

Ten Years Later: Society, “Civil Society,” and the Russian State

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*G*razhdanskoe obshchestvo (civil society) is becoming the new mantra of the Russian government and the political elite in general. The term is widely used in the contemporary Russian political lexicon. A reference to the “creation of civil society” or its “further development” is usually present in a typical set of arguments put forth by Russian policymakers endorsing certain political initiatives in the country. Work on “developing structures of civil society in Russia” is regularly discussed during meetings between President Vladimir Putin and leaders of parliamentary factions or presidential envoys, as happened, for instance, on 28 June 2001 during Putin’s meeting with envoys Petr Latyshev (Urals federal district) and Leonid Drachevskii (Siberian federal district). Even the formation of a coalition of two political parties—the pro-Putin Edinstvo (Unity), and Primakov-Luzhkov’s Otechestvo–Vsia Rossiia (Fatherland-All Russia)—was officially welcomed by President Putin because it was expected to become an “important step aimed at strengthening and developing the political system, and creating civil society.”¹

The number of registered public organizations in Russia has reached approximately 350,000, including more than 70,000 social and noncommercial organizations, which are actively operational and directly or indirectly involved in charitable work. According to different sources, charity organizations unite between 1 million and 2.5 million citizens providing assistance and free services to some 20-30 million Russians, worth 15 billion rubles a year.² Reportedly, the number of Russian regions that have cooperation arrangements with, for instance, groups working with orphans and the disabled, has risen from 12 (out of 89) in 1998 to 40 in 2001.³

¹*Polit.ru*, 28 June and 12 July 2001.

²*Interfax*, 4 September 2001 (quoting Evgeni Vodopyanov, the vice president of the Union of Charitable Organizations of Russia); *Izvestiia*, 21 November 2001.

³See “Good Works,” *The Economist* (24 March 2001): 61–62. For further research in the Russian nongovernmental sector see a number of useful websites: www.ngo.ru (Catalog of Social Resources on Internet); www.trainet.org (Virtual Resource Center for NGOs); www.hrights.ru (Human Rights Institute); www.hro.org (Human Rights Online); infohome.dcn-asu.ru and infohome.alt.ru (InfoHouse-Altai); www.cip.nsk.su (Inter-Regional Public Foundation, Siberian Civic Initiatives Support Center); and www.hartia.ru (Information and Discussion Portal for Civil Society in Russia).

Not by coincidence, it was on 12 June 2001, a symbolic date in Russia's recent history and an official Russia Day holiday, that President Putin held a meeting with representatives from a wide range of public organizations. Attended by twenty-eight nongovernmental organizations (NGOs)—including the Association of Beekeepers, the Allotment Gardeners' Federation, the All-Russian Society of Stamp Collectors, as well as those uniting lawyers, invalids, journalists, consumers, ecologists, and even bards—the Kremlin gathering proposed the formation of a Civic Chamber attached to the Office of the President. The Chamber is expected to become an important component of the process of building a civil society and developing the grass-roots activities of ordinary Russians. Concrete preparations for creating such a Chamber are being made by Gleb Pavlovskii, a former dissident, "political prisoner," and now the head of a high-profile Foundation for Effective Policy, and Vladislav Surkov, a senior official of the presidential administration. The Civic Chamber will be preceded by the Civil Forum, which convened on 21 November 2001 in Moscow with participation of four thousand representatives of citizens' groups and NGOs.

The rapid intensification of dialogue among the Russian political elite and social scientists on civil society and its evolution is no accident. Many observers view the stunning defeat of radical "reformers" in the Russian parliamentary elections of December 1999, and Putin's decisive victory in the presidential campaign of March 2000, as the end of "revolutionary changes" in Russia. In a popular expression, civil society is the point where revolution ends and the routine (*byt*) of a democratic regime begins.

In a certain way, the use of the term *grazhdanskoe obschestvo* is following the pattern of the use of another concept more than ten years ago—*pravovoe gosudarstvo* (*Rechtsstaat*, or "law-governed state"). Indeed, "civil society" is probably now mentioned as often as *glasnost* or *pravovoe gosudarstvo* were used during perestroika in the late 1980s and early 1990s. Back in June 1991 a report prepared for the U.S. Congressional Research Service observed that "voluntary or involuntary lack of consensus on the meaning of the rule of law, broad interpretation of the term, and attempts to use it in political demagoguery as a populist tool lead to outright abuses of the concept."⁴ In the same way perestroika was transformed in reality and public consciousness into *katastroika*—while the "architect of perestroika," Mikhail Gorbachev, deservedly enjoys the support of no more than the 0.5 percent of the Russian electorate which voted for him in the 1996 presidential elections—so too might the indiscriminate use of "civil society" in Russian political doublespeak today lead to similar consequences. The more politicians speak about "civil society," the less meaningful it becomes.⁵

⁴The report was later published as Alexander Domrin, "Issues and Options in the Soviet Transition to the Rule of Law," in *Coexistence. A Review of East-West and Development Issues*, no. 30 (Dordrecht, 1993).

⁵This observation applies not only to Russia and other former Soviet republics. In some other areas of the world the use of the "civil society" formula often lacks any legal meaning and serves as an element of a pseudo-legal justification for purely political goals; for example, ethnic Albanian terrorists and separatists in Macedonia demand recognition of the Albanian language as the second official language of the republic, their pretext being the need to "secure the adequate development of a civil society" and to "secure the full integration of all citizens of Macedonia into the civil society" (*Vecer*, 12 July 2001, quoted in Ulrich Buechsenschuetz, "Macedonia: Speaking a Different Language," *RFE/RL Newslines* [26 July 2001]).

Let us consider, for example, two official documents of the State Duma: the “Plan for Draft Legislation on the Matter of ‘Civil Society,’” and the “Recommendations of Parliamentary Hearings on ‘Russian Federalism and Problems of Development of Civil Society.’”⁶ The former was adopted by the State Duma in the beginning of 1995 and contained titles of thirty-one bills. Besides bills aimed at regulating the establishment and activities of public associations and charity organizations, or formulating “General Principles of Organization of Local Government in the Russian Federation,” the list also included draft acts that differed markedly in their constitutional significance and scope of legal regulation. On the one hand were bills addressing broad political issues such as “On the Election of the Russian Federation President,” “On Referendums in the Russian Federation,” and “On the Russian Federation Constitutional Assembly.” On the other hand, one finds legislation focused on narrow issues, such as “On the Distribution of Erotic Products.”

Similarly, parliamentary hearings at the Russian State Duma on “Russian Federalism and Problems of the Development of Civil Society” (15 November 1999) led to an adoption of three sets of “recommendations” in various areas of social activities. In the area of scientific research, the participants in the hearings recommended that Russian scholars, among other things, concentrate on such eternal problems as “humanism and federalism,” and on such vague topics as “fusion of the energy of civil society with the policy of sustainable development,” “federalism and civil consciousness of Russian society,” and “civil self-governing society—a condition for the creation and development of real federalism in Russia.” In the sphere of information and mass media, participants advised concentrating on “the need for a productive dialogue between political parties, social movements, and state authorities, and the center and regions aimed at reaching political consensus between them.” They also recommended introducing a special section, “The Individual, Civil Society, Federalism in Russia,” in a number of Russian scholarly magazines (*Zhurnal rossiiskogo prava*, *Pravo i ekonomika*, *Svobodnaia mysl*;⁷ *Sotsiologicheskie issledovaniia*, *Polis*, *Federalizm*), and starting a new talk show on TV called “Civil Society and Federalism in Russia.”

Apart from these long-term goals, which, to a large extent, were hypothetical and detached from current Russian reality (for example, goals such as beginning “complex programs, federal and regional, aimed at developing and strengthening civil society,” and establishing an “institute for research in problems of civil society”), the third set of proposals (“in the legal and administrative sphere”) contained a short list of six draft laws which, from the point of view of organizers of the conference and its participants, would help Russia move closer to “real federalism” and to “strengthen civil society in our country at the present time.”

