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REFLECTIONS ON LEGAL REFORM IN RUSSIA

by Kathryn Hendley

Russia is in the process of making an unprecedented transformation on virtually every front. In the economy, we find a transition from state socialism to the market. In the legal realm, we find a transition from a society in which law was largely marginalized to one governed by the rule of law. In the political realm, we find a transition from one-party authoritarianism to a multi-party form of democracy. All aspects of the transition are inter-dependent. No aspect of the transition is complete, but important steps have been made away from the past. At the same time, the ultimate structure of post-Soviet Russia remains in flux. Whether the goal of creating a market democracy can be attained remains to be seen. Indeed, the end result of the transition will not be apparent for many years to come.

The focus of this article is on the intersection of legal and economic reforms in the transition process. The presence of a legal infrastructure that can facilitate market transactions is critical to the success of economic reforms. But what sorts of institutions are necessary? What kinds of laws are needed in order to establish the «rules of the game» for the market? What kinds of institutions and laws are capable of taking hold in the transition period, given the lack of societal knowledge about the market and the deep distrust of the government that built up during the Soviet period? These questions are of practical importance for the success of the transition in Russia and of theoretical importance in terms of understanding the dynamics of societal change more broadly.

In order to understand the current reforms and to predict their

likely outcome, it is necessary to begin by examining the context in which they arose. Institutions do not spring into existence fully-formed. Rather, they evolve gradually, and their eventual shape depends on the underlying culture and the nature of the institutions that precede them.[1] This is true even in the Russian case, where the new and old institutions would seem to have little in common, given that they are grounded in completely different ideologies. Thus, my analysis begins with a brief review of the role of law in the Soviet Union. Then, I turn to the reforms of economic law initiated by Gorbachev and Yeltsin. I examine the extent to which these reforms lived up to the rhetoric, and what the consequences are for society of any shortfalls. Finally, I close with some educated speculations about what the future holds for Russia, and whether there are any lessons to be learned from the Russian experience.

I- The Role of Law in the Soviet Union.

During the seventy-four years that the Soviet Union existed — from the October Revolution of 1917 until the ignominious collapse of the USSR in December 1991 — law was used in a highly instrumental fashion.[2] Law became simply one of a set of policy tools available to political leaders in order to force their policy choices on Soviet society. The structure of the Communist Party as an elite vanguard party that was not publicly accountable to society facilitated the ultimate marginalization of law. In theory, the Party acted in the best interests of society. Over time, however, the rhetoric departed from the reality as Party members learned to manipulate law and legal institutions to serve their narrow personal interests.

Two aspects of the instrumental view of law that prevailed during the Soviet period are worth highlighting. The first is the vision of law as a tool available exclusively to the state. The second is the use of law as an expedient tool for achieving short-term goals at the expense of maintaining the legitimacy and autonomy of law.

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1 See David Stark, «Path Dependence and Privatization Strategies in East Central Europe,» *East European Politics and Societies*, 6:1 (1992), pp. 17-54.

2 For a comprehensive analysis of Soviet law, see Harold J. Berman, *Justice in the U.S.S.R.*, rev. ed. (Cambridge: Harvard University Press, 1963).

Soviet law was conceptualized as non-inclusive and top-down. It represented a one-way projection of authority that reflected the interests of those in power. The masses had no role to play in the law-making process. Their only contribution was to obey the law unquestioningly once promulgated. Thus, law did not reflect their needs or interests. Elections were held, and duly-elected legislators voted on legislation, but it was an elaborate charade. Multi-candidate elections were not allowed; all legislators were members of the Communist Party, and rubber-stamped any laws that came before them.

The result was a sense of alienation on the part of society towards law. Ordinary citizens did not view law as a shield that could protect them from arbitrary action by the state, nor as a sword available to them in order to enforce their rights. To be sure, they saw the sword-like nature of law, but believed it to be a weapon available only to the political leadership. Law was an outside force that acted upon them repressively. Over time, a profound sense of distrust of law and legal institutions grew up.

