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CIVIL SOCIETY AND IDEOLOGY: A MATTER OF FREEDOM

'We will not get freedom from anywhere, if we do not take the decision to be free.'

(Motrošilova 1991, 461)

KEY WORDS: civil society, ideology, rule of law, philosophy of history, civilization

In this paper, I want to elaborate some ideas regarding the state of late Soviet and post-Soviet Russia with respect to what is generally labelled 'civil society', as it is understood in Russian philosophy today. I shall discuss three topics. The first is a discussion that took place during the *perestrojka* years among Soviet philosophers and legal specialists on legality, rule of law, and civil society. The second is occasioned by the well-known position taken by Francis Fukuyama in his *The End of History*; I attempt to situate it in the Russian context. The third topic is the attempt by Nelli Motrošilova to assist Russia in its 'return to Civilization' (with a capital C) by making the concept of civilization 'work' in Russian society.

Two themes will return at several instances, which makes it appropriate to start by discussing them separately. The first is the distinction of formality and materiality, of *form* and *content*, in discussions about law, civil society, and civilization. The 'formal' nature of Western democracy has often been, to Russian thinkers, an important ground for rejection of the Western model. The question is not so much whether such criticism is adequate, but why it has such a strong appeal in Russia. My intuition is that it has to do, mainly, with a different structure of political power. With, of course, some degree of generalization and simplification, Russia can be said to have a history in which people were always told *what* to do by those in a position to do so, whereas Europe has a history in which the focus has shifted from *what* people should do to *how* they should pursue their interests, settle their conflicts, or justify their orders and regulations

(in a sense this is even true of Western philosophy, where the question which position is *true* has given way, gradually but inevitably, to the question which positions are *tenable*). The difference between a predominance of *laws* that tell people *how* to settle their conflicts with each other and with the state, and a predominance of rule by decree [*ukaz*] that always has a concrete *content*, is obvious.

This has led to a focus, in Russia, on the question who is the right person to be in power, whereas in Europe discussions tend to focus rather on procedures. Of course, election campaigns in Western countries are strongly person-oriented, but this does not so much reflect a search for the right person. It rather has a motivating function because actual differences between candidates are relatively small, due precisely to the predominance of procedures: the more complex a democracy, the more 'checks and balances' are built in, the less important the person of the 'leader'. Likewise, Europeans tend to turn political discussions into discussions about rules (highly typical examples are discussions about abortion or euthanasia), whereas Russians tend to turn them into discussions about norms [*nnavy*]. These contrasts between form and content seem to rest upon differences in the structure and organization of society, especially of relations of power, and they also imply a difference between Russia and Europe with respect to the theories that serve to account for political action, and to legitimize a status quo.

This brings me to the second general theme: ideology. Ideology is a subject that is discussed intensively and in very different ways. To enter into that discussion is not my objective, and I shall limit myself to a brief exposition of my own conception at this point. Its value must then appear from its use in what follows; as to its theoretical background, I have employed ideas developed by George Kline, John Thompson, Leszek Kołakowski, and Louis Althusser (Kline 1964, Thompson 1990, Kołakowski 1960, Althusser 1976).

Ideology, in my view, is a possible function of theories ('theory' ranging from a single proposition to intricate theoretical constructs). Theories claim to be true, not of course in some naively realist sense, but in the sense of aiming at an understanding of some reality (this does not contradict my earlier statement about 'tenability instead of truth', rather it explains a basic tension in Western philosophy).

This asserted truth can function, whether used deliberately to that end or not, to motivate action or to legitimize a status quo. Theory and ideology do not belong to the same category, and therefore cannot be each other's opposites. Whether or not a given theory does perform an ideological function does not depend on its being this or that theory, but on the situation in which it exists, and on its aptness to perform an ideological function *given* that situation. The *truth-claim* of theories is essential to their functioning ideologically, because it warrants the rightness of the action or status quo that is being justified. Ideology therefore does *not* necessarily exist at the expense of truth, as the Yugoslav Marxist Svetozar Stojanović had it (Stojanović 1987, 3), but it *is* at odds with critical thought questioning truth-claims.

Ideology, upon this conception, is a widespread and 'natural' phenomenon of any social order, i.e. of all empirically known social life. It fills in the space between, on the one hand, brutal, 'naked' execution of power, and, on the other, persuasive rational argument. Most or all execution of power is connected with ideological mechanisms that compensate for force. The relationship between ideology and rational argument is more complicated. I opt for the following solution: *any* theory contains elements that can, in principle, be questioned. If a theory relies on principles or axioms, this is obvious; if it relies on empirical data, these can be opposed by other data, or their permanence can be questioned; if it relies, finally, on values or norms, these of course have to be shared, and if they are not they become 'subjective'. Theories that function ideologically often contain more than one of these categories.

For example, when somebody says that it is right, and obligatory, to engage in ethnic cleansing of Bosnian villages, and legitimizes such cleansing by referring to a theory stating, among other things, that Serbian soil is holy ground, that Serbs are not only ethnically, but also morally superior to, e.g., Turks, since Serbs are defending Christianity against Islam, then, from a logical point of view, these statements function as axioms or absolute principles. He or she will further refer to innumerable many empirical facts that testify to Serbian superiority, and appeal to values like heroism and manhood. Such a theory can be questioned at many points. It is essential to its

ideological efficacy, therefore, that i) it is *not* questioned, i.e. that alternatives are excluded, ii) practical conclusions ensue from it.

Or, to take a more innocent example: when I participate in the European elections, even though I am not fully convinced of the sense of doing so, I also engage in ideology. I motivate and legitimize my behavior by referring to a theory, partly mine, partly common, about the European Community and its democratic structure, containing such vague principles as 'the more opportunities to cast a ballot, the better it is – so go and vote', or by referring to cases where the political composition of the European Parliament did make a significant difference (omitting the cases where it did not), or in which the parliament, for better or for worse, successfully opposed the European Commission, and doubtful criteria such as what my late father's opinion would have been.

If one subsumes *both* examples under the definition of ideology, then ideology is not only a universal, it is also not necessarily an 'evil' phenomenon. Ideology is what makes society work, what makes people perform all kinds of actions without previously posing often unanswerable questions, and without using physical coercion. But it is also what makes people account for their sacking of Bosnian villages. In other words, it is not a matter of opposing the evil world of ideology to some utopian realm of transparent argumentation, but of differentiating and qualifying by acknowledging that, on one hand, one is caught up in ideology and, on the other hand, that one sometimes acts deliberately in its name. If one believes that argument is better than violence (which is not obvious either, but has itself to be argued for, an argument that cannot be conclusive in any strong sense of the term, and therefore requires ideological support, too), then ideology appears as 'second best', as something people need in order to make society run smoothly, but also as something that critical intellectuals never really feel comfortable with.

I personally regard critical analysis of ideological phenomena as a major task of intellectuals, and certainly for philosophers, but not as one that aims at a total deideologization or absolute absence of ideology, but as one that criticizes concrete cases of ideology. What is required to that end is *freedom*, both in the objective sense of freedom of expression and discussion, and in the subjective sense of daring to think radically and independently.

Finally, it is important to stress that an ideological function may be performed by a theory, irrespective of the truth or falsity of that theory (if only because truth and falsity are rarely manifest), and also relatively irrespective of whether the people engaging in ideological mechanisms actually believe in, or adhere to the theories involved. At the same time, critical investigation of the truth-claims raised in an ideological context is harmful to smooth ideological functioning (which is why the powers 'behind' ideological mechanisms are *always* a potential danger to critical investigation). And credibility and sincere conviction do make a difference, too, but again not a crucial one.

This conception of ideology may seem to be at odds with another, widespread notion of ideology, namely that of a social and political doctrine or 'world-view'. Ask people what ideology is, and they will mention communism, nationalism, fascism, fundamentalism, liberalism. From the perspective just expounded, these are examples of explicit, more or less stable, and more or less 'supervised' theories, the *primary* function of which is an ideological one. This, by the way, explains why it makes no sense to speak about 'the end of ideology', even if major ideologies are being replaced by more subtle forms (although a case could be made that such forms as nationalism or fundamentalism are very much alive, and exemplify the 'classical' pattern).

Soviet Marxism-Leninism, always a prime example of ideology, appears in this conception as an *extreme* case, one that was, first, directly linked to established political power; second, carefully guarded and 'creatively developed', i.e., adapted to new circumstances; third, occupied a monopoly position; fourth, gradually became an exclusively legitimizing, not a motivating ideology; and, fifth, increasingly became a ritual affair with little conviction behind it (which is why such deep conviction had to be permanently *asserted*). Soviet ideology was an extreme case, finally, because it concealed its ideological nature by *claiming* to be an ideology, viz. a true and scientific one. A major effect of this was the offhand legitimate exclusion of any other ideology: alternative positions had to seek a legitimate place *within* it, which led to the peculiar pres-

ence of liberals, social democrats, and national bolsheviks within a communist party.

