Reflections of Anglo-American Legal Concepts and Language in the New Russian Civil Code

Peter B. Maggs
Clifford M. & Bette A. Carney Professor of Law, College of Law,
University of Illinois at Urbana-Champaign

Since 1994, I have been involved in several large projects aimed at providing support to code drafting in the former Soviet Union. Doubting the utility of American advisers for this purpose, I have done my best to divert as much money as possible to other, clearly necessary uses, such as computers for legal drafting and electronic mail, as well as travel expenses to bring together the best experts from the former Soviet republics and Western Europe. The result has been that American advisers have appeared only sporadically and have had relatively little direct influence. Nevertheless, to my surprise, on examining the new Russian Civil Code, I see some reflections of Anglo-American legal concepts and legal terminology. First, I would like to discuss concepts, then terminology.

Concepts

General Principles

The most notable example of the influence of the United States is not in the text of the Civil Code. It is to be found in the notes accompanying the Part I of the Code, stating that it was adopted by the State Duma on 21 October 1994 and signed by the President of the Russian Federation on 30 November 1994. Surely the example of the United States was a prime moving force behind the decision of the Russian people to oust their dictatorial regime and replace it with a democratically elected government with a bicameral legislature and a strong presidency. Likewise, in putting the basic principles of a free-market economy in the first article of the Code, there must have been some thought of the example of the common-law countries. For, in fact, the common-law countries are a significantly purer model of market economics than the civil-law countries of Western Europe. In a recent authoritative economic study, eight of the twelve freest economies in the world were those of common-law countries.¹

Federalism and the Code

The Russian Federation, like the United States, is a federal system. Article 1(3) of the RF Civil Code contains a principle of freedom of commerce

¹ See the Index of Economic Freedom at <http://www.heritage.org>.
(goods, services, and financial assets may be moved freely about on the whole territory of the Russian Federation) that is strikingly similar to the restrictions on state power that the United States courts have imposed under the Commerce Clause of the United States Constitution. In both cases, the purpose is the same: to ensure that the constituent units of the federation cannot erect barriers that would destroy the unity of the free market. The 1993 Russian Constitution—in giving the federal government a monopoly of civil legislation—of course, goes further toward centralization than the common-law federations of Australia, Canada, and the United States, which have generally seen private law as a matter for the constituent political units. There is no doubt that a unified system of private law greatly facilitates commerce in a federal system. Because of the peculiar ability of the common law to disregard state and even national boundaries in building its rules, the common-law federations have managed to achieve this unity without centralized legislation. Russia has achieved the same end-result: a unified system. It, of course, could not use the alien common-law methodology of achieving this unity.

Specific Anglo-American Law Sources

There are very few legal concepts or institutions in the Code that clearly have a common-law source. Even where they do have an Anglo-American source, they typically have been radically changed to reflect the more prescriptive and/or more formal bent of the Russian lawmaker. A good example is the franchise contract, a legal institution that first gained prominence in the United States. The Code’s provisions on the franchise contract (Arts.1027-1040) adopt the outlines of the American franchise contract, but as others have pointed out, it creates so many nonnegotiable rights in the franchisee as to make use of the contract unattractive. More in the general spirit of American law is the Armenian Code version of the franchise contract, which makes all the rules dispositive. (It should be noted, however, that one group in the United States, new-car dealers, have lobbied through anti-cancellation provisions not dissimilar to the Russian legislation.) The drafters of the extremely strict franchise-contract provisions seem to have forgotten the fundamental economic law known to American economists as the “Bowl of Jello” theory. (If you push down on one side of a bowl of Jello, it will rise up an equal amount in another place.) The result of making the franchise contract highly unfavorable to franchisers is likely to be both: