

Russia, Crime, and the Moral Educative Function of Law

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Political leaders, legal scholars, law enforcement officials, and foreign advisors cite the lack of a body of criminal law relevant to the new society as a major factor contributing to the crime problem in the Russian Federation today. Observations of the behavior of average citizens, however, suggest a deeper, more society-wide problem—a lack of support among law-abiding citizens for criminal law and the legal system. Some social scientists have asserted that criminal law is not directed solely toward the criminal or potential criminal, but also performs a moral educative function, sending a message to the law-abiding. The precise message and the significance of this function, however, vary among societies. This article explores the relationship between the moral educative function of criminal law and the law-abiding in post-Soviet Russia.

Imagine living in a city where everyday life is an adventure involving confrontations with, and observations of, minor violations of law and order. Sidewalks are not only for pedestrians, but, as needed, for automobiles and small trucks as well. When the streets have bottlenecks or are inconvenient, sidewalks become roads. When parking is unavailable, sidewalks become parking lots. Drivers not only do not yield to pedestrians, but they run red lights, even when small children are passengers. For the average citizen, being killed by a car driven by another citizen is more likely than being felled by a Mafia bullet. Then again, pedestrians do not yield to traffic. Public transportation—trolleys, buses, and trams—is packed with people; pushing and shoving are commonplace with grandmothers often the worst offenders. While this scenario could depict many urban areas, this situation in Russia suggests that “lack of order” is a social phenomenon in need of explanation.

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From September 1994 through January 1995, such was my daily life in Yaroslavl, Russia, a city of 700,000 people established in 1010, approximately 150 miles northeast of Moscow. Living as a participant-observer, I viewed city life through the eyes of a political scientist, a criminologist, and a foreigner. Major Mafia figures, shootouts, or the serious crime problems reported in the U.S. press were not evident. What was apparent in behavior and heard in common conversation was a less-brazen but more widespread lack of, or weakened, respect for law, or perhaps more precisely, an ambivalence toward law. That is not to say that individuals are immoral, amoral, or more likely to commit crimes than individuals in other societies; rather, this is a societal phenomenon involving attitudes toward the institutions of law in the midst of major social upheaval. With the overthrow of the keystone of the society—communism and the Communist Party—all associated institutions are now subjects for scrutiny, challenge, and/or change.

Drawing on the legal socialization literature, research on the Russian, Soviet, and post-Soviet crime and criminal law, and a case study of one Russian city, in this article I examine and attempt to explain the relationship between the law-abiding, crime, and criminal law in contemporary Russian society. I have approached the problem not as an area specialist, but more as an anthropologist, trying to understand a seeming common disrespect or at least ambivalence toward law and to avoid my own cultural biases. Although Yaroslavl may not be representative of other Russian cities, recent literature indicates that the behavior observed there is not uncommon.¹ Having posited an explanation for the present situation, I will consider the implications of this relationship for the development of criminal law and criminal justice in the Russian Federation.

Criminal Law, Its Moral Educative Function, and the Law-Abiding : A Theoretical Perspective

Why do law-abiding citizens obey the laws of any society? The answer, as developed in the social science literature, is complex. It involves an examination of the content of criminal law, the moral attitudes promulgated in a society, the institutions that promote those attitudes, and changes in one or all of those things over time. The framework developed below, although based on U.S. social science literature, can be used as a starting point from which to analyze the relationship among law, the law-abiding, and contemporary Russian society.

As part of the study of the symbolic function of criminal law, the U.S. social science literature elaborates on the moral educative function of criminal law in the U.S. context. The literature suggests that political acts can be depicted as symbols directed toward an audience.² The substance of the act is less important than the audience's perception of or reaction to that act. In this context, it has been asserted that criminal justice legislation, as symbol, serves to reassure the public that something is being done about the crime problem, provides a model for the states, and fulfills a moral educative function.³ Although scholars continue to debate whether and how criminal laws and sanctions perform that moral educative function,⁴ there is evidence that that function is considered in the develop-

ment of criminal law in the United States.⁵ Three dimensions of the moral educative function of American criminal law have been identified:

- *Sends a message.* The criminal law reflects and communicates a message to the public. That message shows the moral indignation of society toward a certain type of behavior and the moral consensus of society. People are socialized to the consensus by its reflection in the law.⁶
- *Associates behavior with negative consequences.* Criminal law leads people to believe that certain types of behavior are bad because that behavior is associated with negative consequences.⁷
- *Supports law-abidingness.* Criminal law reassures the law-abiding that they are doing right. It distinguishes the good citizen from the criminal. Criminal law praises the law-abiding and therefore teaches law-abidingness.⁸ By praising the law-abiding, criminal law, in effect, confers prestige on the law-abiding and withdraws its support from the criminal element. Criminal law is a “gesture of deference” toward the law-abiding and a “gesture of degradation” toward the criminal.⁹

Those three dimensions provide a starting point for the study of this function in the criminal law of other societies.