Moreover, Soviet society lacked the intermediary institutions that might have helped citizens access the system or that might have assumed a gadfly role, holding the government and the Party accountable to the law. The groups that typically perform that function, such as the press or the bar, were thoroughly under the thumb of the Party. Issue-oriented advocacy groups were not allowed, except within the Party structure, where criticism of state policy would not be tolerated. Civil society was effectively repressed.

On a practical level, Soviet citizens were reluctant or unwilling to use the law in an affirmative fashion to protect themselves. Even where the statutory law seemed useful, they shrank back from mobilizing their rights, fearful of possible repercussions. They used the law only when it was absolutely necessary, as in divorce or housing matters. Otherwise, they avoided law and legal institutions. This fear and distrust did not end with the collapse of the Soviet Union. Attitudes towards law live on and must be reshaped if economic and legal reforms are to succeed in the post-Soviet context.

The second aspect of the instrumental view of law that prevailed in

the Soviet Union that deserves to be highlighted is the use of law as an expedient and flexible tool to accomplish short-term policy goals and to reshape society in the Marxist-Leninist image over the long run. History shows that law could be changed at any moment in order to serve the interests of the political elite. Law was not a source of stability within Soviet society. Indeed, just the opposite was true. At every level of the legal hierarchy — from the constitution down to administrative regulations — the rules could be changed almost instantaneously. Once again, this only served to deepen the distrust of law and legal institutions among the populace.

A concrete example may bring the picture into sharper focus. What role did law play in Soviet-era contractual relations? The answer to this question depends on how we define «law.» If we define law formalistically to include only written law, *i.e.,* the Civil Code of the USSR and the interpretive decrees and regulations, then we would conclude that law was not terribly important.[3] In the context of the command economy, the choice of business partners and substance of the resulting contract was generally dictated from above. Thus, the negotiation of contracts took place not in the shadow of the law, but in the shadow of the Communist Party.

Similarly, when a problem arose, enterprise managers tended not to pursue the matter in court. Economic courts *(arbitrazh)* existed; they had jurisdiction over disputes between state enterprises.[4] Indeed, the law ostensibly required managers to submit all contractual disputes to *arbitrazh.* Notwithstanding this legal obligation, managers preferred to turn to their bureaucratic superiors in the industrial ministries or to Party officials for assistance in putting pressure on the non-performing party. The underlying assumption was that administrative remedies were preferable to legal remedies.

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3 See Goerge Armstrong, «The Evolution of the Concept of Fault and Impossibility of Performance in the Soviet Law of Contracts Between Enterprises,» *Review of Socialist Law*, 7:4 (1981), pp. 187-205.

4 See Stanislaw Pomorski, «State Arbitrazh in the U.S.S.R.: Development, Functions, Organization,» *Rutgers-Camden Law Journal,* 9:1 (1977), pp. 61-116; Heidi Kroll, «Breach of Contract in the Soviet Economy,» *Journal of Legal Studies*, 16:1 (1987), pp. 118-47.

Over time, what developed was a system in which law was largely irrelevant to the formation or enforcement of contracts. The foundation of the system was personal and/or political connections, not universalistic rules enforced by independent tribunals. The system was highly arbitrary and particularistic. Naturally, law could not possibly serve as a source of stability in such a system. In this world in which law served as a handmaiden to politics — to the needs of the Communist Party —the general attitude towards law became one of disdain and distrust.

II- Perestroika-Era Reforms

Just how much did the system or the underlying attitudes change as a consequence of perestroika? Gorbachev came to power in early 1985. He was the first Soviet leader since Lenin to have been trained as a lawyer. He never actually practiced law; his career was spent within the Party bureaucracy.[5] Notwithstanding his apparatchik background, Gorbachev had a profound influence on law. Of all his law-related actions, the most important was to open a debate on the role of law. In 1987, he spoke of the need for a law-based state (*pravovoe gosudarstvo*) in the Soviet Union. Precisely what he meant by this phrase was somewhat obscure at the time, but the rhetoric alone acted as a breath of fresh air.[6] For the first time, Soviet scholars felt free to write frankly about the shortcomings of their system.[7] No longer was it obligatory to present the Soviet system as a paragon. To be sure, most scholarly articles still accentuated its positive features, but no longer denied its less successful aspects. This may seem like a small gain, but open discussion is necessary (though certainly not sufficient) for meaningful legal reform.

