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Legal Consciousness and the
Pravovoe Gosudarstvo.

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This paper is #3 in the series listed on the following page. The series is the product of a major conference entitled, In Search of the Law-Governed State: Political and Societal Reform Under Gorbachev, which was summarized in a Council Report by that Title, authored by Donald D. Barry, and distributed by the Council in October, 1991. The remaining papers will be distributed seriatim.
1. GIANMARIA AJANI, "The Rise and Fall of the Law-Governed State in the Experience of Russian Legal Scholarship."

2. EUGENE HUSKEY, "From Legal Nihilism to Pravovoe Gosudarstvo: Soviet Legal Development, 1917-1990."

3. LOUISE SHELLEY, "Legal Consciousness and the Pravovoe Gosudarstvo."

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Executive Summary

The internal conditions in the USSR make the domestic development of a national legal consciousness far from certain. But the situation is quite different in the international arena. The awareness of law and the commitment to legal principles has been evident in the renewed affirmation of the provisions of the Helsinki agreement and the support given to the legal sanctions taken against Iraq.

The state under Gorbachev has fostered the development of a legal consciousness but he has since renounced this stance as an immediate objective, declaring that the Soviet Union is not ready now “for the procedures of a law-based state.” Law reform has enjoyed the same fate as many other policies advanced by Gorbachev. It has acquired a life and identity of its own. Its future direction is, however, no longer shaped or controlled by the central authorities.

Seized by both the emergent democratic forces within Soviet society and by members of many nationalist movements, law has become a vital instrument for political change, contradicting its usually conservative role in society. Political activists in an increasingly fractured state use legal measures to declare their autonomy from the center. Only as the republics acquire more independence will it be possible to determine whether their new laws and legal institutions reflect the Moscow model or the historical, cultural and political traditions of these diverse ethnic regions.
The high degree of social unrest and public protest in the USSR today makes it difficult to discuss the development of a national legal consciousness. Although Gorbachev and the current Soviet leadership are not pressing for immediate legal reforms, Yeltsin, the reformist governments in the major cities of Moscow and Leningrad and in several republics are firmly committed to the development of a legal consciousness among their populations and the legal community. A reformed national body, the Supreme Soviet, has been constituted to enact new national economic, political and social legislation. Gorbachev and legal commentators complain that the Supreme Soviet is not able to execute its decisions. This is the rationale given by Gorbachev for his request of emergency powers. This stance contradicts his quest for the supremacy of legal norms.

The political and economic realities of a society where the basic commodities of life are in short supply makes it hard to contemplate the supremacy of legal ideals. The violent consumer protests, the frequent inter-ethnic conflict and the civil war raging in parts of the country are incompatible with the law-based state. The republics have declared their laws sovereign over those of the national legislature. A so-called war of laws is being fought between the republics and the center which has partially immobilized the legal decision-making process. The Constitutional Oversight Committee of the Supreme Soviet is "practically paralyzed" because few republics recognize any national authority.

The internal conditions in the USSR make the domestic development of a national legal consciousness far from certain. But the situation is quite different on the international
arena. The awareness of law and the commitment to legal principles has been evident in the renewed affirmation of the provisions of the Helsinki agreement and the support given to the legal sanctions taken against Iraq. Although these policy decisions are useful to the long-term Soviet foreign policy objectives, it would be unfair to explain this new stance in solely utilitarian terms. The individuals representing the USSR in international fora reflect the burgeoning legal consciousness since Gorbachev’s assumption of power.

The state under Gorbachev has fostered the development of a legal consciousness but its form and direction are no longer controlled by the government or the party. Rather, Gorbachev has declared that the Soviet Union “is not ready for the procedures of a law-based state.” The dissident Sakharov, brought back from his Gorky exile by Gorbachev, has become the symbol of the supremacy of law. His commitment to legal principles rather than to the political compromise of Gorbachev made him a hero to many who seek to change the moral order of the society. Sakharov, the dissident who first espoused the importance of constitutional observance, rather than the first national leader to advocate the establishment of a law-based state, now epitomizes, even after his death, legal reform in the popular consciousness.

