

## Piety and Revision: How Will the Mandarins Survive under the Rule of Law

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## Piety and Revision: How Will the Mandarins Survive Under the Rule of Law?

I would like to say something today about the rule of the Party, about constitutional reforms and the rule of law, and about the mandarins and the way they have coped. We must recognize stunning accomplishments in the last several years in Soviet public life. Those that go under the heading of *glasnost* are already fairly familiar to most of you: the Soviet Union's loosening hold on eastern Europe; the repudiation of the Brezhnev Doctrine (never so-called by Brezhnev) that a country once gone socialist must be protected even against its will from going somewhere other than socialist; other confessions of error that were conspicuously lacking in the style of Soviet leadership in the past, like confessions that Stalin had made errors and confessions about the period of stagnation (*zastoi*); accomplishments within the legal system, some of which have been mentioned,<sup>1</sup> some of which will be enumerated tomorrow,<sup>2</sup> and some of which I shall describe, though very briefly,

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1. Presentations by Igor N. Belousovitch and Robert Sharlet, *Cornell International Law Journal Symposium, Perspectives on the Legal Perestroika: Soviet Constitutional and Legislative Changes* (Feb. 16, 1990) [hereinafter Belousovitch Presentation and Sharlet Presentation] (available from Audio/Visual Services, Cornell Law School); see also Belousovitch, *The New Soviet Parliament: Process, Procedures, and Legislative Priority*, 23 CORNELL INT'L L.J. 275 (1990); Sharlet, *Party and Public Ideals in Conflict: Constitutionalism and Civil Rights in the USSR*, 23 CORNELL INT'L L.J. 341 (1990).

2. Presentations by Vladimir N. Brovkin, Herbert Hausmaninger, Serge L. Levitsky, Peter B. Maggs and John Quigley, *Cornell International Law Journal Symposium, Perspectives on the Legal Perestroika: Soviet Constitutional and Legislative Changes* (Feb. 17, 1990) [hereinafter Brovkin Presentation, Hausmaninger Presentation, Levitsky Presentation, Maggs Presentation and Quigley Presentation] (available from Audio/Visual Services, Cornell Law School); see also Brovkin, *The Politics of Constitutional Reform: The New Power Structure and the Role of the Party*, 23 CORNELL INT'L L.J. 323 (1990); Hausmaninger, *The Committee of Constitutional Supervision of the USSR*, 23 CORNELL INT'L L.J. 287 (1990); Levitsky, *The Restructuring of Perestroika: Pragmatism and Ideology (The Preamble to the Soviet Constitution of 1977 Revisited)*, 23 CORNELL INT'L L.J. 277 (1990); Maggs, *Constitutional Implications of Changes in Property Rights in the USSR*, 23 CORNELL INT'L L.J. 363 (1990); Quigley, *The Soviet Union as a State Under the Rule of Law: An Overview*, 23 CORNELL INT'L L.J. 205 (1990).

23 CORNELL INT'L L.J. 191 (1990)

in a little while.

Problems? Yes. Problems remain, arise, abound. A Soviet policy maker with sufficiently broad jurisdiction would have to agree that she or he faced grave problems in — to compile an incomplete list, organized alphabetically — agriculture, alcoholism, cooperatives, corrective labor colonies, corruption, credits, crime, emigration, ideology, markets, military morale, nationalities, party unity, the press, political uses of psychiatry, the ruble, the satellite countries (as they used to be called), shortages, the role of the soviets, unemployment, and trade unions. And many of these problems, of course, encompass large and painful sub-problems. Yet some things are happening, as the two grace notes you heard before have pointed out;<sup>3</sup> progress is uneven, contradictory, sometimes retrograde, and fragmentary.

