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Izvestiia as a Mirror of Russian Legal Reform

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Izvestiia as a Mirror of Russian Legal Reform: Press, Law, and Crisis in the Post-Soviet Era

Frances H. Foster*

ABSTRACT

In this Article, Professor Foster explores the breakdown of legal authority in post-Soviet Russia by examining the experience of the Russian newspaper Izvestiia. The author recounts the power struggles between the Russian president and the parliament, each seeking to exercise sole control over the destiny of Izvestiia and of post-Soviet Russia. Professor Foster argues that Izvestiia's battle for survival is merely symptomatic of the overall structural, procedural, and attitudinal obstacles to Russian legal reform in the post-Soviet era. The author concludes that the key to successful establishment of a stable, democratic, law-based state is a fundamental reconstitution of Russian legal tradition, culture, and language.

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*The mass media are a mirror of society.
Blaming the mirror is a fruitless occupation.¹*

I. INTRODUCTION

On the evening of March 20, 1993, Boris El'tsin stunned the world by announcing the introduction of emergency presidential rule in Russia.² He cited his "duty as a citizen, as a patriot, and as a human being"³ to protect the Russian populace and reform process from an antidemocratic, obstructionist parliament. In succeeding days, President El'tsin, Supreme Soviet Chairman Khasbulatov, and Constitutional Court Chairman Zor'kin waged a veritable battle of the titans. All three framed their

1. Andrei Sharipov, *Necha Peniat' [Nothing to Blame]*, ROSSIISKAIA GAZETA, Dec. 4, 1992, at 2.

2. See Boris El'tsin, Speech, Ostankino Television (Mar. 20, 1993), in ROSSIISKAIA GAZETA, Mar. 23, 1993, at 1 [hereinafter El'tsin, March 20 Speech].

3. *Id.* at 2.

competing claims to legitimacy in legal and democratic rhetoric,⁴ yet ran roughshod over formal legal rules and processes.⁵ Indeed, the eventual resolution of the crisis required resort to extraconstitutional measures.⁶

The March power struggle provides dramatic evidence of Russia's failure to realize the "democratic, law-based state" it pledged at Alma Ata in December 1991.⁷ In fact, however, it is only symptomatic of a larger problem—the "breakdown of all legal authority"⁸ in post-Soviet Russia.

Why have Russian leaders had such difficulty translating promise into reality? What practical and theoretical factors explain this stunted progress toward a democratic, law-based state? Why has law in post-Soviet Russia failed to meet its ultimate challenge as a force for stabilization in a period of profound national change and crisis?

This Article attempts to provide some preliminary answers to these crucial questions. It seeks to identify major structural, procedural, and attitudinal obstacles to Russian legal reform efforts in the post-Soviet era. The Russian legal system is in such flux as to make conventional

4. See, e.g., Boris El'tsin, Speech to Ninth Congress of People's Deputies (Mar. 26, 1993), in *ROSSIISKAIA GAZETA*, Mar. 27, 1993, at 1; Ruslan Khasbulatov, Speech to Supreme Soviet (Mar. 21, 1993), in *ROSSIISKAIA GAZETA*, Mar. 23, 1993, at 1; Valerii Zor'kin, cited in Russian Television Network, Mar. 20, 1993, translated in *F.B.I.S.-SOV*, Mar. 22, 1993, at 19, 20.

5. Interestingly, Boris El'tsin admitted that all three branches of government had acted contrary to the Constitution. See Boris El'tsin, Speech to Ninth Congress of People's Deputies (Mar. 27, 1993), in *ROSSIISKAIA GAZETA*, Mar. 30, 1993, at 2. Valerii Zor'kin received sharp criticism for his immediate denunciation of El'tsin's decrees as unconstitutional. See Sergei Kovalev, cited in Serge Schmemmann, *Hard-Liners Plan a Court Challenge to Yeltsin's Move*, *N.Y. TIMES*, Mar. 22, 1993, at A1, A4. ("Zorkin made his statement even before the Constitutional Court met. It contradicts the law and made him a side in the conflict, and that is why he cannot take part in settling the conflict."). For a defense of Zor'kin, see Inna Murav'eva, *Nad "Skhvatkoi" v Nashe Vremia Ostavat'sia Trudno [It Is Difficult to Remain Above the "Fray" in Our Times]*, *ROSSIISKAIA GAZETA*, Mar. 23, 1993, at 1 (interview with Constitutional Court Judge Boris Ebzeev).

6. See Boris Pugachev, *Na Politicheskome Nebosklone Podnimaetsia Tret'ia Sila [Third Force Is Rising on Political Horizon]*, *ROSSIISKAIA GAZETA*, Mar. 31, 1993, at 1 (describing how executive and legislative authorities "increasingly legalize unconstitutional methods").

7. See, e.g., *Alma-Atinskaia Deklaratsiia [Alma-Ata Declaration]* (Dec. 21, 1991), in *PRAVDA*, Dec. 23, 1991, at 1.

8. Editorial, *To the Barricades With Mr. Yeltsin*, *N.Y. TIMES*, Mar. 22, 1993, at A16. See generally Irina Demchenko, *Teper' Gosudarstvo Delit ne Tovary, a Den'gi [Now the State is Dividing up Money Instead of Goods]*, *IZVESTIIA*, Nov. 27, 1992, at 2; *Prestupnost' i Gosudarstvo: Kto Kogo? [Crime and the State: Who Will Win?]*, *IZVESTIIA*, Feb. 12, 1993, at 5.

scholarly examination of "law on the books" irrelevant, if not futile. Accordingly, this Article takes a "law in action" approach⁹ and considers the general course of legal reform through the experience of one entity, the newspaper *Izvestiia*.

If history is instructive, a free press will be important for the development of democracy in Russia.¹⁰ In other contexts, the press has acted as a major force to advance and safeguard democratic values, institutions, and procedures.¹¹ In fact, one United States scholar has posited that "it is possible to have a democracy without judicial review, though not without freedom of the press."¹²

Russia's Soviet heritage is markedly different. Even at the height of Gorbachev's *glasnost* reforms, the approved functions of the press were to communicate and facilitate central communist party and state directive and ideology.¹³ Soviet leaders derived significant authority from control of information and greeted calls for the most minimal relaxation of restrictions with suspicion and hostility.¹⁴

In post-socialist Russia, then, there likely will be considerable tension between notions of the press as an instrument of the party or state and as an independent "bulwark of liberty."¹⁵ The devolution of central control over information promises to be a matter of particular sensitivity and potential conflict.¹⁶ Thus, an examination of the evolving status and

9. See generally ROSCOE POUND, *THE SPIRIT OF THE COMMON LAW* (1921).

10. Note that U.S. Secretary of State Warren Christopher expressed this view in his March 22, 1993 speech to the Chicago Council on Foreign Relations: "The existence. . . of a strong independent media is also essential for a democratic society." U.S. Secretary of State Warren Christopher, Speech (Mar. 22, 1993), in *N.Y. TIMES*, Mar. 23, 1993, at A7.

11. See generally *PRESS LAW IN MODERN DEMOCRACIES: A COMPARATIVE STUDY* (Pnina Lahav ed., 1985).

12. LUCAS A. POWE, JR., *THE FOURTH ESTATE AND THE CONSTITUTION: FREEDOM OF THE PRESS IN AMERICA* 294 (1991).

13. See generally GAYLE D. HOLLANDER, *SOVIET POLITICAL INDOCTRINATION: DEVELOPMENTS IN MASS MEDIA AND PROPAGANDA SINCE STALIN* 21-24, 29-32 (1972); THOMAS F. REMINGTON, *THE TRUTH OF AUTHORITY: IDEOLOGY AND COMMUNICATION IN THE SOVIET UNION* 133-55 (1988); ANGUS ROXBURGH, *PRAVDA: INSIDE THE SOVIET NEWS MACHINE* 53-55 (1987).

14. For a discussion of limits on *glasnost* under Gorbachev, see Natalie Gross, *Glasnost: Roots and Practice*, *PROBS. COMMUNISM*, Nov.-Dec. 1987, at 69, 73.

15. J. TRENCHARD & T. GORDON, *1 CATO'S LETTERS; OR, ESSAYS ON LIBERTY, CIVIL AND RELIGIOUS, AND OTHER IMPORTANT SUBJECTS* 100 (1971).

16. Recent events support this view. El'tsin issued as his first emergency decree the *Presidential Decree On the Protection of the Freedom of Mass Information* (Mar. 20, 1993). *ITAR-TASS, IZVESTIIA*, Mar. 23, 1993, at 1 [hereinafter *Mass Media Decree*]. This was a response to what El'tsin perceived to be a "real threat to the freedom of

rights of the Russian press should give some indication of the overall problems in Russia's democratic and legal reform.

Izvestiia provides an ideal case for studying post-Soviet developments. In the brief period since its self-declared emancipation in August 1991, this newspaper has directly collided with many key elements of the Russian legal system. As a result, it offers important insights into lawmaking norms and rules; economic regulation in the transition from command to market economy; formal and practical enforcement mechanisms; and the relationship between press, law, and crisis¹⁷ in the post-Soviet era.

speech" by the Russian legislature. El'tsin, March 20 Speech, *supra* note 2, at 2. The decree stipulated "strict accountability" of all officials of state organizations and public associations for interference in mass media activity. *Mass Media Decree, supra*, point 1. It also provided for the Ministry of Internal Affairs to guard media facilities, *id.* point 2, and for the Council of Ministers to create a State Inspectorate for the Protection of the Freedom of the Press and Mass Information. *Id.* point 3. On March 28th, the Congress responded by declaring illegal the Russian Federal Information Center that El'tsin had established on December 25, 1992 to "ensure. . . the timely and broad dissemination of accurate and true information about the course of reforms in Russia and the clarification of Russian Federation state policy through the press and mass media." *Ukaz No. 1647 Prezidenta Rossiiskoi Federatsii O Federal'nom Informatsionom Tsentre Rossii* [Presidential Decree No. 1647 On the Russian Federal Information Center] point 1 (Dec. 25, 1992), in ROSSIISKIE VESTI, Dec. 29, 1992, at 1 [hereinafter *Federal Information Center Decree*]. *Postanovlenie S'ezda Narodnykh Deputatov Rossiiskoi Federatsii O Netlozhnykh Merakh po Sokhraneniuiu Konstitutsionnogo Stroia Rossiiskoi Federatsii* [Russian Federation Congress of People's Deputies Resolution On Urgent Measures to Preserve the Constitutional System of the Russian Federation] (Mar. 28, 1993), in ROSSIISKAIA GAZETA, Mar. 29, 1993, at 1 [hereinafter *Congress Constitutional Resolution*]. In addition, the Congress introduced so-called "observers' councils" to monitor mass media activity. *Postanovlenie S'ezda Narodnykh Deputatov Rossiiskoi Federatsii O Merakh po Obespecheniiu Svobody Slova na Gosudarstvennom Teleradioveshchanii i v Sluzhbakh Informatsii* [Russian Federation Congress of People's Deputies Resolution On Measures to Ensure Freedom of Speech on State Television and Radio Broadcasting and in the News Services] (Mar. 28, 1993), in ROSSIISKAIA GAZETA, Apr. 1, 1993, at 1 [hereinafter *Congress Broadcast Resolution*]. Approximately one hundred deputies petitioned the Constitutional Court for review. See Programma Radio Odin Network, Apr. 2, 1993, translated in F.B.I.S.-SOV, Apr. 5, 1993, at 42.

17. An outstanding discussion of the relationship between crisis and Soviet/Russian constitutional development is provided in ROBERT SHARLET, *SOVIET CONSTITUTIONAL CRISIS: FROM DE-STALINIZATION TO DISINTEGRATION* (1992) [hereinafter *SHARLET-SOVIET CRISIS*]. For an interesting consideration of the impact of crisis on "core" constitutional rights in the United States, see Vincent Blasi, *The Pathological Perspective and the First Amendment*, 85 COLUM. L. REV. 449 (1985). For a treatment of the various definitions of "crisis," see JÜRGEN HABERMAS, *What Does a Crisis Mean Today? Legitimation Problems in Late Capitalism*, in JÜRGEN HABERMAS ON SOCIETY AND POLITICS: A READER 266 (Steven Seidman ed., 1989) [hereinafter *HABERMAS*].

II. THE *IZVESTIIA* EXPERIENCE

Izvestiia's past gave little intimation of its future role as gadfly and advocate for change. Founded in 1917, it served for seventy-four years as the official mouthpiece of the Soviet legislature and "active assistant"¹⁸ of the communist party. Its very name, *Izvestiia Sovetov Narodnykh Deputatov SSSR* [News of the Soviets of USSR People's Deputies] (*Izvestiia SSSR*) proclaimed its subordinate status.

In the waning months of the Gorbachev regime, however, *Izvestiia* journalists increasingly chafed under central party and state domination.¹⁹ With the attempted coup of August 19-22, 1991, *Izvestiia* finally was able to assume a new role and voice. From then on, it tested the limits of Russian democratic and legal reforms.

A. *Izvestiia's "Coup Within a Coup"*²⁰

On August 20, 1991, *Izvestiia* announced its rebirth with a flourish. In open defiance of its editor in chief,²¹ it published Boris El'tsin's "Appeal to the Citizens of Russia,"²² a denunciation of the coup and call for a general strike. In so doing, *Izvestiia* enjoyed the distinction of being the only central newspaper to brave the wrath of the ruling junta.²³

Two days later, *Izvestiia's* editorial office and journalists' collective formally confirmed their newspaper's new direction. Citing acts of omission and commission during the coup, they unilaterally proclaimed inde-

18. *Redaktsii Gazety "Izvestiia" [Editors of the Newspaper "Izvestiia"]*, *IZVESTIIA*, Mar. 14, 1967, at 1.

19. In February 1991, Nikolai Efimov, *Izvestiia's* editor in chief, attempted to remove several of the newspaper's journalists including first deputy editor in chief, Igor Golembiovskii. The *Izvestiia* staff, infuriated by the action, intervened in favor of Golembiovskii and suggested that Efimov step down from his position. Efimov remained editor in chief, nonetheless. In June 1991, on the direction of USSR Supreme Soviet Chairman Anatolii Luk'ianov, Efimov announced new appointments to the editorial staffs of *Izvestiia* and its supplement *Nedelia*. *Izvestiia* journalists protested this decision as directly violating the rights of the Presidium as founder of *Izvestiia* and *Izvestiia's* Editorial Office as founder of *Nedelia*. A. Stepovoi and S. Chugaev, *Uchreditel' i Gazeta [Founder and Newspaper]*, *IZVESTIIA*, June 28, 1991, at 2. See generally *Poslednie "Izvestiia" [The Latest "News"]*, *KOMSOMOL'SKAIA PRAVDA*, June 19, 1991, at 1.

20. Michael Dobbs, cited in Vladimir Nadein, *Trudno Daetsia Svoboda [Freedom Is Difficult to Achieve]*, *IZVESTIIA*, Aug. 24, 1992, at 3.

21. See I. Ovchinnikova, *Pri Svete Sovesti [In the Light of Conscience]*, *IZVESTIIA*, Aug. 22, 1991, at 6.

22. *K Grazhdanam Rossii [To the Citizens of Russia]* (Aug. 19, 1991), in *IZVESTIIA*, Aug. 20, 1991, at 1.

23. *Nashi Novee Starye "Izvestiia" [Our New Old "Izvestiia"]*, *IZVESTIIA*, Aug. 24, 1991, at 4.

pendence from their legal founder, the Presidium of the USSR Supreme Soviet,²⁴ and fired their editor in chief.²⁵ They justified these radical steps as fully conforming with recent Russian presidential decrees and implementing resolutions regarding the treatment of coup participants.²⁶

On August 23rd, *Izvestiia* received a certificate of reregistration from the Russian Ministry of the Press and Information (Press Ministry). This document officially recorded the newspaper's change in name (from *Izvestiia SSSR* to *Izvestiia*) and in founder (now the *Izvestiia* journalists' collective).²⁷ On the same day, *Izvestiia*'s staff unanimously adopted a new charter and, for the first time in history, elected its own editor in chief.²⁸

In a symbolic break with the past, *Izvestiia* reappeared on August 24th, under a different masthead as well as title.²⁹ Over the following

24. In August 1990, the USSR Supreme Soviet Presidium officially founded and registered the newspaper *Izvestiia Sovetov Narodnykh Deputatov SSSR* in accordance with the recently enacted USSR Law On the Press and Other Mass Information Media. *Zakon SSSR O Pechati i Drugikh Sredstvakh Massovoi Informatsii* [USSR Law On the Press and Other Mass Information Media] arts. 7, 8 (June 12, 1990), *Vedomosti*, no. 26, item 492 (1990) [hereinafter *USSR Press Law*]. *Izvestiia SSSR* received the first registration certificate. See Igor Gvritshvili, TASS, Aug. 14, 1990, in F.B.I.S.-SOV, Aug. 15, 1990, at 39.

25. *Reshenie Redkollegii i Kollektiva "Izvestiia"* [Decision of the Editorial Office and the "Izvestiia" Collective], *IZVESTIIA*, Aug. 22, 1991, at 1.

26. The Decision specifically cited El'tsin's Decree No. 61 of August 19, 1991, which characterized the coup as an unconstitutional "crime against the state" and called for removal from office and criminal prosecution for all officials who implemented decisions of the ruling junta. *Ukaz Prezidenta RSFSR No. 61* [Decree No. 61 of the RSFSR President] (Aug. 19, 1991), *Vedomosti RSFSR*, no. 34, item 1137 (1991). See *Postanovlenie Verkhovnogo Soveta RSFSR Ob Dopolnitel'nykh Polnomochiiakh Prezidenta RSFSR po Obespecheniiu Zakonnosti Deiatel'nosti Sovetov Narodnykh Deputatov v Usloviiakh Likvidatsii Posledstviu Popytki Gosudarstvennogo Perevorota v SSSR* [RSFSR Supreme Soviet Resolution On Supplementary Powers of the RSFSR President to Guarantee the Lawfulness of Activities of Soviets of People's Deputies Under Conditions of Eliminating the Consequences of the Coup Attempt in the USSR] (Aug. 21, 1991), *Vedomosti RSFSR*, no. 34, item 1125 (1991); *Postanovlenie Verkhovnogo Soveta RSFSR O Politicheskoi Situatsii v Respublike, Slozhiusheisia v Rezul'tate Antikonstitutsionnogo Gosudarstvennogo Perevorota v SSSR* [RSFSR Supreme Soviet Resolution On the Political Situation in the Republic That Arose as a Result of the Unconstitutional Coup in the USSR] (Aug. 22, 1991), *Vedomosti RSFSR*, no. 34, item 1126 (1991).

27. See *Gazeta "Izvestiia" Zaregistrirrovana* [The Newspaper "Izvestiia" Has Been Registered], *IZVESTIIA*, Aug. 24, 1991, at 1.

28. See *Nashi Nove Starye "Izvestiia," supra* note 23. Igor Golembiovskii was the unanimous choice for editor in chief.

29. The slogan "Workers of the world, unite!" was conspicuously absent from the masthead.

months, its editors and journalists repeatedly emphasized the newspaper's independent status and line. For example, on September 5th, they explicitly rejected *Izvestiia's* traditional, statutorily prescribed function as official publisher of legislative materials.³⁰ They served notice that *Izvestiia* would no longer mechanically reproduce legislation on instruction from above but, rather, would print only those documents "of interest to readers."³¹ Soon thereafter, *Izvestiia's* editorial office also renounced the newspaper's longstanding role as conduit between the citizenry and authorities.³² It stated unequivocally that henceforth *Izvestiia* would neither reply to readers' letters nor forward them to government organs "for action."³³

There was a marked change as well in the content and tone of *Izvestiia* articles. Reporters paraded their liberation from party and state sponsorship in pieces that openly criticized even the highest Soviet and republic leaders and bodies.³⁴ There was an immediate response from readers and authorities—a noticeable increase in retail sales and bans on circulation by several republic governments.³⁵

Despite these dramatic departures from previous practice, *Izvestiia's* staff members insisted that the newspaper was "the direct heir and rightful successor"³⁶ of *Izvestiia SSSR*. They described their publication

30. See *Zakon SSSR O Poriadke Opublikovaniia i Vystupleniia v Silu Zakonov SSSR i Drugikh Aktov, Priniatykh S'ezdom Narodnykh Deputatov SSSR, Verkhovnym Sovetom SSSR i Ikh Organami* [USSR Law On Procedure 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] arts. 1-2 (July 31, 1989), in PRAVDA, Aug. 4, 1989, at 1.

31. *Ofitsioz, Kotoryi Interesuet Vsekh* [Semi-Official Organ, Which Interests All], IZVESTIIA, Sept. 6, 1991, at 1, 1.

32. For information on letters to the editor, see MARK W. HOPKINS, MASS MEDIA IN THE SOVIET UNION 302-07 (1970); ELLEN P. MICKIEWICZ, MEDIA AND THE RUSSIAN PUBLIC 67-68 (1981).

33. Iurii Orlik, *U Redaktsii Net Deneg i Sil na Bessmyslennuiu Perepisku: Kak Otnyne Budut Rabotat' "Izvestiia" s Pis'mami Chitatelei* [The Editorial Office Does Not Have the Money or Workforce for Senseless Correspondence: How "Izvestiia" Will Henceforth Work with Readers' Letters], IZVESTIIA, Jan. 2, 1992, at 3.

34. See, e.g., I. Demchenko, *Esli Ivan Silaev Vse-taki Reshit Uiti. . .* [If Ivan Silaev Decides to Go After All], IZVESTIIA, Sept. 16, 1991, at 1; I. Demchenko, *Podpishet li Rossiia Dogovor ob Ekonomicheskoi Soobshchestvie?* [Will Russia Sign the Economic Union Treaty?], IZVESTIIA, Oct. 8, 1991, at 1; Iurii Feofanov, *Vzlet i Padenie Perestrochnogo Parlamenta* [Rise and Fall of the Perestroika Parliament], IZVESTIIA, Sept. 3, 1991, at 2.

35. See V. Nadein, "Izvestiia" *Zapreshchaiut po Inertsii* ["Izvestiia" Banned Through Inertia], IZVESTIIA, Aug. 28, 1991, at 3.

36. *K Chitateliam* [To Readers], IZVESTIIA, Sept. 24, 1991, at 1.

as the "renewed"³⁷ version of its predecessor. They deliberately selected both a title and a numbering scheme that would reflect this linkage to the past.³⁸ On October 17, 1991, *Izvestiia's* claim to succession received legislative support in a USSR Presidium resolution entitled "On the Transformation of the Newspaper-Publishing Complex 'Izvestiia' Into the Economic Amalgamation Concern 'Izvestiia.'" ³⁹

Over the following months, *Izvestiia* took an increasingly harsh stance toward the Russian parliament and its chairman, Ruslan Khasbulatov.⁴⁰ The newspaper featured the Russian Supreme Soviet's latest foibles and procedural irregularities. It held up for criticism and ridicule Khasbulatov's colorful expressions and heavy-handed management of legislative sessions.

On March 17, 1992, *Izvestiia* stepped up its attack. It published an expose of Khasbulatov's alleged involvement in the expulsion of ethnic Chechens from Moscow hotels and subsequent persecution by the Moscow militia.⁴¹ The author accused the parliamentary chairman of abuse of power and violation of fundamental constitutional and human rights

37. *Nashi Nove Starye "Izvestiia," supra* note 23, at 4.

38. *Id.* The August 24th issue was published as number 202 (for 1991) and number 23468 (since the original date of *Izvestiia* SSSR's founding).

39. In point 2, the Presidium resolution provided:

It is stipulated that the *Izvestiia* concern is the legal successor to the existing *Izvestiia* complex, bases its activity, including import and export operations, on economic autonomy in conformity with the procedure established in USSR and RSFSR legislation, and exercises the right of full economic control of the property on its books.

See Obsuzhdenie na Sessii Verkhovnogo Soveta Rossii Voprosa ob "Izvestiiah" [Discussion at the Russian Supreme Soviet Session on the "Izvestiia" Question], *IZVESTIIA*, July 21, 1992, at 3 [hereinafter *Obsuzhdenie*]. There was some question as to the validity of this resolution, however, since at the time of its enactment there was no legally recognized entity entitled "Izvestiia Concern." *See Iz Spravki O Proverke Uchreditel'nykh Dokumentov Redaktsii Gazety "Izvestiia" i Kontserna "Izvestiia"* [Information On the Investigation of the Founding Documents of the Editorial Office of the Newspaper "Izvestiia" and the "Izvestiia" Concern], *ROSSIISKAIA GAZETA*, July 14, 1992, at 2 [hereinafter *Procuracy Report*].

40. *See, e.g., S. Agafanov, Khasbulatov Otdaet Iavilinskogo Iaponii* [Khasbulatov Gives Iavilinskii Away to Japan], *IZVESTIIA*, Sept. 13, 1991, at 4; Al'bert Plutnik, *Eshche Neiasno, Kuda Poidet Rossiiskii S'ezd* [It Is Again Unclear What Direction the Russian Congress Will Take], *IZVESTIIA*, Apr. 8, 1992, at 2; *Parlament Rossii Vozvratil Proekt Godovogo Biudzhet v Pravitel'stvo. Pravitel'stvo Otnesius' k Etomu Spokoino* [The Russian Parliament Returned the Draft Annual Budget to the Government. The Government Took This Calmly], *IZVESTIIA*, Mar. 28, 1992, at 1.

41. Irina Dement'eva, *Oblava* [Round-up], *IZVESTIIA*, Mar. 19, 1992, at 3.

guarantees.⁴² She even reported ongoing proposals and proceedings for Khasbulatov's removal from office.⁴³ This article proved to be the catalyst for direct confrontation between Russia's First and Fourth Estates⁴⁴ during the latter half of 1992.⁴⁵

B. Early Economic Challenges

During its first year of existence, *Izvestiia* waged a desperate struggle for economic survival. It rapidly discovered that independence came with a heavy price—loss of funding and preferential treatment from the communist party and state. *Izvestiia*'s staff suddenly was forced to deal with the stark realities of economic enterprise and competition. It was ill-equipped for these new tasks, in terms of both experience and financial resources. Because of party and state sponsorship, the newspaper had long been insulated from the practical problems of supply, production, and distribution.⁴⁶ Moreover, when *Izvestiia*'s journalists' collective formally assumed control on August 23rd, it acquired only the "intellectual structure"⁴⁷ of the newspaper and none of its more tangible assets. A separate entity, the Publishing House *Izvestiia* of Soviets of USSR People's Deputies (*Izvestiia* Publishing House), remained the legal owner of all editorial offices, production facilities, equipment, and the like.⁴⁸ *Izvestiia* used this property under a contractual arrangement with *Izvestiia* Publishing House.⁴⁹

In the fall of 1991, per custom and mandate from the Ministry of Communications,⁵⁰ Russian newspapers, including *Izvestiia*,⁵¹ launched

42. *Id.*

43. *Id.*

44. For an example of Russian use of the terms "First" and "Fourth Estates," see, e.g., Valerii Rudnev, *Prezidium Verkhovnogo Soveta Rossii Pytaetsia Podmenit' Sud* [*The Russian Supreme Soviet Presidium Tries to Supplant the Courts*], *IZVESTIIA*, July 14, 1992, at 2.

45. See *infra* part II. C.-D.

46. See Mikhail Berger, *Konflikt Vokrug Tseny na Periodiku* [*Conflict Over Prices for Periodicals*], *IZVESTIIA*, Jan. 31, 1992, at 1; Iu. Sorokin, *Gaidar Nam Drug, No Istina Vse Dorozhe i Dorozhe* [*Gaidar Is Our Friend, But the Truth Is Increasingly Expensive*], *KOMSOMOL'SKAIA PRAVDA*, Feb. 12, 1992, at 1.

47. Igor Golembiovskii, cited in *Obsuzhdenie*, *supra* note 39, at 3.

48. See Mikhail Berger, *Utverzheniia o Tom, Chto "Izvestiia" Zakhvacheny Gruppy Chastnykh Lits,—Lozh'* [*Assertions that "Izvestiia" Has Been Seized by a Group of Private Individuals Are Lies*], *IZVESTIIA*, July 17, 1992, at 3.

49. *Id.*

50. See *Raboचाia Tribuna, Nas Zastavliaiut Prikusit' Iazik* [*They Are Making Us Hold Our Tongues*], *RABOCHAIA TRIBUNA*, Feb. 21, 1992, at 1.

51. See *K Chitateliam*, *supra* note 36.

a drive for 1992 subscriptions. They raised prices substantially to compensate for the rapidly escalating costs of newsprint, publishing materials, delivery, and distribution.⁵² As a result, most publications experienced a considerable decline in subscriptions and faced imminent bankruptcy.⁵³ *Izvestiia* emerged relatively unscathed⁵⁴ from the 1992 subscription campaign. Within a month, however, it too was "on the brink of financial crisis."⁵⁵ The precipitating factor was the introduction of Boris El'tsin's market reforms in early 1992.

On January 2, 1992, the Russian government instituted widespread price liberalization.⁵⁶ This policy had a staggering impact on Russian newspapers. With the lifting of price controls, the cost of newsprint alone rose from 300 rubles per ton to 13,000 rubles per ton.⁵⁷ *Izvestiia* reported an increase in overall production expenses of as much as 200 times previous charges.⁵⁸

To make matters worse, nearly all of the essential publication services remained under government monopoly.⁵⁹ This situation raised particular difficulties in the distribution and transportation sectors, both controlled by agencies of the Ministry of Communications. In mid-January, the central newspaper distribution organization, Rospechat' (formerly Soiuzpechat'), suddenly presented the Russian print media with an ultimatum—either raise prices to an amount preset by Rospechat' or lose all

52. Vera Tolz, *Russia*, RFE/RL RES. REP. 4, 5 (Oct. 2, 1992).

53. See generally Profsoiuz, Vyruchai "Rabochiui Tribunu" [Trade Unions, Come to the Aid of "Rabochaia Tribuna"], RABOCHAIA TRIBUNA, Dec. 25, 1991, at 1.