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5 See Robert G. Kaiser, *Why Gorbachev Happened: His Triumphs, His Failure, and His Fall* (New York: Simon and Schuster, 1991); Zhores A. Medvedev, *Gorbachev* (New York: W.W. Norton & Company, 1986).

6 For a discussion of the meaning of *pravovoe gosudarstvo* which places the term in historical and theoretical perspective, see Harold J. Berman, «The Rule of Law and the Law-Based State *(Rechtsstaat)*,» *The Harriman Institute Forum*, 4:5 (1991).

7 E.g., V.N. Kudriavstev and I.A. Lukasheva, «Sotsialisticheskoe pravovoe gosudarstvo,» *Kommunist*, no. 11 (1988), pp. 44-55.

What precisely was Gorbachev advocating with his call for a law-based state? His rhetoric was high-minded. He spoke of the need for law to bind everyone equally, without regard for Party status. At the time, this seemed revolutionary. For the past seven decades, the preferential status of Party members had been accepted without question (and without discussion). In retrospect, however, we should recognize the very limited nature of Gorbachev's vision of legal reform. What he really wanted was for the existing system to work better. At a very basic level, his goal was for people to obey the law — both the statutory law and executive decrees. He recognized the inefficiency of having two standards of conduct. Not only did Party members disregard the law, ordinary citizens felt justified in going around it because it had no legitimacy within society. The concession on universal applicability was designed to boost its legitimacy —to make the law appear more fair and just. But it was a matter of appearances. Gorbachev never seriously questioned the top-down nature of Soviet law. He did not encourage societal participation in the law-making process. Indeed, when his electoral reforms gave life to a parliament that challenged his policies (or at least refused to rubber-stamp them), his response was to go around the parliament by issuing decrees.

Gorbachev's ideas about how to increase the legitimacy of law were certainly understandable in the context. He seemed to think that if laws that were substantively better and were made universally applicable, that this would increase respect for the law and would generate higher levels of obedience to the law. This mechanistic approach to law and legal reform follows naturally from the authoritarian models of political behavior that had long held sway in the Soviet Union. Gorbachev's tactics did nothing to encourage people to think of law as something new and different — as a positive force that could be used to protect and defend their legal interests.

His lack of comprehension of the importance of legal culture becomes clear when we look at the latter years of his regime. During this period, Gorbachev increasingly ruled by decree. This was particularly evident in the economic realm. Soon major discrepancies grew up between Soviet decrees and legislation. Adding to the confusion was the emergence of the Russian parliament as a potent political force. Thus, the contradictions in the law multiplied. Merely figuring out what the

prevailing law was became a challenge. People began to pick and choose among the various Soviet and Russian legal acts, obeying those that suited their purposes and ignoring those that did not. This image of law as a smorgasbord is not the ideal foundation for a new and more legitimate legal system.

Instead, it seemed like more of the same. Despite the high hopes that the introduction of the concept of the law-based state into political discourse had engendered, the net impact on the Soviet legal system of his tenure was negative. Gorbachev's rhetoric promised so much but delivered so little that it only served to harden the attitudes of skepticism and disrespect towards law that already existed.[8]

During Gorbachev's tenure, we also witnessed the gradual collapse of the state's capacity for enforcement. The intertwining of the state bureaucracy and the Communist Party apparat meant that the Party's fall from power left the state weak and ineffective. In a relatively short period, the Soviet state went from being (or at least seeming) all-powerful to being discredited and impotent. Both permutations of the Soviet state had a deleterious effect on law and legal culture. When too strong, the state (in the form of Party officials) is able to manipulate law to further the interests of those in power. In contrast, in the context of a weak state, law becomes an empty threat and/or promise. The common thread in the Soviet case is the absence of society in the law-making or law-enforcement process.

III- Contemporary Role of Law

With the collapse of the Soviet Union in December 1991 came the emergence of B.N. Yeltsin as the undisputed leader of Russia.[9] Yeltsin had, of course, been a key player in Soviet politics for many years. He was one of the first prominent politicians to break openly with the

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8 See generally George W. Brelauer, "Evaluating Gorbachev as Leader, "Soviet Economy, 8:3 (1992), pp. 197-238.