This set of bills presents some problems. Although it includes a very small number of titles, two of them repeat each other (“On the Responsibility of Officials for Violations of Civil Rights and Freedoms, Constitutional Foundations, and Principles” and “On the Responsibility of Officials for Violations of the Constitutional Rights of People”). Two

⁶“Plan zakonodatel'nykh rabot po tematike ‘Grazhdanskoe obshchestvo’” and “Rekomendatsii parlamentskikh slushanii ‘Rossiiskii federalizm i problemy razvitiia grazhdanskogo obshchestva’” are available in the Parliamentary Library under RF/PM2–3/sl/95–84, and RF/PM2–3/sl/99–552, respectively.

others, meanwhile, envision regulating very similar aspects of law and could probably be combined ("On Guaranteeing the Consistency of Legal Acts of Subjects of the Russian Federation with Federal Legislation," and "On the Mechanism of Recognizing Unconstitutional the Legal Acts of Subjects of the Russian Federation Contravening Federal Legislation"). It is hard to understand from the title of another bill, "On Information Safeguarding Citizens' Security," what area of social relations it intends to regulate. In case of the adoption of the last bill, "On the Mechanism of Rendering Decisions of the Russian Federation Constitutional Court," the act would most probably be eventually recognized as violating the Russian Constitution. Indeed, if the activities of the Constitutional Court are regulated by a Federal Constitutional Law ("On the Constitutional Court of the Russian Federation" of 24 July 1994), the proposed "mechanism of rendering decisions" of the Constitutional Court could not, in principle, be introduced by a regular parliamentary act, but only by another Constitutional Law. The Russian Constitution contains an exhaustive list of Federal Constitutional Laws (on referendum, on arbitration courts, on the Commissioner for Human Rights, on martial law, on a state of emergency, and so on), but the proposed act is not among them.

Finally, and most important in the context of this article, it is completely unclear what all those bills have to do with civil society, and in what way their adoption, in the opinion of lawmakers, would contribute to development of civil society in Russia or its "strengthening."

The concept of civil society has a longer history in the transitional regimes of Central and Eastern Europe than it does in Russia. By the late 1970s the doctrine of civil society was already understood as a program of resistance to the Communist government in Poland. To a large extent, the "velvet revolutions" themselves were "carried out in the name of "civil" society."⁷

Unlike in Central and Eastern Europe, where such terms as "civil society," "citizen's committees," "citizen's assemblies," "citizen's initiatives," and so on, were the "most frequently used terms in the public discourse of that time," revolutionary (in their essence) legal and political reforms were initiated at the end of the 1980s in the USSR not under "civic" slogans, but under slogans of Soviet transition to "democracy" and the "rule of law."⁸ The term "democratic" was present in the titles of the most radical groups and movements in the country: from Novodvorskaia's schizoid Democratic Union to the massive (at that time) Democratic Russia, and from the Social Democratic Platform of the Communist Party of the Soviet Union to Travkin's Democratic Party of Russia and Rutskoy's "Communists for Democracy." Symbolically, one of the very first political groups that

⁷Aleksander Smolar, "Civil Society After Communism: From Opposition to Atomization," *Journal of Democracy* 7 (January 1996): 24. Compare to the following observations: "With all the fuss and noise not a single new idea has come out of Eastern Europe in 1989" (French historian Francois Furet); and "a peculiar characteristic of this revolution, namely its total lack of ideas that are either innovative or oriented towards the future" (Jurgen Habermas), both quoted in Mary H. Kaldor, "The Ideas of 1989: The Origins of the Concept of Global Civil Society," *Transnational Law and Contemporary Problems* 9 (Fall 1999): 475.

⁸Smolar, "Civil Society after Communism," 24.

used the term *grazhdanskii* in its title was *Grazhdanskii soyuz* (the Civic Union), the most promising and influential democratic organization standing in opposition to the domestic and foreign policies of the Russian government in general, and to the disastrous course of Anatolii Chubais's privatization and the experiments of market bolsheviks with the Russian economy in particular.⁹ The refusal of Yeltsin and his radical supporters to hold a dialogue with the Civic Union in the second half of 1992 marginalized Russian politics and channelled governmental economic and social policy toward predominantly confrontational and eventually violent forms.

With the collapse of communism in Central and Eastern Europe, the internal content of the idea of civil society so drastically changed that some authors even began speaking about the "fall of the concept of civil society."¹⁰ This observation is probably correct if we mean an exclusively negative, destructive component of the concept—a denial of the state per se as an apparatus of force, and a mobilization of societal resistance aimed at overthrowing the state. However, in the words of Bronislaw Geremek (a former Polish Solidarity activist and subsequently the parliamentary leader of the Democratic Union, the largest of the post-Solidarity parties), civil society today "cannot and should not base itself on emotions, but on the building of carefully nurtured institutions. ... The main task now is constructing democratic mechanisms of stability." In the opinion of Larry Diamond (of the Hoover Institution), the "single most important and urgent factor in the consolidation of democracy is not civil society but political institutionalization."¹¹ "Democratic mechanisms of stability" and "political institutionalization" are the key words here. And in this respect the conclusions of Geremek and Diamond are highly relevant to Russia as well.

At first glance, the term "civil society" is quite extensively represented in contemporary Russian legislation. It has been used in more than a hundred legal acts and official documents (adopted in 1991–2001). Such acts include at least ten presidential decrees,¹²

⁹It was already 1993 when Peter Stavrakis, at that time associate director of the Kennan Institute, concluded that "Bolshevik monetarism adapted quite comfortably to the historical terrain of Soviet experience, as the Gaidar team exhibited the same ideological fervor that had motivated its Leninist precursors." See his *State Building in Post-Soviet Russia: The Chicago Boys and the Decline of Administrative Capacity* (Washington, 1993), 56. The term "Bolshevik monetarism" was later transformed into a similarly appropriate version—"market Bolshevism." See, for instance, Peter Reddaway and Dmitri Glinski, *Tragedy of Russia's Reforms: Market Bolshevism against Democracy* (Washington, 2001). See also *K Rossii edinoi, sil'noi, demokraticheskoi, protsvetaiushchei: Politicheskaiia programma Grazhdanskogo soiuza* (Moscow, 1992).

¹⁰See, for instance, Smolar, "Civil Society after Communism," 24.

¹¹Bronislaw Geremek, "Problems of Postcommunism: Civil Society Then and Now," *Journal of Democracy* 3 (April 1992): 12; Larry Diamond, "Rethinking Civil Society: Toward Democratic Consolidation," *ibid.* 5 (July 1994): 5.

¹²Decree No. 354, 13 April 1992, "On the Secretary of State of the Russian Federation"; Decree No. 673, of 6 July 1995, "On Drafting the Concept of Legal Reform in the Russian Federation"; Decree No. 424, 27 March 1996, "On Certain Measures Aimed at Strengthening State Support to Science and Institutions of Higher Education in the Russian Federation"; Decree No. 440, 1 April 1996, "On the Concept of the Transition of the Russian Federation to Sustainable Development"; Decree No. 803, 3 June 1996, "On Basic Provisions of Regional Policy in the Russian Federation"; Decree No. 864, 13 June 1996, "On Certain Measures of State Support to the Human Rights Movement in the Russian Federation"; Decree No. 909, 15 June 1996, "On Approval of the Concept of State National Policy of the Russian Federation"; Decree No. 1300, 17 December 1997, "On Approval of the National Security Concept of the Russian Federation"; Decree No. 1370, 15 October 1999, "On Approval of Basic Provisions of State Policy in the Sphere of Development of Local Self-Government in the Russian Federation"; and Decree No. 24, 10 January 2000, "On the National Security Concept of the Russian Federation."

half of which were issued in March-June of 1996 at the height of Yeltsin’s presidential campaign, two presidential directives,¹³ three resolutions of federal legislative bodies (Supreme Soviet and State Duma),¹⁴ two resolutions of the federal Constitutional Court, and one resolution of the Federal Arbitration Court of the Moscow District;¹⁵ three federal programs: on “Continuation of Reforms and Stabilization of Russian Economy” in 1993, on support to book-printing in Russia in 1996–2001, and “Culture of Russia (2001–2005),”¹⁶ and at least three resolutions of the federal government.¹⁷ “Civil society” is also mentioned in numerous legal acts and official documents adopted in regions of Russia,¹⁸ including at least six resolutions of Moscow government,¹⁹ three addresses of regional leaders of Russia (Bashkortostan and Tatarstan), and a number of other acts of executive and legislative bodies.²⁰