### I. The Role of President Gorbachev in Soviet Reforms

The role of Mr. Gorbachev in this is rather curious. You have read, and some of you have written, more than needs to be rehearsed here. I will throw out one little observation, which in some ways is consistent with Mr. Sharlet's observation earlier about the question of Gorbachev's blueprint.<sup>4</sup>

My impression is that when Mr. Gorbachev started out he had some second-order principles but not many first-order principles. As for the latter, I think, he has, unlike most politicians under the pressures of office, become more principled with time rather than less. His second-order principle was to assemble around him and encourage and foster large numbers of earnest, bright if possible, aspiring, young followers, adherents, allies, and collaborators and let them fight it out, let them struggle, see what would fly and what would not, and gradually become attached to some of those ideas and detached from some others.

### II. Shifts in the Rule of the Party: How Much Is Going On and What Is Not

From the standpoint of the outside observer or one who wishes the Soviet people, the Russians, and other peoples well, the shift in the rule of the Party is in many ways a promising development. It looks, at long last, as though someone has taken to heart the magnificent, bitter jest of one of Brecht's characters, who says somewhere, "This government has lost the confidence of the people, we'll have to elect a new people."

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3. Belousovitch Presentation, *supra* note 1; Sharlet Presentation, *supra* note 1; see also Belousovitch, *The New Soviet Parliament*, *supra* note 1; Sharlet, *Party and Public Ideals in Conflict*, *supra* note 1.

4. Sharlet Presentation, *supra* note 1; see also Sharlet, *Party and Public Ideals in Conflict*, *supra* note 1, at 352. For a discussion of whether Gorbachev had a plan for his legal reforms from the outset, see Roundtable Discussion, *Crises in the USSR: Are the Constitutional and Legislative Changes Enough?*, 23 CORNELL INT'L L.J. 378, 380-84 (1990).

What started the shift I do not know; there were certainly many contributing factors. One of them surely was the striking effect of the election to the Congress of People's Deputies in March of last year. You will probably recall that those seats available to public election, not reserved for various organizations heavily dominated by the Party, were often lost rather than won. That is, thanks to a provision in the electoral law that required any candidate to obtain more than 50 percent of the votes in order to be elected on the first run, and another provision that permitted voters to cast null ballots by handing in a ballot with all names crossed out, something like 98 or 99 candidates for the Congress of People's Deputies lost though there were no competing candidates.

Thus, the Soviet Union translated into literal truth a remark made by the American ironist Mort Sahl. Sahl surfaced in 1980 after the Carter-Reagan election and expressed in his way the idea that the election had owed more to the voters' disenchantment with Carter than to their approval of Reagan, by saying, "[I]f . . . [Reagan] had run unopposed he would have lost."<sup>5</sup> It was just that which happened to 98 or 99 candidates, unopposed, who lost in the Soviet Union. Many of them were fat cats indeed: city Party secretaries, generals in the armed services or their equivalent, enterprise managers, and other pillars of the Soviet establishment.

Since then, as you all know, the Party, in at least the Plenum of the Central Committee, has now proposed to countenance a revision of that part of article 6 that had reserved the guiding role for the Party in the Soviet Constitution.<sup>6</sup> But a great many inequalities and privileges remain even if that revision, as we all suppose it will, goes through.

I have already mentioned the reserved seats in the Congress of People's Deputies for various civic organizations including, in the first and biggest instance, the Party itself. Will that be dropped?

What about the *nomenklatura*? That word was used here earlier,<sup>7</sup> correctly but briefly. As perhaps some of you know, the *nomenklatura* in its formal sense is a list of official posts, occupancy of which has to be cleared with the appropriate organs of the Party. The incumbents do not have to be Party members, though in fact almost all of them are, but the nomination has to be cleared with the Party. And that *nomenklatura* — the term is sometimes used for the list, sometimes for the collective of individuals who occupy those posts — reaches quite far down in the bureaucracy into the ministries, enterprises, institutes, collective farms and the like. If the Communist Party ceases to have its monopoly assured by the Constitution, and if in an election it loses, what will happen to the *nomenklatura*? To the victor belong the spoils? Or shall we find that the *nomenklatura* then stands up in favor of civil service and solidity of tenure? It is a complicated issue.

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5. Ferretti, *Mort Sahl, Intractable As Ever, Back in Town*, N.Y. Times, Oct. 2, 1981, at C14, col. 3 (quoting Mort Sahl).