The criminal laws of a particular society do not exist in a vacuum, but are rooted in that society’s institutions and general moral and social influences. The law is only one form of social control, defined as social rules and processes that try to encourage good or useful conduct or discourage bad conduct.¹⁰ Therefore, to understand criminal law it must be viewed in relation to other societal institutions—political, economic, and social—and to how people learn to obey, and learn to want to obey, laws. Educational institutions, for example, also teach obedience to law and rules. Teachers use rules (and rewards and punishments) to make children behave; parents hope to mold behavior for the future. Organized religions, too, are concerned with behavior, with social control, and aim to induce their members to live a godly or proper life.¹¹

Yet, the criminal law, in and of itself and, specifically, the threat of punishment do not explain obedience to law, even when multiple institutions send that message. As legal scholar Lawrence M. Friedman suggests, we are animals who respond to the carrot and stick, but we are also moral and social beings.¹² The law is only words on paper if the way people in society actually think, feel, and behave in regard to law is not considered.¹³ Moral and social factors—motives from inside and messages we get from other people—may, in fact, be more important than rewards and punishments in explaining how we respond to legal acts. Not only is the penal code not the only source of right and wrong, but it may not even be the main source. Every community has its own definitions of right and wrong and its own way of imparting them to its members. For example, people do not obey traffic rules only because they are afraid of the police. They also respond to the person sitting next to them and what that person says about the driver’s behavior. Some of us will go through a red light late at night, with nobody around and nobody with us, but would never do the same by day, police or no police.¹⁴ We obey—want to obey what is right and also what is legitimate—because there is

something right about the way in which the laws came about.¹⁵ Yet, not all areas of morality become penal laws in a complex pluralistic society, and that is not to say they should be. Society makes choices among competing moral principles, as to which become penal law. As Friedman suggests, there are some behaviors whose criminalization might set off some “nasty consequences”—people might start informing on other people, give greater discretion to the police, open the door to blackmail and corruption, or punish people beyond what they deserve.¹⁶

A society’s legal system and underlying moral consensus are subject to change over time.¹⁷ Consensus, a shared vision or feeling that underlies its common life, validating or legitimating what is done, communally and individually, is expressed in a variety of ways, including laws and political and economic structures. At the heart of consensus is what is right, just, fair, important, seemingly worthwhile. But, consensus is not static; it is ever changing in the dialectic of communal life.¹⁸ For example, using N. Elias’s development theory, Heiland and Shelley try to explain the evolution of criminal behavior and social controls in societies.¹⁹ They assert that in the premodern age sanctions controlled individual action by external controls, but with the development of civilization, controls are slowly shifting inward. Therefore, the impact of sanctions is increasingly not the result of external pressures but the consequence of self-control of individual members of society.

Thus, to understand a society’s criminal law and why the law-abiding obey the law requires a framework that considers the content of the criminal law—the specific message and significance of the moral educative function; the substance and foundation of the moral consensus of the society; how the political, economic, and social institutions of that society support and communicate that consensus; and the moral and social factors that communicate to citizens what is right and wrong and what is legitimate law. In addition, because changes do occur in the legal systems and the moral consensus within societies over time, change must be factored into the analysis.

Moral Educative Function of Law and the Russian/Soviet Systems

Russian, Soviet, and post-Soviet literature depicts a moral education function in Soviet and Russian criminal law. Three key themes relevant to this discussion emerge from the literature: the “parental” nature of Soviet criminal law, the relationship between Soviet and Russian law, and the blurring of the line between legal and illegal behavior.

Soviet criminal law has been characterized as parental,²⁰ guiding people to virtue, directing them to their responsibility to society,²¹ and helping to create the “new Soviet citizen” who was needed to build communism.²² The legal system, as well as other political, economic, and social institutions, promoted the educational function of law. Law was made part of the general education of the average citizen; lawyers were required to give lectures in law at meetings of trade unions and other organizations. The law supported the building of communism, not the rights of the individual.