This lengthy exposition of the concept of ideology serves what follows in two respects: firstly, one must proceed very carefully when investigating Russian disputes about law, civil society, or civilization, with their distinct but not opposing ideological functions and theoretical merits; secondly, one must be particularly careful with respect to the use of the very word 'ideology'. The specifically Soviet notion of ideology – an extreme one in my view – has left deep traces in the minds of those who somehow participated within it and of those who opposed it.

RULE OF LAW AND LEGAL IDEOLOGY

During the years of *perestrojka* and *glasnost*' (1986–90), the lamentable state of jurisdiction and human rights in the USSR became a subject of public debate. A lively discussion took place about themes that belong to philosophy of law, and in which both jurists and philosophers took part (Frolov 1988, Nersesjanc 1988). The political stakes in this debate were clear: the establishment of a *Rechtsstaat*, with or without the achievements of 70 years of Soviet rule. As this discussion now belongs to the past, I shall pass over much of its detail and focus on essentials.¹

Obviously, criticism was aimed first of all at all kinds of subordination of citizens to the state. Thus, for example, Tatjana Znamenskaja and Ol'ga Razbaš criticized the 'fundamental tenet about the inseparability of the rights and obligations of citizens,' e.g., the immediate link between the *right* to labour and the *obligation* to work, which turns the citizen into an object instead of a subject of law (Znamenskaja &c 1988, 37f; *Konstitucija* 1988, art. 40).² Also, a strong call was made for *zakonnost*' [legality]: if any law can be cancelled by a decree [*ukaz*] or an order [*prikaz*] from above, the result is a cynic, not a citizen. One of the dissidents' demands had always been that the Soviet government should stick to its *own* laws.³ This issue originated in the Marxist-Leninist conception of law as an instrument of the ruling class, an idea that was fully applied in the USSR: if law is a mere means, not a goal, there is no particular reason to employ it when there are more effective alternatives.

The foundations of Soviet legal theory were laid in the late 1930s, more precisely in 1938, with, according to different sources, A.Ja. Vyšinskij as the major culprit (Mamut 1989, 12, Kruglyj stol 1990, 14). Within the framework of this theory, right was defined as a “system of general compulsory norms of conduct . . . , which express the free will of the ruling class (or of society as a whole, if the phenomenon of class-society has been successfully lifted); the state elaborates these norms and lays them down, the state also ensures their execution” (Mamut 1989, *ibid.*). This total identification of *right* with actual *law* went hand in hand with the subordination of the citizen to the state, of the individual to the collective: “The ideas of a defense of the honour and dignity of the person, of a protection of the rights and liberties of the citizens disappeared completely from the ‘official’ legal theory and practice of those days” (Kudrjavcev &c 1988, 47). Nor was this identification corrected in later years: Leonid Mamut quotes a passage similar to the one quoted above from a 1988 textbook in *Legal Theory* for future jurists (Mamut 1989, 13; cf. Nersesjanc 1988, 30, Nersesjanc 1989, 10, and *Osnovy* . . . 1982, 271).

More theoretical discussions were grouped around the concept of a ‘socialist *Rechtsstaat*’ [*socialističeskoe pravovoe gosudarstvo*]. The mobilization of the ‘human factor’ [*čelovečeskij faktor*] was recognized as a precondition for a successful *perestrojka* (van der Zweerde 1992), and required a juridical foundation to ensure that those participating in the process of transformation would not later be punished (Solov’ëv 1989, 75; Zaslavskaja 1986). The fact that a *Rechtsstaat* formed part of the CPSU program as a means to arrive at a ‘human democratic socialism’ (Kudrjavcev &c 1990, 4; *Materialy* 1990, 77–80) enabled jurists, philosophers and others to address issues that belonged to philosophy of law (Nersesjanc 1988, 1; Nersesjanc 1989, 3, Kudrjavcev &c 1990, 6f, 11; Solov’ëv 1989, 75), a philosophical discipline that had not existed in Soviet times.⁴

Connected with this discussion was the rehabilitation both of bourgeois theorists like Montesquieu (Artamonov 1990; also Nersesjanc 1989, 3–7; Solov’ëv 1989, 63–73) and the Russian liberal legal philosophers of the late nineteenth and early twentieth centuries like Bogdan Aleksandrovič Kistjakovskij (1868–1920),

who stressed the importance of rule of law, insufficiently acknowledged by the Russian *intelligencija* (Copleston 1988, 21f; Kistjakovskij 1990; Kistjakovskij 1991; Skakun 1990; Šamšurin 1990; Nersesjanc 1989, 3; Walicki 1992).

A major figure in this discussion was the jurist Vladik Sumbatovič Nersesjanc (b. 1938), to whom is ascribed the reintroduction of the distinction between right [*pravo, ius*] and law [*zakon, lex*] in a book, published in 1983, when there was no visible sign of *perestrojka* yet.⁵ This distinction is essential, because it is presupposed in any judgment of whether a given law is right or not:

... a law (in the broad sense of the term, including all officially recognized norms and sources of prevailing right) both can and can not correspond to right (such is a 'rightful law' [*pravovoj zakon*]), and can also diverge from it as in the case of a mistake by the legislator or in cases of abuse of the legal form (Kruglyj stol 1990, 21; Nersesjanc 1988, 21).

Nersesjanc's chief source of inspiration is Hegel, whom he rightly defends against accusations of being an apologist of Prussian monarchy and a trailblazer of totalitarianism:

Hegel's state, as a moral unity [*npravstvennoe celoe*], not only disposes of an absolute right with respect to its component parts, but is itself right in its developed totality, too; it therefore is a *Rechtsstaat*, not only as a wish and an ideal, but as idea and reality [*dejstvitel'nost'*] (Nersesjanc 1989, 6).⁶

Another prominent participant in the discussion, the philosopher Erikh Jur'evič Solov'ëv (b. 1934), is known especially for his unqualified emphasis on the central place occupied by the notion of the human person [*ličnost'*].⁷ His contribution to the theme of *Rechtsstaat* and human rights is in line with this *ličnost'*-problematic: his point of departure is the relation between individual (citizen) and collective (society, state), and his main source of inspiration is Kant (Solov'ëv 1989, 67, and idem, Kruglyj stol 1990, 4f.). By opposing the idea that society is "some kind of "super-organism"" rather than "the rich variety of individualized human beings" (Solov'ëv, 1988, 50), as well as the idea, alien to Marx and Engels, that history is "some separate personality, using man as a means to achieve its own goals" (op.cit., 51), Solov'ëv arrived at a conception of the *person* as the natural subject of *unalienable rights* (Solov'ëv, Kruglyj stol 1990, 6).

Both Solov'ëv and Nersesjanc thus stressed the distinction between law and right, thereby opposing current Soviet legalism.

However, in the case of Nersesjanc the final realization of right is the *Rechtsstaat*, whereas for Solov'ëv state and individual remain separate entities, standing in a balanced relation to each other in civil society. It is no surprise, in the light of recent Soviet history, that in a country with an age-long tradition of absolute state power, during which rights and freedom were a *gift* rather than a *right* (Kudrjavcev &c 1990, 10), stress is on the protection of individual rights against state power by imposing limits on the latter (Znamenskaja &c 1988), and on the need to 'elevate the citizen to the position of equal partner of the state and its organs' (Kudrjavcev &c 1990, 8).

One of the distinctively new elements in the discussion was the rejection of the standard Marxist thesis of the class nature of bourgeois law (Koval'zon, Kruglyj stol 1990, 28). Moreover, bourgeois law, which came into existence in the period of rising capitalism, was heralded as an "everlasting democratic achievement" (Solov'ëv 1989, 73; cf. Koval'zon, Kruglyj stol 1990, 28). Several authors argued that the conception and realization of civil society and *Rechtsstaat* could be linked historically to the rise of the third, middle estate [*tretij sloj*]. This already points to the paradoxical situation in the USSR: would it be possible to create a *Rechtsstaat* when the natural basis of that state is absent, and should come into existence *within* it?

