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Legislative Authority in the Soviet Political System

It is a settled principle of Soviet constitutional law that the USSR Supreme Soviet is the supreme representative organ, the supreme legislative body, and the supreme executor of the people's sovereignty. The 1936 Constitution subordinates all other organs of government to the Supreme Soviet, and it alone, on the national level, has the right to form governments, pass laws, and amend the Constitution. The Constitution also stipulates, however, that the Communist Party of the Soviet Union is "the vanguard of the workers in their struggle for the construction of a communist society and constitutes the guiding core of all workers' organizations, public as well as governmental."¹

There is no doubt that the latter principle has been the operative one in Soviet politics since the Revolution. The party leadership has so effectively controlled the activities of all other political institutions that no serious challenge to its authority has ever been made, at least since the Workers' Opposition was crushed in the early 1920s. But recognition of this fact is only a starting point in analyzing Soviet politics, for the party leadership has never attempted to rule through the party apparatus alone. It has developed instead a wide range of subordinate institutions, through which, in varying degrees at different times, it has exercised its authority.

In the legislative area, which is the focus of this essay, the USSR Supreme Soviet and its Presidium have been the primary vehicles for party rule. The functions of these bodies, and the relations between them, are formally regulated by the USSR Constitution, but throughout most of Soviet history party leaders have shown little concern for the specific provisions in the Constitution. During the past decade, however, the roles of the Supreme Soviet and the Presidium in the gathering of information, the formulation of legislative proposals, and their enactment into law have become subjects of widespread debate among Soviet officials and academicians. The terms of the debate are particularly significant in that they focus to an unprecedented extent on provisions of the Soviet Constitution as independent sources of authority in resolving questions of political structure and process. This essay will examine the nature and the sources of the conflict between the Supreme Soviet

1. Article 126. The Constitution of the USSR is amended probably more frequently than any other in the world, so the date of publication is important. Throughout this paper we refer to *Konstitutsiia SSSR* (Moscow, 1966).

and the Presidium over the exercise of legislative authority, and the constitutional questions raised in the course of the current debate.

The Presidium Versus the Supreme Soviet: The Dispute Over Constitutional Status

The 1,517 elected deputies to the USSR Supreme Soviet convene semi-annually in the Great Hall of the Kremlin for legislative sessions, which last from three days to a week. Their time in Moscow is taken up largely by speeches, receptions, and more speeches, interrupted occasionally by the call for a vote on a legislative proposal. The vote will be, as always, unanimously in favor of the proposal, and the end of the session will see, as a rule, from five to ten important pieces of legislation passed into law. This accomplished, the deputies return to their homes and their jobs, and the Supreme Soviet begins its long recess.

Since some of its responsibilities are continuing ones, however, the Supreme Soviet shares its powers with other agencies between sessions, principally with the Presidium, an executive body composed of thirty-seven deputies, including a chairman, fifteen vice-chairmen, a secretary, and twenty members. The Presidium is a continuously operating body with ambiguous responsibilities.² Between legislative sessions it performs a number of functions in the name of the Supreme Soviet. But since it also occupies, along with the USSR Council of Ministers, a constitutional position as a "high organ of governmental power," it exercises a separate set of functions independent of its relationship to the Supreme Soviet. Yet in the exercise of these independent functions, it is, like all other governmental organs, ultimately subordinate to the Supreme Soviet.

In this complex triangle of relationships lies the source of much of the argument over the status of the Presidium in the Soviet governmental system. Prior to the 1960s, Soviet political textbooks tended to identify the Presidium as a kind of executive committee of the Supreme Soviet, comparable on the highest level to what were called, literally, "executive committees" (*ispolnitel'nye komitety*) on the lower levels of the system of soviets.³ The description seemed verified by common sense: the Presidium is directly elected by the

2. Soviet authorities refer to the Presidium as a "continuously operating body," but according to the official parliamentary report (*Vedomosti Verkhovnogo Soveta SSSR*), it met only twice in 1966, four times in 1967, and five times in 1968. These figures are probably misleading, however, since they refer only to plenary meetings at which a quorum is present and decisions are taken by majority vote. No doubt an inner circle of Presidium members meets more frequently in informal session, but there are no public records of such meetings.

3. See, for example, A. I. Denisov and M. G. Kirichenko, *Osnovy sovetskogo gosudarstva i prava* (Moscow, 1950), pp. 122-24.

Supreme Soviet; it is composed exclusively of Soviet deputies; it is empowered by the federal constitution to prepare and conduct sessions of the Supreme Soviet and to carry out certain functions of the legislature between sessions; and its actions in this capacity must be approved by the Supreme Soviet.

It was recognized, of course, that there were certain ambiguities in the Presidium's status. The Constitution states (Article 48) that "the Presidium of the USSR Supreme Soviet is accountable to the USSR Supreme Soviet in all its activities," a statement that might have settled its status as an organ of the legislature. Yet a similar statement is made with regard to the USSR Council of Ministers, which is not considered to be an organ of the Supreme Soviet. And it grants a number of powers to the Presidium, some of them very substantial ones, concerning which no subsequent approval by the Supreme Soviet is required.