Lip service to the necessity of developing or strengthening “civil society” in Russia was paid in all of the president’s “State of the Nation” addresses to the Federal Assembly (1994–2002), as well as in the Concept of Foreign Policy of the Russian Federation and in the Doctrine of Information Security of the Russian Federation. Yet, apparently, there is only one federal Law—“On Education” (No. 3266–1 of 22 July 1992)—that uses this term. One quarter of all official documents mentioning “civil society” (to be precise, twenty-five) are international agreements, communiqués, or memorandums (including those adopted by the UN, UNESCO, the OSCE, the G–8, the Council of Europe and its Parliamentary Assembly, the Supreme Council of the Russia-Belarus Union, as well as a joint statement by Russian president Putin and Yugoslav president Kostunica of 27 October 2000 in Moscow). This figure will become even larger if we add documents hardly having significant legal meaning (like an information report of the federal Central Bank of 3 October 1995, or four orders, three letters, and one resolution of the federal Ministry of General and Professional Education and Ministry of Education), plus those adopted by lesser institutions and organizations (like three resolutions of the Federation of Independent Trade Unions of February–March 1996, or a resolution of the Third Congress of

¹³No. 360–rp, 14 July 1992, “On Ensuring the Activities of the Research Center of Private Law”; and No. 589–rp, 18 December 1996, “On Support to ‘People’s House’ Public Institutions.”

¹⁴Resolution of the RSFSR Supreme Soviet No. 1801–1, 24 October 1991, “On the Concept of the RF Judicial System”; and resolutions of the State Duma No. 450–1 GD, 13 January 1995, “On a Tentative Program of Legislation-Making” [of the State Duma in 1995]; and No. 359–II GD, 17 May 1996, “On Holding Elections of the RF President in Constitutionally Defined Terms.”

¹⁵Respectively, No. 7–P, 30 April 1997; No. 14–P, 22 November 2000, and No. KG–A40/2488–01, 22 May 2001.

¹⁶The federal programs were adopted, respectively, at a session of the federal government on 6 August 1993 (a month and a half before Yeltsin’s coup d’état in Russia), by federal government Resolution No. 1005, 12 October 1995, and by federal government Resolution No. 955, 14 December 2000.

¹⁷No. 939, 19 September 1995; No. 327, 23 March 1996; and No. 547, 1 May 1996.

¹⁸See also V. N. Yuzhakov, ed., *Stanovlenie institutov grazhdanskogo obshchestva* (Materials from the interregional scientific and practical conference “Formation of Civil Society Institutions in Saratov Oblast [1989–1999],” 20–21 January 2000) (Saratov, 2000).

¹⁹See, for instance, Resolution No. 392, 4 May 1999, “On the Concept of a Moscow Program of Social Development,” and Resolution No. 87–PP, 23 January 2001, “On the Complex Program of Development and Support of Small Business in Moscow in 2001–2003.”

²⁰See, for instance, decision of the head of administration of Astrakhan Oblast, No. 598–r, 31 May 2001, “On the Organization of a Scientific-Practical Conference ‘A Civil Society for the Children of Russia.’” For more on the 1999 address of the president of Bashkortostan see A. Makhmutov, “Sem’ kluchevikh problem Poslaniia–99 Prezidenta Respubliki Bashkortostan Gosudarstvennomu Sobraniuii,” *Ekonomika i upravlenie*, 1999, no. 3:3–7.

Russian Justices of 25 March 1994, “On the Concept of the Russian Federation’s Judicial System”). As a result, a comprehensive *Dictionary of Russian Legislation: Terms, Concepts, Definitions* contains about twenty-five thousand legal terms and definitions, but there is no “civil society” among them.²¹ Even the most fundamental commentaries to the federal Constitution contain no mention of “civil society” in their indexes.²²

Russian legislation is not alone in having an unsettled relationship with the term “civil society.” The concept remains a matter of much dispute predominantly among scholars of philosophy and political theory. Civil society itself is a philosophical concept (which is also used in political science and sociology). Scholars trace the origins of this doctrine to the works of Plato, Aristotle, Cicero, Bodin, Grotius, Gobbs, Milton, Spinoza, Locke, to the classics of French and German Enlightenment (Montesquieu, Rousseau, Pufendorf, Leibniz, Thomasius, and Wolf), as well as to the system of civil society developed by Hegel. The concept of civil society is much closer to contemporary political studies rather than to legal research. A sample search in just one magazine—*The Journal of Democracy* in the 1990s—indicated about twenty major articles dedicated to “paradoxes,” “renovation,” “democratization,” “resurgence,” “awakening,” and other perturbations of civil society in various parts of the world, including Russia and other post-Communist countries. On the other hand, publications dedicated to legal aspects of the concept in Russian or foreign academic periodicals and editions are extremely rare.

In legal terms, civil society does not have a strict definition either in Russian or Western law. It is practically unknown in American legislation.²³ Naturally, the fact itself that the term “civil society” can hardly be found in U.S. legislation does not necessarily mean that civil society does not exist in the United States. It does mean, however, that civil society cannot be instituted by special parliamentary acts or executive orders, but is created and nurtured through decades of social development.

Various authors offer different and sometimes contradictory definitions of “civil society” (or, like Bronislaw Geremek and contemporary Russian legal scholar V. M. Lebedev, they refuse to define it or delimit its interrelations with the law-governed state at all).²⁴

²¹L. F. Apt et al, comps., *Slovar'-spravochnik po rossiiskomu zakonodatel'stvu: Terminy, poniatia, opredeleniia* (Moscow, 1998).

²²See, for instance, B. N. Topornin, et al., eds., *Konstitutsiia Rossiiskoi Federatsii: Kommentarii* (Moscow, 1994); and V. A. Chetvernin, ed., *Konstitutsiia Rossiiskoi Federatsii. Problemyi kommentarii* (Moscow, 1997).

²³The term and its definitions are absent in such sources as *Merriam-Webster's Dictionary of Law* (1996), *Ballentine's Law Dictionary, with Pronunciations* (1969), *Mellinkoff's Dictionary of American Legal Usage* (1992), or in Brian A. Garner's *A Dictionary of Modern Legal Usage* (1995). *Burton's Legal Thesaurus* (1998) contains twenty-seven associated concepts of “civil,” but there is no “civil society” among them. A fundamental reference edition, *Words and Phrases: Permanent Edition, 1658 to Date* (1964–2001), consists of more than one hundred volumes and includes “all judicial constructions and definitions of words and phrases by the state and federal courts from the earliest times, alphabetically arranged and indexed,” except “civil society.” *Black's Law Dictionary* (1999) is presumably the only known American law dictionary which contains a legal description of “civil society,” but that does not help either because that source defines the term as “the political body of a state or nation; the body politic” (p. 1396), which basically incorporates the whole spectrum of sociopolitical relations in the country.

²⁴In Geremek's words, “We don't need to define [civil society]. We see and feel it” (quoted in Flora Lewis, “Civil Society: Its Limits and Needs,” *International Herald Tribune* [30 September 1989]). According to V. M. Lebedev,

For example, M. Steven Fish’s “moderately restrictive” definition of “civil society” has room for Gaidar’s DemRossiia, but allegedly excludes “fanatical organizations and groups that seek to seize control of the state and rule exclusively.” On the other hand, Alexander Lukin correctly describes Democratic Russia and other radical “‘democratic’ activists” in Russia as viewing democracy “not as a system of compromises among various groups and interests ... but as the unlimited power of “democrats” replacing unlimited power of the communists.”²⁵ Thus, Democratic Russia certainly meets Fish’s definition of a “fanatical organization” (even though he favorably evaluates DemRossiia’s role and legacy in Russian politics) and—following Fish’s criteria—cannot be considered a “civil society” group (or “civic group”).