As to the content of the concept of a *Rechtsstaat* there was little discussion. Nersesjanc gave a 'minimal definition': "the supremacy [*verkhovenstvo*] of law, the effectiveness of the rights and liberties of individuals, the organization and functioning of state power according to the principle of the separation of powers" (Nersesjanc 1989, 7; cf. Mamut 1989, 14). Elaborating somewhat, we can say that most authors agreed with Nersesjanc on a set of crucial points, which were by no means obvious in the Soviet or post-Soviet contexts:

- i. a first condition is that the laws be effective: "the coming-to-be of a *Rechtsstaat* ... is nothing but the transition from an administration of society by means of the directives of a bureaucratic machinery ... to rule exclusively on the basis of laws in the immediate and precise meaning of the word" (Vengerov 1990, 50, 60; cf. Nersesjanc 1989, 7, Zor'kin 1990, 98, Kudrjavcev &c 1988, 44, 49);

ii. legality, however, is a necessary, not a sufficient condition, since even rule by presidential decree can be fully legal (Nersesjanc 1989, 12). In order for legality to be *rightful legality* [*pravovaja zakonnost*] other conditions must be met:

- the constitution must be preceded by a declaration of human rights and liberties [*deklaracija prav i svobod človeka*] (Kudrjavcev &c 1990, 9–11, Znamenskaja &c 1988, 45);
- the primacy of the first-generation human rights (political, civil rights) over those of the second generation (economic, social and cultural rights) must be recognized (Kudrjavcev &c 1990, 9);
- there has to be effective control and supervision of the execution of laws by the state (Znamenskaja &c, 46; cf. Kudrjavcev &c 1988, 54, Zor'kin 1990);
- the state itself must be subordinated to the law as an absolute condition of the 'reality of individuals' rights and liberties' (Nersesjanc 1989, 7; cf. Kudrjavcev &c 1988, 52);
- finally, there must be a separation of powers [*razdelenie vlastej*] into legislative, executive, and judicial (Zor'kin 1990, 99f, Nersesjanc 1989, 7), a *Trias politica* that was advocated by the CPSU, too (*Materialy* 1990, 89);

iii. in the third place, a necessary condition for a *Rechtsstaat* is the development of a *socio-economic foundation*, summarized in the concept of civil society [*graždanskoe občestvo*] (Nersesjanc 1989, 12 e.a.), a society that can only come into existence at the expense of state power.

Although all participants in the discussion acknowledged that for the coming-to-be of a civil society two conditions must be realized, namely a *market economy* and *individual freedom*, there was, at this point, a contrast between, on the one hand, an 'economist optimism' (or scepticism with respect to it), and on the other hand the 'statism' of someone like Nersesjanc. Thus Kudrjavcev and Lukaševa stated that "socialism creates entirely new economic, social and political conditions, under which the formation of a *Rechtsstaat* is inextricably connected with the democratization of all societal life, with the realization of genuine popular power" (Kudrjavcev &c 1988, 45f), i.e. primarily with a transformation of government and state given a

socio-economic basis. Nersesjanc stressed that “without a free person that is protected by law it is impossible to arrive at the development of a civil society that could be the basis of a *Rechtsstaat*” (Nersesjanc 1989, 12), but he laid equal stress on the fact that it must be the just *state* that incarnates freedom (Nersesjanc, Kruglyj stol 1990, 14f), a statement that evoked the scepticism of those who saw the free individual primarily as a counterbalance for state power:

On the one hand, personal freedom corresponded to the ethics of free market and competition, on the other hand it became a pillar of civil society, the latter acting as a compensation for state power. (...) In this way, the autonomy of the person vis-à-vis the state is a necessary condition for civil society (Znamenskaja &c 1988, 46f).

Broadly speaking, an antithesis manifested itself between a ‘Marxist-Hegelian’ position that stresses the historical conditions for a *Rechtsstaat*, e.g. the fact that it is only now that the USSR is a “sufficiently highly civilized society” (Kudrjavcev &c 1988, 47), and a ‘Kantian’ position that advocates the natural and eternal character of individual human rights.

Despite these differences, individual autonomy and market economy were generally regarded as pillars of civil society. However, citizens are not automatically autonomous individuals. More precisely, subjects of a state, however legal it may be, are not automatically citizens, they also must be able to and have the courage to act that way. The specific problem of the late Soviet and post-Soviet situation in this respect appears in full if one looks at the *subjective* and *inter-subjective* side, comprising legal consciousness, legal culture, and legal ideology [*pravovaja ideologija*]. The most vulnerable spot in the development of a *Rechtsstaat* in Russia is probably the absence, among broad layers of the population, including the *intelligencija*, of consciousness of rights, of knowledge of and trust in actual law, of respect for it rather than fear. The presence of traditions that were formed by ages of suppression and arbitrariness was recognized as a problem of the first order by, among others, Znamenskaja and Razbaš, who wrote in 1988:

The political culture of a nation is the product of a protracted spiritual development. In the West, the ideas of humanism, personal freedom, and self-esteem of the individual found support in religion and in the very nature of the capitalist mode of production, whereas our national democratic traditions have developed under

different conditions. Orthodox religion with its spirit of conciliarity [*sobornost'*], i.e. collectivism, the communal form of agriculture [*obščinoe vedenie khozjajstva*], and finally feudal law, the moral consequences of which we have not overcome to the present day, not to mention more recent periods of personality cult and stagnation – all this contributed to the development of totally different visions of man and of his position vis-à-vis the state (Znamenskaja &c 1988, 50f).

And yet, according to Zor'kin, it is these powerful traditions that have to be counteracted in order to establish a civil society, i.e. a society of citizens who are well aware of their rights:

It is impossible to fight violation of justice, including totalitarianism, ... unless the inner world of man revolts against it, unless broad layers of society realize that it is an evil, and adopt an active attitude that is oriented towards overcoming it (Zor'kin, Kruglyj stol 1990, 23).

Law must be cultivated, a *legal culture* must be brought into being: respect for the law, knowledge of it, “an attitude towards law as towards an everlasting social value, without which the values that pertain to the socialist system – social justice, humanism, freedom, equality, *glasnost'*, collectivism, other democratic ideals and principles – cannot establish themselves” (Kopejčikov &c 1990, 32, 28; cf. Kudrjavcev &c 1990, 7).

The need to stimulate and ground a culture of law implies a ‘re-education’ of the citizenry, esp. of civil servants, “in a spirit of recognition of the supremacy of the law, of the unconditional priority of justice and legality,” which requires the introduction of “a new moral-legal category ... that of the political reputation of a statesman and party-official” (Balgaj 1989, 39). If ‘politician’ is a profession, it is evident that one of Russia’s many deficits today is a shortage of professional politicians (Mežuev, Kruglyj stol 1990, 10). Further, the mere fact that liberal and humanist notions are prominent in theoretical discussions does not imply that “these new values will quickly and easily take root in the ideological consciousness of society” (Znamenskaja &c 1988, 49).

The subject of legal consciousness and culture leads to a delicate point: the idea of ‘legal ideology’ [*pravovaja ideologija*]. On the basis of a conception of ideology as a more or less coherent set of propositions (a ‘theory’), that organizes the commitment and activities of social groups and/or legitimizes some status quo resulting from such activity, and which fulfills this function in relative independence of the truth or falsity of those propositions,⁸ the idea

of a 'legal ideology' is not at all absurd. It would take the form of a coherent set of assertions functioning as a motivating and legitimizing factor, independently of the truth-value of these assertions, i.e. irrespective of the possibility of founding them in any conclusive manner. Nor is the idea of a positive ideological function of philosophy, viz. as an attempt theoretically to underpin a notion such as the inalienability of human rights based on human nature, deprived of meaning.

The recognition of the exigency to establish a market-economy as a *sine qua non* of civil society leads to the central difficulty of the entire discussion: is the political objective to humanize and democratize socialism, i.e. the striving for a socialist *Rechtsstaat*, compatible with the necessarily spontaneous, natural, and presumably 'wild', development of a market economy? Moreover, what would be socialist about such a *Rechtsstaat*? On this point, Solov'ëv and Nersesjanc, to take two token positions, gave clearly differing answers.

According to Solov'ëv, the scope of individual rights is an important parameter of social progress (Solov'ëv 1989, 79): a legal system that recognizes the so-called social human rights (the right to labor, leisure, education, medical care), is more developed and more democratic than one that merely recognizes classical, political human rights. From this perspective, the Soviet system appears upside down: it prided itself on its guarantee of economic and social rights (Vengerov 1990, 51), whereas classical human rights not only came in second, but were recognized only conditionally at that.⁹

According to Nersesjanc, in line with his 'minimal definition' of socialism (Nersesjanc 1990, 47), the difference between a non-socialist and a socialist *Rechtsstaat* consists of the presence or absence of private ownership of the means of production. But, however obvious this may seem, it merely shifts the problem to the question of a 'socialist market economy'.

The fundamental problem behind this discussion and the explanation of its apparent sterility is the problem of the spontaneity, or *Naturwüchsigkeit*, of historical development. The genesis of civil society in Europe and other parts of the world was a very complicated process with a momentum of its own, not projected or planned by any persons or institutions. In Russia, however, this same process

would have to be the aim of a political programme, one that is clear, convincing, and attractive in every respect. In a way, Russian history seems to be repeating itself: towards the end of the 19th century, the Russian *intelligencija* faced the question, perceived as highly urgent at the time, whether or not Russia had to go through a capitalist and bourgeois stage of development in order to become a socialist society, and whether or not the government should introduce or stimulate capitalism for that reason.¹⁰ Towards the end of the 20th century, the question reads thus: should a market economy be introduced or stimulated in order to create a civil society as the natural basis of a *Rechtsstaat*?

