement.⁴⁶¹ At the same time, however, this unexpectedly painstaking⁴⁶² drafting approach presented problems for overall Supreme Soviet legislative activity. It

Finance Ministry officials. Deputies openly challenged Gosplan calculations, asked for information about plans to reverse the disastrous effects of the antialcohol campaign and to increase production of scarce goods, and directly criticized draft budget provisions raising wages of Komsomol and CPSU personnel as "contradict[ing] the emergency anti-inflation measures that society needs." V.I. Samarin, *cited in* Iu. Bersenev et al., *O Pol'ze Konstruktivnykh Somnenii [On the Benefit of Constructive Doubts]*, KRASNAIA ZVEZDA, Sept. 28, 1989, at 1. See V. Romaniuk, *Finansy i Zdorov'e Ekonomiki [Finances and the Health of the Economy]*, IZVESTIIA (evening ed.), Oct. 5, 1989, at 1; TASS, Oct. 4, 1989, in F.B.I.S., Oct. 5, 1989, at 49.

458. See, e.g., V. Bezbrezhnyi et al., *Odnobachnykh Otvetov Net [No Simple Answers]*, Krasnaia Zvezda, Sept. 29, 1989, at 1 (reporting decision to publish draft Press Law in *Sovetskaia Kultura* and *Zhurnalist*). To facilitate public information on the drafting process, the Supreme Soviet decided to reorganize its journal *Narodnyi Deputat*. Beginning January 1990, the journal was to appear eighteen times a year and to include views of deputies, officials, lawyers, activists, and citizens regarding legislative activity, draft laws, and alternative variants. See *Predstavliaem Zhurnal "Narodnyi Deputat" [We Introduce the Journal "Narodnyi Deputat"]*, IZVESTIIA (evening ed.), Oct. 2, 1989, at 6.

459. See Grafova, *supra* note 305; Voronetskii, *supra* note 429.

460. See, e.g., S. Karkhanin, *Shlagbaum Pered Tupikom [Barrier Across the Blind Alley]*, Sov. ROSSIJA, Sept. 29, 1989, at 1 (Laws on State Plan and Budget); Anatolii I. Luk'ianov, Speech to USSR Supreme Soviet (July 19, 1989), *translated in* F.B.I.S.-SOV, July 20, 1989, at 64 (Self-Management Law); Moscow Television Service, July 20, 1989, *translated in* F.B.I.S.-SOV, July 21, 1989, at 81 (Strike Law).

461. See V. Dolganov, *Vremia Otvetstvennykh Reshenii. Zametki s Plenarnykh Zasedanii Vtoroi Sessii Verkhovnogo Soveta SSSR [Time of Responsible Decisions: Notes From the Plenary Sitzings of the Second Session of the USSR Supreme Soviet]*, IZVESTIIA (evening ed.), Nov. 3, 1989, at 1; V. Dolganov & A. Stepovoi, *Vremia Zrelykh Reshenii. Zametki O Plenarnykh Zasedaniakh Vtoroi Sessii Verkhovnogo Soveta SSSR [Time of Mature Decisions: Notes on the Plenary Sitzings of the Second Session of the USSR Supreme Soviet]*, IZVESTIIA (evening ed.), Nov. 16, 1989, at 1. *But see* Kazannik, *cited in* *Narodnye Deputaty: Slovo Perd S'ezdom*, *supra* note 21, at 3 (criticizing as "dry and weak" statutes submitted to Supreme Soviet); A. Sobchak, *Doroga K Pravu [The Path Towards Law]*, PRAVDA, Dec. 5, 1989, at 3 (noting continuing flaws in legislation).

462. See V. Dolganov & V. Kurasov, *Shag K Pravovomu Gosudarstvu [Step Toward Law-Governed State]*, IZVESTIIA (evening ed.), Nov. 2, 1989, at 1 (reporting existence of nine versions of Voters' Instruction Law in committee stage); TASS, Oct. 13, 1989, *translated in* F.B.I.S.-SOV, Oct. 16, 1989, at 38 (observing that seven variants of Ownership Law were submitted to committees).

made unrealizable the timetable and tasks predetermined in August by a Supreme Soviet Presidium⁴⁶³ accustomed to the stage-managed, rubber-stamp legislatures of the past. In late September of 1989, deputies responded by increasing the percentage of time devoted to committee work⁴⁶⁴ and prioritizing the sixty laws scheduled for discussion.⁴⁶⁵ It rapidly became apparent that even these changes would be insufficient to accomplish the overly ambitious goals of the Presidium.⁴⁶⁶ Obviously, there would have to be a major readjustment in future Supreme Soviet procedures and agenda to accommodate an increasingly professional, working legislature.

4. Supreme Soviet Readings

Under the new Supreme Soviet, there was no longer mechanical processing of draft laws. From the very start of the second session, deputies proved to be unusually prepared and interested in a thorough examination of legislation submitted for their approval.⁴⁶⁷ For example, 120 speakers signed up to participate in the Supreme Soviet discussion of draft laws on the state plan and budget.⁴⁶⁸ There was an appreciable

463. See TASS, Aug. 16, 1989, in F.B.I.S.-SOV, Aug. 17, 1989, at 25; TASS, *Zakon—Osnova Zhizni Pravovogo Gosudarstva* [The Law—Foundation of Life in a Law-Governed State], PRAVDA, Aug. 17, 1989, at 2.

464. See Dolganov, *supra* note 389.

465. See *Nachala Rabotu Vtoraia Sessia Verkhovnogo Soveta SSSR* [The Second Session of the USSR Supreme Soviet Has Begun Its Work], IZVESTIIA (evening ed.), Sept. 25, 1989, at 1. Note, however, that there was some disagreement among deputies as to which laws should be included in the "urgent questions" category. See *Proekt Zakona Prochitan. Parlamentskaia Gruppy "Pravdy" Peredaet iz Kremliia* [Reading of Draft Law Completed: Pravda Parliamentary Group Reports from the Kremlin], PRAVDA, Sept. 27, 1989, at 1 (reporting that Ukrainian deputy B. Oleynik considered laws on nationality and ecology of top priority). For a list of laws in order of priority, see A. Davydov & V. Dolganov, *Moskva, Krem'. Na Vtoroi Sessii Verkhovnogo Soveta SSSR* [Moscow, The Kremlin: At the Second Session of the USSR Supreme Soviet], IZVESTIIA (evening ed.), Sept. 26, 1989, at 1.

466. TASS, Oct. 31, 1989, translated in F.B.I.S.-SOV, Oct. 31, 1989, at 50. In fact, throughout the fall of 1989 there were several further schedule changes. For example, the final session of the Supreme Soviet, at Gorbachev's request, began one hour early. V. Dolganov & A. Stepovoi, *Parlament Zavershaet Rabotu* [Parliament Completes Its Work], IZVESTIIA (evening ed.), Nov. 28, 1989, at 3.

467. See Viacheslav Shchepotkin, *Dva Dnia v Sentiabre. Pervye Vpechatleniia o Nachale Raboty Vtoroi Sessii Verkhovnogo Soveta SSSR* [Two Days in September: First Impressions of the Start of the Work of the Second USSR Supreme Soviet Session], IZVESTIIA, Sept. 28, 1989, at 1 (describing debate on Cooperative Law amendments).

468. V. Dolganov & V. Kurasov, *Plan i Biudzhzet Strany Priinyaty* [The Country's Plan and Budget Have Been Adopted], IZVESTIIA (evening ed.), Nov. 1, 1989, at 1. For

improvement in the quality of discussion as well. While there continued to be the occasional emotional outbursts, irrelevant comments, and demagoguery,⁴⁶⁹ the legislature made major strides toward constructive, professional consideration of legislation.⁴⁷⁰

In both the first and second reading stages, deputies closely scrutinized and debated statutes on an article-by-article, and often clause-by-clause, basis.⁴⁷¹ They interrogated draft authors, sponsors, and experts at length about the broad goals, likely consequences, and specific wording of each proposed law.⁴⁷² They made numerous recommendations regarding appropriate changes in statutory language and focus.⁴⁷³ On occasion, they even formally rejected official government drafts. The Council of Ministers' Law on Republic Government had the unenviable distinction of two Supreme Soviet refusals on the first reading.⁴⁷⁴

Although deputies ultimately endorsed most laws on the first⁴⁷⁵ or second⁴⁷⁶ readings, they did so in a manner that diverged markedly from

time reasons, not all of the 120 deputies were able to address the Supreme Soviet from the podium. All were invited to submit their recommendations for publication in the Supreme Soviet stenographic report, however. *Id.*

469. See Davydov et al., *supra* note 414; Losoto & Cherniak, *supra* note 451; TASS, Nov. 24, 1989, in F.B.I.S.-SOV, Nov. 27, 1989, at 67.

470. Viktor Liubovtsev, Interview with Anatolii I. Luk'ianov, Moscow Television Service, Nov. 29, 1989, translated in F.B.I.S.-SOV, Nov. 30, 1989, at 53; TASS, Nov. 29, 1989, in F.B.I.S.-SOV, Nov. 30, 1989, at 55.

471. A prime illustration was Supreme Soviet consideration of the Strike Law, praised by commentators as a model for future legislative discussion of draft laws. See Sergei Alekseev, cited in TASS, Oct. 9, 1989, in F.B.I.S.-SOV, Oct. 17, 1989, at 50; L. Nikitinskii, *Bastovat'—Ne Buntovat'* [Striking—Not Rioting], KOMSOMOL'SKAIA PRAVDA, Oct. 11, 1989, at 1.

472. See, e.g., N. Musienko et al., *Trudnyi Finish* [Difficult Finish], PRAVDA, Nov. 28, 1989, at 1; Shchepotkin, *supra* note 467.

473. For example, deputies proposed forty-eight amendments to the Strike Law. See A. Davydov & A. Stepovoi, *S Uchetom Mneniia Izbiratelei* [Considering the Voters' Opinion], IZVESTIIA (evening ed.), Oct. 9, 1989, at 1; Nikitinskii, *supra* note 471.

474. See TASS, Oct. 16, 1989, translated in F.B.I.S.-SOV, Oct. 17, 1989, at 65; TASS, Nov. 20, 1989, in F.B.I.S.-SOV, Nov. 20, 1989, at 57.

475. See, e.g., *Postanovlenie Verkhovnogo Soveta SSSR O Proekte Zakona O Pensionnom Obespechenii Grazhdan v SSSR* [USSR Supreme Soviet Resolution On the Draft Law On Pension Provision for Citizens in the USSR] (Nov. 2, 1989), PRAVDA, Nov. 4, 1989, at 1; *Postanovlenie Verkhovnogo Soveta SSSR O Proekte Osnov Zakonodatel'stva Soiuzna SSR i Soiuznykh Respublik O Zemle* [USSR Supreme Soviet Resolution On the Draft Fundamentals of USSR and Union Republic Legislation on Land] (Nov. 27, 1989), IZVESTIIA (evening ed.), Dec. 6, 1989, at 1 [hereinafter *Land Law Resolution*].

476. See, e.g., *Zakon Soiuzna Sovetskikh Sotsialisticheskikh Respublik O Poriadke Razresheniia Kollektivnykh Trudovykh Sporov (Konfliktov)* [USSR Law On the Proce-

that of their rubber-stamp predecessors. In legislative voting as well as discussion, unanimity was a thing of the past.⁴⁷⁷ Disagreement became so commonplace that when the Supreme Soviet adopted the Draft Fundamentals of USSR and Union Republic Legislation on the Judicial System without a single dissenting vote, *Izvestiia* correspondents were moved to exclaim that this was "a rarity in the work of this Supreme Soviet."⁴⁷⁸

On a less positive note, the fall 1989 Supreme Soviet sessions revealed several practical and conceptual defects in the reformed scheme for discussion and enactment of legislation. There were early difficulties with the much-touted modern electronic voting equipment installed in late August.⁴⁷⁹ Once functional, however, it generally facilitated more efficient and accurate legislative decisionmaking.⁴⁸⁰ At the same time, the new technology raised interesting, unanticipated issues of "voting glasnost."⁴⁸¹ Now that the Supreme Soviet had the technical capability to identify and record individual deputies' votes, it would have to consider the merits and mechanisms for public disclosure of voting results to constituents.⁴⁸² Similarly, because the voting equipment operated in three modes—open, secret, or by name,⁴⁸³ the legislature would need to balance the competing concerns of deputy anonymity and accountability.⁴⁸⁴

ture for Resolving Collective Labor Disputes (Conflicts) (Oct. 9, 1989), PRAVDA, Oct. 14, 1989, at 1; *Zakon Souiza Sovetskikh Sotsialisticheskikh Respublik Ob Ekonomicheskoi Samostoitel'nosti Litovskoi SSR, Latviiskoi SSR i Estonskoi SSR [USSR Law On the Economic Autonomy of the Lithuanian SSR, the Latvian SSR, and the Estonian SSR]* (Nov. 27, 1989), PRAVDA, Dec. 2, 1989, at 1.

