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## Characteristics of Soviet Law

A. K. R. KIRALFY\*

(1) PARTY-STATE DUALISM. At every turn the observer of the Soviet scene is faced with the paradox of a political party, the Communist Party of the Soviet Union, which has no official legal authority but which possesses a machinery parallel to that of the legally constituted State. The authority of the State ultimately depends on the legislative powers of the Supreme Soviet, but this august official body is made up of candidates elected on a "one-party ticket" and most of them are members of the Communist Party. At every point the Party Secretary and Committee are encountered, and, at the top, the Central Executive Committee of the Party, yet on paper the Party has no more authority in law than the various political parties in the Western Democracies. At one period, Party resolutions were treated as binding by the courts, but this is now recognised to have been "unconstitutional." As a result it is necessary for major Party decisions to be formulated as legal drafts and submitted to the official legislative bodies for approval. On such occasions some deputy makes a speech and there are occasional minor criticisms and amendments, but these are allegedly prepared and rehearsed in advance to give an appearance of genuine debate and discussion. Of course political debate of a more serious kind goes on behind the scenes in Party meetings, especially in the Central Committee and its inner Presidium, but such discussions are private and can never go to the length of doubting the basic ideas of Marxism which Soviet leaders follow. "Interpretations" of Marxism differ, of course, and here again there is some room for

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dispute, but only at the very top, and, even then, at the risk of disgrace or worse if unsuccessful.<sup>1</sup>

(2) THE LEGALITY CAMPAIGNS. It is clear that there are important and influential elements in the Party which would prefer to follow expediency and leave every decision to momentary advantage. They wish to administer the country flexibly and take account of every possible change at once. On the other hand there are others who share the feeling of the individual citizen that the principles of law and procedure should be certain and predictable, and that the conscientious man should be free of the fear of constant frustration and interruption in his activities. Soviet lawyers, like all lawyers, believe in the importance of well-defined rules of law and procedural guarantees, as part of the technique of any system worthy of the name of law. As Professor Hazard has emphasized in his recent work on "The Settlement of Disputes in Soviet Russia", the pendulum swings back and forth and at one moment a high degree of legal stability is assured, while at another everything is in a state of flux. There is little doubt that the private citizen prefers stability. And this is also a test of the régime's political sincerity. Contrary to the opinion of some extreme anti-Communists in the West, it does seem possible to achieve some minimum degree of legality under a socialist or any other system, though the rules of this system may appear to differ from and often contradict the rules familiar in countries dedicated to free enterprise. On the other hand insistence on a completely free hand to achieve desired results savours of despotism and suggests an unwillingness to substitute a stable new order for the stability which capitalism has previously succeeded in creating. It may well be, of course, that the pressures which a socialist system has to face are stronger than those met elsewhere, e.g. the temptation to return to private trade or to ignore the common interest.<sup>2</sup>

(3) THE REGIMES OF LAND. Marxism insisted that land should not be capable of being monopolised by any individual, but should be part of the national heritage. Accordingly, all land, minerals, timber, etc. in the Soviet Union is State patrimony and incapable of acquisition by the individual. Much of this land is directly State-owned, e.g. rivers, public buildings, museums. Much of it is State-owned but operated by public firms or businesses which are emanations of the State, e.g. railroad concerns, factories. Some land is allocated to local government bodies as a basic housing fund, such as apartment houses in which accommodation is obtained on a priority system and cubic content is meted out to those entitled. This still leaves a con-

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<sup>1</sup> See Gsovski and Grzybowski; *Government Law and Courts in the Soviet Union*, Stevens & Co. pp. 35 ff.

