

Judith Armstrong

**Mikhail Borisovich Khodorovsky:
'The Truth and Fairness Will Prevail'**

'O Lord, how sad is our Russia.' Aleksandr Pushkin (1799–1837)

Very occasionally in your low-key progress through a relatively mundane life you stop short, face to face with someone who holds legendary status – for you. It could be the real live author you have long adored as a name on a spine; it might be your favourite opera diva, rock-star, football-player, even a politician you love to hate. These encounters are rare, and part of your own intimate history rather than the current rave. Most people would walk past your person of interest without even pausing.

Given my own professional life in a university department, the examples I offer of this phenomenon tend to have a Russian connection. One sprang up a couple of years ago, when an ad in the paper lured me to a music lecture given by the conductor son of a famous father. As I sat listening to the younger Solzhenitsyn's fluent American English, I could hardly believe that I was in the same room as, would be able to speak to, someone bearing that legendary name. Although he was Dmitri, not Aleksandr, and appeared quite solid, almost fleshy, I felt as though a mythical being had landed at 1 pm that day in the South Melbourne Town Hall. I did talk to him afterwards, but in a voice strangled by emotion.

Unfortunately not all legends emanate from the side of the angels. An earlier occurrence that made an equally deep but distinctly contrary impression was with a former Soviet lawyer responsible for the prosecution of the dissident writers Andrei Sinyavsky and Yuly Daniel, both of whom were arrested for books they had published under pseudonyms in the west. The show-trial in 1966 was held behind closed doors, but two Western journalists managed to penetrate the courtroom and report the proceedings – the ludicrous, trumped-up charges and the ruthlessly harsh sentences – to a shocked outside world. I gnashed my teeth both then and later, every time in fact that I taught Sinyavsky's work, but certainly I never dreamed I would one day encounter the apparatchik who had devised the prosecutor's case. Still less that, in his loud black-and-white striped suit,

enquiring about shops where he could buy presents (for women, nudge-wink), he would be a house-guest within my own four walls.

How could such an unlikely event come about? Quite simply, now that it was the nineties, and the Communist Party of the Soviet Union had been replaced by a new political system called, these days, ‘managed democracy’. (This term has been explicated by historian Dmitri Furman as ‘one where elections are held, but the results are known in advance; courts hear cases, but give decisions that coincide with the interests of the authorities; the press is plural, but with few exceptions dependent on the government’.¹) The former prosecutor, now elevated to the judiciary, was attending a legal conference in this country, and a professor of Russian politics who already had a houseful asked if I could put him up. I agreed, knowing only that the guest was a ‘distinguished’ lawyer holding an academic post.

I discovered the guest’s true infamy while wedged in next to him in the back seat of the professor’s car on a day-trip to Lorne; we were coming back by way of the You-Yangs so that the visitors could see the kangaroos. Politely enquiring about his career, I gasped when he brought up his famous most exploit.

‘What? You were involved in the Sinyavsky–Daniel trial in 1966?’

He nodded complacently.

‘But—?’ I stopped short of asking how he could have brought himself to do such a thing, retreating hastily to a prosaic question about the actual procedures.

No, he hadn’t read any of Sinyavsky’s books beforehand, but when appointed to his task he had been supplied with all of them, plus a quiet room in which to incarcerate himself for three days, reading every word and making stern notes.

‘But what was in those novels that you could accuse him of?’ I asked, knowing that even by Soviet standards they were satirical fantasies whose only ‘crime’ was to have been published abroad.

He pursed his lips and looked down his nose ‘There were a lot of coarse words in them,’ he answered primly. So – a combined total of twelve years hard labour in a Siberian camp for two writers whom the authorities simply wanted out of the way, no matter how flimsy the charges against them.

¹ As summarised by Perry Anderson, in the *London Review of Books*, 25 January 2007.

My stunned conversation with the legendary lawyer was like turning up a photograph of the bad old days. Show-trials have been done away with in the new Russia. Haven't they? But old passions die hard, and in any case no one needs any special knowledge to be aware of some disturbing happening. Even a magazine article had chattily described the lengths that three women – mother, wife and daughter – of the enormously wealthy but now imprisoned ex-oligarch Mikhail Khodorkovsky had to go to visit the man they continued to love and respect, although he was in prison. Maria Filipovna, Inna Valentinovna and Nastya Mikhailovna were allowed to make a visit of three days every three months, so long as they were willing to undertake a 106 hours train-trip from Moscow to Chita, in Siberia, followed by a 20 km taxi-ride, or an aeroplane flight and a nine-hour stopover, plus a 660 km taxi trip of seven to ten hours. Their great fear was that this 'privilege' might be rescinded. From interviews posted more recently on the web, you can learn that they are also fearful of being evicted from their house in Moscow's exclusive Apple Gardens, a settlement mainly occupied by business executives associated with Yukos Oil. Mikhail used to say that this 'English' style home was his favourite place for relaxing.

However, it appears that loyal family members are not the only people concerned for the safety of the former executive. Although he used regularly to be painted, like the rest of his money-smart crew, as a super-conman, there is now a vociferous band of righteous supporters all insisting that the villain is actually a victim, the guilt-free target of wicked plotters bent on bringing him down for their own greedy ends. And when even the *New York Times* refers to him as a maligned, 'visionary' entrepreneur, you would like to find out where he truly stands. Has some kind of secret moral conversion stirred the soul of one of the wealthiest men in the world?

The question is of course one of context as well as subject. Russia's transition from a command to a market economy has had to deal with financial swings ranging from bank failures to an oil and gas bonanza;² the handing on of Yeltsin's mantle to Putin has turned out to be confronting, in different ways, for both Russians and Westerners. But there could be no doubt in either of their collec-

² The words are Andersons's.

tive minds that the new president was a man who brooked no challenge to his definition of rule à la russe.

