The Russian Legal System In a Nutshell

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I. Introduction

There is a Russian saying that to learn the language you must crack it like a nut. The Russian legal system is an even harder nut to crack than the Russian language. Often, like a set of matryoshka dolls, the Russian legal system turns out to be yet another nutshell within a nutshell. For the Russian law student the state is to be found within society, and within the state is to be found the law, and within the law is to be promulgated the constitution, and within the constitution are to be found the various branches of the law giving substantive expression to the basic norms of good government .... One can go on cracking nutshells forever ...

This endlessly abstract argument over the origins of law and government tends to exhaust the common lawyer. It takes mammoth reserves of energy to research the resources of Soviet Law. The irony of post-Soviet law lies in the extent to which it is still pre-post-Soviet. To resolve the issue requires that Slavic sense of humour in which, as another Russian saying goes, laughter is a sin. This is particularly the case for political humour, which, while recognising Yeltsin as the outer nutshell of the current satirical set of matryoshka dolls, still relies on Rasputin ruling from deep within as the living kernel and driving force of the Russian legal system. For the purposes of this paper, the expression 'in a nutshell' thus means within its own nutshell. To identify the successive layers of nutshell around the Russian legal system will be as close as we can get to cracking the nut.

II. The First Outer Shell — Normative Science

In common with most continental legal systems, that of the Russian Federation takes an express stand on normative science. Abstract legal norms are classified into those enabling justice and those prohibiting injustice, and are structured into hypothetical, dispositional, and legally sanctioned-norms.[1] This abstract jurisprudence of law, state-government, and society is virtually incapable of target-translation into common law where abstract jurisprudence is seen to emanate experientially from practical common sense rather than from political philosophy, and where our concept of law is derived from custom embodied in a long heritage of carefully recorded and widely published judicial decisions. What follows is thus a source-oriented[2] account of Russian law, enlivened wherever possible by metaphor and other figures of speech as being the only

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1 Words such as 'hypothetical' or 'dispositional' and 'legally-sanctioned norms' are not my own choice of expression, but represent the need for literal accuracy in translating an alien legal culture into one which has no corresponding terminology for an equivalent concern at common law.

2 For the use of these terms 'source and target-oriented translation' see my "Source and

means of target-translating this unique system of law for the English-speaking reader.

The legal system of the Russian Federation comprises a general jurisprudence (of juristic principles, legal norms, and sociological elements) together with a particular jurisprudence of legal forms and functions (both constitutional and institutional) expressed by exercising not only legislative, judicial, and executive powers, but also through academic commentary,[3] legal scholarship as one among other sources of positive law. Being revolutionary, the Russian legal system is extremely ontological in its concern for beginnings. Unless historical, these are invariably abstract and jurisprudential. This differs from the evolutionary emphasis of the common law whose far less ontological concern is customary and concrete.

By way of ensuring legal continuity, the current constitution of the Federation, enacted in 1993, is seen[4] to have four previous stages of development — being the 1918, 1925, 1937, and 1978 constitutions of the Russian Soviet Federal Socialist Republic. The matryoshka process of encapsulating previous constitutions (as earlier stages of development) within the current constitution means that Leninist and Stalinist periods of leadership still receive constitutional recognition. There being no correspondingly four-cornered written constitution drawn up before 1917, however, makes it harder for researchers to recognise any earlier contributions to constitutional growth. Some ideas of reform from the so-called bourgeois legal period (1861-1917) might be seen to be more in keeping with today's aspirations. Nevertheless, a restricted legal continuity, especially at a constitutional level, remains the mark of any revolutionary society. The present Constitution of the Russian Federation thus continues to espouse revolutionary origins — albeit in an increasingly evolutionary environment.

The legal continuity provided by these encysted remnants of former constitutions is evaluated by specific indicators. Stability, a higher juristic forcefulness, an autochthonous and legally constitutive character, together with the need for a fundamental source of law to provide a base for current legislative activity, are each expressly recognised among the specific indicators of legal continuity.

Dealing with these indicators in the reverse order of their enumeration, we find that the legislative process can be initiated either by the President of the Russian Federation, the Federal Soviet, members of the Soviet, deputies of the State Duma, and, in matters affecting their own proceedings, the Constitutional Court, the Supreme Court, and the High Court of Arbitration. These legal subjects of the legislative process may take the initiative to introduce draft Bills for review by the State Duma where they may be formally read or worked on in committee. Having been accepted by the State Duma, the draft legislation is examined as to its effect on existing law by co-ordinating commissions either before or after

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Target-Oriented Comparative Law" [1966] American Journal of Comparative Law, p 121.

