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### Part I: Constitutional Promise and Political Realities

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| Chapter 1: Constitutionalism and Accountability in<br>Contemporary Russia: The Problem of Displaced Sovereignty |   |
| <i>Richard Sakwa</i>                                                                                            | I |

The relationship between constitutional accountability and the imperatives of governability is viewed through the gap between formal and informal politics and para-constitutional practices. Sakwa concludes that Putin's emphasis has been on short-term stability, leaving unresolved underlying contradictions, and para-constitutional actions which, while not formally infringing the letter of the Constitution, undermine the spirit of constitutionalism.

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| Chapter 2: The Russian Constitutional Court's Long<br>Struggle for Viable Federalism |    |
| <i>Robert Sharlet</i>                                                                | 23 |

The question asked is why did the search for a symmetrical federal system proceed so poorly under El'tsin, yet prove to be more effective under Putin. Attention is given to the Constitution's ambivalence—intent is clearly toward symmetrical federalism, but a constitutional back door was left open for asymmetrical exceptions. Executive policies and leading Constitutional Court cases on federal issues under each president are reviewed, as well as relevant implementation problems and legal and political cultural factors. Sharlet concludes that Putin's federal campaign, while more successful, met provincial resistance. His response has been to move from elected to appointed governors.

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| Chapter 3: Russia's Constitutional Spirit: Judge-Made<br>Principles in Theory and Practice |    |
| <i>Alexei Trochev</i>                                                                      | 53 |

An analysis of how the Constitutional Court is forging a constitutional culture by developing a jurisprudence of individual rights based on its elucidation of universal but unwritten legal principles it holds to be inherent in the Russian Constitution. In building its rights jurisprudence, the Court has drawn

on international legal norms found in UN and European rights documents. Constitutional Court cases are discussed to illustrate the found principles of equality and fairness. In conclusion, Trochev observes that the Court's ultimate challenge in the long run will be to persuade government officials that its rights decisions should prevail over traditional Russian habits of governance.

## **Part II: Constitutional Practice and Legal Obstacles**

### **Chapter 4: Press Freedom in Russia: Does the Constitution Matter?**

*Peter Krug*

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A careful exploration of the status of the constitutional right of freedom of the press in Russia, with the emphasis upon the judiciary's ambivalent role in the process. Often the courts have abstained from protecting press freedom by finding for competing constitutional and statutory claims, although Krug notes a possible trend toward judicial engagement on behalf of media rights as a result of the influence of case law from the European Court of Human Rights.

### **Chapter 5: The Procuracy: Constitutional Questions Deferred**

*Gordon B. Smith*

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A systematic examination of the still unresolved constitutional status of the Procuracy in the Russian legal system. Having weathered several reform attempts to scale back its ample powers largely inherited from the Soviet system, Smith concludes that—with the exception of its erstwhile control over arrest and search warrants—the Procuracy continues to exercise considerable authority over both legal process and administrative behavior in Russia.

### **Chapter 6: Modern Russian Criminal Procedure:**

**The Adversarial Principle and Guilty Plea**

*Stanislaw Pomorski*

123

A close study of the implementation of a defendant's constitutional right to adversarial proceedings based on equality of the parties in a criminal trial through its codification in the new post-Soviet Russian Code of Criminal Procedure. Many jurists have criticized the Code's corresponding redefinition of the court from an active participant in the trial in the former Soviet and Continental legal tradition, to a neutral, passive guarantor of adversariness and equality during the proceedings.

Chapter 7: Jury Trial and Adversary Procedure in Russia:  
Reform of Soviet Inquisitorial Procedure or  
Democratic Window-Dressing?

*Stephen C. Thaman*

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A comparative-historical analysis of current Russian jury practice in the context of its nineteenth-century Russian antecedent and contemporary European experience. Special attention is given to cases illustrating the questions jurors must answer in reaching their verdict, including the question of intent. Instances in which a jury might mitigate a law's impact *sub rosa* are also discussed. Finally, Thaman criticizes the Russian Supreme Court's high rate of reversing jury verdicts of acquittal as a violation of defendants' constitutional right to trial by jury.

Chapter 8: Russia's Constitutional Project and  
Prospects for the Future

*Gordon B. Smith*

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Assessing Russia's progress of constitutional development requires adopting a comparative developmental approach—neither measuring Russia's performance with abstract ideals, nor comparing it with the most advanced, evolved legal and constitutional systems. Smith surveys constitutional developments in the United States during its early years, post-war evolutions in Germany and Japan, and post-colonial developments in India, and concludes that Russia's uneven path of constitutional development is neither unusual nor as bleak as some commentators allege. It remains a work in progress.

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List of Russian-Language Abbreviations

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