The existence of contemporary Western society, as well as the knowledge of the historical development of civil society, may appear as an advantage for post-Soviet theoreticians and politicians. In point of fact, however, it rather is a disadvantage, for every hypothetical factor, every supposedly critical moment in that process, inevitably becomes the object of choice and takes the form of a political option. If a free market economy must be established, then how quickly should that process take place, with which extent of political freedom, with which acceptable degree of social tension? Clearly, these are important and recurring political issues in Western society, too, but there they emerge against the background of an already established market economy and within the framework of a functioning democracy, which renders all political options corrective rather than constitutive.

The problem at stake here was formulated in all clarity by Kudrjavcev and Lukaševa:

Without economic freedom it is difficult to acquire political freedom, for the 'deprivatization' [*ogosudarstvlenie*] of property means the destruction of civil society and its institutions. (...) Human rights *must* develop in a *natural* way and on a sound economic basis [*italics mine, EvdZ*], in which the citizen acts not as an executor, alienated from property, of orders and commands ..., but as a proprietor [*khozjain*], who realizes his interests and needs in free exchange with other participants in economic processes. This is an absolute condition, not only to secure human rights, but also for the formation of a *Rechtsstaat*. (Kudrjavcev &c 1990, 5).

With respect to 'legal ideology', this problem is redoubled: if one is convinced that legal consciousness and legal culture are crucial factors in the formation of civil society and *Rechtsstaat*, and if one assumes (and hopes!) that theoretical positions may perform, in

one way or another, an ideological function in the sense that they support or stimulate the development of civil autonomy vis-à-vis the state, then the theoretical question ‘how does a civil society come about?’ gets entangled with the practical question ‘which theoretical position or perspective should one adopt in order to further that development?’

So, even if the ideas of a *socialist* market and of a *socialist Rechtsstaat* are dropped, as they were in subsequent years, the problem still remains: the desired development is not something to achieve, but something that has to be allowed to happen. The choice thus is that between allowing or hindering a process, the consequences of which cannot be foreseen, making it impossible to determine whether, to use an expression of Milton Fisk, it “might not lead to a Mexican disaster rather than to a US success” (Fisk 1991, 48).

The choice of theoretical positions by Russian intellectuals at this stage of late Soviet history was determined also by the social position of the theoreticians themselves. Apart from its theoretical importance Nersesjanc’s *étatizm* also has an emotional value, and hence a practical effect that differs from that of the individualism and ‘moralism’ of someone like Solov’ëv. The manifest preference for a ‘Kantian’ rather than a ‘Hegelian’ position, and for a self-confident and militant humanism,¹¹ seem to be natural reactions of theoreticians who are themselves citizens, too.

However understandable and sympathetic this ‘spontaneous humanism’ may be, it is not only theoretically problematic in the era of post-humanism and post-modernism, it also, on a practical level, risks subordinating – this time voluntarily – theoretical values to their hoped for practical effect. An ideological function of philosophy is not an evil *per se*, but it becomes a relative evil insofar as it excludes independent, non-committed research. Aleksandr Sergeevič Panarin (b. 1940) was right in this respect when he made a plea for the autonomy of science vis-à-vis state and party (one may skip the party today), as well as for an independent position of philosophy and the social sciences vis-à-vis civil society (Panarin 1990, 129f, 134).

The discussion itself has come to an end, at least among philosophers. This, however, does not mean that it was pointless: it reflected the objective and structural problems of late Soviet society. While philosophy had previously been a 'symptom' of Soviet reality in the first place, it now proved to be its 'traumatic consciousness'. This was a first, important step towards an autonomous position of philosophy within society. The next step would have to be a transition to a critical 'diagnosis' of social and political reality, including the reality of philosophy itself, a transition that is still far from completed.¹² The final and decisive step, 'therapeutic' in an indirect manner, will come about when philosophy claims its own 'civil rights', no longer caring about its positive contribution to civil society and *eo ipso* becoming part of it.

The generally abstract nature of the discussion on rule of law and human rights in the USSR and post-Soviet Russia seems to justify the conclusion that such discussions, though very important for the development of political and legal consciousness among the participants, have very little direct effect. The well-known Georgian philosopher Merab Konstantinovič Mamardašvili (1930–1990) hit the nail on the head when he suggested:

We ought to start doing small and slow things, instead of fighting all-out for, say, Georgia's independence. (...) We have to start at a local level. Set up a school tomorrow. . . . Start breaking through those vertical structures which, almost mathematically, all end in Moscow. . . .¹³

It remains to be seen whether the legal conceptions of Russian philosophers and other intellectuals, sensitized by their experience with the Soviet system, can compensate for the weakly developed legal consciousness of large parts of the Russian population. The average citizen still seems to regard himself as an object rather than a subject of law, a potential victim of the state rather than a relatively autonomous member of a civil society (Znamenskaja &c 1988, 51). When I presented my account of the above discussion to an audience of Russian philosophy teachers, their most forceful reaction was: "Rule of law and civil society are wonderful things, but not for us; what we need is a harsh dictatorship that obliges the poor to remain poor so long as necessary." If Anatolij Vengerov was right that the establishment of a *Rechtsstaat* presupposes the demolition, not the perfection, touching up, or cosmetic repair of the state

machinery (Vengerov 1990, 62), then it is evident that this machinery will have to demolish itself to begin with. Not only did this process of self-destruction not take place,¹⁴ it also is at odds with the call for a powerful state to protect the many victims of 'wild capitalism'.

HISTORY REGAINED? RUSSIAN REACTIONS TO FUKUYAMA

This last remark, by one of the "thousands of instructors and theoreticians in scientific communism (who) know nothing but the dogmas of mythologized Marxism, and (who) are only capable of propagating these dogmas" (Nikiforov 1990, 127), points the way to my second topic. A few years ago, when the walls were tumbling in East Europe, democracy was making its way in Latin America, and market economy was spreading in Asia, the surface of Western public opinion was rippled by Francis Fukuyama's 'End of History', first the article in the semi-official *National Interest* (summer 1989), then, in 1992, the book with the even more provocative title *The End of History and the Last Man*. Fukuyama's main source of inspiration was Hegel's philosophy of history, mediated through the French Hegel-scholar and diplomat Alexandre Kojève.

Briefly, Fukuyama's argument runs as follows. Human history has been marked by a struggle between different ways of organizing society, including economy and politics. This has not only been a struggle of economic or political forces but also, and even primarily, a struggle of ideas and ideologies. The intrinsic goal of this history is freedom, regarded as the capacity of humans to be free, i.e. self-determining (in opposition to nature's determination), and to organize their social life in such a way as to realize that freedom. According to Fukuyama, the opposition between Communism and Democracy was not only a relative opposition, since in the end the 'alternative' systems served democratization in backward countries (Fukuyama 1992, 67),¹⁵ it was also the last stage in a historical struggle. The breakdown of the Soviet system corresponds historically with the global victory of market economy-cum-liberal democracy. The main rival ideology, Marxism-Leninism, has been defeated, and there is only one serious candidate for human social order left. In this sense, then, history has come to an end, as there will never be a superior system. The struggle of ideas has ended,

history now merely becoming the process of reality moving toward the realization of the only remaining idea.

Fukuyama's position was quickly recognized, by Western intellectuals, as profoundly ideological itself, if not direct US government propaganda. Perhaps it was discarded even too quickly and easily. In the first place, Fukuyama's stance does reflect the general position of Western governments and citizens – we *do* look at Myanmar (Burma) with the idea that they are 'not yet' where we have 'already' arrived (Fukuyama 1995, 32) – and thus presents an important case for an analysis of Western 'social consciousness'. In the second place, the fact that Fukuyama's theory performs an ideological function does not necessarily affect the theory itself: it may still entail valuable insights, it may be open to refinement, and it may, last but not least, be true. I cannot think of any *a priori* reason why the mere fact that a theory suits some political practice would discredit that theory, or confirm it for that matter.