3 See *Kommentarii Rossiiskovo Zakonodatel'stva (A Commentary on Russian Legislation,* Moscow, 1995) written, in defiance of Montesquieu's doctrine of the separation of powers, by several of the Federation's Supreme Court judges.

4 See *Osnovy Gosudarstva i Prava (The Basis of State and Law,* Moscow, 1995) p 12.

scrutiny and approval by the Federal Soviet. The final stage (except for presidentially-initiated legislation) is to be subscribed and promulgated as federal law by the President of the Russian Federation.

The fundamental source of law when seen as the base for this legislative process lies in the principles of the constitutional system of the Russian Federation. Some of these principles relate to the recognition and maintenance of human rights and freedoms. These are categorised as being either political (e.g., the right to participate in local government), civil (e.g., the right to private property), social (e.g., the right to residence), or cultural (e.g., recreational rights). A second group of constitutional principles comprise state sovereignty, the rule of law, the separation of powers, autochthony, federalism, and world co-operation. The third and final set of principles recognises ideological and political pluralism, freedom of economic activity, diversity and variety in the forms of property, a secular character to the state, and a socialist thrust in politics.

The autochthonous or grassroots character claimed as 'peoples' power' by the Russian Federation relies on rights to institute referenda and elections, to hold assemblies, meetings, processions and demonstrations, to organise picketings, and to make other individual and collective responses to the exercise of governmental power. The critical evaluation of legislative proposals is also encouraged as an expression of autochthony. These grassroots responses are relied on to indicate the level of legal continuity throughout ongoing changes in the legal system. The legally constitutive, as well as the autochthonous, character of this indicator of continuity is contributed by the legal status given to persons, and by the concept of a well-governed state in its resolution of problems and issues on behalf of its citizens.

The legal status of persons — being more correctly[5] 'of the person and of the citizen' — is a subject all of its own. The fundamentals comprise the principles of equal citizenship and deal also with its acquisition and termination; a person's general legal capacity; the principles of legal status (comprising equality before the courts and law, the plenitude of rights and freedoms, the constitutional rights and freedoms 'of the person and of the citizen' directly in force, and the principle of inalienability); the basic rights and freedoms (comprising civic, political, economic, socialist and cultural rights and freedoms, together with their guarantees); and their corresponding responsibilities expressed in terms of defending one's country, protecting the environment, and paying legally constituted rates and taxes.

The concept of a well governed state is explained in terms of the separation of powers, the rule of law, judicial independence, democracy, maintaining and protecting human rights and freedoms, the concept of raising political awareness in society, the development and fulfilment of legislation for the purpose of creating a legal system for a well-governed state, promoting judicial reform, the formation of all state systems according to the principle of separation of powers, and the creation of a developing society in the context of real conditions for the realisation of human rights and freedoms as higher values.

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[5] See *Osnovy* (supra n 4) p 22 and translation notes in Editor's Introduction (Sarah J Reynolds) to *Statutes and Decisions — The Laws of the USSR and its Successor States* [1995] vol 31, no 5 p 13.

Relying on the peoples' power of referenda, elections and industrial action is probably the high point of practicality in this first outer shell of normative legal science. Apart from the ten pillars of so-called civic society (comprising trade unions, art associations, religious affiliations, political parties, the media, public education, civic insitutions, plus the respective spheres of education, development, science and culture, and the family) each of which is seen to support and be supported by the governmental power of the state, the rest of this first outer shell of normative legal shell consists of a matrix of abstract jurisprudence.

According to this jurisprudential matrix, power in society can be defined in terms of either institutional organisation or constitutional function. The early organisation of primitive social systems is now taught as being entirely different from the despotic or democratic forms of political power exercised in a class society.[6] The purposive functions of institutionalised social power are identified as those which will ensure social order, will encourage conditions for realising a defined community of people, and will implement unity of action among the people. It is a further function of social power to prescribe the ways in which joint action by the people will fill positions of leadership.

Does all this continental jurisprudence make much sense to the common lawyer? By reason of its excessive abstraction, probably not. The common lawyer is more apt to concentrate his attention on the Bukovsky, Ginsberg, Galanskov, Litvinov and Sinyavsky trials.[7] Nevertheless it is in terms of abstract jurisprudence that the fundamentals of the Russian legal system are first explained to law students in institutions of higher learning or VU3 (as they are known by acronym) in the Russian Federation.[8]

II. The Second Outer Shell — Legal Relations

Legal relations are explained by a continuing matrix of jurisprudence in which morality is distinguished from law, and legal culture (apart from its expression in society as a whole) is defined by the citizen's knowledge of legislation in force, his actions in accordance with prescribed legal norms, his deferential attitude towards the law, and his respect for foreign laws.