<sup>2</sup> See Kiralfy, A. K. R.; *Campaign for Legality in the U.S.S.R.* (1957) 6 I.C.L.Q. 625; *Rule of Law in Communist Europe* (1959) 8 I.C.L.Q. 465.

siderable amount of agricultural land which is "leased out" to collective farms, i.e. associations of working farm families. Local authorities maintain land registers in which the parcels of land are identified and their various uses recorded. On each collective farm the family has the right to occupy certain living space and to cultivate an allotment for personal profit. A constant problem in the Soviet Union is the excessive time and effort expended by peasants on these plots, and their neglect of their minimum duty hours on the collective fields. Yet even these "private" houses and lots are owned by a tenure subordinate to the overall ownership vested in the State. Individuals may combine to build homes which they keep for personal use, but such homes are often easily moveable and hence there is no technical violation of the State monopoly of landowning. There are State farms directly operated by the State as "industries" and it is foreseen that eventually these will become the norm and the present compromise "collective farms" will disappear. This, however, is not an imminent possibility.<sup>3</sup>

(4) **LAW AND ECONOMICS.** Soviet law incorporates many rules based on the Marxist view of economics. Thus the individual may only own personal objects like books and clothing, a summer-house and so on. He may not own any major economic items like large machines or herds of livestock. In sum, he cannot control the use to which anything of importance is put, as this would make him to that extent the economic master of the situation. If he is one of the exceptionally well-paid people he may accumulate some better articles of personal use, have longer vacations, better seats at the ballet, but he cannot purchase controlling interests or set up private industries or businesses. The employment of any person by any other person is regarded by the law as an "exploitation" and is only allowed in a few cases, e.g. nursemaids for young children. Private trade is very limited; there may be private hairdressers and repairmen but no large firms with employees. In the same way any attempt to make a profit is regarded as the crime of "speculation."<sup>4</sup> The production and distribution of all goods is based on the State Plan, and planned profits are provided for the various persons concerned. It is against the law to try to set up as a middle-man or to buy up large stocks for re-sale at enhanced prices. Second-hand business is permitted, provided the articles offered for sale are genuine cast-offs of the seller and the State store acts as selling agent. Only the State can make a business of dealing even in second-hand goods. In fact the State has a monopoly of all but the most insignificant business within the Soviet Union, and a complete monopoly of all foreign trade.

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<sup>3</sup> Gsovski and Grzybowski; *op. cit.* p. 1623. Szirmai: *Law in Eastern Europe* vol. 5 U. of Leiden, Netherlands p. 28.

<sup>4</sup> Gsovski and Grzybowski: *op. cit.* 950.

Individual initiative by management has a very restricted scope, in view of the comprehensive nature of the planning system. In practice managers do at times find "short-cuts" and make "deals" but they risk criminal punishment or at least demotion and loss of career if they do so. Strict observance of the regulations may make the attainment of targets very difficult and there is a high wastage in top management, as one director after another fails to reach some excessively high standard. Consumer demand has tended to be ignored in the interest of large production figures of uniform types of article.

(5) LEGAL PROFESSION. Few of the Tsarist lawyers were able to practice after the Revolution. Instead, a number of unskilled persons attempted to act as lawyers, and it was even thought that the community might dispense with trained lawyers. Events have proved otherwise, and the Soviet Union has large numbers of lawyers as legal advisers in State firms as well as in criminal prosecution work or civil practice. Prosecutions are undertaken by State lawyers, in the Attorney-General's (Procurator General's) Department. The defence of criminals, and all civil litigation, are in the hands of private professional advocates. Legal training in law schools, faculties or institutes is required of every candidate for either branch of the legal profession, and a reasonably high standard appears to be attained, especially since the end of World War II. Some lawyers earn large annual sums in fees, e.g. in copyright disputes. There is no out-and-out national legal service in the U.S.S.R., but there is a considerable degree of State control. Thus the Minister of Justice has powers in respect of the admission and disbarment of lawyers; young lawyers are assigned to groups of law offices, or legal collectives, known as "consulting rooms", if they go into "private practice." There are regional Bar Associations with considerable powers. Lawyers are allocated among the various collectives so as to provide good cross-sections in seniority and to cover as wide a number of specialties as practicable. Hence the law is not quite a liberal profession in the U.S.S.R. The defence advocate has had a difficult time, especially in cases involving State interest. Such men have suffered set-backs in their careers and even been imprisoned for conducting vigorous defences. At present they have been repeatedly assured that a lawyer may and should defend his client strenuously without appearing unpatriotic. Many lawyers are members of the Party and amenable to its disciplines. However, the legal profession is not generally regarded as "sensitive" in Russia, since it merely applies and enforces and does not itself create policy, and few lawyers are prominent in the government.<sup>5</sup>