54. *Izvestiia* retained 71.81% of its subscription rate of the previous year as compared to *Literaturnaia Gazeta's* and *Pravda's* rates of 26.11% and 39.33%, respectively. *Preduaritel'nye Itogi Podpiski na 1992 God* [Preliminary Totals of Subscriptions for 1992], IZVESTIIA, Nov. 16, 1991, at 2.

55. Orlik, *supra* note 33, at 3.

56. *Ukaz Prezidenta RSFSR O Merakh po Liberalizatsii Tsen* [RSFSR Presidential Decree On Measures for Price Liberalization] point 1 (Dec. 3, 1991), in ROSSIISKAIA GAZETA, Dec. 25, 1991, at 1; *Postanovlenie Pravitel'stva RSFSR O Merakh po Liberalizatsii Tsen* [RSFSR Government Resolution On Measures for Price Liberalization] (Dec. 19, 1991), in ROSSIISKAIA GAZETA, Dec. 25, 1991, at 1.

57. Francis X. Clines, *Press in Russia Is Hurt By the Reforms It Backs*, N.Y. TIMES, Feb. 20, 1992, at 10.

58. *Podpiska na "Izvestiia-93" Vozobnovliaetsia v Moskve i Prodolzhaetsia v Drugikh Gorodakh Rossii i SNG* ["*Izvestiia-93*" Subscription Resumes in Moscow and Continues in Other Cities of Russia and the CIS], IZVESTIIA, Aug. 15, 1992, at 1.

59. See Iu. Skidanov, *Ukazu Nuzhno Pomogat'* [The Decree Needs to Be Helped], TRUD, Feb. 27, 1992, at 1; Ivan Zhagel, *Gazety—Ne Roskosh: No Mogut Eiu Stat', Esli Ne Budet Kontrolia za Monopol'nym Formirovaniiem Tsen* [Newspapers Are Not a Luxury But Could Become One if There Is No Control Over Monopoly Price Formation], IZVESTIIA, June 22, 1992, at 2.

access to retail sales.⁶⁰ The proposed "minimum prices" were astronomical, well beyond the means of most Russian readers. *Izvestiia*, for example, faced a 400-500 percent price hike.⁶¹ The Moscow Post Office soon followed suit and imposed a substantial tariff for delivery of mailed subscriptions.⁶²

The combined effect of price liberalization and monopolization led to the virtual "collapse of the newspaper empire."⁶³ Subscription fees collected in late 1991 at state-controlled prices were woefully inadequate to offset the spiralling expenses of 1992. As a result, many publications were forced to cease operations either temporarily or permanently.⁶⁴ Even *Pravda* suspended publication in mid-March, a matter of considerable embarrassment to Russian leaders.⁶⁵ *Izvestiia* in the first quarter alone suffered a 400 million ruble loss from subscriptions.⁶⁶ By July, the situation had deteriorated to the point that *Izvestiia* was actually subsidizing its subscribers in the amount of more than two rubles per issue.⁶⁷

Throughout this period, representatives of *Izvestiia* and other prominent Moscow newspapers appealed to the Russian government for assistance.⁶⁸ The response, exemplified by Boris El'tsin's February 20, 1992

60. A. Vorob'ev, *Gazetchiki Vsekh Stran (SNG) Ob'ediniates'* [*Newspapers of All Countries (CIS) Unite*], KRASNAIA ZVEZDA, Jan. 29, 1992, at 1; *Sovetskaia Rossiia, Rasschityvaem Na Vas. K Chitateliam, Aktivistam, Vsem Druz'iam* [*We Are Counting on You. To Readers, Activists, and All Friends*], SOVETSKAIA ROSSIIA, Feb. 1, 1992, at 1.

61. See Berger, *supra* note 46, at 1.

62. See Sergei Taranov, *Pochtovoye Monopolisty Sobiraiutsia Ograbit' Podpischikov Gazet i Zhurnalov* [*Postal Monopolists Intend to Rob Subscribers of Newspapers and Journals*], IZVESTIIA, Aug. 5, 1992, at 1.

63. Vladimir Somov, *Krushenie Eshche Odnoi Imperii. Teper'—Gazetnoi* [*Collapse of Yet Another Empire: This Time the Newspaper Empire*], KURANTY, Mar. 20, 1992, at 4.

64. For statistics, see Interfax, June 16, 1992, in F.B.I.S.-SOV, June 18, 1992, at 44 (comments by Boris Butenko, Russian Deputy Minister of Communications). See Viktor Kozhemiako, *Gazety Idut ko Dnu* [*Newspapers Are Going Under*], PRAVDA, Feb. 21, 1992, at 1.

65. *Miting Razreshili, "Pravdu" Priostanovili* [*They Allowed the Meeting, They Suspended "Pravda"*], PRAVDA, Mar. 14, 1992, at 1; S. Oganian, *Gaidar Smutilsia. . .* [*Gaidar Embarrassed. . .*], PRAVDA, Mar. 14, 1992, at 1.

66. "Izvestiia"—75, *No Oni Ne Stareiut* [*"Izvestiia" Is 75, But Is Not Aging*], ROSSIISKAIA GAZETA, Mar. 12, 1992, at 1.

67. Mikhail Berger, *Pervyi God Nashei Nezavisimosti* [*The First Year of Our Independence*], IZVESTIIA, July 14, 1992, at 2.

68. See TASS, *Pressa Mozhet Vzdokhnut' Spokoinee Posle Vstrechi s Prezidentom Rossii B. N. El'tsinym* [*Media Can Breathe Easier After Meeting with Russian President B. N. El'tsin*], TRUD, Dec. 25, 1991, at 1; Anatolii Iurkov, *K El'tsinu za*

Decree On Additional Measures of Legal and Economic Protection for the Periodical Press and State Book Publishing,⁶⁹ took two forms—subsidies and measures designed to mitigate the effect of market reforms. As will be described below,⁷⁰ both approaches proved problematic but provided some immediate relief to publications on the edge of bankruptcy.⁷¹

Beginning in the spring of 1992, *Izvestiia* faced an additional, more direct threat to its continued existence, this time from the political arena. The Russian legislature set out to accomplish what economic reform had not—the total destruction of *Izvestiia*.

C. Conflict with the Russian Legislature

Ruslan Khasbulatov delivered the opening volley at a March 30th meeting with members of the Supreme Soviet Mass Media Committee. He attacked the major publications as “corrupt,” “subversive” tools of the El'tsin government.⁷² He placed particular emphasis on *Izvestiia*'s antilegislativ bias and “ungrateful, uncivic role.”⁷³

Zashchitoi [To El'tsin for Protection], RABOCHAIA TRIBUNA, Feb. 5, 1992, at 1.

69. Ukaz Prezidenta Rossiiskoi Federatsii O Dopolnitel'nykh Merakh Pravovoi Ekonomicheskoi Zashchity Periodicheskoi Pechati i Gosudarstvennogo Knigoizdaniia (Feb. 20, 1992), in ROSSIISKAIA GAZETA, Feb. 22, 1992, at 1 [hereinafter *Publication Support Decree*].

70. See *infra* part IV.A.

71. *Izvestiia*'s survival, however, was due more to its own efforts than to government assistance. It adapted to changing market conditions in a variety of traditional and innovative ways. Like other Russian publications, it made deep cuts in staff, salaries, deliveries, copies, and local editions. See Orlik, *supra* note 33; *K Chitateliu* [To Readers], IZVESTIIA, July 3, 1992, at 8. It also launched resubscription campaigns at higher prices to offset escalating expenses. See *Podpiska na "Izvestiia" Prodolzhaetsia* ["*Izvestiia*" Subscription Continues], IZVESTIIA, Apr. 8, 1992, at 11. *Izvestiia* diversified its operations by adding new publications, including a joint venture weekly *My/We* with Hearst. See *Pervaiia Sovmestnaia Rossiisko-Amerikanskaia Gazeta "My/We"* [The First Joint Russian-American Newspaper "My/We"], IZVESTIIA, Feb. 27, 1992, at 1; "Zhizn'" O Nalogakh, Kotorye Vy Budete Platit' v 1992 g. ["Zhizn'": On the Taxes You Will Be Paying in 1992], IZVESTIIA, Jan. 9, 1992, at 8. It was one of the first newspapers to make extensive use of advertising, locate unofficial sources of newsprint, and contract directly with distributors. See Aleksandr Solov'ev, *Chinovnichaia Vosnia Vokrug Gazetnykh Kioskov* [Bureaucratic Fuss Over Newspaper Kiosks], IZVESTIIA, Mar. 24, 1992, at 2; Tolz, *supra* note 52, at 5. *Izvestiia* even reorganized its management structure, creating two limited liability companies. See *infra* note 85.

72. See Valerii Vyzhutovich, *Ruslan Khasbulatov: "Iz-za Napadok Pressy na Menia Liudi Perstaiut Chitat' Gazety i Zhurnaly"* [Ruslan Khasbulatov: "Because of the Press' Attack on Me People Stop Reading Newspapers and Journals"], IZVESTIIA, Apr. 1, 1992, at 2.

73. *Id.* Khasbulatov warned journalists: "The press should not harbor any illusion of being the Fourth Estate! You are of no significance!" *Id.*

At the subsequent Congress of People's Deputies, Khasbulatov intensified his offensive. On April 10th, he announced from the rostrum a proposal to revoke *Izvestiia's* status as an independent publication and to "restore" it as official organ of the Russian soviets.⁷⁴ In support, Khasbulatov cited numerous complaints from deputies regarding *Izvestiia's* inaccurate reporting and poor financial management.⁷⁵ In addition, he stated that *Izvestiia* had accumulated a debt of over one billion rubles and had lost its readership.⁷⁶ Following this speech, Khasbulatov had an appropriate resolution drafted for congressional consideration.⁷⁷ On the final day, deputies voted to instruct the Supreme Soviet to reexamine the legal position of the mass media at its next session.⁷⁸

These events provoked a storm of indignation from the Russian mass media. Journalists contended that any unilateral legislative alteration of *Izvestiia's* status would violate the letter and spirit of Russian legislation.⁷⁹ *Izvestiia* went even further. It publicly refuted Khasbulatov's allegations of a one billion ruble debt as an "all-out lie."⁸⁰ After consultation with Russian and Western lawyers, the newspaper took legal action.

74. R. Khasbulatov *Predlagaet "Razobrat'sia" s "Izvestiiami."* "Izvestiia" *Predlagaiut Uvazhat' Zakon* [R. Khasbulatov Suggests "Dealing" with "Izvestiia." "Izvestiia" Suggests Respecting the Law], IZVESTIIA, Apr. 11, 1992, at 1 [hereinafter R. Khasbulatov *Predlagaet*].

75. *Id.* See Plutnik, *supra* note 40 (on deputy criticisms of *Izvestiia*).

76. R. Khasbulatov *Predlagaet, supra* note 74.

77. According to Vladimir Pozner, the author of the resolution was Vladimir Isakov. See Ostankino Television First Program Network, July 15, 1992, translated in F.B.I.S.-SOV, July 17, 1992, at 42, 43.

78. See *id.*; *S'ezd Toshuet po Agitpropu* [Congress Misses Agitprop], IZVESTIIA, Apr. 18, 1992, at 4.

79. Specifically, they cited articles of the Russian Mass Media Law that allowed reregistration or termination of a registered publication only by decision of the founder or by court order. See, e.g., "Izvestiiam" *Po Shapke* [A Blow to "Izvestiia"], KURANTY, Apr. 11, 1992, at 1. See *Zakon Rossiiskoi Federatsii O Sredstvakh Massovoi Informatsii* [Russian Federation Law On Mass Information Media], in ROSSIISKAIA GAZETA, Feb. 8, 1992, at 3 [hereinafter *Russian Mass Media Law*]. They also denounced the proposed bill as inconsistent with constitutional guarantees and public aspirations for genuine freedom of expression and an independent press. See, e.g., *Programma Odin* Network, Apr. 13, 1992, translated in F.B.I.S.-SOV, Apr. 15, 1992, at 24.

80. Igor Golembiovskii, cited in Ostankino Television First Program Network, Apr. 13, 1992, translated in F.B.I.S.-SOV, Aug. 15, 1992, at 24.

It filed a slander suit against Khasbulatov demanding both moral and material damages.⁸¹

Khasbulatov failed to appear in court either personally or through legal representation to answer *Izvestiia's* charges.⁸² As he explained subsequently, "it is not convenient for a . . . chairman of the Supreme Soviet to go to court over every petty insult or piece of vulgarity."⁸³ Instead, he responded by turning to the Russian procuracy to compile a convincing case against *Izvestiia*.⁸⁴

The procuracy conducted an intensive one-month investigation into the creation and operations of the *Izvestiia* newspaper and its spin-off entities, *Izvestiia* Concern and *Izvestiia* Editorial Office.⁸⁵ In its official report, the procuracy asserted five major claims: (1) the August 1991 suspension of *Izvestiia* SSSR and establishment of *Izvestiia* violated the USSR Law On the Press and Other Mass Media (USSR Press Law);⁸⁶ (2) the formation of *Izvestiia* Concern and *Izvestiia* Editorial Office contravened USSR and Russian enterprise legislation;⁸⁷ (3) the October 17,

81. See Vladimir Nadein, "Izvestiia" *Obrashchaitutsia k Iuristam dlia Podgotovki Sudebnogo Iska k R. I. Khasbulatovu* ["Izvestiia" Appeals to Jurists to Prepare Legal Action Against R. I. Khasbulatov], *IZVESTIIA*, Apr. 13, 1992, at 1; *Ob Iske "Izvestii" k R. Khasbulatovu* [On "Izvestiia"'s Suit Against R. Khasbulatov], *IZVESTIIA*, Apr. 24, 1992, at 2 [hereinafter *Ob Iske "Izvestii"*].

82. See L. Nikitinskii, *Nekhoroshie "Izvestiia"* [Bad "News"], *KOMSOMOL'SKAIA PRAVDA*, July 15, 1992, at 1.

83. V. Prokhvatilov & D. Sabov, *R. Khasbulatov: Ne Tam Vy Diktatorov Ishchete . . .* [R. Khasbulatov: You Are Looking For Dictators in the Wrong Place. . .], *KOMSOMOL'SKAIA PRAVDA*, Oct. 9, 1992, at 1, 2 (statement by Ruslan Khasbulatov).

84. See Iulia Khaitina, *Vsevyshnii. . . Parlament* [The Most High. . . Parliament], *MOSKOVSKII KOMSOMOLETS*, July 21, 1992, at 1.

85. According to the official "Explanatory Note" submitted by the heads of *Izvestiia*, *Izvestiia* Publishing House, and *Izvestiia* Concern, *Izvestiia* Concern was a seven-person enterprise formed by *Izvestiia* Publishing House and *Izvestiia's* editorial staff "to fulfill a very narrow range of tasks: to resolve contradictions that arise, hold talks of a commercial nature, and so forth." Cited in Vladislav Krukovskii, *Gosudarstva Ne Mozhet Podarit' Vsem po Izdatel'stvu* [The State Cannot Present Everyone with a Publishing House], *ROSSIISKAIA GAZETA*, Aug. 26, 1992, at 1. *Izvestiia* Editorial Office was established by *Izvestiia* Concern and the *Izvestiia* newspaper. The goal was to give the editorial staff formal legal status as a juridical person and, hence, "rectify" the earlier improper founding and registration of *Izvestiia* Concern. See Igor Golembiovskii, cited in Khaitina, *supra* note 84, at 1.

86. *Procuracy Report*, *supra* note 39, point 1. The report cited Article 13 of the USSR Press Law, which provided that only the founder, registering organ or court had the authority to make a decision on suspension or publication of a mass media organ. See *USSR Press Law*, *supra* note 24, art. 13.

87. *Procuracy Report*, *supra* note 39, point 3. The major problem in both cases was the fact that one of the founding parties was not a recognized juridical person for pur-

1991 USSR Presidium resolution was legally ineffective to convey *Izvestiia SSSR* to *Izvestiia*,⁸⁸ (4) the use of *Izvestiia* Publishing House property by *Izvestiia* Concern and *Izvestiia* Editorial Office violated Russian ownership law;⁸⁹ and (5) by "unfortunate oversight," the official committee for liquidation of USSR Supreme Soviet property failed to inventory and transfer *Izvestiia SSSR* to the Russian Supreme Soviet in December 1991.⁹⁰ As a result of these findings, the procuracy filed a formal protest regarding the registration of *Izvestiia* Concern, recommended "further study" of the other entities created by *Izvestiia*, called for Presidium "examination" of *Izvestiia* Publishing House property, and pronounced "essential" an immediate correction of the liquidation committee's "error."⁹¹

Despite numerous procedural and substantive objections from *Izvestiia*,⁹² the procuracy submitted the report to the Presidium and published it in *Rossiiskaia Gazeta*, the official organ of the Russian Supreme Soviet.⁹³ The Presidium swiftly endorsed the findings. On July 13, 1992, it

poses of the USSR and Russian enterprise laws (the *Izvestiia* editorial staff in the case of *Izvestiia* Concern and the *Izvestiia* newspaper in the case of *Izvestiia* Editorial Office). The Soviet and Russian enterprise laws require more than one legal founder of a limited liability company. See *Zakon Rossiiskoi Federatsii O Predpriatiakh i Predprinimatel'skoi Deatel'nosti* [Russian Federation Law On Enterprises and Entrepreneurial Activity] arts. 11, 13 (Dec. 25, 1991), *Vedomosti RSFSR*, no. 30, item 418 (1992) [hereinafter *Russian Enterprise Law*]; *Zakon SSSR O Predpriatiakh v SSSR* [USSR Law On Enterprises in the USSR] arts. 3, 5 (June 4, 1990), *Vedomosti SSSR*, no. 25, item 460 (1990) [hereinafter *USSR Enterprise Law*].

88. *Procuracy Report*, *supra* note 39, point 2. The report contended that the Presidium exceeded its legal competence by creating an *Izvestiia* newspaper publishing complex. Under Soviet and Russian enterprise laws, only enterprises have the right to form amalgamations. See *Russian Enterprise Law*, *supra* note 87, arts. 11, 13; *USSR Enterprise Law*, *supra* note 87, arts. 3, 5.

89. *Procuracy Report*, *supra* note 39, point 4. It cited violations of Article 21 of the Russian Ownership Law governing the use of state property. See *Zakon Rossiiskoi Federatsii O Sobstvennosti v RSFSR* [Russian Federation Law On Ownership in the RSFSR] art. 21 (Dec. 24, 1990), *EKONOMIKA I ZHIZN'*, Jan. 1991, at 13 [hereinafter *Russian Ownership Law*].

90. *Procuracy Report*, *supra* note 39, point 5.

91. See Georgii Ovcharenko, *Akt Registratsii Kontserna "Izvestiia"—Nezakonen?* [Is the Act of Registration of "Izvestiia" Concern Illegal?], *PRAVDA*, July 9, 1992, at 1; *Procuracy Report*, *supra* note 39.

92. See, e.g., Ovcharenko, *supra* note 91; Rudnev, *supra* note 44, at 2. The heads of *Izvestiia*, *Izvestiia* Publishing House, and *Izvestiia* Concern sent a formal letter of protest to the Russian Federation Procurator General, Valentin G. Stepankov. The text appeared in *IZVESTIIA*, July 16, 1992, at 3.

93. *Procuracy Report*, *supra* note 39. For a discussion of *Rossiiskaia Gazeta*'s relationship to the Russian parliament, see *Svoboda Slova: Pravo i Otvetstvennost'* [Free-

departed from the agenda to approve for Supreme Soviet consideration the Draft Resolution On the Newspaper *Izvestiia Sovetov Narodnykh Deputatov SSSR* (Draft *Izvestiia SSSR* Resolution).⁹⁴ This bill declared that *Izvestiia's* August 1991 establishment and registration were contrary to the USSR Press Law and that the Russian Supreme Soviet was the "legal successor" to the USSR Supreme Soviet Presidium, the injured founder of the suspended *Izvestiia SSSR*.⁹⁵ Accordingly, the resolution called for publication of a newspaper of Russian "representative organs of power" "on the basis of" the *Izvestiia* Publishing House and *Izvestiia SSSR*.⁹⁶ Furthermore, it directed the Russian Press Ministry to "assist" *Izvestiia* in "bringing its founding documents and registration into line with legal requirements and to allocate necessary premises for normal operations."⁹⁷

The draft bill received sharp criticism from all sides. Members of the Russian mass media, government, and legislature loudly denounced the proposed law as a threat to the very future of *glasnost'* and freedom of the press.⁹⁸ Boris El'tsin himself pledged his "unequivocal and resolute support" for *Izvestiia*.⁹⁹ The Supreme Soviet Mass Media Committee formally condemned the bill and proclaimed its adoption by the legislature "impossible."¹⁰⁰ Consequently, the committee recommended re-

dom of Speech: Right and Responsibility], ROSSIISKAIA GAZETA, July 17, 1992, at 1.

94. *Proekt Postanovlenie Verkhovnogo Soveta Rossiiskoi Federatsii O Gazete "Izvestiia Sovetov Narodnykh Deputatov SSSR"* [Draft Russian Federation Supreme Soviet Resolution On the Newspaper "Izvestiia Sovetov Narodnykh Deputatov SSSR"], in ROSSIISKAIA GAZETA, July 14, 1992, at 2 [hereinafter *Draft Izvestiia SSSR Resolution*].

95. *Id.* pmb1.

96. *Id.* point 1.

97. *Id.* point 2.

98. See, e.g., *Obrashchenie Rukovoditelei Sredstv Massovoi Informatsii k Prezidentu Rossii* [Appeal by Russian Mass Media Leaders to the President of Russia], IZVESTIIA, July 15, 1992, at 1; Postfactum, July 14, 1992, in F.B.I.S.-SOV, July 15, 1992, at 33 (comments by Press Minister Mikhail Poltoranin); Mayak Radio Network, July 15, 1992, translated in F.B.I.S.-SOV, July 16, 1992, at 48 (detailing deputy criticisms of *Draft Izvestiia SSSR Resolution*).

99. ITAR-TASS report, *Rukovodstvovat'sia Zakonom O Pechati* [Be Guided by the Press Law], in ROSSIISKAIA GAZETA, July 16, 1992, at 2.

100. *Findings of the Parliamentary Mass Media Committee On the Draft Russian Federation Supreme Soviet Resolution On the Newspaper Izvestiia Sovetov Narodnykh Deputatov SSSR*, in *Liubye Popytki Izmenit' Status "Izvestii" Nezakonny* [Any Attempt to Change "Izvestiia's" Status Is Illegal], in IZVESTIIA, July 16, 1992, at 3 [hereinafter *Mass Media Committee Findings*]. The committee cited internal contradictions, violations of established procedures, and the "patently political character" of the Khasbulatov-*Izvestiia* conflict. *Id.* points 1, 3, and concluding para. See *infra* note 187 for a detailed discussion of procedural flaws. It even questioned the very basis of the proposed

removal of the Draft *Izvestiia* SSSR Resolution from Supreme Soviet consideration and further study of *Izvestiia* Concern's formation.¹⁰¹

These combined protests initially appeared successful. The *Izvestiia* issue disappeared from the Supreme Soviet agenda.¹⁰² Nonetheless, late in the evening of July 17th, it suddenly reemerged. After a spirited debate over the legality of the procuracy investigation and the draft bill, Ruslan Khasbulatov cut short deputy discussion and called for immediate action.¹⁰³ He then proceeded to dictate from the rostrum the following two point "formula": "*Izvestiia* is the newspaper of the Russian Federation Soviets of People's Deputies. The Ministry of the Press, the Ministry of Justice . . . considering the serious violations during registration, should be directed to legalize this newspaper in the appropriate manner."¹⁰⁴ Deputies promptly approved their chairman's resolution sight unseen by a recorded vote of 136 to 23 (with 12 abstentions).¹⁰⁵

After a mysterious, nearly two-week delay, *Rossiiskaia Gazeta* published the official text of the Russian Federation Supreme Soviet Resolution On the Newspaper *Izvestiia* (*Izvestiia* Resolution).¹⁰⁶ Surprisingly, the final version bore scant resemblance to the Khasbulatov text adopted by the deputies on July 17th (or, for that matter, to the original draft bill). The *Izvestiia* Resolution began with a detailed indictment of *Izvestiia* for its creation, registration, and continuing use of the state publishing house and other state property.¹⁰⁷ It asserted that the applicable legislation was the USSR Press Law and not the Russian Federation Law

law—Russian Supreme Soviet inheritance of the USSR Presidium's founding status. *Id.* point 2. The Mass Media Committee stated that the status of a newspaper founder is "not a property matter." Thus, it argued that mass media, not ownership laws, governed any succession to status. The committee cited Article 18 of the Russian Mass Media Law, which provided that upon abolition or reorganization of the founder, "its rights and duties are transferred in full to the editorial office." *Russian Mass Media Law, supra* note 79, art. 18. The Mass Media Committee concluded, accordingly, that *Izvestiia's* editorial office had properly exercised its rights in August 1991. Moreover, it noted that the USSR Supreme Soviet, the legal founder of the *Izvestiia* SSSR, filed no protest at the time. See *Mass Media Committee Findings, supra*, point 2.

101. *Mass Media Committee Findings, supra* note 100, point 5.

102. See Interfax, July 15, 1992, in F.B.I.S.-SOV, July 15, 1992, at 38.

103. See *Obsuzhdenie, supra* note 39, at 4.

104. *Id.*

105. *Id.*

106. *Postanovlenie No. 3333-1 Verkhovnogo Soveta Rossiiskoi Federatsii O Gazete "Izvestiia"* [Russian Federation Supreme Soviet Resolution No. 3333-1 On the Newspaper "Izvestiia"] (July 17, 1992), in ROSSIISKAIA GAZETA, July 29, 1992, at 4 [hereinafter *Izvestiia Resolution*].

107. *Id.* pmb.

On the Mass Media (Russian Mass Media Law), because the latter did not enter into force until February 8, 1992.¹⁰⁸ The law then cited previous Russian Congress decisions to authorize "resumed" publication of a newspaper entitled *Izvestiia Sovetov Narodnykh Deputatov Rossiiskoi Federatsii (Izvestiia RF)* "on the basis of" the *Izvestiia* Publishing House and the former *Izvestiia SSSR*.¹⁰⁹ It called upon the Russian Press Ministry and the Supreme Soviet Mass Media and Legislation Committees to "bring *Izvestiia's* founding and registration documents into line with existing legislation."¹¹⁰ Lastly, this final version of the *Izvestiia* Resolution declared itself effective upon publication.¹¹¹

To *Izvestiia*, at least, both the authorship and rationale of this reworked law were evident. *Izvestiia* detected in the deliberately vague, ambiguous language the fine hand of that "esteemed lawyer," Ruslan Khasbulatov.¹¹² The newspaper argued that the resolution represented nothing less than Khasbulatov's final response to *Izvestiia's* slander suit: "The best way to silence a plaintiff is to nail him into a coffin and send him to the graveyard."¹¹³

108. *Id.*

109. *Id.* point 1.

110. *Id.* point 2.

111. *Id.* point 3.

112. Vladimir Nadein, *Khasbulatov Ne Udaetsia Vernut' "Izvestiia" v Nomenklaturnoe Stoilo [Khasbulatov Will Not Succeed in Returning "Izvestiia" to the Nomenklatura Stable]*, IZVESTIYA, July 19, 1992, at 1.

113. *Id.* It should be noted that throughout this period the Supreme Soviet was also engaged in the formulation of a general resolution on the mass media, per instructions of the April Congress of People's Deputies. There were reports of serious disagreement on the so-called Temporary Drafting Commission. By Khasbulatov's personal order, Mass Media Committee Chairman Viacheslav I. Bragin was removed as chairman of the Temporary Commission and Nikolai T. Riabov, chairman of one of the legislative chambers (the Soviet of the Republic), assumed responsibility for preparation of the resolution. Under its new leadership, the Temporary Commission produced the Draft Resolution On State Policy in the Field of the Mass Media. This bill included a provision instituting an "observers' council" to monitor the mass media, with extensive authority over personnel and financing of Russian television, radio, and newspapers. The Mass Media Committee sharply criticized the draft and prepared its own variant. Legislators eventually hammered out a compromise version, which one deputy characterized as "toothless but balanced." Deputy Zhigulin, cited in I. Zargarian report, Russian Television Network, July 17, 1992, translated in F.B.I.S.-SOV, July 20, 1992, at 29. The final text, retitled *The Resolution On Economic Support and Legal Guarantees for Mass Media Activity*, established procedures for state subsidies to the mass media, recommended "concessions analogous to those granted to cultural institutions and organizations," and called on the Russian government to address such critical issues as future subsidies, material and technical development, equipment production, and demonopolization of the printing and delivery sectors. *Postanovlenie No. 3335-1 Verkhovnogo Soveta*

D. Aftermath

Izvestiia received an outpouring of domestic and foreign support. Journalists, scholars, politicians, readers, and professional and public associations lambasted the *Izvestiia* Resolution as devoid of even the "semblance of legality."¹¹⁴ The *Izvestiia* Resolution raised serious enforce-

Rossiiskoi Federatsii Ob Ekonomicheskoi Podderzhke i Pravovom Obespechenii Deiatel'nosti Sredstv Massovoi Informatsii [Russian Federation Supreme Soviet Resolution No. 3335-1 On Economic Support and Legal Guarantees for Mass Media Activity] points 3-5 (July 17, 1992), in ROSSIISKAIA GAZETA, July 29, 1992, at 4 [hereinafter *Mass Media Support Resolution*]. The resolution also instructed the Mass Media and Legislation Committees to prepare draft laws on television and broadcasting and on appropriate amendments to Russian criminal and administrative violations codes, respectively. *Id.* points 1-2. Thanks to a last-minute concession from Khasbulatov, there was no mention of an observers' council in the final text. See Radio Rossii Network, July 18, 1992, translated in F.B.I.S.-SOV, July 21, 1992, at 26. For general information on the drafting process, see Egor Iakovlev, *Bez Konfuza Zdes' Ne Oboidetsia* [There Can't Help But Be Trouble Here], IZVESTIIA, July 16, 1992, at 3; Vladimir Nadein, *V Parlamente Rossii Gotovitsia Nastuplenie na Svobodu Slova* [An Offensive Against Freedom of Speech Is Being Prepared in the Russian Parliament], IZVESTIIA, July 10, 1992, at 1; Petr Orlov & Irina Zaitseva, Interview with Vladislav Frolin, Central Television First Network Program and Orbita Networks, June 23, 1992, translated in F.B.I.S.-SOV, July 2, 1992, at 40.