Before speaking about the peculiarities of the Russian interpretations of civil society, it is necessary to state that, despite all misunderstandings and periodic use of the term in political demagoguery, the rehabilitation of the concept of civil society in Russian science and political life is certainly a very positive accomplishment in itself. Needless to say, for many decades there was no place in Soviet social sciences (including law) for an objective, unbiased study of such complex concepts as “civil society,” “rule of law,” or “separation of powers.” The dogmatic view on the nature of the Soviet society as a “society without conflicts” (*beskonfliktnoe obschestvo*) made any serious research of those doctrines irrelevant. The *Philosophical Dictionary* (1975) described “civil society” exclusively as a concept of “pre-Marxist philosophy.” Sergei S. Alexeev, a Sverdlovsk legal scholar and a future Chairman of the USSR Constitutional Supervision Committee, insisted that law “by its nature cannot be above the state” and that rule of law is a “deceitful, false, scientifically untenable (*lzhivaia, fal'shivaia, nauchno nesostoiatel'naia*) bourgeois theory.” Avgust A. Mishin interpreted the legal status of President in the United States and other foreign countries as that of the “constitutional monarch,” “somewhat of an atavism,” a “sign of a philistine admiration for Crown.” In 1989, Moscow professor Vladimir N. Danilenko still argued that judicial constitutional review provides “wide opportunities for an assault on rights and freedoms.”²⁶

Despite all the differences in how Russian scholars, politicians, and legislators understand “civil society,” we can nevertheless try to formulate certain common and more or less

“specialists in political science refuse to draw a clear-cut distinction between [civil society and law-governed state]; they consider it a difficult task. As a lawyer, I find it an irrelevant task as well.” See his “O sisteme grazhdanskogo obshchestva Rossii,” in *Grazhdanskoe obshchestvo i regional'noe razvitiie*, (materials from a conference on Civil Society and Regional Development, 22 April 1994), ed. E. I. Cherniak (Tomsk, 1994), 16. Václav Klaus, former prime minister of the Czech Republic, also confesses that he finds the term civil society “superfluous,” a “hollow phrase,” and claims that he does “not think that a civil society is different from a democratic society.” See “Civil Society After Communism: Rival Visions. Václav Havel and Václav Klaus, with Commentary by Petr Pithart,” *Journal of Democracy* 7 (January 1996): 18.

²⁵M. Steven Fish, “Rethinking Civil Society: Russia’s Fourth Transition,” *Journal of Democracy* 5 (July 1994): 41; Alexander Lukin, “Forcing the Pace of Democratization,” *ibid.* 10 (April 1999): 39 (emphasis added in both quotes).

²⁶M. M. Rozental, ed., *Filosofskii slovar'*, 3d ed. (Moscow, 1975), 93; S. S. Alekseev, *Sotsial'naia tsennosti prava v sovetskom obshchestve* (Moscow, 1971), 193; A. A. Mishin, *Tsentral'nie organy vlasti burzhuaznykh gosudarstv* (Moscow, 1972), 10; V. N. Danilenko, *Deklaratsiia prav i real'nost': K 200-letiiu Deklaratsii prav cheloveka i grazhdanina* (Moscow, 1989), 55.

accepted approaches.²⁷ Unlike their Western counterparts who consider civil society an “intermediary phenomenon, standing between the private sphere and the state,” “an autonomous, self-regulating domain independent of the State,” thus placing a dividing line between civil society and the state, Russian scholars and policymakers tend to interpret the “law-governed state” as a political manifestation (*ipostas'*) of “civil society.”²⁸ Rule of law is unquestionably a key element in sustaining the development of civil society, but a law-governed state is viewed not as if it is separated from civil society, but as a reality, which is based on the latter. Russian scholars understand the relationship between the law-governed state and civil society to be one of form and substance, as a balanced, mutually restricted collaboration. Civil society is interpreted not as diminishing the law-governed state, but rather complementing and completing it.²⁹

Overall, Russian scholars are hesitant to consider civil society as the uncontrolled realm of individuals. Following Hegel, they tend to conclude that civil society does not exist before the state or outside of it. As if arguing with one of the above quoted authors, Oleg Rumiantsev, the secretary of the (parliamentary) Russian Constitutional Commission in 1990–93, wrote: “Civil society is not absolutely autonomous, because it experiences certain influence from the state, doesn’t exist before or outside of the latter, but coexists with its obvious reality which in a way embraces it.”³⁰ The state provides protection to civil society, including protection of citizens’ life and health, and maintenance of law and order. In the Russian interpretation, civil society cannot be established at the state’s expense. The state is responsible for maintaining social justice in the country and approximately equal levels of material wealth for its citizens. With its protective foreign and defense policy, the state exercises its role as the ultimate guarantor of the existence of civil society and the Nation.³¹

²⁷See, for instance, A. S. Avtonomov, “Pravovoe oformlenie grazhdanskogo obshchestva v Rossii,” *Predstavitel'naiia vlast': Monitoring, analiz, informatsiia*, 1995, no. 1:73–88; E. Iu. Dogadailo, “Grazhdanskoe obshchestvo i gosudarstvennaia vlast',” *ibid.*, 1996, no. 2:48–56; V. V. Lapaeva, “Obshchestvennoe mnenie kak institut grazhdanskogo obshchestva,” *Advokat*, 1997, no. 3:69–81; *idem*, “Obshchestvennoe mnenie i zakonodatel'stvo,” *Sotsiologicheskie issledovaniia*, 1997, no. 9:16–27; and Iu. Nisnevich, “Problemy vzaimodeistviia obshchestva i vlasti v Rossii,” *Informatsionnye resursy Rossii*, 1997, no. 4:6–10.

²⁸Larry Diamond, “Civil Society and Democratic Development: Why the Public Matters,” in *Democratization: Does the Public Matter?* (Papers from the 1996 Distinguished International Lecture Series), ed. Cheri Long and Douglas Midgett, Issue Editors (Iowa City, 1999), 6 (emphasis added); Adam B. Seligman quoted in Susan Shell, “Conceptions of Civil Society. Review of *The Idea of Civil Society*, by Adam B. Seligman and of *Civil Society and Political Theory*, by Jean L. Cohen and Andrew Arato,” *Journal of Democracy* 5 (July 1994): 124 (emphasis added). According to Diamond’s more detailed definition, civil society is the “realm of autonomous, voluntary associations that pursue limited ends in the public sphere, self-generating, (largely) self-supporting, autonomous from the state, and bound by a legal order or [a] set of shared rules” (“Rethinking Civil Society: Toward Democratic Consolidation,” 5).

²⁹See, for instance, Grigori N. Manov, “Vstuplenie,” in *Grazhdanskoe obshchestvo i pravovoe gosudarstvo: Predposylki formirovaniia*, ed. G. N. Manov (Moscow, 1991), 5–6; *Pravovoe gosudarstvo v Rossii: Zamysel i realnost' (K desiatilietiiu perestroiki). Kruglyi stol iuristov, 19.04.1995* (Moscow, 1995), 16.

³⁰Oleg Rumiantsev, *Osnovy konstitutsionnogo stroia Rossii (Poniatie, soderzhanie, voprosy stanovleniia)* (Moscow, 1994), 76 (emphasis added). See also *idem*, “Stanovlenie grazhdanskogo obshchestva v Vostochnoi Evrope,” in *Sovremennyi sotsializm i problemy perestroiki* (Moscow, 1989), 6–31.

³¹See, for instance, Z. M. Chernilovskii, “Grazhdanskoe obshchestvo: Opyt issledovaniia,” *Gosudarstvo i pravo*, 1992, no. 6:142–51; and O. V. Martyshin, “Neskol'ko tezisov o perspektivakh grazhdanskogo obshchestva v Rossii,” *ibid.*, 1996, no. 5:3–13.

Neither Russian nor Western scholars consider civil society an absolute value in itself. M. Steven Fish, for instance, speaks in quite positive terms about the absence of a “vigorous civil society” in Russia in post-Soviet days, which was an “advantage” for Gaidar’s “shock therapy” because it reduced the “strong popular resistance” to “economic liberalization.”³² Indeed, Russian radical “reformers” (and their foreign advisors) cannot be consistent, sincere, or logical when demanding the creation (or development) of civil society in Russia today, because the absence of civil society (or its weakness) in the beginning of the 1990s was one of the most important factors that actually allowed them to exercise the pillage of the country under the guise of “reforms.”