Jurisprudential responsibility for enforcing legal relations is explained in terms of administrative responsibility for breaches of administrative law, a delictal responsibility at civil law, a penal responsibility for crime, and a disciplinary jurisdiction for breaches of institutional regulation. A troika of state constraints, punitive measures, and legal encouragement operates throughout these four jurisdictions.

Legal relations *per se* are divided, first into jurisprudential facts and secondly into the subjects of legal relations. Jurisprudential facts comprise legal actions (either by way of legal or illegal measures), and legal developments. The subjects

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6 The definition and understanding of such terms are fast changing, as are subtle changes in expressing the terms. Cf the now obsolete *Kratkii Politicheski Slovar'* (Moscow, 1989) with current publications.

7 See Dina Kaminskaya, Final Judgement: *My Life as a Soviet Defence Lawyer* (London, 1983).

8 *Osnovy* (supra n 4).

of legal relations are either physical or legal persons (according to their respective capacities and incapacities) when considered in terms of their voluntarily assumed obligations or jurisprudentially imposed responsibilities.

A breach of legal relations is indicated by opposition to legality (which may be active or passive); incapacity to act (where the subject is of sound mind and otherwise legally responsible); deliberate intention; or culpable carelessness. The resultant corpus of lawbreaking can be analysed in terms of the subject and object of the infringement. This analysis is conducted both subjectively and objectively of the offence. The corpus of lawbreaking comprises crimes, misdemeanours (some of an administrative and others of a disciplinary nature) as well as civil delicts.

III. The Third Outer Shell — Fields of Law

Legal relations give rise to fields of law. One field of law relates to tracing the sources of the other fields, first from the subject, and secondly from the method of legal regulation. The other fields of law are correspondingly seen to be either substantive or procedural. Some of the fields of substantive law are those of constitutional, administrative, financial, civil, land, labour, family, environmental or criminal; whereas the fields of procedural law are either civil or criminal.

As one would expect of any legal system devoted almost exclusively to public at the expense of private law, the most extensive, furthest developed, and excruciatingly detailed legal field is that of criminal law. Its tasks are defined as the preservation of law and order, safeguarding peace and security, protecting societal and state interests, securing all forms of property, and defending personal rights and freedoms.

The Criminal Code of the Russian Federation has a general part, dealing with the operation of criminal law in space and time, and otherwise has a particular part dealing with specific crimes. The concept of crime deals with the illegality, the specific social danger, and the culpability of any act or omission. Each of these are regarded as indicators of criminality.

The concept of criminal responsibility is treated as having both a factual and a juristic basis. From the juristic point of view the corpus of any crime comprises the subject and object of the criminal act or omission. The subject is considered in terms of penal responsibility (such as the subject being of unsound mind) and viewed in terms of purpose, or indirect intention. Participants in crime include those who instigate, organise, help, or execute the crime. Complicity may be anterior or posterior to the offence, and may be either that of a simple participant, or of an organised group, or of a felonious society.

The particular as distinct from the general part of the Russian Criminal Code deals with specific crimes. Those can be categorised as being against the person or against public order. Crimes against the person are divided into offences that infringe on human life; offences that infringe on the political and employment rights of the citizen; sexual offences; and offences, such as libel and slander, that infringe on human worth and personal dignity. The word 'hooliganism', directly transliterated into Russian from the western media, acquired an extended denotation in Soviet society. The concept continues to operate as a legal transplant

in Russian law. Offences against public order include common hooliganism, malicious hooliganism (as demonstrated by cynicism, extreme impudence, and resistance to those who would suppress the commission of the offence), and grossly malicious hooliganism (involving weapons).

Punishments (administered according to reformative, rehabilitative, and preventative theories of penal reform), range from sentence of death, deprivation of liberty, deprivation of employment rights, enlistment in a disciplinary battalion, dismissal from office, confiscation of property, reparation, fines, and public reprimand.

By comparison with the criminal law, land law is on western terms either non-existent or transparently simple. Land, as an object of legal regulation in the post-Soviet Union, is still bound up in the legal history of its juristic status both before and during the Union. Real property rights await the coming into force of a new Land Code. Current Russian legal theory debates land as a category of bio-organism in its own right as well as a means of production. Law students are taught to regard it as an immovable object of legal regulation for which rational use may be prescribed by methods of land husbandry — but these theoretical debates are far removed from the current issues of land law in terms of real property.