Some authors assert that some aspects of the Soviet legal system had their roots in the prerevolutionary system. Soviet law stressed the social danger of the

act and the actor, while Russian criminal law emphasized personal factors and the actor's state of mind in determining guilt.²³ Soviet conceptions of crime and the criminal, however, had deep roots in the Russian Orthodox conception of the corporate character of sin. Traditionally, the Russian peasant saw the criminal as the "unfortunate one"—a victim of society or of his own human temptations or perhaps both. The community shared in his guilt. If the criminal differs from others only in being more unfortunate, there would seem to be no moral justification for punishing him.²⁴ Soviet law carried over the leniency of prerevolutionary Russian law in the punishment of murder, assault, arson, and the like and its harshness in the punishment of ideological and political crimes.²⁵

Other authors emphasize the influences of Soviet law and society on the behavior of the law-abiding. Some assert that the economic difficulties in Soviet society resulted in a blurring effect between law-abiding and criminal behavior because the law-abiding needed to commit crimes to survive.²⁶ Others focus on the disrespect for authority stemming from the assumption that laws can be evaded with bribes and favors.²⁷

The relationship between the law and citizens at the time of the fall of communism was complex, linked to the established system, and possibly one of ambivalence; and that situation continues. Evidence of generational differences in attitudes toward law has been found.²⁸ Such differences will further confound the change process.

Yaroslavl 1995: A Case Study

Yaroslavl is a provincial Russian city located on the Volga River. On the one hand, Yaroslavl was not selected for its generalizability to the rest of Russia, but rather it chose me. On the other hand, the behaviors observed and comments about the law and legal systems may be more typical of Russia, as indicated by the literature previously cited, than those observed in Moscow or St. Petersburg. The primary purpose of this section, however, is to provide some empirical basis, anecdotal as it may be, from which to consider public attitudes toward the criminal law and legal system in contemporary Russia and what this may suggest for reform.

Observations. In Yaroslavl, crime on a large scale—shootings, gang conflict—was not evident. Public drunkenness was the most visible "personal deviant behavior." Confronting inebriated individuals on the trolley or having to walk around a man lying dead drunk on the floor of a local market were not uncommon occurrences. The presence of foreign imports at affordable prices, for example, women's clothing from Italy, in the state store raised the question of whether there was community acceptance of goods illegally acquired by a middleman.

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Furthermore, it was common knowledge that some local businesses, particularly one restaurant and casino, as well as the kiosks, were under the influence of the Mafia. Yet, this was not a city where one felt threatened by organized crime. As suggested above, drivers seemed to pose the greatest risk to other citizens. I myself was in a traffic accident on a snowy night. Our driver stopped, but the perpetrator, who had swerved into our lane, continued on, much to the chagrin of our driver, whose car was damaged.

During one week in September 1994, described as a typical week by the police crime reporter who provided me with the statistics, 458 crimes were reported in the Yaroslavl region. Of those, 141 were solved within the month. The reported crimes included 4 murders (3 were solved), 3 rapes (2 were solved), 25 robberies (10 were solved), and 128 thefts and burglaries (47 were solved). Among the thefts registered were two sacks of cow feed, two sacks of grain, sixty kilos of grain, and ten kilos of barley. There was one “large-scale” robbery of a flat by individuals dressed in police uniforms.

That is not to imply that there were no crimes related to the new economy. The police reporter provided anecdotal evidence of crimes against the new entrepreneurs—thefts of products and personal attacks—and crimes by the new entrepreneurs—absconding with bank loan funds. During the year prior to September 1994, there had been two murders in Yaroslavl that were said to be associated with the “Moscow Mafia.”

Comments. Comments from students, faculty, and others from the community suggested an awareness of Mafia activity. The Mafia were said to control the kiosks. The Mafia were believed to be linked to politics—“You can’t get elected without the Mafia.” Some thought they were organized. Others thought the old bureaucrats were the “real Mafia.” What people described, however, seemed similar to urban environments during the age of boss politics and big city political machines in the United States rather than to Al Capone or the gangland variety of U.S. organized crime, as portrayed in the media-created images of crime in Russia.

Related to the “common criminal behavior” of bureaucrats and politicians were concerns about and descriptions of “borderline” criminal behavior by the “law-abiding.” For example, there were rumors, which I could not substantiate and which may not have been true, that university officials “charged” for student services, for example, for finding placements abroad. The fear that one was more likely to be run over by an automobile than harmed by the Mafia was commonly expressed. The source of greater concern to a social scientist, however, was the expression of attitudes that would seem to undermine respect for criminal law. These were suggested by such comments as: “There are no rules, no manners; we’re a democracy.” “Our problems, our economic problems, are because of the new freedoms.” “If you want something in Russia, there is always a back door.” With respect to public drunkenness, “There but for the grace of God go I.” Or, “This could be someone in my family.”