It also deserves mentioning that the Draft Constitution prepared by the (parliamentary) Russian Constitutional Commission in 1990–93 contained a special chapter dedicated to civil society. The Constitution of the Republic of Crimea of 1992 actually has such a chapter, and it was drafted with the support of members and experts of the Russian Constitutional Commission. Naturally, there was no room for a chapter on civil society in the Yeltsin’s semi-authoritarian, superpresidential, “victor’s Constitution.”³³

To be successful, civil society in Russia must develop in tandem with the strengthening of Russian statehood. In Putin’s words (from his address to the June 2001 meeting with NGOs), “Great Russia is a great society.” Russians are tired of the state-weakening activities of radical social groups and organizations that came to existence at the end of the 1980s and early 1990s; organizations whose motto can be expressed in the words of an Osip Mandel’shtam poem: “We live but don’t feel the country under our feet” (*My zhivem pod soboiu ne chuiia strany*). Richard Rose’s seven-year-old observation that, “if forced to choose, a majority of East Europeans would prefer weak and ineffective government to strong government,” is no longer correct with respect to Russia.³⁴ One of the main reasons behind the stable (almost guaranteed) electoral strength of the Communist Party of the Russian Federation (KPRF) (and an important factor in the victory of the pro-Putin Unity party in the 1999 parliamentary elections) is the fact that 42.1 percent of its supporters consider the KPRF program and activities “state-oriented,”³⁵ whereas only 21.6 and 20 percent of voters for Iabloko and the Union of Rightist Forces find it important that their parties will work for strengthening Russian statehood.³⁶

A recent study undertaken by the Russian Academy of Science (with support of Friedrich Ebert Foundation) demonstrates that the restoration of state power and the “revival of Russia as a mighty global power” is considered the main “unifying and mobilizing idea” in Russia now: 48.3 percent of respondents share this point of view (in 1995 it was 41.4

³²Fish, “Rethinking Civil Society: Russia’s Fourth Transition,” 34.

³³Robert Sharlet, “Citizen and State under Gorbachev and Yeltsin,” in *Developments in Russian and Post-Soviet Politics*, ed. Steven White et al (Durham, NC, 1994), 128. Robert V. Daniels concluded, alarmingly, that Yeltsin “demonstrates how attempts to copy the American system are likely to end up in dictatorship, as they have so often in Latin America” (“Yeltsin’s No Jefferson. More Like Pinochet,” *New York Times*, 2 October 1993).

³⁴Richard Rose, “Rethinking Civil Society: Postcommunism and the Problem of Trust,” *Journal of Democracy* 5 (July 1994): 19.

³⁵A slightly smaller percentage of supporters of Unity—41 percent—explain their choice by the “state-oriented” policy of the party.

³⁶*Otmoshenie naseleniia k federal’nym zakonom i organam gosudarstvennoi vlasti* (Moscow, 2000), 11. The analytical report was prepared for the Russian Government and is on file with the author.

percent), compared to 10.2 percent who named an “idea of individual freedom, priority of interests of an individual over interests of the state.” Other respondents named “return to socialist ideals and values” (15.3 percent), “convergence with the West” (14.5 percent), Russia’s “uniqueness as a nation, special historical mission of Russian people” (8.0 percent), and so on. It is quite remarkable that the percentage of those who support an “idea of resistance to the West, self-reliance” (in other words, autarchy) has grown more than fivefold in the last five years: from 2.3 percent in 1995 to 12.2 percent in 2001—the highest rate of growth compared to ten other “ideas.”³⁷

Václav Havel’s description of civil society as a “social space that fosters the feeling of solidarity between people and love for one’s community” is very close to the Russian traditionalist understanding of the concept.³⁸ According to a contemporary scholar from Siberia, “civil society is a society of citizens having not only a certain level of legal consciousness, but a sense of national pride ... love of one’s fatherland.”³⁹ A number of public organizations may disagree that their views are “destructive,” but that is exactly how they were characterized by Vladimir Kartashkin, a well-known Russian specialist in international law from the Institute of State and Law and the head of the presidential administration’s Commission for Human Rights, and it is exactly how the overwhelming majority of Russians feel as well.⁴⁰ Although Kartashkin’s statement was immediately dismissed by such NGOs as the human rights group Memorial, which is known for its excessive disparagement of Russian history and the Russian state, the same opinion was expressed by Viacheslav Igrunov, a Soviet human rights activist and now a leading figure in the democratic Iabloko party, a federal State Duma deputy, and the director of the Institute of Humanitarian and Political Studies. At a press conference of the Civil Forum organizing committee, Igrunov appealed to the Russian public organizations to stop “futile exercises in fault-finding” (*besplodnoe kritikanstvo*) and turn instead to creative work in cooperation with the state.⁴¹

Even the U.S. Congress-funded Radio Free Europe/Radio Liberty had to recognize that “there are, of course those groups which reject any kind of cooperation” with Russian authorities in their activities.⁴² Such groups certainly have the right to “reject any kind of cooperation” with the Russian state, and the state has a legitimate right to call their

³⁷“Anatomiia russkoi dushi: Desiatiletie otechestvennykh reform v rasshifrovke sotsiologov,” *Izvestiia*, 16 April 2002. Another opinion poll had similar results. 35 percent of respondents named “the revival of Russia as a mighty global power” as the main unifying and mobilizing idea in Russia, compared to 13 percent who named communism and socialism; 7 percent who named capitalism; 6 percent—democracy; 5 percent—Russia’s “uniqueness as a nation”; and 3 percent—religion (Nikolai Popov, “Kakaia vera nas spasit,” *Novoe vremia*, 14 October 2001).

³⁸“Civil Society After Communism: Rival Visions,” 18.

³⁹B. G. Mogilnitskii, “Grazhdanskoe obshchestvo i istoricheskoe soznanie,” in *Grazhdanskoe obshchestvo i regional’noe razvitiie*, ed. E. I. Cherniak (Tomsk, 1994), 6.

⁴⁰In Kartashkin’s words, “many human rights activists, particularly in the capital, unfortunately continue their destructive struggle—they have not forgotten their dissident past, although the situation has totally changed” (*Interfax*, 22 June 2001).

⁴¹For many years, in Igrunov’s words, the confrontational attitude was the most essential and characteristic element of certain NGOs, but now it is outdated. Confrontation leads to the marginalization of members of such groups and of the groups themselves, and eventually marginalizes the ideas which are exploited by such people and organizations (*Polit.ru*, 11 July 2001).

⁴²See Alexander Verkhovsky, “Operation Civic Forum,” *RFE/RL (Un)Civil Societies* 30 (1 August 2001).

activities “destructive.” But in this particular case it is clear which side enjoys the people’s empathy. When a Yaroslavl’ Oblast regional branch of Memorial failed to renew its registration (by September 2000) and a local court subsequently liquidated the branch (in July 2001), Yaroslavl’ residents reacted favorably and organized no major protests, meetings, or demonstrations in support of Memorial.

Western theoreticians of civil society agree that “civil society encompasses a vast array of organizations, formal and informal,” and mention economic organizations (productive and commercial associations and networks) before any other civil society components: cultural, informational and educational organizations, interest groups, developmental organizations, issue-oriented movements, civic groups.⁴³ But the state is not only a power structure—it is an active subject of economic activities as well. That is true of any society, including Russia’s. The state has always played a special role in the national economics of Russia, and the state has traditionally enjoyed special property rights with respect to state enterprises, land, forests, and the like. About a third of all property assets in Russia still belong to the state. According to *Argumenty i fakty* (quoting officials and experts of the federal Ministry of Property Relations), “where the state owns from 25 to 50 percent of shares, things go even worse than at enterprises with 100 percent state participation.”⁴⁴ It is no surprise, then, that 79 percent of Russians “strongly support, or more or less support,” strengthened state control over the economy.⁴⁵ Thus, even from a theoretical point of view it would be wrong to recognize a regular economic organization or an enterprise as an element of civil society and to deny this right to the state. Moreover, in the judicial sphere the state is accountable like any other subject of civil society, be it an individual citizen or a collective.

More than likely, the Russian interpretation of civil “society” is closer to “community” in the traditional Russian understanding of that term, especially because both words are synonyms in Russian—*obshchestvo*. In this respect, Grigorii Iavlinskii’s recent criticism in a liberal newspaper that Russia has a “defective” and “unstable” democracy which “is not supported by the majority of Russians,” and that civil society is substituted with “the Soviet version of community,” is close to reality, even though the same newspaper tried to ridicule him by saying that “the chief trouble with our democracy is the people. Without them it would work perfectly well.”⁴⁶

Indeed, as far as civil society and its elements are concerned, according to a poll conducted by the Public Opinion foundation among fifteen hundred urban and rural residents in June 2001, only 5 percent of Russian citizens are active in public organizations. 73 percent said they would not like to work in any public organization, versus 15 percent

⁴³See, for example, Diamond, “Civil Society and Democratic Development: Why the Public Matters,” 7.

