

Corruption in Russia: A Historical Perspective

Manabu Suhara

Introduction

There seems to be general agreement among specialists that corruption is particularly rampant in post-communist Russia. It is, therefore, not the intention of the author to add yet another accusation to the already voluminous existing literature on the alarming situation of Russian politico-economic life.¹ Rather, the main purpose of this paper is to investigate the causes of the corruption in present-day Russia from the viewpoint of the ethical or moral consciousness of the Russians, and to trace back the historical path towards the sources of their social mentality.

This paper is organized as follows. In Section 1, the current situation regarding corruption in Russia is briefly summarized, and the relationship between corruption, on the one hand, and Russian legal culture and its moral awareness, on the other, is examined. Section 2 describes so-called 'legal nihilism', one of the characteristics of Russian legal culture, and Section 3 deals with 'ethical dualism', another feature of Russian moral consciousness the author would like to emphasize. In the final section, general relations between corruption and economic development are considered, and their implications for the economic prospects of Russia are explored.

1. Corruption in Post-Communist Russia

In the literature of political science, corruption is usually defined as the abuse of public office, powers or resources for private

1 See, for example, Shlapentokh (2003) for analysis of the current situation regarding corruption in Russia.

benefit. At first, we will examine Russian statistics on corruption based on this definition. Table 1 shows recent official data on three types of criminal offences (bribery, embezzlement and abuse of power), which are generally regarded as corruption. According to these statistics, corruption in Russia began to *decline* from the middle of the 1980s, reached its lowest point around the year 1990 or in the first half of the 1990s, and then began to pick up again in the second half of the decade. Is this true? It seems to be substantially different from the information provided by the Russian mass media. Table 2 displays corruption perception indexes for selected countries including Russia, compiled by Transparency International (TI), a non-government organization specializing in surveying corruption. This table shows, in contrast to Table 1, that while corruption in Russia was not so severe in socialist times (27th place out of 54 countries in the world in the first half of the 1980s), it worsened considerably in the 1990s, and now Russia is regarded as one of the most corrupt areas in the world. According to the 2000 TI ranking, for example, the degree of corruption in Russia was ranked 82nd out of 90 countries. Also, the severity of corruption for Russia proves to be much worse than that for Central European transition countries like Poland, the Czech Republic and Hungary. The figures in Table 2, compared with those in Table 1, are far more congruous to our perceptions.

If we accept the figures in Table 2 as plausible, then why do the statistics of registered crimes in Table 1 not reflect the reality? We can easily think of some reasons for the inaccuracy of the figures in Table 1. First, the ability of the police and legal prosecutors to investigate crimes has been substantially reduced by the disorder within the judicial system caused by systemic transformation. Second, crime-rate statistics have fallen, because people have become reluctant to report crimes to a police-force which is deemed to be ineffective and corrupt. Third, the criminal code of the old days has become unsuitable to new forms of offences. It is true that each of these is, indeed, a big problem now faced by Russian society. However, we may cite yet another reason for the fact that official statistics fail to live up to our perceptions. It is that the corruption defined here as a criminal offence might be slightly

Table 1: Number of Recorded Offences Committed by Officials in Russia (thousand)

	1986	1987	1988	1989	1990	1991	1992	1993
Bribery	6.6	4.2	2.5	2.2	2.7	2.5	3.3	4.5
Embezzlement	57.5	57.7	52.0	47.6	44.4	40.4	39.9	37.3
Abuse of power	4.8	3.8	2.8	2.4	2.5	2.5	2.7	2.8
	1994	1995	1996	1997	1998	1999	2000	2001
Bribery	4.9	4.9	5.5	5.6	5.8	6.8	7.0	7.9
Embezzlement	35.6	36.5	39.4	43.4	44.4	48.5	53.6	54.3
Abuse of power	3.2	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

Sources : Luneev (1996: 87); Ministerstvo Vnutrennikh Del RF(2002: 111, 117).