Sakharov’s vision of legal reform based on democratic constitutional principles has gained support among many sectors of the population unmoved by Gorbachev’s image of a socialist law-based state. It has become a successful alternative legal paradigm. Law reform has, therefore, enjoyed the same fate as many other policies advanced by Gorbachev. It has acquired a life and identity of its own. Its future direction is no longer shaped or controlled by the central authorities.
Seized by both the emergent democratic forces within Soviet society and by members of many nationalist movements, law has become a vital instrument for political change, contradicting its usually conservative role in society. Political activists in an increasingly fractured state use legal measures to declare their autonomy from the center. Legal means are also used with increased frequency by diverse national groups to press claims against the central authorities. None of this would have been conceivable before perestroika. Prior to Gorbachev’s leadership, law was conceived solely as a tool of the state rather than a means to press for enhanced rights and increased autonomy from the party. An understanding of the uniqueness of the presently heightened legal consciousness is made all the more remarkable by examining the attitudes to the law that developed during the Soviet period.

Historical Background

The Soviet authorities inherited a society without a well developed legal consciousness. The ideas of the enlightenment, which had such a significant impact on the formation of law and legal institutions in the United States and Western Europe, did not make significant inroads into Russian society. While Peter the Great and Catherine were fully cognizant of the intellectual developments of Western Europe, the legal values of the enlightenment were not institutionalized into a society where the monarch still sought to keep an absolute grip on power. The concepts of judicial independence and equality of law never took hold. Furthermore, the idea that law should come from below rather than from above was never incorporated in the Russian legal culture. The legislature that appeared in the final
days of the Tsarist period lacked the power, the experience and the representativeness to make it a force to successfully enact law in an increasingly unstable society.

The transformation in legal institutions that were clearly evident in Western Europe in the 19th century revolution did not escape Russia but the changes arrived later than in other societies and were less profound. As Harold Berman suggests, it was the adoption of the forms of the law rather than the substance and “it did not penetrate into the consciousness of the Russian people as a whole, particularly the peasants.”4 In 1864, the Judicial Reform was enacted, a legislative measure that borrowed heavily from the western European legal profession. A bar was formed drawn from the Russian upper classes that had high legal standards.5 By the final decades of the Tsarist empire, there appeared a group of men capable of drafting and implementing a major legal reform--“a group of legal experts who strove to assume the attributes of a profession.”6 These jurists began to raise fundamental issues of citizens’ rights and the appropriate role of the state in the enforcement of the law. This movement, while leaving an important legacy for the future, never succeeded in transforming an authoritarian society to one based on the rule of law. Consequently, a legal consciousness was never institutionalized either among state officials or the citizenry before the revolution.

The incipient legal institutions and the burgeoning legal profession attuned to the importance of legal norms did not survive the revolutionary and civil war destruction. The years of war and violence obliterated respect for legal norms by the law enforcers and those subject to its authority. Furthermore, because neither the pre-revolutionary state nor the citizenry ever developed a firm commitment to legal ideals the Bolsheviks were able to displace the limited legal culture with legal nihilism. As a leading Soviet legal critic has

4
commented, "In the revolutionary situation it was necessary to destroy the old legal system to create a new...but we formed a nihilist relationship to the law in general."

The Bolshevik ideology rejected the commitment to the rule of law as bourgeois. For them the state should wither away along with the legal institutions. Their efforts to implement this policy began less than a month after the Bolshevik revolution. In this environment there was no place for a legal consciousness because the society could survive without laws or a legal apparatus. Many lawyers who espoused the Western approach to legal norms were exiled, killed or forbidden to practice in the post-revolutionary state. Western values and revolutionary ideals were incompatible.