6. KONST. SSSR art. 6.

7. Belousovitch Presentation, *supra* note 1; Sharlet Presentation, *supra* note 1.

Connected with it, of course, is the very personal, very important problem of their perquisites, property, and privileges. As you know, disparity in income and nominal inequalities of net worth are rather flatter in the Soviet Union than they are in western countries. But inequality in styles of life can be very considerable, and that difference is made up largely of perquisites.

What will happen to those privileges, as they are called in certain cases? Some of you may know the genre of Soviet anecdotes called Radio Yerevan. Yerevan is the capital city of Armenia and Radio Yerevan is the name for a genre of stories, the basis for which is the legend that on Radio Yerevan there is a question-and-answer program. The public sends in questions, and the station operatives farm the questions out to subject matter experts whose answers are then read out over the air. This mythical program has on it, among others, the question, "Is it really true that the Soviet people eat caviar?" and the answer is "Certainly, through their elected representatives." Well, what is going to happen to that and many other delectable perquisites? We do not know.

What will happen, if the Party monopoly really goes, to accountability for the undoubtedly enormous funds that are in the hands of Party organizations? What will happen to the criminal law immunity that used to be a privilege of Party membership? (Sometimes that immunity could be removed by expulsion from the Party followed by prosecution in the criminal way, that is, handing the expelled member over to the secular arm to be burnt.) What will happen to the secrecy that has been such an enormous benefit to the Party's maintenance of its monopoly in functional, as well as formal ways? All of that is in the future, and the revision of article 6, while very important indeed, is a prelude.

### III. Constitutional Reform and the Rule of Law

Several particular constitutional reforms and changes in the rule of law are in the works. Many of them, as Mr. Sharlet noted,<sup>8</sup> are changes that were floated as proposals in 1956 through 1958, during the early Khrushchev years. They did not succeed then, but they are being revived. These changes include participation of defense counsel in criminal cases at an earlier stage of the proceedings than before, instead of making the counsel's participation await in most cases the conclusion of the preliminary investigation; introduction of a jury system for certain capital cases; and specific expression of the presumption of innocence, though the question of the technical, as distinct from the symbolic, value of that proposed change is one about which we could have some discussion.

Mr. Belousovitch mentioned the reform of the law providing redress to citizens who had been injured by illegal government official

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8. Sharlet Presentation, *supra* note 1; see also Levitsky, *The Restructuring of Perestroika*, *supra* note 2, at 247-65.

action.<sup>9</sup> Before the reform, the then recent law establishing such redress was limited to illegal governmental action committed by a single official. If the action had been committed as a result of a collective decision, then all members of the collective were immune and no redress was possible. The new law took care of that, or rather it is hoped that it will take care of that.<sup>10</sup>

There may be more changes in the future, though that is less certain. One change might be in the system of *propiska* by which the Soviet law enforcement officers and to some extent security police maintained actual or potential control of the residence of a large number of citizens.

And yet, as this audience in such a setting as a great law school knows, the law on the books and law in action are not the same thing. Mr. Sharlet referred to article 125 of the old pre-Brezhnev Constitution, which guaranteed among other things, freedom of assembly.<sup>11</sup> Years ago a certain *zakonnik*, a member of the legalist wing of the dissident movement in defense of legal rights, was picked up and taken to a KGB interrogator for a pre-arrest chat. (Getting ahead of my story, I should tell you he was later indeed, duly arrested and served some time.) At the pre-arrest chat he was told, "Look here, we know all about your criminal activity, we haven't picked you up yet for specific reasons." Nobody mentioned the specific reasons, which happened to be that he was the grandson of a famous man and there would have been international repercussions. "We haven't picked you up yet for specific reasons, but that doesn't mean we don't know what you've been doing and I want to warn you that unless you mend your ways and stop violating the law you will find yourself in confinement."

He said, "[b]ut I don't agree that I've been violating the law. I have been speaking out and assembling documentation on behalf of people who were arrested and prosecuted for demonstrating and speaking out in their turn against a policy of the Soviet government with which they disagreed. And their right to do that is specifically guaranteed by article 125 of the Constitution of the USSR."