(6) THE COURT SYSTEM. Like many Continental countries, the Soviet courts are arranged geographically in a hierarchy. Minor

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<sup>5</sup> Ibid; p. 559 ff.

cases are first tried in a local court and may then be appealed once to a higher court. The higher court itself tries certain major types of case, and from it there is an appeal to the court of the Province. Above this stands the Supreme Court of the federated Republic (e.g. Russia or the Ukraine) and right at the top the Union Supreme Court. At one time the Union Supreme Court was the last instance in many cases, but in recent years its activities have been confined to those areas in which the Union legislature has exclusive competence, i.e. to lay down minimum uniform rules, or which concern the provisions of the Union Constitution. In other cases the Supreme Court of the Republic is the final court of appeal. Many of these appeals come up on protest by the State Attorneys (Procurators) and are taken in the interest of settling the proper interpretation of some law rather than out of concern for the individuals involved. This system of review is not confined to Communist countries. Though strange to English common law it is encountered in a number of provisions about criminal appeals in Canadian law at the instance of an Attorney-General, and his counterpart in Europe.<sup>6</sup>

Most Soviet courts unite both civil and criminal jurisdiction. In the Supreme Courts of Republics and of the U.S.S.R. the volume of specialized work has led to the erection of special divisions to deal with civil and criminal cases. There are also special military, maritime and railway courts.

Soviet courts try cases at first instance as "collegiate benches", i.e. one trained full-time judge as president and two rotating lay associates or assessors as the other members. The idea is to provide some lay participation, to guard against unnecessary technicality and "legalism". The assessors are in theory equally judges of law but in practice follow the directions of the president of the court.<sup>7</sup> Appeals are heard by benches of professional judges.

The higher the court the greater percentage of Party members. On the other hand the ability of the judges is also greater, and their treatment of decisions of inferior courts seems valuable and some protection against abuse of power.

(7) CRIMINAL PROCEDURE. Soviet lawyers are extremely sensitive about their criminal procedure. Forced confessions are admitted to have been used as the basis of many miscarriages of justice.<sup>8</sup> In recent years there have been voluminous articles in Soviet legal journals and even political journals about these problems. Since the State, and behind it the Party, has sovereign power to legislate without restriction, there is no reason why it should not observe standard

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<sup>6</sup> e.g. France, see David and De Vries; *French Legal System* p. 20.

<sup>7</sup> Gsovski and Grzybowski; *op. cit.* 529.

<sup>8</sup> *Ibid*; p. 871, p. 900.

forms of criminal procedure, and every reason why it should. Soviet lawyers admit, and even insist, on the value of similar guarantees of due process to those with which we are familiar. They say that such procedures are the best ways of discovering the truth, and the Soviet State needs to know the truth so that it can effectively carry out its policy. Why should a loyal Communist be "framed" and executed? Yet this happened very often in Stalin's time. None of the Soviet lawyers is concerned to help the guilty to escape, and many of these "guilty men" might not seem at all guilty in Western eyes. However some stable legal order is better than none, and one should prefer to see good procedure even if the rules of substantive law strike us as uncongenial. In theory the Soviet law regarded the confession with as much suspicion as we do in the West. Stalin, however, insisted on removing his opponents by trumped-up charges and forced confessions, and Vishinsky had to say that State crimes had to be treated differently. The fallacy of such an argument has been abundantly pointed out by lawyers in the U.S.S.R. as well as elsewhere. Other disagreeable features of earlier Soviet law, such as guilt by analogy where there was no specific prohibition of the "crime", were much criticised and have gone. This does not seem mere propaganda, though there is clearly a propaganda value in reform of these abuses. One must still question the real freedom of the courts from political pressures, though the principle is clear, namely that a judge may be criticised for his approach to cases over a period but cannot be told how to give judgment in a particular case. In most cases Soviet judges appear to act independently but this may break down in politically important instances.

