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МЕДИА И ДЕМОКРАТИЗАЦИЯ: ВЫЗОВЫ 1990-Х ГОДОВ MEDIA AND DEMOCRATISATION: CHALLENGES OF THE 1990s

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Аннотация. 1990-е годы стали важным временем в формирующейся Российской Федерации для экспериментов и изменений в политике СМИ. Заявленной целью было информирование граждан, но оно сосуществовало с опасениями по поводу того, что чрезмерно критические меры могут поставить под угрозу демократические перспективы. Законодательство и политика в области СМИ тогда также формировались, чтобы «отшлифовать» избирательные мандаты или помочь поддержать определенные взгляды на постсоветское общество. Важными экспериментами стали создание Судебной палаты по информационным спорам при Президенте РФ и Договор об общественном согласии.

Ключевые слова: информированный электорат, сравнение СМИ, избирательный мандат, управление, эпоха Ельцина, стабильность

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Abstract. The 1990s were an important time for experimentation and change in media policy in the emerging Russian Federation. Informed citizenry was a stated goal, but it coexisted with other strong currents, concerns about excessive and overly critical accounts functioning to endanger democratic prospects. Media law and policy was then also shaped to burnish electoral mandates or to help support particular visions of the post-Soviet society. Important experiments included the Presidential Judicial Chamber on Information Disputes and the Treaty of Public Accord.

Keywords: informed electorate, comparative media, electoral mandate, governance, Yeltsin era, stability

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The decade of the 1990s in the Soviet Union and then the Russian Federation was one of the most extraordinary periods in the history of media regulation. It would be a great loss were it to be forgotten. In the spirit of this conference marking 30 years of radical change and stubborn continuity, we should all want to revisit aspects of those these strange and difficult times. Many of those who lived through these dramatic years are, many of them, slipping away, and the legal artifacts of the time are increasingly ephemeral. For me, thinking about this subject led to a happy task, looking through a volume of essays, documents and decisions: **Russian Media Law and Policy in the Yeltsin Decade** [1], published two decades ago, edited by communication law scholars Andrei Richter, Peter Yu and me and heavily influenced by an environment in which Mikhail Fedotov and Yuri Baturin, who created the 1991 Russian media law, played such an important part. In that book, I wrote these words: “Looking at the development of mass media law in post-Soviet Russia is like examining the wrists of a recently freed prisoner where the marks of the chains are still present” [2, p. 31]. Those were strong words. They may continue to be applicable, but in so different a context that all implications must be revisited. Technologies have transformed; the geopolitics of information regulation have revolutionized. A period of dramatic uncertainty and weakness has been replaced with momentary projections of confidence. Altogether, the rather wild and unconventional 1990s, uncertain and often depressed, have given way to a far more controlled and stabilized Putin era. Several vital issues arise when looking back to the 1990s and forward to the next quarter-century: how to celebrate advances; how to discover new vocabularies of change; how does one understand the dramatic modifications in the strategic reshaping of media spaces in a digital age.

A few words about why the 1990s were such an important crucial time for reconceptualizing media law and policy. One reason this decade of the 1990s was so consequential was the cast of characters engaged in participating in the reshaping process. In the vortex created by the sudden end of the Soviet Union, in the time during Perestroika and after, the redefinition of freedom of expression fell to an unusual mixture of journalists, officials,

lawyers, educators, entrepreneurs and thieves, some operating at enormous scale. It would be an important contribution to chronicle the cast of characters. I would single out Yassen Zassoursky, the legendary dean of the School of Journalism at the Moscow State University (MGU), who died in 2021 and whose cavernous office at MGU was a site of religious wonder: a global archive incorporating, not just the decade, but a century of consequential transformation. Zassoursky had witnessed transformations, drastic changes in ideology, in alliances and technology. His office was benevolent and simultaneously tragic, a monument to the elegance of persistent memory and the destructive impacts of shifting winds. Everyone passed through his office, from Scientologists to fervid graduate students, foreign broadcast moguls to fly-by night operatives, high flying diplomats, and ambitious scholars and entrepreneurs. As Andrei Richter wrote in a loving tribute, Zassoursky “managed to create an academic laboratory for free journalism while maintaining the facade of ‘forging ideological personnel’” [3]¹.