The slowly achieved gains in legal consciousness of the late 19th century were nearly obliterated. The mass of the population decimated by years of war and arbitrary violence placed survival over the protection of their legal rights. Citizens terrified by aggressive and brutal criminals cared little about the penal policy of the newly constituted legal system if it enhanced their personal safety. Order acquired primacy over legal norms. By the end of the period of war communism, the Bolsheviks became less concerned with the withering away of law and "began to increasingly 'regress' in the direction of a reconstructed legal 'superstructure' in Soviet society." But this growing reliance on legal institutions did not lead to the resurrection of the pre-revolutionary tradition. The tsarist era lawyers, the harbingers of a legal culture, ceased to function as a legal profession. The divisive and destructive tactics of the state towards even those lawyers who would serve the new government precluded the possibility of a law-based state. The police were not only renamed but restructured and restaffed. The judiciary and procuracy were gutted and replaced by
those with revolutionary zeal but no legal knowledge.

Even before Stalin's rule, only isolated pre-revolutionary jurists managed to continue their legal careers in the new Soviet state. They did, however, survive in certain visible locales--in the courtroom, as advocates, and in the universities as instructors. Their influence was limited because their defense of clients was circumscribed by Soviet practice and law school instructors were controlled by the close monitoring of curriculum. But in these capacities they did serve as models for limited numbers of future generations of lawyers. It is the legacy of pre-revolutionary lawyers that is cited by present day reformers as the seeds of perestroika.

The NEP period provided a temporary retreat from the legal nihilism of the immediate post-revolutionary period. Foreshadowing the formulations of the perestroika period, the Bolshevik legal policy of the mid-1920s stated that strict responsibility for legal observance by both citizens and the state must be complemented by increased guarantees of the citizen's person and property. The legal culture of the NEP period that merged pre-revolutionary Russian legal tradition and Western European legal concepts was short-lived.

Stalinism swept away the Bolshevik backtracking by substituting a legal policy of terror. Stalinism negated the very essence of a legal consciousness--destroying rather than fostering respect for the law. As Soviet scholars now suggest, it was the antithesis of the rule of law and a period that established a strong and unfortunate legacy for the contemporary period.

Even while Stalinist practice was so far from any Western concepts of legality, there was an adherence to the forms of law. Stalinist political enemies were not executed without
benefit of trial or a legal proceeding such as a “troika” (the kangaroo courts of the Stalinist purges), even though they were a mockery of justice. The Stalin constitution provided a veneer of legality and a pretense of commitment to individual rights. But it existed in an environment in which terror reigned and legal personnel lacked a legal consciousness. Law was simply another tool of the state and was perceived as lacking inherent value.

After Stalin’s death, the new leadership moved quickly to abolish the excesses of the Stalinist period. Extra-legal courts were eliminated, millions of individuals were released from labor camp and former political prisoners were rehabilitated. Major legislative changes occurred, including the introduction of a new criminal code which reduced the maximum period of incarceration from twenty-five to fifteen years. All of these were measures that undid and rectified some of the abuses of the past. But no attempt was made by the mass media to foster a new legal culture in Soviet society on the scale that has occurred with glasnost. The reforms were intended to de-Stalinize. While many legal reformers had a far-reaching concept of what they would like to achieve in Soviet society, the Soviet Union was not then ready to envision a dramatic transition from a totalitarian society to a law-based state.

A push for legalism and the observance of Soviet law came in the 1970s. But the striving for a new legal culture did not come from the state or the party. Instead, it emerged from the human rights movement within the dissident community. Sakharov, the most visible leader of the human rights dissidents, widely expounded their fundamental tenet--the USSR need only live up to its constitution and the international agreements on human rights which the Soviet government had signed. For them the observance of existing legal norms would
create a better society.\textsuperscript{17} It was a stance that was clearly rejected by the state. The dissidents' approach to reform of Soviet society was harshly suppressed by the very instruments of the state that they sought to change. The human rights advocates were sent abroad, internally exiled or prosecuted in highly visible trials.