9 The disintegration of the Soviet Union gave rise to the creation of 15 new countries, founded on the basis of the former republics of the Soviet Union. Russia was the largest of these successor states.

Communist Party. By the early 1990s, he was the president of Russia, and he used this post as a platform from which to push for increasingly more radical economic reforms.[10] When Russia threw off the Soviet yoke in January 1992, Yeltsin and his advisors acted swiftly to «shock» the Russian economy into a new market era.[11] Virtually all prices controls were lifted. The restrictions on wages were also liberalized.[12] In the subsequent months, Yeltsin's regime launched an ambitious program to privatizate state enterprises.[13]

The combination of perestroika and the new more market-oriented reforms has effectively destroyed the institutions of the administrative command system, *e.g.,* the ministries and the Party. But Yeltsin and his advisors quickly learned that constructing new institutions was far more difficult that tearing down old ones. Building a market economy in a society that had known only state socialism for over seven decades has proved to be a daunting challenge — certainly more painful than the

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10 See generally Boris Yeltsin, *Against the Grain*, trans. by Michael Glenny (New York: Summit Books, 1990).

11 See Boris Yeltsin, *The Struggle for Russia*, trans. by Catherine A. Fitzpatrick (New York: Times Books, 1994), ch. 6; David Lipton and Jeffrey D. Sachs, «Prospects for Russia's Economic Reforms,» *Brookings Papers on Economic Activity*, 2: 1992, pp. 213-83.

12 Under the Soviet administrative command system, controls on wages had been imposed through rigid restrictions on wage funds. While eliminated on a formal level, to some extent they were replaced by tax regulations, which imposed high taxes on wages above a centrally-determined norm.

13 Privatization had begun in a half-hearted fashion under Gorbachev. The first Soviet privatization law was passed in July 1991, but the putsch of August 1991 and the turmoil that followed left little time or energy for privatization. Pre-1992 privatization tended to be ad-hoc in nature, and is often referred to as «spontaneous» or «nomenklatura» privatization. See Simon Johnson and Heidi Kroll, «Managerial Strategies for Spontaneous Privatization,» *Soviet Economy,* 7:4 (1991), pp. 281-316; cf. Michael Burawoy and Kathryn Hendley, «Between Perestroika and Privatization: Divided Strategies and Political Crisis in a Soviet Enterprise,» *Soviet Studies*, 44:3 (1992), pp. 371-402. For an overview of Yeltsin's privatization program, see Peter Rutland, «Privatization in Russia: Two Steps Forward, One Step Back?» *Europe-Asia Studies*, 46:7 (1994), pp. 1109-31.

short-term adjustment that Yeltsin implicitly promised the Russian people.

The transition to the market requires profound changes in institutions and underlying attitudes.[14] Indeed, an entirely new vocabulary is needed. Competition and profit become critical. A banking system, complete with a method of securing collateral, has to be created. Hard budget constraints, backed by a real threat of bankruptcy, have to be accepted by both the state and the business community. This list of institutional prerequisites for the market is far from complete.[15] The framework for these institutions is set by law. Thus, the transition requires a series of new laws that will facilitate market-based economic transactions.[16] As with institutions, the number of new laws called for is intimidating. Included are such basic *laws as* the civil code, corporate law, securities law and bankruptcy law. When Russia embarked on the transition in 1992, none of these laws was adequate to the task.

As difficult as institutional change (whether legal or economic) is, it pales in comparison to the task of reshaping attitudes and behavior. After all, institutions mean little if not embraced by their target audience. Economic actors have to be willing to alter their basic assumptions about how the economic system works. They have to recognize the realities of the market. In particular, they have to accept the limited nature of state subsidies; bankruptcy has to be a real risk. In the legal context, people have to be willing to use the new laws to defend and promote their interests vis-a-vis the state and private actors. As we've already argued, Russians have little faith in the ability of the law to serve their interests. Their assumption is that law is a coercive tool of the state and, therefore, to be avoided whenever possible. This legacy of skepticism regarding law only makes changing behavior more difficult.