Table 2: Corruption Perceptions Index for Selected Countries

	1980-85	1988-92	1996	1997	1998	1999	2000	2001	2002
Italy	Score	4.9	4.3	3.4	5.0	4.7	4.6	5.5	5.2
	Ranking	31/54	34/54	34/54	30/52	39/85	39/90	29/91	31/102
Poland	Score	3.6	5.2	5.6	5.1	4.6	4.2	4.1	4.0
	Ranking	40/54	27/54	24/54	29/52	39/85	44/99	43/90	44/91
Czech Rep.	Score	5.1	5.2	5.4	5.2	4.8	4.6	4.3	3.9
	Ranking	27/54	27/54	25/54	27/52	37/85	39/99	42/90	47/91
Hungary	Score	1.6	5.2	4.9	5.2	5.0	5.2	5.2	5.3
	Ranking	46/54	26/54	31/54	28/52	33/85	31/99	32/90	31/91
Russia	Score	5.1	3.3	2.6	2.3	2.4	2.4	2.1	2.3
	Ranking	27/54	39/54	48/54	49/52	76/85	82/99	82/90	79/91

Note: As to 'Score', 10=highly clean, 0=highly corrupt, whereas 31/54 on the ranking line, for example, means the 31st place among 54 countries surveyed. Italy is marked out here as a country with exceptionally bad records by advanced countries' standards. Poland, the Czech Republic, and Hungary fall into the same category as Russia, that of a country in transition.

Source: Transparency International (<http://www.transparency.org/>).

different from our implicit definition of corruption. According to Michael Johnston, the above-mentioned definition of corruption as an offence by an individual is a product of modernity. In classical works since Ancient Greece (Plato, Aristotle, Thucydides, and later Machiavelli) the term ‘corruption’ usually had a much broader meaning than it does today. That is to say, it referred to the moral health of a society as a whole, or of political process in particular (Johnston, 1996: 322). If this classic definition of corruption were to be applied to current Russian society, the degree of existing corruption revealed by this would be disturbing. In this paper we will consider the issue of corruption in Russia in the broader sense of the term, especially from the viewpoint of the interconnection of public and private matters.

Generally speaking, human social behaviour is decided based on law, morals and custom. In his theory of social institutions, Douglass North explains those institutions in terms of three dimensions of formal rules, informal rules and enforcement (North, 1990). Here, applying North’s framework to social norms, we will designate statutory law or positive law as ‘formal rules’, and unwritten norms such as morals, ethics, custom, and the normative mentality underlying these social norms, as ‘informal rules’.² Normally, formal rules are accompanied by compulsion by a third party for their enforcement, typically by the state, whereas informal rules are thought to be self-enforcing.

By employing this theoretical framework, the worsening situation regarding corruption in Russia in the course of systemic transformation can be explained as follows. While the transformation has brought about poverty and the differentiation of income and assets among people, the rapid institutional changes have, at the same time, created a vast vacuum in the law. Loopholes in laws have been used to accumulate private wealth. In addition to the defects in formal rules, organizations responsible for law enforcement, such as the police, the prosecution and law courts, have not fully performed their essential duties due to lack of budget,

2 Therefore, law is categorized as ‘formal rules’, whereas the legal culture, which generates law, is considered to belong to ‘informal rules’.

knowledge and training. These circumstances seem to have directly brought about the increase in crime. But this is not the whole story. Informal rules, namely traditional social norms and the underlying moral consciousness peculiar to Russia, also seem to have caused problems. The extent to which the confusion of public and private matters is tolerated in moral consciousness in Russia may, for instance, be considerably loose compared with Western norms. In addition, although laws and regulations as formal rules obviously do exist in Russia, they seem to be easily violated, because a substantial part of them is not necessarily consistent with the natural feelings of the populace. In this paper we will examine the traditional characteristics and historical formative process of the moral consciousness of Russian society by looking back to the past, particularly Tsarist Russia.

2. Legal Nihilism

The phrase ‘legal nihilism’ has often been used to characterize Russian legal tradition. In consideration of both attitudes towards the law and of social norms in general, the author would also like to discuss the concept of ‘ethical dualism’ as a related aspect of Russian mentality. We will examine ‘legal nihilism’ in this section and then ‘ethical dualism’ in the next.