Nevertheless, the prevailing view among constitutional lawyers, academicians, and propagandists was that the Presidium bore a special relationship and responsibility to the Supreme Soviet not shared by other organs of government. In April 1959, however, a young Chuvash scholar, Igor Bepaly, published a small book on the role of the Presidium in union republic governments, in which five pages were devoted to a startling attack on the traditional concept of the Presidium's relationship to the Supreme Soviet.⁴ His central thesis was that there existed, in fact or in law, no special relationship at all between these organs. Like all other governmental bodies, he argued, the Presidium was ultimately subordinate to the Supreme Soviet as the highest representative, democratic body. But it "is not an organic part, nor an organ of, the Supreme Soviet. Any contrary assertion completely distorts not only the essential nature of this organ, but is in direct opposition to the constitutions of the union republics, according to which the Presidium of a union republic Supreme Soviet is a high organ of governmental power of the union republic" (p. 10).

Bepaly's argument was detailed and impressive. In neither of the two phases of the Presidium's work—during sessions of the Supreme Soviet or between sessions—did he find it acting as an agent of the legislature. During sessions, the Presidium is, in fact, in recess. It does not preside over the session—that is the function of its chairman, or the chairmen of the respective chambers during separate sessions. It makes no decisions, nor are any matters referred to it for decision. Some of its previous acts are presented to the Soviet for approval, but that only requires action by the legislature, not the Presidium.

Between sessions, Bepaly pointed out, most of the powers exercised by

4. I. T. Bepaly, *Prezidium Verkhovnogo Soveta Soiuznoi Respubliki* (Moscow, 1959), pp. 8–12.

the Presidium are not delegated to it by act of the Supreme Soviet, but granted to it by the federal Constitution. Even the necessity to submit some of its acts for subsequent approval by the Soviet is a constitutional, not a legislative, requirement. In fact, the necessity to submit some acts for approval not only does not prove that the Presidium is an agent of the legislature, as many had argued,⁵ it proves just the opposite! For if the Presidium were empowered to act for the legislature between sessions, why should the legislature reserve the right to disavow those actions at its next session? The possibility of disapproval means that the Presidium is, in fact, acting on its own authority, which, like that of all other governmental agencies, is subject to ultimate legislative control.⁶

Bespaly's assertion of the independence of the Presidium from the Supreme Soviet posed a discomfiting challenge to established views of the nature and status of the legislature. An independent Presidium, exercising a wide range of legislative powers on its own authority, seemed difficult to square with the legislative provisions of the Constitution. True, the Presidium is an elective and representative body, but it is elected by the legislature, not the people, and is not responsible to any popular constituency. As long as it was viewed as acting for the Supreme Soviet, its acts, however independent in fact, could share in the legitimate legislative authority exercised by the parent body. As an independent organ of state power, however, the Presidium had to look to its own constitutionally authorized powers for authority to issue legislative edicts, and those powers did not include the right to legislate.

Furthermore, Bespaly's thesis seemed to attack the well-established ideological principle that all political institutions represent the will of the Soviet people. By emphasizing the Supreme Soviet's right to disapprove acts of the Presidium, Bespaly was clearly presuming that the Presidium might take actions which conflicted with the will of the Supreme Soviet, and hence, theoretically, with the will of the people.⁷ He anticipated criticism on this point, and sought to allay it with a direct disclaimer. "The method of forming the Presidium . . .," he wrote, "(through election by the Supreme Soviet), its subordination to the Supreme Soviet, and the specification of its jurisdiction in the constitution of the union republic exclude the possibility of any kind of conflict between the Presidium and the Supreme Soviet."⁸ Nevertheless, it

5. See B. P. Kravtsov, *Verkhovnyi Sovet SSSR* (Moscow, 1954), p. 78, and G. V. Barabashev and K. F. Sheremet, *Sovetskoe stroitel'stvo* (Moscow, 1965), pp. 76-77.

6. An analogous case in the American political system would be the President's authority to make interim personnel appointments, subject to approval by the Senate at its next session. In doing so, the President is exercising not a congressional power but his own constitutional authority.

7. Intended or not, the point is an ironic one, because this power, which in practice has never been exercised, is one of the main bases for the Soviet claim to a democratic legislature. In Bespaly's argument, however, it tends to weaken that claim.

8. Bespaly, *Presidium*, p. 12.

was on this point, more than on any other, that his argument was attacked. "It is hardly necessary to prove," wrote one critic, "that the system of the Supreme Soviet constitutes an organic whole, and that all its organs, composed of deputies—chambers, Presidium, committees—are a single mechanism, and not a system of so-called 'powers and counterpowers.'"⁹

As the argument over the Presidium's constitutional status engaged Soviet scholars and jurists in response to Bespaly's challenge, it was clear that the issue could not be resolved without first dealing with a more fundamental question: what was the Presidium's proper role in the legislative process, and to what extent had its activities violated the constitutional pre-eminence of the Supreme Soviet in this field?

The Presidium Versus the Supreme Soviet: The Dispute Over Legislative Authority

The Constitution provides that "the legislative power is exercised exclusively by the USSR Supreme Soviet" (Article 32), thus indicating its supremacy over all other organs of government. What it does not state is what is meant by "legislative power." In practice, there are three basic categories of legal acts (*pravovye akty*): laws (*zakony*), which are enacted only by the Supreme Soviet; edicts (*ukazy*), which are issued only by the Presidium; and decrees (*postanovleniia*), which may be issued by both organs, as well as by the two chambers of the Supreme Soviet individually and by a number of other organs.