114. L. Nikitinskii, *Kotoraia Tut Chetvertaia? . . . Slaz'!* [What's Up with This Fourth Estate? . . . Intervene!], KOMSOMOL'SKAIA PRAVDA, July 21, 1992, at 1. Critics cited the blatant disregard of lawmaking procedures (see, e.g., R. Zaripov & S. Sokolov, *Poslednie "Izvestiia"?* [The End of "Izvestiia" ?], KOMSOMOL'SKAIA PRAVDA, July 18, 1992, at 1; *Nasilie Nad Nezavisimost'iu "Izvestii"*—*Tsinichnyi Vyzov Rossiiskoi Demokratsii* [The Violence Against "Izvestiia's" Independence Is a Cynical Challenge to Russian Democracy], IZVESTIIA, July 29, 1992, at 1), flaws in statutory language and content (see, e.g., Sergei Filatov, cited in Sergei Chugaev, *"Ia Ne Sobiraius' Posylat' v 'Izvestiia' Militsiiu,"*—*Zaiavliaet Pervyi Zamestitel' Predsedatel'ia Verkhovnogo Soveta RF Sergei Filatov* ["I Do Not Intend to Dispatch the Militia to 'Izvestiia' "—Proclaims First Deputy Chairman of the RF Supreme Soviet, Sergei Filatov], IZVESTIIA, July 29, 1992, at 2; *We Despise Our Own Law*, MOSKOVSKII KOMSOMOLETS, July 31, 1992, at 2), and lack of legislative competence. Most critics focused on contradictions with constitutional separation of powers. See, e.g., Liubov' Tsukanova, *Delo o Pereimenovanii Vashingtona* [The Matter of Renaming Washington], ROSSIISKIE VESTI, July 21, 1992, at 1. Others emphasized violations of the rights of other former Soviet republic legislatures as heirs of the USSR Supreme Soviet. See, e.g., Kuanysh Sultanov, cited in *V Zashchitu Svobody Slova* [In Defense of Freedom of Speech], IZVESTIIA, July 17, 1992, at 3. Many critics were disturbed by the broader implications for freedom of speech and democracy. See, e.g., International Committee for the Protection of Freedom of the Press, *Appeal to Boris El'tsin*, translated in IZVESTIIA, July 29, 1992, at 1; *Blгодарим za Podderzhku* [Thanks for the Support], IZVESTIIA, July 22, 1992, at 3; *Svoboda Slova: Dva Vzgliada iz Parlamenta* [Freedom of Speech: Two Views From Parliament], LITERATURNIAIA GAZETA, July 22, 1992, at 2. Some extended their attack on the *Izves-*

ment problems as well. Press Minister Mikhail Poltoranin announced that his ministry would not carry out the "unlawful" *Izvestiia* decision and would appeal to the Constitutional Court for relief.¹¹⁶ *Izvestiia* refused to comply on grounds that to do so would violate the Russian Mass Media Law adopted only months earlier by the Supreme Soviet.¹¹⁶ According to Chairman Viacheslav Bragin, the Russian Mass Media Committee was "put in a very awkward position"¹¹⁷ of having to implement a resolution it consistently had declared illegal.¹¹⁸

These concerns culminated in a formal request for Constitutional Court review on August 3, 1992. The petitioners, three people's deputies,¹¹⁹ claimed that the *Izvestiia* Resolution violated constitutional provisions on separation of powers,¹²⁰ human rights,¹²¹ Russian Federation

tiia Resolution into a challenge of the very legitimacy of the legislature. See, e.g., Konstantin Katanian, *Byt', Ili Ne Byt' Chetvertoi Vlast': Rol' Suflera v Teatre Absurda* [To Be or Not to Be the Fourth Estate: Role of Prompter in Theater of the Absurd], KURANTY, July 21, 1992, at 1; Aleksandr Sabov, *Eshche ne Veche. . . Vozmozhna Li u Nas Gazetnaia Voina Mezhdru Razlichnymi Institutami Vlasti?* [Not Yet an Assembly . . . Is it Possible That We Will Have a Newspaper War Between the Various Institutions of Power?], LITERATURNIAIA GAZETA, July 29, 1992, at 2. It should be noted that the legislature did have defenders in its actions against *Izvestiia*. See, e.g., Statement by Rossiiskaia Gazeta Editorial Collegium, *Svoboda Slova: Pravo i Otvetstvennost'* [Freedom of Speech: Rights and Responsibilities], ROSSIISKAIA GAZETA, July 17, 1992, at 1; Iurii Glukhov, *Vozmozhny Varianty. . .* [Possible Variants. . .], PRAVDA, July 16, 1992, at 2.

115. See Sergei Staroselskii & Aleksandr Krasulin, ITAR-TASS, July 22, 1992, in F.B.I.S.-SOV, July 23, 1992, at 35.

116. See "Izvestiia" *Gotovy Podchinit'sia Zakonu, No Ne Prikhoti Zakonodatel'ia* ["Izvestiia" Is Prepared to Obey the Law, But Not the Whim of Legislators], IZVESTIIA, July 20, 1992, at 1.

117. Viacheslav Bragin, *V Istorii s "Izvestiiami" Svoe Slovo Obiazan Skazat' Sud, i Nikto Bol'she* [In the "Izvestiia" Affair the Court Must Make Its Own Statement, and No One Else], IZVESTIIA, July 29, 1992, at 2.

118. *Id.*

119. The deputies were Sergei Sakhrai, Aleksandr Kotenkov, and Igor Bezrukov. The Russian Press Ministry was unable to petition the Constitutional Court because it was not one of the parties specified by Article 59 of the Constitutional Court Law. *Zakon RSFSR O Konstitutsionom Sude RSFSR* [RSFSR Law On the RSFSR Constitutional Court] art. 59, para. 1 (July 12, 1991), *Vedomosti RSFSR*, no. 30, item 1017 (1991) [hereinafter *Constitutional Court Law*]. See Interfax, July 21, 1992, in F.B.I.S.-SOV, July 22, 1992, at 54.

120. *Khodataistvo O Proverke Konstitutsionnosti Postanovleniia Verkhovnogo Soveta Rossiiskoi Federatsii ot 17 Iulia 1992 Goda No. 3333-1* [Petition to Verify the Constitutionality of the Russian Federation Supreme Soviet Resolution No. 3333-1 of July 17, 1992] point 1, in IZVESTIIA, Aug. 3, 1992, at 1 [hereinafter *Constitutional Court Petition*] (citing KONST. RF arts. 1, 3, 109). They contended that the legislature had improperly exercised judicial powers by resolving questions regarding transfer of

republic sovereignty,¹²² and legislative procedure.¹²³ They asked the Constitutional Court for three forms of relief: (1) recognition of the *Izvestiia* Resolution as unconstitutional and ineffective from the date of entry into force; (2) retroactive invalidation of any subsequent acts based thereupon; and (3) temporary suspension of the resolution pending Constitutional Court examination.¹²⁴

The Constitutional Court swiftly issued the requested suspension.¹²⁵ The legislative response came on August 17th, an application for registration of a newspaper entitled *Izvestiia Sovetov Narodnykh Deputatov Verkhovnogo Soveta Rossiiskoi Federatsii* [News of the Soviets of People's Deputies of the Russian Federation Supreme Soviet] (*Izvestiia RF*).¹²⁶ Reportedly, Khasbulatov personally initiated this action without

property and registration of a mass media organ. *Id.* point 1 (citing KONST. RF arts. 163, 168 and *Russian Mass Media Law*, *supra* note 79, art. 15). Moreover, it had encroached on the exclusive jurisdiction of the executive branch by issuing mandatory instructions to a government body (the Press Ministry). *Id.* point 1 (citing KONST. RF arts. 3, 121-1, 122, 129).

121. Specifically, the petitioners argued that the attempt to subordinate *Izvestiia* and, hence, destroy its objective coverage of legislative work, constituted a threat to citizens' constitutional rights to seek, receive, and disseminate information freely. *Constitutional Court Petition*, *supra* note 120, point 2 (citing KONST. RF art. 43). In addition, they asserted that because a resolution is not subject to judicial appeal, the legislature effectively deprived the *Izvestiia* journalists' collective of the constitutional guarantee of legal protection of rights and interests. *Id.* (citing KONST. RF art. 63 and *Constitutional Court Law*, *supra* note 119, art. 58).

122. The petitioners contended that the Supreme Soviet had violated constitutional and Federation Treaty provisions by adopting a resolution relating to soviets throughout Russian Federation territory without any consultation or consent of the affected republics. *Constitutional Court Petition*, *supra* note 120, point 3 (citing KONST. RSFSR arts. 78, 81-5; *Federativnyi Dogovor* [Federation Treaty] arts. III, VI (Mar. 13, 1992), in ROSSIISKAIA GAZETA, Mar. 18, 1992, at 2 [hereinafter *Federation Treaty*], and *Constitutional Court Law*, *supra* note 119, art. 58).

123. The deputies claimed unconstitutionality on grounds of improper legislative procedures, citing voting irregularities on July 17, 1992 and the marked inconsistency between approved and final texts. *Constitutional Court Petition*, *supra* note 120, point 4 (citing *Constitutional Court Law*, *supra* note 119, art. 58).

124. *Constitutional Court Petition*, *supra* note 120, point 2.

125. See Ivan Novikov, ITAR-TASS, Aug. 5, 1992, in F.B.I.S.-SOV, Aug. 6, 1992, at 40. It should be noted that the Constitutional Court has no legal authority to mandate suspension of legislation pending consideration of the case. It has the power only to "request" such action. *Constitutional Court Law*, *supra* note 119, art. 8, para. 5.

126. See Irina Matveeva, "Izvestiia" Budet Bol'she? Podana Zaiavka na Registratsiiu Novoi Gazety [Will There Be Another "Izvestiia"? Application Made for Registration of a New Newspaper], ROSSIISKIE VESTI, Aug. 20, 1992, at 1. The newspaper was registered in mid-September under the title *Izvestiia Narodnykh Deputatov Rossiiskoi Federatsii* [News of the Russian Federation People's Deputies]. See Interfax, Sept. 21,

any prior consultation or clearance from the Mass Media Committee, Presidium, Supreme Soviet, or local soviets.¹²⁷ In a press conference on August 17th, Khasbulatov only reinforced his determination to subordinate *Izvestiia* to legislative control. He warned all assembled to “[w]ait for a development in the situation.”¹²⁸ Khasbulatov gave a preview of his next move by placing particular emphasis on the need to resolve “ownership questions” regarding building and printing facilities.¹²⁹ From that point on, the legislative offensive against *Izvestiia* shifted from an attack on the newspaper’s independent status to an assault on its economic base.

E. *The Battle for Control of Izvestiia Publishing House*

Boris El’tsin launched a preemptive strike on August 22, 1992. He issued an ordinance instructing the Russian Federation State Committee for Management of State Property (Goskomimushchestvo) “to examine the question of assigning in accordance with established procedure, the property of the publishing complex *Izvestiia Sovetov Narodnykh Deputatov SSSR* to its successor—the *Izvestiia* newspaper publishing complex.”¹³⁰

On August 24th, Fikriat Tabeev, the chairman of the Russian Property Fund, countered with his own ordinance. This document claimed for his organization legal ownership of all *Izvestiia* Publishing House property until Supreme Soviet confirmation as founder.¹³¹ Five days

1992, in F.B.I.S.-SOV, Sept. 25, 1992, at 27.

127. Viacheslav Bragin, cited in Georgii Ivanov-Smolenskii, *Ispolnitel’naia Vlast’ Namerena Otstaiivat’ Svoiu Pozitsiiu v Voprose ob Izdatel’stve “Izvestiia”* [The Executive Power Intends to Defend its Position On the “*Izvestiia*” Publishing House Issue], IZVESTIIA, Oct. 20, 1992, at 1.

128. Vasilii Ustiuzhanin, *Law: The Letter and the Spirit: In the Situation with Izvestiia, It Is Not State Law That Has Prevailed Until Now, But Telephone Law*, ROSSIISKAIA GAZETA, Sept. 4, 1992, at 2, translated in F.B.I.S.-USR, Sept. 25, 1992, at 13.

129. Matveeva, *supra* note 126.

130. *Rasporiazhenie Prezidenta Rossiiskoi Federatsii Ob Imushchestve Izdatel’skogo Kompleksa “Izvestiia Sovetov Narodnykh Deputatov SSSR”* [Ordinance of the Russian Federation President on the Property of the Publishing Complex “*Izvestiia* of the USSR Soviets of People’s Deputies”] (Aug. 22, 1992), in IZVESTIIA, Aug. 24, 1992, at 1 [hereinafter *El’tsin Ordinance*].

131. Cited in G. Charodeev, *Rossiiskoi Fond Reshil Prisvoit’ “Izvestiia” i Takim Obrazom Pytaetsia Torpedirovat’ Rasporiazhenie Prezidenta Rossii* [The Russian Fund Has Decided to Appropriate “*Izvestiia*” and Thus Is Attempting to Torpedo the Russian President’s Ordinance], IZVESTIIA, Aug. 26, 1992, at 2 [hereinafter *Russian Property Fund Ordinance*].

later the battle of ordinances continued. Goskomimushchestvo Chairman Anatolii Chubais formally proclaimed the creation of the Izvestiia State Newspaper-Publishing Complex (Izvestiia Complex).¹³² This new entity included Izvestiia Concern, Izvestiia Editorial Office, Izvestiia Publishing House, and all subordinate structures. The Goskomimushchestvo ordinance recognized Izvestiia Complex as the successor to Izvestiia Publishing House and appointed Igor Golembiovskii as the interim general director.¹³³

A sharp debate ensued over the respective property claims and spheres of operation of Goskomimushchestvo, and the Federal Property Fund. Both sides bolstered their cases with frequent citations to Russian Federation laws regarding disposition and privatization of state property.¹³⁴ In fact, however, the controversy really represented a battle by proxy between El'tsin and Khasbulatov. Goskomimushchestvo was an executive agency under El'tsin's command and the Federal Property Fund was a body subordinate to the Russian parliament. In the fall of 1992, the two principals became directly involved in the Izvestiia Publishing House conflict.

On September 7th, the Supreme Soviet Presidium met in closed session.¹³⁵ The main order of business was consideration of a draft resolution transferring Izvestiia Publishing House to the jurisdiction of the Russian Supreme Soviet. Khasbulatov reportedly prepared this bill in virtual secrecy, without the knowledge of the Mass Media Committee or the "overwhelming majority" of Presidium members.¹³⁶ In violation of established legislative procedures, Khasbulatov proposed immediate adoption of the resolution without discussion.¹³⁷ Deputies balked and voted for postponement of draft consideration until September 14th to permit examination by the relevant parliamentary committees.¹³⁸ Khasbulatov warned legislators that if they failed to "find a solution" in one

132. Cited in *Pravitel'stvo Obrazovalo Gazetno-Izdatel'skii Kompleks "Izvestiia" Rasporiazhenie* [The Government Has Formed the Newspaper-Publishing Complex "Izvestiia" Ordinance], IZVESTIIA, Aug. 28, 1992, at 1 [hereinafter *Goskomimushchestvo Ordinance*].

133. *Id.* points 2 & 3.

134. See, e.g., Charodeev, *supra* note 131; Krukovskii, *supra* note 85; Ustiuzhanin, *supra* note 128.

135. See Georgii Ivanov-Smolenskii, *Zasedenie Prezidiuma VS Rossii Obnazhaet Raznoglasiia* [The Russian Supreme Soviet Presidium Exposes Disagreements], IZVESTIIA, Sept. 8, 1992, at 2.

136. *Id.* (citing Viacheslav Bragin).

137. *Id.*

138. Interfax, Sept. 8, 1992, in F.B.I.S.-SOV, Sept. 10, 1992, at 31.

week's time, he would unilaterally determine Izvestiia Publishing House's fate with his own decree.¹³⁹

The following week, the Mass Media Committee formally denounced the draft resolution and recommended its removal from the legislative agenda.¹⁴⁰ Deputies initially followed the committee's suggestion.¹⁴¹ Once again, however, Ruslan Khasbulatov intervened and threatened to ensure personally the "appropriate" disposition of Izvestiia Publishing House property.¹⁴² This time, the deputies heeded their chairman's warning. They revoted in the desired fashion and officially added the Izvestiia Publishing House question to the agenda.¹⁴³ By a substantial majority, the two parliamentary chambers officially adopted Khasbulatov's bill on October 19th and 20th.¹⁴⁴

139. Ivanov-Smolenskii, *supra* note 135.

140. See Interfax, Sept. 14, 1992, in F.B.I.S.-SOV, Sept. 15, 1992, at 17.

141. At subsequent Presidium and Supreme Soviet meetings on September 21st and October 8th, legislators refused to introduce the Izvestiia Publishing House issue into the agenda. See Interfax, Sept. 21, 1992, in F.B.I.S.-SOV, Sept. 22, 1992, at 24; Ivan Novikov, ITAR-TASS, Oct. 8, 1992, in F.B.I.S.-SOV, Oct. 9, 1992, at 26.

142. In a televised interview on September 21, 1992, Khasbulatov proclaimed: "We shall certainly bring this so-called conflict with *Izvestiia* to a conclusion. The newspaper has quite consciously pursued its course of waging war on the Supreme Soviet. How can we tolerate this? How can we allow such things? What sort of Supreme Soviet chairman would I be if I permit two, three, or four people of that collective to prevail over the Supreme Soviet, the country's top legislative authority? This will never happen." Ostankino Television First Program Network, Sept. 21, 1992, translated in F.B.I.S.-SOV, Sept. 22, 1992, at 24, 27 [hereinafter Khasbulatov Interview]. After the Supreme Soviet rejected the Izvestiia Publishing House proposal on October 8th, Khasbulatov announced that he had signed "already today" an order to transfer the publishing house to Russian Federation ownership. See Novikov, *supra* note 141.

143. See Vasilii Kononenko, *R. Khasbulatov Poshel na Otkrytuiu Konfrontatsiiu s Iсполnitel'noi Vlast'iu* [*R. Khasbulatov Has Entered into Overt Confrontation with the Executive*], IZVESTIIA, Oct. 9, 1992, at 1.

144. See Interfax, Oct. 19, 1992, in F.B.I.S.-SOV, Oct. 20, 1992, at 31; Vladimir Nadein, *Segodnia Zakhvatyvaetsia Odno Izdatel'stvo, Zavtra Nastanet Chered Vsei Pechati* [*Today One Publishing House Is Seized, Tomorrow It Will Be the Turn of the Entire Press*], IZVESTIIA, Oct. 21, 1992, at 1. As in the case of the *Izvestiia* Resolution, there were serious questions regarding the validity of the final tally of votes. See *Zaiavlenie Orghomiteta Koalitsii Reform* [*Announcement of the Organizational Committee of the Reform Coalition*], IZVESTIIA, Oct. 21, 1992. For a text of the final resolution, see *Postanovlenie Verkhovnogo Soveta Rossiiskoi Federatsii Ob Izdatel'stve "Izvestiia Sovetov Narodnykh Deputatov Rossiiskoi Federatsii"* No. 3686-1 [*Russian Federation Supreme Soviet Resolution No. 3686-1 On the "Izvestiia Sovetov Narodnykh Deputatov Rossiiskoi Federatsii" Publishing House*] (Oct. 20, 1992), in ROSSIISKAIA GAZETA, Oct. 21, 1992, at 1 [hereinafter *Izvestiia Publishing House Resolution*].

On October 21st, the legislature sent an unmistakable message regarding its determination to seize control of *Izvestiia's* economic base. Deputy Chairman Iurii Voronin issued an ordinance "in fulfillment" of the *Izvestiia* Publishing House Resolution, which named a director for *Izvestiia* Publishing House and called for preparation of a new charter.¹⁴⁵ Even more ominously, it instructed both the *Izvestiia* financial administration and the so-called "guards of the supreme bodies of state authority and government," a 5000-person armed unit under Ruslan Khasbulatov's command,¹⁴⁶ to "ensure preservation of material and technical valuables, buildings, and structures" of *Izvestiia* Publishing House.¹⁴⁷

In succeeding days, a powerful coalition of government, legislative, and media forces developed in opposition to the Supreme Soviet and its chairman, Khasbulatov. On October 27th, representatives met at a Mass Media Committee session to discuss appropriate strategies to resist parliamentary "maneuvers" regarding *Izvestiia*.¹⁴⁸ The most tangible results were the Mass Media and Legislation Committee's joint appeal to their deputy colleagues to reexamine the *Izvestiia* issue and petition to the Constitutional Court to review the *Izvestiia* Publishing House Resolution.¹⁴⁹ Press Minister Poltoranin concluded that "the time has come for the president to have a say in the solution of this problem."¹⁵⁰

145. *Rasporiazhenie No. 3693rp-1 Zamestitelia Predsedatelia Verkhovnogo Soveta Rossiiskoi Federatsii Ob Ispolnenii Postanovleniia Verkhovnogo Soveta Rossiiskoi Federatsii "Ob Izdatel'stve 'Izvestiia' Sovetov Narodnykh Deputatov Rossiiskoi Federatsii"* [Russian Federation Supreme Soviet Deputy Chairman's Order No. 3693rp-1 In Fulfillment of the Russian Federation Supreme Soviet Resolution "On the 'Izvestiia' Sovetov Narodnykh Deputatov Rossiiskoi Federatsii Publishing House"] (Oct. 21, 1992), *Vedomosti RF*, no. 43, item 2428 (1992) [hereinafter *Voronin Ordinance*].

146. For general information on the parliamentary guards, see Sergei Mostovshchikov, *Vooruzhennye Sily Belogo Doma Poka Okazyvaiut Neznachitel'noe Soprotivlenie Vlastiam, No pri Neobkhodimosti Mogut Blokirovat' Vazhneishie Ob'ekty Moskvy* [White House Armed Forces Thus Far Offer Insignificant Resistance to Authorities, But if Necessary Could Block Moscow's Most Important Objects], *IZVESTIIA*, Oct. 22, 1992, at 1.

147. *Voronin Ordinance*, *supra* note 145.

148. See Sergei Chugaev, *Dva Parlamentskikh Komiteta Prizyvaiut VS Rossii Priostanovit' Deistvie Postanovleniia Ob Izdatel'stve "Izvestiia"* [Two Parliamentary Committees Urge the Russian Supreme Soviet to Suspend Action of "Izvestiia" Publishing House Resolution], *IZVESTIIA*, Oct. 28, 1992, at 2.

149. See Interfax, Oct. 27, 1992, in *F.B.I.S.-SOV*, Oct. 28, 1992, at 40.

150. Poltoranin, *cited in* Chugaev, *supra* note 148. It should be noted that Mikhail Poltoranin was engaged in a personal struggle with Ruslan Khasbulatov. He publicly attacked Khasbulatov's attempt to seize control of *Izvestiia* as the "fuse [that] might wreck the situation in Russia." He also accused the parliamentary chairman of inordi-

Ironically, on the very day of the Mass Media Committee meeting, the Supreme Soviet leadership decided to back up its demands with force by dispatching its troops to the shared premises of *Izvestiia* Publishing House and *Izvestiia* Editorial Office.¹⁵¹ At this point Boris El'tsin reentered the arena. In a presidential directive of October 27th, he declared the parliamentary guards an "illegal armed formation" and ordered their immediate disbandment.¹⁵² After a brief skirmish between governmental and parliamentary forces, Khasbulatov's guards withdrew from the *Izvestiia* facilities,¹⁵³ thus avoiding a potentially bloody confrontation between the executive and the legislature. Shortly thereafter, the *Izvestiia* Publishing House voluntarily acknowledged the Russian Federation Supreme Soviet as its founder¹⁵⁴ and reregistered accordingly.¹⁵⁵ Thus far, there has been no serious objections raised by the Russian president or media.

For the next six months, *Izvestiia's* fate hung in the balance. On May 19, 1993, the Constitutional Court finally issued its long-promised decision and ruled in favor of *Izvestiia* on all counts.¹⁵⁶ Russian executive and legislative branches remain at loggerheads. Indeed, in recent months

nate personal ambitions and dictatorial tendencies, even drawing a parallel with Stalin. Khasbulatov responded by officially requesting that Boris El'tsin remove Poltoranin from his positions as Press Minister and Vice Premier. See generally Natal'ia Gorodetskaia, *Khasbulatov Protiv Poltoranina. Bor'ba "Gigantov Demokratii" Priblizhaetsia k Svoemu Apogeiu* [*Khasbulatov v. Poltoranin. The Battle of the "Giants of Democracy" Reaches Its Apogee*], NEZAVISIMAIA GAZETA, Oct. 13, 1992, at 1; ITAR-TASS report, *Ruslan Khasbulatov Potreboval Uvolit' Mikhaila Poltoranina* [*Ruslan Khasbulatov Demands Dismissal of Mikhail Poltoranin*], IZVESTIIA, Oct. 12, 1992, at 2; Kononenko, *supra* note 143.

151. See A. Korzun, *Ocherednaia Pobeda Sovetskoii Vlasti* [*Another Victory for Soviet Power*], KOMOSOMOL'SKAIA PRAVDA, Oct. 28, 1992, at 1.

152. *Rasporiazhenie Prezidenta Rossiiskoi Federatsii* [*Directive of the Russian Federation President*] (Oct. 27, 1992), in IZVESTIIA, Oct. 28, 1992, at 1.

153. See Sergei Mostovshchikov, *Prezident Rossii Likvidiroval Nezakonnoe Vooruzhennoe Formirovanie* [*The President of Russia Abolished the Illegal Armed Formation*], IZVESTIIA, Oct. 28, 1992, at 1; Tamara Zamiatina, ITAR-TASS, Oct. 28, 1992, in F.B.I.S.-SOV, Oct. 28, 1992, at 12.

154. See *Izvestiia* Publishing House Collective, Open Letter to President El'tsin and Supreme Soviet Chairman Khasbulatov (Oct. 30, 1992), in ROSSIISKAIA GAZETA, Nov. 3, 1992, at 2.

155. See *Utverzhden Ustav Izdatel'stva "Izvestiia"* [*Charter of the "Izvestiia" Publishing House Has Been Confirmed*], IZVESTIIA, Nov. 24, 1992, at 3.

156. IZVESTIIA, May 20, 1993, at 1 [hereinafter *Constitutional Court Izvestiia Ruling*]. For a discussion of this decision see *infra* notes 322-24 and accompanying text. See generally Nikita Dubrov, "*Izvestiia*" Vyigrali Delov Konstitutsionnom Sude [*"Izvestiia" Won in the Constitutional Court*], ROSSIISKIE VESTI, May 20, 1993, at 1.

their battle over *Izvestiia* has rapidly escalated into all-out warfare for control of the Russian mass media and the very destiny of Russia itself. Thus, the *Izvestiia* case is far more than a single, isolated struggle for survival in post-Soviet Russia. It is a revealing precursor of the current constitutional crisis of power and a "touchstone"¹⁵⁷ by which to judge the overall process of Russian legal reform.

III. LAWMAKING IN POST-SOVIET RUSSIA

Izvestiia's experience reveals a number of serious problems in Russian lawmaking approaches and techniques. These anticipate and help explain the recent confrontation between Russia's president, legislature, and Constitutional Court.

A. Governing Law

The Russian parliament initially framed its attack on *Izvestiia* as a challenge to the newspaper's independent status,¹⁵⁸ centering on the August 1991 termination of *Izvestiia SSSR* and registration of *Izvestiia*. Both sides subsequently contended that the key to resolution of the case was determination of the applicable law. The Supreme Soviet leadership argued that the relevant legislation was the June 1990 USSR Press Law, the statute in force at the time of *Izvestiia's* "rebirth" as an independent newspaper.¹⁵⁹ It maintained that *Izvestiia's* editorial office and journalists' collective's unilateral suspension of *Izvestiia SSSR* violated Article 13 of the USSR Press Law.¹⁶⁰ Pursuant thereto, only a founder, court, or registering organ possessed the requisite legal authority to cease publication of a mass media organ.¹⁶¹ None of these specified bodies did so. As of August 1991, the USSR Supreme Soviet Presidium, not the *Izvestiia* journalists' collective, was the official founder of *Izvestiia SSSR*. Accordingly, the Russian Supreme Soviet concluded that as "successor" to the USSR Presidium it was fully justified in taking measures to "restore the original situation."¹⁶²

Izvestiia, by contrast, declared the governing law to be the December 1991 Russian Mass Media Law, in effect at the time of the Russian parliamentary offensive against *Izvestiia*.¹⁶³ Article 6 stipulated that this

157. Nadein, *supra* note 144, at 2.

158. *See supra* part II.C.

159. *See supra* note 108 and accompanying text.

160. *See, e.g.*, V. Lisin, *cited in Obsuzhdenie, supra* note 39, at 3.

161. *USSR Press Law, supra* note 24, art. 13.