Although the author is not well acquainted with how and when the term ‘legal nihilism’ was coined, it was often used in the Perestroika period to brand the legal tradition of Russia. The prevalence of this term was related to the westernization of Russia in the period of Perestroika. At that time Russia sought a quick introduction of Western values. In the field of law, the embracement of the concept of *pravovoe gosudarstvo* (*Rechtsstaat*, rule of law state) by Mikhail Gorbachev at the Nineteenth Party Conference in June 1988 symbolized the movement. By raising this issue, ‘he broke dramatically with seven decades of Soviet political and legal tradition’ (Huskey, 1992: 33). That is to say, ‘skeptical and negative attitudes towards law’ in Russia were clearly recognized as backward, compared with the Western legal culture represented by the concept of ‘*Rechtsstaat*’ or ‘rule of law’. Thus the term

‘legal nihilism’ began to be used in Russia in order to emphasize its legal ‘backwardness’.³

What does the term ‘legal nihilism’ really mean? It is useful to examine three aspects of the term. Firstly, as a matter of course, it means Russian people’s distrust of law in general, the depth of which may be clearly illustrated by some common Russian proverbs regarding law and courts:

- Law is a pole of a cart, you can handle it as you like (Закон дышло: куда захочешь, туда и воротишь)
- Wherever there is law, there is also insult (Где закон, там и обида)
- Wherever there is a law court, there is also untruth (Где суд, там и неправда)
- Even if you go to a court, you cannot find justice there (В суд пойдешь, правды не найдешь)
- Fed up with lawsuits, reconciliation is the best (Полно судиться, не лучше ль помириться)
- We don't fear a trial, but fear a judge (‘Judges are prone to take bribes’.) (Не бойся суда, а бойся судьи)
- Like a duck’s stomach, it is difficult to fill up a judge’s pockets (Утинового зоба не накормишь, судейского карман не наполнишь)
- What is good for a judge is good for his pockets (Судье полезно, что в карман полезно)
- Into a court wearing a coat, out of the court without a shred of clothing on (Пошел в суд в кафтане, а вышел нагишом)⁴

3 The period from the October Revolution to the middle of the 1930s is also called the ‘age of legal nihilism’ in a different sense from that described above. During this period the fundamentalist legal theory was dominant, of which the ‘withering away of law’ theory by E. Pashukanis was typical. On the practical front, the ‘firm belief that all the fundamental problems can, and should, be solved by strictly politico-administrative measures’ had priority over law (Tumanov, 1989: 22).

4 Most of these proverbs are quoted from Oki (1983a: 232-233, 1983b: 324-325).

The author would like to point out two issues as reasons for the distrust of law shown in these proverbs. Firstly, in Tsarist Russia law was essentially a means of harsh control over the population. Secondly, laws were arbitrarily made by despotic authorities, which led to the situation in which 'there were no codified laws at all, or even if there was a code, it was so incomplete or not promulgated that it was almost equivalent to nothing' (Oki, 1989b: 323). While we will elaborate on these two points below, here we would like to touch on two additional issues, namely the *kormlenie* system in Russian history, and the miserable situation in Tsarist Russia concerning courts and judges.

It is often pointed out that bribery in Russia was a remnant of the old system of *kormlenie* (feeding). In Kievan Russia, the ruler and his agents conducted *poliud'e* (a tribute-collecting tour) through each district of the territory. Article 42 of *Russkaia Pravda*, the oldest collection of laws supposed to have been compiled under Jaroslav the Wise (ruled 1015-1054), postulates the amount of money and food for official tribute collectors and their horses which were to be provided by local residents over one week (Vernadsky, 1947: 34). That is to say, a system in which the people of each district 'fed' the ruler's representatives on food and other material supplies, namely *korm* (stipend in kind), was institutionalized as early as the 10th or 11th century. This is called the *kormlenie* system. In the 13th and 14th centuries, many of the patrimonial bureaucrats of Muscovite Russia (see below for patrimonialism) who had been sent to different parts of the territory had come to depend on *korm* as a means of livelihood. Although several attempts were made to abolish this system, such as reforms by Ivan the Terrible and Peter the Great, in essence this practice of mixing up public and private matters lasted long, and became one of the most firmly established customs in Russia (Kucherov, 1953. See also Sedov, 1996; Potter, 2000).