The spirit of Zassoursky was an example of why the period of the 1990s was so yeasty. There were many forces at play. To have functioned and contributed in that decade required some magical combination of idealism, realism, fatalism and cynicism, some willingness to pretend positive change was possible, while recognizing depressing limitations. It was a period of individual and collective striving for human rights and freedom of expression, and at the same time of massive privatization and alteration of institutions. Brilliant minds that had seen few opportunities to have their ideas discussed and realized now could command attention. The unconventional became the currency of the moment. I remember a conversation with Igor Malashenko, the one of the founders of NTV, about programming possibilities. In 1990s, NTV was a key national independent privately owned TV broadcaster. Experts were urging Malashenko to have more public interest programming. Spanish and Turkish soap operas were gaining popularity. It was

¹ For me, other influences include Aleksei Simonov and his Glasnost Defense Foundation, Andrei Richter’s Moscow Center for Media Law and Policy and the Carter Commission on Radio and Television Policy.

his view, however, that the Russian audience needed programs, rather, like “Miami Vice” that would, in his view, awaken the sleeping mass and increase the thirst for cutthroat competition. That way lay the future. Moscow’s hotel lobbies were filled with idea entrepreneurs, agents of charities, representatives of big brands (like McDonald’s), producers, famous academics and others. Internews, an international media support nonprofit organization, now a collection of hundreds and more of implementers around the worldwide pressing for democracy-augmenting media, was then just a struggling pioneer, defining its purpose, seeking a formula for engagement [4]. In the wake of the great institutional collapse, this was a time for the fashioning or refashioning of norms. It was a great jurisprudential void. Of course, it was hardly a total emptiness. This was a society in which almost 75 years of Soviet governance and Leninist ideologies of the function of the media was deep in the collective identity. And, as mentioned, the surrounding world, academics, businesses and those engaged in communications governance and development, were pervasively seeking to influence Russian efforts at reform. All this made the 1990s special. And this combination of forces created a heightened consciousness of alternative ways of thinking about the role of information in society, about media and democracy, about the very purpose of information flows.

Fully to capture the discourse and transformation of this period is far beyond the capacity of this short essay. Certainly, among the monuments to this time are the legislative constructs of Fedotov and Baturin. There were many steps, large and small. The new media law was certainly a major effort. But the impact of the times was larger and more pervasive. The abandonment of old models meant there was almost a *tabula rasa*, from an institutional perspective. How media should be structured in the Russian Federation became a matter of global debate. There were small cultural steps as well, including: a “school” of media law and policy informally named after Baturin and formed at the MSU School of Journalism. The school held weekly classes to recruit and train young law and journalism students who would become more familiar with international standards and approaches to media law, still novel in for the Russian Federation. These young law and media professionals could and did staff the new institutions created as tangible instruments of change.

More pervasive perhaps, were theoretical innovations. I draw heavily on the work of Professor Frances Foster, who chronicled four distinct approaches to the functions of information explored by Russia after the dissolution of the Soviet Union. These four — a foundation for thinking through theoretical perspectives were, in Foster’s telling, the informed citizenry theory, the de-

fense of democracy theory, the popular mandate theory, and the parental theory [5, p. 95–118].

INFORMED CITIZEN THEORY

A root approach — one that perceived the emerging society as stemming from its citizenry — saw a need for a very broadly functioning media, one that could yield a citizenry capable of performing the functions assigned to it in a democratic post-Soviet world. A citizenry worthy of the term should be informed (or have the means to be informed), and it could be the task of the media institutions to ensure the fulfillment of this task. This would be particularly important as the new citizen of the Russian Federation was formed. One can see the thousands of implications for media immediately. Of course, the theory was a powerful argument for official affirmative action to protect the media from economic and political extinction. Foster found in the debates of the time the emphasis on media’s role in informing Russian society as grounds for careful exemption from free market principles for specific preferences such as state subsidies, tariff reductions, and tax concessions [6, p. 97]. There is a policy implication to assure the existence of a media system that can inform the citizenry. One should also note that the informed citizenry theory was deployed to justify journalistic advocacy of media coverage of the negative as well as positive aspects of post-Soviet Russia. This included a defense for harsh and persistent media criticism and ridicule of Russian leaders, institutions, and processes. The informed citizenry theory undergirds access to information and openness of data (as the doctrine develops). Foster tied the theory to efforts to resist or protest official attempts to monitor, censor, and mandate expression. It has also been a frequent defense against government criminal, civil, and extralegal actions against individual media organs.