I am not implying that everyone was engaged in “borderline activity” or that even those who believed such behavior to be common were themselves engaged

in it. The perception that this behavior was pervasive did not mean that it was in fact widespread. There seemed, however, to be a general belief that this behavior occurred and was common. Some accepted; others seemed resigned to it. Some suggested, as the solution to the crime problem, a strong central authority to reestablish controls—to establish the rules. They believed that with rules, as under the Soviet system, order would be restored. Others were frustrated, continued to support democracy, but did not know how to change the situation. Although the information presented here is anecdotal and subject to a variety of interpretations, what was evident was that many people believed that there was a problem, a social/societal problem.

The Law-Abiding and Ambivalence toward Criminal Law: Discussion

The case study of Yaroslavl suggests ambivalence on the part of the law-abiding toward the criminal law and the legal system. The Russian, Soviet, and post-Soviet literature provides insight into and diverse explanations for this phenomenon. Although substantively different, the explanations all point to the need for a complex, multifaceted approach to address this situation.

Analysis of the Problem

One explanation for contemporary Russian ambivalence toward the legal system and criminal law is the breakdown of the control of the Communist Party over the society and the impact of the fall of the party on the credibility of other social institutions. The demise of the party weakened other social institutions, including the schools, the church, and the family, that had already been weakened by the dominance of the party. These institutions typically provide the traditional moral and social supports of a society's legal system. Consequently, the basis on which respect for the legitimacy of the legal system was established was also weakened.

Another legacy of communism and the Communist Party is the difficulty in separating the functions of other institutions, such as economic from political from legal. As Harold Berman states, it was impossible to distinguish the consequences of moral education through law from those of moral education through social, economic, and political institutions in general.²⁹ This close association is carried over into the current situation. Citizen complaints suggest that clear distinctions are not made among the functions and responsibilities of particular social institutions. For example, long bread lines were blamed on the freedoms of the new democracy rather than the inadequacies of the new economics. Complaints about the political system—"You have to have Mafia support to be elected," or "Old bureaucrats are the new Mafia"—suggest general distrust of institutions and authority, rather than frustration with the failures of particular institutions to function and/or provide appropriate services. Thus, the legitimacy and credibility of the criminal law and legal system today are subject to the public's view of authority in general.

The demise of the party, however, would also directly affect the legitimacy and credibility of the legal system because of the latter's relationship to the party and the function of criminal law to educate the public on the essence of the "new Sovi-

et man.” The message of the Soviet legal system, defining the “new Soviet man,” is no longer appropriate. Criminal law cannot confer prestige on the law-abiding by distinguishing between the criminal and the “new Soviet man.” The parental role of the Russian/Soviet legal system is also inappropriate in a democratic society based on citizen participation. Still other aspects of the Soviet legal system do not provide the moral and social underpinnings necessary to sustain a legal system within a democratic society. For example, the severity of punishment, imposed in the interest of society, which in turn supported tension between the criminal law serving the interests of the person and the larger society, does not provide the basis for a legal system within a democratic context. In addition, the legal system has been identified with the interests of those in authority, rather than viewed as an outgrowth of a moral consensus in the society.

The contemporary situation in Russia thus suggests a society where not only the Communist Party but institutional authority in general has broken down. Public respect for authority, as well as the link between the party and other social institutions, has undermined those social institutions, including the legal system. Moreover, the legal system and criminal law, as currently constituted, may not meet the needs of a democratic society. Thus, the breakdown of the control of the Communist Party could explain the tension between the law-abiding and the criminal justice system in post-Soviet society.

An alternative explanation, posited by some social scientists, for this observed tension between the law-abiding and the criminal law in contemporary Russia is the blurring of right and wrong as a consequence of factors rooted in Soviet society. Specifically, the social science literature attributes this blurring effect to three factors: the need of the law-abiding to evade the law; overcriminalization—in going beyond the societal consensus of what is criminal behavior; and alienation from authority. Accordingly, this blurring and the consequent “borderline criminal behavior” by the law-abiding are viewed as simply a situational adjustment to or legacy of the communist era. As such, one would expect this behavior to disappear as conditions changed. Because this behavior continues to be observed, two questions arise. Is this behavior still viewed as necessary, but not right, because the legitimacy of institutions that create that necessity is still in question? Or, after more than seventy years, has behavior that began as a situational response become accepted as right; have attitudes toward certain behaviors changed? Affirmative answers to either of these questions suggest different approaches to reform; in the former case, wait and see may be an appropriate response, but not in the latter.