477. In fact, on October 9 the USSR Supreme Soviet experienced its first tied vote. See A. Davydov et al., *Zabastovka—V Ramkakh Zakona [Strikes—Within the Framework of the Law]*, IZVESTIIA (evening ed.), Oct. 10, 1989, at 1.

478. V. Dolganov & A. Stepovoi, *Priniat Zakon O Sudoustroistve [Law On Judicial System Adopted]*, IZVESTIIA (evening ed.), Nov. 13, 1989, at 1.

479. See TASS, Aug. 18, 1989, in F.B.I.S.-SOV, Aug. 21, 1989, at 87; S. Prokoshenko, *Session Sets Priorities*, SOV. LATVIIA, Sept. 27, 1989, at 3, translated in F.B.I.S.-SOV, Oct. 16, 1989, at 33.

480. In some cases the results were embarrassing. For example, when Gorbachev forgot to vote on September 26 all assembled were immediately aware of the fact. See *Proekt Zakona Prochitan, supra* note 465, at 2.

481. S. Karkhanin, *Stroka v Zakon [Paragraph Added to the Law]*, SOV. ROSSIIA, Oct. 10, 1989, at 1.

482. *Id.*

483. See TASS, *supra* note 479.

484. Karkhanin, *supra* note 481; L. Telen, *Rasstanovka Sil [Arrangement of Forces]*, SOTS. INDUSTRIIA, Dec. 22, 1989, at 1. The lack of guidelines in either the Provisional Standing Orders or Temporary Rules to govern use of secret ballots only compounded the problem.

Supreme Soviet administrative bodies and even the deputies themselves also provided occasional obstacles to effective legislative discussion and adoption of legislation. As in the past, the Presidium and Secretariat had a less than impressive record in distributing draft texts and supporting materials to deputies in a sufficiently timely fashion prior to Supreme Soviet deliberations.⁴⁸⁵ Deputies most obviously disrupted the process by nonattendance of critical sessions. In several instances, the resulting lack of quorum necessitated a formal delay in the final debate and decision on draft laws.⁴⁸⁶ Another troublesome issue was illegal voting by Supreme Soviet members. *Komsomol'skaia Pravda* illustrated this problem graphically on October 19, 1989. It published an article entitled "View From the Balcony," complete with photographs of a legislator pressing the voting button of his absent neighbor.⁴⁸⁷

More important and instructive were the repeated procedural flaws that marred and delayed Supreme Soviet lawmaking activity. Nearly all these flaws originated from the incomplete and imprecise language of the July 1989 Temporary Rules. As expected, there was significant confusion and debate over such key voting issues as the definition of "majority" approval⁴⁸⁸ and the appropriate instances of voting on a clause-by-clause basis rather than on the text as a whole.⁴⁸⁹ Also problematic was the virtually undefined distinction between the first and second reading stages. This led to significant disagreement over the purpose and scope of the first reading. Many legislators insisted on a lengthy, detailed examination and criticism of specific draft wording. Others, in contrast, called for a more abbreviated discussion of general conceptual bases only.⁴⁹⁰ Even the second reading stage presented serious difficulties. For exam-

485. See Dolganov & Stepovoi, *supra* note 461.

486. See, e.g., V. Dolganov & A. Stepovoi, *Obsuzhdaetsia Proekt Zakona O Pechati [Draft Law On the Press Under Discussion]*, *Izvestiia*, Nov. 26, 1989, at 1, 2. See generally TASS, Dec. 18, 1989, in F.B.I.S.-SOV, Dec. 19, 1989, at 57 (noting that Rafik Nishanov claimed 120 out of 542 Supreme Soviet members were "regularly absent" and more than 70 deputies missed nearly half of the sessions). In some cases, deputies failed to attend, vote as a political protest, or both. See, e.g., *Tsena i Rynok [Prices and the Market]*, *Pravda*, Oct. 11, 1989, at 1 (Armenian walkout); Vilnius Domestic Service, Nov. 21, 1989, translated in F.B.I.S.-SOV, Nov. 24, 1989, at 77 (Lithuanian protest).

487. S. Kiselev, *Vzgliad S Balkona [View From the Balcony]*, *Komsomol'skaia Pravda*, Oct. 19, 1989, at 1. The author recommended giving deputies upon registration personal keys to their desks to remove "temptation" from their colleagues. *Id.*

488. See, e.g., Davydov & Stepovoi, *supra* note 473; Davydov et al., *supra* note 477.

489. See, e.g., Dolganov & Stepovoi, *supra* note 466; Moscow Domestic Service, Oct. 3, 1989, translated in F.B.I.S.-SOV, Oct. 4, 1989, at 70.

490. See, e.g., Dolganov & Stepovoi, *supra* note 461.

ple, during the final consideration of the Baltic Autonomy Law, it became increasingly apparent that the scheme for last-minute individual amendments from the floor had major disadvantages. It had the potential to distort and weaken the internal consistency of a law that had been carefully formulated and refined for months in committee.⁴⁹¹

Finally, during their second session, Supreme Soviet deputies received a first-hand lesson in the dangers of statutory loopholes. The Temporary Rules' provisions granting Soviet leaders unlimited flexibility and power to bypass legislative channels became a reality. As discussed earlier,⁴⁹² the Council of Ministers submitted a request for immediate emergency powers on October 2, 1989. Neither legislative committees nor separate or joint sittings of the Supreme Soviet had previously reviewed the document. Nonetheless, the legislature passed an only slightly amended version twenty-four hours later.⁴⁹³ Likewise, on November 23, the Supreme Soviet formally enacted the Principles on the Leasing System after a single day's discussion by the full legislature.⁴⁹⁴ A TASS correspondent conceded that this was "[c]ontrary to the established parliamentary practice in keeping with which bills are first approved in the first reading and are adopted only after extra editing in committees and commissions."⁴⁹⁵

5. Nationwide Discussion

During its second session, the Supreme Soviet began to give serious consideration to transforming the hitherto largely pro forma nationwide discussion of drafts into a meaningful mechanism for popular input into the legislative process. Most of the laws approved on the first reading were published in the mass media and formally issued for nationwide discussion.⁴⁹⁶ In a remarkable break with past tradition, deputies occa-

491. See Dolganov & Stepovoi, *supra* note 466, at 3.

492. See *supra* notes 445-46 and accompanying text.

493. See *supra* note 6.

494. *Osnovy Zakonodatel'stva Soiuza SSR i Soiuznykh Respublik Ob Arende* [Fundamental Principles of USSR and Union Republic Legislation on Leaseholding] (Nov. 23, 1989), PRAVDA, Dec. 1, 1989, at 3.

495. TASS, Nov. 23, 1989, in F.B.I.S.-SOV, Nov. 24, 1989, at 72, 73.

496. It should be noted that while most statutes were formally submitted for "nationwide discussion," see, e.g., *Land Law Resolution*, *supra* note 475, others were published only for "discussion." See, e.g., *Postanovlenie Verkhovnogo Soveta SSSR O Proekte Zakona O Pechati i Drugikh Sredstvakh Massovoi Informatsii* [USSR Supreme Soviet Resolution On the Draft Law On the Press and Other Mass Information Media] (Nov. 27, 1989), IZVESTIYA, Dec. 4, 1989 at 1, point 3. See A. Pankov, *Garantiia Glasnosti* [Guarantee of Glasnost'], TRUD, Jan. 18, 1990, at 2.

sionally opted to submit for public comment and comparison not only the endorsed draft but also the most significant variants. For example, in November 1989 the legislature voted to publish both the official version of the Ownership Law and the alternative drafts and proposals prepared by the Ecology Committee, the Lithuanian Supreme Soviet, the Autonomous Oblast' deputies group, and an individual deputy.⁴⁹⁷

The Supreme Soviet also made notable efforts to improve its techniques for collation and examination of nationwide discussion results. Initially, legislative committees and the Academy of Sciences played the major role.⁴⁹⁸ Later, the Supreme Soviet created special groups to monitor the process and to analyze public comments and criticisms.⁴⁹⁹ There was increasing use of independent opinion polls to ensure a more representative sample of views.⁵⁰⁰ Eventually, legislators were able to expedite their work considerably through computer processing of citizens' letters and proposals.⁵⁰¹

Despite these advances, there remained a widespread concern about leadership manipulation of nationwide discussion. Some deputies main-

497. See Moscow Television Service, Nov. 14, 1989, translated in F.B.I.S.-SOV, Nov. 15, 1989, at 46. For the text of the draft Ownership Law, see *Proekt Zakon Soiuzna Sovetskikh Sotsialisticheskikh Respublik O Sobstvennosti v SSSR Draft USSR Law On Ownership in the USSR*, PRAVDA, Nov. 18, 1989, at 3. For variants see *Draft USSR Law On Ownership*, SOV. ROSSIIA, Nov. 21, 1989, at 1, translated in F.B.I.S.-SOV., Dec. 5, 1989, at 92 (Ecology Committee version); *Draft USSR Law On Ownership*, SOV. ROSSIIA, Nov. 21, 1989, at 1 translated in F.B.I.S.-SOV, Nov. 29, 1989, at 100 (Lithuanian version); *Proposals on Draft Law On Ownership in the USSR Submitted by a Group of People's Deputies Representing Autonomous Formations*, SOV. ROSSIIA, Nov. 21, 1989, at 1, translated in F.B.I.S.-SOV, Nov. 24, 1989, at 60; *Predlozheniia K Proektu Zakona [Draft Law Proposals]*, PRAVDA, Dec. 9, 1989, at 3 (discussing Deputy Plotnieks' proposed changes to articles 23-25). Interestingly, the Supreme Soviet did not choose to publish the original Council of Ministers' draft, a move that one commentator criticized as "a parody of 'nationwide discussion.'" V. Vorob'ev, *Publik Kazhdomu Deciatomu? [A Roll for Every Tenth Person?]*, SOV. ROSSIIA, Dec. 16, 1989, at 3.

498. See Buzhkevich, *supra* note 456; S. Karkhanin, *Zakonotvortsy Zhdut Soveta [Lawmakers Waiting for Advice]*, SOV. ROSSIIA, Nov. 15, 1989, at 1.

499. In the case of the Ownership Law, however, the Presidium was entrusted with formation of the special group. See Moscow Television Service, *supra* note 497.

500. See V. Petrunia, *Ozhidaniia i Otsenki. O Chem Svidetel'stvuiut Rezul'taty Oprosa Obshchestvennogo Mneniia V Sviazi So Vtorem S'ezdom Narodnykh Deputatov SSSR [Expectations and Assessments: Results of the Public Opinion Poll on the Second USSR Congress of People's Deputies]*, TRUD, Jan. 3, 1990, at 1; TASS, Feb. 8, 1990, in F.B.I.S.-SOV, Feb. 13, 1990, at 40, 41. Some deputies argued that the best way to obtain the people's opinion was a referendum rather than nationwide discussion. See, e.g., Gavril K. Popov, Speech to USSR Congress of People's Deputies (Dec. 13, 1989), in PRAVDA, Dec. 15, 1989, at 2.

501. See TASS, Jan. 10, 1990, translated in F.B.I.S.-SOV, Jan. 17, 1990, at 60.

tained that the process was as "fictitious"⁵⁰² as ever and, accordingly, should be avoided at all costs.⁵⁰³ The required reforms were legislative formulations of precise, binding procedures and establishment of independent bodies, accountable solely to the Supreme Soviet, to collect, supervise, and analyze nationwide discussion results.⁵⁰⁴

6. Refinement

In the fall of 1989 Supreme Soviet committees made discernible progress in their reworking of statutes. This legislative *dorabotka* activity occurred at two points in the lawmaking process: (1) during the first or second reading stage, and (2) between readings.