It is clear that from a Western perspective the late USSR presented a major test-case for Fukuyama's argument, and the failure of subsequent Soviet and Russian governments to make a smooth transition to market economy and liberal democracy can easily be thought to refute Fukuyama's position, or at least make it problematic. To be sure, this failure does not affect the core of the Hegel-Kojève-Fukuyama thesis: it merely implies that the end of history has not yet definitively come about world-wide, not that this end itself is different from what they claim it is.¹⁶

From a Russian perspective things look quite different, for the issue immediately turns into the age-old debate about whether Russia should follow the Western way or find its own road, linked to some kind of *svoeobrazie* or *rossijnost'*. A translation of Fukuyama's article appeared 1990 in *Voprosy filosofii*, with an interesting commentary by Jurij Aleksandrovič Zamoškin (1927–1993).¹⁷ During the *perestrojka*-era and after, a strong trend in the USSR/CIS/Russia held that the transition to a market economy should be made as quickly as possible, as is testified by the 1992 dialogue in *Put'* by Fukuyama and the political scientist and Yeltsin-advisor Andranik Migranjan. The latter is an advocate of an authoritarian transition from totalitarianism to democracy (Fukuyama &c 1992, 234), and showed himself to be more radical and optimistic than Fukuyama,

who pointed out that market economy and democracy must develop 'from below', given the evident risks of authoritarianism:

If you create a strong state in order to destroy the old state, who will give you a guarantee that the new state will serve democratic goals? Today you try to use that state in order to create a chance for free economic activity to spread. But while you are attaining that goal, you create a new apparatus. And at the head of that apparatus a totally different person may turn up. And that will present a greater threat to democracy than any more decentralized system, when power is based on an equilibrium between different institutions (Fukuyama &c 1992, 238).

In connection with the vehement debate over the fate of Marxism in Russia, Vadim Michajlovič Mežuev (b. 1933) added a cultural element to this historiosophical argument. He stated that the socialist experiment in Russia had been a failure from the outset, due however not to socialism or Marxism, but to Russia's immaturity: 'The experience with the development in our country after the October revolution justifies misgivings about the possibility of socialist reforms in a pre-civilized or early-civilized stage of development of society, or, as we used to write, "passing by capitalism [*minuja kapitalizm*]."'¹⁸ Mežuev took the next step, when he included Marxism in the global process of civilization:

... without the Marxist or, more generally, the social-democratic and communist idea, capitalism would not have become what it is today. Like any dynamic and developing system, civilization absorbs a moment of negation and critique into its very development. ... With respect to it [to civilization, EvdZ], Marxism fulfills its historical task by furthering its democratization and humanization. ...'¹⁹

This may well be true with respect to Western society, but then one should remember that in the West socialism existed, and continues to exist, within the framework of civil society and liberal democracy, whereas in Russia these were annihilated, if they ever were alive.

Nersesjanc went one more step further and explicitly opposed Fukuyama (Nersesjanc 1993, 13) with his position that there can be no return to capitalism, because that would mean to run against the objective course of history. Despite all terror and tragedy, socialism has fulfilled its historic mission, viz., the abolition of private ownership of the means of production. Being the negation of capitalism, socialism has negated, along with private property, bourgeois law with its merely formal equality of all in favor of *real* equality. Today, the negation of this negation must be accomplished, in the sense of a restoration of formal equality before the law without a restoration

of private property, sublating both to a higher level by adding what Nersesjanc calls 'civil property', a general right of every citizen to an equal share in 'desocialized' socialist property; on top of that basic property everybody may enrich himself according to his abilities and possibilities (Nersesjanc 1990, 48ff). This, he holds, would not only be more just than the present situation, in which the state overnight has turned itself into a major proprietor by treating socialist property as state property, it would also be the basis for progress and freedom, i.e. for human civilization as such. Capitalism should follow this path, too, but it can do so 'passing by socialism [*minuja socializm*]', since "the rough labor of history has already been done" (Nersesjanc 1993, 12). The new social formation, post-socialist as well as post-capitalist, is called 'civilism' [*civilizm*] by Nersesjanc (Nersesjanc 1990, 56, and idem 1993, passim).

Clearly, the development of uncontrolled capitalism in Russia has already nullified the practical chances for any such socialist or civilist legal order, but these notions retain their importance as they reflect the typically post-Soviet outlook of many intellectuals. Moreover, the fact that Russia has definitely not become the kind of liberal democracy-cum-free market economy orthodox Fukuyamians might dream about, seems to justify the expectation that these or similar conceptions will be put on the agenda again in the near future.

Nersesjanc's position fits into the basically Hegelian scheme, also adopted by Marx and by Fukuyama, even if they give it a different content. Several points can be made. One could 'accuse' Nersesjanc of filling the traditional scheme of historical materialism with a new content, the form being retained while the matter is replaced; but one could also agree with Nersesjanc that a transition to a Western model is not *automatically* Russia's only or even best choice, and one might praise him for at least suggesting a way out of the dilemma-like choice between *dikij kapitalizm* and one or the other variety of 'Russkaja ideja'.

The point I want to stress, however, is that Fukuyama is right with his insistence, against Migranjan, on the fact that the development of a market economy, a civil society, and a democratic political order must take place primarily *from below*, and that all that can be done from above is the establishment of a set of necessary, but not sufficient conditions that allow for these developments to take place:

a legal system, public order, a state monopoly on violence. It is a matter of creating a place where things *may* happen, i.e. a matter of negative freedom (absence of barriers). A further necessary condition is the capacity of individuals or groups within society to act as free citizens, to have the confidence that their rights will be respected, that judges will be neutral, and that it will make sense to call upon the legal system instead of turning to organized crime when their partner in business is not willing to pay. In Russia today, neither of these conditions seems to be fully realized, and the crux of the matter is to be found on the subjective level, in the will to act as free individual human beings, helped in this by a legal consciousness and legal ideology.

This in turn has very much to do with the distinction I made, at the outset of this paper, between form and matter. Soviet ideology and the Soviet legal system were 'material' in nature: they told people *what* to think and *what* to do. The ideology and legal system of a civil society, by contrast, are formal rather than material: they tell people *how* to deal with conflicting ideas and interests, and *how* to behave in politics and economy. Whatever road Russia will take, this difference seems to be of critical importance. The essence of *pluralism* is not that there are many positions, nor that there should be, nor even that they have to be tolerated at all costs, but that a plurality of positions or interests is legitimate (even if there actually is only one position), because there is a *formal rule* that says that any position or interest is legitimate (precautions regarding criminal acts or attempts to undermine the legal order itself left aside).

And this equally applies to ideology. The general ideology of Western society is *pluralist*, particular positions like liberalism, social democracy, christian democracy, and even fascism, but also ecologism, feminism, anthroposophy, or consumerism having their legitimate place within that order. In other words: this ideology is *formal*, too. More precisely, there exists a general, formal ideology, based on the idea of pluralism as a value in itself (or at least as the lesser evil) that explicitly leaves room for an unlimited variety of 'ideologies', i.e. of theories that function ideologically in motivating people in what they do or help them account for what they have done, or again enable them to legitimize a status quo. Ideas do motivate people in this situation, but they can be very different in nature.

CIVILIZATION AND IDEOLOGY

This leads to a third and last topic, the attempt by Nelli Vasil'evna Motrošilova (b. 1934) to let certain ideas *work* in the present situation in Russia, i.e. in my terminology, to make philosophical ideas perform a positive ideological function. Motrošilova was one of the leading Soviet historians of philosophy, and today is one of Russia's leading philosophers (if that notion still applies at all), who has done much for the revival of philosophical culture. Western readers were familiar with her work mainly through a collection of articles on the history of Western philosophy, selected and edited by Motrošilova, that appeared in Germany in 1986, and that was reviewed favorably.²⁰ To the small group of Western 'philosophical sovietologists' who more or less systematically kept up with Soviet philosophical literature in the original, she was further known as the author of the only adequate Soviet study on phenomenology for a long time,²¹ and of an unorthodox study on Hegel.²²

Like Solov'ëv and Mamardašvili, Motrošilova is member of the generation of the 1960s – the *šestidesjatniki* – who, having received their philosophical training during the relatively liberal period of 'thaw', tried to preserve a certain level of philosophical culture within institutionalized and ideologized Soviet philosophy.²³ Under Soviet circumstances, to be a historian of philosophy was one of the few possible ways to be a philosopher. In more recent publications, Motrošilova appears no longer primarily as a historian of philosophy, but as a historically oriented philosopher who turns to the present problems of Russia. Her aim is not to *analyze* the actual situation in Russia – a philosophical *Aktualitätsanalyse* – but *to act upon* that situation through the elaboration and 'propaganda' of the idea of civilization. Her objective is to counteract the threatening decline of human civilization on a world-wide scale (Motrošilova 1991, 3), and to bring Russia back to the mainstream of that civilization after its Soviet period (12).

There is remarkable continuity in Motrošilova's work: a straight line runs from her investigations into 16th and 17th century anthropological conceptions,²⁴ through her study of the social-historical roots of classical German philosophy, to the theme of humanism and civilization in her more recent work. The heart of this line is to be found, I think, in the profound and reflected conviction that

philosophy is *part* of historical reality (Motrošilova 1991, 8f.). It is formed and influenced by it, but not in a passive way: it is a *factor* in the historical process, i.e., in the further development of society and civilization. This conviction determines not only the theoretical approach present in Motrošilova's work, but also the goal of her theoretical practice. In other words: certain theoretical positions are consciously turned into action by someone who knows which role these positions have played in a historical development that Russia should urgently hang on to. Taking up the the "moral responsibility of a historian of philosophy" (Motrošilova 1991, 5), Motrošilova tries to do herself what she has seen, in her historical studies, others engaging in, and seeks to deploy the results of her research into the history of philosophy to help resolve Russia's 'lack of civilization':

... my choice is to present to the reader a history of philosophy centred around ... the problem of problems: the laborious coming-to-be of Civilized Man, and, consequently, around the ideas of philosophers who made a particular contribution to the birth, development and defence of universal humanistic values (Motrošilova 1990, 191f).