(8) PROCURATORIAL REVIEW. Most systems of law derived from Roman law have a public official who is concerned to see that breaches of law are detected and punished, and to supervise the functioning of the legal machinery. Even in England the Attorney-General and Solicitor-General are party men and members of the legislature as well as of the Crown executive, and there is no system of special lawyers, except in divorce cases where Roman law provided the model. In Scotland, Roman law influence has produced a system more like the European. The State and District Attorneys in the United States and the Crown Attorneys in Canada also resemble the European rather than the English law officers. Hence there is nothing particularly Communist about the Soviet procuracy, or its leader, the Procurator General of the U.S.S.R. These men are extremely active in reviewing the results of lawsuits and prosecutions, as well as in investigating complaints of administrative illegality.<sup>9</sup> Their record appears quite admirable in many cases, and their visitations are clearly the subject of apprehension by those who break the law,

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<sup>9</sup> Ibid; pp. 547 ff.

whether officials or private persons. On the other hand the procuracy are generally Party members and the Procurator General closely connected with the central power. It would therefore be wrong to think of them as championing the individual against the State. Quite the opposite, they are concerned to see the law fully enforced and to make local courts and officials follow the line set at the top. None the less this institution does work for due process within this context. How far can the procuracy check abuses and illegalities by high officials? This is a weak point, since the system does not operate where perhaps it is most needed, at the top of the State (and Party hierarchy). *Quis custodiet custodes?* Again, the procurator is supposed to guard the rights of the defence, but can this function be entrusted to the man who is conducting the prosecution? The procurator is in charge of the investigation of crime and in theory he and the judge control the investigator and check abuses, but in practice this can hardly be much of a guarantee for the defence.

(9) CRIMINAL LAW. The Soviets still claim that there will come a time when criminal law ceases to be necessary, but they have in fact been constrained to apply it with great severity. The divisions of the typical Russian Republic's Criminal Code are in many respects similar to those of Western countries; there are groups of offences against the State, against property and against the person. However there are also some characteristic Communist crimes, such as speculation or private trade, counter-revolution, spreading alarming rumours, (i.e. offences characteristic of reaction against Communism) and there are equally typical offences of another kind, such as exploitation by a self-seeking official of his authority (i.e. the kind of abuse which can easily occur under a dictatorship or revolution). Thus the regime appears to try to control its own bureaucracy when misusing its powers. Even within the traditional scheme of crimes, it is clear that one type of theft predominates in importance, the theft of public or socialist property by individuals. The Soviet regime constantly complains of pilfering and embezzlement and the failure of any strong sense of guilt to develop where the community is robbed as a whole. The need to combat this problem is sometimes in conflict with more technical ideas of the elements of theft as a crime. Under Stalin it was common to create, by case-law, constructive thefts, e.g. obtaining higher wages by producing a forged graduation certificate was treated as stealing the wage differential between graduates and non-graduates. Since that time there has been a return to classifying crimes more precisely, and requiring the actual taking of some property or money against the will of the owner. Sentences in Russia are very severe. From time to time there are amnesties and commutations, but then

corresponding reactions in favour of more "realistic" sentences and less leniency.<sup>10</sup>

Sentences are served partly in actual prison confinement and partly in labour camps or columns. At one time all sorts of relatively unimportant crimes attracted long sentences, as if the imposition of punishment was aimed at labour recruitment. More recently this has been relaxed, and disciplinary measures and demotions have been used to replace criminal sentences in some cases, e.g. lateness or absence from work.<sup>11</sup> In many Western systems treason and murder are regarded as crimes fit for the death sentence. Soviet policy has varied, but murder is not generally punishable by death unless carried out against an official of the State in that capacity, or by armed gangs. On the other hand serious thefts of State property, and, recently, falsification of official records of production, have been made capital crimes. Treason, espionage, terrorism and counter-revolution, may of course, be capital offences.

(10) LAW OF TORT. Civil law still exists in the U.S.S.R. although property is largely nationalised. It is considered convenient to retain it as most suited to deal with various traditional problems. The sources of the law of tort in the Soviet Union are various and scattered. There are provisions in the various Civil Codes, such as that of the Russian Republic, for liability for negligence and for strict liability for increased hazard, similar to those of the French Civil Code.<sup>12</sup> Again, as in the French system, the "civil party" may claim damages for harm done to him by a criminal in the commission of a crime, e.g. wounding in a fight or robbery. In addition to this the tort law imposes a civil liability on workers to compensate their factories for careless damage done to machinery or goods in their charge. Soviet factories and undertakings are set up as juridical persons, so that a person run over by a careless driver of a train can sue the railroad enterprise, and a person injured by dangerous premises can sue the enterprise which occupies and operates the premises.