It is beyond our concern here to try to sort out the confusion surrounding these categories (a task that Soviet scholars have not yet accomplished),¹⁰ but the differences in authority between the Presidium and the Supreme Soviet are clearly involved in the differing nature of the legal acts they produce. Since the Supreme Soviet is constitutionally superior to the Presidium, the question boils down to this: which of the various actions the Presidium takes require subsequent review and approval by the Supreme Soviet, and which do not? The actions that concern us here are those that have general, all-union significance and relate directly to the legislative power of the Supreme Soviet. They fall generally into four categories: (1) those issued in conformance with powers specifically granted to the Presidium by the Constitution, (2) those involved with the "concretization" of legislative acts, (3) those concerned with the "interpretation" of such acts, and (4) those that introduce substantive changes in existing legislation.

9. L. Mandelshtam, "Istina i domysly," *Izvestiia*, July 30, 1966, p. 3.

10. Among recent writings on the problem, the best brief summary is found in A. F. Shebanov, "Razvitie formy sovetskogo prava," *Sovetskoe gosudarstvo i pravo*, 1967, no. 9, pp. 22–31. For a longer and more rewarding study see A. V. Mitskevich, *Akty vysshikh organov sovetskogo gosudarstva* (Moscow, 1967).

The powers specifically granted to the Presidium by the Constitution (in Article 49 and elsewhere) are, curiously, among the least important that it exercises. They include chiefly powers that are never exercised (proroguing parliament, initiating referendums), or are exercised by bodies other than the Presidium (appointing ministers and high military officers, ordering national mobilization), or are of little consequence (convening the legislature, receiving foreign ambassadors). Nevertheless, they are formally granted to the Presidium, which has always considered them to be part of its own jurisdiction, hence not subject to subsequent approval by the Supreme Soviet.

In recent years, however, a number of legal scholars have attacked this idea, arguing that the Constitution has been misinterpreted on this point.¹¹ The Presidium, they contend, does not have exclusive jurisdiction over such matters as calling elections or appointing ambassadors. For Article 49 clearly establishes two kinds of authority for the Presidium: the power to take an action, and the power to establish (*utverzhdat'*) the legal basis for taking the action. This is exemplified in sections *i* and *z* of Article 49: the former authorizes the Presidium to “*establish* orders and medals of the USSR,” while the latter grants it the authority to “*award* orders and medals of the USSR.” In the cases of all other powers granted the Presidium by Article 49, however, only the act itself is authorized. Hence, although the Presidium is authorized to appoint ambassadors (section *r*), it is not authorized to establish the qualifications, terms of office, or lines of responsibility of ambassadors so appointed. This authority rests within the legislative jurisdiction of the Supreme Soviet.

The logical consequence of this interpretation is to reduce greatly the constitutional basis for much of the authority heretofore assumed to rest with the Presidium as an organ of state power and to subordinate many of its actions to the legislative authority of the Supreme Soviet. However, there is no evidence to suggest that the Presidium has accepted this distinction or that the Supreme Soviet has acted upon it in approving edicts of the Presidium. So far it remains, apparently, a minority view within academic circles, but one that is receiving considerable attention in Soviet political journals.

A second contentious power exercised by the Presidium has to do with what is called the “concretization” of laws.¹² As in most Western parliamentary systems, legislative enactments of the Supreme Soviet provide only

11. See *ibid.*, pp. 94–95, and I. N. Kuznetsov, “Kompetentsiia Prezidium Verkhovnogo Soveta SSSR i pravovye problemy ee reglamentatsii,” *Uchenye zapiski VNIISZ*, n.d., no. 8, p. 11.

12. The issuance of normative acts “concretizing” laws is not an exclusive right of the Presidium, but is done by many other institutions, including public organizations, trade union councils, and government ministries. See S. N. Bratus and I. S. Samoshchenko, *Obshchaia teoriia sovetskogo prava* (Moscow, 1966), p. 144.

general guidelines, leaving the detailed application of the law to executive and administrative agencies. While the Presidium exercises in practice (there is no direct constitutional authorization to do so) wide authority over this process, some observers insist that there is no independent jurisdiction involved. "The detailization and concretization of a law," Professor Mitskevich writes, "does not mean its alteration, and is objectively necessary only where the general prescription of the law cannot be implemented without concrete rules relating to the process of implementation, the types and forms of responsibility, and so forth."¹³ Where an action has exceeded this limit, it should be submitted to the Supreme Soviet for approval.

The Constitution (Article 49) grants to the Presidium the right to "interpret [*dat' tolkovanie*] existing laws of the USSR," a task that is completely beyond the capacity of the Presidium, or any other single body, to cope with. Despite the high degree of centralization inherent in the Soviet political system, the issuance of laws and regulations is a highly unsystematic process, resulting in countless instances of duplication, contradictory provisions (sometimes within a single regulation), conflicts between newer and older laws on the same subject, and a host of other problems.¹⁴ The courts and countless administrative agencies are involved on a day-to-day basis in applying the laws of the state, and therefore cannot avoid problems of statutory interpretation. But neither the Constitution nor federal law authorizes them to exercise this power. As a result, interpretations tend to be made on an ad hoc basis, drawing upon common sense, judicial precedents, inner-party bulletins and circularized letters, personal judgments by local party and governmental officials, and other such sources.