**Perestroika and the Legal Consciousness**

Gorbachev, after assuming power, sought to end the legal nihilism that characterized previous Soviet leaders. In many ways he coopted and popularized the ideas of the human rights dissidents of the previous decade. What had once been at the periphery of Soviet society became the model for a new Soviet legal culture. The ideas of judicial independence, the primacy of constitutional norms and the concept of the separation of the justice system from the party, once espoused only by human rights activists,\textsuperscript{18} became part of the Party platform in the Summer of 1988.\textsuperscript{19} The human rights activists' insistence that Soviet authorities uphold the international covenants that they signed became a clearly articulated part of Soviet foreign policy.

The incorporation of these ideas in the Party program followed a concerted campaign by Gorbachev to make legal reform a fundamental objective of his state policy of perestroika. Gorbachev, when he initiated the campaign for profound legal reform was at the height of his influence--his pronouncements set the course of national policy. Like his initial efforts to reform the economy and the political institutions, he saw legal reform occurring within the context of the existing structure of Soviet society. For Gorbachev, the socialist system should
not be dismantled but merely improved.

Evidence of this point may be found in Gorbachev's objective of creating a socialist law-based state (pravovoe gosudarstvo). For Gorbachev, legal reform would exist within a state controlled economy where the individual was subordinate to the economic interests of the government. In this respect, the legal culture he advocated differed from the capitalist rule of law state.20

In the socialist pravovoe gosudarstvo promoted by Gorbachev, both men and institutions are subordinate to and observant of the law. The government and the party are held in check by the force of law and legal institutions. A social contract exists between the state and the citizenry in which individual rights are respected and both the state and the citizens know the limits of the law.21

The concrete benefits of this perspective were among the prime reasons for Gorbachev's strong advocacy of legal reform. No longer would the law force citizen compliance with the objectives of the state; law would help revitalize the society by lifting the constraints that inhibited citizens from becoming active supporters of party policies. A legal foundation would, therefore, serve as the basis for the social, political and economic reconstruction of the USSR. The law-based state, once conceived as a bourgeois idea, thus became a fundamental goal of perestroika.

In a law-based state both the government and the party must adhere to legal procedures and guarantees, but they must also emphasize the values embodied in the law.22 A well developed legal consciousness shared by both the citizenry and the legal profession, therefore, became an important prerequisite to a law-based state. In its absence neither
institutions of the state nor the party would respect legal norms. Moreover, individuals would fail to exercise the rights that they enjoy. They would not use the courts to defend their civil rights, protest violations of their labor rights or challenge arbitrary officials.

Only incomplete measures have been taken to create a new legal culture. The Soviet leadership, having suppressed the population’s legal consciousness throughout its history, could not order one into existence like a five year plan. It could only foster its gradual development in law schools, legal institutions and among members of the profession. But this required a reversal of the state’s role of many decades. Although this policy could be ordered from the top, the means for its implementation throughout the society were clearly lacking. The impotence of the USSR Supreme Soviet is the clearest illustration of this phenomenon. The party in the late 1980s was losing its ability to ensure the execution of its orders and many of the legal personnel, although officially subordinate to the party leadership, lacked the will to execute its mandate.

Despite these constraints, some efforts have been made by jurists to enhance the legal consciousness of future lawyers and of those currently employed by the state. Law professors are now rewriting texts to show the dire societal consequences of the misuse of the criminal law. Many law personnel have been prosecuted by their colleagues or dismissed from various ministries for abuse of their authority. While these changes help alleviate the most egregious abuses, it does not assure that practicing judges, procurators and police will cease acting as instruments of state policy. A new legal culture cannot develop in institutions still controlled by resident Communist Party units. In such a politicized environment, legal professionals remain more attuned to party requirements than the legal consequences of their
behavior. But the current efforts of Yeltsin and other republic leaders to remove party units from these institutions of justice, if they succeed, will be an important step towards the enhancement of the legal culture of practicing jurists. But this move has been set back by the efforts to reinstate political organs within the militsia and the military.