Then, on 2 July this year, from the other side of the world, came the announcement that President Bush had used his presidential powers to exonerate Lewis ‘Scooter’ Libby, the former White House aide, from a two and a half-year prison term. It was a clemency born from anger, Libby’s sentence resulting from an investigation into the leaking of the identity of a former CIA operative, Valerie Plame. The leak, as intended, also rebounded on Plame’s husband, who had dared criticise Bush’s Iraq policy. According to Mr Bush, the sentence meted out to his staff-member was ‘just too harsh’; and although his partiality enraged many, nothing and no one could overturn his action – not even the Speaker of the House of Representatives, Nancy Pelosi, who angrily condemned what she termed Bush’s condoning of criminal conduct. She was far from alone in her view, but the reprieve stood.

In the same month, many Australians cast doubt on Prime Minister John Howard’s method of solving the problem of aboriginal child abuse. Of course there is no suggestion that his policy is criminal, more that the action is heavy-handed and likely to arouse panic and terror in the aboriginal population of the Northern territory. But whatever the effect, Howard vowed to stand by his policy, because in this matter, he is bold enough to admit, *he knows he is right*. His self-confidence matches that of his American counterpart, as Australians saw again soon afterwards, when on Queensland’s Gold Coast the Indian-born doctor Mohamed Haneef was charged with supporting terrorism, and spent twelve days in detention without charge.

Yet in this latter case, Australian procedures showed their resilience. A large (‘amazing’ was another word that was used) number of ordinary people were shocked into protesting the action to the Law Council, both by telephone and email, and the press was openly critical of the measures taken by the Australian Government and the Federal Police. The Law Council president saw a clear connection between the Haneef case and a ‘bigger picture’ in which the ASIO legislation was permitted to erode long-established rights and presumptions. For the head of the Law Institute of Victoria, it was ‘big Brother – in the George Orwell sense.’

It seemed that the public was at last becoming aware of the message that civil rights lawyers had been trying to get over for some three years – that the so-

called defence of the free world might be tipping over into the sacrifice of the very freedoms that constitute those words. But we had not after all reached that pass. On 27 July the case against Dr Haneef collapsed.³ The government released him and two days later he was flown to his home in Bangalore, equipped with a re-entry visa but not, at that stage, a work permit, although this was granted later.

The Plame and Haneef cases are significant as minor straws flagging a worrying disregard on the part of national leaders for the checks and balances that are supposed to curb absolute power. Neither of them comes within a bear's roar of events in Russia, where the number of journalists that have been murdered (thirteen since Putin came to power) is but one of the indicators that, as English academic Donald Rayfield puts it,⁴ the President's men have 'total impunity' in a country reverting to a 'brutal and totally corrupt autocracy'. Meanwhile, he adds, not one figure in the (British) political establishment dares utter a word.

The arrest of Khodorkovsky four years ago, while a *cause* not nearly as *célèbre* as it should be, must at least be read as a cautionary tale, an ominous portent of what might happen to any individual in any country where the rule of law can be overridden. When Solzhenitsyn and Sinyavsky were literally sent to Siberia, in 1945 and 1966 respectively, there was little political presumption of human rights in Russia; since 1989, and particularly after the failed coup of 1991, they were supposed to be in place. Khodorkovsky's case, neither isolated nor typical, gives cause for doubt.

For those of us with shelves of worn paperbacks dating back to the nineteen-sixties, the faces of Solzhenitsyn and Sinyavsky live on through thumbnail photographs on back covers; but anyone wanting to see what Mikhail Borisovich looks like should turn to Google, which will oblige with several compelling portraits. He is a clean-cut, good-looking man, with short dark, now greying hair, close-cropped in the mugshots; square, rimless glasses frame intelligent brown eyes which in some of the photos still gleam with humour; and even though he is clean-shaven, the hint of a five o'clock shadow lurks above his wide, full-lipped mouth. Mikhail Khodorkovsky looks calm, ironic, engaging.

³ The Commonwealth Director of Public Prosecutions conducted a review of the case which admitted that his agency had put two errors of fact before the court, before withdrawing the case.

⁴ The distinguished Professor Emeritus of Russian and Georgian at Queen Mary College (University of London).

His extraordinary career, from commonplace origins to CEO of the second biggest oil company in the world, is not just the usual success story, but one predicated on factors the west would have understandable difficulty in grasping: they include the psychology of moral and political formation under a totalitarian system; the challenges inherent in setting up almost *ab initio* a democratic rule of law; and the embryonic ethics of business-development and profit-making in an incipient market society.

His fall demonstrates at a profoundly personal level how pitifully vulnerable to the Russian state even a powerful, wealthy and independent individual can find himself.

But let us begin with his rise.

The Russian oligarchs were an infamous group of seven (the others being Berezovsky, Gusinsky, Potanin, Abramovich, Fridman and Aven) who in the 1990s amassed money, assets and unforeseen power through their business acumen and uncanny ability to connect with the country's new political elite. 'Dizzy with success', to borrow Stalin's famous phrase,⁵ they piled up huge profits during the generalised rush to privatisation that followed the end of the Soviet régime. Khodorkovsky, presenting, arguably, as the most interesting of the group, certainly became the richest, although not the only one to end up in jail or exile when personal status clashed with the will of the government.

The background from which he emerged gave little hint of his future prowess. He was born in Moscow in 1963 to middle-class parents who lived in a two-room apartment and worked as engineers at the Kaliber factory, which manufactured measuring devices. Always a good student, he completed his tertiary studies at the Mendeleev Institute of Chemical Technologies, working on the science of rocket fuel. He graduated in 1986, attended the Plekhanov Institute of National Economy, a top economic management school, for two years, and took some part-time courses at Moscow's Institute of Law course because 'it was necessary to be able to understand and exploit decrees issued by government'. David Hoffman, author of *The Oligarchs: Wealth and Power in the New Russia*,⁶ gives a picture of the young Khodorkovsky closely studying the political system in order to

⁵ In March 1930 Stalin tried to slacken the pace of collectivisation with an article titled 'Dizzy with Success'.