As described earlier,⁵⁰⁵ deputies frequently raised criticisms and suggestions in the course of formal Supreme Soviet consideration of drafts. For example, legislators proposed forty-eight amendments to the Strike Law.⁵⁰⁶ In such cases, the Supreme Soviet customarily elected to delay voting and to refer the bill back to committee for reexamination and revision in light of deputy recommendations.⁵⁰⁷

What followed was an extremely grueling process. The Supreme Soviet formed a "working group"⁵⁰⁸ or "coordinating commission."⁵⁰⁹ This body had the onerous task of analyzing and evaluating not only deputy amendments but also recent letters, telegrams, and appeals from citizens and then preparing an appropriate new text for presentation to the legislature.⁵¹⁰ The time frame for completion was usually unreasonable—three days appeared to be the norm.⁵¹¹ Nonetheless, the results

502. Pankov, *supra* note 496 (comment by Nikolai V. Fedorov).

503. See E. Leont'eva, *Obsuzhdaem Proekty Zakona O Sobstvennosti. Ukrepliat' Li Stoikost' K Bedstviyam?* [We Discuss the Draft Law On Ownership: To Strengthen Stability Against Misfortune?], SOTS. INDUSTRIIA, Dec. 12, 1989, at 2 (interview with Iaroslav Kuzminov); Moscow World Service, Dec. 27, 1989, translated in F.B.I.S.-SOV, Dec. 28, 1989, at 78 (comments of Boris N. El'tsin).

504. See Moscow World Service, *supra* note 503; Moscow Television Service, Nov. 13, 1989, translated in F.B.I.S.-SOV, Nov. 14, 1989, at 61.

505. See *supra* notes 471-73 and accompanying text.

506. See Nikitinskii, *supra* note 471.

507. See, e.g., Moscow Television Service, Nov. 1, 1989, translated in F.B.I.S.-SOV, Nov. 2, 1989, at 60 (Law On Status of Deputies); Moscow Television Service, Nov. 22, 1989, translated in F.B.I.S.-SOV, Nov. 24, 1989, at 65 (Land Law).

508. See, e.g., Karkhanin, *supra* note 481 (Strike Law).

509. See, e.g., Dolganov & Stepovoi, *supra* note 466 (Baltic Autonomy Law).

510. See Davydov & Stepovoi, *supra* note 473; Moscow Domestic Service, Oct. 9, 1989, translated in F.B.I.S.-SOV, Oct. 10, 1989, at 62.

511. See TASS, Nov. 27, 1989, in F.B.I.S.-SOV, Nov. 27, 1989, at 68 (discussing bills deferred from November 24 to November 27 to permit "further elaboration").

were often extraordinary. In several instances, the working group produced a revised draft that was so precise and "well considered"⁵¹² that it could be adopted with dispatch. A prime illustration was the Draft Law on the Procedure for Appealing to the Courts Unlawful Actions by State Organs and Officials Infringing Citizens' Rights.⁵¹³ In a mere twenty-four hours, the Legislation Committee (with the assistance of the Supreme Court) managed to compose a final draft that encountered criticism on only one point, its date of entry into force.⁵¹⁴

According to the Temporary Rules, *dorabotka* would most commonly occur between first and second readings of a draft.⁵¹⁵ The second session of the Supreme Soviet presented few opportunities to view this process in action because most laws received only a first reading. The Strike Law and the Baltic Autonomy Law experiences, however, gave early indications of the likely contours of such activity in the future.

In both cases, the working groups responsible for *dorabotka* made substantial changes in the scope and language of texts that had been approved on their first reading by the previous session of the Supreme Soviet.⁵¹⁶ Thus, when submitted for their second readings, the Strike Law broadened representation of work collective interests,⁵¹⁷ and the Baltic Autonomy Law amended provisions on commercial banking.⁵¹⁸ Because of the magnitude of their task, the two legislative working groups drew on the expertise of other deputies and numerous outside institutions and individuals. For example, the Strike Law working group, headed by the Soviet of the Union Labor Commission, received assistance from specialists in the Council of Ministers, the State Committee for Labor and Social Problems, and various scientific and academic establishments.⁵¹⁹ Not surprisingly, disagreement arose in the pro-

512. S. Karkhanin, *Arbitrom Stanet Zakon* [The Law Will Arbitrate], SOV. ROSSIIA, Oct. 4, 1989, at 1. *Accord Dolganov, supra* note 461; Losoto & Cherniak, *supra* note 451 (comments by Anatolii I. Luk'ianov).

513. *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik O Poriadke Obzhalovaniia v Sud Nepravomernykh Deistvii Organov Gosudarstvennogo Upravleniia i Dolzhnostnykh Lits, Ushchemliaiushchikh Prava Grazhdan* [USSR Law On the Procedure for Appealing to the Courts Unlawful Actions by State Organs and Officials Infringing Citizens' Rights] (Nov. 2, 1989), IZVESTIIA, Nov. 12, 1989, at 2.

514. Dolganov, *supra* note 461.

515. *See Temporary Rules, supra* note 324, point 7.

516. The Baltic Autonomy Law and the Strike Law were approved on the first reading on July 27 and August 2 respectively. *See supra* notes 383 & 385.

517. *See TASS*, Oct. 3, 1989, in F.B.I.S.-SOV, Oct. 4, 1989, at 71.

518. *See Moscow Television Service*, Nov. 24, 1989, translated in F.B.I.S.-SOV, Nov. 27, 1989, at 55, 56.

519. Karkhanin, *supra* note 481.

cess. Once again, the Strike Law provided an instructive precedent. Apparently, at one point, the Labor Commission and the Legislation Committee reached different conclusions as to the most suitable arbitral body to decide collective labor disputes.⁵²⁰ Their solution was to resort to a special conciliation procedure to resolve the issue.⁵²¹

The second session of the Supreme Soviet revealed three main flaws in the *dorabotka* process. First, it allotted working groups insufficient time for the meticulous analysis and elaboration required for effective, complete legislation. As a result, legislators failed to anticipate key problems. For example, the Strike Law was cited as a model product of the new lawmaking scheme,⁵²² but it turned out to be virtually unworkable in practice because of its lack of specific rules or enforcement mechanisms.⁵²³ Second, the hasty revision of drafts, particularly during Supreme Soviet readings, facilitated outside intervention in the lawmaking process. As illustrated by the Baltic Autonomy Law, administrative authorities could prevail upon working groups to introduce last-minute amendments that would significantly alter the content and blunt the impact of a draft law.⁵²⁴ Third, the vague guidelines regarding formation of *dorabotka* working groups proved predictably troublesome. The October 17 Supreme Soviet sittings provided dramatic evidence of the problem. When Anatolii Luk'ianov announced the predetermined composition of the Ownership Law "editorial commission," deputies protested so vociferously that the chairman adjourned the session, admonishing participants to "moderate their emotions and approach the discussion calmly and judiciously."⁵²⁵ The final working group consisted of Gorbachev, Ryzhkov, and the chairmen of all Supreme Soviet commissions and committees.⁵²⁶

7. Redaction and Publication

A draft law, once approved, required a final edit to reflect deputy amendments followed by publication. As in the *dorabotka* case, there

520. The Labor Commission favored a judicial arbitration organ. The Legislation Committee supported an independent arbitration body. *Id.*

521. *Id.*

522. See *supra* note 471.

523. See Buzhkevich, *supra* note 419, at 2.

524. See Moscow Television Service, Nov. 24, 1989, translated in F.B.I.S.-SOV, Nov. 27, 1989, at 56.

525. See V. Dolganov & V. Kurasov, *Ot Proekta K Zakonu [From Draft to Law]*, *IZVESTIYA*, Oct. 19, 1989, at 1.

526. *Id.*

were no clear standards to govern legislative activity in this last lawmaking stage.⁵²⁷ The second session of the Supreme Soviet demonstrated the very real threat to legislative autonomy occasioned by this procedural deficiency.

On November 27, 1989, deputies approved the Draft Law on the Press and Other Mass Information Media (the Press Law) on the first reading.⁵²⁸ They formally resolved to publish the "elaborated" version in the press for discussion.⁵²⁹ The text that eventually appeared in *Izvestiia* on December 4, however, was not the approved bill but the government's variant draft that had been previously rejected by the Supreme Soviet.⁵³⁰ This unannounced substitution sent deputies an unmistakable warning.

B. *Lessons of the Second Session*

By the conclusion of its second session, the Supreme Soviet had confirmed in practice the critical importance of precise, regularized procedures for creation, discussion, approval, and enactment of statutes. Procedural lacunae and defects explained many of the delays and flaws in Supreme Soviet lawmaking. Origination, initiation, and preparation of drafts were largely spontaneous and disorganized. Discussion of legislation in committee hearings and on the floor of the legislature was a cumbersome process of virtually unstructured and unlimited debate. There was insufficient lead time for deputies to consider legislative proposals or for committees to refine drafts for reconsideration. The few rules that did exist frequently proved unmanageable and easily circumvented.

In addition, the lack of procedures was a significant obstacle to legislative autonomy. It permitted continued administrative intervention in the

527. The one definite stipulation was article 1 of the Law on Publication and Entry Into Force, which entrusted the USSR Supreme Soviet Presidium with publication of USSR laws and other acts adopted by the Congress of People's Deputies and the Supreme Soviet. *Law on Publication and Entry into Force*, *supra* note 346, art. 1.

528. See Moscow Television Service, Nov. 27, 1989, translated in F.B.I.S.-SOV, Nov. 28, 1989, at 71.

529. *Postanovlenie Verkhovnogo Soveta SSSR O Proekte Zakona O Pechati i Drugikh Sredstvakh Massovoi Informatsii* [USSR Supreme Soviet Resolution On the Draft Law On the Press and Other Mass Information Media] point 3 (Nov. 27, 1989), *IZVESTIIA*, Dec. 4, 1989, at 1.

530. *Proekt Zakona Soiuza Sovetskikh Sotsialisticheskikh Respublik O Pechati i Drugikh Sredstvakh Massovoi Informatsii* [Draft USSR Law On the Press and Other Mass Information Media] (Nov. 27, 1989), *IZVESTIIA*, Dec. 4, 1989, at 3. See L. Nikitinskii, *Kto Pechetsia O Pechati. Vse Smeshalos': Zakonoproekty Stanoviatsia Imennymi, a Popravki—Anonimnymi . . .* [Who Is Concerned About the Press. Everything Is Mixed Up: Draft Laws Are Becoming Signed, While Amendments Are Anonymous], *KOMSOMOL'SKAIA PRAVDA*, Jan. 10, 1990, at 1.

lawmaking process. Thus, even under the reformed scheme, the Supreme Soviet made few inroads into longstanding governmental dominance of the preliminary drafting stages. Moreover, despite major advances, it failed to eliminate administrative influence on subsequent legislative discussion, refinement, and publication of statutes. Bitter experience taught legislators to be constantly vigilant against subversive bureaucratic efforts to promote departmental interests at the expense of effective, democratic legislation.⁵³¹

Most importantly, the new reforms were unable to dislodge the communist party as the key figure in Soviet lawmaking. Throughout the second session, legislators continued to submit drafts for CPSU imprimatur and to vote in accordance with party *diktat*. Theoretically, there was now a fundamentally different relationship between party and legislature. The CPSU confined its lawmaking activities to definition of the legal policy and political concepts underlying legislation while the legislature had exclusive responsibility for formulation, debate, and adoption of statutes.⁵³² Practice fell well short of this model, however.

Throughout 1989, the CPSU prepared and discussed legislation prior to Supreme Soviet deliberation. One example was the Resolution on Curbing Organized Crime, which was initially drafted and considered by the CPSU legislative and control committees.⁵³³ In fact, there was party intervention in every stage of the official lawmaking process. The most dramatic illustration was the "mysterious and confused passage"⁵³⁴ of the draft Press Law. Through direct and indirect means, the CPSU prevented publication of the original working draft,⁵³⁵ instructed com-

531. For example, at a joint legislative committee hearing in October, Vladimir Boldyrev, the chief of Glavlit, proposed amending article 5 of the draft Press Law, which prohibited censorship of publications. He argued that the statute should grant his organization broad authority to guard state and other secrets because otherwise journalists would "be constantly in court." Supreme Soviet deputies and commentators roundly condemned this covert attempt to nullify guarantees and warned legislators to watch for similar such maneuverings by administrative officials and organs. See Dmitrii Kazutin, *Will the Press Be Legally Recognized? Notes from a Joint Meeting of the USSR Supreme Soviet*, MOSCOW NEWS, Oct. 8, 1989, at 12.

532. See Nikitinskii, *supra* note 370, at 2.

533. See TASS, Nov. 2, 1989, in F.B.I.S.-SOV, Nov. 3, 1989, at 43. See generally Hiroshi Oda, *The Law-Based State and the CPSU*, in TOWARD THE "RULE OF LAW," *supra* note 3, at 163, 168.