The situation is more complicated where a worker is hurt by the carelessness of another worker, and here, on lines like those of the rather discredited doctrine of common employment in England, some general neglect by the management of the enterprise must be

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<sup>10</sup> Szirmai: *Law in Eastern Europe*, Vol. 3 University of Leiden, Netherlands pp. 57 ff.

<sup>11</sup> Gsovski and Grzybowski; *op. cit.* pp. 1433 ff.

<sup>12</sup> i *Ibid*; p. 1174.

ii Russian Civil Code; Sections 403-415.

iii French Civil Code; Articles 1382 ff.

ix Szirmai; *op. cit.* vol. 5 pp. 288, 289.

shown, contributing towards the injury.<sup>13</sup> Persons suing for physical injuries are treated more tenderly than others, and are exempt from lawyer's charges or court fees. The measure of compensation in personal injury cases is low in Canadian terms but this may be a reflection of the general low standard of living and not a policy of denial of adequate compensation. There are industrial injuries benefits and various other pension schemes in the U.S.S.R., as well as rules requiring injured persons to be found, if possible, some kind of work which they are still able to perform, so that their productivity is not entirely lost and they may eke out a living of sorts. Cattle trespass is an important tort, occurring where livestock of one collective farm stray and consume or damage crops on another farm. Collective farms have legal personality and may sue and be sued. Soviet law has provisions for subrogation in various cases, e.g. where the State has to pay compensation it may sue to recoup the cost from persons more directly responsible.<sup>14</sup> Some forms of action like ejectment are replaced by special proceedings under housing legislation, since apartment dwellers acquire no property rights but only social priorities. Civil actions for libel or slander are not heard of, and direct recovery of property goods as well as land make remedies like conversion unnecessary.

(11) CONTRACT LAW. Paradoxically, the importance of the contract has grown under the Soviet planned economy.<sup>15</sup> There is no freedom of contract in our sense, no freedom not to contract at all or to select the essential terms of the contract. What happens, instead, is that the State Plan, and its consequent subdivisions and implementations, provide a pattern for production and distribution. The planning bodies then allocate certain items to be manufactured by a given enterprise and supplied to another enterprise. The most important terms of the contract from the point of view of the State, that is, minimum quality, quantity and price are laid down by the Plan. The two enterprises are then required to negotiate a formal contract, filling in details on some of the less essential terms, where on-the-spot knowledge may be most helpful. If the two "firms", both merely manifestations of the same State, fail to agree on terms, they are required to submit their dispute to an elaborate State Arbitration machinery.<sup>16</sup> If a contract is completed and officially approved there may be subsequent disputes about its performance, and here again recourse is to arbitration. The requirement of arbitration in place of ordinary court procedure seems due to several motives. In the first place the arbitrators are experts on the plan and will ensure it is

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<sup>13</sup> Szirmai; *Law in Eastern Europe*, Vol. 5 of U. of Leiden, Netherlands pp. 289 ff.—a new civil code has recently been approved.

<sup>14</sup> *Ibid*; p. 290.

<sup>15</sup> Gsovski and Grzybowski; *op. cit.* p. 1146.

<sup>16</sup> *Ibid*; p. 585.

being complied with; in the second place they will have more expert knowledge of the industry; in the third place they are closer to the making of policy and can operate with more confidence and less formality. There is also an element of privacy or even secrecy. The system prevents too much inefficient dirty linen being washed openly. Proceedings are not public like those of courts, and lawyers may not practise before the arbitrators without special permission, presumably limited to "reliable" persons.

The Communists appear to have irrevocably chosen to use the device of a binding contract rather than more flexible business arrangements such as one would expect in "one big firm." This is because they have constantly to struggle with the trend among their business managers to change arrangements and cover up for one another, in return for a similar treatment. By insisting on a contract and on specific performance of a contract such disintegrative tendencies are resisted. The "parties" to the contract are not allowed to waive breach and the arbitrator will on his own initiative enforce its provisions, just as the procuracy will take action if they are told that some contract is not being enforced. Thus a receiving enterprise may not overlook or excuse a faulty or short delivery, but must at once complain to the appropriate authorities and, if not made good, start breach of contract proceedings, ending in specific delivery of the articles. This law may be regarded by some as administrative rather than civil in its ultimate sanctions, but the Russians prefer the traditional framework of contract law for the reasons stated.