⁶ David Hoffman, *The Oligarchs: Wealth and Power in the New Russia* (New York, Public Affairs, 2003).

understand its rules, adopt its camouflages, learn its weaknesses, and work it from the inside. He once told an interviewer, ‘it is possible to find loopholes in every law, and I will use them without an instant of hesitation’.

His mother, who had heard stories of the disappearance of many entrepreneurs after the liberties of the free-wheeling NEP period were declared unnecessary, is said to have been opposed to her son’s becoming a businessman; but, ignoring the obstacle of his part-Jewish background, Mikhail’s ambition was for a long time set on occupying the boss’s chair in a major Soviet plant. By the early 1980s he could see better opportunities in the growing black market, which was dominated by people from ethnic minorities unable to rise to the top in the Soviet system. Khodorkovsky began to acquire his first wealth by trafficking in jeans, brandy and computers, and laundering some of the profits, it is alleged, through the Russian mafia. The nuances of transition however demand that such allegations be interpreted: not only did the then President and former KGB chief, Yuri Andropov, turn a blind eye to the majority of such activities, some commentators assert that KGB protection was a necessary requirement the establishment of a black market that was actually its own surreptitious but deliberate creation, designed to build up a new class of private businessman.⁷ The KGB, whether as such or rechristened the FSB, is not necessarily of one mind with the government hierarchy.

In 1986, when Mikhail Gorbachev came to power and began liberalizing the Soviet economy, though without breaking his ties with the Communist Party, Khodorkovsky was already deputy chair of a Komsomol (Young Communist League) district committee in Moscow, and had begun using his knowledge of the currency regulations to encourage the members to implement a strategy of generating profits by mixing budget funds and cash-flow. When private business activities in the form of co-operatives were introduced, Gorbachev personally chose Khodorkovsky to head one of their earliest manifestations, the Centres for the Scientific-Technical Creativity of Youth. These were intended to stimulate scientific research at national institutions that had languished under Communism; productivity was to be increased by allowing researchers to receive an unheard of cash percentage of company sales. Khodorkovsky again availed himself of lax laws that allowed these ‘creative collectives’ to offer their services to state companies and institutions, and be paid in cash. According to his own admis-

⁷ Anton Surikov, independent security agent and long-time acquaintance of Khodorkovsky.

sion, he was soon conducting 'up to five hundred contracts for scientific research simultaneously', and employing up to five thousand people.

The following year Khodorkovsky spoke on the incentive of cash rewards for research sales at a conference for computer programmers. His words hit home to a young man in the audience called Mikhail Brudno,⁸ who excitedly reported that Mikhail Borisovich was talking about 'unimaginable things', and quickly introduced him to other ambitious young men. A loose group came together to form a tight team, one of whose aims was to search out further ways of turning non-cash budget funds, with limited use and value, into cash that the partners could spend as they thought fit. The French husband of one member provided an opening into Western markets, and the group began importing computer parts into Russia. Within a short time they had accumulated enough money to start a bank, the Commercial Innovative Bank for Scientific and Technical Progress, known as Menatep. One of the first institutions to be granted a licence by the Soviet government for private banking and hard-currency operations, it was early on charged with the transfer of payments to the victims of the Chernobyl disaster.

Of this period of Khodorkovsky's career, David Hoffman sketches a 'no-guilt' situation which would obtain until the late nineties. He writes,

To say Russian banks robbed the government would be technically incorrect, since most of the time what they did broke no law. You would 'have a banya [Russian sauna] session with your buddy at the Finance Ministry and they would put in \$600 million.' Until the finance ministry asked for its money back a few months later, you parked it in dollars or high-yielding ruble bonds, collected the exchange-rate gain or the interest, and watched inflation erode the ruble value of the principal you owed. There was no law against that.

Menatep also managed some government accounts, giving rise to the rumour that it was handling the vast wealth of the Communist Party. Brudno has said that although the bank never knowingly managed Party funds, it was impossible to rule out the possibility that some Communist Party companies, not identified as such, could be among its clients. Nevertheless, during perestroika it was again the KGB rather than the Party that looked to young men like those in Menatep to help them engage with the new economics. Commentators trying to delve into

⁸ Interviews with Brudno, a co-founder of Yukos currently living in Israel, have been published in several places.

Khodorkovsky's rapid climb acknowledge that even if he used some Komsomol or KGB money, he was always in independent control. Former partners have said that he was noted for meticulous planning, willingness to take major risks and an uncompromising belief that he was right. (Later interviews would allow the reader to interpret that as 'in the right'.) Christian Michel, a founder with Christopher Samuelson of Valmet, a Geneva-based global trust business which agreed in early 1989 to advise Khodorkovsky's group, goes further:

He set about his work like a maniac. The business was his life. Nothing was left to chance, and he was constantly checking every detail. He has one single passion: building an empire. People like this are unstoppable, or stoppable only by a bullet.

Valmet later held large shares in Menatep and organized the transfer of vast sums of money via its international networks. In return it gave its young protégés lessons in Western banking practices, which according to Brudno, they had not even begun to imagine. The first time they arrived in Geneva, Michel put them up in his own apartment; later they graduated to a low-cost rental apartment, and finally to a five-star hotel. Michel claims that he had to teach the group what a credit card was and how to use a chequebook.

I spent two weeks training the entire staff in Budapest... running through in basic detail how a bank works... how to read a balance sheet, how to conduct an audit, how to put internal control mechanisms in place, and how to provide credit facilities... They were fast learners. Perhaps too fast. Totally unaware of the norms, they reacted to advice that the auditors would simply not allow one of their projected transactions by requesting Mr Arthur Anderson to kindly reconsider...