⁴⁴As of 1 September 2001, state property in Russia includes 9,855 federally owned state unitary enterprises, 34,868 institutions, and 4,308 share packages. The share packages differ in size. In 84 joint-stock companies the Russian Federation owns 100 percent of the authorized capital, in 605—more than 50 percent, and in 1,719—less than 25 percent (“Na prodazhu,” *Argumenty i fakty*, 26 September 2001).

⁴⁵*Polit.ru*, 21 April 2000.

⁴⁶Grigorii Iavlinskii, “Liberalizm dlia vsekh,” *Obshchaia gazeta*, 28 June 2001; Dmitrii Furman, “Kogda vozmozhnen liberalizm dlia vsekh,” *ibid.*, 13 July 2001.

who said that they would.⁴⁷ A recent UNICEF report finds that young people are even less active in social organizations (or in sport activities) than in the late 1980s.⁴⁸

The average Russian expresses distrust of seven out of ten key institutions of Russian society, with political parties as the least trusted (7 percent) and the courts and the army as the most trusted institutions in the country (40 percent and 62 percent, respectively).⁴⁹ Only 14 percent of Russians (every seventh one of us) consider Russia a democratic state, with 54 percent saying that “overall” it is not. 60 percent do not believe that their votes are capable of changing anything.⁵⁰ Although as few as 6.9 percent of the fifteen hundred Russians polled by the Russian Public Opinion and Market independent research center believe that a situation in which political leaders make arbitrary decisions as they see fit would be best for Russia, and although as few as 2.8 percent believe that military rule would be very good for Russia, only 9.1 percent believe that democracy is “the best form of rule despite certain problems it poses” (an additional 38.7 percent “to some degree” share this view).⁵¹

An analytical report prepared at the Institute of Legislation and Comparative Law under the Russian Government indicates that 70 to 80 percent of Russians think that “laws overall do not work.” 28.2 percent of civil servants recognize that they have to ignore or violate federal laws in their work. 70 percent of the population believe that they have to undertake illegal actions in order to guarantee their legitimate rights more often now than before the beginning of legal reforms in the country. 56 percent of the population (and 58.9 percent of civil servants) consider the government and other federal bodies of the executive branch the most corrupt. Since the end of 1989, people’s trust in the federal legislature has shrunk from 88 percent (for the USSR Supreme Soviet) to 4.3 percent (for the State Duma). Only 3.7 to 3.9 percent of Russians agree that Yeltsin’s decade was a “necessary stage in the development” of Russian society (4.8 to 5.1 percent of civil

⁴⁷*Interfax*, 2 July 2001.

⁴⁸The report, *Young People in Changing Societies*, is available at www.unicef-icdc.org/presscentre/presskit/monee7/youth.

⁴⁹Rose, “Rethinking Civil Society,” 25–26. Russia is not unique in this respect. Rose finds a “similar level of distrust” in the Czech Republic, Slovakia, Hungary, and Poland (p. 25). A new study also finds that the “distribution of attitudes toward democracy within the Russian population is not so very different from many other countries in transition” (Timothy J. Colton and Michael McFaul, *Are Russians Undemocratic?* (Washington, 2001), 21). Overall, the results of Colton and McFaul’s study corroborate the conclusions of a group of Iowa scholars made several years ago (based on 600 completed interviews in 1990, 1,400 in 1991, 1,300 in 1992, and 1,750 in 1995) that Russian legal values are close or similar to those in other former Soviet republics or in the United States: “The Russian mass public is not ... hostile to the rule of law. ... We discover more support for legal procedure [in Russia] than might have been expected. ... On the whole Russians show greater support for legality than do Lithuanians. ... We find American and Russian publics to have a very similar proportion of those willing to jettison suspects’ rights in the name of fighting crime” (William M. Reisinger, Arthur H. Miller, and Vicki L. Hesli, “Russians and the Legal System: Mass Views and Behaviour in the 1990s,” *Journal of Communist Studies and Transition Politics* 13 [September 1997]: 24, 25, 45). See also William M. Reisinger, Arthur H. Miller, and Vicki L. Hesli, “Political Values in Russia, Ukraine and Lithuania: Sources and Implications for Democracy,” *British Journal of Political Science* 24 (1994): 183–223; Arthur H. Miller, Vicki L. Hesli, and William M. Reisinger, “Comparing Citizen and Elite Belief Systems in Post-Soviet Russia and Ukraine,” *Public Opinion Quarterly* 59 (Spring 1995): 1–40; and William M. Reisinger, “Legal Orientations and the Rule of Law in Post-Soviet Russia,” in *Constitutional Dialogues in Comparative Perspective*, ed. Sally J. Kenney et al. (New York, 1999), 172–92.

⁵⁰See Nikolai Popov, “Fantazii na temu demokratii,” *Novoe vremia*, no. 34 (2001).

⁵¹*Interfax*, 19 April 2000.

servants; 7 to 8.7 percent of Russian elite).⁵² 95.1 percent of the population (and 94.4 percent of civil servants) vote for a “decisive restoration of order in the country.”

Although as many as 89 percent of the sixteen hundred Russians polled in April 2000 by the All-Russia Center for Public Opinion Studies “strongly support or more or less support” guarantees of the democratic rights and freedoms of every citizen, an increasingly growing percentage of Russians (from 71 percent in February 1998, to 81 percent in April 2000) believe that order is the “most important issue for the country at present,” “even if it is necessary to break some democratic principles and limit people’s personal freedoms to establish it.” According to another opinion poll, conducted by Monitoring.ru, 68 percent of Russians favor such a restrictive institution as *propiska* (versus 23 percent who say that it should be abolished) and believe that citizens of the Russian Federation should have to register at their place of residence via the *propiska* system.⁵³

Wars of *kompromat* between TV channels controlled by rival oligarchs, profiteering,⁵⁴ overcommercialization, de-intellectualization, and a general degradation of liberal mass media in Russia, have led to unsurprising consequences—the second-oldest profession has nearly lost its function as a means of expressing independent public opinion and, in the words of Oleg Poptsov, a veteran of the glasnost campaign and the president of TV Tsentr (under jurisdiction of the Moscow city government), “has now moved closer to the oldest [profession] than ever before.”⁵⁵ As a result, although there is not much support for introducing any kind of political censorship, over 60 percent of respondents (across all categories) in a May 2001 opinion poll are prepared to approve some sort of a preliminary checking or censorship of press reports and publications to ensure “objectivity of information and a balanced evaluation of current events.” An even more significant majority of Russians (three quarters of respondents, regardless of their age or education levels) are in favor of censorship aimed at safeguarding public morals.⁵⁶

According to a poll conducted by the All-Russian Center for Public Opinion Research in June 2001, about three quarters of Russians (72 percent), including Alexander Solzhenitsyn, a symbol of resistance to the Communist tyranny of the past, federal Minister of Justice Iurii Chaika, and many other leading figures of Russian society and culture, openly and vigorously support restoration of death penalty for certain crimes, whereas only 19 percent want it abolished. Responding to the demands of society, on 15 February

⁵²The report was titled, “Attitudes of the Population toward Federal Laws and Agencies of State Authority.” A later opinion poll by the All-Russia Center for Public Opinion Studies in mid-January 2001 indicated similar results, showing that 75 percent of Russians believe that, in historical terms, the Yeltsin era did Russia more bad than good (with 15 percent who do not think so). See *Strana.ru*, 1 February 2001.

⁵³The All-Russia Center for Public Opinion Studies conducted its poll on 14–17 April 2000, in 150 polling locations in 83 areas of 33 regions of the country (*Polit.ru*, 21 April 2000; *Interfax*, 12 July 2001).

⁵⁴A recent survey of four hundred journalists across Russia, conducted by the Institute of Sociology of the Russian Academy of Sciences, found that 30 percent of them had inserted hidden advertising into stories “regularly” or “occasionally.” Overall, 67 percent of journalists had done it “more than once.” “Journalists ... themselves have destroyed their image as defenders of liberties,” admits the political editor of the St. Petersburg-based daily *Nevskoe vremia* (quoted in Galina Stolyarova, “Poll Highlights Media’s Weakness,” *St. Petersburg Times*, 28 August 2001).

