The Rule of Law and Legality in the Soviet Union

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Introduction
The Situation before 1917

The problem faced by observers of Soviet forensic practice is the question why certain breaches of the law, both substantive and formal, have been taking place in spite of considerable efforts on the part of the authorities and scholars to raise the standards of trial at all stages from police inquiry and preliminary investigation to trial in the courts.

Breaches of procedural and substantive law by courts and authorities have from time to time taken place in all legal systems, but, in order to understand the specific weaknesses of Soviet legality, this article proposes to view Russia up to the revolution as a country dominated by a small alien minority over a vast population with many languages and different cultural backgrounds. This is only a formula for gaining insight and understanding—it does not claim to be a statement of fact, or a dogma. It is based on the division of the pre-revolutionary Russian population between an extremely thin stratum of hierarchical bureaucracy administered by an autocracy and a majority of illiterate peasants, the church and the military being loyal and in most instances subservient to the autocracy.

One of the usual characteristics of foreign domination is the lack of an integrated society. The latter would presuppose a common language, a common cultural background, a common normative system and a common ideology. Only a common language may conditionally, but with considerable reservations, be admitted for the Russian upper stratum and the Russian peasantry, but even here the conceptual and phonemic differences were enormous. Half the rural population was not even Russian, but of a complex composition of many cultures, languages, beliefs and normative systems.

It is an interesting observation that most European countries under foreign domination, such as the Baltic nations, the Czechs, and the other Slavs of Central Europe, retained their own languages, but assimilated the normative-legal systems and ideologies of their rulers. On the other hand, in Russia the foreign elite adopted more or less the language of the ruled, but the ruled retained
their normative-legal system and their own belief systems.
The formula may be met by another objection—that of a certain vertical social mobility in Russia—peasants climbing up the bureaucratic ladder and even reaching top positions. This has occurred throughout history in all foreign dominated countries—some individuals of the subjugated people being able to penetrate the ranks of their masters, and themselves becoming members of the ruling group of aliens.
The important factor in the suggested formula is the great and continuous difference between the peasants and the rest. The feeling of guilt and remorse present among almost all great Russian writers, artists and intellectuals as regards the peasantry and the many movements towards integration and ideological inter-penetration testify to the fact of alien domination. Similar feelings of guilt were common among the colonial powers and induced considerable numbers of missionaries to take Christianity and literacy to the dominated people.
I would omit here any detailed examination of the normative and traditional differences that existed (and to some extent exist even now) between the peasants and the rest of the population. It is, however, important to remember that amongst the peasants it was the skhod, the mir, and later the peasants' courts which performed judicial functions in peasant communities, not according to the written laws of Russia, but according to local legal customs and traditions.

In Russia, with the October revolution, the tsarist legal system with its rather shortlived reformed legal tradition (established as late as 1864) was discarded with comparatively little thought for the consequences of such a drastic step. It should be pointed out that the post World War II People's Democracies did not follow the Russian example and embarked on a gradual reform of their former legal systems, initially retaining the bulk of their former legislation.
The desire to get rid of the old legal system in Russia and to replace it at the outset with revolutionary or socialist legal consciousness may be explained on the one hand by the Marxists' theories of State and Law and on the other by the habit and tradition of the peasant courts and the skhody of applying internalised customary laws and traditions with a sensibility towards equity not of a formal but of a material character.