Distrust of justice and the police is also historically deep-rooted in Russia. The judicial system in Tsarist Russia, especially before the 1864 reforms, may be characterized by 'disorder, brutality, arbitrariness and corruption' (Kucherov, 1953: 7). For instance, 'it was organized on a class basis, with separate

courts and different punishments for the nobility, the clergy, the urban population, and the remnants of the free peasantry. The intellectual and moral level of the judges was notoriously low; bribery was almost universal' (Berman, 1963: 211). Courts also had a reputation for ineffectiveness. 'At the beginning of the reign of Nicholas I there were 2,000,000 cases awaiting decision, and 127,000 persons were in jail, expecting a sentence. In 1842, ... the number of undecided cases in all the courts of the empire had increased to 3,300,000' (Kucherov, 1953: 3).

Regarding the second aspect of 'legal nihilism', we can identify the fact that law in Russia has assumed the character of an instrument for administrative control over the populace. Generally, law can be classified into several types based on its various functional aspects. Roberto Unger, for example, identifies from the history of mankind three types of law, which are customary or interactional law, bureaucratic or regulatory law, and the legal order or legal system. He argues that the whole structure of law in any society can be consistently explained as a combination of these three types of law (Unger, 1976: 48-58). In his terminology, customary law is the law evolved naturally from reciprocal human interactions within a community, whereas bureaucratic law is the law formed through the vertical relationship of order and obedience within power relations of a state. While these two types of law are commonly observed in any place, at any time, it was practically only in Western Europe that the legal order was spontaneously evolved. The latter is the autonomous and universal law developed through individualistic and equal human relations. Almost the same classification of law can be seen in Shigeaki Tanaka's division of law into three types of communal, administrative and universal laws (Tanaka, 1986). Such classification could be regarded as an application of Karl Polanyi's well-known triad of reciprocity (community), redistribution (the state), and exchange (market), to the legal system.

According to such classifications, an overwhelming majority of Russian law has been of the bureaucratic or administrative type. Toshio Morishita explains the situation in Russia as follows: 'In (Imperial) Russia the market economy as well as private property

was not fully developed. Therefore, the law which the citizens have independently established in order to create the internal order of the civil society, and at the same time by which they should be bound, ... was also not developed, ... and criminal law as an instrument of the authorities for the purpose of the establishment and maintenance of national order came to the center of the legal system. ... Also in the Soviet legal system, criminal law took the central position of the entire system. In 1985, for example, there were only 15 judges in the civil division of the Russian supreme court, as opposed to as many as 73 judges in the criminal division' (Morishita, 1997).

As to the question whether the centre of the legal system is taken by criminal law or, as in Western countries, civil law occupies the centre, there is an interesting theory by Yoshiyuki Noda (1978: 28). He classifies the formation of human mentality into the three models of the nomadic type, the agricultural type, and a type which combines the two, and explains the agricultural type mentality as follows. In an agrarian life, society is spontaneously evolved, just like crops are naturally grown. It is possible, and also desirable, to lead a natural life, allowing things to evolve in a natural way. In such a society, social norms are not necessarily needed, and thus normative consciousness is not generated. A society of this type is, from the very beginning, peaceful and orderly, and struggles are denied on the ground that they disturb peace and order. They ought to be eliminated even by using forcible measures. Criminal law thus occupies the central position in the law of such a society, though the situation where even criminal law is not needed is still more healthy. Noda proposes this theory, implicitly comparing the Western legal culture as a typical nomadic type with the East-Asian legal culture (including Chinese and Japanese legal culture) as a typical agrarian type. If we accept Noda's theory, then it can be said that the mentality of Russian society evidently belongs to the agrarian type.

As the third aspect of 'legal nihilism', we can mention the 'lightness' of the significance of law. It can be said that law has been much less internalized mentally in Russia than in Western Europe. Despotic authorities often promulgated law arbitrarily as a

temporary expedient, whereas people easily fended it off, taking no serious heed of it.