162. Ruslan Khasbulatov, *cited in Obsuzhdenie, supra* note 39, at 4.

163. *See, e.g.*, Rudnev, *supra* note 44, at 2.

legislation applied to all mass media "founded in the Russian Federation."¹⁶⁴ Although strictly speaking, no "Russian Federation" existed in August 1991,¹⁶⁵ the Russian Mass Media Law implementing resolution granted *ex post facto* recognition to existing Russian entities previously registered in accordance with the USSR Press Law.¹⁶⁶ *Izvestiia* maintained that its August 1991 founding and registration complied with all of these statutory requirements.¹⁶⁷ Its founder, the *Izvestiia* journalists' collective, had submitted the appropriate documentation to government authorities. Shortly thereafter, the collective received an official certificate of registration from the Russian Press Ministry, which never expressed any objection to *Izvestiia*'s establishment. Thus, *Izvestiia* contended that for Russian Mass Media Law purposes, the journalists' collective, and not the USSR Supreme Soviet Presidium, was the newspaper's legal founder.¹⁶⁸ Under this interpretation, the December 1991 Russian statute effectively cut off any claims of a previous founder to challenge the newspaper's status.

The conflict between union and republic laws is by no means solely a post-Soviet phenomenon. As early as June 1990, the first Russian Congress of People's Deputies asserted the primacy of its own Constitution and legislation on Russian territory and proclaimed its authority to suspend operation of all USSR laws that contravened RSFSR sovereign rights.¹⁶⁹ Despite strong opposition from Gorbachev,¹⁷⁰ Russian leaders

164. *Russian Mass Media Law*, *supra* note 79, art. 6.

165. In August 1991, the official name was the Russian Soviet Federative Socialist Republic. The Russian Supreme Soviet formally changed the name on December 25, 1991. See *Zakon RSFSR Ob Izmenenii Naimenovaniia Gosudarstva Rossiiskaia Sovetskaia Federativnaia Sotsialisticheskaia Respublika* [RSFSR Law On Changing the Name of the State Russian Soviet Federative Socialist Republic] (Dec. 25, 1991), *Vedomosti RSFSR*, no. 2, item 62 (1992).

166. *Postanovlenie Verkhovnogo Soveta Rossiiskoi Federatsii O Poriadke Vvedeniia v Deistvie Zakona Rossiiskoi Federatsii "O Sredstvakh Massovoi Informatsii"* [Russian Federation Supreme Soviet Resolution On the Order of Implementing the Russian Federation Law "On Mass Information Media"] point 2 (Dec. 27, 1991), *Vedomosti RF*, no. 7, item 301 (1992).

167. See, e.g., Rudnev, *supra* note 44, at 2.

168. According to the Russian Mass Media Law only the founder, registering organ, or court have the legal authority to terminate a properly registered mass media organ. *Russian Mass Media Law*, *supra* note 79, art. 6.

169. See *Deklaratsiia O Gosudarstvennom Suverenitete RSFSR* [Declaration On the State Sovereignty of the RSFSR] point 5 (June 12, 1990), in *SOVETSKAIA ROSSIIA*, June 14, 1990, at 1.

170. See, e.g., *Ukaz Prezidenta SSSR O Postanovlenii Prezidiuma Verkhovnogo Soveta RSFSR ot 9 Avgusta 1990 goda* [USSR Presidential Decree On the RSFSR Supreme Soviet Presidium Resolution of August 9, 1990] (Aug. 23, 1990), in *IZVES-*

subsequently extended these claims to require explicit Russian confirmation of all USSR legislative, administrative, and presidential acts.¹⁷¹ This created a serious "war of laws" between federal and republic authorities and contributed to the ultimate collapse of the USSR.¹⁷²

With the dissolution of the Soviet Union in December 1991, the conflict between federal and republic law once again came to the fore. Recognizing the virtual impossibility of creating overnight a new legislative scheme, the Russian leadership opted for a temporary continuation of USSR legislation. In its formal ratification of the Agreement On Establishment of the Commonwealth of Independent States, the Russian Supreme Soviet set out the following general rule: "[P]ending the adoption of appropriate RSFSR legislative acts, the norms of the former USSR shall apply on RSFSR territory, insofar as they do not contradict the Constitution of the RSFSR, the legislation of the RSFSR, and the Agreement."¹⁷³ The *Izvestiia* case reveals the real difficulties of applying this broad principle in actual practice.¹⁷⁴

The coup of August 1991 and subsequent introduction of emergency rule by Boris El'tsin further complicated the *Izvestiia* debate over governing law. These events inspired what might be called the "illegitimate lawmaker" argument. In essence, *Izvestiia* claimed that the USSR Supreme Soviet Presidium had so discredited itself during the coup that it had lost any moral or legal right to remain the newspaper's founder. In

TIIA, Aug. 24, 1990, at 1 (annulling RSFSR economic sovereignty resolution).

171. See, e.g., *RSFSR Law On the Operation of USSR Bodies' Enactments on RSFSR Territory* (Oct. 24, 1990), in SOVETSKAIA ROSSIIA, Oct. 28, 1990, at 5; *RSFSR Law On Ensuring the Economic Foundation of RSFSR Sovereignty* (Oct. 31, 1990), in SOVETSKAIA ROSSIIA, Nov. 2, 1990, at 1.

172. It should be noted that other republics, especially Estonia, Latvia, and Lithuania, asserted state sovereignty more than a year before the RSFSR did so. For a discussion of USSR reaction, see, e.g., *O Nesootvetstviu Nekotorykh Zakonodatel'nykh Aktov Soiuznykh Respublik Konstitutsii SSSR [On the Nonconformity of Certain Union Republic Acts with the USSR Constitution]*, IZVESTIIA, Nov. 13, 1989, at 1. See generally William C. Allison, *Self-Determination and Recent Developments in the Baltic States*, 19 DENV. J. INT'L L. & POL'Y 625 (1991); John C. Blase & Cynthia M. Smith, *Soviet Republics' Demand for Autonomy: the Need for Constitutional Reform and the Institution of Canadian-Style Judicial Review*, 17 J. LEGIS. 237 (1991).

173. *Postanovlenie No. 2014-1 Verkhovnogo Soveta RSFSR O Ratifikatsii Soglasheniia O Sozdanii Sodruzhestva Nezavisimykh Gosudarstv [RSFSR Supreme Soviet Resolution No. 2014-1 On the Ratification of the Agreement On Establishment of the Commonwealth of Independent States]* point 2 (Dec. 12, 1991), in ROSSIISKAIA GAZETA, Dec. 17, 1991, at 1.

174. This uncertainty regarding applicability of USSR and Russian legislation may explain why those involved in the *Izvestiia* case cited both types of statutes to support their positions. See, e.g., *Procuracy Report*, *supra* note 39, points 2, 3.

support, *Izvestiia* cited specific El'tsin decrees and Russian Supreme Soviet resolutions that unilaterally suspended existing Soviet legislation and institutions.¹⁷⁵ Many of El'tsin's emergency decisions, however, later were challenged as unconstitutional.¹⁷⁶

On balance, then, the *Izvestiia* journalists' collective and editorial office clearly violated the USSR Press Law when they terminated the legally registered mass media organ *Izvestiia* SSSR. The only colorable defense is that they acted in accordance with special emergency enactments that were themselves of dubious legality. The more likely view is that *Izvestiia* journalists and staff took advantage of a chaotic situation to liberate themselves from Soviet party and state control.¹⁷⁷ The dissolu-

175. See *supra* notes 24-26 and accompanying text. For a restatement of the "illegitimate lawmaker" defense, see Iu. Nesterov, cited in *Obsuzhdenie, supra* note 39.

176. The most criticized decrees were those directed against the mass media and the communist party. *Ukaz No. 76 Prezidenta RSFSR O Deiatel'nosti TASS, Informatsionnogo Agentstva "Novosti" i Riada Gazet po Dezinformatsii Naseleniia i Mirovoi Obshchestvennosti O Sobytiakh v Stran* [RSFSR Presidential Decree No. 76 On the Activity of TASS, the "Novosti" Information Agency, and a Number of Newspapers in Disinforming the Population and the World Community About Events in the Country] (Aug. 22, 1991), in ROSSIISKAIA GAZETA, Aug. 24, 1991, at 1; *Ukaz Prezidenta RSFSR O Priostanovlenii Deiatel'nosti Kommunisticheskoi Partii RSFSR* [RSFSR Presidential Decree On Suspending the Activity of the RSFSR Communist Party] (Aug. 23, 1991), Vedomosti RSFSR, no. 35, item 1149 (1991); *Ukaz Prezidenta RSFSR Ob Imushchestve KPSS i Kommunisticheskoi Partii RSFSR* [RSFSR Presidential Decree On Property of the CPSU and the RSFSR Communist Party] (Aug. 25, 1991), Vedomosti RSFSR, no. 35, item 1164 (1991).

El'tsin ultimately lifted his mass media suspensions. *Ukaz Prezidenta RSFSR O Merakh po Zashchite Svobody Pechati v RSFSR* [RSFSR Presidential Decree On Measures to Protect Press Freedom in the RSFSR] (Sept. 11, 1991), Vedomosti RSFSR, no. 37, item 1199 (1991). On November 30th, the Constitutional Court upheld El'tsin's ban on the party but ruled that low-level party cells were legal and that property claims should be resolved by the Russian judiciary. For text of Constitutional Court decision, see ROSSIISKAIA GAZETA, Dec. 16, 1992, at 6.

For criticisms of the mass media and party decrees, see, e.g., V. Nadein, *Zakryv Gazety, El'tsin Sovershil Oshibku. On Dolzhen Sam Ee Ispravit'* [By Closing Newspapers El'tsin Committed an Error. He Should Correct It Himself], IZVESTIIA, Aug. 26, 1991, at 2; Carla Thorson, *Has the Communist Party Been Legally Suspended?*, REP. ON USSR, Oct. 4, 1991, at 4.

Apparently a series of other August 1991 decrees are also awaiting Constitutional Court review. Mikhail Gurevich, *Odna Golova "Dvuglavogo Mikhaila"* [One Head of the "Double-Headed Mikhail"], MOSKOVSKII KOMSOMOLET, Feb. 6, 1993, at 2.

177. It should be noted that numerous other newspapers also unilaterally changed founders after the August 1991 coup, including *Pravda* and *Sovetskaia Rossiia*. See Liubov' Tsukanova, *Dozimetr dlia Pressy* [Dosimeter for the Press], ROSSIISKIE VESTI, July 16, 1992, at 1. According to Sergei Filatov, then first deputy chairman of the Supreme Soviet, this made particularly suspect the legislature's decision to assert claims to

tion of the USSR legislature and its Presidium in December 1991, however, rendered *Izvestiia's* troubled beginnings fundamentally irrelevant. From that point on, there no longer existed an entity with the legal standing to sue as founder of *Izvestiia SSSR*.¹⁷⁸ The Russian Supreme Soviet claim to succession is questionable at best, as it is based solely on the laws regarding inheritance of USSR Supreme Soviet property, not status.¹⁷⁹ This may well explain why Khasbulatov eventually chose to end his attack on the *Izvestiia* newspaper and pursue far stronger claims to the ownership of its material base, the *Izvestiia* Publishing House.

Nonetheless, the *Izvestiia* debate over governing law has important implications for the present and future. Recent experience with constitutional drafting¹⁸⁰ only confirms the difficulties of integrating legal regimes from two markedly different periods of history. The Russian legislature thus far has resisted proposals for adoption of an entirely new Constitution to reflect the concrete needs and realities of the post-Soviet era. Instead, it has chosen to make over 300 amendments to the original Russian Constitution of 1978. The result is a "patched up"¹⁸¹ document riddled with inconsistencies and fundamentally unsuited for resolution of

only one newspaper. Sergei Filatov, *cited in* Chugaev, *supra* note 114.

178. In fact, the Russian Mass Media Law provides: "In the case of liquidation or reorganization of the founder. . . its rights and responsibilities are transferred in full to the editorial office, unless otherwise specified in the editorial charter." *Russian Mass Media Law, supra* note 79, art. 18.

179. *See supra* note 100. Due to space constraints, this Article is unable to provide a detailed examination of property issues raised by the *Izvestiia* experience. In brief, the *Izvestiia* case indicates serious confusion at the highest levels regarding jurisdiction to regulate former USSR and current Russian state property (*see supra* part II.E.) and even more importantly, the very definition of state, social, and private ownership in post-Soviet Russia. *See generally* Nikitinskii, *supra* note 82; Nikitinskii, *supra* note 114; *Ob-suzhdenie, supra* note 39; Ustiuzhanin, *supra* note 128. Experiences with *Izvestiia* Concern, *Izvestiia* Editorial Office, and *Izvestiia* Publishing House also reveal the practical difficulties in implementing statutory provisions relating to transformation of state-owned enterprises into new economic forms. *See supra* part II.C.-E. To complicate matters further, in October 1992 *Izvestiia* Editorial Office reorganized as a joint-stock company. "*Izvestiia*" *Ostaiutsia* "*Izvestiiami*." *Obrashchenie k Chitateliyam* ["*Izvestiia*" *Remains* "*Izvestiia*." *Appeal to Readers*], *IZVESTIIA*, Oct. 21, 1992, at 1.

180. *See generally* Vera Kuznetsova, *Pokhozhe, El'tsin Okonchatel'no Rashhoditsia s Parlamentom, Povtoriaia Put' Gorbacheva s Tochnost'iu do Naobort* [Apparently *El'tsin* Is Finally Breaking with the Parliament, Repeating the Path of Gorbachev in Exactly the Opposite Direction], *NEZAVISIMAIA GAZETA*, Sept. 22, 1992, at 1; Vera Tolz, *Drafting the New Constitution*, *RFE/RL RES. REP.* 1 (July 16, 1993).

181. Sergei Filatov, *cited in* Vasilii Kononenko, *Ispolnitel'naia Vlast' Gotovitsia Vynesti na Referendum Svoi Voprosy* [Executive Preparing to Submit Its Questions to Referendum], *IZVESTIIA*, Mar. 31, 1993, at 1.

current political and economic problems.¹⁸²

Even more interestingly, the "illegitimate lawmaker" defense has resurfaced in recent months. It was in fact Boris El'tsin's very justification for instituting special presidential rule by decree in March 1993. In his March 20th announcement, El'tsin explained that the Russian legislature at its recent Eighth Congress of People's Deputies had acted in such an unconstitutional, reactionary, and undemocratic fashion that he as president was "compelled to assume responsibility for the country's future."¹⁸³ To reinforce this claim of parliamentary illegitimacy, El'tsin characterized the legislature as a CPSU-controlled entity intent upon the restoration of communism in Russia.¹⁸⁴ In so doing, he recast the Russian executive-legislative conflict as a Manichean struggle between the forces of good and evil, a characterization that proved highly persuasive, at least to Western audiences.¹⁸⁵

B. *Lawmaking Procedure*

As I have discussed elsewhere,¹⁸⁶ one of the most significant lessons of the Gorbachev-era "perestroika parliament" was its demonstration of the

182. See *Monopolizatsiia Vlasti Gubitel'na dlia Rossii* [The Monopolization of Power Is Ruinous for Russia], ROSSIISKIE VESTI, Mar. 19, 1993, at 1. On June 4 and July 20, 1993, the Supreme Soviet issued resolutions regarding adoption and drafting procedures for a new Russian Constitution. Nonetheless, the legislature continues to oppose rapid enactment of a new Constitution. Texts of these resolutions appear in ROSSIISKAIA GAZETA, June 11, 1993, at 1 and ROSSIISKAIA GAZETA, July 28, 1993, at 4.

183. El'tsin, March 20 Speech, *supra* note 2.

184. *Id.* Accord Viacheslav Kostikov, *Zaiavlenie Press-Sekretaria Prezidenta Rossiiskoi Federatsii* [Announcement of the Press Secretary of the Russian Federation President], in IZVESTIIA, Mar. 30, 1993, at 1 (El'tsin's press secretary referring to Congress as "a vindictive communist inquisition that is prepared, in the name of restoring its totalitarian domination, to burn around itself everything connected with democracy, *glasnost*', human rights and the dignity of the Russian people and all Russians"). St. Petersburg Mayor Anatolii Sobchak also accused "Comrade" Zor'kin of "loyalty" to the communist party and its ideology. See Ostankino Television First Channel Network, Mar. 24, 1993, translated in F.B.I.S.-SOV, Mar. 25, 1993, at 35, 36.

185. In fact, many Western commentators took this a step further and declared both the legislature and the Constitution void *ab initio* because they were created in the communist era. See, e.g., Editorial, *A Wise Bet On Russia's Hopes*, N.Y. TIMES, Mar. 23, 1993, at A22; A. M. Rosenthal, *The Third Russian Revolution*, N.Y. TIMES, Mar. 23, 1993, at A23. Yale Law School professor Bruce Ackerman even compared Boris El'tsin's "end run" around the "communist" Constitution to George Washington's "radical action" at the Constitutional Convention and praised his move as a "model" for Eastern Europe. Bruce A. Ackerman, *1787 And 1993*, N.Y. TIMES, Apr. 3, 1993, at 23.

186. Frances H. Foster, *Procedure as a Guarantee of Democracy: The Legacy of the Perestroika Parliament*, 26 VAND. J. TRANSNAT'L L. 1 (1993).

critical importance of legislative procedure. From 1989-90, the reformed Soviet legislature discovered through practice that regularized rules can promote legislative professionalism, enhance public participation in the lawmaking process, protect parliamentary minorities, and restrain control from above. The *Izvestiia* case affirms the continued validity of these conclusions for Russia today.

The *Izvestiia* experience suggests that, if anything, the level of procedural observance has only deteriorated in the post-Soviet period. This case reveals a consistent pattern of disregard of legislative rules. One illustration is the *Izvestiia* Resolution, enacted in an accelerated, truncated process that violated the letter and spirit of the Supreme Soviet Standing Orders in every lawmaking stage.¹⁸⁷ This flexible approach to

187. The basic rules governing Supreme Soviet lawmaking procedure are set out in the Standing Orders of October 24, 1990. *Reglament Verkhovnogo Soveta RSFSR* [RSFSR Supreme Soviet Standing Orders] (Oct. 24, 1990), *Vedomosti RSFSR*, no. 26, item 320 (1990) [hereinafter *Standing Orders*]. This statute is nearly a verbatim reproduction of its USSR counterpart. *Reglament S'ezda Narodnykh Deputatov SSSR i Verkhovnogo Soveta SSSR* [*Standing Orders of the USSR Congress of People's Deputies and USSR Supreme Soviet*] (Dec. 20, 1989), in *IZVESTIIA*, Dec. 28, 1989, at 1. For a detailed description of lawmaking stages and procedures, see Foster, *supra* note 186.

The troubled passage of the *Izvestiia* Resolution began with its anonymous formulation behind closed doors. This was contrary to efforts by Soviet and Russian reformers since 1989 to transform the preinitiation phase into a more open and participatory process. See Foster, *supra* note 186. The draft "turned up" (Iakovlev, *supra* note 113, at 3) unexpectedly at the July 13th Presidium session without any formal mention in the published agenda or accompanying documentation as required by statute. *Standing Orders*, *supra*, arts. 39, 64. In violation of Articles 62 through 64 there apparently was no clear identification of the bill's authors or official "initiator." See A. Androv, cited in *Ob-suzhdenie*, *supra* note 39. Nevertheless, the Presidium swiftly approved the text for direct submission to the Supreme Soviet. In so doing, it bypassed the traditional "preliminary examination" by "relevant" committee(s) [here, the Mass Media Committee] and the Legislation Committee. *Standing Orders*, *supra*, art. 67. (It should be noted, however, that in June 1992, the Russian legislature amended this Article to give the Presidium blanket authority to determine drafting committees, stages, and conditions. There was no longer any specific requirement of submission to "relevant" committee(s) and the Legislation Committee. *Zakon No. 3073-I Rossiiskoi Federatsii Ob Izmeneniiakh i Dopolneniiakh Reglamenta Verkhovnogo Soveta RSFSR* [*Russian Federation Law No. 3073-I On Changes and Additions to the RSFSR Supreme Soviet Standing Orders*] point 3 (June 18, 1992), *Vedomosti RF*, no. 30, item 1786 (1992) [hereinafter *Standing Orders Amendments*]).

When the Supreme Soviet gave "due regard for the findings" of the Mass Media Committee and refused to include the bill on its agenda, it acted in accordance with Article 68 of the Standing Orders. Despite this decision, however, the *Izvestiia* issue resurfaced on the last day of the Supreme Soviet session. From then on, there occurred an extraordinary series of Standing Orders' violations.

Deputies proceeded directly to draft consideration and vote, thus effectively nullifying

statutory creation and enactment rapidly became the rule rather than the exception in Russian legislative practice. By the fall of 1992, a special task force of the Legislation Committee reported that leadership infractions of procedural rules had reached the point of an unconstitutional abuse of power by the Supreme Soviet Presidium and its chairman.¹⁸⁸

Lack of procedural regularity had far-reaching consequences. One result was effective insulation of lawmaking from public, and even legislative committee, knowledge, input, and accountability.¹⁸⁹ It also encouraged hasty, unsystematic preparation of statutes, which contributed to the low quality and sporadic production of Russian legislation.¹⁹⁰ Most significantly, nonobservance of legislative procedures removed any restraints on the chairman's direction of parliamentary discussion and action. This allowed Khasbulatov to disregard the rights and views of legislative opponents¹⁹¹ and even to reconstitute "unsuitable" legislative

statutory guarantees for the participation of parliamentary committees and the concerned public in preparation, discussion, and revision of legislation. *Standing Orders, supra*, arts. 69-71, 74, 76-82. Supreme Soviet discussion of the *Izvestiia* Resolution was a parody of established procedures. Chairman Khasbulatov interrupted speakers at will, provided unsolicited personal commentary and direction, limited the duration and scope of deputy discussion, and finally dictated his own text. *See Obsuzhdenie, supra* note 39. Ironically, one of the formal functions of the chairman is to monitor compliance with the Standing Orders. *Standing Orders, supra*, art. 16. The voting stage was equally defective. In marked contrast with the Standing Orders' norm of "two readings" per bill, (*id.* art. 72) deputies gave final approval "sight unseen" to Khasbulatov's bill. Even the recorded tally of votes was dubious because it included names of absent deputies.

The ultimate procedural infringement was publication of an official text that diverged substantially from the adopted version. Only one month earlier, the Supreme Soviet had amended its Standing Orders to add the following language: "After the Russian Federation Supreme Soviet has adopted a law as a whole, it is impermissible to introduce into the text of the law any changes whatsoever, including stylistic." *Standing Orders Amendments, supra*, point 10.

188. *See* Interfax, Oct. 14, 1992, in F.B.I.S.-SOV, Oct. 16, 1992, at 39.

189. *See, e.g.,* Vladimir Ermolin, *Prezident RF Vozrashchaet na Povtornoie Rassmotrenie Zakony iz "Voenogo Paketa"* [Russian Federation President Returns Laws from the "Military Package" for Reexamination], KRASNAIA ZVEZDA, Jan. 15, 1993, at 1 (criticizing lack of public access to draft military laws). Interestingly, Khasbulatov himself has criticized limited committee participation in draft preparation. *See* Ivan Novikov, ITAR-TASS, Feb. 8, 1993, translated in F.B.I.S.-SOV, Feb. 9, 1993, at 29.

190. *See* Elena Musatova, *Raboty Budet Mnogo. Zharkoi* [There Will Be a Lot of Work. Hard Work], ROSSHISKAIA GAZETA, Sept. 2, 1992, at 1; Viktor Sheinis, *Ot Avgusta do Avgusta: Popytka Parlamentskikh Itogov* [From August to August: Attempt at a Parliament Summation], LITERATURNNAIA GAZETA, July 22, 1992, at 1.

191. *See, e.g.,* Georgii Ivanov-Smolenskii, *Zasedanie Prezidiuma VS Rossii Obnazhaet Raznoglasiia* [Russian Supreme Soviet Presidium Session Exposes Disagreements], IZVESTIIA, Sept. 8, 1992, at 2 (describing Khasbulatov's actions in Septem-

committees.¹⁹²

Throughout this period, Khasbulatov took a variety of measures to reinforce his de facto control of the legislative process. He unilaterally redefined his personal powers as chairman¹⁹³ and expanded the size and functions of his staff.¹⁹⁴ Moreover, he revived the tradition of authoritarian "leadership" by the Presidium and legislative apparatus.¹⁹⁵

ber 1992 Presidium meetings to prevent Viacheslav Bragin and other Mass Media Committee members from presenting in formal session the committee report, which criticized Khasbulatov's repeated "violation of legality," expressed no confidence in the chairman, and called for establishment of a legislative commission to "prepare this question").

192. One example was Khasbulatov's replacement of Viacheslav Bragin with Vladimir Lisin as chairman of the Mass Media Committee over the strong objections of committee members. See Anna Broido, "Ia Vsegda Stremilsia k Dialogu" Govorit Novyi Predsedatel' Teleradiokompanii "Ostankino" Viacheslav Bragin v Interv'iu "RV" ["I Have Always Strived for Dialogue" Says New Chairman of "Ostankino" Television and Radio Company Viacheslav Bragin in an Interview with "RV"], ROSSIISKIE VESTI, Jan. 21, 1993, at 2; *Protest Chlenov Komiteta po SMI* [Protest of Mass Media Committee Members], IZVESTIIA, Jan. 30, 1993, at 2. According to an *Izvestiia* correspondent, Lisin received this position because of his demonstrated loyalty and diligence in the *Izvestiia* case. Sergei Chugaev, *Novyi Predsedatel' Parlamentskogo Komiteta po SMI Otrazhaet Vzgliady Bol'shinstva v VS Rossii* [The New Chairman of the Parliamentary Mass Media Committee Reflects the Views of the Majority in the Russian Supreme Soviet], IZVESTIIA, Jan. 27, 1993, at 4. In April 1993, the Supreme Soviet leadership abolished the Mass Media and Economic Reform Committees allegedly for purposes of "replacing awkward deputies." Mass Media Committee Statement, cited in *Ostankino Television* (Apr. 30, 1993), translated in F.B.I.S.-SOV, May 3, 1993, at 35. According to Deputy Aleksandr Kopeika further "reorganizations" are planned in the future. ITAR-TASS, Apr. 30, 1993, translated in *id.*

193. See *Rasporiazhenie Predsedatelia Verkhovnogo Soveta Rossiiskoi Federatsii O Raspredelenii Obiannostei Mezhdru Predsedatelia Verkhovnogo Soveta i Zamestiteliami Predsedatelia Verkhovnogo Soveta, Predsedateliami Palat Verkhovnogo Soveta Rossiiskoi Federatsii* [Russian Federation Supreme Soviet Chairman's Order On the Distribution of Responsibilities Among the Supreme Soviet Chairman, Supreme Soviet Vice-Chairmen, and the Chairmen of the Chambers of the Russian Federation Supreme Soviet] (Aug. 21, 1992), *Vedomosti RF*, no. 35, item 2005 (1992). For a description of other documents enhancing Khasbulatov's authority, see Georgii Ivanov-Smolenskii, *Nakanune Sessii Rossiiskogo Parlamenta Lidery Koalitsii Reform Trebuiut Ostavki R. Khasbulatova* [On the Eve of the Russian Parliament Session, Reform Coalition Leaders Demand R. Khasbulatov's Resignation], IZVESTIIA, Sept. 3, 1992, at 2.

194. See Aleksandr Evlakhov, Interview with Sergei Filatov, ROSSIA, Jan. 13-19, 1993, at 1 (claiming 1500 people working for Khasbulatov). See also Lidia Luk'ianova, *Pravila dlia Predsedatelia* [Rules for the Chairman], KURANTY, Jan. 6, 1993, at 4.

195. See Nikolai Fedorov, Speech to Eighth Congress of People's Deputies (Mar. 12, 1993), in ROSSIISKIE VESTI, Mar. 13, 1993, at 2. On March 19, 1993, the Constitutional Court declared unconstitutional twenty-seven acts issued by the Supreme Soviet chairman, vice-chairman, and Presidium. *Postanovlenie No. 5-P Konstitutsionnogo Suda Rossiiskoi Federatsii* [Russian Federation Constitutional Court Resolution No. 5-P]

By March 1993, Congress and Supreme Soviet sessions had degenerated into "constant and gross breaches" of the Standing Orders.¹⁹⁶ On occasion, apparatus officials reportedly cast votes for deputies.¹⁹⁷ The Presidium regularly supplanted the Russian legislature as lawmaker. For example, in direct violation of the Constitution, it formulated questions for national referendum.¹⁹⁸

To make matters worse, there were major flaws as well in the executive branch's approach to creation and adoption of laws and regulations. Unlike the legislative context, here the fundamental problem was not disregard of established lawmaking rules and channels but the virtual absence of any such procedures. There was no formal drafting body with the assigned responsibility for supervising the language, content, and consistency of proposed laws with existing presidential, administrative, and legislative acts.¹⁹⁹ Executive, especially presidential, lawmaking was largely an ad hoc process. Decrees generally appeared in reaction to recent developments rather than as part of an integrated program. The *Izvestiia* case provides several examples. These include the El'tsin and Goskomimushchestvo ordinances on *Izvestiia* Publishing House and the presidential edict banning Khasbulatov's parliamentary guard.²⁰⁰

Executive lawmaking occurred behind a shroud of secrecy, with limited opportunities for public comment, participation, or information re-

(Mar. 19, 1993), in ROSSIISKAIA GAZETA, Apr. 14, 1993, at 5.

196. Leonid Volkov, *Otkuda Griadet Diktatura [Whence the Threat of Dictatorship]*, IZVESTIIA, Mar. 11, 1993, at 5. For a detailed description of Standing Orders violations, see Luk'ianova, *supra* note 194.