The Presidium's role in interpreting the law is, by contrast, a rarefied and occasional one, called for mainly in two general situations: when the courts and procuracy are in doubt about how to apply a general statute, and when government or economic agencies are in conflict over the application of a legislative enactment. In March 1965, for example, the Presidium issued an edict relating to the punishment of "nazi criminals" without defining the term.

13. Mitskevich, *Akty vysshikh organov*, p. 98. For examples of the concretization of laws see D. I. Olkhov, "Novyi Zakon o vseobshchei voinskoi obiazannosti," *Sovetskoe gosudarstvo i pravo*, 1968, no. 5, pp. 138-43 (on the 1967 Law on Military Service), and *Vedomosti Verkhovnogo Soveta SSSR*, 1968, no. 39, pp. 672-73 (on the recent Law on Marriage and the Family). The Presidium's actions on an earlier law on military obligations provoked charges of illegality because its "concretization" allegedly resulted in substantive changes in the content of the law. See I. N. Kuznetsov, "K voprosu o iuridicheskoi prirode ukaza Prezidiuma Verkhovnogo Soveta SSSR i ego sootnoshenii s zakonom," in *Voprosy sovetskogo gosudarstvennogo prava* (Moscow, 1959), pp. 236-37.

14. These are discussed in A. N. Mishutin, "Nekotorye voprosy sovershenstvovaniia zakonodatel'stva v svete reshenii XXIII s'ezda KPSS," in F. I. Kalinychev et al., eds., *XXIII s'ezd KPSS i voprosy gosudarstvennogo stroitel'stva* (Moscow, 1968), pp. 29-44.

In response to considerable judicial confusion, the Presidium issued an interpretation of the statute six months later listing specific categories of crimes which were to be considered acts of "nazi criminals."¹⁵

So far we have spoken of acts of the Presidium which are either within its own constitutional jurisdiction or subordinate to the legislative power of the Supreme Soviet. In neither case do they transgress the literal authority of the legislature, despite the broad interpretation given to the powers of "concretization" and "interpretation." However, the party leadership has never limited the Presidium's role to such acts, but has used the Presidium as the primary vehicle for the initiation of new regulations for Soviet society as well as amendments to existing legislation. Here is clearly a *legislative* activity, in apparent violation of Article 32 of the Constitution, which reserves for the Supreme Soviet the exclusive authority to legislate.

Many have purported to find constitutional justification for the Presidium's legislative role, based on one or more of the following arguments.¹⁶ First, the *principle* that the Presidium can act for the Supreme Soviet is indisputable, and is specifically manifested in those articles in the Constitution that authorize the Presidium to convene the legislature, schedule elections, appoint and dismiss ministers of the government, and so forth. All such matters are subsequently submitted to the Supreme Soviet for enactment into law. Therefore the Constitution includes no general prohibition against edicts of the Presidium which affect matters subject to the exclusive legislative power of the Supreme Soviet. Second, the fact that such actions must be approved by the Supreme Soviet indicates that the Presidium is exercising only a sub-legislative power and therefore committing no infringement on the Supreme Soviet's legislative power. Third, as a practical matter, the infrequency and brevity of sessions of the Supreme Soviet make it essential that some governmental organ have continuing authority to act in response to constantly changing needs of the country. The Presidium is the logical organ to do this, since it can be called into session at any time and is the highest elected, representative body between sessions of the Supreme Soviet.

Against this orthodox rationale, a number of writers have directed a battery of counterarguments.¹⁷ The common ground they share is their insist-

15. The original edict appears in *Vedomosti Verkhovnogo Soveta SSSR*, 1965, no. 10, p. 186; for the interpretation see *ibid.*, no. 37, p. 532.

16. Various facets of this point of view are presented in Iakov N. Umansky, *Sovetskoe gosudarstvennoe pravo* (Moscow, 1960), pp. 285-86; P. S. Romashkin et al., *Teoriia gosudarstva i prava* (Moscow, 1962), pp. 417-18; and N. G. Aleksandrov et al., *Osnovy teorii gosudarstva i prava* (Moscow, 1963), pp. 388-89.

17. See Mitskevich, *Akty vysshikh organov*, pp. 99-104; Kuznetsov, "K voprosu," p. 203; D. A. Kerimov, *Svoboda, pravo i zakonnost'* (Moscow, 1960), pp. 177-81; and S. S. Kravchuk, *Voprosy razvitiia sovetov na sovremennom etape* (Moscow, 1966), pp. 41-48. Kravchuk and Kerimov are agreed that the legislative actions of the Presidium

ence that no amount of linguistic hairsplitting can obscure the basic reality: the Presidium does, in fact, issue legislative decrees between sessions of the Supreme Soviet, and this constitutes a clear violation of the Constitution. The notion that acts of the Presidium that alter existing laws are "sublegislative" in nature has, it is argued, no validity in legal science. A legislative act has a particular and uniform juridical force. It may be as fundamental and all-encompassing as a constitutional amendment or as particularistic as a resolution for adjournment, but it cannot be both. By the same token, any alteration in an act carries with it exactly the same juridical force as the act itself. Therefore, when the Presidium alters an existing law, it exercises the same legislative authority as the body that originated the law.