The comments from Yaroslavl suggest that institutions—economic, political, and social, including legal—are not trusted. This distrust may lie in the association of present leaders with the old regime, such as political leaders or leaders of the Russian Orthodox Church. In other cases, distrust may be a consequence of current success being attributed to associations or complicity with organized crime, as suggested by the question “How does one tell the old bureaucracy from the new Mafia?” Distrust could be generated by the failure of institutions to meet public need. The complaints, however, do not seem to be directed against the fail-

ure of the institutions to protect persons from crime, a sign of relative weakness between the institutions of law and order and the criminal element. Yet, some comments about “borderline criminal activity,” which may be interpreted as examples of a blurring of legal and illegal behavior, may more accurately be interpreted as reflecting frustration with failure of the legal and political systems to address effectively “borderline criminal activity” or the conditions that promote it.

What is evident is that the relationship between political, social, economic, and legal institutions and the law-abiding society in contemporary Russia is not secure, stable, or characterized by trust. Changing this relationship is a challenge that may take decades to meet. The identification of the interests of society with those in authority, not as an outgrowth of a moral consensus in society, makes the task of reform still more complex. Moreover, if, as it appears from the analysis presented so far, the roots of these issues lie not in the recent Soviet era, but in the Russian culture, then real reform will demand time and a multifaceted approach that includes special consideration of Russian culture and traditions.

Framework for Reform

The analysis presented above, if correct, suggests several implications for the future reform of Russian criminal law. Some change may be effected through law reform, particularly changes in behavior that are situational adjustments to particular conditions. Although such reforms are necessary, they are not sufficient to address the issues confronting the Russian legal system. The following section offers suggestions and a framework for change. It does not, however, provide a formula or design for the future, since such change must come from within not without.

Some law reform has taken place and other reforms are in process in the Russian Federation. New laws that address the crimes of the new economy may educate by drawing a line between what is allowed and not allowed in the new economic system. Such laws may reassure the public that these crimes will be punished. New laws, drawn up at the federation level, may also serve as models to regional or local authorities. Enacting new laws is part of developing the symbolic/moral educative function of criminal law for the new Russia, but new laws, in and of themselves, do not change behaviors or attitudes toward the legal system. Long-term criminal law reform involves more than abolishing special Soviet criminal laws, writing new laws to respond to the crimes of a capitalist society, or rewriting Russian criminal laws to facilitate the prosecution of Russian criminals abroad as part of the international communities anti-organized crime efforts. Adding such new laws will not necessarily address the problem of public ambivalence.

An effective approach to reform of Russian criminal law and its legal system also requires substantive law reforms that incorporate a message that supports law-abiding behavior in a democratic context, reflects Russian culture, and is integrated with the message of other social institutions. Consequently, the questions emerge. What is the message currently being sent? What is the message that must ultimately be sent to support the desired social, political, economic, and legal systems? For effective reform, the answers to these two questions need to be reconciled. Ultimately, the answer to the latter is a mix between the former

system, present realities, and future hopes. The precise message, how it will be communicated, and how the moral educative function of criminal law will be defined in this new Russian society is still a work in progress. What is critical, however, is that law reform occur purposively, incorporating not only sanctions for the lawbreaker and threats of punishment to the potential criminal, but support for law-abiding behavior.

To legitimate such reforms in a democratic context, the message would have to reflect a moral consensus, be based on the interests of the public, and be articulated through elected bodies responsible to those citizens. The process of civilizing requires that the public play a part in establishing the moral consensus to

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be internalized; it also requires a variety of social institutions to support that consensus. As suggested above, however, a tension between the person and society is deeply rooted in Russian society. Reforms would involve integration of individual responsibility, as

well as individual rights and interests, which were downplayed in previous systems, with the public interest. New laws and legal reforms will have to clearly reflect the interests of citizens, not just the interests of those in authority as has traditionally been the case in Russia. Moreover, the system of controls, instituted as part these reforms, would necessarily rely less on controlling individual action by external controls than on internal controls. The development of the message may therefore be an evolutionary process.

An effective approach to criminal law reform also involves the development of new and reformed legal structures. Here, too, Russians must look to their past and the future. Scholars have observed that the traditional Russian legal system did not have its roots in the Enlightenment³⁰ or in the Anglo-Saxon legal tradition as does that of the United States, but in the legal systems of nineteenth-century Germany and France.³¹ Some authors depict the latter as granting greater authority to the state, implying that the non-Anglo-Saxon systems are, accordingly, less just.³² Considering the high rate of incarceration in the United States, which in the past led U.S. correctional reformers to compare rates in the United States with those in the Soviet Union, Russians might be better advised to look to their past for suitable structures and approaches to sanctions, as well as to the legal systems of other nations, as it seeks the transformation of law and legal institutions. Decriminalization of penal laws, greater tolerance of deviant behavior, reduction of lengthy periods of imprisonment, fewer sanctions, and the creation of prison alternatives are viewed as evidence of the civilizing of a society. The traditions of the Russian peasants—the sense of corporate sin and community responsibility—might support a “softening” effect on criminal sanctions and a positive sense of community support. Drawing from such traditions might support the development of a system of criminal law that is more reflective of public moral consensus within Russian society.