197. Volkov, *supra* note 196.

198. See Anatolii Sobchak, *cited in* Interfax, Feb. 13, 1993, in F.B.I.S.-SOV, Feb. 16, 1993, at 23, 24.

199. See Constitutional Court Judge Gadis Gadzhiev, *cited in* Anna Ostapchuk, *Sud'i KS: Segodnia Konstitutsiia Spuzhit Vlastiiam dlia Bor'by Mezhdu Soboi [Constitutional Court Judges: Today the Constitution Serves Authorities' Battle Against Each Other]*, NEZAVISIMAIA GAZETA, Apr. 3, 1993, at 2. On December 12, 1991, El'tsin created a State-Law Administration, the duties of which included review of all important normative acts. According to Sergei Sakhrail, the former head of this body, however, he acted solely as a "smokescreen" and saw only half of all decrees El'tsin signed. L. Nikitinskii, *Sakhrail Vyshel iz Okruzheniia Prezidenta. Prezident Ostalsia v Okruzheniia [Sakhrail Has Left the President's Entourage. The President Remains Surrounded by the Entourage]*, KOMSOMOL'SKAIA PRAVDA, Aug. 8, 1992, at 1.

200. See *supra* part II.E. This "ad hoc quality" of lawmaking was also characteristic of Gorbachev's approach to legal reform. Robert Sharlet, *The Path of Constitutional Reform in the USSR, in PERESTROIKA-ERA POLITICS: THE NEW SOVIET LEGISLATURE AND GORBACHEV'S POLITICAL REFORMS* 17, 26 (Robert T. Huber & Donald R. Kelley eds., 1991).

garding the authors, content, or timing of acts.²⁰¹ Disorganization and delay were common at even the highest levels of the Russian executive branch. One particularly dramatic instance was the "sad lot" of the Russian Government resolution on mass media registration levies.²⁰² As directed by the December 1991 Russian Mass Media Law, the Press Ministry readied this document for publication in February 1992.²⁰³ It dispatched the final text to the Finance Ministry for endorsement. Unfortunately, the resolution mysteriously disappeared there "among all the other papers."²⁰⁴ After a lengthy search, officials located the document. In the interim, however, the Russian mass media were unable to register new publications.

A recent trend will likely exacerbate these internal bureaucratic problems. In late 1992 and early 1993, there has been a rapid proliferation of presidential agencies and staff directly accountable to and in some cases funded by El'tsin.²⁰⁵ This has already raised considerable uncertainty and tension as to which bodies—presidential or governmental—are ultimately responsible for executive branch lawmaking and enforcement.²⁰⁶ Khasbulatov has overtly encouraged these

201. See Evgenii Kiselev, Ostankino Television, Jan. 24, 1993, translated in F.B.I.S.-SOV, Jan. 25, 1993, at 30; Mikhail Leont'ev, *Novaia Programma Pravitel'stva: Snachala Selektivnaia Strukturnaia Politika, a k Zime—Sbor Khvoinoi Muki* [New Government Program: Selective Structural Policy for the Beginning But Collection of Pine-Needle Flour by Winter], SEGODNIA, Apr. 20, 1993, at 1; Valentin Logunov, *Ministerstvo Pravdy Vmesto Svobody Pechati* [Ministry of Truth Instead of Freedom of the Press], ROSSIISKAIA GAZETA, Dec. 29, 1992, at 1; Pavel Vasil'ev, Interview with Gennadii Shipitko, ROSSIISKIE VESTI, Aug. 27, 1992, at 1.

202. Andrei Poleshchuk, *Registratsiia Sredstv Massovoi Informatsii v Rossii Zamorozhena. Znaet li ob Etom Ministr Pechati i Informatsii Poltoranin?* [Registration of Mass Media in Russia Is Frozen. Does Press and Information Minister Poltoranin Know Anything About It?], NEZAVISIMAIA GAZETA, Mar. 25, 1992, at 1.

203. The goal was to issue the resolution soon after the Russian Mass Media Law entered into force on February 8, 1992. *Id.*

204. *Id.*

205. Two examples are the presidential local representatives system and the Federal Information Center. See Veronika Kutsyllo, *President's Administration Gets New Powers*, KOMMERSANT-DAILY, Feb. 9, 1993, at 2, translated in F.B.I.S.-SOV, Feb. 10, 1993, at 24. Interview of Mikhail N. Poltoranin, Mayak Radio Network, Jan. 19, 1993, translated in F.B.I.S.-SOV, Jan. 22, 1993, at 43. The Russian Congress has declared both structures illegal. *Congress Constitutional Resolution*, *supra* note 16.

206. The potential conflict between presidential and administrative organs for mass media regulation presents one much-publicized case. There has been significant debate over the respective jurisdictions of the Federal Information Center and Press Ministry. See, e.g., Nikolai Andreev, *Mikhail Poltoranin: "My Zanimaiemsia Gosudarstvennym Ustroistvom i Chetvertaia Vlast' Dolzhna Pomogat' v Etom"* [Mikhail Poltoranin: "We

“contradictions”²⁰⁷ by word and deed. He has emphasized repeatedly the existence of two “parallel” and “competing” governments, the legitimate Russian government headed by the Council of Ministers and the unconstitutional presidential administration.²⁰⁸ Under Khasbulatov’s tutelage, the Russian legislature introduced constitutional amendments calculated to drive a further wedge between top government and presidential authorities. These significantly expanded the scope and lawmaking powers of the Council of Ministers at the expense of the presidency.²⁰⁹

El’tsin has recognized the grave flaws in executive lawmaking. He has issued a series of measures designed to introduce procedural regularity, specificity, and predictability into the process. The most notable of these is his January 14, 1993 Decree On the Procedure of Lawmaking by Central Federal Executive Bodies and the Russian Federation Presidential Administration.²¹⁰ This law provides guidelines regarding draft preparation, adoption, and publication.

Are Preparing a State Structure and the Fourth Estate Must Help in This’], IZVESTIIA, Dec. 28, 1992, at 2; A. Podkopalov, *M. Poltoranin Snova v Tsentre* [*M. Poltoranin Is Again in the Center*], KOMSOMOL’SKAIA PRAVDA, Dec. 29, 1992, at 1.

207. Vladimir Todres, *Shokovoe Reshenie El’tsina Ostanovilo “Shokovuiu Reformu.” Novyi Prem’er Zaiavil, Chto Budet Stroit “Rynok, a Ne Bazar,” No Snachala Posmotrim, Kakoe On “Postroit” Pravitel’stvo* [*El’tsin’s Shock Decision Stops “Shock Reform.” New Premier Says He Will Build “Market, Not Bazaar,” But First Let Us See What Kind of Government He “Builds”*], NEZAVISIMAIA GAZETA, Dec. 16, 1992, at 1.

208. See, e.g., Ruslan Khasbulatov, Speech to Meeting of Chairmen of Soviets of People’s Deputies (Feb. 8, 1993), cited in Interfax, Feb. 8, 1993, in F.B.I.S.-SOV, Feb. 8, 1993, at 26.

209. *Postanovlenie No. 4626-I S’ezda Narodnykh Deputatov Rossiiskoi Federatsii O Merakh po Osushchestvleniiu Konstitutsionnoi Reformy v Rossiiskoi Federatsii* [*Russian Federation Congress of People’s Deputies Resolution No. 4626-I On Measures for Implementation of Constitutional Reform in the Russian Federation*] (Mar. 12, 1993), in ROSSIISKAIA GAZETA, Mar. 13, 1993, at 1. This resolution put into immediate effect the constitutional amendments that had been enacted by the Seventh Congress but never implemented because of the December compromise agreement. *Postanovlenie S’ezda Narodnykh Deputatov Rossiiskoi Federatsii O Stabilizatsii Konstitutsionnogo Stroia Rossiiskoi Federatsii* [*Russian Federation Congress of People’s Deputies Resolution On the Stabilization of the Russian Federation Constitutional Order*] (Dec. 12, 1992), in ROSSIISKAIA GAZETA, Dec. 15, 1992, at 1. See generally Valerii Vyzhutovich, *S’ezd Lishel Prezidenta Fakticheski Vsekh Polnomochii* [*Congress Has Effectively Stripped the President of All Powers*], IZVESTIIA, Mar. 17, 1993, at 4 (amended Constitution “complicates the president’s relationship with his cabinet during the transition period”).

210. *Ukaz No. 48 O Poriadke Deiatel’nosti Tsentral’nykh Organov Federal’noi Ispolnitel’noi Vlasti i Administratsii Prezidenta Rossiiskoi Federatsii po Vedeniiu Zakonoproektnykh Rabot* (Jan. 14, 1993), Sobranie Aktov Prezidenta i Pravitel’stva Rossiiskoi Federatsii (Sobranie), no. 3, item 170 (1993). See also *Ukaz O Sovershenstvovanii Sistemy Obespecheniia Deiatel’nosti Prezidenta Rossiiskoi Federatsii* [*Decree On Perfect-*

Yet, the events of March 1993 reveal the stubborn persistence of traditional lawmaking attitudes and techniques. The package of El'tsin emergency decrees originated in the deep, impenetrable recesses of El'tsin's personal bureaucracy. There was no direct public access or information regarding the initiation, preparation, discussion, and approval of these crucial documents.²¹¹ Despite recent procedural requirements to the contrary, El'tsin never cleared his decrees with the Ministry of Justice.²¹² Moreover, he reported their existence on March 20th but published them in only a piecemeal fashion over succeeding days, with no explanation proffered for the delay.²¹³ The key act even diverged markedly from the announced text.²¹⁴

Earlier this year El'tsin's new chief of staff, Sergei Filatov, recommended a more formal approach to presidential lawmaking.²¹⁵ He called for the institution of a "rigorous procedure for the passage of drafts of all presidential documents" and "expert legal study before they ever reach the president's desk."²¹⁶ The March experience confirms the wisdom of this proposal.

tion of the System for Ensuring the Russian Federation President's Work] (Feb. 22, 1993), *Sobranie*, no. 9, item 735 (1993).

211. For information on preparation of the decree, see Evgenii Krasnikov, *Impichment Nerealen, Pobeda El'tsina—Tozhe [Impeachment Is Unrealistic, But So Is a El'tsin Victory]*, *NEZAVISIMAIA GAZETA*, Mar. 23, 1993, at 1. Even after El'tsin's March 20th speech Russian leaders and the populace were unable to view the actual text of the decree. *See, e.g.*, Valerii Zor'kin, *Speech to Russian Supreme Soviet* (Mar. 21, 1993), in *ROSSIISKAIA GAZETA*, Mar. 23, 1993, at 3 (reporting unsuccessful Constitutional Court requests to view the official text and supporting documents).

212. *See* Ostapchuk, *supra* note 199, at 2.

213. For explanation of delay in publication, see Vasilii Lipitskii, *Vstriaska Uglubila Raskol Naberzh. Vnizu Ukrepliaetsia Vlast' Regional'nykh Elit [Shock Deepens the Split at the Top. The Authority of Regional Elites Strengthens at Lower Level]*, *ROSSIISKAIA GAZETA*, Apr. 3, 1993, at 1; Iurii Zainashev, *Interview with Sergei Shakhrai*, *MOSKOVSKII KOMSOMOLETS*, Apr. 21, 1993, at 1.

214. *See* A. Podkopalov, *Saga o Propaushei Gramote [Saga of the Disappearing Document]*, *KOMSOMOL'SKAIA PRAVDA*, Mar. 25, 1993, at 1. For a discussion of possible reasons for the variation in the text, see Liudmila Telen', *"Prezident Ne Rassmatrival Silovyykh Variantov" ["President Did Not Consider Strong-Arm Options"]*, *MOSKOVSKIE NOVOSTI*, Apr. 11, 1993, at A8.

215. Liudmila Telen', *"Apparatnyi Revansh" Demokratov ["Apparatus Revanche" of the Democrats]*, *MOSKOVSKIE NOVOSTI*, Feb. 14, 1993, at 8 (interview with Sergei Filatov).

216. *Id.* For an excellent recent commentary on the internal workings of the presidential administration see Roza Sergazieva, *Interview with Valerii Semenchenko*, *ROSSIISKIE VESTI*, Apr. 2, 1993, at 2.

C. Competence

The *Izvestiia* case reveals that the constitutionally prescribed "separation of powers"²¹⁷ is a myth in post-Soviet Russia. In practice, the lines between legislative, executive, and judicial jurisdictions are blurry if not invisible. For example, the Supreme Soviet in its *Izvestiia* Resolution clearly displayed no hesitation whatsoever in intruding into executive and judicial preserves. Despite its lack of authority to do so, the parliament issued mandatory directives to executive agencies.²¹⁸ Over the formal objections of Mass Media Committee members, other deputies, and legal experts,²¹⁹ it opted to supplant the courts and deal with the issue directly by legislative fiat. Indeed, the consistent use of the "resolution" format was indicative of parliamentary attitudes toward the other branches of power. Unlike laws, resolutions are immune from presidential veto and judicial review.²²⁰

Russian President El'tsin similarly displayed a marked preference for unilateral rule by decree on virtually any subject act imaginable. The general expectation of El'tsin and *Izvestiia* proponents was that presidential edict would automatically and conclusively settle disputed matters.²²¹ In fact, however, this technique often led to greater confusion and tension. A prime illustration was El'tsin's August ordinance on the *Izvestiia* Publishing House, which effectively called for a transfer of state property to a nonexistent entity. The result was a total of five separate, inconsistent laws on *Izvestiia* Publishing House—by President El'tsin, the Federal Property Fund, Goskomimushchestvo, the Supreme Soviet, and Deputy Chairman Voronin. Not only did El'tsin's ordinance fail to accomplish the definitive resolution anticipated but it actually led to armed confrontation between the executive and legislative branches. Ironically, the entire dispute over *Izvestiia* Publishing House never belonged in the hands of the president or legislature in the first place. Instead, the issue clearly fell within the competence of the judiciary.²²²

217. KONST. RF art. 1 (*razdelenie vlastei*).

218. See *Izvestiia* Resolution, *supra* note 106, point 2 (Press Ministry). Note that in Khasbulatov's dictated text the Supreme Soviet instructed the Ministry of Justice and the Press Ministry to take "appropriate" action. See *supra* note 106 and accompanying text.

219. For numerous examples of such jurisdictional objections, see *Obsuzhdenie*, *supra* note 39, at 3-4.

220. See Igor Golembiovskii, *cited in* Khaitana, *supra* note 84; *Constitutional Court Petition*, *supra* note 120, point 2, para. 3.

221. See Charodeev, *supra* note 131; Boris El'tsin, *cited in* V. Starkov, *B. El'tsin, "Ot Reformy v Rossii Ne Otstupliu!"* [*B. El'tsin: "I Will Not Retreat from Reforms in Russia!"*], ARGUMENTY I FAKTY, no. 42, 1, 2 (1992).

222. For a summary of the *Izvestiia* Publishing House experience, see *supra* part

The *Izvestiia* case also suggests the fundamental irrelevance of inter- and intra-republic jurisdictions and interests. The Russian executive and parliamentary leaderships consistently have pledged to observe the rights of other former USSR republics and of republics within the Russian Federation.²²³ Yet, they gave little consideration of these interests in the battle over *Izvestiia*. *Izvestiia*, after all, originated as a *Soviet*, not a *Russian*, central press organ. Even in its "renewed" form, the newspaper openly proclaimed its intent to publish throughout the Commonwealth of Independent States and the Russian Federation.²²⁴ In fact, this was the very reason the Supreme Soviet cited for acquiring an additional legislative newspaper—*Izvestiia* covered a broader territory and audience than existing parliamentary papers.²²⁵ Nevertheless, both legislature and president attempted to decide *Izvestiia*'s fate without consultation, let alone the consent, of interested republic constituencies.

The *Izvestiia* experience highlights in bold relief the grave consequences of a failure to differentiate lawmaking jurisdictions. One result was a pattern of uncoordinated, inconsistent regulation, of which the *Izvestiia* Publishing House war of laws stands as the most obvious example.²²⁶ As will be described below,²²⁷ the bewildering maze of legislative, presidential, and administrative regulations addressing the economic support of the mass media was also illustrative of this problem.

Another adverse consequence was the increasingly unrestrained conflict between branches of government. By mid-1992, this had reached the point of no deference or recognized lines of authority. The *Izvestiia* case reveals how problems at the top of the governmental structure can have a

II.E.

223. See, e.g., RUSLAN KHASBULATOV, *THE STRUGGLE FOR RUSSIA: POWER & CHANGE IN THE DEMOCRATIC REVOLUTION* 224 (1993); Boris El'tsin: *U Prezidenta SSSR Est' Vremia Maksimum do Srediny Ianvaria* [Boris El'tsin: *The USSR President Has at Most Until the Middle of January*], *IZVESTIIA*, Dec. 17, 1991, at 1; Ruslan Khasbulatov, *O Vneshnei Politike i Diplomatii Rossii* [On Russian Foreign Policy and Diplomacy], *ROSSIISKAIA GAZETA*, Mar. 6, 1992, at 7; Speeches by Boris El'tsin and Ruslan Khasbulatov at signing of Federation Treaty, Russian Television Network, Mar. 31, 1992, translated in F.B.I.S.-SOV, Apr. 1, 1992, at 24-26.

224. See Berger, *supra* note 67; Nadein, *supra* note 35.

225. Parliamentary leaders contended that as a result of the March 1992 Federation Treaty the Supreme Soviet suddenly needed an additional newspaper. See Ramazan Abdulatipov, *cited in* Chugaev, *supra* note 114; Vladimir Lisin, *cited in* Ustiuzhanin, *supra* note 128, at 2.

226. See *supra* part II.E. See generally Valerii Korobeinikov, *Na Kazhdom Shagu Zakon Podsteregaiut Opasnosti* [At Each Stage Law Confronts Danger], *ROSSIISKAIA GAZETA*, Mar. 6, 1992, at 2.

227. See *infra* part IV.

spillover effect at lower levels. In the summer of 1992, an executive agency, the Press Ministry, repeatedly refused to implement legislation it deemed unconstitutional.²²⁸ Likewise, a subordinate legislative body, the Federal Property Fund, without compunction issued an ordinance that directly contradicted a presidential instruction.²²⁹ The end result was an impasse between the executive and legislative branches.

These problems were only compounded by the leadership's rejection of any notion of continuity or supremacy of law, including the Constitution itself. In a September 1992 interview, Ruslan Khasbulatov proclaimed that "the supreme legislative body is entitled to solve any problem."²³⁰ When asked whether this included the right to alter adopted legislation at will to conform with changing circumstances, he responded, "But of course, how can it be otherwise?"²³¹ El'tsin's actions suggested a similar devaluation of continuity and supremacy of law. He issued presidential decrees on an ad hoc basis without any real commitment to ensuring their compatibility with existing legislative or constitutional norms.²³²

As the *Izvestiia* experience indicates, this lack of theoretical or practical constraints on lawmaking only encourages continued rule by law rather than rule of law.²³³ It permits the use of law as an instrument to further the personal ambitions and agenda of the individual lawmaker. The *Izvestiia* case provides a particularly egregious example—Ruslan Khasbulatov's overt manipulation of the legislative process to retaliate against a troublesome critic.²³⁴ At the same time, the *Izvestiia* experience

228. See *supra* note 115 and accompanying text. Soviet of the Republic Chairman Nikolai Riabov responded "We would certainly lose our self-respect if our ministers stopped implementing Supreme Soviet decisions." He warned that the legislature would find a way to compel executive authorities either to fulfill parliamentary directives or "leave state service." Nikolai Riabov, *cited in* Ustuzhanin, *supra* note 128, at 2.

229. See *supra* note 131 and accompanying text.

230. Khasbulatov Interview, *supra* note 142.

231. *Id.*

232. See Liudmila Telen', "Apparatnyi Revansh" *Demokratov* ["Apparatus Captured" by Democrats], MOSKOVSKIE NOVOSTI, Feb. 14, 1993. at 8. For a discussion of flaws in presidential lawmaking, see *infra* part III.B.

233. For discussion of the distinction between rule of law and rule by law, see Harold J. Berman, *The Rule of Law and the Law-Based State (Rechtsstaat)*, in TOWARD THE "RULE OF LAW" IN RUSSIA? POLITICAL AND LEGAL REFORM IN THE TRANSITION PERIOD 43 (Donald D. Barry ed., 1992) [hereinafter TOWARD THE "RULE OF LAW" IN RUSSIA?]; Noriho Urabe, *Rule of Law and Due Process: A Comparative View of the United States and Japan*, LAW & CONTEMP. PROBS., Winter 1990, at 61, 63.

234. El'tsin also has been criticized for using his lawmaking powers to retaliate against a "disloyal" mass media organ. See Dmitrii Ostalskii & Mikhail Karpov, Interview with RIA Novosti Director-General Andrei Vinogradov, NEZAVISIMAIJA GAZETA,

shows a more subtle form of personalistic lawmaking. Both Khasbulatov and El'tsin frequently invoked the specter of harsh, unilateral action as a bludgeon to secure desired resolution of an issue by more conventional means.²³⁵

The recent constitutional crisis, then, is the logical culmination of trends identified in the *Izvestiia* case. Like *Izvestiia*, the Russian populace and reform process became hostage to the "whim" of the lawmaker.²³⁶ Lack of coordination and eventually open conflict between executive and legislative branches made it impossible for Russia to construct the legal framework essential for national modernization.²³⁷ By late 1992, the situation had deteriorated to the point of a total paralysis of lawmaking and overall governing authority. At the December Seventh Congress of People's Deputies it became painfully obvious that there existed no effective legal standard or mechanism to break the deadlock between Russia's president and parliament. Only extraconstitutional "conciliation" by Constitutional Court Chairman Valerii Zor'kin rescued Russia from the brink of disaster.²³⁸

The collapse of this temporary truce took the familiar form of an executive-legislative struggle over jurisdictional authority spearheaded by

Jan. 24, 1992, at 1 (on El'tsin's January 22, 1992 presidential decree on the merger of TASS and RIA-Novosti).

235. See, e.g., *supra* notes 139, 142 and accompanying text. In the *Izvestiia* case, El'tsin, unlike Khasbulatov, generally communicated such threats either in a veiled fashion or through official spokespersons. See, e.g., *Boris El'tsin: Budu Zashchishchat' Svobodu i Dostoinstvo Rossiiskoi Pressy* [Boris El'tsin: I Will Defend the Freedom and Dignity of the Russian Press], *IZVESTIIA*, July 17, 1992, at 1; *Reshenie po Pechati Nakhnets-to Doshlo do Pechati* [Decision on the Press Has Finally Gone to Press], *KOMSOMOL'SKAIA PRAVDA*, July 29, 1992, at 1.

236. *We Despire Our Own Law*, *supra* note 114, at 2.

237. See Viktor Chernomyrdin, Speech to Supreme Soviet (Jan. 28, 1993), Russian Television Network, Jan. 28, 1993, translated in F.B.I.S.-SOV, Jan. 29, 1993, at 31; Liubov' Tsukanova, *V Spore za Rossiiskuiu Koronu* [In the Dispute for the Russian Crown], *ROSSIISKIE VESTI*, Jan. 4, 1993, at 2. In the summer of 1993, conflict between the president and parliament reached the point of a "war of laws" over the very process of privatizing the Russian economy. See Ivan Karpenko, *In the Constitutional Court: Russia's Right to Privatization*, *IZVESTIIA*, Aug. 5, 1993, at 2, translated in F.B.I.S.-SOV, Aug. 6, 1993, at 20.

238. See generally Nikolai Andreev & Sergei Chugaev, *Soglashenie Mezhdru Prezidentom i S'ezdom Vyvodit Rossiiu iz Politicheskogo Krizisa* [Agreement Between President and Congress Extricates Russia From Political Crisis], *IZVESTIIA*, Dec. 14, 1992, at 3; Leonid Nikitinskii, *Valerii Zor'kin Snova Vystupaet v Roli Mirotoivortsa* [Valerii Zor'kin Again in Role of Peacemaker], *IZVESTIIA*, Jan. 28, 1993, at 5. For a negative evaluation of compromise, see, e.g., Aleksandr Frolov, *Khudoi Mir Luchshe? [Is a Bad Peace Better?]*, *SOVETSKAIA ROSSIIA*, Dec. 15, 1992, at 1.

Boris El'tsin and Ruslan Khasbulatov.²³⁹ Unlike the *Izvestiia* case, this was no longer a war by proxy. On March 12th, the Russian legislature once again unilaterally redefined constitutional boundaries. This time, however, it directly challenged and limited presidential authority. Most notably, in its Resolution On Measures for the Implementation of the Constitutional Reform, the Congress gave the Supreme Soviet the immediate legal right to suspend presidential decrees and orders pending Constitutional Court review and to terminate presidential powers following any attempt to dissolve legally elected state bodies.²⁴⁰

The Russian president's response was also consistent with past practice. On March 20th, El'tsin threatened to resolve the crisis by personal fiat. The key difference was that El'tsin now openly proclaimed supremacy of presidential edict over contrary legislative enactment and declared strict vertical control of Russian regional authorities.²⁴¹

As in the *Izvestiia* case, this potentially disastrous confrontation between executive and legislative branches eventually ended in stalemate. El'tsin retreated from his announced introduction of emergency presidential rule.²⁴² President and parliament reached an uneasy, unworkable compromise²⁴³ and Russia braced itself for the inevitable next round.

IV. LAW, MARKETPLACE, AND IDEAS

The *Izvestiia* case shows that executive-legislative conflict and procedural deficiencies have taken a heavy toll on the quality of the Russian

239. See generally Luk'ianova, *supra* note 194; *Monopolizatsiia Vlasti Gubitel'na dlia Rossii*, *supra* note 182.

240. See *supra* note 209.

241. El'tsin, March 20 Speech, *supra* note 2, at 2. For criticism of these two moves, see, e.g., Igor Lenskii, *Ekspromtom po Konstitutsii Rossiiskie Respubliki Protiv* [*The Russian Republics Are Against Rushing the Constitution*], PRAVDA, Mar. 26, 1993, at 2; Viktor Trushkov, *Chlen Konstitutsionnogo Suda RF Viktor Luchin: "Sud Zasedal Noch'iu Ne iz Liubvi k Ekzotike"* [*Russian Federation Constitutional Court Justice Viktor Luchin: "Court Did Not Meet at Night out of Love for the Exotic"*], PRAVDA, Apr. 3, 1993, at 1. For a text of the formal Constitutional Court denunciation of El'tsin's announcement, see *Vedomosti RF*, no. 13, item 466 (1993).

242. The written text of El'tsin's March 20th decree removed any mention of emergency rule. For the text of the decree, see *Sobranie*, no. 13, item 1102 (1993).

243. For discussion of the problems with the Congress' March 29th referendum decision, see Sergei Chugaev, *Prezident Rossii Nachal Podgotovku k Referendumu* [*Russian President Has Begun to Prepare for Referendum*], IZVESTIIA, Apr. 1, 1993, at 1; Sergei Parkhomenko, *Vy Khoteli Referendum? Vy ego Imeete! . . . Prezidentskaia Komanda Vse'rez Rasschityvaet na Pobedu 25 Aprelia* [*You Wanted a Referendum? You Got It! Presidential Team Seriously Expects To Win On 25 April*], SEGODNIA, Apr. 6, 1993, at 3.

lawmaking product. Parliamentary, presidential, and administrative statements on *Izvestiia* uniformly suffered from internal contradictions,²⁴⁴ vague expression of norms and rules,²⁴⁵ and inconsistency with existing legal provisions.²⁴⁶ This weakness in format of laws offers yet another explanation for Russia's ineffective use of law to address national crisis. The full dimensions of the problem are best illustrated by an in-depth analysis of the leadership's response to a matter of vital concern to *Izvestiia* and other Russian newspapers—survival in a rapidly changing economic environment.

A. Legal Support for the Press

When the Russian press found itself caught in the transition from command economy to market economy, it repeatedly sought government assistance.²⁴⁷ The only comprehensive response was Boris El'tsin's February 20, 1992 Decree On Additional Measures of Legal and Economic Protection for the Periodical Press and State Book Publishing. This decree specifically targeted the dual threat identified by the mass media:

244. For example, the preambles of both draft and final versions of the *Izvestiia* Resolution formally declared illegal the formation of *Izvestiia* in August 1991. *Draft Izvestiia SSSR Resolution*, *supra* note 94, pmbl.; *Izvestiia Resolution*, *supra* note 106, pmbl. Yet, the bills subsequently recognized the de facto existence of *Izvestiia*, calling for its reregistration in line with existing legislation. *Draft Izvestiia SSSR Resolution*, *supra* note 94, point 2; *Izvestiia Resolution*, *supra* note 106, point 2.

245. Illustrations of vague language include the provisions for publication "on the basis of" *Izvestiia* Publishing House and *Izvestiia* SSSR (*see, e.g., Izvestiia Resolution*, *supra* note 106, point 2), reregistration "in line with existing legislation" (*id.*), transfer of *Izvestiia* SSSR Publishing Company property "in accordance with established procedure" (*El'tsin Ordinance*, *supra* note 130), and "use of federal property in the most effective manner" (*Goskomimushchestvo Ordinance*, *supra* note 132, pmbl.).

246. *See, e.g., Russian Property Fund Ordinance*, *supra* note 131. Under the 1991 RSFSR Privatization Law, the Russian Property Fund has temporary ownership rights over only those enterprises whose certificates of ownership had been conveyed to it by Goskomimushchestvo. *Zakon RSFSR O Privatizatsii Gosudarstvennykh i Munitsipal'nykh Predpriatii v RSFSR* [RSFSR Law On Privatization of State and Municipal Enterprises in the RSFSR] art. 6, para. 2 (July 3, 1993), in SOVETSKAIA ROSSIIA, July 3, 1991. Goskomimushchestvo had never transferred any such certificate of *Izvestiia* Publishing House ownership to the Federal Property Fund. The August 1992 El'tsin and Goskomimushchestvo Ordinances violated RSFSR Enterprise Law provisions regarding liquidation and reorganization of existing economic entities. Neither ordinance complied with the statutory requirement of "agreement by the labor collective." *Russian Enterprise Law*, *supra* note 87, art. 37. For information on inconsistencies between the *Izvestiia* Resolution and the Russian Constitution and legislation, see *supra* notes 79, 100, 114, 120-23, 187, 223-24 and accompanying text.