This conclusion is reinforced by the fact that edicts of the Presidium altering existing laws or establishing new regulations go into effect immediately, so that subsequent approval by the next Supreme Soviet has no effect on their implementation. (It may be argued, as Professor Mitskevich has done, that such edicts have a temporary quality pending approval by the legislature, but this in no way affects their juridical force.¹⁸)

Is it necessary for the Presidium to exercise this authority? Common sense would seem to support the orthodox view that in the six-month intervals between sessions of the Supreme Soviet some official body must carry on the legislature's work. The right of the Presidium to do so, D. A. Kerimov writes, is justified by "practical necessity, connected with the need for timely changes in this or that legal norm when it is unfeasible or impossible to convene the USSR Supreme Soviet in special session."¹⁹ No doubt "timely changes" in existing legislation are occasionally required, but for the Presidium to hang the vast scope of its *de facto* legislative authority on this slender peg is unconvincing on several grounds.

First, many acts of the Presidium clearly involve no urgency at all. In 1968, for example, edicts were issued detailing the dimensions of the Russian continental shelf, changing the name of a government ministry, and altering a 1957 law dealing with labor disputes. All were subsequently submitted to the Supreme Soviet for approval, but it is hard to see in these matters the need for urgency about which Kerimov writes.

Second, the timing of the Presidium's edicts seems to bear no relation to the scheduling of sessions of the Supreme Soviet. As S. S. Kravchuk has pointed out, the Presidiums of union republic Supreme Soviets frequently issue substantive edicts a mere two or three days before the opening of a legislative

are unconstitutional, but Kerimov suggests altering the Constitution to legitimize the practice, while Kravchuk wants to forbid the practice in fact as well as in law.

18. Mitskevich, *Akty vysshikh organov*, p. 101.

19. Kerimov, *Svoboda, pravo i zakonnost'*, p. 182.

session.²⁰ The same is true on the national level. On September 26, 1967, the Presidium issued an edict broadening the benefits of persons working in the Far Northern territories,²¹ a matter that must have been in preparation for a number of months. Yet it was issued just sixteen days before the start of the fall session of the USSR Supreme Soviet. It is difficult to believe that this matter was so urgent it could not wait two more weeks for the legislature to deal with it.

Finally, the argument for urgency is further deflated by the fact that the Constitution provides the Presidium with specific emergency powers over and above its normal prerogatives. In defense of the nation, the Presidium is authorized to “declare a state of war in case of military attack on the Soviet Union” and to “declare full or partial mobilization” of the country (Article 49). Domestically, it may “declare martial law in a locality or throughout the country for the purpose of defending the USSR or preserving public order and the security of the state” (Article 49). Even a legislative crisis involving only the inability of the two houses of parliament to agree on a proposed bill (a highly unlikely event, to be sure) is circumscribed by the Presidium’s right to dissolve parliament and call new elections (Article 47). In addition to these specific emergency powers, the Presidium is authorized to call the legislature into special session whenever it wishes and to extend its regular sessions for as long as is necessary to conduct its business (Article 46).

In view of all these provisions, the orthodox argument regarding the necessity for the Presidium to exercise legislative authority loses considerable force. Altogether, the case against the Presidium as it presently functions, both from a constitutional and a practical point of view, is a strong one, and has considerable support in academic and juridical circles in the Soviet Union. Its main points are that the Presidium persistently violates the Supreme Soviet’s exclusive constitutional right to legislate, and that there is no practical, governmental need for it to do so.

Constitutionalism and Political Change

The central question here is why the legislative provisions of the 1936 Constitution have been so consistently violated. The question is seldom raised by Western writers, probably because the answer seems so obvious: the Constitution is violated because it was never meant to be implemented in the first place, and because to give effective force to all its provisions would bring

20. Kravchuk found that of thirty-four *ukazy* issued by the Presidium of the Ukrainian Supreme Soviet and subsequently passed into law between 1959 and 1963, twelve were issued within two weeks of a legislative session. See *Voprosy razvitiia sovetov*, p. 47.

21. *Vedomosti Verkhovnogo Soveta SSSR*, 1967, no. 39, pp. 561–62.

about the destruction of Communist Party rule in the Soviet Union. Such a statement, while probably true as a generality, is nevertheless irrelevant to the matter we are raising. The question of legislative authority has never been one that involved any direct threat to the pre-eminent position of the CPSU in the political structure. Party control over parliamentary institutions has been unchallenged since the earliest years of the Soviet era.