Citizens, like the legal profession, cannot immediately reorient their attitudes towards Soviet legal institutions. Long suppressed by the law, they cannot be expected to rapidly turn to the courts for the protection of their rights. Furthermore, the conditions needed to protect their interests are not now present. The legal recourse of citizens against the state is still limited. For example, a 1987 law gave citizens only the right to challenge unjust actions of individual officials in court when almost all decisions are made collectively. Only in July 1990 was the law modified to grant citizens the right to challenge collective decisions. But the existing legal culture and the inadequate number of defense attorneys, makes it difficult for citizens to benefit from this legislative change.

The absence of a deep rooted legal culture among the profession and the populace has been a major impediment to large scale legal reform and the achievement of the pravovoe gosudarstvo. But growing citizen awareness of the law thanks to glasnost' has changed citizen attitudes towards the law.

Developing a Legal Consciousness

The creation of a law-based state required the nurturing of a legal consciousness. Initially, the state channelled its development but lost much of the initiative after bringing
Sakharov from his Gorky exile. His return and his pointed pronouncements on government illegality proved to be an important catalyst for a popular appreciation of the values embodied in a law-based state. Sakharov’s entry into national political life provided Soviet citizens a visible human symbol of the commitment to a legal consciousness. Sakharov was transformed from outcast to national hero. His role in altering the legal culture cannot be overestimated. The state’s ideological commitments, long personified in the words and deeds of a single individual, has accustomed Soviet citizens to dealing in iconographic images. Sakharov, emanating from a religious family with the demeanor of a holy man committed to legal principles fused the historical Russian legacy with the western democratic concepts of human rights and the primacy of legal institutions. In many ways Sakharov replaced Lenin as the societal ideal. Soviet citizens now had a visible figure to identify with their legal quest, an individual who had suffered as in the lives of the Orthodox saints.

Sakharov reentered a Soviet society prepared for his message. An intense media campaign on legal reform galvanized citizen support for a change in Soviet legal processes and a transformation of legal institutions. The campaign for legal reform differed from previous propaganda that was met with popular indifference. The mass media drew citizen attention to the current abuses of individual rights in both civil and criminal cases. But it did not advocate the dismantling of the Soviet system to rectify the abuses.

Unlike the campaigns of old that were developed and executed by the party apparatus, this campaign was not orchestrated by professional propagandists. Rather it was the activity of individual journalists and jurists. Many distinguished legal scholars temporarily abandoned their scholarly writings to address a mass audience. In the process, many became known
media figures and subsequently candidates for elected office.

The reeducation process in the legal arena began in 1986 but acquired much more intensity in the following year. The attacks on the current system were focused on several prominent areas including: 1) criminality, corruption, brutality and inefficiency of legal personnel 2) endemic violations of legal procedures 3) subordination of the judiciary and legal system to the party apparatus and 4) poor quality personnel. The articles and television programs on these subjects personalized the problems brought by endemic injustices and the institutionalized domination of the party. They revealed that these abuses touched not only the criminal population but also the ordinary citizen with a housing, labor or divorce problem requiring resolution by the justice system.

By taking the case for reform to the citizenry, the legal propagandists risked arousing the antagonism of the populace to the existing order. Many citizens, cynical about political justice, still had faith in the operation of civil justice. By destroying citizens' illusions, reformers were destabilizing the society. But this was a risk some were ready to take. Many others did not foresee that the ultimate consequence of their revelations might be the dismantling of the socialist economic system and party control over the legal apparatus.

At the outset, the attacks on the justice system and the execution of law were broadly based. But as the campaign matured, the legal attacks became more focused. While once the militsiia rarely was cited in official publications, Soviet sources revealed that between 1986 and 1988 2500 critical references to the MVD appeared in governmental journals!28 Another 800 critical articles were published on the procuracy. The judiciary and the correctional system were also singled out for criticism in national and regional newspapers throughout the
country. The attacks in the press were complemented by hard-hitting television shows such as "Man and the Law" and "600 Seconds" in Leningrad (the most popular television show in the country). While the former focused on the most diverse range of legal problems, the latter was concerned primarily with crime problems. Other television shows staged debates on the merits of criminal law reform, exposes were aired on labor camps, criminal negligence in children's homes, conditions in labor camps, and corruption of legal officials. The exposes focused not only on the mistreatment of criminals but built a constituency for legal reform by focusing on the abuses of the rights of innocent citizens by callous and brutal legal personnel.