The fact that it was extremely difficult to codify laws in Imperial Russia symbolically shows the makeshift character of the law of the time. Peter the Great, for example, ordered the formation of a commission with the aim of systematizing the Code (*Ulozhenie*) of 1649 and more than 1,500 subsequent laws, but his intention was not fulfilled, because it was almost impossible to ‘codify the chaotic mass of contradictory statutes, ordinances, and decisions, that was accumulating’ (Berman, 1963: 205). Since then, as many as ten attempts of codification ended in failure, before the completion of the ‘body of laws’ (*Svod Zakonov*) by Mikhail Speranskii in 1835. Given the fact that the autocracy did not take the law seriously, it may be natural that people assumed the same attitude. Also, it is no wonder that the people gave bribes to judges in order to receive favourable decisions, viewing that law could be interpreted in any way they wished, as the above-quoted proverbs reveal.

Moreover, the deep distrust of law was harboured not only by ordinary Russian people. Contempt for the legalism of the West – as symbolized in the words of 19th century Slavophile I. V. Kireevskii who said ‘brothers make contracts with brothers’, – was also common among the Russian intelligentsia. V. Tumanov (1993) points out that such contempt for law was expressed not only by Slavophiles, but also the broad ideological spectrum of intelligentsia, such as Westernizers like A. Herzen, *Narodniki* like P. Lavrov, anarchists like M. Bakunin, pacifists like L. Tolstoi, and writers of the group ‘*Vekhi*’ like N. Berdiaev. Tumanov also argues that many of them put moral principles ahead of law, and that this trend of thought is inherited by contemporary writers like A. I. Solzhenitsyn.⁵

5 Solzhenitsyn’s phrase ‘The moral principle must be ahead of the legal principle’ is cited in Tumanov (1993: 57).

3. Ethical Dualism

It is obvious that the term 'legal nihilism' does not necessarily mean sheer ethical chaos. A society would not come into existence without some form of ethical system. As stated above, the mentality which is peculiar to Russia insists that greater importance should be attached to morals rather than to law. What were the concrete relations between morality and law within such a framework?

Thomas Owen (1981: 9-16) describes Moscow merchants and their economic ethics in the first half of the 19th century as follows. Firstly, it was not considered to be an ethical issue that merchants cheated others. 'Cheating strangers ... carried little moral censure among the traditional merchants'. The Moscow merchants 'perfected several means of surviving and prospering in trade. ... Outright illegalities common to all modes of commerce in Moscow were cited in an official report in 1846: fraud, forgery, false measures, and false weights'. However, 'there is ample evidence that toward wholesale suppliers, friends, and coreligionists (for example, Old Believers), they observed the Eighth Commandment scrupulously'. That is to say, Moscow merchants' attitudes towards a person depended on whether or not he or she belonged to the same community as they did. In other words, different morals were applied inside and outside the community. Secondly, the credit system was still in a rudimentary stage and most trade was conducted in cash, which could also be explained by distrust of outsiders. Thirdly, 'The grip of paternal domination and religious obscurantism remained strong ... in the traditional merchant culture'. They demonstrated total devotion to the tsar, but on the other hand, displayed profound hostility towards state officialdom, which arbitrarily exploited them using law as an administrative weapon.

As Owen emphasizes, Moscow merchants were far from the Western bourgeoisie, and 'were essentially nothing but *trading muzhiks* (peasants). ... The constant influx of enterprising peasants into the merchant estate naturally contributed to the persistence of many features of peasant life within the merchant milieu' (Owen,

1981: 9). So what was the situation in Russian farm villages? According to Boris Mironov (1990: 11-12), in the second half of the 19th century, ‘the official law and the officially recognized morality of the state were limited primarily to the towns. ... Most activities (in the commune) were regulated by unofficial norms, which jurists have termed common law or custom. ... The same dualism is found in the moral code that operated among the peasants. ... The peasants deemed it “immoral” to deceive a neighbor or relative, but to deceive a government official or landlord was quite a different matter – indeed, that was a moral deed worthy of encouragement. Stealing something from a neighbor, violating the boundary markers dividing allotments, or cutting wood from the commune’s forest without permission was immoral, but picking fruit from a squire’s orchard, cutting wood in a forest belonging to a noble or the government, or putting some of a squire’s land under plough – these were acts free from moral censure. Thus the peasants had one morality when dealing with members of their own commune and quite another for outsiders, especially those who were not peasants’. Taking into consideration the fact that an aspiring peasant went to town and became a merchant, it may be only natural that the morality of the merchants was quite similar to that in the farm communes.