At a time of territorial diminution for the Soviet Union, Bank Menatep grew dramatically, aided in 1989 by the contribution of a brilliant new recruit, Platon Lebedev, the only card-carrying member of the Communist Party and a genius at organisation. Another of the five directors, Leonid Nevzlin, was charming, artistic and in charge of communications with the government. Not only did they all complement each other, they lived in a compound that was virtually a commune. The wives chatted while the children played, and each family knew if another was receiving visitors. The husbands may or may not have trusted each other, but were united in not extending credit to anyone but themselves.

Their ties with the authorities were close. By the time Yeltsin was climbing onto his tank in 1991, Khodorkovsky was an advisor to the Russian government. While Boris Nikolaevich rallied the crowds, Khodorkovsky stood inside the White House with the future president's press secretary, who, armed with a gun, stood ready for a worst-case scenario. Soon after Yeltsin took office, Khodorkovsky was made a deputy minister for Fuel and Energy (1993–1994), while Menatep's wide achievements were recognised by the appointment of other past and present executives to various governmental posts. Khodorkovsky spent a brief stint in Europe, buying a flat in England and then selling it because he found English life didn't suit him. He came to the conclusion that he was a 'homebody', not a cosmopolitan, albeit one with a driver and a personal jet. In 1994 Menatep evolved into the investment company Rosprom, which continued the takeover of old industrial plants and became, like Khodorkovsky, himself, immensely wealthy. Both bought heavily into the state-owned Yukos oil company, which the government was keen to sell off, given that oil companies did not pay taxes and that it was widely, if erroneously, believed the Communist Party would win the 1996 election and re-nationalise. Instead, by 1997, Khodorkovsky was the boss of an enterprise whose market capitalisation had shot up to US\$6.8 billion.

Throughout this period Khodorkovsky was regularly accused of using gangster methods to override his competitors, but from 1999 onwards he adopted another course, consciously electing not to break the law, or any widely accepted ethical principle. This may have been because of a genuine change of heart, or it may simply have been prompted by the realisation that Russian methods were not acceptable to the West – a crucial factor in his ambitions. In any case, the two considerations are not mutually exclusive. Given the concentrated power of both the Tsarist and Soviet regimes, Russian law had visibly failed to evolve in parallel with the West. In very many areas, for example publishing, in which copyright had scarcely been heard of, such laws as did exist were simply inadequate to deal with the whole new situation. Rafts of regulations had to be passed as quickly as possible in practically every sphere of operation; grasping and implementing them were further hurdles. In the world of business in particular, many things considered inappropriate in the West took time to be legislated for, allowing lax attitudes in regard to insider trading, false advertising, arrangements with shareholders and so on, to remain the norm. Khodorkovsky would easily have been able to achieve his successes without fear of committing a transgression.

‘Before 1999,’ he said, ‘I did not break Russian law, but “anything else” (e.g. conformity to Western ethical standards) was not my concern.’ After that year he hired a PR firm to help him build investor trust; consciously adopting the ‘honesty, openness and responsibility’ that they advocated, he began implementing a new policy of ‘transparency’. In practical terms this meant installing a vertical management structure and a board of directors that included Americans and Europeans, paying out everything required, from taxes to dividends, and making all receipts available for scrutiny. He also shaved off his moustache, which improved his appearance, and became a tireless public speaker. As the main proprietor of Yukos, he argued, his greatest concern was to improve its finances and reputation, and thereby raise its market value; regardless of what he might have done in the past, he would from now on play it straight.

Is anyone in a position to judge where lay the pragmatism and where the moral conviction in his resolution?

In 2000 Vladimir Putin, newly elected to the presidency of the Russian Federation, called a meeting of the ever more powerful and rich oligarchs, at which he famously told them that if they would stop meddling in politics, he would turn a blind eye to the doubtful ways they had accumulated their wealth. Boris Berezovsky immediately left for London, while Vladimir Gusinsky exiled himself to Greece; but Khodorkovsky stayed on in Moscow and, the following year, established with a group of other Yukos shareholders the Open Russia Foundation. This was a philanthropic organisation whose mission statement set out its intention of facilitating Russia’s emergence as one of the leading world economies: ‘We are completely certain that this is possible if the country continues moving along the road of democratic reforms, strengthening civil society and stimulating the entrepreneurial spirit.’

The Foundation strove to be not just a donor but an ‘incubator’ of initiatives contributing to the social and economic progress of the country. Through an initial annual budget of US\$15 million – handled with a high degree of transparency – considerable sums of money were made available to numerous worthy causes. Open Russia founded new schools, funded the internet access of others, stocked libraries, and established an ongoing trust at Oxford University to provide scholarships for Russian students studying in Britain. It also contributed to the establishment of the rich literary prize known as the ‘Russian Booker’.

Especially dear to Khodorkovsky's heart was the Podmoskovny Lyceum, a private boarding school for 135 students that he established in the grounds of a former estate in one of the outer suburbs of Moscow. At first it was just a home for the children to live in, from which they were bussed to local schools; later he built a study centre and seven dormitories. Costing about \$30,000 per student per year to run, the school offers core subjects plus music, dance, choir, art, photography, theatre and fashion design. There is a gym, a small swimming pool, a large library, computer rooms, and a kitchen and canteen; also a clinic with four doctors, a dental suite and a staff of on-site psychologists. The walls are decorated with student work and paintings donated by Khodorkovsky. The pupils wear uniforms, and the much-loved patron is Khodorkovsky's mother, Maria Filipovna, who spends much of her time there.

Alexander Yarulov, the headmaster, describes the Lyceum as an elite school for children with problems. Many of them are orphans, the offspring of Russian servicemen killed in action or in Chechnya. One shrapnel-scarred 17-year-old was a hostage during the Beslan school siege in September 2000, where her mother and older sister were killed. Government officials used to make admiring visits to the school, but after Khodorkovsky's imprisonment and the dismantling of Yukos, the Russian prosecutor's office froze its assets and the school's directors – Mikhail's parents – fear that 'Misha's favorite baby' will soon be shut down. According to his mother, the school has not been given any reason for the action against it.