By 1987, a mere year after the major campaign to increase legal consciousness had begun, citizen reaction could clearly be gauged by letters to editors of major newspapers. This long-standing measure of Soviet popular reaction revealed that concern about legal institutions and the operation of law had risen to the top of citizen concerns. The letters on the need for legal reform equalled or surpassed in number those concerning such pressing daily concerns as housing and food. The sheer volume of the response on this issue, an area that had previously aroused little concern, is evidence of the impact of the media campaign.

No single effort to disparage the existing justice system enjoyed as much visibility as the trial of Iuri Churbanov, Brezhnev's son-in-law. This highly-publicized show trial of the former deputy Minister of Internal Affairs was an important vehicle for the discrediting of the Brezhnev regime. Prosecuted on charges of bribery and corruption, this trial, unlike previous show trials in Soviet history, was based on actual crimes. The procurators and the journalistic coverage revealed the social costs of Churbanov's misuse of his authority.
Churbanov's personal corruption and his tolerance of illegal activity by his subordinates undermined justice for many citizens of the USSR. Popular reaction was harsh, and many citizens protested the leniency of his twelve year labor camp sentence. Following the trial, the political costs of legal corruption became ever clearer to the populace.

The press campaign raised the legal consciousness of justice personnel as well as the citizenry. Legal personnel, long accustomed to a subservient press to which they contributed articles glorifying their operations, now had to adjust to muckraking journalists who questioned their basic operations and their approach to law. Illustrative of this is the case of police operations in Karelia.

Miliitsiia investigators in Karelia tortured suspected defendants to extract false confessions. A factory worker was kicked so brutally that he had to have his spleen removed. But his abuse was not an isolated incident. A metalworker had a gas mask placed over his head until he lost consciousness while a third criminal suspect was beaten over the head with a four pound ball opening a cut on his head.

Those who might think that the abusive investigators were anomalies would be startled by the support from their colleagues and superiors. The miliitsiia and MVD of Karelia showed no greater legal consciousness. Rather, they did everything within their power to ensure that their co-workers escaped punishment, including mounting a mass public protest at party offices, intimidating non-criminal witnesses and collecting 1,500 rubles from fellow officers for a fund to defend their sadistic colleagues. A Moscow based defense attorney was selected by the Karelian MVD chiefs for their indicted colleagues and the visiting lawyer was then provided transport by the Ministry of Internal Affairs of Karelia in
its official cars.

Despite this solidarity from the local law enforcement community, two officers accused of these abuses were eventually convicted after the intervention of the USSR Procuracy, the Ministry of Internal Affairs in Moscow and the oblast party committee. This reaction was precipitated only by the journalistic scrutiny of the case.

Journalistic exposes provoke an official response because, according to procuratorial and Ministry of Internal Affairs policy, justice agencies have to investigate and respond to every press criticism of their actions. With thousands of critical articles appearing regularly, law enforcement personnel had to devote significant attention to the investigation of misconduct making them more sensitive to their behavior and more attentive to their legal obligations. This is not a voluntary growth in legal consciousness but a necessary response to outside pressure. Behavior had to change because those enforcing the law could no longer rely on the state and the party to shelter them from accountability to the citizenry. While certain improvements are noticeable, a new legal culture cannot develop rapidly among law enforcers who long felt themselves above the law.

Measuring Legal Consciousness

There is qualitative and quantitative evidence that the awareness of the importance and the utility of law has risen rapidly among the population. The All-Union Center for the Study of Public Opinion has in different surveys attempted measures to determine legal attitudes of the population and the extent of change that has occurred under perestroika.
These nationwide representative polls reveal a populace that is increasingly distressed by the citizen’s treatment in the legal process but also one that has very little tolerance for the deviant in society.