Max Weber (1988: 164) explains such moral duality with the concepts of ‘internal morals’ (*Binnenmoral*) and ‘external morals’ (*Außenmoral*). He named the morals which were based on solidarity and familial-communist principles within a community ‘internal morals’. As time passed, however, the development of division of labour and exchange enlarged the extent of economic negotiations beyond the community. Now the above-mentioned communist principles no longer held good in this domain, and ‘external morals’ whereby any kind of behaviour could be tolerated from an utter stranger became dominant.

Although such duality was probably common in pre-modern communities, it is thought to have gradually decayed along with changes in circumstances, and a new ‘publicness’ emerged. In other words, the need for general and universal norms which ought to be valid in any time, any place, and for whoever who might be

concerned came to be recognized, and the legal order, as defined by Unger, was being formed. However, this tendency manifested itself in various places in different degrees. While in Europe the tendency emerged very clearly, in Russia it remained quite feeble. We can cite at least three historical circumstances peculiar to the West as reasons that the legal order based on 'rule of law' in Britain, or '*Rechtsstaat*' on the Continent, was internalized.

Firstly, feudalism in medieval Western Europe is characterized by its decentralized nature. Weber already took notice of the fact that 'the relationship of loyalty between the lord and the vassals was based on free contracts held by people from different clans' (Weber, 1983: 68), and emphasized that such contracts brought about firm legal contractual relations and such relations, in turn, provided a solid foundation for 'individualism' (Weber, 1983: 377-378).⁶

Similar issues were also suggested by Barrington Moore. He pointed out that some concepts which were observed in the relationship between a lord and his dependents in Western feudalism, such as 'the conception of the right of resistance to unjust authority,' or 'the conception of contract as a mutual engagement freely undertaken by free persons,' (Moore, 1977: 415), brought about the formation of the idea that, if law was arbitrarily decided by a ruler (king) or if it entailed disadvantages against members of the state except the ruler, then it must be replaced with fair and rational law.

It is well-known that in this respect Russian feudalism was quite different from that of the West. 'Feudalism as it developed in Russia differed from the West most notably in the absence of reciprocity (between the lord and the vassals). ... The Russian system of feudalism was established (under Ivan the Great) in the context of a highly centralized state in which the sovereign owed

6 According to Weber, Japan, which had a system of feudalism much more similar to that of Western Europe than that of China, for example, was, therefore, able to develop individualism, whereby it relatively easily received capitalism from the outside as a finished product (Weber, 1983: 378). This viewpoint has served as a starting point for the theory in which relations between Japanese economic development and its feudalistic past were elaborated.

none of the obligations to his vassals that were common in the much more decentralized feudal states of Western Europe' (Newcity, 1997: 49-50). Russian feudalism could more precisely be called patrimonialism, as described by Weber. According to Weber (1978: 1010-1012), the patriarchal state is the system of the state in which the relations between the patriarch and his family members are magnified into the relations between the lord and the vassals. While this is the simplest structure of the state system in a pre-modern society, a lord dispatches his sons and subjects to each part of the country in order to assign local administration. This locally decentralized form of patriarchal domination is called patrimonialism. Dispatched servants, namely, patrimonial bureaucrats, are subordinate to the lord, and are subject to his arbitrariness. A patrimonial bureaucrat, typically, is rapidly promoted by the grace of the master, and can suddenly lose his position by invoking the master's wrath. Thus, the patrimonial bureaucrats tend to endeavour to make a close and personal connection to the lord. Vadim Volkov (2000) accounts for corruption in Russia from such historical foundations as patrimonial bureaucracy.