Family law is expressly declared to be an independent field of law in the Russian Federation, and is administered in accordance with the Marriage and Family Code. Labour law, operating variously at federal and state levels, requires an occupational specialisation unknown in the west. This specialisation is rigorously enforced on every tradesman and professional person so that one does not simply graduate in law or medicine but is restricted from the start to work in one's legal or medical speciality. In the west one specialises, say by moving from general practice to psychiatry, or by moving from bar to bench, in accordance with higher professional qualifications and experience. In post-Soviet as in Soviet Russia, one's initial trade or professional specialisation tends to limit one's working life.[9]

Property law maintains its high Soviet profile in public law by considering private property as only one among state, municipal, and other public forms of ownership.[10] Intellectual property in the Russian Federation distinguishes between artistic and industrial rights, and by expressly recognising inventions, practical models, industrial patterns and selective achievements, seems to emphasise industrial property.[11] Environmental law owes its most explicit origin to the 1991 Decree of the Russian Federation on the Preservation of the Environment. There are other sources of environmental law in the Water and

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9 See *Ankyeta* (The Application Form), a short story by Sergi Antonov (translated in *Soviet Short Stories*, Penguin 1963) where the heroine "had qualified as an electrical engineer specialising in radio. Specialists in that line were always desperately needed . . ." but then how would she get that sort of specialised job? (For a while the heroic radio specialist dug potatoes!)

10 By extreme contrast with Soviet legal education, our own concentration on private ownership, with its consequent oversight of public ownership, probably explains how governments have been so suddenly able to privatise state assets in the west.

11 *Osnovy* (supra n 4 (p 51).

Soil Codes, in laws concerning mineral wealth, forestry, and fresh air, as well as in other less well defined fields of law.

IV. The Fourth Outer Shell — Federal Institutions

Among the legislative, judicial and executive branches of government, the traditional bias towards an executive balance of power has been radically restructured by the establishment in 1991 of the Constitutional Court. This court is empowered to examine the constitutionality of law applicable to concrete cases, to determine matters in conformity with the Constitution of the Russian Federation, to consider complaints against breaches of constitutional rights, and to determine jurisdictional disputes among federal and state organs of power and between them and their subjects. The appointment of judges to this Court, as to the Supreme Court, and to the Court of Higher Arbitration, as well as the appointment of Procurators-General to the Procuracy, is made by the Federal Soviet[12] (which together with the State Duma constitutes the bicameral parliament of the Federal Assembly created in 1993).

The Federal Assembly, as constituted by the Federal Soviet and State Duma, manifests a clear demarcation of jurisdiction between its two constituent chambers, which together possess plenary powers for the making of legislation.

The Duma shares responsibility for control of the federal budget. It consents with the President to the appointment of the Prime Minister. It can appoint and dismiss the Commissioner for Human Rights, Secretary to the Treasury, and Chairman of the Central Bank. It can bring a vote of no-confidence against the government, and bring proceedings to impeach the President.

The Federal Soviet has powers corresponding to those of the Duma for the appointment and dismissal of the Secretary to the Treasury, and can also bring proceedings to impeach the President.

IV. The Fifth Outer Shell — Federal Responsibility

Because the whole history of Soviet law is one constituting the totalitarian move from private to public law, it is the law of the state that projects the most substantive and concrete concept of Soviet law for the common lawyer. The same formula still operates for most post-Soviet legal systems, where private enterprise is almost impossible to regulate, and commercial control has almost entirely gone underground, passing into the hands of protectionist racketeers.

However nightmarish this plenitudinous projection of public law may be to the common lawyer, and however incompetent the forces of capitalism may be to effect a peaceful translation of both domestic and foreign trade procedures from the communist model into the open market, all the previous jurisprudential shells are no more than diaphanous and vaporish garments, barely covering the

[12] 'Federal Soviet' is sometimes translated into English as 'Federal Council'. This is quite correct, since 'Soviet' (derived from the concept for 'conscience') simply means 'advice, opinion, counsel or council'. Just to show the extent to which 'Sovietology' still remains encapsulated in post-Soviet Russia, I have preferred to transliterate rather than translate the word 'Soviet' (which long pre-dates the Soviet Union) wherever that word persists in post-Soviet Russia.

citidel of the Soviet state, which until the collapse of communism could be taken for the kernel of its legal system.