More provocatively, Khodorkovsky made no secret of his desire to promote 'democracy and civil society'. He encouraged legal aid groups, supported non-partisan think-tanks and advocated a Constitution that would grant more power to the parliament and less to the president, expressing publicly his preference for a multi-party system over Putin's centralised government. To this end he gave personal approval to the liberal SPS (Union of Right Forces) and Yabloko parties, both of which he funded during the 2005 elections. Before his arrest the BBC announced that Khodorkovsky wanted to buy the publication rights of the independent *Moscow News*, and had hired an anti-Kremlin investigative journalist.

It was in 2003 that the state hit both Yukos and its executives with the first of a series of lawsuits, in which the latter were accused of embezzlement, tax

evasion and fraud; most of the charges related to the 1994 privatisation of a fertiliser plant called Apatit, and an insecticide research institute. The allegations turned on whether or not the uncontested assets of these companies had been acquired too cheaply and the profits transferred to Yukos, to the detriment of the tax department and the shareholders. It has been pointed out that regardless of what did happen, during the nineties similar accusations could be made against many other companies, including several owned by the state.

In July 2003 Platon Lebedev, now a senior executive, was arrested and sentenced to 8 years in a Siberian prison; several other executives fled the country. On 25 October, a news flash halted trading on the Russian Stock Exchange for the first time since its inception. Khodorkovsky himself had been arrested in Novosibirsk by masked and armed personnel, who surrounded his private plane while it was refuelling en route to a Yukos production site in Eastern Siberia. Hauled back to Moscow, he was charged and placed in detention pending trial. As later happened in Australia with Doctor Haneef, bail requests were denied; but in this case a two-year legal battle got under way. The Kremlin's Tax Ministry claimed that Yukos owed some US\$5 billion in tax arrears, interest and fines – information it would have to have obtained from the Procurator-General's office, which was already committed to a pre-trial finding of guilty. After the initiation of the legal proceedings, the Tax Ministry reopened the closed and signed-off audit it had made of Yukos in 2000, to announce that the company had new tax liabilities; the fact that its business practices and internal controls had previously been approved by an international law firm, and by PricewaterhouseCoopers in preparation for a possible listing on the New York Stock Exchange, was simply ignored.

Khodorkovsky was forced to resign as CEO of Yukos, and the government froze the company's assets before forcing the sale of its core production subsidiary the following year. Robert Amsterdam, one of his team of defence lawyers, remarked that this was as if President Bush had arrested Bill Gates so that he could nationalise Microsoft. A founding partner of the law firm Amsterdam and Peroff, Amsterdam labelled the arrest a key moment in Russia's anti-democratic backslide. Later that year, on 29 September, his own Russian visa was cancelled and he was given hours to leave the country.

The legal procedures finally resulted in Khodorkovsky's being sentenced in May 2005 to eight years jail in Krasnokamensk, a prison located to the south of

the Siberian town of Chita, 6500 kilometers east of Moscow. Ironically, even with Khodorkovsky in jail, the orderly succession plan he had put in place before his arrest allowed Yukos, second in the world only to ExxonMobil, to continue to thrive; its remaining assets were valued at US\$33 billion. Without the partial forced sale it has been suggested the company would have been worth more than US\$100 billion. Khodorkovsky's own wealth having also doubled as world oil prices rose, his personal fortune was estimated at somewhere between US\$8 and 13 billion.

Meanwhile Vladimir Putin and Gerhard Schroeder, then Chancellor of Germany and a not impartial player, jointly claimed that 'oligarch Khodorkovsky' 'stole' Yukos. In reality, taking it over had presented considerable risk, given that Yukos was at the time deeply in debt. Amsterdam maintains that if any stealing took place, it was the Kremlin who later robbed Mr Khodorkovsky of the billions of value added dollars that he worked for years to build into what *became* one of the world's leading oil companies. Its growth was certainly no foregone conclusion, as evidenced by the sorry performance of the state-controlled Rosneft oil company during the same period.

The reason for the German Chancellor's stand was explained by Amsterdam in an article in *Die Welt* (27 April 2007), where, writing for a mainly German readership, he stated that foreign support for the Kremlin campaign against Yukos originated in Germany because of cartel-like arrangements which allow Gazprom and leading German energy companies to profit from a fifty-fifty deal on 'nearly the entire mark-up', while working together to take over energy infrastructure from countries that could not afford the market rates. Amsterdam again made his point, that the state's illegal expropriation of the company should be seen as a 'grand-scale theft by state officials and others who abused public institutions in order to achieve their criminal aims'. Yet hardly anyone within or outside Russia has protested, the silence only lending boldness to a Kremlin which appears increasingly unconcerned by world opinion.

The significance of Khodorkovsky's arrest can hardly be underestimated on either political or moral grounds, but the former are the more muddled. There is more than one reason for the Kremlin 'chekists' (nicknamed for the Soviet secret police whose brutality they recall; they are also known as *siloviki*, or strongmen) to want to be rid of Khodorkovsky. His open support for free-market political parties

opposed to Putin had already aroused suspicions that he wanted to seek political office himself; and his commitment to privatisation and property rights works against the apparent desire of the *siloviki* to roll them back. In the opinion of an unnamed Western diplomat quoted by columnist Georgie Anne Geyer in the *Chicago Tribune* (25 July 2003), Yukos was a pawn in the fight between the Kremlin on the one hand and those determined to continue economic reform on the other. 'The security types in the Kremlin see the future of the country as coming through the revitalisation of the defence sector. But Yukos means a revitalisation of oil and gas and integration into the international markets.' In other words oil and gas have become weapons in a political agenda which has implications for Russia's relations with the United Kingdom, Georgia and the Ukraine, and also for the North European Gas Pipeline, which affects Poland.