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14 See generally Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990).

15 See generally Oliver E. Williamson, *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting* (New York: The Free Press, 1985).

16 See R.H. Coase, *The Firm, the Market and the Law* (Chicago: University of Chicago Press, 1988), ch. 1.

In order to concretize the problems associated with the transition, we now turn to three aspects of the ongoing process: (1) the adoption of a new civil code; (2) privatization; and (3) development of a market-based contractual regime.

IV- The Adoption of the Civil Code

The Russian Duma adopted a new civil code in October 1994.[17] In theory, this law is critical given that civil code provides the basic framework for all economic transactions. Moreover, it sets the tone for future legislation. On a superficial level, the code is impressive. It consolidates the law and contemplates multiple forms of property and many types of market-driven economic transactions. In preparing the new civil code, the Russian legislators sought counsel from a wide variety of foreign experts in the United States and Europe. There are, of course, important differences in the common law and civil law legal traditions with respect to corporate organization and other key elements of any civil code.[18] The Russian law does not fully endorse either approach, but tries to weave the two together into a set of norms that is appropriate for Russia.

Notwithstanding these positive attributes, serious doubts persist as to whether the new civil code will have the sort of practical impact anticipated. There are two primary reasons for this skepticism. The first is the evident gap between this law and the present-day Russian reality. As we have previously noted, the new civil code attempts to bring together the best from many different models. While the drafters traveled the world in search of advice, they made no serious effort to investigate the needs of Russian businessmen. Russians were, in fact, doing business in the absence of the civil code. It would seem to have been prudent to find out what sorts of legal instruments and norms had come to be accepted. To be sure, these norms are much less technically sophisticated than those created under the new civil code. Passing laws

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17 *Rossiiskaia gazeta*, No. 238-239, 8 December 1994.

18 Compare Roberta Romano, *Foundations of Corporate Law* (Oxford: Oxford University Press, 1993) with Mark J. Roe, «Some Differences in Corporate Structure in Germany, Japan, and the United States,» *Yale Law Journal*, vol. 102 (1993), pp. 1927-2003.

that are significantly more advanced than actual practice can have the effect of stimulating change in behavior. But if the gap is too great, the law will be incomprehensible and, in all likelihood, will lie dormant. Given the extraordinarily underdeveloped nature of the Russian economy, and the lack of understanding of basic market concepts, we have to question whether passing a state-of-the-art civil code is a blessing or a bane. Whether Russian businessmen and their lawyers are capable of absorbing and using this new civil code remains to be seen.

The second source of skepticism about the potential impact of the civil code are the persistent problems with implementation. The weakness of the central state is troubling in this context. The civil code is a federal law and so Moscow should be assuming primary responsibility for its enforcement. But serious doubts exist as to the capacity of Moscow to exert its influence in the far flung regions of Russia. In other countries, we might place our hope in self-enforcement. We might assume that the instability of the transition period had given rise to a pent up desire for general rules. The underlying contempt for law provides little basis for hope. Despite what legislators might think, businessmen outside Moscow were not waiting with bated breath for this new law. The past decade has convinced them to rely on their wits rather than waiting for solutions from Moscow.

V- The Process of Privatization

Privatization is a second key element of the transition to the market. The architects of privatization have declared it to be a success.[19] In support of this claim, they point to the number of former state enterprises that have gone through privatization and to the number of shareholders that now exist. Such statistical evidence could be countered by the staggering number of enterprises that have been forced to cease production following privatization due to an inability to access new markets or new sources of financing. Such data do not trouble the supporters of Russian privatization; they dismiss them as inefficient firms that should have been closed.

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19 E.g., Maxim Boyko, Andrei Shleifer and Robert W. Vishny, «Privatizing Russia,» *Brookings Papers on Economic Activity,* 2 (1993), pp. 371-402.

