Introduction

Russian Law Today: At the Crossroads of Past and Present

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Russian law faced a number of challenges in 2011-2013 that tested its cohesiveness and level of development, not to mention the state of the rule of law and democracy in the country. Fraud in the elections to the State Duma, the Pussy Riot case, the adoption of anti-gay laws, anti-opposition measures and, finally, the Magnitskii case and the so-called “anti-Magnitskii law” are some prominent examples that underline how the law is used to achieve the objectives of an authoritarian political regime, resembling the methods and approaches applied during the era of Soviet positive law-making. Several laws passed in 2011-2013—such as local acts banning gay propaganda, a federal law banning “non-traditional sexual relationships”, an act banning the adoption of Russian children by American citizens, bills on changes in the Family Code to ban adoption by homosexual couples and others—represent attempts to regulate private behavior and to test the limits of personal liberty.

This situation of state’s revising the attitudes to human rights presents a number of challenges for legal research. After the 1990s—an era of legal experiments, swift denials of the past and democratic debates—Russian legal scholarship stabilized, giving rise to a quiet state of rigid conservatism similar to the situation that existed in the age of Soviet ideological control, with the difference

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that, today, freedom of speech is guaranteed by the Russian Constitution, and there is no need to struggle with the regime and hide one’s ideas behind the crafted narrative of supposedly official discourse. Technically, any scholar is relatively free to define his or her research interests, methodology, and area of study, as well as to express challenging ideas in a wide range of academic journals. Nonetheless, today’s legal scholarship focuses almost exclusively on the normative substance of Russian rules and institutions—real law and legal reasoning—almost completely ignoring other potential research areas such as the socioeconomic impact of the law. By concentrating on purely legal issues, research tends to ignore the uncertainties of other social sciences by carefully avoiding interdisciplinary studies. Igor Kozlikhin, one of the leading legal theorists in Russia, expressed his disagreement with “pointless and even detrimental usage of ‘alien’ terminology” in a recent article, while criticizing hermeneutics, legal anthropology, and communications theory in their application to law and legal theory.

In fact, there is a visible gap between well-developed legal theory and its application to the studies of substantive law in current legal research in Russia. Studies of substantive law and legal institutions are dominated by description, formal analysis, and practical outcome. The result is that legal research is perceived in terms of its usefulness for the practical needs of the law, but the crucial element of legal theory, i.e., a critical approach is mostly missing, which is connected with the system of legal education. In such a situation, this probably means that proper legal research might even create an obstacle to openly positive law-making because of its critical-thinking approach.

3 See, for example, William E. Butler’s brief assessment of the development of Russian legal history and research in his review of recent publications in the field: Michelle Lamarche Marrese, A Woman’s Kingdom: Noblewomen and the Control of Property in Russia, 1700-1861; Tat’iana Evgen’evna Novitskaia, Pravovoe regulirovanie imushchestvennykh otnoshenii v Rossii vo vtoroi polovine XVIII veka; and William Benton Whisenhunt, In Search of Legality: Mikhail M. Speranskii and the Codification of Russian Law, in: 7(3) Kritika: Explorations in Russian and Eurasian History (2006), 657-665, at 658.
6 The contradiction between legal research and application of the law was obvious in the Pussy Riot case. The judge did not accept two of three expert reports (ekspertiza) about Pussy Riot’s alleged actions: these two relied on the general corpus of legal research and were conceptually well-grounded, but they applied methodologies from other disciplines (psychology, literary studies, history, religious studies), and their authors were from various disciplinary backgrounds. Their conclusions found no element of hooliganism (or blasphemy for that matter) in the actions of the accused. The third report, however, was straightforward, relied on citing normative law (even if it was Russian canon law of the seventeenth century) and drew obvious conclusions, i.e., that the accused clearly broke the canon law and thus did commit acts of hooliganism. Besides the obvious political agenda, the situation is very clear. The text of the rejected reports can be found here: <http://artprotest.org/index.php?option=com_