But more surprisingly, Khodorkovsky's situation is part of a web whose spokes are reaching out to touch the governmental policy of a country as remote as Australia. In mid-June 2007 Robert Amsterdam flew to Canberra to meet with the Minister for Foreign Affairs, Mr Downer, his purpose being to use some proposed (though not at that point public) changes to the Australia–Russia uranium agreement as leverage against the Russian government's persecution of his client; at the time of writing of this essay, he is about to return to Australia to put his point to the APEC conference to be held in September.

Amsterdam's white paper, titled the 'Abuse of State Authority in the Russian Federation', co-written with his partner Dean Peroff, was published on 7 February 2007. While dealing specifically with the legal charges against Khodorkovsky, it demonstrates how emphatically the case speaks not just to the fate of one person or even one country, but to the democratic codes, the underpinnings of justice and the human rights that constitute the civilised world. Similarly, it is the claim of this essay that while it also focusses on one individual, the political, legal and moral considerations raised are of vastly more widespread significance.

From the moral point of view, Khodorkovsky's case has been taken up by various human rights monitors, who interpret his arrest and imprisonment as an ominous sign that dissent will not be tolerated in a Russia which blatantly rejects Western practices, influence and even investors. It stands alongside other measures such as the neutralising of independent media outlets, the weakening of liberal political parties, and the killing of dissidents and investigative journalists like Anna

Politkovskaya, whose murder on 7 October 2006 is simply the best-known of many.

On 18 March 2006, Open Russia's bank account was frozen, the courts having rejected the argument that the foundation was a separate entity not party to the case against Yukos. This was further proof that the 'ideas, wealth and support for democratic institutions' of its founder, described by the *Financial Times* as 'an outstanding business manager, the best in Russia', are persistently seen as a threat to entrenched Kremlin interests. Sergei Kovalyov, President of the Russian Human Rights Institute, warned that 'the fate of this one person will echo the fate of millions in the country if we don't stand up to defend our freedom'.

Kovalyov is one of the people behind the Committee to Free Mikhail Khodorkovsky, a group founded by international academics, legal observers and business leaders convinced that his unjust persecution by the Russian government has purely political roots. Holding that his trial violated due process according to both Russian and international law, they try to publicise his situation in a variety of ways, including a website which tells his story as they see it, and describes the conditions in his two places of imprisonment in Siberia.

The first, Krasnokamensk, holds about 1000 inmates, who live in barrack blocks of 80 and sew and pack clothes all day; it is near a uranium mine, which pollutes the drinking water. An internal crime fraternity operates amongst the mostly young, male inmates, the majority of whom are local and in jail for thieving. During Khodorkovsky's time in Krasnokamensk, which lasted until December 2006, he had some access to books and writing paper; television was available in the recreation room between 6 and 10 pm, although the shows were chosen by other inmates; and during evening hours he was able to meet with local representatives of the law. However, these individuals were all subject to harassment, constant turnover, and continuous disruption of their efforts.

Grigory Pasko, a human rights journalist and a guest blogger on Amsterdam's website, has posted an interview with Denis Yurinsky, a prisoner who overlapped with Khodorkovsky during the last eleven months of an eight year murder sentence. By then a work supervisor, Yurinsky oversaw Khodorkovsky for nearly a year, from the autumn of 2005 until August 2006, when Yurinsky was discharged. He admitted that instructions 'from above' demanded that Khodorkovsky be caught in 'constant violation' of the rules; he was put in an isolation cell almost as soon as he arrived for not being at his workplace; in fact he was

looking for the supervisor in order to ask him to explain how to operate the sewing machine, but, as a new arrival, had unwittingly chosen a moment when one of the frequent daily head counts was in progress. In Yurinsky's observation Khodorkovsky's long-standing practice of mastering regulations made him difficult to fault other than fraudulently; but his very study of a copy of prison rules, received through the post, was the next reason for him to find himself again in solitary confinement, even though under Russian law convicts are explicitly entitled to information about their rights. A third reprimand, and seven days in the isolation, was earned when he ate 'outside the designated premises'; in fact he was drinking tea, to make up for having to go without dinner altogether if he wished to meet with his lawyers. A month later Khodorkovsky was slashed across the face by a fellow convict called Kuchma, who admitted that he was interested in obtaining a transfer to another area. But it was Khodorkovsky who was placed in solitary confinement, this time 'for his own safety'. A further ten days was imposed two months later, when Khodorkovsky's wife gave him two lemons, probably to slice up and put in his tea, which he had failed to report. Yet prisoners are permitted by law to use and dispose of personal items, including foodstuffs, at their own discretion.

The director of the Russian Federal Penitentiary Agency, Yuri Kalinin, denied that the knifing incident had even occurred, insisting that Khodorkovsky's wounds had been sustained in a brawl with Kuchma.⁹ Five days later, however, he changed his story, saying that Khodorkovsky had provoked the situation, and telling the press that, 'He should not have grown so attached to young prisoners, brought them so close to himself, or been so affectionate to them.'

The *Time* article includes significant observations by Alexei Kondurov, a retired KGB major-general, former official of Yukos, current member of the Russian legislature, and these days a critic of the present regime, who notes the similarities between the procedures at Krasnokamensk and the tactics of the Soviet era, when convicts were regularly recruited to harass a targeted prisoner. 'They don't need orders to assault a prisoner singled out by the administration for harsh treatment', he said. 'They just do it to seek lenience and rewards.' Or perhaps transfers.

⁹ *Time Magazine*, 21 April 2006.