534. Dolganov & Stepovoi, *supra* note 486, at 1.

535. See Nikolai V. Fedorov, *Still Trying to Influence the Law-Makers Are Those Who Should Implement the Laws. The Discussions Backstage Are Quite Often More Significant Than What Is Done Openly*, MOSCOW NEWS, Mar. 18, 1990, at 14.

mittee members to revise their text,⁵³⁶ circulated an anonymous variant to Supreme Soviet deputies twenty-four hours before formal debate,⁵³⁷ added unofficial wording to the approved law published in *Izvestiia*,⁵³⁸ and transferred the task of reworking the statute from the original legislative committees to a special Presidium commission sympathetic to party views.⁵³⁹

Nonetheless, by its adjournment on November 28, 1989, the Supreme Soviet had made a major contribution to Soviet legislative practice. It had firmly established the feasibility and desirability of an effective, professional lawmaking body. Despite some cynicism and frustration about the slow pace of accomplishment, the USSR had embarked on a program of significant legislative reform and seemed committed to that end. The next step was to develop an appropriate procedural framework to fulfill the promise of the second session of the Supreme Soviet.

C. "Bidding Farewell to Illusions"⁵⁴⁰

On December 12, 1989, legislators reassembled in the Kremlin Palace of Congresses for the Second Congress of People's Deputies. One of their major tasks was to adopt detailed parliamentary standing orders that would "enshrine"⁵⁴¹ the practical techniques developed by the Supreme Soviet over the past six months. Progressive deputies became increasingly convinced that Supreme Soviet experience had made more than lawmaking procedures obsolete. It had also called into question the very theoretical and structural bases of Gorbachev's prescribed model of legislative reform.

1. Codification of Lawmaking

The Standing Orders of the USSR Congress of People's Deputies and USSR Supreme Soviet⁵⁴² (Standing Orders) were an exemplary product

536. See Nikolai V. Fedorov, cited in *Kakim Byt' Zakonu o Pechati* [What the Draft Press Law Is to Be Like], ARGUMENTY I FAKTY, Dec. 2-8, 1989, at 1.

537. See Dolganov & Stepovoi, *supra* note 486, at 1.

538. See *supra* notes 528-30 and accompanying text.

539. See Fedorov, *supra* note 535. For an excellent summary of the Press Law experience, see Remington, *supra* note 12, at 186-94.

540. Moscow Domestic Service, Jan. 13, 1990, translated in F.B.I.S.-SOV, Jan. 23, 1990, at 84.

541. Evgenii M. Primakov, *O Proekte Reglamenta S'ezda Narodnykh Deputatov SSSR i Verkhovnogo Soveta SSSR* [On the Draft Standing Orders of the Congress of USSR People's Deputies and the USSR Supreme Soviet], PRAVDA, Dec. 17, 1989, at 3, 3.

542. *Reglament S'ezda Narodnykh Deputatov SSSR i Verkhovnogo Soveta SSSR*

of the process they sought to codify.⁵⁴³ The statute was originally drafted by legal specialists⁵⁴⁴ and initiated by the Congress of People's Deputies.⁵⁴⁵ A working draft was circulated to deputies in August.⁵⁴⁶ It was formally revised by the Legislation and Self-Management Committees⁵⁴⁷ on the basis of numerous hearings⁵⁴⁸ and proposals from legislators, committees, jurists, state organs, and scientific institutes.⁵⁴⁹ It was presented for a first reading with a list of key participants in the drafting process.⁵⁵⁰ It underwent considerable discussion, *dorabotka*, and amendment at the first and second reading stages.⁵⁵¹ The final text submitted to the Congress in mid-December represented a significant advance over earlier versions and directly incorporated recommendations from individual deputies⁵⁵² and legislative committees.⁵⁵³ Nevertheless, its formal enactment was delayed several days to permit further refinement.⁵⁵⁴

The new statute generally tracked the lawmaking stages set out in the July Temporary Rules. It provided for initiation by organs and persons

[*Standing Orders of the USSR Congress of People's Deputies and USSR Supreme Soviet*], IZVESTIYA (evening ed.), Dec. 28, 1989, at 1 [hereinafter *Standing Orders*].

543. See Primakov, *supra* note 541, at 3 (praising the "scrupulous work" on the Standing Orders as a signal that the Soviet legislative process had "left behind the traditional pattern, whereby draft legislative acts, as a rule, were formulated outside the Supreme Soviet and submitted to the Supreme Soviet only for voting").

544. A "rather voluminous draft," Luk'ianov, *supra* note 324, at 62, was prepared by specialists in the Institute of Soviet State Structure and Legislation and the Institute of State and Law of the USSR Academy of Sciences. See Primakov, *supra* note 425.

545. *Resolution on Procedural Laws*, *supra* note 440. The Supreme Soviet endorsed this resolution on July 24. *Postanovlenie Verkhovnogo Soveta SSSR Ob Organizatsii Raboty Po Vypolneniiu Poruchenii, Danykh Verkhovnomu Sovetu SSSR S'ezdom Narodnykh Deputatov SSSR* [USSR Supreme Soviet Resolution On the Organization of Work to Fulfill the Instructions Given to the USSR Supreme Soviet by the USSR Congress of People's Deputies] point 4 (July 24, 1989), PRAVDA, July 27, 1989, at 1.

546. See Dolganov & Kurasov, *supra* note 462, at 1.

547. See Moscow Television Service, Nov. 1, 1989, translated in F.B.I.S.-SOV, Nov. 2, 1989, at 58, 59 (citing Rafik N. Nishanov).

548. See Primakov, *supra* note 425.

549. See *id.* at 55. More than sixty deputies submitted proposals. See Dolganov & Kurasov, *supra* note 462, at 1. The Ecology and International Affairs Committees also provided recommendations. Primakov, *supra* note 425.

550. See Primakov, *supra* note 425.

551. See Primakov, *supra* note 541.

552. For a discussion of such proposals, see *id.*

553. For example, the Ecology and Science Committees recommended mechanisms for formation of deputies' groups. *Id.*

554. At the end of his December 16 report, Primakov called for a postponement in final debate of the Standing Orders and asked deputies to submit their comments and recommended changes to the Editorial Commission. *Id.*

with the constitutional authority to do so.⁵⁵⁵ It followed the previous pattern of assigning the bulk of draft preparatory work to Supreme Soviet commissions and committees.⁵⁵⁶ It envisioned a process of two readings by the Supreme Soviet "unless decided otherwise by the Congress and the USSR Supreme Soviet in regard to a specific draft."⁵⁵⁷ It left nationwide discussion to the discretion of legislators⁵⁵⁸ and provided opportunities for *dorabotka* between, during, and after formal Supreme Soviet consideration of bills.⁵⁵⁹ Finally, it referred to the July 31 Law on Publication and Entry Into Force to govern these two final stages.⁵⁶⁰

Unlike the Temporary Rules, however, the Standing Orders covered each lawmaking stage in detail. In all, the statute contained 185 articles, more than 40 of which dealt specifically with formulation and approval of laws, treaties, and other legislative acts.⁵⁶¹ This was an obvious improvement over the sketchy eight-point outline of the Temporary Rules. Not surprisingly, then, the Standing Orders offered greater precision regarding such crucial matters as draft preparation,⁵⁶² amendment,⁵⁶³ and enactment.⁵⁶⁴ Moreover, they extended their scope to encompass Congress as well as Supreme Soviet lawmaking⁵⁶⁵ and to include limited treatment of the respective tasks and competencies of the two Supreme

555. See *Standing Orders*, *supra* note 542, art. 124.

556. *Id.* arts. 128-32.

557. *Id.* art. 133.

558. *Id.* arts. 135 & 137.

559. *Id.* arts. 137, 140, 141, 142, 143. An interesting revision in *dorabotka* practice appears in Article 142, which allows for return to committee to ensure no intrinsic contradictions in a bill amended on the second reading.

560. *Id.* art. 147.

561. *Id.* §§ IX-XI.

562. See *id.* arts. 128-32. For example, the new Standing Orders provided for participation by bill sponsors, *id.* art. 130, distribution of working drafts to deputies, *id.* art. 128, expert scientific analysis, *id.* art. 131, open discussion of drafts, *id.* at art. 132, and notification of individual deputies regarding the committee disposition of proposed amendments. *Id.*

563. See, e.g., *id.* arts. 138-42. The Standing Orders introduced a requirement of written submission of amendments to the Presidium, chairman of the chambers, or head preparatory committee. *Id.* art. 138. Deputies had the right to explain their recommendations during committee discussions and, if rejected, during full legislative sessions. *Id.* arts. 139 & 140. Any rejected amendments were to be included with the text when presented for a second reading. *Id.* art. 139.

564. The Standing Orders addressed the problem of majority voting. In cases of USSR legislation, they required a majority of the total number of USSR people's deputies. *Id.* art. 144. Decisions on procedural matters, in contrast, were to be decided by a majority of deputies present. *Id.* arts. 150 & 151.

565. See generally *id.* § IX.

Soviet chambers.⁵⁶⁶

Even more striking were the radical additions and changes inspired by Supreme Soviet practical experience. Most notably, the Standing Orders formally authorized the creation and participation of independent deputies' groups,⁵⁶⁷ required identification of preliminary draft authors,⁵⁶⁸ and stipulated examination of alternative drafts in both committee⁵⁶⁹ and full legislative sessions.⁵⁷⁰ The new procedures also increased republic rights and influence in the legislature.⁵⁷¹ At the same time, they introduced reforms designed to constrain and supervise the powers of the Presidium,⁵⁷² Secretariat,⁵⁷³ and even the Supreme Soviet Chairman himself.⁵⁷⁴ Finally, in conjunction with a specific law on deputy status,⁵⁷⁵ the Standing Orders addressed basic concerns of legislators, such as guaranteed participation in Supreme Soviet and Congress activity and debate,⁵⁷⁶ access to information,⁵⁷⁷ media coverage,⁵⁷⁸ support services,⁵⁷⁹

566. *See id.* art. 136.

567. *See id.* art. 39. The Standing Orders permitted creation of permanent or temporary deputies' groups. Article 39 guaranteed groups with at least one hundred members full rights to participate in legislative activity provided they notify in writing the Supreme Soviet Chairman of their formation, composition, goals, and official spokespersons. It also provided to groups with at least twenty members the right to distribute material as official documents of the legislature.

568. *Id.* art. 125.

569. *Id.* art. 130.

570. *Id.* art. 135.

571. *See, e.g., id.* art. 13 (providing rights to insist on inclusion of item in agenda) and art. 70 (addressing republic representatives' rights in termination of debate).

572. For example, article 83 required the Presidium to admit outside observers to its meetings (if invited by the Supreme Soviet Chairman), provide advance notice of meetings, make minutes and stenographic reports of meetings accessible to deputies, and publish decisions in the mass media. *Id.* art. 83. Moreover, the Standing Orders transferred many previous Presidium controls over the lawmaking process to the full legislature, such as inclusion of drafts on the agenda, *id.* art. 129, and submission for first reading, *id.* art. 133.

573. *See id.* arts. 184-85.

574. For example, articles 12 and 24 introduced a formal written application and notification process for deputies to speak in legislative sessions. The Standing Orders granted the Chairman the right to alter the sequence of speeches but only with permission of the Presidium and with an official explanation of the reasons for the change. *Id.* art. 25.

575. *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik O Statuse Narodnykh Deputatov v SSSR* [USSR Law On the Status of People's Deputies in the USSR] (Dec. 21, 1989), *IZVESTIYA*, Dec. 27, 1989, at 1 [hereinafter *Law on Status of Deputies*].

576. *See, e.g., id.* arts. 10-16; *Standing Orders, supra* note 542, arts. 29, 39, 44, 54, 67, 92, 132, 176.

577. *See, e.g., Law on Status of Deputies, supra* note 575, arts. 32, 34; *Standing*

and outside employment security.⁵⁸⁰

While a major step forward, the Standing Orders still failed to remedy many of the areas identified for reform by Supreme Soviet members. Thus, they continued to provide overly fluid procedures for preparation and approval of statutes.⁵⁸¹ They contained no requirement or concrete rules for nationwide discussion.⁵⁸² They allowed inadequate time for deputies' receipt and review of documents prior to legislative deliberations.⁵⁸³ They retained loopholes for bypassing stages of the lawmaking process.⁵⁸⁴ Most importantly, the new scheme included no clear definition of the relationship or distinct functions of the Supreme Soviet and the Congress.⁵⁸⁵ As customary, it modified even its vague statement with "as a rule" language.⁵⁸⁶ Ironically, at the very time that deputies were considering the Standing Orders, they were in the midst of a disagreement over precisely this crucial issue.