247. *See supra* note 68.

continued government monopolization of all major publication services and new price liberalization policies. Most notably, it established a mandatory price-controlled quota for newsprint production, guaranteed state compensation of state communications enterprises to reduce delivery and distribution costs, called for rapid demonopolization of distribution networks, and authorized subsidies to Russian publications.²⁴⁸ Due to technical and conceptual flaws, however, the decree ultimately proved of little concrete value.

One essential problem was that the document was legally and practically unenforceable without supplementary regulations. It amounted merely to a set of instructions to government authorities to take action and modify current practices.²⁴⁹ Despite the obvious emergency needs of the Russian press, the highest administrative body, the Council of Ministers, did not issue the requisite implementing resolution until July 1992.²⁵⁰

Moreover, the very scheme mandated by the decree revealed a significant "gap between law and reality."²⁵¹ It lumped together a wide variety of publications, including newspapers, magazines, children's and artistic books, and reference materials, without any consideration of each category's distinct production problems.²⁵² The decree also failed to recognize the severe budget constraints of the Russian government. For example, it provided for state compensation of communications enterprises, purchase of paper and binders' board for textbooks and children's books, and subsidies for newspapers at a time of severe economic crisis.²⁵³ Most unrealistic was its seventy percent quota for paper production, which threatened to bankrupt the paper and pulp industry. The decree required these enterprises to sell the bulk of their production at fixed prices without any relief for the escalating costs of raw materials and

248. *Publication Support Decree*, *supra* note 69, points 3, 4, 6.

249. *See id.* points 1, 3, 4, 6. For a discussion of this problem see Mayak Radio Network, Feb. 25, 1992, *translated in* F.B.I.S.-SOV, Feb. 25, 1992, at 32; Skidanov, *supra* note 59.

250. *Postanovlenie Pravitel'stva Rossiiskoi Federatsii O Merakh Pravovoi i Ekonomicheskoi Zashchity Periodicheskoi Pechati i Gosudarstvennogo Knigoizdaniia* [Russian Federation Government Resolution On Legal and Economic Measures of Support for the Periodical Press and State Book Publishing] (July 16, 1992), in ROSSIISKAIA GAZETA, July 21, 1992, at 2. A related problem, the failure to specify concrete enforcement mechanisms and procedures, will be discussed below. *See infra* part IV.A.

251. Arkadii Udaltsov, *Spasem li Rossiiskuiu Slovenost'?* [Will We Save Russian Literature?], LITERATURNAYA GAZETA, Feb. 26, 1992, at 1.

252. *Publication Support Decree*, *supra* note 69, point 3.

253. *See id.* point 3.

other essential inputs, such as electricity and fuel.²⁵⁴ In so doing, it basically shifted the burden of market reform from publications to the paper industry.

Imprecise, ambiguous language created a number of potential loopholes. One illustration was the compensation of communications enterprises for delivery and distribution expenses "within the framework of the 1991 subscription campaign."²⁵⁵ This raised questions as to whether the provision was applicable to subscriptions only and not to retail trade.²⁵⁶ Another example was the stipulation for "fixed prices" of paper supplies.²⁵⁷ The decree did not offer any guidance regarding who would set the price, when, and at what level. Similarly, there was the mysterious undefined guarantee of subsidies "with due regard for price liberalization."²⁵⁸

In addition, the decree awarded benefits on a discriminatory basis. It explicitly exempted government newspapers and magazines from earnings taxes.²⁵⁹ Most disturbingly, it gave authorities wide discretion to define the class of recipients. The preamble stated as its target for assistance the "socially important" press. Later, point three guaranteed paper supplies to "magazines and newspapers published under programs approved by the Russian Federation Ministry of the Press and Information." Since at the time no such programs actually existed, this gave rise to rumors that the Press Ministry kept secret blacklists of politically "unsuitable" publications.²⁶⁰

A related concern was the very notion of press subsidization. The practice preceded El'tsin's decree. As early as December 1991 the Press Ministry provided financial support to Russian newspapers and continued to do so throughout the first half of 1992.²⁶¹ *Izvestiia* reportedly received fifty-seven million rubles from the Press Ministry.²⁶²

When the Russian legislature also began to award its own subsidies in March 1992, it revealed the potential negative ramifications of the subsidy approach. The Supreme Soviet demonstrated that funding gave authorities a powerful weapon to intervene in the marketplace and gave

254. *Id.* See Udaltsov, *supra* note 251.

255. *Publication Support Decree*, *supra* note 69, point 3.

256. See Udaltsov, *supra* note 251.

257. *Publication Support Decree*, *supra* note 69, point 3.

258. *Id.*

259. *Id.* point 5.

260. See Irina Demchenko, "Chetvertaia Vlast' " Dolzhna Stat' Vlast'iu [The "Fourth Estate" Must Become a Power], *IZVESTIIA*, Feb. 27, 1992, at 3.

261. See TASS, Feb. 10, 1992, in *F.B.I.S.-SOV*, Feb. 12, 1992, at 39.

262. See Berger, *supra* note 67, at 2.

avored publications an unfair competitive advantage. This is precisely what the parliament threatened to accomplish in March 1992, when it granted its own journal *Rossiiskaia Gazeta* a 273.1 million ruble allocation,²⁶³ an action *Izvestiia* vehemently protested.²⁶⁴ To exacerbate the problem, there existed no established application process or meaningful standards to govern selection of beneficiaries or grant amounts.²⁶⁵ This permitted authorities unlimited discretion and sometimes led to incongruous results. For example, *Izvestiia*, which had loudly proclaimed its opposition to subsidies, suddenly found itself the recipient of an unsolicited 900 million ruble "gift" from the Russian parliament.²⁶⁶

On a more theoretical level, there began to be serious concern about the impact of subsidies on the content and role of publications. *Izvestiia*, like other Russian newspapers, pondered whether journals "purchased" by authorities in fact could function as an independent "Fourth Estate."²⁶⁷ Yet, without such financial assistance, few publications were likely to withstand El'tsin's economic reforms. Thus, subsidies presented the Russian print media with a difficult choice, between the immediate imperatives of survival and the long-term goal of autonomy. A March 1992 *Izvestiia* title captured the essence of this dilemma: "At What Price Press Independence."²⁶⁸

In the struggle to control the mass media, Russian leaders explicitly have ruled out less threatening and costly measures of economic support. Russian newspaper representatives, the Mass Media Committee, and the

263. Postfactum, Mar. 9, 1992, in F.B.I.S.-SOV, Mar. 11, 1992, at 41.

264. See, e.g., Mikhail Berger, *Pochem Nezavisimost' Pressy. Rossiiskie Vlasti Obzhdaiut Vopros o Podderzhke Gazet [At What Price Press Independence. Russian Authorities Discuss the Question of Support for Newspapers]*, IZVESTIIA, Mar. 20, 1992, at 2.

265. See Aleksandr Lin'kov, *Est' "Komsomol'skii" Milliard! [One Billion for "Komosomol'skaia Pravda"]*, ROSSIISKAIA GAZETA, Mar. 19, 1992, at 7; Mikhail Shevelev, *Pressa i Vlast': My—Ne Para [Press and Authorities: We Are Not a Couple]*, MOSKOVSKIE NOVOSTI, Mar. 29, 1992, at 21. According to recent reports, a draft law on subsidies has been proposed, which will formalize criteria for selection. See Dmitrii Frolov, *Griadet Reforma Dotirovaniia Pressy. Ministr Pechati Khochet Ponomomu Raspredelit' 24 Milliarda Rublei Dotatsii [Reform of Press Subsidies Is Approaching. The Press Minister Wants to Establish a New Way to Distribute 24 Billion Rubles in Subsidies]*, NEZAVISIMAIA GAZETA, Feb. 9, 1993, at 1.

266. See Shevelev, *supra* note 265, at 21. For an example of *Izvestiia's* public rejection of subsidies, see "*Izvestiia*"—75, *No Oni Ne Stareiut*, *supra* note 66, at 1 (Editor in Chief Golembiovskii announcing at *Izvestiia's* 75th anniversary celebration: "We simply will not accept any government subsidies.").

267. See, e.g., Mikhail Berger, "*Pravda*" *Vozobnovila Vykhod ["Pravda" Has Resumed Publication]*, IZVESTIIA, Apr. 8, 1992, at 2; Somov, *supra* note 63.

268. Berger, *supra* note 264.

Press Ministry have discovered this through bitter experience. In 1992, they advocated and codified in draft legislation proposals for across-the-board tax exemptions and interest-free or low-interest loans.²⁶⁹ Due to strong opposition from parliamentary leaders, however, no such provisions appeared in the final text of the mass media resolution adopted in July 1992.²⁷⁰

Interestingly, the subsidy question has reemerged in recent months. Today, both executive and legislature have rejected alternative approaches. The subsidy issue has become a constitutional crisis in microcosm. A serious battle is underway to determine who has the authority to grant (and withhold) subsidies: the statutorily designated government body, the Press Ministry,²⁷¹ the presidential mega agency, the Federal Information Center,²⁷² or the Supreme Soviet Presidium.²⁷³ Consequently, the central concern is not formulation of the most effective remedial measures for Russian newspapers but rather domination of the subsidy process and, thus, of the press itself.

B. *Implications for the Present*

The flawed format of the Russian Constitution is a central issue in today's crisis of power. Internal contradictions, errors, and ambiguities have directly contributed to conflict among president, parliament, and

269. See Lidia Luk'ianova, *Ne za Tem Ia Prishla v Ministerstvo. . .* [That Is Not What I Came to the Ministry For. . .], KURANTY, Apr. 14, 1992, at 6; *Pressu Sdelat' Tsvilizovannoi* [Civilizing the Press], ROSSIISKAIA GAZETA, June 17, 1992, at 2; Postfactum, July 11, 1992, in F.B.I.S.-SOV, July 13, 1992, at 50.

270. See Orlov & Zaitseva, *supra* note 113; *Mass Media Support Resolution*, *supra* note 113.

271. *Mass Media Support Resolution*, *supra* note 113, point 3. See Vladimir Nazarov, Interview with Mikhail Fedotov, KURANTY, Jan. 13, 1993, at 7; N. Vainonen, Interview with Mikhail Fedotov, ROSSIISKIE VESTI, Jan. 10, 1993, at 2.

272. The presidential decree creating the Federal Information Center gave this body the broad authority to "coordinate state mass media policy." *Federal Information Center Decree*, *supra* note 16, point 1. It was unclear whether the Federal Information Center's powers included distribution of subsidies to state media. Although Mikhail Poltoranin, head of the Center, insisted that his agency would not intrude into Press Ministry regulatory functions (see, e.g., Podkopalov, *supra* note 206), he gave mixed signals regarding the subsidy issue. See, e.g., Andrei Egorshv, Interview with Mikhail Poltoranin, Ostankino Television, Dec. 31, 1992, translated in F.B.I.S.-SOV, Jan. 4, 1993, at 28.

273. Under draft amendments to the Mass Media Support Resolution, the Supreme Soviet Presidium replaces the Press Ministry as the authority in charge of press subsidies. See Iuliia Khaitina, *Prezidium k Roli Glavnogo Tsenzora? Udarim Rublem po Neposlushnoi Pechati* [Presidium in Role of Chief Censor? Let Us Hit the Disobedient Press in the Pocket], MOSKOVSKII KOMSOMOLETS, Jan. 21, 1993, at 1.

Constitutional Court. As Boris El'tsin noted in his March 24th message to the Supreme Soviet, "One and the same act can be deemed constitutional and also nonconstitutional and even anticonstitutional, and all three verdicts will be impeccably supported by correct citation of the numbers of articles, paragraphs, and references to the constitution currently in force."²⁷⁴

The core difficulty has been the internal inconsistency between the constitutional guarantee of separation of powers (Article 1) and definition of the Congress of People's Deputies as the "supreme organ of state power . . . [with] explicit legal authority to examine and resolve any question within Russian Federation jurisdiction" (Article 104). To compound the problem, the Constitution fails to stipulate a detailed, rigorous amendment process.²⁷⁵ In the past nine months, the Russian parliament has exploited this lacuna to the utmost to enhance its constitutional powers at the expense of both president and Constitutional Court.²⁷⁶

All sides acknowledge serious defects in the existing Constitution. Nonetheless, as the March power struggle revealed, they have taken three distinct approaches. The Russian legislature has insisted on strict observance of the letter of the law, despite its recognized shortcomings.²⁷⁷ President El'tsin, in contrast, has exalted the spirit of the Constitution. He has dismissed parliamentary claims as legalistic and has cited abstract notions of "law as justice" and popular sovereignty to question and ultimately disregard constitutional mandates.²⁷⁸ The Constitutional Court has opted to take a middle ground. It has sought to enforce the text as written, but, at the same time, identify and urge rapid amendment of the most troublesome provisions.²⁷⁹ These divergent responses

274. Boris El'tsin, *Poslanie Prezidenta Rossiiskoi Federatsii Verkhovnomu Sovetu Rossiiskoi Federatsii O Konstitutsionnosti* [Message from the Russian Federation President to the Russian Federation Supreme Soviet On Constitutionality] (Mar. 24, 1993), in ROSSIISKAIA GAZETA, Mar. 26, 1993, at 1, 2.

275. See Aleksandr Krasulin, Interview with Constitutional Court Judge Vladimir Oleinik, ITAR-TASS, Apr. 6, 1993, in F.B.I.S.-SOV, Apr. 7, 1993, at 46.

276. See *supra* notes 209, 240 and accompanying text; Fedorov, *supra* note 195.

277. See, e.g., Russian Federation Supreme Soviet Presidium Appeal, *K Grazhdanam Rossiiskoi Federatsii* [To the Citizens of the Russian Federation] (Mar. 20, 1993), ROSSIISKAIA GAZETA, Mar. 23, 1993, at 1.

278. See, e.g., El'tsin, *supra* note 274.

279. See Constitutional Court Report to Russian Supreme Soviet (Mar. 5, 1993), in ROSSIISKAIA GAZETA, Mar. 11, 1993, at 3 [hereinafter Constitutional Court Report]; Valerii Zor'kin, Speech to Ninth Congress of People's Deputies (Mar. 26, 1993), in ROSSIISKAIA GAZETA, Mar. 27, 1993, at 1 [hereinafter Zor'kin Speech]; Valerii Zor'kin, *We Have All Sworn Allegiance to the Same Constitution*, ROSSIISKAIA GAZETA, Apr. 27, 1993, at 2, translated in F.B.I.S.-SOV, Apr. 28, 1993, at 25.

indicate that one essential prerequisite for future political and legal stability is adoption of a new, carefully crafted, and mutually acceptable²⁸⁰ Russian Constitution.

V. ENFORCEMENT OF LAW IN POST-SOVIET RUSSIA

Izvestiia's final and most profound lesson is the inadequate enforcement of law in post-Soviet Russia.²⁸¹ The case reveals significant statutory, institutional, and attitudinal obstacles and barriers. This has serious implications for future Russian legal reform efforts. It suggests that even the most meticulously designed legal provisions will remain ineffective without accompanying enforcement mechanisms and, most importantly, societal and leadership commitment to their adherence.

A. Statutory Gaps

The *Izvestiia* experience indicates that one explanation for Russian difficulties in enforcement has been the failure to stipulate concrete mechanisms and procedures within the four corners of the laws to be applied. After enactment of the *Izvestiia* Resolution and *Izvestiia* Publishing House Resolution, commentators and authorities specifically

280. Constitutional Court Chairman Valerii Zor'kin has aptly noted, "In the same way, no constitution can be imposed by one side on the other. After all, a constitution means a compromise." Interview with Valerii Zor'kin, Russian Television Network, May 17, 1993, *translated in* F.B.I.S.-SOV, May 18, 1993, at 22. Thus far, the Russian president and parliament have veered away from this approach. Following his decisive victory in the April 25th referendum, Boris El'tsin issued a new draft Constitution, which was published in *Izvestiia* on April 30, 1993. On April 29th, the Supreme Soviet passed a decree regarding procedures for adoption of a new Constitution. This prompted considerable concern that "the political crisis in Russia may soon be transformed into a struggle of two constitutions." Veronika Kutsyllo, *El'tsin Has Presented His Draft Constitution. Boris El'tsin Will Take Full Advantage of Referendum Results*, KOMMERSANT-DAILY, Apr. 30, 1993, at 9, *translated in* F.B.I.S.-SOV, May 3, 1993, at 39, 40. On May 8, 1993, the Constitutional Commission published an alternate draft Constitution in *Rossiiskaia Gazeta*. On July 21, 1993, the Constitutional Conference version appeared in *Krasnaia Zvezda*.

281. For a superb, in-depth treatment of this issue, see B. I. Sazonov, *Sotsial'nye, Organizatsionnye i Pravovye Osnovy Mekhanizma Deistviia Zakona* [Social, Organizational and Legal Bases for Implementation of Law], GOSUDARSTVO I PRAVO, no. 1, 23 (1993). One commentator has noted a possible advantage of this lack of enforcement: "The contradictory nature of Russian laws, which reaches the absurd, is rectified by their optional application." Iurii Baturin, *cited in* *Zakony Vne Zakona: Odin iz Avtorov Zakona o Pechati Iurii Baturin Kommentiruet Postanovlenie S'ezda* [Laws Outside the Law: Iurii Baturin, One of the Authors of the Press Law, Comments on Congress Decree], NEZAVISIMAIA GAZETA, Apr. 3, 1993, at 5.

identified this "acute question."²⁸² The result was considerable uncertainty about the practical effect of the new law, a fact that only fueled existing tensions.

Izvestiia's defamation action against Ruslan Khasbulatov²⁸³ was particularly illustrative of this problem. The newspaper sought two remedies, retraction and monetary damages. It rapidly discovered, however, that despite explicit statutory guarantees for "defense of honor and dignity,"²⁸⁴ it was, in fact, "virtually unprotected from slander and defamation."²⁸⁵ Due to gaps and inconsistencies in current Russian law and practice, there are no clearcut standards or enforceable rights to damages for injury to business reputation.²⁸⁶ Not surprisingly, *Izvestiia's* suit was ultimately dismissed in October 1992.²⁸⁷

A review of recent statutes reveals that enactment of "toothless"²⁸⁸ legislation is common in post-Soviet Russia. One example of this phenomenon is the much vaunted Russian Mass Media Law, which has proven to be essentially a dead letter for precisely this reason.²⁸⁹ All sides now are engaged in a competition to introduce "specific legal levers"²⁹⁰ to

282. Chugaev, *supra* note 114. After passage of the *Izvestiia* Publishing House Resolution, Voronin was forced to issue a supplementary act "in fulfillment" of the resolution. See *supra* notes 145, 147 and accompanying text.

283. See *supra* notes 81-82 and accompanying text.

284. GK RSFSR art. 7.

285. *Ob Iske "Izvestii" k R. Khasbulatovu*, *supra* note 81.

286. One major problem in pursuing the case was uncertainty regarding the applicability of the Fundamentals of Civil Legislation of the USSR and Union Republics. This law, which specifically provided in its Article 7 for material damages, was slated to enter into force on January 1, 1992. By that time, however, the USSR had ceased to exist. On March 3, 1993, the Supreme Soviet issued a resolution providing specifically for the applicability of the Fundamentals of Civil Legislation to violations occurring after August 3, 1992. See ROSSIISKAIA GAZETA, Mar. 24, 1993, at 5. For other discussion of the defamation action, see Nadein, *supra* note 81; Tamara Zamiatina, ITAR-TASS, Apr. 14, 1992, in F.B.I.S.-SOV, Apr. 15, 1992, at 25. An American lawyer suggested that another obstacle for *Izvestiia* might be judicial tolerance for politicians' nonobservance of property rights. Nadein, *supra* note 81.

287. See IZVESTIIA, Oct. 13, 1992, at 2.

288. Zhigulin, *cited in* Zargarian, *supra* note 113.

289. See Mikhail Poltoranin, *Pressa v Rossii Uzhe Stala Chervertoi Vlast'iu* [The Press in Russia Has Already Become the Fourth Estate], IZVESTIIA, Apr. 21, 1992, at 2. Another example is the State Border Law, adopted on April 1, 1993, which includes no provisions regarding liability for its violation. See Anatolii Stasovskii, *Granitsa bez Zakona—Ne Granitsa. Gosudarstvo bez Granitzy—Ne Gosudarstvo* [A Border Without a Law Is No Border. A State Without a Border Is No State], KRASNAIA ZVEZDA, Apr. 3, 1993, at 1.

290. M. Mitiukov, Chairman of the Legislation Committee, *cited in* Iurii Feofanov, *Ne Svorachivaet li Nasha Demokratia na Leninskii Put'?* [Is Our Democracy Not

ensure "suitable" implementation of the statute.²⁹¹

Similar defects exist in presidential and administrative acts.²⁹² The problem is compounded in this context, however, by the absence of any formal structures to implement presidential measures.²⁹³ In recent months, both President El'tsin and the Council of Ministers have taken steps to improve enforcement of their respective acts. On April 30, 1993, El'tsin formally created a "Control-Observation Council" and "Control Department" to monitor executive fulfillment of presidential instructions.²⁹⁴ The Council of Ministers also has announced formation of a special supervisory council to promote lower-level compliance with administrative regulations.²⁹⁵

Turning on to the Leninist Path?, IZVESTIIA, Aug. 20, 1992, at 3.

291. Some of the proposed and/or adopted changes have included amendments to the Criminal Code, Criminal Procedure Code, and Administrative Offenses Code to introduce liability for infringing freedom of speech, abusing freedom of speech, and insulting high officials; increased penalties on editors in chief for press leaks of state secrets; measures to monitor compliance with Mass Media Law provisions; and steps to limit media monopolies. See, e.g., *id.*; Georgii Ivanov-Smolenskii, *Zakon O SMI Ne Budet Pozvoleno Narushat' ni "Dniu", ni Drugim Izdaniiam* [Neither "Den" Nor Other Publications Will Be Allowed to Violate Mass Media Law], IZVESTIIA, May 18, 1993, at 2; Maria Kuzmenkova, Interview of Mikhail Poltoranin, ITAR-TASS, Oct. 30, 1992, in F.B.I.S.-SOV, Nov. 3, 1992, at 47; Svetlana Orliuk, "Glavlit" Returns? Security Specialist Vladimir Rubanov Comments on New Draft Law "On State Secrets," NOVAIA EZHEDNEVNAIA GAZETA, July 23, 1993, at 2, translated in F.B.I.S.-SOV, July 26, 1993, at 26; Aleksandr Shinkin, *Pir Vtoroi Drevneishei. . . Razgovor s "Dushitelem Svobody" Vladimirom Lisinym* [Feast of the Second Oldest. . . A Talk with the "Stifler of Truth" Vladimir Lisin], PRAVDA, May 12, 1993, at 2. On July 15, 1993, the Supreme Soviet formally created the so-called Federal Council Ensuring Freedom of Speech in State Television and Radio Broadcasting to monitor the electronic media. For the text of the relevant resolution and supplementary provisional statute see ROSSIISKAI GAZETA, July 30, 1993, at 5.

292. For a detailed discussion of nonimplementation of presidential and administrative acts, see Aleksandr Rutskoii, Speech to Supreme Soviet (Apr. 16, 1993), Russian Television Network, Apr. 16, 1993, translated in F.B.I.S.-SOV, Apr. 19, 1993, at 52.

293. See Andrei Krasnov, Radio Rossii, Jan. 13, 1993, translated in F.B.I.S.-SOV, Jan. 14, 1993, at 25.

294. *Ukaz No. 573 O Kontrol'no-Nabliudatel'nom Sovete pri Rukovoditele Administratsii Prezidenta Rossiiskoi Federatsii i Kontrol'nom Upravlenii Administratsii Prezidenta Rossiiskoi Federatsii* [Decree No. 573 On the Control-Observation Council for Leadership of the Russian Federation Presidential Administration and the Control Department of the Russian Federation Presidential Administration] (Apr. 30, 1993), in ROSSIISKIE VESTI, May 21, 1993, at 7.

295. See Interview with Vladimir Shumeiko, Interfax, Feb. 5, 1993, in F.B.I.S.-SOV, Feb. 9, 1993, at 21.

B. Institutional Obstacles

One of the most striking features of the *Izvestiia* case is the virtual absence of the judiciary.²⁹⁶ Under both Soviet and Russian mass media legislation, the initial conflict over newspaper formation and registration was an issue for court, not legislative or presidential, determination.²⁹⁷ Likewise, the subsequent disputes regarding use of state property, creation of limited liability spin-off companies, and leadership-initiated liquidation and reorganization of existing economic entities were matters specifically within the statutorily designated competence of Russian courts and *arbitrazh* tribunals.²⁹⁸ Yet, president and parliament consistently chose to bypass formal dispute resolution channels and deal with *Izvestiia* by direct fiat. This lack of deference suggests that even in the post-Soviet era, the judiciary remains Russia's weakest branch of government.²⁹⁹

The *Izvestiia* experience also offers some disturbing insights into the evolving role and functions of the Russian procuracy. According to Rus-

296. The Constitutional Court is a special quasi-judicial organ and will be discussed separately below. See *infra* notes 320-35 and accompanying text.

297. *USSR Press Law*, *supra* note 24, art. 13; *Russian Mass Media Law*, *supra* note 79, art. 6.

298. *Russian Enterprise Law*, *supra* note 87, arts. 16, 20, 37; *Russian Ownership Law*, *supra* note 89, arts. 30, 31, 32; *RSFSR Council of Ministers Decree No. 601 On Joint-Stock Companies* arts. 141, 142 (Dec. 25, 1990), translated in KAJ HOBER, *JOINT VENTURES IN THE SOVIET UNION: A LEGAL TREATISE*, app. 48 (1992). For Russian judicial and *arbitrazh* cases dealing with these issues, see, e.g., Vladimir Verin, *Egor Iakovlev Snova Ne Prav [Egor Iakovlev Is Wrong Again]*, *PRAVDA*, May 7, 1992, at 2 (discussing Supreme Arbitrazh Court's April 21, 1992 ruling against attempted government liquidation of a television enterprise); *Narodnyi Sud Otklonil Isk Mininformpechata k "Sovetskoi Rossii": Sud Nad Gazetoi [People's Court Rejects Information and Press Ministry's Suit Against "Sovetskaia Rossiia"; Court Case Over Newspaper]*, *SOVETSKAIA ROSSIYA*, May 18, 1993, at 1 (noting judicial decision against termination of *Sovetskaia Rossiia*).

299. See Berman, *supra* note 233, at 57. Even under Gorbachev, the judiciary remained the weakest branch of government. Valery Savitsky, *What Kind of Court and Procuracy?*, in *TOWARD THE "RULE OF LAW" IN RUSSIA?*, *supra* note 233, at 377, 378. There may be change in the near future. In an April 23, 1993 radio interview, Sergei Filatov pledged that "in the coming months we will start to actively carry out reforms of judicial bodies." Filatov, *cited in* *Programma Radio Odin Network*, Apr. 23, 1993, translated in F.B.I.S.-SOV, Apr. 26, 1993, at 70, 73. According to a recent interview with Constitutional Court Judge Gadzhiev, the Russian Supreme Court specifically refused to hear the *Izvestiia* case. It was for this reason that the Constitutional Court had to become involved. Gadzhiev suggested that there may be a future *arbitrazh* decision regarding *Izvestiia's* relationship with *Izvestiia* Publishing House. Olga Kondrateva, *Interview with Gadis A. Gadzhiev*, *ROSSIISKAIA GAZETA*, May 22, 1993, at 2.

sian legislation, the procuracy is a neutral, independent institution whose tasks include "ensuring supremacy of law and strengthening of legality, [and] the socioeconomic, political, and other rights and freedoms of citizens."³⁰⁰ The *Izvestiia* case suggests a marked divergence between law and reality. It reveals a pattern on the part of the procuracy of increasing receptivity to political pressure, subordination to parliamentary dictate, and inattention to legal procedures and guarantees.³⁰¹ These trends have only intensified in recent months.³⁰² The procuracy has rapidly emerged as the de facto investigatory arm of the Russian legislature.³⁰³

300. *Zakon No. 2202-1 RSFSR O Prokurature Rossiiskoi Federatsii* [RSFSR Law No. 2202-1 On the Russian Federation Procuracy] arts. 2, 5 (Jan. 17, 1992), in ROSSIISKAIA GAZETA, Feb. 18, 1992, at 3. See generally Valentin Stepankov, *Prokuror Rossii Dolzhen Oshchutit' Sebia Gosudarstvennym Chelovekom. . .* [The Russian Procurator Must Be Perceived as a Man of the State. . .], ROSSIISKAIA GAZETA, Mar. 19, 1992, at 7.

301. See *supra* part II.C.

302. For criticisms and examples of procuracy failures to defend citizens' rights, susceptibility to political influence, and violations of laws, see, e.g., Pavel Anokhin, *Zakonodatel'iu, Zashchishchaiushchemu Svoi Prava, Sledovalo By Pozabotit'sia i o Pravakh Drugikh* [A Legislator, Defending His Rights, Should Show Concern Also for Others' Rights], ROSSIISKAIA GAZETA, Mar. 11, 1992, at 6; Mikhail Gurevich, *Forecasts According to Stepankov. Actors Wonder What Is Inside General Prosecutor's Safe*, MOSKOVSKII KOMSOMOLET, Apr. 9, 1993, at 1, translated in F.B.I.S.-SOV, Apr. 12, 1993, at 27; Politkovskii, Interview with Valentin Stepankov, Ostankino Television, Oct. 23, 1992, translated in F.B.I.S.-SOV, Oct. 26, 1992, at 31; Elena Shaposhnikova, *The Chief Defense Attorney Promises Us*, ROSSIISKAIA GAZETA, Aug. 7, 1992, at 4, translated in F.B.I.S.-SOV, Aug. 21, 1992, at 18. The most publicized recent example of procuratorial violations of procedures occurred in the case against the August 1991 coup organizers. Particularly notable was the pretrial publication and radio broadcast of Procurator General Stepankov's book, *KREMLEVSKII ZAGOVOR* [KREMLIN PLOT], which characterized the defendants as guilty. See Oleg Rubnikovich, *GKChP Protiv Avtorov "Kremlevskogo Zagorova": Eks-Prem'er Utverzhdaet, Chto On Ne Alkogolik* [Putschists Against "Kremlin Plot" Authors: Ex-Premier Insists He Is Not an Alcoholic], NEZAVISIMAIA GAZETA, Apr. 14, 1993, at 1. Because of these violations, on May 18th, the Russian Supreme Court granted defense lawyers' request for a dismissal of the state procurators. It called for parliament to set up a special independent procuracy body and suspended the SCSE trial until resolution of these procuratorial issues. Radio Rossii Network, May 18, 1993, translated in F.B.I.S.-SOV, May 19, 1993, at 36.