Secondly, clashes of interest in the West between the church and the secular monarchs, the monarchs and the aristocracy and so on, as well as the need to mediate between the conflicting claims, can be thought to have made the legal system both necessary and possible. According to Berman (1883: 10), 'perhaps the most distinctive characteristic of the Western legal tradition is the coexistence and competition within the same community of diverse jurisdictions and diverse legal systems'. With the pursuit of a principle which could integrate different legal systems of opposing social groups as consistently as possible, the need for an autonomous and universal rule of law came to be recognized. In the same vein, Unger (1976: 66-76) argues that the emergence of universal norms can be elucidated by the confrontation of the three social groups of the sovereign, the aristocracy, and the third estate, none of which individually had enough power to overwhelm the other two groups. Needless to say, the situation in Russia was quite different in this respect as well. Russia was devoid of the struggle between the sacred and secular powers which was commonly ob-

served in the West. Russian Orthodoxy denied the concept of the supremacy of the church over the autocracy, as the church itself formed part of the autocratic power.

Thirdly, it is considered that the evolution of autonomous and universal norms was related to the development of commerce and the market. Avner Greif (1994) argues that, comparing Genoese merchants with Maghribi traders in the 11-13th centuries, and also employing game-theoretical analysis, the cultural characteristics of the two groups have led to a divergence in patterns of economic development. That is to say, the Genoese, who embodied the individualistic cultural beliefs of the Latin world, as opposed to the Maghrebis with collective cultural beliefs were, due to their cultural heritage, able to develop bilateral enforcement mechanisms with the formal legal system to secure and enforce an agreement which, in turn, has enabled them to conduct complicated impersonal trade and eventually has brought about economic development. In other words, Greif implies that autonomous and universal law may be generated from trading among merchants with individualistic culture. John Hicks advocates a similar thesis more explicitly. According to Hicks (1969, especially, Chap. 3), the emergence of the merchant as an intermediary for trade and information is the basis of the market economy, and the development of the market economy is tantamount to the development of the 'mercantile economy'. As the mercantile economy evolves, money, credit and new legal institutions are generated. Hicks points out that 'the characteristic features of that old legal system are not such as to meet the needs of the market. ... The old principles of settlement, in terms of customary rights and duties, are by no means such as are now required' (Hicks, 1969: 36). Douglass North (1990, especially Chap. 13) argues, to the same effect, that the evolution and development of long-distance trade made possible the invention of law and other related rules such as standardized weights and measures, units of account and merchant law courts, in order to secure fulfilment and enforcement in distant parts of the world, and that mutual observance of these rules made possible the increase in trade. The existence of impersonal rules brought about the decrease in transaction costs and the expansion in trading opportunities, and

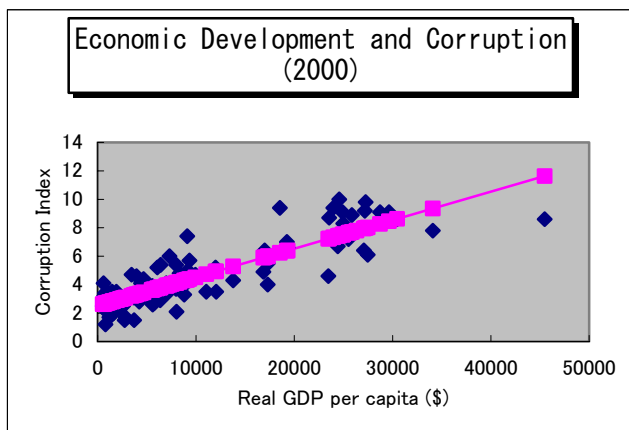
eventually led to economic development. It can be said that the emergence of a new legal system based on a fresh type of publicness has necessitated economic growth. In contrast to the Western mercantile tradition, the culture of Russian merchants, mentioned above citing T. Owen, seems to offer an actual example of Greif's proposition that a universal legal order is difficult to evolve out of collectivist communities.⁷

4. Norm Consciousness and Economic Development

In this paper the author has emphasized 'legal nihilism' and 'ethical dualism' as the moral origins of corruption in Russia in its broad sense. Such a mentality is prone to create personal connections between those concerned with private gains outside the realm of law. This mentality also seems to be incompatible with an efficient market economy. Theoretically, market exchange is based on free and transparent contracts by independent economic agents and necessitates as much predictability and calculation rationality as possible. In contrast, the contempt for law and the inclination towards personalized relations mar such foundations for efficient exchange. In other words, the norm consciousness which could lead to the personalization of trade is not suitable to the demands of the market. As stated above, North regards economic development in the same light as an efficient market. If we accept this thesis as correct, then future economic prospects for Russia are not bright. In a society that brushes law aside and embraces the system of dual norms, transaction costs tend to be higher, which makes difficult the realization of an efficient market economy.