At which point the interrogator said, "Please, we're having a serious conversation." The interrogator knew that law in the books and law in action are not the same thing.

Other changes in the legal system? Mention has already been made, and I would only like briefly to underscore it, of the institutional needs.<sup>12</sup> There are too few courts, with too little powers, too thinly and meagerly sustained with resources, and too few judges and lawyers. You

9. Belousovitch Presentation, *supra* note 1.

10. *Id.*; see also Hausmaninger, *The Committee of Constitutional Supervision of the USSR*, *supra* note 2, at 291 (discussion of constitutional review of adjudication of individual citizens' complaints).

11. Sharlet Presentation, *supra* note 1; see Sharlet, *Party and Public Ideals in Conflict*, *supra* note 1, at 344-52 (discussion of mechanisms of social control with examples).

12. Belousovitch Presentation, *supra* note 1; see also Belousovitch, *The New Soviet Parliament*, *supra* note 1, at 280-81.

have already heard something about the pulls and strains on the new generation of deputies of the Congress or the Supreme Soviet<sup>13</sup> who have to do a lot of drafting, revising, and plain legislative thinking without a staff to speak of, without committee rooms, paper clips, carbon paper, libraries, secretaries, or time. And there are more demands on them from outside the Supreme Soviet. Of course, they must attend to their constituents like legislators everywhere. But there are also the interviews with *Ogonyok*, the fellowships in foreign research universities, the opportunities for television exposure, and a lot of other heady, attractive, distracting opportunities for them.

Along with a new discovery of separation of powers — not just division of functions — we hear it asserted by many persons in and around the Supreme Soviet that the Soviets (the legislative branch) should be supreme. There is also the prospect of new battles between the executive and the legislative, inadequately refereed by the courts. So, much is uncertain and much remains to be hoped for as well as done.

#### IV. How Much Can Be Expected from the Rule of Law in this Situation?

##### A. The Proper Role of the State

Among the many sad contradictions of Soviet history is the contradiction between the utopian prediction inherited from Engels, among others, that under socialism the State would wither away,<sup>14</sup> and the actual Soviet practice of strengthening and swelling the State beyond the most extravagant imagination of czars or pharaohs. Proponents of the rule of law, I suggest, should try not to let the principle of law and order or the principle of due process of law be manipulated into an instrument of executive, bureaucratic tyranny. In the service of that vigilance they must sometimes assert an opposite paradox: that those who govern are under an obligation to use the State's juridical machinery in such a way as to restrain the State and restrain themselves, who are both the masters and the servants of the people. That ought not be confused, as often happens, with the claim that freedom under law is a favor granted to the populace by those who are in charge of the State. It is common to speak of legality as an attribute of the State, as in *pravovoe gosudarstvo* (*Rechtsstaat*), but we ought to maintain, and I suggest the Soviet people ought to maintain, not that the rights of the people are bestowed by the State, but rather that the powers of the State are conferred by the people. The people do not receive their rights but retain and reserve them. That is, we should ask the State to take the ninth<sup>15</sup>

13. Belousovitch Presentation, *supra* note 1; see also Belousovitch, *The New Soviet Parliament*, *supra* note 1, at 277-78.

14. See K. MARX & F. ENGELS, *THE COMMUNIST MANIFESTO* 50 (D. Ryazanoff ed. 1963).

15. U.S. CONST. amend. IX ("The enumeration . . . of certain rights, shall not be construed to deny or disparage others retained by the people.").

and tenth amendments<sup>16</sup> seriously. When State officials are made subject to juridical restraint, that restraint is not imposed by the grace of those officials. It is a price exacted by the people in delegating the power to govern, and it is part of the paradox of decent government.