This approach would be one way to civilize

our Homeland, a country of the most elevated spiritual culture, of very rich and pluriform traditions, enormous creative potentials, and in that respect a civilized country, [which] in other respects lags more and more behind contemporary standards and the high level of civilized being attained already (Motrošilova 1990, 190).

In 1990, Motrošilova investigated the ways in which classical German philosophy was *conditioned* by its epoch as well as the ways in which that philosophy, *by virtue of* its understanding of how it was related to its epoch, was one of the factors in *making* that epoch. Investigating the history of philosophy, she tried to develop a theory of the "general mechanisms of the socio-historical conditionedness of philosophic knowledge" (Motrošilova 1990, 4). In 1991, she turned this theory into practice, trying to make ideas, taken from the history of philosophy, *work* in the actual historical situation, starting from her historical understanding of how ideas *have been working*. This turn was already announced in 1990:

The present investigation is an attempt at a new answer to this necessity of theory, which has fully practical and highly actual aspects as well. To understand classical German philosophy in the context of social development, in connection with the *dialectic of history*, means to turn to the clarification of more general mechanisms

of the active influence of philosophy on its own epoch and on history as a whole. Such a clarification is urgently required from philosophy and culture in general in our time, fraught with unprecedented dangers for mankind (Motrošilova 1990, 5).

In the course of her historical investigations, Motrošilova has developed a theoretical model of the interrelation [*vzaimosvjaz'*] of philosophy and the historical development of society, distinguishing three levels: civilization – epoch – historical situation. This model, receiving some theoretical elaboration in her book on classical German philosophy (Motrošilova 1990, 6–10), is illuminating, and shows what one might call a realist interpretation of the Hegelian concept of *epoch* as a phase in the development of World Spirit, renamed ‘civilization’. The most general level thus is that of *civilization*, “the dimension of the contradictory, spasmodic development of mankind since barbarianism” (Motrošilova 1990, 6), a *universal* and generally *progressive* movement. This development takes place as the succession of *epochs*, “large-scale stages in the development of human civilization” (Motrošilova 1990, 9). Although the division of civilization into epochs is not strict, depending as it may on a choice of perspective (social-economic formations: feudalism, capitalism; cultural eras: Renaissance, Enlightenment; stages of technical development: industrialization, technological revolution), these concepts are traditionally Hegelian. However, Motrošilova introduced a third level, implied by Hegel’s notion of concrete existence [*Dasein*] but hardly elaborated in his philosophy, viz. the level of *historical situation*. At this concrete level of historical existence of philosophical activity, regional, national, social, and personal factors come into play.

In 1991, she summarized this theoretical model in a description of selected chapters from the history of philosophy (Motrošilova 1991, 9). But the same model can also help us understand what Motrošilova herself is doing. Human *civilization* has reached, in our epoch, a certain level, which, *because* it is attained in some places, is attainable for the world at large. This level of civilization – as a totality of ideas – is ‘at work’ in contemporary society. Our *epoch* is an epoch of vast technological possibilities and of an elevated level of possible social and economic well-being, of civil society, democracy, and freedom, but it is, at the same time, an epoch of nuclear threat, ecological disaster, mass violations of human rights,

and of an actual social life that falls way short of what is attainable. This singles out the *historical situation* of Russia: it is a part of the world that not only "... lags behind contemporary standards and the high level of civilized being attained already" but in some respects "lags behind *more and more*" (Motrošilova 1990, 190). In such a situation the role of philosophy, in spite of the fact that it is part of civilization at large, is *different*, and *must* be different from the role it has in countries that *are* more or less at the level of attainable civilized being.

The central theoretical notion that links Motrošilova's recent work with her previous work, is the basically Hegelian notion of 'working ideas'. For Hegel, a 'real' [*wirkliche, dejstvitel'naja*] idea was a 'working' [*wirkende, dejstvujuščaja*] idea; in Motrošilova's words: "Those philosophical ideas that are immortal with regard to their profoundest meaning ... have the quality of being "working" ideas" (Motrošilova 1991, 6). The working ideas brought to the fore by Motrošilova – freedom, democracy, justice –, are gathered under the umbrella of *civilization*. Motrošilova thus tries to *apply* to present post-Soviet Russia what she has learnt from her historical studies: that humanist, 'civilizational' ideas have worked in the genesis of modern civil society, exemplified by the West, but also by Japan (Motrošilova 1991, 23), and that they have not worked in some mysterious way, behind our backs, but through the concrete thoughts and actions of people, living in concrete social-historical situations.

What Motrošilova is trying to do is to *implant* in her readership the idea of civilization, and to develop it in order to facilitate Russia's "return to the road of world civilization" (Motrošilova 1991, 23). In this respect, she acts as an *učitel' naroda, a prosvetitel'* in the traditional sense. Personally, I feel inclined to think that this is not a philosopher's task: let others (politicians, writers, priests) produce ideologemes, and let philosophers critically examine those ideologemes (without having the illusion, itself ideological, of ever putting an end to ideology as such). However, Motrošilova's choice to let philosophy perform an edifying function is justified by *her* social-historical situation. Moreover, in presenting to her audience a number of independently thinking individuals as the 'heroes of her narrative', she implants in them the idea of free philosophical thought, too. Perhaps the lesson that can be learned from this is that

philosophers can come to an understanding of how philosophy is conditioned by the social-historical situation it exists in, and that this brings them to a position where they can try to act upon their own historical situation.

This is the strength of her position: she explicitly seeks to influence her readers in the spirit of civilization, and she has every right to do so in virtue of her standing as a scholar. At the same time, it is what makes her position 'risky'. The desire for civilization is so strong that perhaps both the author's and readers' eyes are blind to the fact that 'Civilization' is a concept that, if uncritically employed, is vague, and easily used in an ideological way, if there is no critical thought to counter it. The best example of the ideological use of the idea of civilization is the justification it provided for the colonization of almost the entire non-European world. Western 'civilization' brought disease, alcoholism, and near-extinction to 'uncivilized' peoples, a process still under way in South America, Australia, and Siberia. The normative character of the concept of civilization gets blurred by the fact that it appeals to the positive feelings one has about it. It is a concept with a strong 'ideological aptness', since it can easily motivate and legitimize human actions, regardless of whether what is presented as civilized can indeed be seen as such.

While the idea of civilization has an exclusively positive content (relating all negative aspects to 'barbarianism'), concrete civilization – states, groups of people, armies – may 'employ' this idea precisely because it is exclusively positive: there is nothing to say *against* it, which means that 'barbarianism' always has to disguise itself as civilization. Motrošilova seems to be well aware of this danger, when she states, displaying her Soviet experience, that "... they [the 'working' philosophical ideas, EvdZ] are, by the way, even capable of 'serving' those who take them as ready-made canons, the philosophical dogmatics of all times and nations" (Motrošilova 1991, 6), rightly pointing out that it is not only a *naive*, but also a *harmful* illusion to think wishfully that "somewhere behind a distant or near historical horizon a serene "bright future" awaits people ... " (Motrošilova 1991, 20). As not only Soviet history has shown, "massive barbarian relapses" (Motrošilova 1991, 19) are always possible, and to counteract these relapses is certainly a task of intellectuals, including philosophers. However, what is to be regarded

as relapse is never evident. Part of that endeavor is to investigate critically to what extent civilized society is true to its *own* idea, i.e. the ideas it professes (e.g., the idea of human rights), and this is a way to make those ideas *work*, but the same endeavor becomes uncritical when ideas like civilization, barbarianism, civil society, mankind, are taken as something *substantial*: even if they obtain, in the course of history, a life of their own, and in that sense transcend their concrete historical situation, they remain human *creations*, not *discoveries*.