2. Rejection of the Gorbachev Model

The Second Congress of People's Deputies came as a rude awakening to legislators and commentators accustomed to the increasing maturity and professionalism of the Supreme Soviet.⁵⁸⁷ They witnessed a dramatic reversion to old-style Soviet legislative practice, with a Congress carefully stage-managed from start to finish. Despite the involvement of eighty deputies in the special Congress preparatory commission, the ulti-

Orders, supra note 542, arts. 4, 57, 58, 83-86, 128.

578. *See, e.g., Law on Status of Deputies, supra* note 575, art. 31; *Standing Orders, supra* note 542, arts. 16-17, 57, 58, 132.

579. *See, e.g., Law on Status of Deputies, supra* note 575, arts. 32, 34, 85-86, 184.

580. *See, e.g., id.* arts. 33, 36.

581. For example, the Standing Orders continued to permit preparatory committees to determine their own procedures and structure. *See id.* arts. 130-31.

582. *See id.* arts. 131 & 135.

583. *See, e.g., id.* art. 134 (providing for distribution of text and supporting materials not later than three days prior to first reading).

584. *See, e.g., id.* art. 133 (providing for two readings unless otherwise determined by legislature) & art. 137 (allowing adoption without second reading).

585. *See, e.g., id.* art. 145 ("The USSR Congress of People's Deputies may accept for its examination the draft of any USSR law.").

586. *Id.* art. 133 ("[Drafts] affecting the interests of union republics and their relations with USSR state organs are accepted for examination by the USSR Congress of People's Deputies, as a rule, after these drafts have been examined in the USSR Supreme Soviet").

587. *See, e.g.,* Miroslav Buzhkevich, *Vremia—Delu [Time—For Work]*, PRAVDA, Dec. 15, 1989, at 1.

mate agenda contained only items approved by the leadership.⁵⁸⁸ There was restricted, taped media coverage of sessions to avoid the "deplorable experience"⁵⁸⁹ of the First Congress. Deputies' speeches were so uninspired and formulaic that they appeared as recorded as the television broadcasts.⁵⁹⁰

Gorbachev unabashedly controlled congressional proceedings. This was evident from the first day. When deputies voted by a two-thirds margin to change the agenda, an obviously startled Gorbachev stared at the electronic voting panel, asked deputies if they understood their decision, and then launched into a detailed reexplanation of the issue at hand. Legislators eventually "appreciated the Chairman's position" and revoted in the desired manner.⁵⁹¹ Congress' administrative bodies reinforced this leadership control. For example, Georgii Kriuchkov, head of the Congress Secretariat, openly acknowledged that the Presidium and Secretariat refused to distribute deputy materials that could have "complicated the Congress' work, exacerbated relations among groups of deputies, or contributed to fueling passions."⁵⁹²

588. For a description of the special commission, see Mikhail S. Gorbachev, Speech to USSR Congress of People's Deputies (Dec. 12, 1989), *translated in F.B.I.S.-SOV*, Dec. 13, 1989, at 51, 51. The Congress' agenda was initially discussed and cleared by the CPSU Central Committee, see *Informatsionnoe Soobshchenie o Plenumе Tsentral'nogo Komiteta Kommunisticheskoi Partii Sovetskogo Soiuzа* [Information Report on the CPSU Central Committee Plenum], *IZVESTIYA*, Dec. 10, 1989, at 1; *Vystupleniye M.S. Gorbacheva Na Plenumе TsK KPSS Po Voprosu II S'ezda Narodnykh Deputatov SSSR* [M.S. Gorbachev's Speech to the CPSU Central Committee Plenum on the Second USSR Congress of People's Deputies], *IZVESTIYA*, Dec. 10, 1989, at 1, and the Supreme Soviet Presidium, see *TASS, Zasedaniye Prezidiuma Verkhovnogo Soveta SSSR* [Session of the USSR Supreme Soviet Presidium], *IZVESTIYA* (evening ed.), Dec. 11, 1989, at 1. On the day before the formal convocation of the Congress, it was also endorsed by representatives of official deputies' groups. See *TASS, Sobranie Predstavitelei Grupp Narodnykh Deputatov SSSR* [Meeting of Representatives of USSR People's Deputies' Groups], *IZVESTIYA* (evening ed.), Dec. 11, 1989, at 1. For the text of the final agenda, see *Postanovleniye S'ezda Narodnykh Deputatov Soiuzа Sovetskikh Sotsialisticheskikh Respublik O Povestke Dnia Vtorogo S'ezda Narodnykh Deputatov SSSR* [Resolution of the USSR Congress of People's Deputies On the Agenda for the Second USSR Congress of People's Deputies] (Dec. 12, 1989), *IZVESTIYA*, Dec. 14, 1989, at 1.

589. *TASS*, Dec. 12, 1989, in *F.B.I.S.-SOV*, Dec. 13, 1989, at 69.

590. Al'bert Plutnik, *Sbudutsia Li Nadezhdy?* [Will Hopes Be Fulfilled?], *IZVESTIYA*, Dec. 16, 1989, at 1. *Accord* Buzhkevich, *supra* note 587; P. Voshchanov & S. Kiselev, *Ni Grozdei, Ni Idei* [No Highlights, No Ideas], *KOMSOMOL'SKAIA PRAVDA*, Dec. 14, 1989, at 1; Iurii Zarechkin, *Varianty Peremen* [Variants of Changes], *LITERATURNAYA GAZETA*, Dec. 20, 1989, at 1.

591. Vladimir Iadov, *Izбиратели U Telekrana* [Voters at the Television Screen], *KOMSOMOL'SKAIA PRAVDA*, Dec. 15, 1989, at 1.

592. Nikolaev, *supra* note 413, at 1 (interview with Georgii K. Kriuchkov).

If the Second Congress was a "set scenario,"⁵⁹³ its legislators were an excellent supporting cast. They successfully completed the predetermined agenda,⁵⁹⁴ even endorsing the important Law on Constitutional Oversight, which had never been discussed or approved by the Supreme Soviet.⁵⁹⁵ The Congress concluded on a singularly appropriate note. From the rostrum, Mikhail Gorbachev formally declared the session over and then reminded party members of the next day's CPSU Central Committee Plenum.⁵⁹⁶

For many deputies and outside observers, the Congress confirmed and reinforced a growing sentiment that real legislative reform would be impossible within the confines of the Gorbachev model. There were early efforts to reduce internal party and administrative filters. Thus, December constitutional amendments eliminated at the republic level reserved legislative seats for social organizations,⁵⁹⁷ licensed direct popular election of republic Supreme Soviet members,⁵⁹⁸ reduced powers of electoral commissions,⁵⁹⁹ and enhanced opportunities for equal electoral participation by candidates.⁶⁰⁰

Direct challenges to party supremacy over the legislative process also arose. Citizens and commentators increasingly targeted communist deputies for criticism, citing the chilling effect of party discipline on legislative performance.⁶⁰¹ Even high CPSU leaders publicly repudiated long-sacrosanct notions of party unity and obedience. For example, one Politburo

593. Interview with Egor K. Ligachev, Moscow Domestic Service, Jan. 13, 1990, translated in F.B.I.S.-SOV, Jan. 23, 1990, at 84, 84 (quoting Komsomol deputies). *Accord Iurii Ryzhkov, cited in Vitalii Tretiakov, Second Congress; Discussions in Kremlin*, MOSCOW NEWS, Dec. 31, 1989, at 4.

594. See Mikhail S. Gorbachev, Speech to USSR Congress of People's Deputies (Dec. 24, 1989), PRAVDA, Dec. 25, 1989, at 1.

595. See I.D. Khadyrke, Speech to USSR Congress of People's Deputies (n.d.), LITERATURNIAIA GAZETA, Dec. 27, 1989, at 4; Kazimer V. Moteka, Speech to USSR Congress of People's Deputies (Dec. 22, 1989), translated in F.B.I.S.-SOV, Dec. 27, 1989, at 65. For the text of the Constitutional Oversight Law, see *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik O Konstitutsionnom Nadzore v SSSR [USSR Law On Constitutional Oversight in the USSR]* (Dec. 23, 1989), IZVESTIIA, Dec. 26, 1989, at 1.

596. Gorbachev, *supra* note 594.

597. *1989 Constitutional Amendments on the Electoral System, supra* note 181, arts. 95, 96, 97.

598. *Id.* art. 91.

599. *Id.* art. 100.

600. *Id.*

601. See, e.g., Aleksandr Il'in, *Mesto Kommunisty—Na Perednem Krae [A Communist's Place—In the Forefront]*, PRAVDA, Dec. 11, 1989, at 1; G. Ovcharenko & V. Shirokov, *Kommunist Na S'ezde [A Communist at the Congress]*, PRAVDA, Dec. 12, 1989, at 2.

member stated unequivocally that party-affiliated legislators were not "duty-bound" to support the policies of CPSU organs or leaders, including the "topmost."⁶⁰² He claimed that no legislator had ever been accused of violating party discipline for views expressed in parliament.⁶⁰³ Other party officials explicitly acknowledged the jurisdiction and authority of the new Constitutional Oversight Committee to override unconstitutional CPSU decisions.⁶⁰⁴ Progressive legislators went even further and called for immediate repeal of Article 6 of the USSR Constitution, the formal legal recognition of CPSU monopoly of political power.⁶⁰⁵ In fact, right before his death, Andrei Sakharov organized a pre-Congress strike in support of such action.⁶⁰⁶

Finally, based on their practical experience, Soviet legislators started to question the embodiment of Gorbachev's *demokratizatsiia* policy—the two-tiered legislature. Many concluded that the Congress had demonstrated itself to be organically and effectively incapable of formulating and adopting legislation.⁶⁰⁷ The kindest critics praised its original function as a political forum but acknowledged that it had exhausted even that role.⁶⁰⁸ To most progressive deputies, the dual legislative scheme made it virtually impossible for the more promising⁶⁰⁹ Supreme Soviet to realize its full potential. Three aspects were particularly troublesome.

602. Interview with Aleksandr Iakovlev, Moscow World Service, Dec. 20, 1989, translated in F.B.I.S.-SOV, Dec. 22, 1989, at 52, 52-53 [hereinafter Iakovlev Interview]. See also "Ia Veriu v Etu Programmu" ["I Believe in This Programme"], KRASNIA ZVEZDA, Dec. 24, 1989, at 1 (interview with Nikolai I. Ryzhkov).

603. Iakovlev Interview, *supra* note 602, at 53.

604. See, e.g., TASS, Dec. 21, 1989, in F.B.I.S.-SOV, Dec. 22, 1989, at 48.

605. See Iurii Afanas'ev, Speech to USSR Congress of People's Deputies (Dec. 21, 1989), translated in F.B.I.S.-SOV, Dec. 22, 1989, at 40; AFP, Nov. 27, 1989, translated in F.B.I.S.-SOV, Nov. 27, 1989, at 80.

606. See Moscow World Service, Dec. 7, 1989, translated in F.B.I.S.-SOV, Dec. 8, 1989, at 40; Boris Zverev & Aleksandr Borisov, TASS, Dec. 10, 1989, translated in F.B.I.S.-SOV, Dec. 11, 1989, at 70.

607. See, e.g., I.P. Ilinskii, cited in *Dostatochno Li Vlasti U Vlasti?* [Does the Power Have Enough Power?], IZVESTIIA, Feb. 4, 1990, at 2; Roy Medvedev, cited in Gavrilov et al., *S'ezd Zavershen: Zadanie Na Zavtra* [The Congress Is Ended: Mission for Tomorrow], PRAVDA, Dec. 26, 1989, at 4.

608. See, e.g., B.N. Topornin, cited in *Dostatochno Li Vlasti U Vlasti?*, *supra* note 607.

609. See E. Evtushenko, cited in Gavrilov et al., *supra* note 607. In terms of political debate and culture, Deputy V.I. Iarovoi evaluated Supreme Soviet deputies at the fifth-grade level and their Congress counterparts at the second-grade level. V.I. Iarovoi, cited in Iu. Nikolaev, *V Poze Oppozitsii. Kollektivnaia Ekspertiza Zaiavleniia Ot Litsa Mezhrigional'noi Gruppy* [Opposition Posture: Collective Assessment of Statement in Name of Interregional Group], Sov. ROSSIA, Dec. 24, 1989, at 3.