Because an effective approach to criminal law reform involves the development of positive public attitudes toward criminal law and the legal system, such reforms cannot be limited to the legal arena but involve concomitant changes in those institutions that traditionally support a nation's legal system. The issue of institutional reform in Russia today is not simply that of restoring institutions affected by the breakdown of control by the Communist Party. These institutions were already damaged by having been subjugated to the interests of the party. Berman concluded in his 1977 article, that if the educational or "parental" role of law were to be abandoned or substantially reduced, the law would become strikingly different from every other official activity of the Soviet social, economic, and political system.³³ Moreover, it is impossible to isolate the consequences of moral education through law from those of moral education through social, economic, and political institutions in general. The opposite proposition is that under the new system, the legal system and the moral educative function of the law cannot be isolated from, but are rather linked to, reforms in the social, economic, and political systems.

Criminal law reform is most clearly related to reform of the political system. Using political institutions to effect change brings the force of legitimacy to bear on an envisioned change.³⁴ Respect for the law-making institutions is critical to respect for the products of that system—the laws. If the political institutions do not have the trust of the people, then the respect for the laws created through those institutions is compromised. News reports, via the Internet as well as traditional sources, suggest that the issues of respect for and stability of political institutions in contemporary Russia remain. The recurrent appeal to a centralized authority to restore order by imposing laws in Russia would seem to fly in the face of reform. Yet, the reliance on authority is a recurrent theme in Russian history. Andrea Sanjian has suggested that the traditional appeal of authoritarianism is not spurious.³⁵ It would seem that the contemporary Russian challenge is to restore institutions without resorting to authoritarianism.

Ultimately, in a democratic system respect for political institutions is critical, and such respect should transcend individuals. During a time of transition, however, it may be difficult to distinguish between political institutions, political office, and the incumbents. That is, building support for political institutions may be affected by those who hold office. While in Russia, I had the occasion to speak with a member of the Russian Federation Council. She told me that one of her priorities was to see that her colleagues improve their manners in the council. At first, her remarks seemed strange. Although several televised outbursts by her colleagues did suggest some need for change, it is no secret that the behavior of members of the law-making bodies of older democracies is not always exemplary. On further consideration in the context of reform, symbolic politics, moral education, and Russian history, however, her prioritizing this concern made sense. While attempting to establish respect for institutions, respect for the individuals who make the laws may help to engender support for the institutions. At the very least, citizens will have to trust that their political and legal institutions will articulate their interests, not only the interests of those in authority.

Political developments, as well as developments in criminal law, must be rooted in Russian culture. Such concepts as political responsibility, political efficacy, and the expected behavior of politicians have to be informed by Russian culture and traditions. They cannot simply be transferred from other societies. Over twenty-five years ago, James Billington wrote:

Forces within one culture do not exist to serve the purposes of another; and the familiar institutional forms of liberal, parliamentary democracy are still incomprehensible to many Russians. But Russia may well develop new social and artistic forms presently unforeseen by either East or West which will answer the restive demand of its people for human freedom and spiritual renewal.³⁶

His observations remain true today. Reform of the criminal laws will have to occur in the context of the Russian democratic evolution—whatever that comes to mean.

Legal reform is also linked to economic reform. Traditionally, the middle class has been the ballast of democratic systems. Economic difficulties in Russia have not resulted in the evolution of a strong, stable middle class. The continuation of such difficulties gives rise to the fear that what will emerge economically is a society of “haves” and “have nots.” Such an outcome would not bode well for political or legal reforms. Within the legal arena, such conditions might lead to criminal law being used to enforce the interests of the haves, creating “nasty consequences,” as Friedman suggests, and a repetition of the past.

Social institutions—the church, family, schools—all provide the underpinnings for obedience to law by the law-abiding. The challenge involves changes in the educational curriculum; reestablishing and/or reenforcing the credibility of the churches, perhaps disengaging them directly from the political arena; and reestablishing the influence and independence of the family. Soviet effectiveness in using institutions to support the Communist Party may complicate not only institutional reform, but the acceptance of reforms as real reform. For example, under the Soviets, legal scholars lectured in public forums in support of the system, communicating its message. While this technique might be appropriate for educating the public about the new reforms, it may appear to be more of the same—authority speaking in its own interest.