⁵⁵See Oleg Poptsov’s interview in Aleksandr Gubanov, “Televidenie—eto mekhanizm upravleniia stranoi: Mekhanizm upravleniia stranoi nuzhdaetsia v remonte,” *Obshchaia gazeta*, 26 July 2001.

⁵⁶Iurii Levada, “Sotsvopros,” *Novaia gazeta*, 30 July 2001.

2002 the State Duma resolved 266–83 to urge President Putin to reconsider the moratorium on the death penalty.

Another survey held by the same research center was dedicated to the 120th anniversary of Iosif Stalin’s birth and was even more indicative: 44 percent believe that the Stalin era brought good and bad in equal portions to Russia; 19 percent think that there was more good than bad; and 3 percent more consider that era “absolutely good.” This adds up to 66 percent.⁵⁷

Iavlinskii is wrong, however, to emphasize the “soviet” when he warns of the creation of a “Soviet version of community,” for what was described above as the current interpretation of civil society in Russia is closer in its essence to a traditional Russian, rather than the Soviet version of a community.

It is true that at the turn of the twenty-first century, Russia (in many respects) lacks a developed civil society in its Western sense of the phrase. The term itself for us in Russia has more theoretical than practical meaning. A question that still needs to be answered by social scientists, however, is whether the civil society concept is universal and equally applicable to various countries and civilizations. As Harold J. Berman has observed, contemporary legal systems are only surface expressions of deeper, broader forces of cultural evolution: “Law cannot be neatly classified in terms of social-economic forces. A legal system is built up slowly over the centuries, and it is in many respects remarkably impervious to social upheavals. This is as true of Soviet [now Russian] law, which is built on the foundations of the Russian past, as it is of American law, with its roots in English and Western European history.”⁵⁸

Naturally, that observation concerns the development of civil society (or community) in Russia. It was already mentioned that civil society can hardly be instituted by a discrete legal act. Luckily, Russia passed through the ordeal of legislative euphoria and normative idealism during the Gorbachev era.⁵⁹ Overall, it has overcome the tendency to view the law as a panacea for social problems, to make the law absolute without recognizing the limits of any legal action. Legislation, as a rule, reflects various prelegal norms and values (as well as prejudices) that are accepted by large strata of a society at a given time. Laws can work effectively when they embody sociocultural principles that are accepted by the majority of the people. If a new “progressive” or “reactionary” piece of legislation (usually in a form of a by-law or an executive legal instrument) is shoved down throats of the majority of the population, or if people do not accept or understand it, in all likelihood it will become a dead letter. In the worst-case scenario, the law will not just be ignored and trivialized by people, but will prove detrimental to the lawmakers’ goals.

The recent abolition of the Clemency Commission (for many years headed by writer Anatolii Pristavkin) raised a new wave of criticism, especially in Western press, of the

⁵⁷*Interfax*, 28 June 2001; *Trud*, 6 January 2000.

⁵⁸Harold J. Berman, *Justice in the USSR: An Interpretation of Soviet Law*, 2d ed. (Cambridge, MA, 1963), 5; idem, *Justice in Russia: An Interpretation of Soviet Law* (Cambridge, MA, 1950), 3.

⁵⁹Legislative euphoria had some positive effects at the early stage of legal reforms in the USSR. For example, from June 1987 to just the autumn of 1988, approximately 1,200 federal and 7,500 republican decrees that hindered the Soviet transition to the rule of law were repealed. In the same period, more than 33,000 federal and 80,000 republican ministerial and departmental rules and regulations concerning economic and social relations in the country were abolished.

Russian government's ability to strengthen civil society in Russia.⁶⁰ The Pristavkin commission had been portrayed exclusively as "one of the few structures of a civil society," and as a "humanizing tool" in Russia's "failing," "notoriously corrupt, inefficient, and highly dependent" judicial and law enforcement system. Members of the commission were praised as "liberal writers and scholars who worked day and night, so as to save as many victims of faulty trials as possible." Pristavkin himself modestly called his commission "an island of mercy in a sea of cruelty."⁶¹

Although right to call the Clemency Commission a "structure of a civil society" in Russia, these authors otherwise level criticism which does not hold water. Back in 1992, the idea was to staff the commission with seventeen representatives from Russia's liberal intelligentsia (writers, specialists in Russian literature, former dissidents, a reformist clergyman, and so on). As "holders" of some progressive humanitarian ideas, they would have an enlightening effect on society and the state. Unfortunately, the experiment failed, and not because of the state. Instead of cooperating with the state and its structures, the commission infringed on its prerogatives, and it was only a matter of time that such infringement would backfire. The commission was formed as an advisory body of the federal presidential administration and technically had no formal power or authority. It could only recommend something to the president, and while the president could follow its advice, he was not obliged to do so. When agreeing—year after year—with all (or nearly all) of the Clemency Commission's recommendations, Yeltsin set a precedent and made Pristavkin and his comrades believe that they were above the state. The advisory commission, however, could not and should not substitute court decisions or the will of the executive, just as no other element of a civil society can substitute for the state.

Sentiments aside, according to official data (compiled in the beginning of 2001 by the federal Ministry of Justice for the presidential administration), the number of recommended pardons grew from 2,726 in 1992 (when the Clemency Commission was formed) to 4,988 in 1995, and 7,418 in 1999.⁶² In 2000 the Clemency Commission considered about 13,300

⁶⁰In legal terms, clemency (*pomilovanie*) (exercised by the president according to Article 89 of the Russian Federation Constitution) should not be confused with amnesty (*amnistii*), which is a prerogative of the State Duma (Art. 103). For details see I. L. Marogulova, *Amnistii i pomilovanie v rossiiskom zakonodatel'stve* (Moscow, 1998). The whole controversy caused by the reorganization of the Clemency Commission is a good illustration of how the concept of civil society is being misunderstood and misused, not only by the Russian federal government (which is natural) but also by another Russian elite—the liberal intelligentsia—as well as by Western experts and the Western mass media, who "have always seen Russian politics through the eyes of the radical Moscow intellectuals" (Jerry F. Hough, Evelyn Davidheiser, and Susan G. Lehmann, *The 1996 Russian Presidential Election* [Washington, 1996], 14). See also Gennadii Ponomarev, "Pomilovanie ne dolzhno nosit' massovogo kharaktera," *Obshchaia gazeta*, 28 March 2002.

⁶¹See, for instance, Kathy Lally, "Pardons Turn Rare in Putin's Russia," *Baltimore Sun*, 14 June 2001; Masha Lipman, "How Putin Pardons," *Washington Post*, 17 July 2001; and Sophie Lambroschini, "Russia: Pardon System Plays Mercy Role Amid A Cruel Society," *RFE/RL*, 23 February 2001.

⁶²Sergei Pykhtin, "Privatizatory miloserdiia?" *Rossiiskaia Federatsiia segodnia*, no. 18 (2001): 8. Commentary to the Russian Constitution (prepared five years ago by the Center for Constitutional Studies of the Moscow Public Science Foundation, with the participation of a justice of the federal Constitutional Court [Gadis Gadzhiev] and a group of distinguished foreign scholars [Peter Solomon, Stephen Holmes, Andras Saio, Michel Lesage, and so on]), gives more specifically a number of commutations of death penalty on the recommendation of the Pristavkin commission in 1992–94. In 1992 the commission considered 56 death penalties and recommended that the president commute 55 of them. Two years later the commission considered 137 death penalties and recommended 124 commutations. (*Konstitutsiia Rossiiskoi Federatsii: Problemyi kommentarii* [Moscow, 1997], 141). As we see, the numbers of commutations correlate with the commission's recommendations about pardons in general.

petitions and recommended that the president pardon 12,834 petitioners (or more than 96 percent!) Like his predecessor, Putin approved all of the commission's recommendations.⁶³ Overall, Yeltsin pardoned more than fifty thousand criminals, and Putin—about ten thousand (by March of 2001).⁶⁴