The opinion polls reveal significant differences in legal values among various sectors of society. Some of the early surveys reveal that the maintenance of societal order was of primary concern to the masses, whereas a majority of the intellectuals were more concerned with greater guarantees of freedom of speech. But both sectors of society were in accordance that a return to mass repression in society was excluded or a slight possibility. There was a shared conviction that the repressions of the Stalinist past can and must be put behind the citizenry. This conclusion is important because a Stalinist terror can only be mounted with the tacit or overt cooperation of much of the population. It suggests that there is a national consensus that arbitrary justice is undesirable and should be avoided.  

While the polls provide an intellectual appraisal of legal issues, recent events confirm the centrality of law reform to many workers and the risks they will take to secure a more just society. Visible manifestation of the importance of law reform was provided by the demands of striking miners and protesters in different parts of the Soviet Union. Consistently coupled with their demands for improved housing, better wages and greater access to consumer goods are demands for the independence of the judiciary and for the removal of party organs from the militsiia, procuracy and other legal institutions. These legal demands are evidence that a legal consciousness has risen among even the working population who see these reforms as key to an improved standard of living and quality of life.

Further testimony of the popular consensus on legal objectives is the broad-based
support for Yeltsin's platform to de-politicize government and make Soviet law subordinate to the laws of the Russian Republic. Striking workers have supported this position because they believe it is consistent with their agenda of decentralizing the state to give workers more economic initiative. The visibility of the legal demands indicates how quickly the populace has assimilated the fact that the mode of operation of the legal system has a direct impact on their daily lives.

Yet the growing legal consciousness cannot be equated with the development of a legal culture. The number of cases in which well-known Soviet citizens have gone to court to protect or defend their rights has increased. Most recently, for example, former KGB operative Kalugin went to court for restoration of the privileges which were withdrawn when he publicly challenged the state security apparatus. While Soviet citizens seek greater rights for themselves, they do not necessarily want to confer them on those who are deemed marginal to society. A public opinion poll conducted in 1990 indicates the punitiveness and vindictiveness of individuals towards their fellow citizens. Among those queried, from 27 to 33 percent of them wanted to "liquidate" prostitutes, drug addicts and homosexuals. Moreover, an additional 24 to 31% thought that such people should be isolated from society. Their attitude towards many other marginal groups in society such as rockers (lovers of rock music), hippies and those suffering from AIDS is not much more tolerant. In other words, the law is not to promote tolerance in society. Rather it is to be used to produce conformity in society and to isolate or execute those who fail to conform to its idealized model. Such values do not reflect a well developed legal culture, but rather the legacy of seventy years of Soviet rule and of authoritarian Tsarist rule before that. In all these years, obedience to the
ruling monarch was placed over any concept of a higher legal order.

**Discussion**

For decades in the Soviet Union, the law served the interests of the state rather than the citizenry. The legal culture which had emerged among sectors of the intellectual elite during the final years of the Tsarist period was nearly obliterated in the first years of the Soviet regime. Legal nihilism became the predominant legal culture.

Legal consciousness under Stalin targeted an individual for persecution. There was a total divergence between the norms embodied in the Constitution and those practiced by the state's legal institutions. Citizens were acutely aware that it was futile to pursue their rights under the Stalinist Constitution. Laws were promulgated, international agreements were signed without any intention by the state to live up to their commitments.

Even in the decades following Stalin's death, there was a sharp and intentional divergence between legal norms and institutional practice. Those who advocated state adherence to its legal codes were labelled "dissidents" and accorded the treatment Soviet society provided its "political criminals."

Perestroika, ushered in by Gorbachev, marked a sharp break with the past. Legal values were made supreme as one of the major objectives of perestroika became the creation of a law-based state. Sakharov, the exiled leader of the dissident human rights movement pressing for law reform, was restored to a place of honor in society. A major media campaign was launched to enhance citizen awareness of the importance of law and the
societal costs of abusing individual rights. Massive purges of corrupt legal personnel were carried out throughout the country and reported in the vigilant press. A revamped Supreme Soviet became the new national legislative body with the authority to enact new laws affecting the political, social and economic order.