In sum, effective legal reform and resolution of the ambivalence of the law-abiding toward Russian criminal law is a complex task. Law reform is a first step, but legal reform also involves changing the message of the system to the law-abiding and reform of legal institutions, based on the future direction of Russian society but rooted in its traditions. Moreover, legal reform cannot take place in isolation from other institutions. Accordingly, one cannot expect legal reform to take place overnight, even over a few years. It will take time to institute, implement, and institutionalize long-term reform. But to avoid frustration and decay from within, time is also of the essence. Although the task is complex, dramatic changes have occurred in Russia in only a few years.

Conclusion

In this article I have attempted to explain the seeming ambivalence of law-abiding Russians to criminal law and, based on that explanation, to posit a framework

for reform. It is only a first step. While the problems of Russian criminal law reform are complex, the reader should not go away with the image that the situation is analogous to the wild west or prohibition gangsterism, despite newspaper descriptions to that effect. There is violence. What in the long run may be more destructive to the society, however, is garden-variety corruption, "borderline criminal behavior," or the perception that such behavior is common, which undermines respect for legal institutions, a problem characteristic of the era of machine politics in cities such as New York, Chicago, and Boston.

Addressing the Russian problem is not a matter of fixing the Soviet system or returning to the pre-Soviet era. It is not simply a matter of breaking with the harsh Soviet legal system, developing laws similar to those in Western democracies, or adding new laws to address the new crimes of the new capitalism. It involves complex legal reform, reforms in those institutions that support viability, credibility, and legitimacy of the legal system, and communicating a message of support to the law-abiding through the institutions. Reform of criminal law in contemporary Russia will require care, scholarship, and valuable time. For example, what the moral educative message should be, how it should be reflected in new laws and structures, and how it should be communicated through institutions need further study. Moreover, these changes must become institutionalized, not subject to the whims of the person in authority.

The task is difficult for cultural, as well as technical reasons, but it is a matter to be decided from within, not a task for outsiders to prescribe. As stated repeatedly in this article, the observations, explanations, and framework for change are only preliminary. These findings, however, have serious implications for the development of the new Russian political and criminal law systems, which will have to go hand in hand. In developing this analysis, I have tried to avoid cultural biases, especially the recommendation that the new Russian legal system approximate the U.S. system. Rather, I have tried to suggest that changes in Russian criminal law and the legal system are necessary, that there is no prescribed formula for those changes, but they must fit the people and the culture as well as democratic principle. What that mix will be, and how effective it will be in gaining the respect of the law-abiding, time will tell. As Billington has suggested: "Russia may well develop new social and artistic forms presently unforeseen by either East or West which will answer the restive demand of its people for human freedom and spiritual renewal."³⁷

NOTES

1. James O. Finckenaer, *Russian Youth: Law, Deviance, and the Pursuit of Freedom* (New Brunswick, N.J.: Transaction Press 1995), 19; Stephen Handelman, *Comrade Criminal* (New Haven, Conn.: Yale University Press, 1995), 337, 245.

2. Murray Edelman, *The Symbolic Uses of Politics* (Chicago: University of Illinois Press, 1964); *Politics as Symbolic Actor: Mass Arousal and Quiescence* (New York: Academic Press 1971); Joseph Gusfield, *Symbolic Crusade: Status Politics and the American Temperance Movement* (Urbana: University of Illinois Press, 1963).

3. Barbara A. Stolz "Congress and Capital Punishment: An Exercise in Symbolic Politics," *Law and Policy Quarterly* 5 (April 1994): 157-79, "Congress and Criminal Justice

Policy Making: The Impact of Interest Groups and Symbolic Politics,” *Journal of Criminal Justice* 13 (1985): 307–19, and “Congress and the War on Drugs: An Exercise in Symbolic Politics,” *Journal of Crime and Justice* 15 (1992): 119–36.

4. For example, J. Andenaes, *Punishment and Deterrence* (Ann Arbor: University of Michigan Press, 1974); Thurman Arnold, *The Symbols of Government* (New Haven, Conn.: Yale University Press, 1935); Walter Berns, *For Capital Punishment* (New York: Basic Books 1979), 507; Gordon Hawkins. “Punishment as a Moral Educator,” in *Contemporary Punishment*, Rudolph J. Gerber and Patrick D. McAnany, eds. (Notre Dame: University of Notre Dame, 1972), 120–28; Frank Zimring and Gordon Hawkins, *Deterrence: The Legal Threat in Crime Control* (Chicago: University of Chicago Press, 1973).

