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Mikhail Galyatin

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Comparative American-Soviet Environmental Land Use Laws

A. A Soviet View

Mikhail Galyatin*

The topic of today's colloquium is Comparative American-Soviet Environmental Law and I will be discussing the relationship of land use laws to environmental protection. To highlight the differences between the United States and the Soviet Union, let us begin with a simple example: a comparison of academic degrees from the program of this conference. The degrees of Doctor and Professor are familiar, but we now encounter the degree entitled a Candidate of Legal Science. What is a Candidate of Legal Science? To answer this question the educational systems of the Soviet Union and the United States should be researched, compared, and a conclusion drawn. A Candidate of Legal Science is one who searches for something, for example, the academic degree. A Candidate of Legal Science in the Soviet Union is comparable to a Ph.D. in the United States. This underscores that unfamiliar facts should not be used to draw conclusions based on the familiar.

The same is true when comparing American land use law and Soviet land law. Unlike the United States, there is no zoning in the Soviet Union. Neither are there police powers or private property. Does this mean that there is nothing to compare? No, comparisons can be made. We will proceed by examining the essence of each nation's land use laws such as police power and private property.

Let us take property for example. The United States and the Soviet Union are quite different. Private property in the

* Candidate of Legal Sciences, Bureau of Environmental Protection and Rational Use of Natural Resources, Institute of State & Law, USSR Academy of Sciences.

United States is defined as a bundle of rights belonging to a person, an enterprise, or other entity. In the Soviet Union the land is owned by the State. Each has a completely different approach to defining property. In the Soviet Union, property has three major rights: the right of use, the right of transfer, and the right of enjoyment.

In the Soviet Union property is a relationship between the land user or person who works on the land, and the State. This is completely different than in the United States. In the USSR there is no such thing as a fee simple estate, where all rights belong to a particular person. The government and the State, one way or another, retain some rights, thus depriving the person of those rights. In the United States, not paying just compensation for the taking of property under police powers is a deprivation of Fifth Amendment property rights, which differs from the Soviet system.

In the Soviet Union there are land use rights, rights which belong to a land user. The land user must be a person, collective farm, or other legal entity. Because the property belongs to the State, the State defines what rights belong to a person using the land. From the State's point of view, there are six categories of land. Agricultural land allows a person the complete right to use land for agriculture purposes. It cannot be used for industry, recreation, or any other purpose. In the second category, there are urban and residential lands. Industrial and commercial lands comprise a third category. The fourth category of land is forest lands or lands of forest farms. The fifth, is land of the State water fund. These are the lands of both the shore and the river. The last category is the land of the State reserve. When a person uses urban land, agricultural land or forest land, he has enough rights to use it completely and rationally, fulfilling his aim.

The American system of zoning is analogous to the Soviet land use system in that both establish limits on use. In both nations agriculturally zoned land can be used only for agricultural purposes. Commercially zoned land is only for commercial use and recreationally zoned land for recreational use. In the Soviet Union there are only six zones; in the United States there are unlimited zones.

According to the Soviet Constitution, property is land owned by the State and common property of the Soviet people.¹ Citizens have the right of general use. A person can use farm land or any kind of land, unlike the United States, where private property is protected by trespassing laws. The United States does have a similar doctrine: the doctrine of public trust.

There are similarities between the two systems which can be used as the basis for some conclusions. American law describes land as a pyramid, starting at the center of the earth up to the heavens. Each piece of land is comprised of air rights, water rights, mineral rights, land rights and so on. There is no one single object; land is divided into different layers of rights.

In the 1920s the Soviet Union had legislation which dealt separately with air, water, and land. Property rights are now further divided into land ownership and land use. There is State ownership of land and State ownership of forests. Parallels between the U.S. and the USSR systems can be drawn. In each, when land is divided for different specific objectives a regulation concerning the use can be specified. Land use regulation can be more detailed, increasing its precision and effectiveness when dealing with specific objects such as air, water or land. Thus, there is a tendency by both the United States and the Soviet Union to deal with these problems in a similar manner.

This is only a general overview of the major directions where valuable results can be achieved. But what is the aim of this comparative research? At the beginning of the century, when western comparative law was developing, the Soviet legal system was not recognized. The Soviet legal system was not considered to be a unique system, but one based on French law. But in the 1950s and 1960s, after the widely known monograph of Rene DeVide (which stated that there is a Soviet legal system, a Socialist legal system), the Soviet legal

1. "State ownership shall be the common property of the whole Soviet people, the basic form of socialist ownership." *Konst. SSSR*, art. 11, *reprinted in* Butler, *The Soviet Legal System Legislation & Documentation* 6 (1978).

system was recognized as a unique system and one which must be researched and understood. However, comparative lawyers were only trying to find differences; the aim was to criticize the other system, to give advice on how the other's legal system should be developed.

Many lawyers believe, as do I, that comparative lawyers know everything about the foreign legal system but nothing about their own. We should take another step forward and use comparative law as a means for understanding our own legal system, using both the similarities and the unique laws behind each legal system.

The environments of each nation are both unique, yet share similarities. Likewise, the laws which govern each are similar in some aspects but differ in many others. Each nation's laws are being transformed by legislation and legal regulations. However, they can be compared, assisting in a better understanding of your own legal system and land use law. These developments are inspired by environmental concern and became possible because of the environmental consciousness of the public, the lawyers, and other people. Public hearings do not exist in the Soviet Union, but there is another mechanism for the public to participate in the decision-making process. It would be very useful to try to implement or to introduce such public participation in Soviet land law. In the Soviet Union the public has a right to participate directly in the land use decision making process after the decision is already made. Participation should be before a land use decision having environmental consequences is made. From this we see the general aim of comparative law in the environmental fields.