What is much worse and troublesome, however, is not even the skyrocketing numbers of the pardoned, but rather their composition. The percentage of petty criminals pardoned in 2000 upon recommendations of the commission was less than a quarter, whereas 76 percent of the pardoned had been sentenced for murders (2,689), “assaults leading to a severe injury to the health of a victim” (2,188), banditry (1,848), robbery (709), kidnapping (18), and the like. One of the latest sets of seventeen draft “pardon decrees” sent by the Pristavkin commission to Putin (with a recommendation to sign them) included 2,565 names. 2,449 of them (95 percent) were criminals convicted for “serious and very serious” (*tiazhkie i osobo tiazhkie*) crimes.⁶⁵ Recidivists comprised about 60 percent of the list: 1,070 of them had been convicted twice; 318—three times; 81—four times; and 37—five or more times. Prison and penal colony administrations objected to the commission's recommendations at least 308 times, but the criminals were pardoned anyway.⁶⁶

The existence of this disturbing trend was confirmed by N. V. Eliseeva, a Russian lawyer who independently analyzed material from the presidential administration's Pardons Department. Eliseeva concluded that criminals who had been convicted for “serious and very serious” crimes received a disproportionately high percentage of pardons. In 1996–2000 they comprised between 40 and 58.6 percent of those pardoned; of the entire incarcerated population, meanwhile, only 23.4 to 23.9 percent had been convicted for “serious and very serious” crimes—half the relative size of their group's number of pardons.⁶⁷

For comparison, although the legal institution of clemency is known in most countries of the world, it is applied extremely rarely, in exceptional cases or circumstances. There are about twenty-seven thousand names, for example, on the comprehensive list of acts of clemency for U.S. federal crimes—these acts of clemency might include a reprieve, remission of fine, commutation, or pardon—and this list comprises the 206 years from George Washington to Bill Clinton (but it excludes the scandalous pardons Clinton granted

⁶³Every Tuesday (the only day when the Clemency Commission held its meetings), members of the seventeen-member commission considered between 200 and 700 cases. The journal of the Russian Federal Assembly calculated that members of the Pristavkin commission spent between 17.5 seconds and 2 minutes to consider each case (Sergei Pykhtin, “Privatizatory miloserdiia?” 8).

⁶⁴N. Demidenko, “Konstitutsionno-pravovoe regulirovanie voprosov pomilovaniia v Rossiiskoi Federatsii,” *Pravo i zhizn'*, no. 38 (2001): 191.

⁶⁵The categorization of crimes in the Russian Criminal Code is more complex than the felony-misdemeanor division in the United States. The four categories of crimes and their maximum punishments are: minor crime (up to 2 years in prison); moderately serious crime (up to 5 years in prison); serious crime (up to 10 years in prison); very serious crime (over 10 years in prison, life imprisonment, or death, although the death penalty has not been carried out since Russia was admitted to the Council of Europe in February 1996).

⁶⁶The Russian press has written about defense attorneys who proudly advertise their service, saying that they have access to the Clemency Commission, but that the “fee for that service is high” (*dorogo stoit*). Reportedly, \$5,000 was the going rate for commutation of a one-year prison sentence. See Marina Gridneva, “\$5000 za kazhdyi god svobody: Pochemu prezident perestal proshchat' ubiits i banditov,” *Moskovskii komsomolets*, 26 December 2001.

⁶⁷N. V. Eliseeva and A. S. Mikhlin, *Pomilovanie v Rossiiskoi Federatsii* (Moscow, 2001), 50. See also A. S. Mikhlin, V. I. Seliverstov, and L. V. Iakovleva, “Pomilovanie v Rossii,” *Zakon*, 2002, no. 3:137.

to 140 crooks and criminals on his last day in office).⁶⁸ In the last eight years only 0.3 percent of convicted criminals have been pardoned in the U.S. (on the federal level). In 2001, President George W. Bush received almost nine hundred requests, but did not grant clemency to anybody. In Germany, 111 people were pardoned in 1994–99. Nobody has been pardoned in Japan in the last thirty years. The president of France receives 25,000–35,000 pardon petitions a year, but grants no more than 1.5–2 percent of them.⁶⁹

Although virtually all participants in the Civic Forum's July 2001 press conference spoke about the need for "constructive cooperation" between the institutions of civil society and the state, full-fledged cooperation between them is still in the realm of wishful thinking. If distrust was indeed a "pervasive legacy of communist rule," as Richard Rose claims, it is even more so in post-Communist, "democratic" Russia.⁷⁰ And it is not the peculiarities of the Russian statist, conservative, and traditionalist understanding of civil society that poses the main problem to the development of civil society, but rather the current condition of Russian society itself.

Vladimir Putin inherited a crushed, looted, and humiliated country struggling to survive the "liquidation regime" of the "reformers." In just ten years the country has lost about 44 percent of its GDP. Russia's population has been shrinking by up to half a percent a year, and its increase in mortality rates (60 percent since 1990) has been "unprecedented in any country during peacetime since the Middle Ages."⁷¹ After ten years of anti-human "reforms" Russia ranks 134th among all states in terms of male life expectancy, and 100th in terms of female life expectancy (by 1997, the death rate among Russian males had equaled that of war-ravaged Liberia). Men in "democratic" Russia have a smaller chance of surviving to age 60 than under the tsar a century ago. The country has

⁶⁸Ronald Reagan, for instance, pardoned 406 people in 8 years. 70 people were pardoned, only one commutation granted, and 1,554 executive clemency applications denied from 1989 through 1993. See the remarkable studies of clemency in the United States by P. S. Ruckman, Jr., "Executive Clemency in the United States: Origins, Development, and Analysis (1900–1993)," *Presidential Studies Quarterly* 27 (Spring 1997); and "Keys to Clemency Reform: Knowledge, Transparency," *Jurist* (7 March 2001), both available at jurist.law.pitt.edu/pardonop5.htm. A complete list of executive clemency applications from 1953 through 1999 is available at www.rvc.cc.il.us/faclink/pruckman/pardoncharts/jopdata.htm.

⁶⁹To our knowledge, the memo of the federal Ministry of Justice which led to the reorganization of the Pristavkin commission was never published in its entirety in the open press. However, it was quoted several times in the Russian mass media. See, for instance, Marina Gridneva, "Nasil'nik mil ne budet," *Moskovskii komsomolets*, 9 July 2001; and L. Kazik, "Miluiut tut vsiakikh," *Kommersant - Vlast'*, no. 28 (2001): 23–25. It is amazing that criticism of Putin's decision to improve the effectiveness of the Clemency Commission's work comes mainly from the United States, a country that has the largest prison population in the world (approximately 2 million in 2001—more than twice the size of Russia's), executes somebody every five days on average, and, according to numerous reports of Amnesty International and other human rights organizations, continues "to violate international standards by using the death penalty against the mentally impaired, individuals who were under 18 at the time of the crime, and defendants who received inadequate legal representation." Between 1977 and 1999 state authorities in the United States commuted only forty death sentences on "humanitarian grounds." See *U.S.A.: Killing Without Mercy: Clemency Procedures in Texas* (Amnesty International, 1 June 1999), available at www.web.amnesty.org/ai.nsf/index/AMR510851999.

⁷⁰Rose, "Rethinking Civil Society," 18. According to a recent poll conducted by ROMIR-Gallup International, 45.3 percent of Russians do not trust their government, compared to 45.1 percent who do (*Interfax*, 30 August 2001).

⁷¹The conclusion belongs to Murray Feshbach, a former branch chief at the U.S. Bureau of the Census and research professor at Georgetown University, and now a Senior Scholar at the Wilson Center (*Washington Post*, 12 July 1995).

more homeless children today (between one and two million) than after the Bolshevik Revolution or World War II.

An unprecedented social catastrophe in Russia, which the UN Development Program calls “a human crisis of monumental proportions” and which has been largely ignored by the Western community, makes any discussion of “civil society” in Russia today even more artificial and irrelevant than ten years ago.⁷² The concept of civil society implies a (relatively) high level of well-being. Destitute people are unable to form a civil society. At the turn of the twenty-first century, the Russian nation must first concentrate on stopping the depopulation and degradation of Russia and on overcoming the disastrous consequences of Yeltsin’s regime, rather than on involving the country in another round of radical economic “reforms” and futile social engineering. Otherwise, there will be no Russia or Russian society, whether civil or uncivil.

⁷²UNDP Press Release, “Men Hardest Hit by Hurried Transition to Free Markets in Ex-Soviet Countries,” in *Transition 1999: Human Development Report for Central and Eastern Europe and the CIS*, available at www.undp.org/rbec/pubs/hdr99/pr.htm.