303. See Mikhail Poltoranin, cited in Ostankino Television, translated in F.B.I.S.-SOV, Apr. 1, 1993, at 27, 27-28 ("The procurator general, Stepankov, is constantly at the ready with his finger on the trigger and is waiting to be brought out again and told: investigate this and do that.") But see Valentin Stepankov, cited in Aleksandr Nadzharov, *Kak Schitat' Golosa na Referendume: General'nyi Prokuror Schitaet Reshenie S'ezda Narusheniem Zakona* [How To Count Votes in the Referendum: Procurator General Considers Congress Decision a Violation of Law], NEZAVISIMAIA GAZETA, Apr. 20, 1993, at 2 (Stepankov insisting on procuratorial neutrality and criti-

Parliament now claims the powers to appoint the procuracy's highest officer, determine its salary scale, direct its work, and even extend to it special legislative protection services.³⁰⁴ In the process, executive authorities have turned to their own agencies to carry out assigned procuratorial duties.³⁰⁵ There are even reports of future plans to abolish the procuracy altogether or subordinate it to executive control.³⁰⁶

Furthermore, the *Izvestiia* case indicates the inadequacy of existing structures to enforce interrepublic rights. Interestingly, shortly after adoption of the *Izvestiia* Resolution, the Guild of Parliamentary Journalists formally appealed to signatories of the Agreement On Establishment of the CIS Interparliamentary Assembly.³⁰⁷ The Guild requested immediate convocation of the Assembly for purposes of resolving relations between state organs and the mass media. *Izvestiia* ultimately received no assistance, however, from the Assembly or any other CIS institution.

Since its formation in December 1991, the CIS has proven to be largely an empty shell. Due to sensitivity regarding republic sovereignty and fears of Russian dominance, CIS members have deliberately rejected mandatory supranational mechanisms in favor of voluntary coordination and consultation among republic leaders.³⁰⁸ In its first year of existence, the CIS produced over 200 accords, few of which have been implemented.³⁰⁹ In January 1993, CIS heads of state met in Minsk to develop more effective legal and organizational structures. Included in the agenda

cizing Congress referendum decision).

304. See Politkovskii, *supra* note 302; Valerii Savitskii, *Departament Okhranki? [Protection Department?]*, IZVESTIIA, Apr. 6, 1993, at 2.

305. See, e.g., Ostalskii & Karpov, *supra* note 234 (describing El'tsin's use of Federal Security Agency rather than procuracy despite Russian Mass Media Law provisions to the contrary). Procurator General Stepankov has noted that under the current scheme his agency has no "control" over many executive organs' lawmaking activities. Valerii Stepankov, Speech to Supreme Soviet (Apr. 16, 1993), Russian Television Network, Apr. 16, 1993, translated in F.B.I.S.-SOV, Apr. 19, 1993, at 66, 66-68.

306. Stepankov, *supra* note 305, at 68.

307. See ITAR-TASS, July 27, 1992, in F.B.I.S.-SOV, July 29, 1992, at 26.

308. See *Trudnosti Sodruzhestva Preodolimy [The Commonwealth's Difficulties Are Surmountable]*, ROSSIISKAIA GAZETA, Jan. 16, 1993, at 7. For a general summary and analysis of the CIS, see Jan S. Adams, *Will the Post-Soviet Commonwealth Survive?* (Apr. 1993) (The Merston Ctr., Ohio State Univ.).

309. See Igor Sukhanov, *SNG: Posle Rossiiskogo Referenduma [CIS: After the Russian Referendum]*, ROSSIISKIE VESTI, Apr. 28, 1993, at 2; Valerii Vyzhutovich, *Iskusstvennoe Dykhanie: Vopros ob Ustave SNG v Minske, Vidimo, Budet Postavlen. No Vriadi Reshen [Artificial Respiration: The Question of the CIS Charter Will Obviously Be Raised. But It Is Unlikely to Be Resolved]*, IZVESTIIA, Jan. 22, 1993, at 2.

were proposals to activate the CIS Economic Court and to create a special Interstate Court for resolution of ethnic and interrepublic conflicts.³¹⁰ It is an open question whether either body will become a meaningful forum.³¹¹

Similarly, the *Izvestiia* case highlights a serious problem with enforcement of intrarepublic rights and interests.³¹² Recent events have reinforced this lesson. President and parliament have repeatedly issued acts directly violative of the republic guarantees set out in the 1992 Federation Treaty.³¹³ The only republic recourse has been nonobservance or appeal to central legislative and executive authorities or to the Constitutional Court to repeal such measures.³¹⁴ Republic leaders have identified as the major source of this difficulty Russia's failure to institute the ap-

310. See *Ustav SNG Ostavit Kazhdoi Strane Pravo Opredeliat' Svoiu Politiku* [CIS Charter Will Leave Each Country the Right to Determine Its Own Policy], ROSSIISKAIA GAZETA, Dec. 31, 1992, at 6; ITAR-TASS, Jan. 25, 1993, in F.B.I.S.-SOV, Jan. 26, 1993, at 7; Aleksandr Shagun, *16 Aprelia v Minski Sostoitsia Vneochedrednaia Vstrecha Glav Gosudarstv Sodruzhestva* [Extraordinary Meeting of CIS Heads of State Will Take Place 16 April in Minsk], IZVESTIIA, Apr. 14, 1993, at 1.

311. There are some promising recent trends. These include the Russian parliament's ratification of the CIS Charter on April 15, 1993 (*Postanovlenie Verkhovnogo Soveta Rossiiskoi Federatsii O Ratifikatsii Ustava Sodruzhestva Nezavisimykh Gosudarstv* [Russian Federation Supreme Soviet Resolution On Ratification of the Charter of the Commonwealth of Independent States] (Apr. 15, 1993), *Vedomosti RF*, no. 17, item 608 (1993)), the May 14, 1993 agreement by nine former republics to establish an economic union and CIS legal and organizational mechanisms (see Vladimir Gavrilenko, *Vneochedrednaia Vstrecha Liderov SNG—Ser'eznyi Etap v Razvitiu Sodruzhestva* [Extraordinary Meeting of CIS Leaders—Serious Stage in Developing Commonwealth], KRASNAIA ZVEZDA, May 18, 1993, at 1), and the formal approval of Leonid Dashuk as chairman of the CIS Economic Court. See Pavel Shinkarenko, *Sodruzhestvo Vyhodit iz "Pike": Tak Mozhno Bylo By Okharakterizovat' Moskovkoe Soveshchanie v Verkhakh Uchastnikov Soveta Glav Gosudarstv-Chlenov SNG* [Commonwealth Pulls Itself Out of Its "Nosedive." This Is How the Moscow Summit Conference of Participants in the Council of Heads of State of CIS Member Countries Could Be Described], ROSSIISKIE VESTI, May 18, 1993, at 2.

312. See *supra* part III.C.

313. See Constitutional Court Report, *supra* note 279, point 3; Stanislav Shatalin, *Krizis Vlasti: Est' li Vyhod?* [The Crisis of Power: Is There a Way Out?], NEZAVISIMAIA GAZETA, Apr. 8, 1993, at 1.

314. For a discussion of republic nonobservance of federal laws, see Lenskii, *supra* note 241. For a recent example of a republic appeal, see Mordovian SSR Supreme Soviet Appeal, SOVETSKAIA ROSSIJA, Apr. 15, 1993, at 2 (responding to El'tsin's decree suspending a Mordovian law). Pursuant to Article 59 of the Constitutional Court Law, the highest republic organs of state power have the authority to petition for Constitutional Court review of the constitutionality of international treaties or normative acts. *Constitutional Court Law*, *supra* note 119, art. 59.

propriate machinery for enforcing Federation Treaty provisions. Accordingly, at the Eighth Congress on March 10, 1993, the Council of Heads of Republics formally called for creation of a commission to prepare a draft law on principles and mechanisms for Federation Treaty implementation.³¹⁵ Less than three weeks later, at the Ninth Congress, deputies from Nizhnii Novgorod proposed the rapid establishment of a powerful Council of the Federation.³¹⁶ Some leaders also have recommended including the Federation Treaty within the text of the new Russian Constitution to give it highest legal status and force.³¹⁷ The drafts published by President El'tsin and the Constitutional Commission, in fact, followed this suggestion.³¹⁸ If past practice is any guide, however, mere enshrinement in the Constitution is unlikely to secure in and of itself genuine recognition of republic sovereignty.³¹⁹

315. Radik Batyrshin, *Za El'tsinym—Glavy Respublik RF, Za Khasbulatovym—Glavy Sovetov* [For El'tsin—Heads of Russian Federation Republics, For Khasbulatov—Heads of Soviets], NEZAVISIMAIA GAZETA, Mar. 10, 1993, at 1.

316. Ideally, this body would give Russian Federation members a collective, meaningful voice in constitutional formulation and in future political decisionmaking. See Vitalii Portnikov, *Sovet Federatsii: Prizrak Razvala ili Put' k Soglasiiu?* [Council of the Federation: Specter of Disintegration or Path toward Accord?], NEZAVISIMAIA GAZETA, Mar. 30, 1993, at 1; Shatalin, *supra* note 313. Thus far, the republics have failed to endorse the proposal. See Radik Batyrshin, *Sovet Federatsii ili Soiuz Russkikh Zemel'? Ob'edinenie Respublik, Kraev i Oblastei Ves'ma Problematicno* [Council of the Federation or Union of Russian Lands? Unification of Republics, Krai and Oblast's Is Highly Problematic], NEZAVISIMAIA GAZETA, Mar. 31, 1993, at 3; Liubov' Tsukanova, *K Novoi Konstitutsii—Cherez Sovet Federatsii* [Towards a New Constitution—Through the Council of the Federation], ROSSIISKIE VESTI, May 22, 1993, at 2.

317. See Oleg Rumiantsev et al., *Osnova Federatsii: Konstitutsiia, Dogovor ili Sovet?* [Federation Basis: Constitution, Treaty or Council?], FEDERATSIIA, Mar. 30, 1993, at 2.

318. See El'tsin Draft, section two, and Constitutional Commission Draft, section four, version A, referred to in note 280. For critical reviews of both drafts' treatment of republic rights, see Vladimir Ermolin, *Konstitutsionny: Protsess Poshel: I Est' Nadezhda, Chto Tupik Emu Ne Grozit* [Constitutional Process Underway: And There Is Hope It Will Not Be Sidelined], KRASNAIA ZVEZDA, May 21, 1993, at 1; Roza Sergazieva, *Interviu v Kuluvarakh* [Interviews in the Corridors], ROSSIISKIE VESTI, May 27, 1993, at 1.

319. The issue of republic sovereignty becomes increasingly complicated as Khasbulatov and, especially, El'tsin vie for republic support in their struggle for control of Russia. See Batyrshin, *supra* note 315; Sergei Parkhomenko, *Konstitutsionnoe Soveschchanie: Za Kvadratnym Stolom o Piaty Storonakh. V Poiskakh Novykh Partnerov, Kreml' Osuivaet Novo-Ogarevskii Opyt* [Constitutional Conference: At a Square Table With Five Sides. As It Searches for New Partners, Kremlin Assimilates Novo-Ogarevo Experience], SEGODNIA, May 25, 1993, at 2. Moreover, to make matters even more complex, regional-level (oblast' and krai) leaders have begun to agitate for increased rights, often in

On a more positive note, the *Izvestiia* case points to one apparently promising development in post-Soviet law enforcement, the emergence of the Constitutional Court as a potential check on unconstitutional law-making activity. It is impressive that throughout the case all parties—newspaper staff, legislators, and administrative authorities—invoked Constitutional Court intervention.³²⁰ This trend has continued in 1993. Despite complaints about possible Constitutional Court bias, president and parliament alike have repeatedly turned to the Court to review the key contentious documents.³²¹ Perhaps, Chairman Zor'kin is justified, then, in describing the Court as a "little island of arbitration."³²²

Moreover, the Constitutional Court ruling on *Izvestiia* is encouraging. The Court went beyond obvious separation of powers violations to take a surprisingly sweeping stand in defense of citizens' rights. Most notably, it cited and upheld the broad constitutional guarantee of freedom of expression.³²³ It is regrettable that the Court did not also take advantage of

direct contradiction with republic positions. This has had a serious impact on the process of drafting and approving a new Russian Constitution. See Aleksei Tarasov, "Bomb Under Russia's Future." *Definition of Republics as Sovereign States Which Are Part of Russian Federation Is Unacceptable, Kray and Oblast Leaders Believe*, IZVESTIIA, June 24, 1993, at 1, translated in F.B.I.S.-SOV, June 25, 1993, at 21.

320. See *supra* part II.D.-E.

321. For example, the Supreme Soviet sought Constitutional Court review of El'tsin's March 20th Address and action (see *Postanovlenie No. 4648-1 Verkhovnogo Soveta Rossiiskoi Federatsii Ob Obrashchenii Prezidenta Rossiiskoi Federatsii k Grazhdanam Rossii 20 Marta 1993 goda* [Russian Federation Supreme Soviet Resolution No. 4648-1 On the Russian Federation President's 20 March 1993 Address to Russian Citizens], (Mar. 21, 1993), *Vedomosti RF*, no. 13, item 461 (1993)) and El'tsin's procedures for adoption of a new Constitution. See ITAR-TASS, May 19, 1993, translated in F.B.I.S.-SOV, May 20, 1993, at 44. El'tsin wrote to the Court in protest of Ninth Congress decisions. See Aleksandr Krasulin, ITAR-TASS, Mar. 31, 1993, translated in F.B.I.S.-SOV, Mar. 31, 1993, at 18. Deputies petitioned for review of the Ninth Congress Broadcast Resolution (see *supra* note 16), Constitutional Resolution, referendum definition, and attempts to impeach El'tsin. See Aleksandr Krasulin, ITAR-TASS, Apr. 9, 1993, in F.B.I.S.-SOV, Apr. 13, 1993, at 43.

322. Valerii Zor'kin, cited in K. Aleksandrov, *Kto Zashchitit "Tret'iu" Vlast'?* [Who Will Defend the "Third" Estate?], SOVETSKAIA ROSSIIA, Apr. 3, 1993, at 1.

323. *Constitutional Court Izvestiia Ruling*, *supra* note 156, point 1 (citing KONST. RF art. 43). In so doing, it appeared to send an unmistakable message to executive and legislative branches about recent moves to control the mass media. Unfortunately, one week later the Court sent contradictory signals when it upheld the Ninth Congress' repeal of presidential decrees on the mass media, confirmed the right of legislatures to be cofounders of state television and radio companies, and declined to rule on formation of observers' councils. ROSSIISKAIA GAZETA, June 19, 1993, at 5 [hereinafter *Constitutional Court Ruling on Congress Broadcast Resolution*].

the opportunity to condemn infractions of legislative procedures and to establish a constitutional standard of due process of lawmaking.³²⁴ Constitutional Court judges apparently discussed the issue in hearings but ultimately chose to address it only indirectly in the final opinion.³²⁵

At the same time, however, the *Izvestiia* experience reveals some of the limitations of the Constitutional Court. The most obvious of these was the lengthy delay in consideration of the case. The Constitutional Court promised a decision in late 1992, but failed to issue its opinion until May 1993, after the dispute had become essentially moot.³²⁶ This delay reflects the Court's heavy case load and inefficient organizational structure and procedures. In early May 1993, the Constitutional Court reported a backlog of 200 petitions and appeals.³²⁷ To remedy this situation, the Court has recommended a significant overhaul of existing Constitutional Court legislation. For instance, it has called for reduction of its quorum requirement, establishment of special chambers for resolution of individual complaints, and a prerequisite of at least fifty deputy signatures on petitions for consideration of parliamentary conflicts.³²⁸

Another serious problem in the present scheme is the absence of concrete mechanisms to implement Constitutional Court decisions. For example, in the *Izvestiia* case, the Constitutional Court could only request, not mandate, Supreme Soviet suspension of the *Izvestiia* Resolution pending review.³²⁹ The legislature never responded to the request or even discussed it in formal session.³³⁰ On the contrary, it proceeded to

324. See Foster, *supra* note 186. Note that in its decision on the Congress Broadcast Resolution, however, the Constitutional Court specifically cited legislative failures to comply with procedural requirements for adoption and publication. Nonetheless, the Court upheld the resolution. *Constitutional Court Ruling on Congress Broadcast Resolution*, *supra* note 323, points 1, 6.

325. See Iurii Feofanov, *Konstitutsionnyi Sud Rossii Zashchitil Svobodu Pechati i Pravovoi Poriadok* [Russian Constitutional Court Defends Freedom of Press and Legal Order], *IZVESTIIA*, May 20, 1993, at 1. The ruling cited violations of constitutional provisions on legislative chambers, commissions, and committees. *Constitutional Court Izvestiia Ruling*, *supra* note 156, point 1 (citing KONST. RF arts. 112, 117).

326. Fortunately for *Izvestiia*, the Supreme Soviet and its chairman dropped their direct challenge to the newspaper's status in the summer of 1992. Thus, according to Eduard Gonzal'ez, a member of *Izvestiia*'s editorial board, the ruling was significant for his newspaper's staff largely "from the point of view of principle." Tamara Zamiatina, *ITAR-TASS*, May 13, 1993, in *F.B.I.S.-SOV*, May 14, 1993, at 23.

327. See Sergei Ovsienko, *Konstitutsionnyi Sud Potonul v Khodatastvakh i Zhalobakh* [The Constitutional Court Drowned in Petitions and Appeals], *ROSSIISKIE VESTI*, May 8, 1993, at 2.

328. See Constitutional Court Report, *supra* note 279, point 5.

329. See *Constitutional Court Law*, *supra* note 119.

330. See Ivanov-Smolenskii, *supra* note 127.

form and register its own publication, *Izvestiia RF*.³³¹ This practice continues today. The executive and legislative branches consistently ignore Constitutional Court directives and execute laws under Constitutional Court consideration.³³² Yet, the Court lacks effective legal or practical means or sanctions to secure compliance.³³³

A final and potentially fatal flaw is the growing official and public perception of Constitutional Court politicization. Since December 1992, the Court and, most visibly, its chairman, Valerii Zor'kin, have become increasingly embroiled in the executive-legislative struggle for power.³³⁴ This has led to considerable debate about the Court's ability to operate as a neutral, disinterested tribunal.³³⁵ It remains to be seen what will be the full impact of this political involvement on the Constitutional Court's stature, credibility, and effectiveness in the difficult days ahead.

331. See *supra* notes 126-27 and accompanying text.

332. See, e.g., Aleksandrov, *supra* note 322 (refusal of El'tsin to accede to Constitutional Court request for materials relating to March 20 decree); Andrei Tarasov, *Iu. Voronin Presses Soviets Over Abolition of the Institution of President's Representatives*, *IZVESTIIA*, Apr. 17, 1993, at 1, translated in F.B.I.S.-SOV, Apr. 21, 1993, at 49 (discussing implementation of the March 29, 1993 Ninth Congress decree on abolition of local-level presidential representatives, which was under Constitutional Court review).

333. See Aleksandrov, *supra* note 322 (discussing lack of enforcement mechanisms and possible impact on future decisions regarding "shock therapy" and price deregulation decrees).

334. For example, Valerii Zor'kin played a prominent role at the Seventh, Eighth, and Ninth Congresses. See *supra* notes 5, 238 and accompanying text; Gennadii Talalae, *ITAR-TASS*, Mar. 12, 1993, translated in F.B.I.S.-SOV, Mar. 12, 1993, at 33. He frequently provided public personal commentary in the mass media on legislative and presidential actions. For a review of Zor'kin's political actions, see Robert Sharlet, *Russia: Chief Justice as Judicial Politician*, 2 *E. EUR. CONST. REV.* 28 (Spring 1993); Constitutional Court Deputy Chairman Nikolai Vitruk, cited in Nikolai Feofanov, *Pravo i Politika v Zshelonakh Tretei Vlasti [Law and Politics in Echelons of Third Power]*, *IZVESTIIA*, May 26, 1993, at 5.

335. See, e.g., Mikhail Gurevich, Interview with Mikhail Poltoranin, *MOSKOVSKII KOMSOMOLET*, Mar. 23, 1993, at 1; Konstantin Katanian, *Interviews with Constitutional Court Deputy Chairman Nikolai Vitruk and Constitutional Court Judge Anatolii Kononov*, *KURANTY*, Apr. 13, 1993, at 4; Evgenii Kiselev, Interviews with Constitutional Court Judge Anatolii Ametistov, *Ostankino Television*, Apr. 4, 1993, translated in F.B.I.S.-SOV, Apr. 5, 1993, at 34. For a defense of Constitutional Court politicization, see Ostapchuk, *supra* note 199.

It should be noted that there have been intense legislative and executive efforts to influence and/or undermine Constitutional Court actions. See, e.g., Aleksandrov, *supra* note 322; Aleksandr Balashov, *Judges Have Not Fully Agreed with Their Chairman*, *KOMMERSANT-DAILY*, Apr. 7, 1993, at 12, translated in F.B.I.S.-SOV, Apr. 8, 1993, at 27.

C. *Attitudinal Impediments*

The blatant disregard of law and legal institutions by Russia's highest officials was a consistent theme in the *Izvestiia* case.³³⁶ Indeed, the legal system proved virtually irrelevant. Personal intervention by El'tsin and Khasbulatov, not formal legal channels or organs, ultimately determined the fates of the *Izvestiia SSSR*, *Izvestiia*, and the *Izvestiia* Publishing House.

At the height of the *Izvestiia* dispute, Khasbulatov proclaimed that "the supreme legislative body is entitled to solve any problem."³³⁷ This included the right to assume judicial, even Constitutional Court, functions because "we defined court laws ourselves."³³⁸ In recent months, El'tsin has echoed these sentiments. He has openly asserted the authority to supplant legal institutions that fail to uphold his notion of legality.³³⁹ Some of his supporters have gone still further to insist that El'tsin himself is now the sole "guarantor" of the democratic, law-based state.³⁴⁰ Others have completely rejected existing enforcement mechanisms in favor of direct popular implementation of law.³⁴¹

Leadership devaluation of law has already had a demonstrable effect on post-Soviet Russia. In March 1993, it brought the country to the brink of civil war. At the March 26th emergency session of the Congress of People's Deputies, Valerii Zor'kin reminded president and legislators that the "main reason for the conflict is not only and not so much the text of the Constitution but authorities' failure to abide by the Constitution."³⁴² Unfortunately, his words fell on deaf ears. In their recent "war of constitutions," president and parliament have continued to focus on constitutional text rather than observance.³⁴³ As a result, a reenactment of the March confrontation appears imminent.

In a less immediate sense, the Russian leadership's negative attitude toward law threatens to undermine the very goal it espoused for its new order in December 1991—establishment of a democratic, law-based

336. See *supra* part II.C.-E.

337. Khasbulatov Interview, *supra* note 142, at 28.

338. *Id.*

339. See, e.g., El'tsin, March 20 Speech, *supra* note 2.

340. See, e.g., Boris Fedorov, *cited in* Russian Television Network, Mar. 23, 1993, *translated in* F.B.I.S.-SOV, Mar. 24, 1993, at 25; Andrei Kozyrev, *cited in* Georgii Shmelev, ITAR-TASS, Mar. 21, 1993, *translated in* F.B.I.S.-SOV, Mar. 22, 1993, at 24.

341. See, e.g., Anatolii Sobchak, *cited in* Ostankino Television, Mar. 24, 1993, *translated in* F.B.I.S.-SOV, Mar. 25, 1993, at 35.

342. Zor'kin Speech, *supra* note 279.

343. See *supra* note 280.

state. As Russian and Western scholars have noted, the essential prerequisite for success in this endeavor is the development of a national legal consciousness and, eventually, legal culture.³⁴⁴ This requires a concerted effort to inculcate in Russian officials and citizenry a genuine respect and confidence in legal norms, values, institutions, and processes. With the "barren legal culture"³⁴⁵ of the Russian and Soviet past and the crisis environment of the post-Soviet present, this is an extraordinarily difficult task. At the very least it demands clear, uncompromising leadership example and commitment. Presidential and parliamentary actions of the past few months fly in the face of this reform effort and put it in serious jeopardy. As Soviet of Nationalities Chairman Ramazan Abdulatipov recently remarked, "Seeing the president or a deputy 'overthrowing' the Constitution almost daily, is there any kind of law in which man ought to have faith? If a law adopted by the Supreme Soviet means absolutely nothing to top politicians, how can you force the man in the street to obey this document?"³⁴⁶

VI. CONCLUDING REFLECTIONS: PRESS, LAW, AND CRISIS

As Russia lurches from crisis to crisis, its leaders have reached accord on a single point, the dire necessity for a "stabilizing body."³⁴⁷ In the United States, two mechanisms that have answered this need are the press and the legal system. As the *Izvestiia* case has illustrated, neither has emerged as a force for stabilization in the Russian context. This

344. See, e.g., V. S. Nevsesiants, cited in Sharlet, *supra* note 17, at 149 n.88; A. P. Semitko, *Russkaia Pravovaia Kul'tura: Mifologicheskie i Sotsial'no-Ekonomicheskie Istoiki i Predposylki* [Russian Legal Culture: Mythological and Socio-Economic Sources and Premises], *GOSUDARSTVO I PRAVO*, no. 10, 108 (1992); Robert Sharlet, *The Fate of Individual Rights in the Age of Perestroika*, in TOWARD THE "RULE OF LAW" IN RUSSIA?, *supra* note 233, at 197, 199; Louise I. Shelley, *Legal Consciousness and the Pravovoe Gosudarstvo*, in TOWARD THE "RULE OF LAW" IN RUSSIA?, *supra* note 233, at 63; TASS, *Vysokoe Napriazhenie—Kazhdomu Dniu Perestroiki* [Great Effort—for Every Day of Perestroika], *PRAVDA*, Feb. 2, 1988, at 2.

345. Albert Schmidt, *Soviet Legal Developments 1917—1990: A Comment*, in TOWARD THE "RULE OF LAW" IN RUSSIA?, *supra* note 233, at 339, 341. See generally HAROLD J. BERMAN, *JUSTICE IN THE U.S.S.R.: AN INTERPRETATION OF SOVIET LAW 279-82* (rev. ed. 1963); RICHARD S. WORTMAN, *THE DEVELOPMENT OF A RUSSIAN LEGAL CONSCIOUSNESS* (1976); Shelley, *supra* note 344, at 64-67.

346. Ramazan Abdulatipov, cited in Viktor Shirokov, *Ramazan Abdulatipov: "My Sluzhim Rossii . . ."* [Ramazan Abdulatipov: "We Serve Russia. . ."], *PRAVDA*, Apr. 16, 1993, at 1.

347. Aleksandr Rutskoi, Speech to Ninth Congress of People's Deputies (Mar. 26, 1993), Russian Television Network, Mar. 26, 1993, translated in F.B.I.S.-SOV, Mar. 29, 1993, at 17, 19.

raises challenging questions about the relationship between press, law, and crisis in the post-Soviet era.

A. *Press and Stabilization*

The initial Russian justifications for freedom of the press were strikingly similar to their United States counterparts. Proponents argued that an independent Fourth Estate would expose and check potential abuses and "mistakes" by executive, legislative, and judicial branches;³⁴⁸ provide the citizenry with the "full and objective" information essential for democratic self-governance;³⁴⁹ assist in the spiritual liberation of the populace from the shackles of socialism;³⁵⁰ offer a forum for introduction, comparison, and debate of reform proposals;³⁵¹ and "consolidate" Rus-

348. See, e.g., Viktor Kozhemiako, Interview with Vitalii Tretiakov, PRAVDA, Nov. 1, 1991, at 1; Mikhail Poltoranin, *Pressa v Rossii Uzhe Stala Chetvertoi Vlast'iu* [The Press in Russia Has Already Become the Fourth Estate], IZVESTIIA, Apr. 21, 1992, at 2. A list of rationales appears in Lev Gudkov & Boris Dubin, *Konets Kharizmaticheskoi Epokhi: Pechat' i Izmeneniia v Sistemakh Tsennosti Obshchestva* [The End of the Charismatic Epoch: The Press and Changes in the System of Societal Values], SVOBODNAIA MYSL', nos. 5, 32 (1993). For the clearest statement of United States notions of the press as a "Fourth Estate," see Potter Stewart, "Or of the Press," HASTINGS L. J. 631 (1975). The definitive work on the "checking" rationale is Vincent Blasi, *The Checking Value of the First Amendment*, 1977 AM. B. FOUND. RES. J. 521 (1977).

349. See, e.g., Igor Pisarskii, cited in *V Zashchitu Svobody Slova*, supra note 114. This rationale resembles the United States "self-government" argument (see ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* (1948); ALEXANDER MEIKLEJOHN, *POLITICAL FREEDOM: THE CONSTITUTIONAL POWERS OF THE PEOPLE* (1965)) and "right to know" argument (see POWE, supra note 12, at 235-59; David M. O'Brien, *The First Amendment and the Public's "Right to Know,"* 7 HASTINGS CONST. L.Q. 579 (1980)).