Nevertheless, the Supreme Soviet and the Presidium do perform political functions, and the relationship between them is a significant part of the Soviet political process. That the Presidium rather than the Supreme Soviet should be the party's primary vehicle for legislation remains to be explained, particularly in view of Stalin's expressed intention that the Presidium should *not* share legislative authority with the Supreme Soviet. Both the Presidium of the Central Executive Committee and the Council of People's Commissars had had such authority under the 1924 Constitution; yet the 1936 Constitution clearly withdrew that authority, reserving it exclusively for the Supreme Soviet. In his report on the draft Constitution, given in 1936, Stalin stated, "We must, finally, eliminate the situation where, rather than a single organ legislating, a large number of them are doing so. Such a situation contradicts the principle of the stability of the laws. And the stability of laws is more necessary for us now than ever before."²²

In the year or two following ratification of the new Constitution, political commentators continually referred to this change as an important revision of the 1924 Constitution,²³ and the change was reflected throughout the lower levels of the governmental system. Commenting on the period in a recent book, Professor M. G. Kirichenko writes:

In the RSFSR Constitution of 1937 (in complete conformance with the 1936 USSR Constitution), the idea was expressed that the Presidium of the Supreme Soviet should be independent and separate from the Supreme Soviet (although subordinate to it) as an organ carrying out only its own functions; that it should not be organically a part of the Supreme Soviet itself (as the Presidium of the All-Russian Central Executive Committee was in relation to the parent body); that it should not duplicate the Supreme Soviet or carry out analogous functions; *and especially that it should not possess the power to legislate.*²⁴

Despite such intentions, the idea of an emasculated Presidium was still-

22. Quoted by A. N. Poskrebyshv, *Izvestiia*, Feb. 26, 1947, p. 7.

23. See, for example, I. P. Trainin, "O glave gosudarstva," *Sovetskoe gosudarstvo*, 1938, no. 1, p. 90.

24. M. G. Kirichenko, *Vysshie organy gosudarstvennoi vlasti RSFSR* (Moscow, 1968), p. 214 (my emphasis). Kerimov also contends that the Presidium has "regulated social relations not intended to be within its jurisdiction. . . ." See *Svoboda, pravo i zakonnost'*, p. 180.

born. From the beginning the Supreme Soviet found its "exclusive" legislative authority exercised largely by the Presidium. The reasons for this involve both ideological and political factors operative in Soviet politics throughout the postrevolutionary era.

First, all popularly elected assemblies have both practical and symbolic or ideological functions to perform, and are organized to give some degree of emphasis to one function or the other. The USSR Supreme Soviet is an extreme example of a legislature organized to embody ideological values rather than to engage in practical, legislative activity. It is constantly referred to as a "workers' assembly," a term which refers not only to the social status of a majority of its members but also to the fact that they are full-time productive workers, not professional politicians.²⁵ This makes it difficult, in a practical sense, for deputies to spend much time in Moscow working as legislators, but reinforces the symbol of mass democracy embodied in the deputy as worker. Furthermore, a major part of the deputies' responsibilities consists of maintaining close contact with their constituents and fellow workers, and with helping to put Soviet laws into practice on the local level, mostly by example. This too requires their presence at home rather than in the capital, but it has the positive effect of strengthening popular belief in the concern of the government for the well-being of the people. Finally, the high turnover rate of elected deputies (over 60 percent in the 1970 elections) contributes far more to the myth of universal participation in government than it does to the training of competent, experienced legislators.

The Presidium presents the opposite picture. As a symbol of Soviet democracy, it has far less to offer than the Supreme Soviet. Although it includes leading figures of each of the republics and a smattering of ordinary workers among its members, it is not a popularly elected body. Its deliberations are usually private and only occasionally reported in the press. Hence in general the public thinks of it as an executive rather than a representative body.

For most of these same reasons, however, the Presidium is admirably organized to carry on the practical work of the Supreme Soviet. A number of its members either live in Moscow or can be there frequently. Its more important members have long tenure in office, thus ensuring greater continuity and expertise in their work. Its staff is large, permanent, and constantly available for the investigation and preparation of legislative proposals and other acts of the Presidium. Its size enables it to work efficiently with other governmental bodies, such as Gosplan and the Council of Ministers, as well as with party organs. With all of these organizational advantages, it is hardly surprising that

25. For discussion of the Soviet concept of a "workers' assembly" see F. Kalinychev and A. Lukianov, "Samye predstavitel'nye, postoianno rabotaiushchie . . ." *Sovety deputatov trudiashchikhsia*, 1966, no. 9, pp. 7-12.

the party leadership has tended to use the Presidium rather than the Supreme Soviet for whatever practical tasks it has permitted the legislature.

The concept of a workers' parliament is further emphasized by the brevity and infrequency of sessions of the Supreme Soviet. As was mentioned before, some matters are bound to arise between sessions which require action by the legislature. Amendments to criminal law codes, for example, or alterations in the national budget might well preclude four or five months' delay until the next session of the legislature, yet not be important enough to warrant a special session. In instances like these, the Presidium, already authorized to perform some of the responsibilities of the legislature between sessions, was the logical organ to take care of such matters. Thus the necessity for the Presidium to act for the legislature on some matters compromised, from the beginning, the Supreme Soviet's legislative authority on all matters. The only relevant criterion then became the degree of urgency attached to a particular matter, and in the crisis-oriented Soviet system it was, and is, never difficult to justify the need for immediate action, however unconvincing the reasoning may seem to some observers, both Soviet and non-Soviet. On this basis, the Presidium rationalized its right to pass legislative edicts on any subject whatsoever.