Whether the number of privatized firms accurately capture the relative success of privatization is unclear. These quantitative indicators are helpful only if we consider the goal of the privatization process to change the structure of enterprises. It is undeniable that a substantial percentage of former state enterprises have been corporatized and transformed into joint-stock companies through the privatization process. It is also undeniable that this transformation has taken place at an unprecedented speed. Indeed, the bulk of Russian enterprises were privatized between 1992 and 1994 — two short years. But changing the legal form of the enterprise is only a means to an end: it is necessary but not sufficient. The ultimate goal of privatization is to increase the efficiency of Russian firms and, ultimately, to make them capable of competing in the global marketplace. Quantitative indicators provide little insight into whether progress is being made towards changing how the Russian business is run. Merely reconstituting the managers as a board of directors, and the general director as the chairman of the board does not necessarily cause them to behave any differently. Along similar lines, merely printing and distributing stock certificates does not cause people to question management policy and otherwise to behave like shareholders.[20] Whether a qualitatively new relationship now exists between workers (as shareholders) and management is highly questionable.

But side-stepping the debate over the wisdom of rapid privatization as an economic policy and turning to its legal aspects, we find that it has had a pernicious effect. Like most aspects of Russian economic reform, privatization was carried out in a top-down fashion. Indeed, for the most part, the rules governing the privatization process are contained in executive decrees, rather than in legislation. Yeltsin and his advisors

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20 The difficulty of creating shareholders in a society that had never allowed passive forms of investment or private property is further complicated by the fact that most enterprises are owned by their employees. For a comprehensive discussion of the three methods of privatization available in Russia, see Roman Frydman, Andrzej Rapadzynski, John S. Earle, et al, *The Privatization Process in Russia, Ukraine and the Baltic States* (London: Central European University Press, 1993).

were unable to convince legislators to accede to their vision. The response was not to seek compromise, but to go around the legislature.

This has troubling implications for the prospects for real democracy in Russia. But it creates more practical problems for the legal system. The end result was that the law governing privatization and the law governing the operations of privatized firms was sprinkled throughout many different decrees. Merely determining the substance of the law was almost impossible. Requiring that people wade through endless decrees in hopes of finding the relevant provisions is hardly a recipe for convincing the skeptical populace to obey and use the law. To some extent, the piecemeal nature of law has been ameliorated by the adoption of the civil code. But not entirely, for the civil code provides that privatization decrees can serve as a source of company law.[21] In any legal system, transparency of law is important. It is, however, particularly important in Russia where there is a tradition of non-publication of law and secrecy.[22]

VI- Contracts

The third aspect of the transition process to be examined is the effort to construct a new market-based contractual regime. As with privatization, on the surface the changes over the past five years are remarkable. The national economic plan no longer exists. Thus, success is no longer judged by plan fulfillment; profitability has become the watchword among Russian businessmen. Enterprises are no longer beholden to industrial ministries; they can set their own production profiles and schedules. Each of these seemingly positive developments has its negative side. For example, the expansion of enterprise rights has been matched by an expansion of duties. The industrial ministries no longer guarantee a steady supply of needed inputs. In addition, enterprise management now answers for sales; output is not allocated by central authorities. While liberating management to sell to whomever it

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21 Article 96-3, Civil Code, *Rossiiskaia gazeta*, No. 238-239, 8 December 1994.

22 On transparency, see Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven: Yale University Press, 1969).

chooses, it also opens up the very real threat that it will be unable to sell all of its output. This, in turn, gives rise to the threat of bankruptcy.

The collapse of the administrative-command system has caused a general unravelling of the system of contractual relations. Contractual partners used to be dictated from above, and ministries used to act as contractual enforcers of last resort. Now enterprises are on their own. In theory, the breakdown of the institutional status quo combined with the absence of any single dominant group within society that is able to impose its will on society should give rise to a demand for universalistic rules that will serve as a kind of baseline. Since no single group or individual can dictate the «rules of the game», there should be a collective longing for some compromise solution. Law can act as this compromise. Though it serves no ones interests totally, it establishes a relatively neutral set of rules that serve as a framework for economic transactions (both in formulating them and in subsequent disputes). The goal is to create a relatively level playing field, both in terms of substantive law and legal institutions.[23] To rephrase the argument in the Russian context: the collapse of the Communist Party and the institutions of the command economy left a political vacuum that could have been «filled» by law.