The Russian Federation exercises jurisdiction either solely on its own behalf or else jointly among member states of the Federation. It has sole responsibility for the federal budget, federal revenue and taxes, and the federal fund for regional development. It has sole jurisdiction over the federal civil service, over federal state property, and over postal communications within the Federation. It decides issues relating to federal territory and organisation, establishes a legal basis for a single market through financial, credit, and customs regulation, and assumes sole responsibility for defence and security, foreign policy, and international relations, as well as declaring on issues of war and peace. It determines the status of its territory, defines the policy to be enforced there, and defends its claims to a territorial sea, airspace, exclusive economic zone, and continental shelf.

The Federation may by itself alter, and adopt proposed alterations to the Russian Constitution. It can do the same for other federal laws, including checking on their enforcement. The Federation administers the meteorological, geodesic, and cartographic services, and enforces metric and other standards of measurement for time, statistics, and accountancy. It controls the distribution of electrical and atomic energy, and assumes responsibility for radioactive and narcotic substances. It is responsible for the regulation and protection of human rights, determines citizenship of the Russian Federation, and deals with problems affecting national minorities. It enforces the administration of justice through the courts and has special responsibilities for supervising the procuracy. The ultimate responsibility of the Federation for substantive and procedural justice, at both legislative and executive levels as well as through the courts, cannot be avoided, although, as we shall see in dealing with the next level of government, certain responsibilities are shared jointly with the constituent states of the Federal Republic.

VI. The Sixth Outer Shell — Shared Federal Responsibility

First amongst this shared responsibility between the Federation and its subject states is that for the exercise of legislative power dealing with residency, with mineral wealth, and with the environment. This shared legislative responsibility extends also to labour law, family law, and administrative law. On the judicial level, the same shared responsibility extends to appointing judges, advocats, and notaries; and on the executive level to appointments to law enforcement agencies.

General questions related to education, training, culture, physical culture, sciences, and sport are also a shared responsibility. The same sharing with member states extends to establishing general principles of taxation and revenue within the Federation, and establishing general principles related also to the several systems distinguishing state power from local self-government.

There are express powers to deal jointly with catastrophes, natural calamities, and epidemics; to take joint action concerning the utilisation of natural resouces, the protection of the environment, the setting apart of areas to be preserved in their natural state, and the conservation of historical and cultural monuments.

Joint action can also be taken to preserve the indigenous habitation and traditional life styles of ethnic minorities; to decide questions of land ownership, usage, and distribution (as well as for minerals, water, and other natural resources); to co-ordinate issues of public health, family protection, maternity, paternity, childhood, and social welfare; and to protect both human and civil rights as well as the rights of national minorities.

Joint jurisdiction also exists between the Russian Federation and its member states to uphold the law, enforce law and order, provide for social security, and accord with the Constitution and Laws of the Russian Federation and its member states.

VII. The Seventh Outer Shell — The Office of President

There are those who would cite a cult of personality — what in the west would be called a charismatic theory of law — to account for the legal history of the still Soviet state from Lenin through Stalin, Khrushchev, Brezhnev, and Gorbachev to Yeltsin. This makes the office of president the ultimately central figure in our continuing set of matryoshki.

Certainly the president is head of state, but because that may be mistaken for a titular role under certain forms of constitutional monarchy, the President of the Russian Federation should also be understood as heading the government. He acts as guarantor for the constitution of the Federation, and for the human and civil rights of its citizens. He ensures co-ordinated functioning and mutually supportive action among the organs of state power. Without being included among the branches of power, he is still able to activate them. He determines the basic direction to be taken by internal and external affairs of state. He participates in the legislative process. He is supreme commander of the armed forces of the Russian Federation. He both sets up and heads up the Security Soviet. He decides priority in cases raising questions concerning the legal status of persons, of decorations, and of appropriating names. He grants pardons. He may suspend the exercise of legislative power.

For those who see the office of president occupying the central position of power in the still Soviet legal system of the new Russian Federation, the results of the presidential election being held as this paper is being written are crucial in terms of the President's continuing role in 'heading the government' and 'determining the basic direction to be taken by internal and external affairs of state.' Alistair Cooke in a recently broadcast Letter from America has proclaimed those presidential elections as among the most democratic in the world. As this paper goes to press, the resulting balance of power between Yeltsin and Lebedev confirms that conclusion. As with any quickly evolving but basically revolutionary legal system, however, the future for the Russian Federation, whose legal system traditionally incorporates a high level of political content, remains fragile.