In a country where the State reflects the wishes of a majority, perhaps the most important task of the rule of law is protection of the rights of political minorities, ethnic minorities, cultural dissenters, economically weak classes and others, against encroachment by today's majority through the officials whom that majority has put into power. To name two minor classes of persons who badly need such protection, we might instance the whistle-blowers, who have observed illegal official conduct, usually from inside large organizations, and courageously attempt to bring their observations to the attention of officials up the line. One knows how difficult their task is from many reports in Soviet newspapers, from books like Konstantin Simis's *USSR: The Corrupt Society*,<sup>17</sup> and others. And another class of persons badly in need of protection against the majority are the sometimes unpleasant persons who are overly litigious, who enjoy or are psychologically driven to use the machinery of courts, ministries, deputies, procuracy, and other agencies of the law to excess. Persons in both those classes need the benefit of the rule of law, particularly at the very time that they invoke it. In some other respects, against the background of Soviet history, it is equally urgent to secure the rights of the *majority* against the bureaucracy. Reform of the electoral laws, transition to a multiparty system, and emphasis on the role of the Supreme and other soviets would contribute to such protection.

## B. Constitutions and Institutions

I think it would be unwise to lay down a rule, even for a single state, for or against a written constitution. The Soviet Union has a written constitution now, although it is on the way toward erosion or revision, but I do not think we should sit here and prescribe. There are several examples of states in each category of written or unwritten constitutions with fairly good records in the rule of law. A combination of particular statutes, inveterate regulations, historical taboos, public morality, and social etiquette suffices to protect the rule of law in some states where, it could be argued, a written constitution would perturb good old habits, produce undesirable rigidity, or even provoke lawlessness.

When drawing up provisions to go into a written constitution, new or amended, some jurists borrow from the experience of other countries. It has happened on many occasions, several of them just after the end of the Second World War, that ex-colonies sought to adapt some constitutional provisions, either of the former imperial metropolis or more likely of a different country that was not stained with the colonial-

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16. U.S. CONST. at amend. X ("The powers not delegated to the United States by the Constitution . . . are reserved to the States respectively, or to the people.")

17. K. SIMIS, *USSR: THE CORRUPT SOCIETY* (1982).

ist stigma locally but spoke the same language the mother country had. Again, it seems fruitless to lay down a general rule for determining when a borrowed provision can be well fitted into a second country and when, on the contrary, it would do more harm than good despite excellent operation in its native habitat.

We may tend, as lawyers, to put too much weight on particular formal institutions. It is admirable to have learned the 18th-century lessons on separation of powers, but it does not follow that any specific shape of legislative, executive or judicial institution is automatically to be preferred. Like a constitutional norm, an institution that works in one national setting may, when transplanted to another, perform a different function and have different advantages and shortcomings. The work that one institution may usefully do in promoting the rule of law in one given national setting may depend, for example, on local factors such as the state of the legal profession, the condition of popular education, the "law-consciousness of the people," to borrow a Russian term, and the effectiveness of the systems of communication.

In states with genuine though incomplete separation of powers, various higher institutions of government often have control, oversight, veto, or delaying power over one another. This is known in some countries as a system of checks and balances. The system imposes a cost in reduced "efficiency," for it means that many decisions must be postponed or revised and that some issues which often are the most highly charged, politically difficult, ticklish, *zlobodnevnye* issues may long persist without being resolved by a clear cut victory for one institution, party or faction. Countries that have suffered in the past from tyrannical or oppressive "efficiency" are content to make such a sacrifice.

### C. The Role of Lawyers in the Rule of Law

How prominent must lawyers as a profession be in a society that is seriously committed to promoting the rule of law? It has been said about war that it is too important to be left to the generals; we could perhaps agree that the rule of law is too important to be left to lawyers.<sup>18</sup> In various parts of the world, circumstances of local history including political ideology, ecclesiastical tradition, bureaucratic disputes, revolutionary upheavals, and economic organizations have thrown lawyers onto the center of the stage and assigned to them roles that in other places or in other times might have been filled by churchmen, orators, editors, cultural anthropologists, or applied scientists. As in the United States, the prominence of lawyers is reflected in jurists' numbers, income, and political visibility, and in the strong opinions held of lawyers by the laity.