The alternative, of course, would be to increase the frequency or duration of sessions of the Supreme Soviet, but in the Soviet context this is not considered a feasible alternative. Officially, the election of workers and peasants to the Supreme Soviet constitutes the major organizational difference between the Soviet parliament and its bourgeois counterparts, which are profoundly tainted with the disease of "professionalism." Practically speaking, there is widespread resistance among enterprise managers and shift bosses to releasing key workers (the kind most likely to be elected to the soviets) even for attendance at the brief sessions of the legislature currently being held. Longer or more frequent sessions would no doubt intensify that resistance.²⁶ Some

26. Complaints on this score from deputies to soviets are numerous. One deputy to the Moscow City Soviet (a senior worker and former member of the executive committee of a district soviet) put it succinctly: "Sometimes it is necessary to take time off from work. The shift leader grumbles a little, but lets you go. But try to tell him that it is necessary to go to the Moscow Soviet, to a ministry, or other such office on the business of an elected official—no, you cannot go. He will say: do public business in your free time. And one can understand him. A brigade has a plan, and a master has an obligation to ensure its fulfillment. If he is often absent, who will see to the plan?" V. Markina, "Tem, kto idet na smenu," *Sovety deputatov trudiashchikhsia*, 1966, no. 5, p. 27.

Even members of the Presidium of the USSR Supreme Soviet, if they are not otherwise important figures, have difficulty finding time for their legislative responsibilities. One such member complained: "I have worked as a weaver at the S. I. Balashov textile factory for sixteen years, and am freed from my work only during the time of the sessions." Z. Pukhova, "Deputat i ego dolg," in V. I. Vasiliev et al., eds., *Voprosy raboty Sovetov deputatov trudiashchikhsia* (Moscow, 1968), p. 373.

Soviet writers seem moderately troubled by the fact that legislatures in other Communist countries hold considerably longer sessions than the Supreme Soviet does, apparently without succumbing to "professionalism."²⁷ Nevertheless, suggestions for longer sessions of the Supreme Soviet are almost never put forth, even by outspoken critics of the present state of affairs.

Another reason for the Presidium's legislative position is that the Bolshevik leadership, in its determination to establish absolute control over parliamentary institutions, favored using the Presidium rather than the Supreme Soviet as the vehicle for legislation. The submission of legislative proposals to the whole parliament would have necessitated a wider circulation of information than was required in working through the Presidium. In the secretive environment of the Stalinist regime, this was an unacceptable risk. Furthermore, circulation of information on pending party proposals to the legislature and its standing committees might have resulted in the committees becoming forums for the aggregation of nonparty interests.

The unwillingness of the leadership to countenance this kind of political development largely accounts for the low degree of internal differentiation in the functions and structure of the Supreme Soviet throughout most of its existence. The eight standing committees established in 1937 remained inactive for a decade thereafter, until a 1947 statute set forth the jurisdiction and procedural rules for the Legislative Proposals Committee. Twenty more years were to pass before any major expansion of the committee structure or elaboration of jurisdictional and procedural rules was enacted (see note 34).

A third factor in the relationship between the Presidium and the Supreme Soviet arises from the natural inclination of members of the Presidium to use their positions for political advantage. Fifteen of the thirty-seven members are also chairmen of the Supreme Soviet Presidiums of their own republics, and though they may be secondary figures on the national scene, as Derek Scott contends,²⁸ they nevertheless have positions to protect, and can be expected to take a lively interest in the political status of the Presidium as a factor in their own careers. This is especially true of the chairmen of the USSR Presidium, who have invariably been influential party leaders whose careers were either rising (Brezhnev, Podgorny) or declining (Voroshilov, Mikoyan) at the time they assumed office. In either case, it is reasonable to assume that they invested the Presidium with as much importance as possible in their own interest.

Evidence for this appears in the awarding of medals to prominent Soviet leaders, a prerogative granted to the Presidium by the Constitution. In fact, such awards have been used by Chairman Podgorny to considerable political

27. See Mitskevich, *Akty vysshikh organov*, p. 130.

28. Derek J. R. Scott, *Russian Political Institutions*, 3rd ed. (New York, 1966), p. 114.

advantage in recent years. Christian Deuvel reports that “*below the Politburo level* the decisive influence in this matter is exerted personally by the Chairman of the Supreme Soviet Presidium . . . , not by the Politburo as a whole, nor by the cadre department of the Central Committee, as is frequently believed. The Chairman of the Supreme Soviet Presidium in this instance does not merely sign the decree awarding this or that order to one or another leading official; indeed he seems to have considerable scope for personal initiative in raising or lowering the award or even in denying it altogether.”²⁹ The struggle for political advantage within the Supreme Soviet may also partly explain why major legislative edicts have so often been issued shortly before or after sessions of the Supreme Soviet—to reinforce the Presidium’s absolute right to issue them, independent of its willingness to submit some of them to the legislature for approval.

It should be recognized that Soviet leaders traditionally have been far less convinced of the insignificance of “formal authority” than many Western writers. The history of Soviet political institutions offers many examples of institutions that were granted an array of formal functions separate from the real exercise of political power, then denied even the right to perform those functions. Nominations of candidates for local soviets, for example, have never really been initiated by the organizations that have the formal authority (except the party, of course), even though it makes little difference who is elected, since the soviets are effectively controlled by local party leaders and Soviet officials. Likewise, executive committees of local and regional soviets have traditionally been reluctant to report on their activities to the soviets over which they preside, as required by long-standing legislation, even though the deputies are virtually powerless to override their authority. There has been, therefore, a perennial anxiety among Soviet leaders that merely formal participation in government may gradually evolve into an encroachment on the real power of the party elite. Very likely it is a justifiable anxiety.