On 22 April 2006 Yuri Zarakhovich, a Moscow-based journalist for *Time Magazine*, made a suggestion which could only be headlined outside Russia: that the authorities were cracking down on Khodorkovsky because his incarceration had actually increased his popularity. Opinion polls have revealed growing sympathy for him even among ordinary Russians, who previously saw him as unscrupulous and greedy, but now acknowledge that, unlike the oligarchs who took their wealth and left, he had stayed to face up to a rigged trial and harsh sentencing. In the eyes of some – though not all – he is beginning to be seen as a prisoner of conscience. For an erstwhile oligarch it has already been a long march, but one not yet over.

Khodorkovsky's first appeal against his original sentence was heard on 22 September and 15 October 2005. While on appeal, he was legally entitled to stand as a candidate for the Duma, and announced his intention to nominate; but seven months later, on 3 May 2006, the Moscow City Court upheld the eight-year sentence, neatly stymying any such aspirations.

Valid hope for an early release still lay in the Russian practice which allows for the possibility of parole once a prisoner has served half of his sentence; in Khodorkovsky's case this would come up in October 2007. To circumvent this possibility, in late December 2006 he was faced with new charges of criminal behaviour, which also required that he be moved from the Krasnokamensk prison to a pre-trial detention centre in the city of Chita. Whether or not the new charges are 'proven', his eligibility for parole is now as dead as any thoughts of a parliamentary future, even though the location of this latest investigation is illegal in itself. Keeping him in Chita contravenes Article 152 of the Russian Code, which states that a criminal investigation must be carried out in the city or region in which the crime was supposed to have occurred – in Khodorkovsky's case, Moscow.

Further charges were brought on 5 February 2007. This time the Prosecutor General accused Khodorkovsky of embezzling the proceeds of all the sales conducted by Yukos and its trading companies from 1988 to 1994, and of laundering the money through foreign banks and trading companies. The sum quoted was US\$33 billion, an amount greater than the total profits of Yukos for the entire six-year period. Moreover, this was the period during which PricewaterhouseCoopers and other international auditors had already certified the accuracy of the Yukos

books, verifying that all moneys had been earned properly and legally accounted for. Undaunted, the Russian government launched separate tax charges against PwC itself, hinting that their future in Russia would be jeopardised if they continued to defend the accuracy of their Yukos procedures.

As well as resuming the attempt to incriminate Khodorkovsky, the new campaign can be interpreted as part of a push to legitimise both a series of fraudulent acquisitions by Russian state-owned enterprises of the remaining Yukos assets, and the seizure of whatever remaining assets Khodorkovsky may have abroad, on the grounds of alleged money-laundering. Western observers have suggested that the new charges and projected trial are simply a Kremlin-inspired smokescreen designed to distract attention from, and justify, the illegal acquisition of the Yukos assets by state-owned energy companies.

The existence of such a campaign would seem to be borne out by the instances of peripheral intimidation. If Khodorkovsky's international attorneys, notably Robert Amsterdam, have been expelled, the Russian lawyers involved in his defence or support have been subjected to official harassment which includes arrests, searches of their persons and offices, seizure of their defence materials, and disbarment. Peter Finn, in *The Washington Post* of 3 June 2007, discusses the example of Karinna Moskalenko, a brilliant human rights lawyer with a once highly professional, widely recognised reputation, who is now constantly monitored by the Prosecutor General's Office in a sustained attempt to get her disbarred. Her other clients include the families of tortured, disappeared or murdered Chechens, whose cases are invariably lost in Russian courts, yet frequently won at the European Court in Strasbourg, which hears appeals of decisions made by national courts. Moskalenko also runs an International Protection Centre, which is now under pressure from the authorities; in July 2006 she opened a sister organization in Strasbourg in case the Moscow office is shut down.

Part of the rather curious case against her, which the Prosecutor's Office has declined to discuss, rests on the accusation that she repeatedly failed to appear in Chita at times when she was required to assist her client in the reviewing of his case material. Moskalenko's rebuttal states that Russian law allows, but does not require, the presence of an attorney when a case file is being reviewed by a defendant, while Khodorkovsky himself argued in a letter to the Prosecutor's Office that Moskalenko's principal role was to represent him in the European Court in Strasbourg. This claim was backed up by Róisín Pillay, the legal officer

for Europe at the Geneva-based International Commission of Jurists, who also questioned the disbarment proceedings. None of these objections was admitted however, leading Pillay to interpret the result as an example of a general campaign of harassment against Russian human rights lawyers, who are regularly but illegally identified with their clients. Yuri Kostanov, a member of the Independent Council of Legal Experts in Moscow and vice chairman of the Moscow bar, has said that he believes the threats against Moskalkenko to be the work of the special services department determined to display their power. He and other legal experts fear that their pursuit of her represents an attempt to rein in any defence lawyer willing to take a case to Strasbourg, where Russia, which has more plaintiffs appealing cases at the court than any other European country, consistently loses – a fact that infuriates Russian political leaders and leads them to accuse the court of bias.

Moskalkenko is far from being the only one of Khodorkovsky's defence team to come under attack. Another, Olga Artyukhova, was searched after she had visited him in November 2003, prosecutors alleging that she was carrying a note from Khodorkovsky discussing plans to tamper with witnesses. Handwriting experts subsequently confirmed that the document contained Artyukhova's own notes should certain witnesses be called. The bar association rejected the prosecutors' motion against her, but the authorities appealed and took their case to the courts; the case dragged on for nearly two years before Artyukhova voluntarily gave up her law practice. Since then, the Russian authorities have unsuccessfully tried to have twelve more of Khodorkovsky's lawyers disbarred. Yuri Schmidt, who resisted such an attempt in 2005, made the point: 'Every time they file a complaint it requires a lot of time to defend.'

So far the bar association, where lawyers form a majority of any panel reviewing a disbarment case, has refused to support the attempts to disbar Khodorkovsky's lawyers, but Schmidt is afraid that this professional majority will soon be replaced by government appointees. Moskalkenko's own fear is that the prosecutors will appeal to the courts, as they did in the Artyukhova case. There they rarely lose. And if that happens, 'I will be disbarred,' she says. 'I have no doubt.'