7 Fernand Braudel (1992: 441-466) vividly describes Russian merchants in the 17th and 18th centuries, emphasizing their adaptability, leaving a slightly different impression from that which Thomas Owen's above-mentioned book gives us.

Figure 1: Economic Development and Corruption



Note: $N=88$, $R^2=0.748$. Real per capita GDP data are taken from the *World Bank Atlas 2000*, whereas corruption indexes are cited from Transparency International (see Table 2).

It may be self-evident that economic development is not consistent with corruption. Figure 1 simply associates the level of economic development with the corruption perceptions index by TI. Most of the recent and more sophisticated empirical studies also confirm the negative relationship between corruption and economic development (see, for example, Mauro, 1995; Treisman, 2000). Francis Fukuyama (1995) notes of the level of ‘trust’ of a social group in other groups in various countries, and emphasizes that the degree of ‘trust’ exerts profound influence on economic development. Although he does not explicitly touch on Russia, it is a typical low-trust society. Fukuyama’s discussion of a low-trust society can be related to the discussion of the Russian mentality of ‘legal nihilism’ and ‘ethical dualism’ as emphasized in this paper. These characteristic features belong to the sphere of culture, which implies that they are hard to change and that even if they do change, it is only very slowly.

In order to comprehend the Russian people’s attitudes towards law, a survey conducted in 1998 by Richard Rose is very illuminating. According to that survey, 71 per cent of Russians surveyed

think that their own state system is far from the ideal of *Rechtsstaat*. At the same time, however, they do not want Russia to be a *Rechtsstaat*, and 62 per cent of surveyed Russians consider that the law is often excessively harsh on ordinary people. So if the law is harsh, then it may not necessarily be desirable to observe it. Seventy-three per cent of the respondents answer that the harshness of law can be softened by not abiding by it (Rose, 1999: 74). This survey reveals yet another example of the historical adhesiveness of legal consciousness.

It might be a mistake, however, to emphasize excessively the point that a culture which tries to distance itself from the law is always incompatible with the realization of economic development. For example, Noda (1978), as discussed above, assumes that East Asian legal culture, including Japanese, is of the agricultural type, whose people regard as desirable a society where law does not function. Despite its agrarian mentality, however, Japan was able to achieve economic development. To give another example, the theory was referred to in footnote 5 that feudalism can be seen to possess the essential character of respect for contract, and can therefore be considered to be one of the sources of capitalistic economic development. In spite of this theory, several East Asian countries which did not go through feudalism in the past have recently achieved remarkable economic growth. To put it differently, the conditions for economic development are not necessarily limited to norm consciousness or social mentality, and Japan and other economically successful Asian countries may have exerted considerable efforts to make their customs or behaviour suitable for economic development. In Russia as well, there have been times when powerful economic growth was recorded, such as the period from the late 19th century to the beginning of the 20th century, or the period of the socialist industrialization from the 1930s to the 1950s. Such times seem to be during a period when norm enforcement by the state was markedly reinforced. Russian officials in Soviet times, when coercive power by the state was much more severe than today, were not regarded as particularly corrupt, as shown in Table 2. And under the guidance of Stalin, the Soviet Union underwent intense economic development. So although the

terror of the Stalinist regime must obviously not be repeated, the fact that the time under Stalin witnessed relatively rapid development might illustrate that a certain level of authoritarian regime is necessary for Russia to realize economic growth. Nonetheless, it should still be pointed out that the concept of a kind of publicness, being perhaps a fresh idea to the Russians, should be internalized thoroughly in order for their economy to sustain development in the long run.

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