DEFENSE OF DEMOCRACY THEORY

Foster contrasted the informed citizen theory with the “defense of democracy theory”, which became more prominent as the decade advanced. She read the post-Soviet debates as shifting towards this “defense of democracy” emphasis, and the distinction is significant. Much of the political class, especially then president of Russia Boris Yeltsin, came to see “full” information, as described by an “informed citizen” lens, as a potential threat to the democratic system. “Too much” information or the wrong kind could have a destabilizing effect. Certain flows can alienate citizenry from government. Carpeted emphasis on official corruption and other frailties are seen (and were seen in mid-1990s Russia) to weaken gov-

ernment institutions already in a weakened state. There was an overarching point: constant delegitimization encourages popular distrust, apathy, and nonparticipation in the political process. “Irresponsible” dissemination of information can also exacerbate political and ethnic divisions. Incessant reports of even the most inconsequential disagreements between branches of power fuel political tensions and inhibit compromise [7, p. 99].

The defense of democracy theory thus came to regard the mass media, at times, as a dangerous adversary. Foster expanded this argument:

“[...] the media exalt abstract constitutional rights above the concrete interests of state and citizenry. In so doing, they jeopardize the evolving democratic process and cause serious harm to society. Under the protective banner of freedom of press, expression, and information, the media bombard the populace with a barrage of false, distorted, offensive, and negative news. They unleash “psychological war”, discredit organs of power, “torpedo” reforms, inflame an already tense atmosphere, and contribute to public dissatisfaction and despair. Under the defense of democracy theory, the notion of an independent Fourth Estate is anathema. It views the proper role of the media instead as conduit between government and citizenry. Like the informed citizenry theory, the defense of democracy theory recognizes the value of an “informing” media for democracy. Its understanding of this function is fundamentally different, however. The defense of democracy theory limits the media to “constructive”, “responsible”, “balanced”, and “objective” dissemination of information” [8, p. 100].

POPULAR MANDATE THEORY

Let me turn to the final two approaches that animated discussion in the 1990s. The “popular mandate theory” was tied to then (and now) emerging modes of legitimating governments as a consequence of the quality of an election. What are the preconditions for considering a popular mandate to be reliable and what role does the media play in achieving that goal? The popular mandate theory requires a healthy balanced flow of political information to the electorate. The popular mandate theory also has as an aspiration that voters receive a genuine comparison and choice among competing candidates and approaches. The popular mandate theory can justify various forms of intervention: opportunities for candidates, irrespective of wealth or status, to “equitable access” to mass communication and information media. Moreover, it calls for a full and fair presentation of positions and forbids any outside manipulation or distortion. Finally, the popular mandate theory demands serious, “civilized”, and constructive election campaigns and coverage. Gov-

ernment is justified in prohibiting “unethical”, “defamatory”, and “improper” criticism of opponents (or even the constitution itself). According to Foster, reviewing the debates of the 1990s, “the popular mandate theory views active media involvement in campaigns with suspicion. It emphasizes the power of journalists to skew political information, processes, and outcomes. To prevent media manipulation and interference in elections, the popular mandate theory permits only objective, nonpartisan and unfiltered reporting of campaigns. It ‘rules out’ any analysis, comparison, and criticism of candidates and positions that could unduly influence voters’ perceptions and decisions” [9, p. 102].

PARENTAL STATE THEORY

I have less to say about Foster’s last category — perhaps the most important — namely what she called the Parental Theory. She identified this theory as characterizing Yeltsin’s response to the election debacle of December 12, 1993, when post-Soviet Russia had the first parliamentary elections and a constitutional referendum. Low voter turnout, unenthusiastic popular endorsement of the Constitution, and decisive repudiation of reformist candidates, parties, and platforms were blamed in large part on a failed information policy. This experience also led, as Foster noted, to a fundamental reevaluation of the short-term prospects for democracy in Russia. Under the new view, Russia was “immature and unprepared for democracy” [10, p. 104]. According to the “parental theory”, the role of information is to nurture a particular kind of democracy. Its function is to create what could be seen as necessary conditions for future development of a democratic system — “social accord” and “political culture”. Current efforts to ensure “traditional values” may be an embodiment of a pervasive parental state approach with dramatic potential consequences for media.

As the 1990s pulsated with these various theories of information flow, policies emerged that embodied elements of these theories — sometimes empowering of individuals but often constricting and censoring speech. This interplay between changing justifications, balances of power and enforced actions gave the 1990s their precariousness. For example, consistent with the “popular mandate” theory, adopted or considered policies included:

“[...] assignment of free air time by lot in equal blocks to all registered candidates; limitations on fees and opportunities for paid political advertisement; and provision of free newspaper space for publication of candidate and party platforms. The Russian government [...] sought to reduce the distorting effects of status on the electoral process by monitoring and restricting media use by government officials, heads of television and radio

companies, and journalists who are candidates or candidates' representatives. The popular mandate theory's concern with fair and full presentation [...] translated into extensive legal and extralegal prescriptions on potentially "distorting" practices and coverage. For example, post-Soviet Russia [...] banned public opinion polls and "agitation" for or against candidates immediately prior to or during voting. It has also issued detailed directives regarding the approved format, content, and scope of election-related broadcasts" [11, p. 103].