First, the Congress' exclusive power to amend the USSR Constitution stymied Supreme Soviet efforts to introduce radical reforms in Soviet legislation. For example, the second session of the Supreme Soviet found itself compelled to delay enactment of much-needed economic statutes until the Congress formally updated the Constitution.⁶¹⁰ Second, as demonstrated by the Constitutional Oversight Law,⁶¹¹ the Congress could adopt legislation completely independent of established Supreme Soviet lawmaking channels and procedures. Third, the Congress could effectively subordinate and undermine the more mature Supreme Soviet through its power to supersede and nullify that body's enactments.⁶¹²

The Second Congress partially remedied the first problem by temporarily expanding Supreme Soviet powers to include amendment of the Constitution.⁶¹³ To address the second flaw, reformers recommended granting the Supreme Soviet a veto over all laws considered by the Congress that had not been prepared in Supreme Soviet commissions and committees.⁶¹⁴ The third issue appeared to require a more drastic response—the elimination of the dual legislature altogether. By early 1990, there was strong support for casting off the shackles of the Gorbachev model and instituting a more modern, autonomous Western-style system.⁶¹⁵ As one legal reformer proclaimed in February, "We must have a proper parliament."⁶¹⁶ Gorbachev swiftly picked up the gauntlet.

610. See Vadim V. Bakatin, Speech to USSR Congress of People's Deputies (Dec. 22, 1989), translated in F.B.I.S.-SOV, Dec. 27, 1989, at 46, 54; TASS, Nov. 13, 1989, in F.B.I.S.-SOV, Nov. 14, 1989, at 69.

611. See *supra* note 595 and accompanying text.

612. See A.A. Mishin, cited in *Dostatochno Li Vlasti U Vlasti?*, *supra* note 606, at 2.

613. *Postanovlenie S'ezda Narodnykh Deputatov Soiuzu Sovetskikh Sotsialisticheskikh Respublik O Porucheniakh Verkhovnomu Sovetu SSSR i Konstitutsionnoi Komissii Po Nekotorym Konstitutsionnym Voprosam* [USSR Congress of People's Deputies Resolution On the Assignments to the USSR Supreme Soviet and the Constitutional Commission of Several Constitutional Questions] (Dec. 19, 1989), IZVESTIIA, Dec. 23, 1989, at 1. For a criticism of this decision, see Telen, *supra* note 484, at 1.

614. See Khadyrke, *supra* note 595, at 4.

615. See, e.g., V. Danilenko, *Utverzhdaia Novuiu Formu Praveniia* [Strengthening the New Form of Government], NARODNYI DEPUTAT, no. 2, 12 (1990); O. Losoto & G. Ovcharenko, *Perestroika i Vlast* [Perestroika and Power], PRAVDA, Jan. 31, 1990, at 1. At the opening session of the Third Congress in March 1990, Sergei Alekseev declared, "We have become prisoners of the slogan: All power to the Soviets!" Moscow Television Service, Mar. 12, 1990, translated in F.B.I.S.-SOV, Mar. 13, 1990, at 44.

616. Boris P. Kurashvili, cited in *Dostatochno Li Vlasti U Vlasti?*, *supra* note 607.

3. "At Historic Crossroads":⁶¹⁷ The Third Congress of People's Deputies

On February 7, 1990, the CPSU Central Committee formally proposed the institution of a strong executive presidency to contain the "uncontrolled revolution from below."⁶¹⁸ By mid-March, the Third Congress of People's Deputies had duly amended the Constitution and elected Mikhail Gorbachev as the first President of the USSR.⁶¹⁹ In so doing, the legislature legitimized the formal concentration of political and legal authority in the hands of a single individual. Among the many sweeping powers it assigned to Gorbachev were the unilateral rights to declare a state of emergency, establish temporary presidential rule, issue binding decrees, veto laws, dismiss top government officials, and dissolve the legislature.⁶²⁰

Perhaps symbolically, the federal legislature endorsed this retreat to authoritarian rule in an accelerated, truncated process that violated both spirit and letter of the Standing Orders enacted only a few months earlier. In a manner decidedly reminiscent of the past, the CPSU inspired and initiated the presidency amendments.⁶²¹ A special working group handpicked by the Presidium then prepared in two weeks a draft without any participation of Supreme Soviet committees and commissions.⁶²² Supreme Soviet deputies received the text a mere twenty-four hours prior to its first and final reading on February 27, 1990.⁶²³ The justification of this last-minute circulation was the "exceptional nature of the

617. Aleksandr N. Iakovlev, Speech to USSR Supreme Soviet (Feb. 27, 1990), *translated in* F.B.I.S.-SOV, Feb. 28, 1990, at 45.

618. A. Mishin, *cited in* L. Nikitinskii, *Pervoe Litso [Top Man] KOMSOMOL'SKAIA PRAVDA*, Feb. 24, 1990, at 1. *See* K. Gumannomu, *Demokraticheskomu Sotsializmu (Platforma TsK KPSS K XXVIII S'ezdu Partii) [Toward Humane, Democratic Socialism (CPSU Central Committee Platform for 28th Party Congress)]*, PRAVDA, Feb. 13, 1990, at 1, part IV [hereinafter CPSU Platform]. *See* Vladimir N. Kudriavtsev, Speech to USSR Supreme Soviet (Feb. 27, 1990), Moscow Television Service, Feb. 27, 1990, *translated in* F.B.I.S.-SOV, Feb. 28, 1990, at 41.

619. On March 14, 1990, the Third Congress amended the USSR Constitution to allow introduction of a presidential system and to repeal the formal "leading" role of the CPSU. *See March 1990 Constitutional Amendments Law, supra* note 6. The following day, it elected Mikhail Gorbachev, the sole candidate for the position, as the USSR President. *See* TASS, Mar. 15, 1990, *in* F.B.I.S.-SOV, Mar. 15, 1990, at 49.

620. KONST. SSSR arts. 127(3) & 127(7) (as amended Mar. 14, 1990).

621. CPSU Platform, *supra* note 618, part IV.

622. *See* Kudriavtsev, *supra* note 618, at 41.

623. *See* Moscow Television Service, Feb. 27, 1990, *translated in* F.B.I.S.-SOV, Feb. 28, 1990, at 34, 35.

situation."⁶²⁴ Supreme Soviet discussion of the amendments was abbreviated and constrained by Gorbachev. The Chairman silenced dissenters, interjected his own views, and eventually shortened debate on grounds that "points of view and arguments [were] already being repeated."⁶²⁵ Despite serious deputy concerns about the draft and frequent requests for postponement of voting to permit further refinement,⁶²⁶ Gorbachev insisted on an immediate vote.⁶²⁷ When the Supreme Soviet approved the amendments for submission to an extraordinary session of the Congress on March 12, one deputy warned his colleagues that they would be "ashamed of this later."⁶²⁸

Not until endorsement of the amendments were Supreme Soviet committees and the public finally given a voice in the lawmaking process. Unfortunately the time allotted was so brief as to permit only nominal participation. Legislative committees had a mere two weeks to consider and repair the flawed draft.⁶²⁹ The Soviet citizenry had only a single week for comment and criticism of the published text.⁶³⁰ To make mat-

624. Iurii Iu. Boldyrev, cited in Moscow Television Service, Feb. 27, 1990, *translated in* F.B.I.S.-SOV, Feb. 28, 1990, at 34, 35.

625. Moscow Domestic Service, Feb. 27, 1990, *translated in* F.B.I.S.-SOV, Feb. 28, 1990, at 37. For a discussion of Gorbachev's "incorrect" behavior, see Andrei Nuikin, *V Tom Li Meste My Vozvodim Barrikadu? Trevogi Publitsista v Den' Okrytiia S'ezda* [*Are We Erecting the Barriers in the Right Place? Publicist's Fears on the Day the Congress Opens*], *IZVESTIIA*, Mar. 13, 1990, at 6.

626. See, e.g., Comment by Aleksei Emel'ianov, *in* Moscow Television Service, *supra* note 624, at 35; Comment by unidentified deputy, Moscow Television Service, Feb. 27, 1990, *translated in* F.B.I.S.-SOV, Feb. 28, 1990, at 36.

627. Moscow Television Service, *supra* note 626, at 36.

628. *Id.* (comment by Iurii Iu. Boldyrev). Another procedural criticism was the failure to submit the presidential amendments first to the Soviet of Nationalities for consideration. Baltic deputies claimed that this move represented a "complete disregard" for republic views and refused to participate in the final Supreme Soviet vote. See Lithuanian broadcast, Feb. 27, 1990, *in* F.B.I.S.-SOV, Mar. 1, 1990, at 57.

629. See *Obsuzhdaetsia Vopros o Prezidentstve* [*Presidency Issue Under Discussion*], *IZVESTIIA*, Mar. 4, 1990, at 1. Deputies criticized several aspects of the draft, including mechanisms for presidential election, vague eligibility requirements, weak checks and balances, and presidential powers to declare war, institute presidential rule, and propose election of new Supreme Soviet members. See, e.g., V. Tso et al., *I Vlast', i Demokratiia* [*Both Power and Democracy*], *PRAVDA*, Mar. 2, 1990, at 1; *Vsia Presidentskaia Vlast'* [*All Presidential Power*], *SOV. KULTURA*, Mar. 10, 1990, at 2.

630. The draft was published on March 5, 1990. See *Proekt Zakona Soiuza Sovetskikh Sotsialisticheskikh Respublik Ob Uchrezhdenii Posta Prezidenta SSSR i Vnesenii Izmenenii i Dopolnenii v Konstitutsiiu (Osnovoi Zakone) SSSR* [*Draft USSR Law On Establishing the Post of USSR President and Making Amendments and Additions to the USSR Constitution (Fundamental Law)*], *IZVESTIIA* (evening ed.), Mar. 5, 1990, at 1. Interestingly, the Supreme Soviet did not mandate nationwide discussion of the text.

ters worse, this public discussion bore little resemblance to the reform ideal of an objective evaluation of draft merits and deficiencies. Rather, as in the past, it consisted largely of a mass media propaganda campaign to publicize and exalt the new presidential system.⁶³¹

The Congress of People's Deputies proved an even greater parody of the legislative process. From the very start, congressional approval of the presidency was a foregone conclusion. In fact, when deputies arrived in Moscow, they received an agenda that included "Election of the President of the USSR."⁶³² Gorbachev dominated the subsequent proceedings with scant regard for the Standing Orders. He interrupted speakers,⁶³³ terminated debate,⁶³⁴ and required written submission of deputy remarks to a specially created Editorial Commission.⁶³⁵ Gorbachev consistently violated voting rules. He routinely bypassed formal procedures in favor of a personal determination of congressional views on key issues.⁶³⁶ He unilaterally rejected deputy requests for voting on an article-by-article basis⁶³⁷ and openly proclaimed the power of Congress to change estab-

See Postanovlenie Post Prezidenta SSSR i Vnesenii Sootvetstvuiushchikh Izmenenii i Dopolnenii v Konstitutsiiu (Osnovnoi Zakon) SSSR [USSR Supreme Soviet Resolution On Establishing the Post of USSR President and Making Appropriate Amendments and Additions to the USSR Constitution (Fundamental Law)] point 3 (Feb. 27, 1990), PRAVDA, Feb. 28, 1990, at 1.

631. *See* E. Gonzal'ez, *Comrade President*, *IZVESTIYA*, Mar. 13, 1990, at 1, *translated in* F.B.I.S.-SOV, Mar. 13, 1990, at 70.

632. *Postanovlenie S'ezda Narodnykh Deputatov Soiuza Sovetskikh Sotsialisticheskikh Respublik O Povestke Dni Vneocherednogo Tre't'ego S'ezda Narodnykh Deputatov SSSR [USSR Congress of People's Deputies Resolution On the Agenda for the Extraordinary USSR Congress of People's Deputies]* point 3 (Mar. 12, 1990), *PRAVDA*, Mar. 13, 1990, at 1. For a criticism of point 3, *see* N. Petrov, *cited in* N. Musienko, *Pozitsiia Deputatov [Deputies' Position]*, *PRAVDA*, Mar. 13, 1990, at 2.

633. *See, e.g.*, Interchange between Afanas'ev and Gorbachev, *USSR Congress of People's Deputies* (Mar. 12, 1990), *in* *IZVESTIYA*, Mar. 14, 1990, at 2.