All of these legal changes were orchestrated from the center. The pre-conditions for a legal culture were established but it could not be created immediately. Neither the population nor the legal profession, after years of Stalinist terror and the denial of legal rights, could immediately reorient themselves to the new environment. A law-based state could not be ordered into existence.

While the central government of the Soviet Union for the first time in its history had established the pre-conditions for a legal culture, it no longer controlled the destiny of the country. Power was devolving from the center to the periphery. This trend was to democratize the USSR by giving more power to the republic supreme soviets. These republic legislatures, however, became tools for the dismemberment of the USSR. Law, seen by Gorbachev as a tool to reform the socialist society, instead became the means to end the socialist system and dissolve the national unity. Different republic legislatures, following the lead of the Baltic republics and the RSFSR under Yeltsin, sought to end the socialist system and move their republics towards private ownership of land and a capitalist economy. Furthermore, most of the newly-constituted republic supreme soviets used their new legislatures to declare their laws sovereign over those of the USSR. Law rather than violence became the means by which most republics declared their autonomy from Moscow's direction. But while law became a tool of both national and regional policy, it is not clear to
what extent the foundations have been laid for a legal culture in the diverse territory of the present USSR.

The Future of a Legal Culture

A legal culture is still in an embryonic state in the USSR as a whole and in most of the individual republics. The volatility accompanying the dismantling of the Soviet empire will lead either to such violence that no rule of law can exist or will lead to a shake-up of existing legal institutions facilitating the establishment of a new legal culture in many regions of the country. Historical and cultural determinants make the emergence of a consistent legal consciousness in the entire territory of what is now the USSR unlikely. The prospects for a strong legal culture are greater in the Baltic republics, whose new republic leaderships place great importance on restructuring legal institutions. The possibilities are much slimmer in the Moslem republics, whose indigenous legal culture based on the Shariia has been suppressed throughout the Soviet period. Moreover, a legal consciousness still exists in the Baltic republics that were annexed by the Soviet Union only a half century ago. But a Western style legal consciousness remains an alien value in the Asian republics, particularly those undergoing a surge of Moslem fundamentalism.

The impediments to a new legal culture are certainly great in many areas. The surging forces of nationalism may prove counterproductive to the rule of law in many republics. Indicative of this is the Moldavians, who have turned to the Romanians, known for their callous disregard for individual rights, for assistance in establishing a new police force.37
Furthermore, the ethnic conflicts in the Caucasus are hardly conducive to the development of a greater legal consciousness among many sectors of the population.

Only with the development of the diversified republic legislatures will the impact of the national drive for a legal consciousness be evident. But this drive is presently impeded by the center’s great efforts to hold on to national power. It remains to be seen the extent to which the republics are allowed to pursue an independent course of the development. Only at that stage will it be possible to determine whether their new laws and legal institutions reflect the Moscow model or the historical, cultural and political traditions of these diverse ethnic regions.
NOTES


4. Ibid., 216-217.


15. A. M. Iakovlev in “Kakim dolzhno byt’ pravovoe gosudarstvo?”, op.cit. note 7,11.
26. For a discussion of the complaints law, which allowed citizens the right only to protest the decisions of individual officials when in fact almost all decisions are made collectively, see Toward the Rule of Law: Soviet Legal Reform and Human Rights under Perestroika, New York: Helsinki Watch Report 1989, 9-32.


29. This was reported by Valery Savitsky, one of the leading Soviet scholars pressing for legal reform, in October 1987, in a personal interview.

30. See for example, Dmitrii Likhanov, "Koma," Ogonek 1989 No.4, 18-22.


32. Discussion based on a meeting with members of the Collegium of the USSR Procuracy in Moscow, January 1989.

33. Meeting with Iurii Levada, All-Union Center for Public Opinion, June 1989. Also see the survey of popular attitudes on various questions including law and the legal system in Literaturnaia Gazeta 1 February 1989, 11.