All these policy initiatives yielded specific outcomes in administration and novel institutions for adjudicating disputes about media and elections or media and societal norms. One significant example that bears examination was a complex enterprise called the President's Judicial Chamber for Information Disputes. Yeltsin created the Chamber in December 1993 purportedly to assist in effective enforcement, interpretation, and development of norms and rules. It became a tool, as many would conclude, to protect efforts favoring Yeltsin. In terms of theories of information and society theories, almost all were in play. The Chamber could be said, ideally, to probe how information diffusion could be enhanced to create a more informed citizenry. It frequently presented itself as a defender of democracy. Its functioning was justified in terms of enhancing the legitimacy of a popular mandate. President Putin abolished the Judicial Chamber by his decree on June 3, 2000. In its brief history, the Judicial Chamber dealt with issues that are similar to those that confront or are constructed to confront societies today. The Chamber was concerned with media dissemination of information that allegedly discredited state institutions, personnel, and legislation. The Judicial Chamber examined and censured publications and broadcasts said to ridicule the federal legislature as a "farce" and its deputies as "clowns" and "buffoons" as well as broadcasts of offensive, slanderous, and inflammatory statements by candidates [12].

There is a final example of institutional creativity that bears study. Too little has been written, I think, about the effort in 1994 to fashion a Treaty of Public Accord [13], a sweeping and dramatic effort to build on a theory of free expression in society. It is interesting to see the contorted attempts to tame discourse in a world of media, not today's social media but media similarly open and seemingly unregulable. There was the desire to appear to be wholly open, yet to domesticate speech and to do so in a way that has the attributes of the consensual, the private and the self-policing. One could look back to the 1990s and the attempted Treaty of Public Accord as a precedent. It depended on the illusion of broadly organized voluntary accession, a wholesale move from individual to collective rights, and the invocation of Soviet themes. Under the

Treaty of Public Accord almost everyone was intended to be a signatory. The Treaty's "terms of service" or standards were more forceful than what one sees in some though not all of today's content moderation arrangements. Some examples (italics are mine. — M.P): The parties to the Treaty "*pledged to take all necessary measures to ensure stability within the country*". Or this: "*The organizers of rallies and demonstrations, and local bodies of power and law enforcement bodies accept moral and political, as well as legal, responsibility for ensuring that these actions are peaceful in nature and that they are conducted in strict accordance with current legislation*". The signatories stipulated that the only constitutional amendments that should be proposed and advanced should be those "*conducive to stabilizing the situation in society*". In a sweeping effort to be encompassing "the numerous parties to the treaty recognized *"the grandeur of Russian history, with its heroic and tragic pages"*, and recognized as well that that grandeur "*obliges one to avoid simplified or insulting appraisals of the past and to prevent the distortion of historical fact*".

CONCLUSION

The 1990s in Russia were a period of high experimentation in the shaping of media policies. It was a period of intense drama and a shifting mixture of significant actors with widely differentiated constituencies. Media policy had its veneer of principle and its reality of competition for power. Media policy was a theater through which the new Russian Federation defined itself and a framework for oligarchs and others to create their own form of "democratic development". The 1990s were a decade in which idealism fluttered in and out of consciousness. In the effort to advance new approaches, one could see the persistence of old theories — Marxist-Leninist theories — in which openness, criticism, broad diffusion of information are instrumental and significant [14]. The impact of the 1990s on the future of the Russian Federation, on media development elsewhere in the former Soviet Union, and on theories of media and democracy — all this will be debated for decades to come. The elemental point here is that — as always — there are important opportunities to gain for the present from examining media debates and policy implementations from the past. The contemporary world — in the West, in China, in Russia — is a scene in which aspects of the crises of the 1990s have their parallels and precedents. Concerns persist about the corruption of elections and the election of the corrupt. Debates proliferate about the rising dangers of free expression to democracy itself and the need to address those dangers. Anxieties about the culture intensify with increasing conviction that social media, rather than being pure engines of freedom, can

dramatically undermine cohesion. Foreign media interventions subvert a century of media organized by state and nation. And media in conflict becomes a subject of increasing importance and complexity as new forms of conflict put in question long-accepted truths about the receipt and transmission of information “regardless of frontiers”. Fedotov and Baturin have organized perspectives on three decades of media development as a way to scrutinize pathways taken and pathways blocked. We are fortunate that they have pressed for this comparative inquiry.

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