Whether all of these factors preclude any basic alteration in the relationships between the Presidium and the USSR Supreme Soviet is difficult to predict. Soviet scholars themselves are divided on the question. The number of those who continue to argue that edicts of the Presidium are of a lower juridical order than laws of the Supreme Soviet, and therefore do not encroach on the legislature’s rights, appears to be dwindling. Many others now freely and critically admit that the Constitution is being consistently violated on this point. Once this view is accepted, Professor Mitskevich argues, “it becomes necessary either to renounce the practice of issuing ‘legislative edicts’ and to enact all laws and all changes in laws only during sessions of the Supreme

29. Christian Duevel, “Unusual Awards for Gromyko,” *Radio Liberty Dispatch*, Aug. 7, 1969, p. 3.

Soviet, or to secure through legislation the right of the Presidium to enact such edicts *expressis verbis*, within clearly established limits.”³⁰

Mitskevich and many of his colleagues opt for the second course, and hence for the status quo, but there are also dissenting voices, arguing not only that the Presidium should be denied the right to legislate but that a trend in this direction is already apparent. Professor Kravchuk points out that in several of the union republics the importance of laws enacted by the Supreme Soviets has greatly increased in comparison with edicts of the Presidiums. Furthermore, the quantity of legislation dealt with during legislative sessions has also increased. Comparing the Second Supreme Soviet (1947–51) with the Fifth (1959–63) in several republics, Kravchuk found that the number of substantive laws passed had increased over the period by 371 percent in the RSFSR, 380 percent in the Ukrainian SSR, and 433 percent in the Belorussian SSR.³¹ This increasing activity of the republican Supreme Soviets is viewed hopefully by Kravchuk. “The greater the development of legislative activity by the Supreme Soviets,” he states, “the less it appears necessary for the Presidiums to issue edicts altering and adding to existing legal norms.”³²

For reasons already presented, and in view of the structural inertia that infests all governmental systems, it seems unlikely that any rapid alteration in the relations between the Presidium and the Supreme Soviet will take place. The Presidium will no doubt continue to resist such change, and it has considerable resources at hand to do so. Nevertheless, the party leadership has expressed in recent years increasing concern over the status of the soviets at all levels. At the Twenty-third Party Congress in 1966 Chairman Brezhnev initiated a campaign to reinvigorate the soviets (not the first, to be sure), which has resulted in a number of legislative enactments and party declarations aimed at elevating the training of deputies, expanding the work of standing committees, liberalizing the rights and privileges of deputies, and requiring executive committees to involve the deputies more effectively and consistently in the work of the soviets.³³ As a result, a far greater number of Supreme Soviet deputies now serve on standing committees, the committees meet more often, and the quantity of legislative business they deal with is steadily increasing.³⁴ In addition, the recent law on standing committees strengthens the

30. Mitskevich, *Akty vysshikh organov*, p. 102.

31. Kravchuk, *Voprosy razvitiia sovetov*, pp. 44–46.

32. *Ibid.*, p. 46. The desirability of reducing the Presidium’s authority is argued also by A. S. Pigolkin, “Sovershenstvovanie zakonodatel’noi tekhniki,” *Sovetskoe gosudarstvo i pravo*, 1968, no. 1, p. 52.

33. Most of the official documents on these matters, texts of relevant speeches at the Twenty-third Party Congress, and a collection of explanatory essays have been published in Vasiliev, *Voprosy raboty Sovetov deputatov trudiashchikhsia*.

34. During the Seventh Supreme Soviet (1966–70) the number of standing committees increased from four (five in the Soviet of Nationalities) to eleven in each chamber,

right of deputies to absent themselves from their jobs without loss of pay while carrying on legislative business, a move which may make it possible for them to take a greater part in the work of committees between sessions of the Supreme Soviet.³⁵

With all these developments, the pressures from below to permit the Supreme Soviet a more significant role in the legislative process, at least in nonsensitive areas of social and cultural affairs, will no doubt increase. There is evidence already that deputies have engaged in serious investigative work during the past few years in connection with proposed legislation, particularly that dealing with the use of land space and with pensions. In the latter case, one of the deputies involved claimed that the findings of his committee convinced the party leadership that committee proposals should be incorporated in the directives for the current five-year plan.³⁶

Whether this trend is to continue depends on the general evolution of the Soviet political system. It is at least clear, however, that the literal provisions of the 1936 Constitution have in recent years become an increasingly prominent basis for arguments favoring greater democratization in the political process. This in itself is a significant development, for it focuses attention on the profound schism between the ideals of Soviet constitutional law and the reality of political control by the CPSU, and opens to public debate some heretofore highly sensitive questions regarding the distribution of legislative responsibilities among the parliamentary institutions.

while the number of elected deputies serving on these committees increased from 259 (18 percent) in the Sixth Supreme Soviet (1962-66) to 700 (nearly fifty percent) in the Seventh.

35. The law is published in *Zasedaniia Verkhovnogo Soveta SSSR: Sed'mogo sozyva*, Third Session, Stenographic Report (Moscow, 1967), pp. 415-24.

36. See Iu. Korolev, "Vazhnoe zveno gosudarstvennogo kontroliia," *Sovety deputatov trudiashchikhsia*, 1966, no. 5, pp. 20-24.