This is, of course, only one possible scenario for the future of Russia. Although any final judgment would be premature, Russian legal culture seems to be developing in a different direction. As before, trading partners enter into written contracts that memorialize their agreement. But they still mean little in practice; perhaps even less than before. Thus, rather than seeking stability in generally applicable rules, economic actors continue to rely on their networks of personal relations. Efforts to adapt are focused on reconstructing these networks in the wake of the fall of the Communist Party rather than on petitioning Moscow for better substantive laws and more effective enforcement. In many cases, these new networks include organized crime elements, which have stepped into the void as private contract enforcers.

The question of why law has not become more important in con-

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23 The argument is inspired by the work of Max Weber, *Economy and Society*, eds. Guenther Roth and Claus Wittich, vol. 1 (Berkeley: University of California Press, 1978).

tractual relations cannot be easily answered. The lack of trust in law and legal institutions plays a significant role. Pursuing legal remedies is rarely the easy way out when a dispute arises. If the rules are not clear and the institution that resolves disputes is assumed to be corrupt, then the failure to resort to the law becomes understandable. The Yeltsin government has tried to address some of these concerns. It instituted a major reform of arbitrazh. The jurisdiction of these economic courts was expanded to include disputes between all types of business organizations.[24] Arbitrazh was also reconstituted as arbitrazh courts, thereby raising its prestige as an institution and the status of the decision makers. But the reforms have proved inadequate. The arbitrazh courts' enforcement powers are limited. As a result, a party who prevails can never be sure that it will actually be able to recover on the judgment. Moreover, arbitrazh courts are limited to monetary damages, which is of little interest to managers who cannot go out into the marketplace and purchase replacement goods. Over time, as markets develop and competition becomes a reality, we would expect that monetary damages would become more appealing to Russian businessmen.

A second reason why law continues to be rather peripheral to contractual relations is the prevalence of monopolies within Russian industry. If an economic actor believes that there is only one possible source for a particular item, then he is unlikely to challenge that trading partner — even if that trading partner engages in patently illegal acts. Once again, we would expect this factor to become less potent over time, as monopolies dissipate under market pressure.

Finally, we should not neglect the role of organized crime. As noted above, in some cases, the stability that might have been provided by law is actually being provided by private actors. Such stability achieves the short-term objective of forcing a trading partner to comply with the terms of a contract. But the long-term implications of relying on private enforcement are troubling. There is, of course, no recourse from a decision (as there would be in court). The encroachment of organized crime into traditional state functions, such as contract

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24 During the Soviet period, arbitrazh had been limited to resolving disputes between state enterprises.

enforcement, tends to harden the distrust of ordinary citizens for law and legal institutions. The end result is to make it increasingly difficult to build the legitimacy for law that is so essential if people are going to embrace it as a means of protecting themselves.

VII- Conclusions

Russia provides few rays of hope for the deve-lopment of a legal culture in which people respect and use the law. The question to be considered is whether Russia is unique or whether there are lessons to be taken away from its experience. Certainly, Russia's history is unique, but then so every country has its own history. Perhaps the attitudes about law were more extreme than elsewhere, and there was a greater willingness to use law in an openly instrumental fashion. But this is a pattern that is common to many countries.

When we move our focus to the present day, we find that the experience of Russia parallels that of other developing countries. The tragedy is that the same mistakes keep repeating themselves in different parts of the world. There seems to be an unwillingness to learn from the past. Each new campaign for legal development makes the same discoveries.

Three general lessons stand out from the Russian experience. All are inter-connected. The first is the limitation of top-down reforms modeled on foreign experience. In order to have a long-term effect, law cannot simply be forced on society from above. It has to answer the needs of society — it has to respond to some «demand» (whether or not this demand has been articulated). Some kind of formal feedback mechanism should be created in order to make it easier for legislators and other decision-makers to take real life into account. Second, destroying institutions before new ones exist to take their place may create chaos. Even if the old institutions function poorly, it may make more sense to build on their foundation, rather than leaving a vacuum. Finally, while stability can be assumed to be desired by society (particularly by economic actors) law is not the only source of such stability. If the law is silent or falls short of what is needed, then people will seek and find stability elsewhere.