5. Stolz, “Congress and Capital Punishment,” 157–79.

6. *Ibid.*, 166.

7. Zimring and Hawkins, *Deterrence*, 81–83.

8. Walter Berns, *For Capital Punishment* 507–08.

9. Joseph Gusfield, *Symbolic Crusade: Status Politics and the American Temperance Movement* (Urbana: University of Illinois Press, 1963), 15.

10. Lawrence H. Friedman, *American Law: An Introduction* (New York: W.W. Norton & Company, 1984), 3–4.

11. *Ibid.*, 4.

12. *Ibid.*, 218.

13. *Ibid.*, 5.

14. *Ibid.*, 219.

15. *Ibid.*, 221.

16. *Ibid.*, 229.

17. *Ibid.*, 19; James P.M. Walsh, *The Mighty from Their Thrones: Power in the Biblical Tradition* (Philadelphia, Penna: Fortress Press, 1987), 5.

18. Walsh, *The Mighty from Their Thrones*, 5.

19. Hans-Gunther Heiland and Louise I. Shelley, “Civilization, Modernization and the Development of Crime Control,” in *Crime and Control in Comparative Perspectives*, Hans-Gunther Heiland, Louise Shelley, and Hisao Katoh, eds. (New York: Walter deGruyter, 1991), 2–18.

20. Harold J. Berman, *Justice in the U.S.S.R.*, rev. ed. (New York: Vintage Russian Press, 1963), 283–89.

21. Olympiad S. Ioffe and Peter B. Maggs, *Soviet Law in Theory and Practice* (New York: Oceana Publications, Inc, 1983), 77.

22. Harold J. Berman, “The Use of Law to Guide People to Virtue: A Comparison of Soviet and U.S. Perspective,” in *Law, Justice, and the Individual in Society: Psychological and Legal Issues*, June L. Tapp and Felice J. Levine, eds. (New York: Holt, Rinehart, and Winston, 1977), 77.

23. Berman, *Justice in the U.S.S.R.*, 251, 252, 256.

24. *Ibid.*, 248.

25. *Ibid.*, 25.

26. Finckenaue, *Russian Youth*, 22, citing Belikova and Shokin; and Louise I Shelley, “Crime and the Collapses of the Soviet State,” in *The Social Legacy of Communism*, James R. Millar and Sharon L. Wolchik, eds. (New York: Woodrow Wilson Center Press, 1994), 130–148.

27. Andrea Stevenson Sanjian, “The Social Construction of Deviance and the Transition from Communist Rule,” in *The Social Legacy of Communism*, James R. Millar and Sharon L. Wolchik, eds. (New York: Woodrow Wilson Center Press 1994), 124.

28. Finckenaue, *Russian Youth*, 40; Handelman, *Comrade Criminal*, 345.

29. Berman, “The Use of Law to Guide People to Virtue,” 81.

30. James H. Billington, *The Icon and the Axe* (New York: Vintage Books, 1970 edition), 304.

31. For example, Finckenaue, *Russian Youth*, 51.

32. Ibid., 51.
33. Berman, "The Use of Law to Guide People to Virtue," 81.
34. W. Bennis, K. Benne, R. Chin, and K. Corey, *The Planning of Change*, 3rd Ed. (New York: Holt, Rinehart, and Winston, 1976), 42.
35. Sanjian, "The Social Construction of Deviance," 127.
36. Billington, *The Icon and the Axe*, 593–94.
37. Ibid., 594.

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The leading Victorian criminal law jurist James Fitzjames Stephen took the opposite view. The manly man should take control of his little kingdom of the family and criminal law should cede him his sex rights, as it did. Modern criminal law has modernised men and curtailed these rights to women. The husband's immunity from rape prosecution has been abolished. What was once endorsed in a manly man is now officially condemned. Moral Uncertainties of Rape and Murder: Problems at the Core of Criminal Law Theory. Ngaire Naffine. Portrait of a Victorian Rationalist. This crime of morality can affect the lives of children, youth and householders. A distorted form of behavior is what happens is adultery, rape and obscenity. The moral or educative effect of the criminal law is about how punishment is the expression of social disapproval of a crime and crime causes a risk of an unwanted consequence. Offenses are considered immoral by the criminal justice system. He goes on to add that in Continental legal literature the moral or educative effect of the criminal law plays a huge role in deterring crime. Apparently, the moral or educative effect can be more persuasive than the threat of punishment. Hellmuth Mayer, a German criminologist, agrees with this theory and says that the general preventive effect of criminal law isn't deterring, but uses morality to guide people to be law-abiding citizens. He adds that power is the most convincing thing to man and than can be in the form of moral stability.