At their best, lawyers feel and act upon a special obligation to uphold the rule of law: not only because thereby they protect their professional aggrandizement or because they naturally support a mode of public thought and action in which they feel easily adept, but because

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18. See Roundtable Discussion, *supra* note 4, at 394.

their training and observation tell them that the common interest is served by it. Perhaps this obligation is important enough to justify at least a part of lawyers' privileges and wealth. But it all would count for little if the society around them treated the laws and juridical activity as mere ritual, or drama, or as a cover for the moves of the power holders. The legal profession can do much, but by itself it cannot secure the rule of law for a people who hold the law in contempt or consider law irrelevant to their most pressing doctrines. In the Soviet Union, the jury is still out.

#### D. Limits to Our Expectations

I suggest that progress toward the rule of law will be made easier if we understand that, important though it is, we cannot expect it to solve all the problems of society or even all the problems of government. For example, the rule of law understood in its procedural sense does not necessarily entail a just society; it is possible to apply regular, general procedures with certainty and fairness to carry out unjust policies. I know that Lon Fuller used to say that the common law tended to work itself pure, and procedural due process tended to work itself toward substantive due process if given time. But, it may take a longer time than we all have. That concept of law as regular, general procedures without that which ought to underlie it, was implicit in the translation of "rule of law" that was used in Khrushchev's time, *upravlenie posredstvom prava*, or administration by means of law, emphasizing procedural regularity but seeming to omit any reference to substantive justice.

Nor does the rule of law guarantee fairness or justice in families or among friends or in the other large areas of social life that partly escape juridical oversight in even the most litigious, law-ridden, or the most totalitarian of societies. A sense of ethical responsibility may owe more to custom, art, and religion than to the legal system.

To those who hold that human rights in the social and economic spheres belong ahead of human rights in the political and civil area, the rule of law may seem empty. It is true that the rule of law does not guarantee social or economic progress, but we ought to bear in mind the observation made some years ago by a thoughtful jurist that countries where policies promoting equality had been preferred to policies promoting freedom turned out to have achieved neither. For a good society with imperfect human beings we can say that the rule of law is necessary, though one ought not to arouse false hopes by insisting that it would be sufficient.

#### E. All At Once or Little By Little

To make significant progress in promoting the rule of law in the Soviet Union is a Herculean task, and it is not easy to imagine two rivers that can be diverted into the stables for the cleaning. The Soviet jurist, reflecting on 70 years of Soviet public life with its record of war, poverty, dislocation, terror, stagnation, progress, upheaval, and reversals, must

consider nearly three generations of interrelated phenomena that still tend to reinforce one another. These phenomena include monopoly of power, privilege, official posts, perquisites of office, control over entry into and exit from government by the Party or its servants and followers; monopoly of most of the lawful media of communication along with the material resources necessary to their function; systematic secrecy; suppression or distortion of statistical and other public information; routine mendacity and pervasive hypocrisy in official and quasi-official statements; disorder in the contents, arrangements, and accessibility of legislative and regulative acts; frequent official disparagement of the value and importance of the legal profession, discouraging recruitment and cramping the material and personal resources put at the disposal of that profession; deep-seated, far-ranging lawlessness on the part of State and Party officials including those charged with the duty of enforcing the laws on, for example, economic and other crimes; policies and practices that necessarily have the effect of encouraging corruption throughout the government and society; misuse and under-utilization of the soviets at various levels; and frequent violation and mockery of the principle of independence of the judiciary.

Within the past few years, as we have suggested, there have been changes, some of them have been spectacular though not surely lasting. At least, they have made an impression. Outside the Soviet Union — for reasons that lie deep in the history of ideas, the history of socialism, and in some places traditional attitudes toward Russia — the Soviet Union systematically gets more credit for stopping what it should never have started than it got blame for starting it in the first place. That is luck for the Soviet Union.