(12) LABOUR LAW. Almost all persons in the Soviet Union, apart from members of collective farms, are employed by the State. The main terms of all contracts, e.g. wages, are fixed in advance, but there is supposed to be a certain room for collective bargaining between the trade unions and the government.<sup>17</sup> The unions tend to concentrate on matters like factory safety, holiday arrangements and pensions and welfare. No strikes are tolerated. Some employees obtain contracts for fixed terms, others are simply taken on indefinitely. Some pains are taken to recruit and train labour for the jobs needed according to the periodic plans. Dismissal or transfer must be justified by various limited grounds, e.g. where a mine is worked out, serious indiscipline of the worker, and so on. No law compels a man to apply for work but very few are economically able to live without it. Soviet law attempts to bring about a reconciliation in many disputes between "labour" and "management", through the intervention of trade union channels, but there is an ultimate recourse to the ordinary courts. Dismissals of high officials are dealt with by administrative channels and are not ventilated in the courts.

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<sup>17</sup> *Ibid*; p. 1446.

(13) INHERITANCE LAW.<sup>18</sup> Few Soviet citizens can accumulate very large fortunes. The question of inheritability was much discussed in the past and it was nearly abolished on ideological grounds. However, since it plays no significant part in the economic picture, it has proved possible to tolerate it and avoid stirring up family discontent. The circle of relatives entitled to succeed on intestacy, is very limited, and the present law does not permit property to be left by will, except to close relatives, the State or some public body. It is now possible that a wider measure of freedom of disposition by will will be permitted, under the projected new civil codes. Dependants have various claims under Soviet law even if they are not related to the decedent; the family enjoy a certain security of tenure of the family home, and retain the essential household utensils. In order to ensure the observance of the law against gifts to strangers every will must be officially scrutinized when made. Soviet law also restricts the settlement of the estate in various ways, e.g. if a man already has one home he may inherit another by specific provision but may not arrange to get another from the estate in lieu of some other, say monetary, provision made for him. Interests in collective farms do not devolve as such, but members of the family may ask for membership.<sup>19</sup>

(14) CONCLUSIONS. It may be asked whether the Soviet legal system, on which those of the satellite states are also modelled, is a system of a generically new type, or whether it is merely a traditional form of law operating under special conditions. Some lawyers treat the Soviet system as basically Roman in type, but modified to meet local conditions. Their argument is that the emphasis on statute, much of the procedure, the framework of civil and criminal law, the types of civil remedies, all persist from the pre-revolutionary Russian law of Roman inspiration. The Communists themselves strenuously deny this. They claim a fresh identity for their concepts, even when they happen to use the same names, e.g. they deny that their procurators are the same as the Western European procurators, or that their contract of service is identical with that of Roman law, though it uses the Roman name. This argument is not completely convincing; the classification of contracts in Soviet law is obviously originally based on Roman law, via European adaptations, and procedural steps are equally traditional. On the other hand the large number of new concepts devised by the Soviets, the great inroads made by Marxist ideas into many fields and the dwindling importance in practice of many of the topics still regulated by Roman ideas, justify the more usual opinion now held, that is, that the "socialist" systems con-

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<sup>18</sup> *Ibid*; p. 1163. Szirmai, *op. cit.* p. 17 ff.

<sup>19</sup> Szirmai; *Law in Eastern Europe*, Vol. 5 U. of Leiden, Netherlands pp. 28, 29.

stitute a new order of legal systems, beside the Roman law, Common Law, Islamic law and others. This is supported by the prospect of the Soviets modifying even the hard core of traditional doctrine. Thus special types of contract not based on Roman law appear in the new civil codes, i.e. contracts of transportation, of capital construction, of agricultural delivery, of message transmission and so on. There remain many older elements but these are so universal in nature as to be common to all or most legal systems.