634. Only 19 out of 288 people registered were able to speak on March 12. Nonetheless, Gorbachev decided to end formal discussion of the amendments after only two hours of further debate on March 13. Mikhail S. Gorbachev, *Speech to USSR Congress of People's Deputies* (Mar. 13, 1990), *in id.* at 4.

635. *See* Moscow Television Service, Mar. 12, 1990, *translated in* F.B.I.S.-SOV, Mar. 13, 1990, at 45. Deputies criticized the Editorial Commission for not responding to their criticisms and amendments. *See* Moscow Television Service, Mar. 13, 1990, *translated in* F.B.I.S.-SOV, Mar. 14, 1990, at 53.

636. *See, e.g.*, Mikhail S. Gorbachev, *Speech to USSR Congress of People's Deputies* (Mar. 12, 1990), *translated in* F.B.I.S.-SOV, Mar. 14, 1990, at 48, 49 (reporting that Gorbachev determined voting procedures, turned to the hall and asked, "Comrades, do we share these ideas?," and then concluded, "Good.").

637. *See* Moscow Television Service, Mar. 13, 1990, *translated in* F.B.I.S.-SOV, Mar. 14, 1990, at 53, 54 (noting that Gorbachev rejected the request on grounds of

lished rules, including the very definition of a two-thirds vote for tabulation purposes.⁶³⁸

On March 14, 1990, the Third Congress formally enacted the presidency amendments in a process that contravened fundamental Standing Orders' stipulations regarding voting sequence⁶³⁹ and final approval on a single reading.⁶⁴⁰ Despite the new constitutional requirement of a popularly elected President,⁶⁴¹ the Congress itself chose the country's first holder of the office. Not surprisingly, it turned to the CPSU Central Committee's nominee and sole candidate for the post, Mikhail Gorbachev.⁶⁴² Several deputies protested these procedural irregularities, even citing relevant provisions of the Standing Orders.⁶⁴³ One deputy appealed to broad principles of the law-based state: "[T]he main argument for introducing presidential rule is that we want legality to be observed within the country. But if we want legality to be observed within the country, we must clearly begin with ourselves."⁶⁴⁴ Yet, all these last desperate defenders of legislative procedure received for their efforts were labels as obstructionist and unpatriotic.⁶⁴⁵ The consequences were predictable.

Adherents of the presidency repeatedly promised that the new system would not "encroach on the role of the representative organs of power."⁶⁴⁶ In fact, there was an immediate, noticeable reduction in the

insufficient time).

638. See Moscow Television Service, Mar. 13, 1990, translated in F.B.I.S.-SOV, Mar. 14, 1990, at 46, 47 (noting calculation of two-thirds from roll call rather than total number of deputies).

639. The Congress violated articles 140 and 142 by failing to discuss and vote on proposed amendments prior to a final vote on the articles and draft law as a whole. *Standing Orders*, supra note 542, arts. 140 & 142.

640. Pursuant to article 137, a draft could be adopted on the first reading only if the Congress (or Supreme Soviet) determined that it did not require amendments. *Id.* art. 137.

641. KONST. SSSR art. 127(1) (as amended Mar. 14, 1990).

642. TASS, Mar. 14, 1990, in F.B.I.S.-SOV, Mar. 15, 1990, at 53. The Soiuz deputies' group also nominated Nikolai Ryzhkov and Vadim Bakatin. Both withdrew their names from consideration, however.

643. See N. Krivomazov et al., *S'ezd Golosuet Za Prezidenta* [The Congress Votes for the President], PRAVDA, Mar. 15, 1990, at 1.

644. Iurii Iu. Boldyrev, Comments at USSR Congress of People's Deputies (Mar. 13, 1990), translated in F.B.I.S.-SOV, Mar. 14, 1990, at 47.

645. See, e.g., V. Dolganov & A. Stepovoi, *Vybory Prezidenta Sostoialis': Strana Zhdet Rezul'tata* [The Elections for President Took Place: The Country Awaits the Result], IZVESTIIA, Mar. 15, 1990, at 1.

646. Anatolii I. Luk'ianov, *O Vnesenii Izmenenii i Dopolnenii v Konstitutsiiu (Osnovnoi Zakon) SSSR i Uchrezhdenii Posta Prezidenta SSSR* [On the Introduction of

stature, functions, and independence of the federal legislature and its deputies. Television stations introduced air-time quotas restricting access and coverage of radical legislators.⁶⁴⁷ The communist party expelled members in direct retaliation for their activities as deputies.⁶⁴⁸ The government began to show blatant disregard for legislative authority,⁶⁴⁹ and the Presidium regained significant power "to lighten the work of the Supreme Soviet."⁶⁵⁰ The President increasingly issued decrees that amended, supplemented, and even supplanted formal legislation.⁶⁵¹

These combined practices led to the rapid decline of the Soviet legislature. In 1990 and 1991 there were mass resignations of deputies,⁶⁵² marked decrease in public interest and participation in parliamentary sessions and elections,⁶⁵³ and frequent calls for outright abolition of the

Amendments and Additions to the USSR Constitution (Basic Law) and the Establishment of the Post of USSR President], PRAVDA, Mar. 13, 1990, at 1. Accord Mikhail S. Gorbachev, cited in Moscow Domestic Service, Mar. 15, 1990, translated in F.B.I.S.-SOV, Mar. 15, 1990, at 51, 52.

647. See Andrei Borodenkov, *Limits for Deputies*, MOSCOW NEWS, Feb. 18, 1990, at 14.

648. See Aleksandr Ruvinskii, Moscow Domestic Service, Apr. 29, 1990, translated in F.B.I.S.-SOV, May 3, 1990, at 49 (case of Vadim N. Lopatin).

649. See E. Rakhmadiyev, cited in V. Dolganov & A. Stepovoi, *Povyshenie Tsen Otsrocheno [Price Rise Postponed]*, IZVESTIYA, June 16, 1990, at 1.

650. S. Karkhanin, *Faktor Professionalizma [The Professionalism Factor]*, SOV. ROSSIYA, June 27, 1990, at 1.

651. Gorbachev made extensive use of his presidential emergency powers and increasingly resorted to military, KGB, and police organs to enforce his orders. Two particularly apt examples are Gorbachev's presidential decrees of January 26 and 29, 1991. The first decree assigned the Soviet *militsiia* [police] and KGB broad emergency authority to "combat economic sabotage and other crimes in the economic sphere." *Ukaz Prezidenta Soiuza Sovetskikh Sotsialisticheskikh Respublik O Merakh Po Obespecheniiu Bor'by s Ekonomicheskim Sabotazhem i Drugimi Prestupleniiami v Sfere Ekonomiki [Decree of the USSR President On Measures to Combat Economic Sabotage and Other Crimes in the Economic Sphere]*, PRAVDA, Jan. 28, 1991, at 1. The second decree created joint militia-army patrols to maintain law and order in city streets and "public places." *Ukaz Prezidenta Soiuza Sovetskikh Sotsialisticheskikh Respublik O Vsaimodeistvii Militsii i Podrazdelenii Vooruzhennykh Sil SSSR Pri Obespechenii Pravoporiadka i Bor'be s Prestupnost'iu [Decree of the USSR President On Joint Action of the Militia and Subunits of the Armed Forces to Maintain Law and Order and Struggle Against Crime]*, PRAVDA, Jan. 30, 1991, at 1.

652. See S. Sokolov, *Po Sobstvennomu Zhelaniiu [At Their Own Request]*, KOMSOMOL'SKAIA PRAVDA, Dec. 27, 1990, at 1.

653. See Anatolii I. Luk'ianov Interview, Moscow Central Television, Jan. 6, 1991, translated in F.B.I.S.-SOV (Supp.), Jan. 10, 1991, at 32, 36; Pavel Voshchanov, *Natiagivaia Vlast', Kak Odeialo . . . [Hogging Power, Like a Blanket . . .]*, KOMSOMOL'SKAIA PRAVDA, Nov. 23, 1990, at 2.

Congress and the Supreme Soviet.⁶⁵⁴ On December 26, 1991, the federal legislature finally was pronounced legally as well as factually dead.⁶⁵⁵

Thus, the Third Congress of People's Deputies was indeed an historic crossroads. It marked the effective end of meaningful legislative reform in the USSR. By March 1990, deputies had made impressive progress towards legislative autonomy and professionalism. Nonetheless, they ultimately proved unable to realize these goals because they failed to institutionalize a mechanism to protect their "perestroika parliament" against its progenitor.⁶⁵⁶ In the words of a former Supreme Soviet deputy, "Let those who follow us be bolder and wiser."⁶⁵⁷

V. THE PERESTROIKA PARLIAMENT REVISITED: GUIDANCE FOR THE POST-SOVIET ERA

In Moscow of 1993, legislature and president once again are locked in mortal combat.⁶⁵⁸ Although the country is new and the protagonists are different,⁶⁵⁹ the issue is essentially the same—the future of democracy and the rule of law.

654. See Liudmila Aleksandrova, TASS, June 6, 1991, translated in F.B.I.S.-SOV, June 6, 1991, at 18; Miroslav Buzhkevich, *Poslushaem Spory v Kuluarakh* [We Hear Quarrels in Corridors], PRAVDA, May 11, 1991, at 2; Mikhail S. Gorbachev, Speech to USSR Supreme Soviet (Jan. 15, 1991), Moscow Domestic Service, Jan. 15, 1991, translated in FBIS-SOV, Jan. 16, 1991, at 25.

655. See Anuar Alimzhanov, Speech to Extraordinary and Final Session of the USSR Supreme Soviet (Dec. 26, 1991), translated in F.B.I.S.-SOV, Dec. 26, 1991, at 9; Moscow Radio, Dec. 26, 1991, translated in F.B.I.S.-SOV, Dec. 26, 1991, at 9.

656. Accord Nuikin, *supra* note 625, at 3.

657. Emel'ianov, *supra* note 9, at 2.

658. See Celestine Bohlen, *Yeltsin Survives a Vote in Legislature on His Powers*, N.Y. TIMES, Mar. 11, 1993, at 14. One of the most recent publicized disputes between El'tsin and the Russian parliament was prompted by the Supreme Soviet's unilateral decision to take over ownership of the newspaper *Izvestiia*. *Postanovlenie Verkhovnogo Soveta Rossiiskoi Federatsii O Gazete "Izvestiia"* [Russian Federation Supreme Soviet Resolution on the Newspaper "Izvestiia"] (July 17, 1992), ROSSISKAIA GAZETA, July 29, 1992, at 4. See Mikhail Poltoranin & Viacheslav Bragin, *Reshenie Po Pechati Nakonets—To Doshlo Do Pechati* [Decision on the Press Has Finally Gone to Press], KOMSOMOL'SKAIA PRAVDA, July 29, 1992, at 1; Liudmila Telen, *Power vs. Power*, MOSCOW NEWS, July 26-Aug. 2, 1992, at 6; Vitalii Tret'iakov, *Ruslan Khasbulatov Nuzhen Vsem i v Bor'be s "Izvestiiami"* [On Lish' Demonstriruet Svoiu Silu [All Need Ruslan Khasbulatov and in the Struggle with "Izvestiia" He is Demonstrating His Strength]], NEZAVISIMAIA GAZETA, July 21, 1992, at 1.

659. Arguably, the roles are reversed as well with El'tsin serving as a force for change and the Russian parliament providing conservative resistance. See Serge Schmemmann, *Aid to Russia: Should Yeltsin Be the Focus?*, N.Y. TIMES, Mar. 11, 1993, at 1 (describing El'tsin as "reformist" and the Russian Congress as "reactionary").

In today's Russia, however, there is an additional player, the Constitutional Court.⁶⁶⁰ This body has the potential and the commitment to perform the roles so needed in 1990 as neutral arbiter and guarantor of institutional independence. With only the vaguest of charters,⁶⁶¹ but loftiest of missions, Constitutional Court members have pledged to hold Russian legislature and president alike to the highest standards of legality.⁶⁶² Thus far, they have concentrated largely on review of content and

660. See *supra* note 17. A detailed discussion of the Constitutional Court is both premature and beyond the scope of the article.

661. For Constitutional Court judges' descriptions of the inadequacies of the Russian Constitution that guides their work, see *Esli Vas Uvolili Po Starosti, Otkazalis' Propisat' Ili Lishili Liubimoi Gazety . . . [If You Have Been Fired Because of Your Age or Deprived of Your Favorite Newspaper . . .]*, LITERATURNIAIA GAZETA, Mar. 4, 1992, at 11; Interview with Valerii D. Zor'kin, SELSKAIA ZHIZN', Jan. 23, 1992, at 3.