It would be understandable, given the litany that I have just recited, if one were to insist that reform could only be revolutionary and comprehensive on the ground that nothing can be done until everything is done. In practice, however, piecemeal measures may do if they are connected by a steadily maintained program, or at least a steadily regarded vision of the entire horizon. That problem, which is both a strategic and a moral problem, resembles the problems that have to be faced in dealing with the wider issues of *perestroika*, and like them it may yield to local and current considerations of available resources and foreseeable risks. Whether Gorbachev, the man who, if my analysis is correct, has been developing principles as he went along, is nimble enough to manage this is something we do not yet know.

As some of the preceding remarks of my colleagues pointed out, time is needed for many things. There must be time to train the new boys in economic management, to train the lawyers and judges, to train deputies. There must be time to adjust expectations and claims so as not to rub the noses of the losers in their loss. There must be time to build a political culture, as Mr. Sharlet mentioned,<sup>19</sup> and time to build

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19. Sharlet Presentation, *supra* note 1.

the economy. Years ago, it was a jest, regarded as mischievous, spiteful and irresponsible, to say that, from the standpoint of the Cold War, we ought to be grateful to the Bolsheviks for slowing down Russia's growth rate. But, it turns out that there is something in this remark, statistically speaking. Well, time is needed to build the economy back up and the question becomes whether time is available.

## V. Survival of the Soviet Mandarins

In the midst of all this, the power-holders have to cope with a change, possibly in their own power, but certainly in the field of battle and the field of play. How do these power-holders with set traditions, ways of thought, habits of expression, and ways of signaling to one another cope with the change, given that the change from the standpoint of many is undesirable? They are, by and large, declared adherents to a doctrine. This pride of doctrine is accompanied by a sincere as well as tactical concern for the prestige of scientificity. So they attach much importance to the reduction not only of cognitive dissonance but of logical dissonance. You have to preserve consistency, if necessary by appealing to a second-order principle or even a third-order principle. The tighter the doctrine, the harder that is to do. What Elizabeth Hardwick, in discussing certain general Protestant churches in America, called "that mild and permeable doctrine" may accommodate revision with less strain than would accompany revision of tighter creeds.

What varieties of response do the Soviet mandarins have to the disagreeable changes? Of course defection or schism is one and we may be seeing some of that. We may also see revision, accomplished but denied at the same time. I suppose the most famous example of this in the history of Russian communism is Lenin's *What Is to Be Done?*,<sup>20</sup> where he made striking reversals of Russian social democratic and Marxist doctrine while insisting that his was the higher orthodoxy. In France, the detractors of Jean Monnet, who were skilled and successful mandarins, used to manage the transition without skipping a beat. You could hardly pinpoint the time when from knowing that what Monnet was proposing was impossible, they smoothly shifted to saying that obviously everybody knew that what Monnet proposed was inevitable. Walter Lippmann, a celebrated and successful mandarin, was so sure that Dewey would defeat Truman in 1948 that he would write columns not saying, "Here is why I think Dewey will defeat Truman," but rather, "What is the most important domestic priority problem facing the new Dewey administration?" After the election, Lippmann wrote a silken smooth column saying, in effect, "Well, Truman won. Yes, some of us may be blamed for predicting that Dewey would win. But the only place where we went wrong is not that we didn't know that there were more Democrats than Republicans, we always knew that. The only error we made, if error it

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20. V. I. LENIN, *WHAT IS TO BE DONE?* (1902).

could be called, was in not realizing how many of the Democrats would come out to vote." That is managing defeat with aplomb.

The mandarins may also appeal to higher order principles. In 1951 or 1952, some Soviet scholars wanted to rehabilitate Freudian psychotherapy although Freud was a bad name in Soviet official doctrine. How do you do it? Answer: you put Freudian psychotherapy under the wing of an acceptable name, namely Pavlov. Very briefly, the chain was: Pavlov is okay. Pavlov worked in the field of reflexes and secondary signal systems, so secondary signal systems are okay. Language is a secondary signal system. Psychotherapists work with language. Therefore, psychotherapy is Pavlovian. It is a little bit like the adjustments that you can read about made by end of the world sects when the predicted date has come and gone and alas, the world has not ended.