350. See, e.g., Nikolai Andreev, *Pechati Pridetsia Pomoch'* [The Press Will Need to Be Helped], IZVESTIIA, Feb. 20, 1992, at 2; Aleksei Kiva, *Eto Sladkoe Slovo "Demokratiia"* [That Sweet Word "Democracy"], KULTURA, Jan. 11, 1992, at 1; *Help Agrarian Publications! The Country's Scientists Appeal*, SEL'SKAIA ZHIZN', Mar. 13, 1992, at 2, translated in F.B.I.S.-USSR, Mar. 27, 1992, at 80; Dmitrii Volkogonov, cited in *V Zashchitu Svobody Slova*, supra note 114. The "liberty" or "self-realization" rationale for freedom of expression, which has been articulated most eloquently by C. Edwin Baker, seems to have particular force in the post-socialist context. See C. EDWIN BAKER, *HUMAN LIBERTY AND FREEDOM OF SPEECH* (1989); ZECHARIAH CHAFEE, *FREE SPEECH IN THE UNITED STATES* 33 (1941); *Branzburg v. Hayes*, 408 U.S. 665, 726-27 (1972) (Stewart, J., dissenting); *Procunier v. Martinez*, 416 U.S. 396, 427 (1974) (Marshall, J., concurring).

351. See, e.g., Boris El'tsin, Statement to Mass Media (July 16, 1992), KURANTY, July 18, 1992, at 4. This argument appears to be the rough equivalent of the traditional "marketplace of ideas" notion. See *Abrams v. United States*, 250 U.S. 616, 630 (Holmes, J., dissenting); *United States v. Associated Press*, 52 F. Supp. 362, 372 (S. D. N. Y.

sian citizens in support of their embattled government during "a time of most difficult sociopolitical changes and economic trials."³⁵² Russian leaders have promised unwavering defense of the Fourth Estate and have even recognized it as an essential prerequisite for establishment of a democratic, law-based state.³⁵³

Yet, reality has diverged markedly from these high-sounding phrases. As the preceding study has shown, there has been a pattern of increasing leadership attempts to influence and to subordinate the Russian mass media by direct and indirect, political and economic means.³⁵⁴ The post-Soviet era has witnessed a rapid implementation of prior restraints on publication,³⁵⁵ restrictions on press access to information,³⁵⁶ numerous

1943).

352. *Vypisat' Gazety Khotiat Mnogie. No na Puti Podpischikov Stoiat Bar'eryi* [Many Want To Subscribe to Newspapers. But There Are Barriers in the Way of Subscribers], KRASNAIA ZVEZDA, Aug. 1, 1992, at 1. See also A. Dokuchaev, Interview with V. Manilov, KRASNAIA ZVEZDA, Apr. 15, 1992, at 1; Oleg Poptsov, cited in Russian Television Network, Mar. 9, 1992, translated in F.B.I.S.-SOV, Mar. 12, 1992, at 44. For a discussion of the United States counterpart to this rationale, see *infra* notes 362-65, 368-69 and accompanying text. But see MELVILLE B. NIMMER, NIMMER ON FREEDOM OF SPEECH: A TREATISE ON THE THEORY OF THE FIRST AMENDMENT 2-123 (1984) (arguing safety valve rationale "less relevant to the press").

353. See, e.g., Boris El'tsin, cited in TRUD, Dec. 1, 1992, at 1; Ruslan Khasbulatov, cited in Ostankino Television, Mar. 31, 1993, translated in F.B.I.S.-SOV, Apr. 1, 1993, at 16, 21; Interfax, Jan. 13, 1993, in F.B.I.S.-SOV, Jan. 14, 1993, at 30.

354. The *Izvestiia* case provides a graphic illustration of how economic factors can impact actual exercise of press rights. In the words of one commentator, the experience demonstrates that "ownership is power." Tsukanova, *supra* note 177, at 1. See also Nikitinskii, *supra* note 114. It also suggests the potential dangers of a free market system for the press. See *supra* parts II.B., IV. For similar discussions in the United States context, see, e.g., BEN BAGDIKIAN, THE MEDIA MONOPOLY (1990); EDWARD S. HERMAN & NOAM CHOMSKY, MANUFACTURING CONSENT: THE POLITICAL ECONOMY OF THE MASS MEDIA (1988); Jerome A. Barron, *Access to the Press—A New First Amendment Right*, 80 HARV. L. REV. 1641 (1967); James Curran, *Mass Media and Democracy: A Reappraisal*, in MASS MEDIA AND SOCIETY 82 (James Curran & Michael Gurevitch eds., 1991) [hereinafter MASS MEDIA]; Stanley Ingber, *The Marketplace of Ideas: A Legitimizing Myth*, 1984 DUKE L. J. 1 (1984).

355. See, e.g., Vladimir Shevelev, *A New Watchdog for the Press*, MOSCOW NEWS, Nov. 17-24, 1991, at 2; *Nezavidnuiu "Kletku" Otvel Nashei Gazete Nash Ministr* [Our Minister Has Put Our Newspaper in an Unenviable "Cage"], ROSSIISKIE VESTI, May 5, 1993, at 1; *Ukaz No. 1349 Ob Osveshchenii Sobytiu v Raione Chrezvychainogo Polozheniia Sredstvami Massovoi Informatsii* [Presidential Decree No. 1349 On Coverage of Events in the State of Emergency Region by the Mass Media] (Nov. 11, 1992), in ROSSIISKAIA GAZETA, Nov. 14, 1992, at 5; *supra* note 16.

356. For example, in recent months the press has been permitted little or no access to Presidential Council and Presidium sessions. See, e.g., Oleg Odnokolenko, *Posle Referenduma: Prezidentskii Sovet Podvel Itogi i Opredelil Strategiiu* [After the Referendum:

criminal and civil actions against media organs and personnel,³⁵⁷ and introduction of draft legislation to expand liability for disclosure of state secrets, insulting of top officials, attacks on constitutional organs of power, and violations of Russian Federation "integrity."³⁵⁸ Some Russian commentators have detected an ominous correspondence between recent proposals and the most repressive, "antidemocratic" provisions of the Soviet-era criminal code.³⁵⁹

Foreign and domestic observers generally attribute this backlash to the Russian leadership's unfamiliarity with, sensitivity to, and, ultimately, intolerance of Fourth Estate criticism and opposition.³⁶⁰ The *Izvestiia* experience provides strong support for this argument. After all, the original catalyst for the dramatic events that followed was *Izvestiia's* open, direct challenge to the authority, legitimacy, and public image of the Russian parliament and its chairman. Interestingly, in the midst of the *Izvestiia* case when El'tsin too received unfavorable press coverage, there was immediate speculation that president as well as parliament would turn against the media.³⁶¹

The Presidential Council Summed up and Determined a Strategy], KRASNAIA ZVEZDA, Apr. 30, 1993, at 1; ITAR-TASS, May 5, 1993, in F.B.I.S.-SOV, May 6, 1993, at 39. See also Viktor Kozhemiako, *Zhurnalistsam Vkhod Vospreshchen* [Journalists Barred Entry], PRAVDA, July 16, 1992, at 2.

357. See, e.g., A. Arkhipov, *Zhirinovskii Vyigryvaet* [Zhirinovskii Wins], SOVETSKAIA ROSSIIA, Apr. 14, 1992, at 4; M. Poltoranin, *Pis'mo Ministra* [Letter from the Minister], SOVETSKAIA ROSSIIA, Oct. 8, 1992, at 1; Shaposhnikova, *supra* note 302; Elena Tregubova, *Prokuratura za Natsravnopravie* [The Procurator Is for Equal Nationality Rights], NEZAVISIMAIA GAZETA, Aug. 1, 1992, at 1. The most publicized case was the October 1992 investigation and arrest of two *Moskovskie Novosti* journalists for alleged publication of state secrets. In a September 20, 1992 article, the two authors contended that, despite official statements and international treaties to the contrary, Russia was in fact continuing to manufacture and test chemical weapons. For discussion of the legal aspects of the case and implications for press freedom, see, e.g., Andrei Illesh & Sergei Mostrovshchikov, *Kazhdyi Zhurnalists Teper' Mozhet Stat' "Predatelem Rodiny"* [Every Journalist Can Now Be a "Traitor to the Motherland"], IZVESTIIA, Oct. 24, 1992, at 1; Andrei Illesh et al., "Prodavshii Rodinu," *Ne Tak Uzh i Opasen,—Reshil Narodnyi Sud* ["Betrayer of the Motherland" Is Not All That Dangerous, the People's Court Decided], IZVESTIIA, Nov. 2, 1992, at 1; Valerii Rudnev, *Sekrety Khimicheskogo Oruzhiia v Materialakh Ugolovnogo Dela i Dokladakh Mezhdunarodnoi Konferentsii* [Chemical Weapon Secrets in Files on Criminal Case and in Reports of International Conference], IZVESTIIA, May 20, 1993, at 6.

358. See generally Aleksandr Shinkin, *V Silki Ne Ugodit' By* [Better Not Fall Into Snares], PRAVDA, July 21, 1992, at 1.

359. See, e.g., Feofanov, *supra* note 290.

360. See, e.g., Tsukanova, *supra* note 177.

361. See Ostankino Television First Program Network, *supra* note 77.

A closer look, however, suggests an additional, less obvious explanation. The recent moves against the media may reflect not only the early success of the Russian press as an embryonic Fourth Estate, but also its fundamental failure as a force for societal consolidation and moderation during a period of profound national crisis.

One of the most compelling but least cited United States defenses for freedom of expression relates precisely to the issue of crisis management that confronts Russia today. In the words of Thomas Emerson, "freedom of expression . . . is an essential mechanism for maintaining the balance between stability and change."³⁶² In the United States context, the press has traditionally promoted this equilibrium in two main ways. It has acted as a "safety valve"³⁶³ for the release and "domestication"³⁶⁴ of popular discontent and frustration. Equally importantly, it has communicated to and persuaded the United States citizenry that established political and legal institutions and processes are both predictable and flexible enough to accommodate change.³⁶⁵

In post-Soviet Russia, enhanced press independence has led to very different results. The Russian press has played a destabilizing, not moderating, role. Its debate of competing strategies and objectives has contributed to public dissensus and disunity.³⁶⁶ Its unrelenting criticism and exposure of personal and systematic failings has eroded rather than fostered public confidence in the post-socialist Russian leadership and

362. THOMAS I. EMERSON, *THE SYSTEM OF FREEDOM OF EXPRESSION* 7 (1970). See also Peter Golding, *The Missing Dimensions—News Media and the Management of Social Change*, in *MASS MEDIA AND SOCIAL CHANGE* (Elihu Katz & Tamas Szecskö eds., 1981).

363. NIMMER, *supra* note 352, at 1-53 to 1-54; Aviam Soifer, *Freedom of the Press in the United States*, in *PRESS LAW IN MODERN DEMOCRACIES: A COMPARATIVE STUDY*, *supra* note 11, at 79, 82.

364. ALEXANDER BICKEL, *THE MORALITY OF CONSENT* 57-58 (1975) ("domesticated civil disobedience"). See generally Thomas I. Emerson, *Toward a General Theory of the First Amendment*, 72 *YALE L. J.* 877, 884-86 (1963).

365. M. ETHAN KATSH, *THE ELECTRONIC MEDIA AND THE TRANSFORMATION OF LAW* 13 (1989). For a discussion of why "the legal order must be flexible as well as stable," see ROSCOE POUND, *INTERPRETATIONS OF LEGAL HISTORY* 1 (1946). See also LON L. FULLER, *THE MORALITY OF LAW* 33-39, 79-81 (1964).

366. See generally Igor Malashenko, *RTV: Politika i Politiki: Na Samom Dele Chetvertaia Vlast' Iavljaetsia Pervoi* [*RTV: Politics and Politicians: In Fact, the Fourth Estate Is the First!*], *NEZAVISIMAIA GAZETA*, Apr. 21, 1993, at 5. Sergei Muratov, *Grozit li Televideniiu Nezavisimost'?* [*Does Independence Threaten Television?*], *IZVESTIJA*, Apr. 29, 1992, at 3; Poltoranin, *supra* note 348.

evolving norms, rules, institutions, and procedures.³⁶⁷ Thus, the press has demystified and delegitimized the present as well as the past.

A central tenet of the United States rationale for broad expressive rights is that "an open society will be the stronger and more cohesive one."³⁶⁸ The early experience in post-Soviet Russia, however, suggests the opposite conclusion. In his examination of United States freedom of expression, Thomas Emerson identified two limitations that may help explain this apparent contradiction between general theory and Russian practice: (1) "society must be committed to democratic procedures or rather in the process of committing itself," and (2) "men [must] have learned to function within the law."³⁶⁹ The *Izvestiia* experience provides ample evidence that Russia has thus far failed to satisfy either of these requirements. The case casts serious doubts on the level of current commitment to democratic procedure³⁷⁰ and indicates grave problems in enforcement and observance of law.³⁷¹ This prompts a perplexing question that has far-reaching implications for the reform process in Russia and other former socialist states.³⁷² Is conventional wisdom³⁷³ correct that

367. See generally Boris El'tsin, cited in Ostantkino Television Vostok and Orbita Networks, Oct. 8, 1992, translated in F.B.I.S.-SOV, Oct. 13, 1992, at 17, 22; Harald Hamrin, *Russian Rulers Want to Control the Press*, DAGENS NYHETER, Jan. 11, 1992, at A9, translated in F.B.I.S.-SOV, Jan. 15, 1992, at 45. For studies of how the mass media can undermine public confidence in and legitimacy of political institutions, see, e.g., Kurt Lang & Gladys Engel Lang, *The Mass Media and Voting*, in READER IN PUBLIC OPINION AND COMMUNICATION 455 (Bernard Berelson & Morris Janowitz eds., 1966); M. J. Robinson, *American Political Legitimacy in an Era of Electronic Journalism*, in TELEVISION AS A SOCIAL FORCE: NEW APPROACHES TO TV CRITICISM 97 (Douglass Cater & Richard Adler eds., 1975).

368. Emerson, *supra* note 364, at 884. See also RODNEY A. SMOLLA, *FREE SPEECH IN AN OPEN SOCIETY* (1992).

369. Emerson, *supra* note 364, at 884.

370. See *supra* part III. B. (describing executive and legislative disregard of lawmaking procedures).

371. See *supra* part IV.

372. For a superb analysis of the press in post-socialist states, see Owen V. Johnson, *The Press of Change: Mass Communications in Late Communist and Post-Communist Societies*, in ADAPTATION AND TRANSFORMATION IN COMMUNIST AND POST-COMMUNIST SYSTEMS 209 (Sabrina P. Ramet ed., 1992). Note that this "perplexing question" may apply more broadly than the post-socialist context. See Amando Doronila, *The Role of the Media in Strengthening Democracy*, 1 DEMOCRATIC INSTITUTIONS 39, 41 (1992) (discussing the relationship between free press and the "still fragile democratic system" of the Philippines).

373. For an excellent presentation of this view, see Sanford J. Unger, *The Role of a Free Press in Strengthening Democracy*, in DEMOCRACY AND THE MASS MEDIA: A COLLECTION OF ESSAYS 368 (Judith Lichtenberg ed., 1990).

press freedom is a precondition for the democratic, law-based state? Or is the democratic, law-based state a precondition for press freedom?

B. *Law, Culture, and Communication*

In their quest for a way out of crisis, Russian officials and commentators have frequently lamented the absence of a "legal" mechanism to contain and resolve conflict.³⁷⁴ The preceding study has painted a discouraging portrait of post-Soviet legal reform efforts. It has highlighted concrete procedural, institutional, and attitudinal problems that are likely to present continuing obstacles in the future. In the final analysis, however, the greatest threat to Russian stability and legality may lie elsewhere.

In his pioneering work *The Electronic Media and the Transformation of Law*, M. Ethan Katsh remarked, "Modern law promotes stability and limits the process of societal change by placing a heavy emphasis on maintaining links with the past."³⁷⁵ He later noted that, to fulfill these functions, law relies heavily on mass communication and belief in words and symbols.³⁷⁶

This analysis may provide two further explanations for the failure of law to manage change in the post-Soviet era. First, the Russian legal system lacks the essential moorings to the past. It can invoke few accepted cultural or historical standards or traditions of legality, justice, and due process.³⁷⁷ This reflects the overall "cultural despair"³⁷⁸ of pres-

374. See, e.g., Ruslan Khasbulatov, *Rossia—Trevogi i Nadezhdy* [Russia—Anxieties and Hopes], ROSSIISKAIA GAZETA, Apr. 13, 1993, at 3; Tsukanova, *supra* note 237.

375. KATSH, *supra* note 365, at 13. See also HAROLD J. BERMAN & WILLIAM R. GREINER, *THE NATURE AND FUNCTIONS OF LAW* 484 (4th ed. 1980).

376. KATSH, *supra* note 365, at 267.

377. This is due to the absence of an established Russian and Soviet legal consciousness and legal culture. See *supra* notes 344-45 and accompanying text. Interestingly, the extensive legal modernization efforts of the eighteenth and nineteenth centuries "did not bring an element of stability to Russia." WORTMAN, *supra* note 345, at 288.

378. Ishwer C. Ojha coined the phrase in his *CHINESE FOREIGN POLICY IN AN AGE OF TRANSITION: THE DIPLOMACY OF CULTURAL DESPAIR* (2d ed. 1971). Ojha used the term to describe the "agonizing," "national trauma" generated by the "recognition of China's weakness and cultural irrelevance" and "the necessity to import a foreign model to ensure the very survival of the national unit." *Id.* at xi, 8. He concluded that under Mao, China successfully "translated her cultural despair into the transformation of social attitudes." *Id.* at 275. For a discussion of the "inner and psychic collapse" of Russian society and post-Soviet "epidemic of despair," see N. Aleksandrova, Interview with Iu. M. Polishchuk, SOVETSKAIA ROSSIIA, Mar. 26, 1992, at 2.

ent-day Russia, a country currently in search of a national identity³⁷⁹ and past.³⁸⁰ Second, there is no "rhetoric for mediating and muting . . . conflicts."³⁸¹ During both socialist and post-socialist eras, Russia's leaders have frequently reinterpreted, redefined, and repudiated such terms as constitutionality, democracy, and rule of law.³⁸² As a result, in Russia

379. See John Dunlop, *Russia: Confronting a Loss of Empire*, in *NATIONS AND POLITICS IN THE SOVIET SUCCESSOR STATES* 43 (Ian Bremmer & Ray Taras eds., 1993); Roman Szporluk, *Dilemmas of Russian Nationalism*, in *THE SOVIET NATIONALITY READER: THE DISINTEGRATION IN CONTEXT* 509 (Rachel Denber ed., 1992). It should be noted, however, that in the late Soviet period there were "destabilizing effects of Russian nationalism." Dina R. Spechler, *Russian Nationalism and Soviet Politics*, in *THE NATIONALITIES FACTOR IN SOVIET POLITICS AND SOCIETY* 281, 292 (Lubomyr Hajda & Mark Beissinger eds., 1990) [hereinafter *THE NATIONALITIES FACTOR*].

An outstanding recent "cultural interpretation" of the general nation-building process is Yael Tamir, *LIBERAL NATIONALISM* 57-77 (1993). See also Miroslav Hroch, *From National Movement to the Fully-formed Nation: The Nation-Building Process in Europe*, 198 *NEW LEFT REV.* 3 (Mar./Apr. 1993). But see E. J. Hobsbawm, *NATIONS AND NATIONALISM SINCE 1780: PROGRAMME, MYTH, REALITY* 191 (2d ed. 1992) (arguing that nations and nationalism will play "subordinate, and often minor roles" in the future); Samuel P. Huntington, *The Clash of Civilizations?*, *FOREIGN AFF.*, Summer 1993, at 22 (arguing that "civilization identity" rather than national identity will become increasingly dominant).

380. In a 1988 article, Iurii Afanas'ev spoke of a societal "identity crisis" created by the "systematic destruction of collective memory" by Stalin and Brezhnev. Iurii Afanas'ev, *Perestroika i Istoricheskoe Znanie [Perestroika and Historical Knowledge]*, *LITERATURNAI A ROSSIIA*, June 17, 1988, at 2-3, 8-9, cited in Szporluk, *supra* note 379, at 511. In commenting on these remarks, Roman Szporluk pointed out that "historical memory is the pivotal formative component of social and group identity." *Id.* The concern about the Russian past did not originate in post-socialist or even Gorbachev eras, however. For a discussion of early efforts, see Jack Haney, *The Revival of Interest in the Russian Past in the Soviet Union*, 32 *SLAVIC REV.* 1 (1973).

It should be noted that there is a clear linkage between the search for identity and past. As one scholar remarked, "the nation finds a source of identity not merely in a present state of consciousness. We are as we are because we have been as we were." Philip Alcott, *The Nation as Mind Politic*, 24 *INT'L L. & POL.* 1361, 1374 (1992). Indeed, some nations have gone so far as to "invent" or "rediscover" a history or culture. See BENEDICT ANDERSON, *IMAGINED COMMUNITIES* (1983); *THE INVENTION OF TRADITIONS* (E. J. Hobsbawm & T. Ranger eds., 1990); A. D. SMITH, *THEORIES OF NATIONALISM* (1983).

381. *SHARLET-SOVIET CRISIS*, *supra* note 17, at 6.

382. For an outstanding treatment of the varying uses of the term "constitution" in Russia, see Sharlet, *supra* note 344. See also Sergei Kara-Murza, *Bluzhdaiushchii Ogon' Perestroiki [The Wandering Flame of Perestroika]*, *PRAVDA*, Oct. 22, 1992, at 2; Viktor Plotnikov, *A Word to Our Readers: We Will Only Survive Together*, *SEL'SKAI A ZHIZN'*, Feb. 22, 1992, at 1, translated in *F.B.I.S.-USR*, Mar. 20, 1992, at 93; Arkadii Vaksberg, *Kladbishche Upushchennykh Vozmozhnostei: Im Stal ne Vovremia Sozdannyi Konstitutsionnyi Sud Rossii [A Graveyard of Lost Opportunities: The Untimely Crea-*

today "the most sacred words have lost their true meaning."³⁸³ This effacement³⁸⁴ of language and symbols has deprived Russia of an important instrument to secure voluntary compliance and trust in legal structures, rules, and procedures.

This, then, raises serious concerns about the Russian leadership's current emphasis on the formulation of a new Constitution, elimination of "antidemocratic," obstructionist institutions and officials, and uncritical importation of Western political and legal values and forms. It suggests that, even if implemented, these largely cosmetic changes are unlikely to lead to successful establishment of a stable, democratic, law-based state. As a Russian commentator recently observed, "In the heat of the struggle, the initial aims are somehow forgotten."³⁸⁵

In the end, the most effective solution to Russia's "constitutional crisis" may indeed be constitutional—not a "modern" post-socialist Constitution,³⁸⁶ however, but a fundamental constitution and reconstitution of

tion of the Constitutional Court of Russia], LITERATURNAYA GAZETA, Apr. 14, 1993, at 10. Changes in meanings of terms is, of course, not solely a Soviet/Russian phenomenon. See JAMES B. WHITE, WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER, AND COMMUNITY (1984); RAYMOND WILLIAMS, KEYWORDS: A VOCABULARY OF CULTURE AND SOCIETY (rev. ed. 1983); Fred Dallmayr, *Hermeneutics and the Rule of Law*, 11 CARDOZO L. REV. 1449 (1990); Jürgen Habermas, *The Concept of the Lifeworld and the Hermeneutic Idealism of Interpretative Sociology*, in HABERMAS, *supra* note 17, at 165.

383. Ramazan Abdulatipov, Speech to Ninth Congress of People's Deputies (Mar. 27, 1993), Russian Television Network, Mar. 27, 1993, translated in F.B.I.S.-SOV, Mar. 29, 1993, at 40, 41.

384. I borrow this term from PHILIP FISHER, MAKING AND EFFACING ART: MODERN AMERICAN ART IN A CULTURE OF MUSEUMS (1991). Note that Russia's effacement of language may also have an adverse impact on its modernization efforts. See JOHANN G. HERDER, 18 SÄMMTLICHE WERKE 346 (1877-1913), cited in ROBERT R. ERGANG, HERDER AND THE FOUNDATIONS OF GERMAN NATIONALISM 150 (1931), cited in Nathaniel Berman, *Nationalism Legal and Linguistic: The Teachings of European Jurisprudence*, 24 INT'L L. & POL. 1515, 1520-21 (1992) ("a national group which neither knows nor loves its own language has robbed itself of its tongue and its brain, i.e., of the organs for the development of itself and the most precious national honor").

385. Aleksandr Gol'ts, *Skol'ko Mozhno Iskat' Vragov?* [*How Many Enemies Can One Seek?*], KRASNAIA ZVEZDA, Apr. 3, 1993, at 2.

386. El'tsin and his supporters currently contend that only the adoption of a new Constitution will extricate Russia from crisis and allow the introduction of comprehensive reforms. See, e.g., Boris El'tsin, Speech to Heads of Republics (Apr. 29, 1993), in IZVESTIYA, Apr. 30, 1993, at 1; Sergei Filatov, cited in Vasilii Konenko, *Sergei Filatov: Samoe Glavnoe Seichas—Prekratit' Protivostoianie Vlastei* [*Sergei Filatov: The Most Important Thing Now Is to Stop the Confrontation Between Government Branches*], IZVESTIYA, May 19, 1993, at 1.

Russian legal tradition, culture, and language.³⁸⁷ If past practice is any guide,³⁸⁸ the Russian press has the potential to play a major role in this endeavor, as a force for mediation, articulation, and development of a national and popular legal consciousness. In so doing, it could shatter its age-old image as a passive mirror of Russian reality and emerge as an active and essential component of the post-Soviet legal reform process.³⁸⁹

387. I draw this notion of "constitution and reconstitution" most directly from WHITE, *supra* note 382. Note, however, that the term "reconstitution" has also been used in scholarship on Russian cultural and nationality issues. See, e.g., Dunlop, *supra* note 379, at 59 ("reconstitution of Russia"); Roman Szporluk, *The Imperial Legacy and the Soviet Nationalities Problem*, in THE NATIONALITIES FACTOR, *supra* note 379, at 1, 17 ("Russians seek to reconstitute their national memories and build a Russian national identity."). For a similar argument expressed by a Russian commentator, see Iurii Afanas'ev, *Nomenklatura na "Shkodke Vechevoi": Rossiiskoe Obshchestvo Eshche Nel'zia Nazvat' Grazhdanskim* [*The Nomenklatura at the "Popular Assembly": Russian Society Still Cannot Be Called Civil*], NEZAVISIMAIA GAZETA, Apr. 2, 1992, at 1.

388. For discussions of the relationship between media and the development of legal consciousness, see, e.g., KATSH, *supra* note 365; Marc Galanter, *The Legal Malaise: Or Justice Observed*, 19 L. & SOC'Y 537, 545 (1985). Note that a recent trend in mass communications research focuses precisely on this issue of how media transform culture and consciousness. This approach has been given a variety of labels, including "medium theory" (see, e.g., JOSHUA MEYROWITZ, NO SENSE OF PLACE: THE IMPACT OF ELECTRONIC MEDIA ON SOCIAL BEHAVIOR 16 (1985)), "culturalist" studies (see, e.g., James Curran et al., *The Study of the Media: Theoretical Approaches*, in CULTURE, SOCIETY AND THE MEDIA 11, 26 (Michael Gurevitch et al. eds., 1982)), and a revived but significantly expanded version of the "media effects" research (see, e.g., PERSPECTIVES ON MEDIA EFFECTS (J. Bryant & D. Zillmann eds., 1986); Jack M. McLeod et al., *On Understanding and Misunderstanding Media Effects*, in MASS MEDIA, *supra* note 354, at 235). Examples of such work include ELIZABETH L. EISENSTEIN, THE PRINTING PRESS AS AN AGENT OF CHANGE: COMMUNICATIONS AND CULTURAL TRANSFORMATIONS IN EARLY MODERN EUROPE (1979); WALTER J. ONG, INTERFACES OF THE WORD: STUDIES IN THE EVOLUTION OF CONSCIOUSNESS AND CULTURE (1977). There is particular concern about the impact of electronic media on societal behavior and ideas. See, e.g., KATSH, *supra* note 365; MEYROWITZ, *supra*. There is also literature on the relationship between communication and national development that may provide useful insights for Russia. For example, one author has noted a clear conflict between media contributions to "national integration" and to "changes in attitudes that would hasten the process of modernization." J. O. Boyd-Barrett, *Cultural Dependency and the Mass Media*, in CULTURE, SOCIETY AND THE MEDIA, *supra*, at 174, 188. See RONALD C. BENGE, COMMUNICATION AND IDENTITY (1972); COMPARATIVE MASS MEDIA SYSTEMS (L. John Martin & Anju Grover Chaudhary eds., 1983); WILBUR SCHRAMM, MASS MEDIA AND NATIONAL DEVELOPMENT: THE ROLE OF INFORMATION IN THE DEVELOPING COUNTRIES (1964); David H. Weaver et al., *Press Freedom, Media, and Development, 1950-1979: A Study of 134 Nations*, J. COMM. 104 (Spring 1985).

389. See Tony Bennett, *Media, 'reality,' signification*, in CULTURE, SOCIETY AND THE MEDIA, *supra* note 388, at 287 (criticizing "hackneyed" mirror analogy).

Editor's Note:

Professor Foster's Article, completed in August 1993, appears prophetic in light of recent events in Moscow. It anticipates and helps explain the final bloody confrontation between Russian president and parliament, the open disregard of constitutional and legal norms, the fierce battle for control of the mass media, and El'tsin's unilateral dissolution of federal and regional legislatures, removal of the Procurator General, and suspension of the Constitutional Court. Professor Foster's Article raises serious doubts about the immediate prospects for establishing a genuine democratic, law-based state in Russia. Her conclusions suggest that Boris El'tsin's promise of "fair" and "open" parliamentary elections in December 1993, even if implemented, is likely to have only a limited impact on the overall legal reform process.