Knowing, from historical studies as well as from their own Soviet experience that philosophy can only flourish under conditions of freedom – freedom of thought, i.e. lack of spiritual authority, to begin with, but freedom of expression, publication, and discussion, too – philosophers are ‘natural’ adherents of freedom and civil society. Now, since their activity can only be legitimized in terms of the ruling ‘ideology’ that corresponds to that civil society – let’s call it a pluralist, liberal ideology –, and since at the same time they are well aware of the fact that they live in a society that, to quote Mežuev, “does not even “smell of civilization”,”²⁵ or that, in Motrošilova’s words, ‘lags behind contemporary standards and the high level of civilized being already attained,’ philosophers seek to provide and stimulate the civilizational ideology that would bring their country to a higher level and, at the same time, would be the appropriate background for their own activity and status as philosophers. At this point, Motrošilova’s position displays the same paradox as does Russian society at large: the gap between a high level of cultural and intellectual development, and a low level of social, political, and economic development, which is acutely perceived ‘from above’, but has to be remedied ‘from below’. The best, if not the only ‘propaganda’ of civilization is its *act*, its reality, however limited in space and time it may be. Just as the only way to implement a market economy is to start producing and trading, and not by introducing it on a political level (the only things politicians can do is let it happen, relieve restrictions etc.), so the only way to let free philosophical thought develop is to be a freely thinking individual human being oneself, a point made in all clarity by Merab Mamardašvili (Mamardašvili 1989).²⁶

CONCLUDING REMARKS

In this paper, I have moved from philosophy of law, via philosophy of history, to the working of ideas in history, and from the abstract demand for rule of law and legal ideology to the concrete, conscious employment of civilizational ideas by individual philosophers. The three topics I have discussed can be taken together and linked with the 'ideological vacuum' often referred to by post-Soviet Russian intellectuals. The Soviet system was 'ideologized' in the sense of being permeated by an official, party- and state-controlled, obligatory, 'Marxist-Leninist' ideology, that was ideological at least in the sense of claiming to represent a scientific-philosophical world-view, motivating the Soviet people in all their political, economic, social, and intellectual activity, while in fact being a permanently adapted universal medium for the legitimation of the *status quo*. Moreover, this ideology was *material* in the sense of having a very definite content, viz. an allegedly true account of all natural and human reality. The disappearance of this ideology certainly created a vacuum. The question, however, is what it will be filled by: a similar ideology, of whatever content, or an ideology of a different, *formal* type?

The *horror vacui* of post-soviet Russia was pithily expressed by Vladimir Ivanovič Tolstykh (b. 1929) with the saying "A holy place is rarely empty [*svjatoe mesto pusto ne byvaet*]." ²⁷ There have been attempts to fill this vacuum: for example, in 1994 *Voprosy filosofii* published an essay by Nikolaj Alekseevič Kosolapov, entitled 'An Integrating Ideology for Russia: an Intellectual and Political Challenge'. ²⁸ But if in the above saying the present tense of the imperfective verb *byvat'* [to happen, to be present] is to make any sense, one may well assume that this vacuum has been filled already, only not by an explicit, positive, *material* ideology, but by a plurality of more or less elaborated, and more or less explicit ideologemes, including that of the ideological vacuum, gathered under the umbrella of a *formal* ideology of pluralism and freedom of thought. The *horror vacui* thus depends on the extent to which the self-proclaimed and carefully entertained Soviet conception of ideology is taken both as the ideological reality of the USSR and as *the* concept of ideology.

In the examples discussed one perceives the force of the image of a vacuum in the trend among Russian intellectuals to produce a new ideology in the sense of an elaborate, positive *doctrine*. At the same time, the intellectual activity of, e.g., Motrošilova already participates in a kind of ideology that belongs to civil society, realizing it while taking an advance on its realization. Here, too, it is basically a matter of freedom, and not simply of freedom of expression and discussion, but of freedom of thought, i.e. the subjective freedom to let one's thought take its course. But this means that one also has to relate freely to society and ideology. Put radically, one cannot contribute positively to society as a *free* person if one does not accept the possibility of disclaiming *all* possible social impact, whether 'positive' or 'negative'. The obligation or responsibility to produce a new ideology makes this very difficult. Moreover, in a pluralist society it is rarely if ever clear whether and how someone's ideas work, just as one can never predict what the ultimate effects of one's economic endeavors will be. This is at odds with the idea of the philosopher as a *prosvetitel' naroda*, an idea so dear to the Russian *intelligencija*, unless *prosveščenie* is understood precisely in the Kantian sense of 'emerging from man's self-incurred immaturity.'²⁹

Motrošilova's approach illustrates the tension between the 'Western' tradition of individual free thought, and the tendency, predominant in Russian and Soviet thought alike, to seek support for ideology in some epistemic authority, be it Christian Revelation, the genius of the *klassiki marksizma-leninizma*, or the tradition of humanist thinking. The immediate connection of Power and Truth is fundamentally at odds with the notion of civil society, which presupposes the coexistence and mutual recognition of different positions, that, in the end, cannot be founded in something else, and the recognition of the direct link between ideological phenomena and political or material *interests*, in however an idealized form they may appear.

It is, I believe, a dangerous illusion to think that one can develop a new material ideology *and* have something like a civil society. Which amounts to saying that civil society, as much as a free philosophical culture and a free market economy, is not something that can be created or introduced, but that has to come into existence as the result of the *unconcerted* actions of a *multitude* of individual human beings, including the ideological effects of these actions. And it is

only within the context of an already established civil society that 'integrating ideologies' can be proposed without running the risk of repeating recent history by filling old forms with new contents. Russia is perhaps a unique case in that it can *believe* that it is facing a historical choice, whereas other countries either 'just develop' according to complicated logics that historians and philosophers are still unravelling, or are simply occupied, colonized, or otherwise incorporated in world history. The tragedy of this situation is that many people, especially intellectuals, think they have to *choose* a road for Russia, while in fact they have to *wait* and *let happen*, and, in the meantime, engage in their proper trade, i.e. the production and critique of ideas and theories that may, but need not, perform a significant ideological function, not subject to their will in either case. What they 'ought to do' is allow themselves this freedom, and think against any kind of 'empire',³⁰ including that of Civilization.

NOTES

[abbreviations used: *VF* = Voprosy filosofii; *FN* = Filosofskie nauki; *ON* = Obščestvennye nauki; *SEET* = Studies in East European Thought; *SST* = Studies in Soviet Thought; *SGiP* = Sovetskoe gosudarstvo i pravo; *VAN* = Vestnik AN SSSR]

¹ For a more elaborate discussion see E. v.d. Zweerde, 'Van heilstaat naar rechtsorde: rechtsfilosofische thema's in de hedendaagse sovjetfilosofie', *Tijdschrift voor Rechtsfilosofie en Rechtstheorie* 1991, No. 3, pp. 177–198.

² In this manner, Nobel-prize winner Josif Brodskij was exiled for 5 years in 1964 on the accusation of *tunejadstvo* – after massive protest he was allowed to return to Leningrad in 1965, and emigrated to the USA in 1972.

³ Cf. the chapter 'The Human Rights Movement', in: M. Meerson-Aksenov & B. Shragin (eds.), *The Political, Social and Religious Thought of Russian "Samizdat"* – An Anthology (Belmont, Mass.: Nordland Publishing Company, 1977), pp. 179–232.

⁴ In the standard work on Soviet philosophy by J.P. Scanlan, 'philosophy of law' is shown to be part of social and political philosophy, i.e. historical materialism, 'the only fully monolithic and dogmatic field of Soviet philosophy' (Scanlan 1985, 224); in 1990, the editors of *VF* stated that 'presumably, it is difficult to find a ... field of theory that has suffered more and was deformed more thoroughly by the ideological and political actions of Marxist dogmatics' (Kruglyj stol 1990, 3).

⁵ *Pravo i zakon* [Right and Law] (Moskva: Nauka, 1983).

⁶ Cf. also V.S. Nersesjanc, 'Gegelevskaja dialektika prava: étatizm protiv totalitarizma [Hegelian Dialectics of Right: Statism versus Totalitarianism]', *Voprosy filosofii* 1975, No. 11, p. 145.

⁷ Solov'ëv, known for his biography of Luther (*Nepobeždënnij eretik* [An

Unbeaten Heretic] (Moskva: Molodaja gvardija, 1984)), was the author of the, at the time, unorthodox chapter on 'Ličnost' [The Person] in the new official philosophy-textbook of the *perestrojka* years: I.T. Frolov e.a. (eds.), *Vvedenie v filosofiju* [Introduction to Philosophy], 2 vols. (Moskva: Politizdat, 1989), vol. 2, pp. 550–584; for a survey of the *ličnost*'-problematic in late Soviet philosophy, cf. E.M. Swiderski, 'How the Category of the Person is Accommodated in Soviet Philosophy', in: L.K. Sosoe (ed.), *Identité: Évolution ou Différence? Mélanges en l'honneur du professeur Hugo Huber* (Fribourg: Éd. Universitaires, 1989), pp. 55–78.

⁸ The point that 'it is not essential for symbolic forms [that perform an ideological function, EvdZ] to be erroneous or illusory in order for them to be ideological' was rightly made by Thompson: 'By treating error and illusion as a contingent possibility rather than a necessary characteristic of ideology, we can relieve the analysis of ideology of some of the epistemological burden with which it has been encumbered since Napoleon' (Thompson 1990, 56).