Or the mandarins could go on a counter-offensive. Lenin, attacked for revisionism, says, "Who are the actual revisionists? Everybody knows the *actual* revisionists are Bernstein," and so on. Or Jan Palach sets fire to himself in protest against the Warsaw Pact forces' invasion of Czechoslovakia in 1968, and the Soviet authorities and press write, "Who are the real murderers of Jan Palach?" It turns out the real murderers are the bourgeois *revanchists* and interventionists, who set up unrealistic expectations and disoriented this young man. Or when others were debating whether the third world should pay its debts, Dr. Castro asserted in a speech, the Europeans and North Americans with their superior military force "had exploited the resources of the southern hemisphere for several centuries, extracting labor, minerals and crops while giving us nothing valuable in return. So the real truth is that we in the third world are their creditors and they are our debtors." In other words, you take the counter-offensive; you do not take a neutral position or bring the ball back to the line of scrimmage, you try to throw the other side for a loss.

You remember the submarine of the Whiskey class that was stranded on a sand bar in Swedish internal waters around 1980. Who was to blame? Some thought the Soviet captain was to blame, but of course the Soviet press had its explanation: the honest navigating captain had been led astray by electronic false signals of the Swedes. This was the 20th century equivalent of the old coastal robbers who set out false lights and lured ships to their destruction on the rocks. So the real international law violators were the Swedes, not the Soviets.

Or consider Sartre who in 1956 attacked Khrushchev for his revelations in a secret speech not because the revelations were not true, but because Khrushchev was at fault in not preparing the population sufficiently to receive these unpleasant truths.

Or the mandarins may employ the binary organization of reality into dyads. The Soviet quasi-official view is that reality is divided into mutually exclusive but jointly exhaustive alternatives. That is, they treat all alternatives as if they were contradictory, as if the two contraries occupied the entire field. Sometimes it happens that the Soviet arguer

has to favor a policy which seems to be neither on one side nor on the other side of the dyad. He cannot say that he favors a compromise, because that is a rather special and limited statement, and it looks unprincipled. So he must try to find a way to group the unacceptable alternatives that puts both on one side of a second-order dyad, making the alternative not *between*, but *above* the unacceptable alternatives. I have been explaining that to my classes for years, and the other day I was lucky enough to notice in the paper a literal confirmation of that idea. Yeltsin had attacked Gorbachev's Party platform as unclear and contradictory and charged that it looked as though it had been written partly with the right hand and partly with the left. Frolov, the editor-in-chief of *Pravda*, said to a reporter, "I think I can tell you that Mikhail Gorbachev does not write either with the left hand or with the right hand; he gives dictation."

The mandarins may also employ distinctions. If driven, you can retreat to one distinction after another. Take the Marxist doctrine of the immiseration of the proletariat — the idea that under capitalism the proletariat is inevitably driven into deeper and deeper poverty. Suppose it turns out that the proletariat has been growing richer, not poorer. The first distinction is not absolute, but relative immiseration: the proletariat have been growing richer, but they have not been growing richer as fast as the rich have been growing richer. Then suppose it turns out that inequalities have, in fact, been declining so that the curve is shallower than it used to be and the poor have been growing richer faster than the rich have been growing richer in percentage terms. Well, says the doctrine, we are talking not about the first derivative but the second derivative: they are growing richer, but not as faster richer as they used to be growing faster richer. And if that is refuted then the next line is not national but global: we were not talking about the poor in any given country, we are talking about the poor in global terms, and even though the Europeans and Americans have been growing richer at all levels and at all speeds, it has been at the expense of the poor in other countries. The same is true of other sorts of distinctions. For example, the problem of contradictions arising under socialism was solved by Lenin around 1920 when he invented a distinction between antagonistic and non-antagonistic contradictions.

The mandarins are especially smooth in periods of transition, that is what puts them on their mettle. And this is a period of transition to beat all other periods of transition in the Soviet Union. It is painful, but I have confidence in the ability of Soviet mandarins to cope with the painful transition, and I also have confidence in the ability of western analysts of Soviet mandarins to cope with their coping with the changes.