662. See, e.g., *U Nas, Kazhetsia, Povliaetsia Tret'ia Vlast' [A Third Power Appears to Be Emerging For Us]*, LITERATURNIAIA GAZETA, Jan. 22, 1992, at 10 (interview with Judge Ernest M. Ametistov). In early decisions, the Constitutional Court has already demonstrated its willingness to call both president and legislature to account for their actions. For example, on January 14, the Court declared unconstitutional Boris El'tsin's presidential decree of December 19, 1991, which merged the Ministry of Internal Affairs and the Federal Security Agency into a single megasecurity organ. For text, see *supra* note 17. The Court subsequently has ruled against legislative efforts to create an "All-Russian Agency for Authors' Rights [Copyrights]," see Mikhail Karpov, *Konstitutsionnomu Sudu Rossii Skuchat' Ne Prikhoditsia [Russia's Constitutional Court Does Not Need to Be Bored]*, NEZAVISIMAIA GAZETA, Apr. 15, 1992, at 2 and Mikhail Karpov, *Postanovlenie Prezidiuma VS Nekonstitutsionno [Supreme Soviet Presidium Resolution Is Unconstitutional]*, NEZAVISIMAIA GAZETA, Apr. 29, 1992, at 2, to extend its rule over Moscow city organs, see Konstantin Katanian, *Court Investigates*, KURANTY, May 20, 1992, at 1, in F.B.I.S.-SOV, May 22, 1992, at 28, and to enact a new antimonopoly law, see Liudmila Ermakova, *ITAR-TASS*, May 20, 1992, in F.B.I.S.-SOV, May 21, 1992, at 71. The latter case represented the first appeal by El'tsin to the Constitutional Court. *Id.*

At the Seventh Congress of People's Deputies, the Constitutional Court significantly expanded its authority to defend the Russian constitutional order against executive and legislative action. On December 10, 1992, after eight days of repeated battles with the Congress, Boris El'tsin called for a national referendum to decide whether president or legislature should govern Russia. *Obrashchenie Prezidenta B.I. El'tsina K Grazhdanam Rossii i Ko Vsem Isbirateliyam [Appeal of President B.I. El'tsin to Citizens of Russia and to All Voters]* (Dec. 10, 1992), in ROSSIISKAIA GAZETA, Dec. 11, 1992, at 1. Constitutional Court Chairman Valerii Zor'kin took the rostrum and formally demanded on behalf of the Constitutional Court that President El'tsin and Supreme Soviet Chairman Khasbulatov institute "immediate consultations" to resolve their political differences. *Vystuplenie Predsedatelia Konstitutsionnogo Suda V.D. Zor'kina [Speech of Constitutional Court Chairman V.D. Zor'kin]* (Dec. 10, 1992), in ROSSIISKAIA GAZETA, Dec. 11, 1992, at 1. Under Zor'kin's direction, the two sides successfully reached a compromise agreement on December 12, 1992. *Postanovlenie VII S'ezda Narodnykh Deputatov Ros-*

enforcement of laws.⁶⁶³ Recent Soviet history suggests that they should expand their compass to include an equally compelling concern, the very lawmaking process.

The preceding study highlights in bold relief the advantages of legislative procedure. It illustrates how regularized rules can promote legislative efficiency and professionalism, enhance public involvement in the lawmaking process, safeguard minority participation and views, and restrict outside intervention and control. It provides telling support for theoretical hypotheses that the most effective procedures are those developed within the institution itself.⁶⁶⁴

At the same time, the Soviet experience reveals the fragility as well as the value of democratic procedures. It presents a strong case for their utmost protection and continuing supervision at the highest levels. Accordingly, it suggests that if Russia is indeed to establish a democratic, "rule-of-law" state, it should give serious consideration to making the integrity of legislative procedure a constitutional mandate and guarantee. One possibility is to introduce a constitutional requirement of "due process of lawmaking."⁶⁶⁵

The proposed approach would license formal review of legislation for conformity with prescribed lawmaking procedures. In theory, a variety of organs could undertake this task,⁶⁶⁶ such as the Russian legislature,

siiskoi Federatsii O Stabilizatsii Konstitutsionnogo Stroia Rossiiskoi Federatsii [Resolution of the Seventh Congress of People's Deputies of the Russian Federation On Stabilization of the Constitutional Order of the Russian Federation] (Dec. 12, 1992), in ROSSIISKAIA GAZETA, Dec. 15, 1992, at 1.

663. See Zor'kin Interview, *supra* note 661; Nadezhda Zhukovskaia, *Sud Vysshii, Bespristrastnym* [The Court Supreme and Impartial], ROSSIISKAIA GAZETA, Apr. 21, 1992, at 2.

664. See Stanley Ingber, *Rediscovering the Communal Worth of Individual Rights: The First Amendment in Institutional Contexts*, 69 TEX. L. REV. 1, 96 n.510 (1990).

665. Linde, *supra* note 18. It should be noted that while the proposed approach draws heavily on the language and analysis of Hans Linde, it rejects his final conclusion that courts should judge legislation solely "as a process, not as a product." See *id.* at 254-55. In this regard, it shares the view of Laurence Tribe that concern with the "due process of lawmaking is an important supplement, not substitution, for existing review standards." See Laurence H. Tribe, *The Emerging Reconnection of Individual Rights and Institutional Design: Federalism, Bureaucracy, and Due Process of Lawmaking*, 10 CREIGHTON L. REV. 433, 444 (1977); Tribe, *Policy Science*, *supra* note 19, at 82-83.

666. See Linde, *supra* note 18, at 244 (describing potential review by United States legislative and executive branches). Based on his examination of the 1988 United States budget process, one scholar concluded that, in fact, Congress is the body best suited to guarantee "due process of lawmaking" and that "the judicial role in the lawmaking process should be de minimis." Neal E. Devins, *Appropriations Redux: A Critical Look at the Fiscal Year 1988 Continuing Resolution*, 1988 DUKE L.J. 389, 406 (1988).

president, judiciary, or Constitutional Court. In practice, however, only the Constitutional Court appears to be a likely candidate.⁶⁶⁷ It stands above the fray of legislative-executive conflict and, as a new body, is not tainted by the historic weakness and low repute of the Soviet judiciary. It has the legal competence to judge procedural violations⁶⁶⁸ and has even made a preliminary foray into this territory. In February 1992 a mysterious misprint in the final version of the Russian budget led to a Constitutional Court inquiry into the very "legality of the passage of resolutions."⁶⁶⁹ Should Russian legal reformers choose to proceed further in this direction, they will need to add the following questions to their agenda.

First, they must determine what constitutes a legitimate lawmaking institution in the Russian context. Soviet precedent dictates that, at the very least, such body should owe its primary allegiance to the electorate

667. This role would be consistent with European practice, where constitutional tribunals, under the rubric of "formal" or "extrinsic" constitutionality, have long reviewed the compliance of statutes with established lawmaking procedures. See Gottfried Dietze, *Judicial Review in Europe*, 55 MICH. L. REV. 539 (1957).

668. See *Zakon RSFSR. O Konstitutsionnom Sude RSFSR*, *supra* note 17, art. 58(4).

669. Stanislav Oganian, *Novaia Konstitutsiia—Nash Poslednii Shans* [A New Constitution—Our Last Chance], PRAVDA, Feb. 21, 1992, at 2, 2 (comment by Valerii D. Zor'kin).

On January 14, El'tsin submitted a draft budget that included a sum of 16.3 million rubles earmarked for the Constitutional Court. The legislature adopted the law, with a reduced allocation to the Constitutional Court of 2 million rubles. On February 6, Valerii Zor'kin, the Constitutional Court Chairman, requested the legislature submit all relevant documents on the budget law. The legislature did not act accordingly. On February 13, the deputy chairman of the Russian Supreme Soviet informed Zor'kin that the changed figure was "only a technical error" and that "someone had omitted the figure 1 in front of the figure 2." He assured Zor'kin that the error had been corrected and that the document now reflected the correct figure of 12.8 million rubles. See V. Golovachev, *Taina Ischeznuvshei Tsifry* [The Secret of the Figure That Disappeared], TRUD, Feb. 15, 1992, at 1.

The Constitutional Court, in its formal session on February 14, criticized the "superficial" response of the legislature and questioned the veracity of its explanation. More importantly, it expressed concern about the very constitutionality of final editorial changes in adopted laws, suggesting that such practices might not be "compatible . . . with a law-governed state." Oganian, *supra*, at 1. See also Konstantin Katanian, *Even the Very People's Deputies Who Adopted the 'Law On the Constitutional Court' and Elected the Very Judges, Most Likely, Did Not Expect That in the Country There Would Appear So Quickly a Powerful Organ for Which the Law Comes First*, KURANTY, Feb. 25, 1992, at 4, translated in FBIS-USR, Mar. 20, 1992, at 78. The Constitutional Court ultimately decided to broaden its examination to include all edited laws, not merely the budget law at issue. Golovachev, *supra*, at 1.

and the nation as a whole, not to any outside organization or individual. It indicates several possible antidotes to external control, including genuinely free, contested election of all legislators by the citizenry; elimination of the two-tier model; strict limits on parliamentary administrative organs and leaders; clear demarcation of legislative functions and competence both internally and vis-à-vis executive and judicial branches; and restrictions on delegation of lawmaking authority. Which, if any, of these factors are prerequisites for legitimacy? At what point does a legislature become so infected by outside influence as to render its enactments invalid? These are crucial questions that await future decision.

Second, architects of the new system must also define what are legally enforceable lawmaking procedures. Soviet practice confirms the desirability of "very concrete," "well understood," and "purposefully made" procedures.⁶⁷⁰ Perhaps, then, the Constitutional Court should limit its inquiry to published constitutional, statutory, and internal rules.

Third, reformers also must establish an appropriate standard for review. Should the Constitutional Court insist on absolute compliance with prescribed procedures or, rather, enforce a minimal constitutional standard of legislative decisionmaking?⁶⁷¹ The preceding case illustrates in graphic detail the inexperience of Soviet legislators. This situation has not improved markedly in the post-Soviet era. Legislative inexperience sends conflicting messages. It appears to make an overly stringent compliance requirement unreasonable in the Russian context. Yet, it also calls for a sufficiently high threshold to encourage orderly, predictable formulation and adoption of laws.

Fourth, Russian reformers must address the issue of remedies. For example, a basic question is whether to deem laws not fully in compliance with established procedures as void or voidable. It might be appropriate as well to reconsider the current two-stage invalidation process in cases of individual complaints to the Constitutional Court. Under existing rules, the Constitutional Court has no authority in such instances to order immediate nullification of an unconstitutional law. Instead, it must formally request the Russian Legislature to review the statute's possible invalidation.⁶⁷²

Fifth, they must give serious attention to the enforcement of Constitutional Court rulings. From the very start, judges have expressed significant concern over the lack of concrete legal mechanisms to ensure execu-

670. Linde, *supra* note 18, at 241-42.

671. David M. Lawrence, *Private Exercise of Governmental Power*, 61 *IND. L.J.* 647, 683 (1986).

672. See Tamara G. Morshchakova, *cited in Esli Vas Uvolili*, *supra* note 661.

tion of their decisions.⁶⁷³ To their great relief,⁶⁷⁴ thus far, Russian authorities have, in fact, voluntarily complied. Whether this becomes established practice, however, remains to be seen.

Admittedly, resolution of these five issues is an extraordinarily difficult assignment for the young, inexperienced, and overburdened architects of a new Russia. Nonetheless, if Alexander Bickel was correct that "[t]he highest morality is almost always the morality of process,"⁶⁷⁵ then the challenge is as noble as it is formidable.

673. See, e.g., *U Nas, Kazhetsia, Povliaetsia Tret'ia Vlast'*, *supra* note 661.

674. See, e.g., *Esli Vas Uvolili*, *supra* note 661 (discussing possible consequences if Boris El'tsin had failed to recognize Constitutional Court invalidation of his security agency merger decree). On April 1, Mikhail Mitiukov, Supreme Soviet Legislation Committee Chairman, proposed adoption of a law on compulsory compliance with Constitutional Court decisions. See Mikhail Karpov, *A Sushchestvuet Li Federatsiia? [But Does a Federation Exist?]*, NEZAVISIMAIA GAZETA, Apr. 2, 1992, at 1.

675. Alexander Bickel, *Watergate and the Legal Order*, 57 COMMENTARY 19, 25 (1974).