⁹ The Soviet Constitution (*Konstitucija* 1988) warranted, in articles 40–47, the so-called second generation human rights, while art. 50 stated: 'In conformity with the interests of the people, and with the aim of consolidation and development of the Soviet system, freedom of expression, press, association, procession and demonstration are guaranteed to the citizens of the USSR.' Moreover, the articles about the rights, liberties, and obligations of the Soviet citizen were preceded by the general reservation that 'the use of their rights and liberties by the citizens may not be at the expense of the interest of society and the state, of the rights of other citizens' [art. 39].

¹⁰ An advocate of the necessity to let capitalism 'follow the natural path of development,' including a 'law-observing parliamentary state' was G.V. Plekhanov, the 'father of Russian Marxism' (Walicki 1992, 83).

¹¹ Equally manifest in the new philosophy-textbook, *Vvedenie v filosofiju* (Moskva: Izd. Polit. Lit., 1989).

¹² Critical social and political thought is extremely rare in contemporary, post-Soviet Russian philosophy; an example is presented by Valerij Podoroga, e.g. in an interview entitled 'Fenomen vlasti [The Phenomenon of Power]', *FN* 1993, No. 1–3, pp. 44–55; during *perestrojka*, faithful Marxists like Anatolij P. Butenko made attempts in the direction of critical analysis of surrounding socio-political reality, but this current seems to have fallen silent.

¹³ H. Smeets, 'Wij hebben in een soort druif geleefd [We have been living inside some sort of grape (interview with Merab Mamardašvili)]', *NRC Handelsblad*, 9 oktober 1990.

¹⁴ Cf., esp., Nersesjanc' vehement critique of the tacit appropriation, by the state and its representatives, of the previous 'socialist property' (Nersesjanc 1993, 3–14).

¹⁵ Cf. Kojève 1971, 436: 'Si la soviétisation de la Russie et la communisation de la Chine sont plus et autre chose encore que la démocratisation de l'Allemagne impériale (par le truchement de l'hitlérisme) ou l'accession du Togo à l'indépendance, voire l'auto-détermination des Papous, c'est uniquement parce que l'actualisation sino-soviétique du bonapartisme robesperrien oblige l'Europe post-napoléonienne à accélérer l'élimination des nombreuses séquelles plus ou moins anachroniques de son passé révolutionnaire.'

¹⁶ As Fukuyama pointed out recently, the statement about the end of history is not an empirical statement, but 'a normative statement based in crucial ways on empirical evidence' (Fukuyama 1995, 29): 'Empirical fact alone cannot prove or disprove its validity, except perhaps at the very unlikely extremes (that is, the complete disappearance of liberal democracy, or the total universalization of it, or the appearance of an angel announcing the millennium). Empirical fact does not and cannot arm us with a deterministic methodology for predicting the future. What empirical fact can do, on the other hand, is to give us a greater or lesser degree of *hope* that the statement is true' (30). Now, whether or not we find this construction convincing (I do not: either the normative statement is acceptable as true, and then empirical evidence cannot be relevant, or it does depend on empirical evidence – inductive backing – but then setbacks in the development of liberal democracy are arguments against it; the third possibility, which was, I think, Hegel's solution, is to make empirical development part of an intrinsically 'normative process', but this solution, one way or another relying on objective or absolute idealism, is not what Fukuyama opts for – indeed his Hegel is Kojève's 'anthropologized Hegel' (38)), and it is clear that Fukuyama does not claim a strong historicism for which actual developments in Russia and elsewhere would constitute a major problem.

¹⁷ F. Fukujama, 'Konec istorii [The End of History]', *VF* 1990, No. 3, pp. 134–148, Ju.A. Zamoškin, 'Konec istorii: ideologizm i realizm [The End of History: Ideology and Reality]', *VF* 1990, No. 3, pp. 148–155.

¹⁸ V.M. Mežuev, in: 'Kruglyj stol: Umer li marksizm [Round Table: Has Marxism Died]?', *VF* 1990, No. 10, p. 43.

¹⁹ *Op. cit.*, p. 45.

²⁰ N.V. Motrošilova (ed.), *Studien zur Geschichte der westlichen Philosophie; Elf Arbeiten jüngerer sowjetischer Autoren* (Frankfurt am Main: Suhrkamp Verlag 1986); reviews by A. Schaefer, *Philosophischer Literaturanzeiger* 41 (1988), Nr.2, pp. 160–162, H.E. Schiller, *Das Argument* 29 (1987), Nr.163, pp. 430–432, and E. v.d. Zweerde, *Zeitschrift für philosophische Forschung* 43 (1989), Heft 4, pp. 705–709.

²¹ N.V. Motrošilova, *Principy i protivorečija fenomenologičeskoj filosofii* (Moskva: 1968).

²² N.V. Motrošilova, *Put' Gegelja k Nauke logiki* (Moskva: Nauka, 1984).

²³ Cf. on the formation of the *šestidesjatniki*, F.T. Michajlov, 'Umer li marks v Rossii [Did Marx die in Russia]?', *Filosofskie issledovanija* 1993, No. 1, p. 87, or E.Ju. Solov'ëv, in the selected materials from the 'Umer li marksizm'-discussion, published in *SEET* 45 (1993), p. 39f ['Umer li marksizm?'], was published in *VF* 1990, No. 10, pp. 19–51, a selection from much more extensive material; other selections appeared in *Latinskaja amerika* 1990, No. 5–6, and in: *Mark-sizm: pro i kontra* (M.: 1992)); a German translation of Solov'ëv's contribution is E.Ju. Solov'ëv, 'Die Illusion des proletarischen Messianismus', in: A. Litschev, D. Kegler (eds.), *Abschied vom Marxismus; Sowjetische Philosophie im Umbruch* (Reinbek bei Hamburg: Rowohlt, 1992), pp. 48–59; a selective English translation can be found in *SEET* 45 (1993), pp. 1–133].

²⁴ See N.V. Motrošilova, 'Orientacii novoj ličnosti i ikh vyraženie v filosofii čeloveka XVII stoletija [The Orientation of a New Personality and its Expression in 17th Century Philosophy of Man]', in: N.V. Motrošilova (ed.), *Istoriko-filosofskij ežegodnik '86* (Moskva: Nauka, 1986), pp. 84–103, and idem, 'Učenie o čeloveke v filosofii épokhi rannikh buržuaznykh revoljucij [Theory of Man in

the Philosophy of the Period of Early Bourgeois Revolutions]', in: T.I. Ojzerman e.a. (eds.), *Filosofija épokhi rannikh buržuaznykh revoljucij* (Moskva: Nauka, 1983), pp. 481–575; for a discussion, see E. v.d. Zweerde, 'Discussion Review of *Istoriko-filosofskij ežegodnik 1986*', *SST* 37 (1989), pp. 30–32.

²⁵ V.M. Mežuev, in 'Kruglyj stol: Umer li marksizm?', *VF* 1990, No. 10, p. 45.

²⁶ Mamardašvili is keenly aware of the fact that any philosophical culture is empty and sterile if it is not based on the *act* of philosophical thought (which is not to deny that a lot of other elements are important, too).

²⁷ V.I. Tolstykh, in: 'Kruglyj stol: Umer li marksizm?', *VF* 1990, No. 10, p. 22.

²⁸ E.g., N.A. Kosolapov, 'Integrativnaja ideologija dlja Rossii: intellektual'nyj i političeskij vyzov [An Integrating Ideology for Russia: an Intellectual and Political Challenge]', *VF* 1994, No. 1, pp. 3–24.

²⁹ I. Kant, 'An Answer to the Question: What is Enlightenment', in: H. Reiss, H.B. Nisbet (eds.), *Kant's Political Writings* (Cambridge, London, New York, Melbourne: Cambridge, (1970) 1977), p. 54, translation of 'Beantwortung der Frage: Was ist Aufklärung?', in: *Schriften zur Anthropologie, Geschichtsphilosophie, Politik und Pädagogik I* [Wilhelm Weischedel (ed.), I. Kant, *Werkausgabe Band XI* Frankfurt am Main: Suhrkamp Verlag, 1977], p. 53 [Akademie-Ausgabe A 481]: 'Aufklärung ist der Ausgang des Menschen aus seiner selbstverschuldeten Unmündigkeit. Unmündigkeit ist das Unvermögen, sich seines Verstandes ohne Leitung eines anderen zu bedienen. Selbstverschuldet ist diese Unmündigkeit, wenn die Ursache derselben nicht am Mangel des Verstandes, sondern der EntschlieÙung und des Mutes liegt, sich seiner ohne Leitung eines andern zu bedienen.'

³⁰ Cf. V.A. Podoroga, 'Fenomen vlasti [The Phenomenon of Power]', *FN* 1993, No. 1–3, p. 55.

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