On 3 April 2007, after hearing the new charges, the regional court in Chita ruled that Mikhail Khodorkovsky's custody be extended. The defense considered the ruling illegal and unfounded, but their cassation appeal was held up by lengthy

interventions from the Prosecutor's Office, presumably in an effort to ensure that the restraint order stood, despite the ruling from the Basmanny District Court in Moscow on 20 April that it was illegal for the investigations to take place in Chita. In order to be apprised of the several adjournments of the hearing, Karinna Moskalenko had to make the long flight to Chita three times. On 31 May an appeal hearing did take place, but was left unresolved. Meanwhile, so long as the legality of the restraint order remains unsettled, Khodorkovsky remains in pre-trial detention – a direct violation of the European Convention on Human Rights,¹⁰ which provides for the right of prompt access to judicial proceedings to determine the legality of a person's arrest or detention, and either a trial within a reasonable time or release pending trial. Again, there are macro-micro parallels with the imprisonment of Dr Haneef under Australia's new anti-terrorism laws – except that his lasted less than two weeks.

On 8 June, by which time Khodorkovsky had spent three months in the pre-trial facility, yet another adjournment was announced. Karinna Moskalenko was informed of this ruling just a few minutes before the hearing of her own disbarment case, on which hung her entire status as a practising lawyer, by a committee of the Moscow Bar Association. This hearing did not in fact take place, but only because a representative of the Prosecutor General's office failed to turn up. When the next due date, 21 June, came around, the hearing was again postponed. The tenterhooks of delay, uncertainty and insecurity can be almost as effective in destroying a person as more severe methods.

The evidence that Khodorkovsky's body of supporters is growing both in and beyond Russia makes it all the more difficult to understand why one important body, Amnesty International, will go no further than to label his arrest 'politically motivated' and call for a 'fair trial' without any reference to political bias in the accusations against him. Russian human rights groups have tried in four unsuccessful petitions to have Amnesty officially declare him a political prisoner. They find the refusals surprising in the light of its earlier criticism of Russia's handling of the Yukos case, but the official explanation is that the organisation has no proof that Khodorkovsky is in prison solely because of 'peaceful political activities'.

¹⁰ Paragraph 4 of Article 5.

Amnesty's most recent International Report, issued in 2007, does admit that in 2006 the Russian Federation's 'human rights defenders and independent civil society came under increasing pressure. People seeking justice faced intimidation and death threats'. It also admitted that 'the European Court of Human Rights ruled that Russia had violated the rights to life, to liberty and security, to respect for private and family life and to an effective remedy, and to the prohibition of torture'. The report cites Khodorkovsky's case, along with that of his fellow oligarch Platon Lebedev, as an example of 'unfair trial', and acknowledges that both men were denied the right to serve their sentences in or near their home areas. Khodorkovsky's confinement in a punishment cell for two weeks for having a copy of publicly available government decrees on prisoner conduct, is recorded, and also that he was 'held in a punishment cell for a week in March for drinking tea in an unauthorized place'. Amnesty noted that in Russia, 'Prisoners served sentences after trials that failed to meet international fair trial standards, and in which their lawyers considered the charges to be politically motivated.' However, none of these assessments were accompanied by any denunciation or even criticism, which seems a somewhat spineless stance in light of the organisation's self-description as a 'worldwide movement of people who campaign for internationally recognized human rights'.

The lack of strong back-up from the principal international guardian is particularly regretted by Russian human rights groups, given that public opinion in the form of newspapers and television stations has become the mouthpiece of the regime. The once independent-minded NTV and *Izvestia* are today funded by Gazprom; ORT, the TV channel once owned by Berezhevsky, is run by indirectly by the FSB. Unlike Dr Haneef, Mikhail Khodorkovsky is unlikely to be rescued by a mixture of vox pops, media pressure and official recourse to a civil and legal code resistant to manipulation. Nor can he look to an undercurrent of intellectual dissent such as was created and disseminated by writers of the Soviet era. Evgeni Zamyatin (*We*), Mikhail Bulgakov (*The Master and Margarita*), Boris Pasternak (*Doctor Zhivago*) are only three well-known examples of many *intelligents* whose intellectual and political resistance to a hated regime was manifested through internationally acclaimed novels. But, as Perry Anderson perceptively points out, they were working in a situation where 'the tension bred by ideological controls also kept alive the spirit of opposition'. Now 'this universe has abruptly collapsed'. Today public opposition does little to express private hostility. Yet,

what is there to stop it? During the Soviet era, when demonstrations were banned and dissent barred, it was understood that to stay alive you needed to keep quiet. For the intelligentsia, Aesopian language, 'writing for the drawer' and the ability to decode subtexts all became strategies of intellectual and spiritual survival. Unfortunately they were never fail-safe, as we have seen; and it appears just as clear today that even untold, oligarchical oil-wealth is not proof against a similar form of persecution, if not martyrdom.

Meanwhile, as the kindling piles up in Russia, Khodorkovsky's lawyer, a welcome corrective to the one in the striped suit, will try to douse the flames with Australian yellowcake wrapped in Canadian White Paper. Coincidentally, during the writing of this penultimate paragraph (on 27 August), news came through that the Swiss Supreme Court had refused to co-operate with Russian requests for certain bank documents and even rebuked the authorities for the 'political and discriminatory character... underlined by the infringement of human rights and of the right to defence' of their pursuit of Yukos.

Meanwhile the oxymoronic panache of the *Washington Post* of 20 July should raise a wry smile: the charges against Khodorkovsky are, it writes, 'magnificently implausible'. As were those which in earlier times sent men like Sinyavsky, Daniel and Solzhenitsyn, multiplied by the million, down the doomed road to Siberia. There are of course profound differences between the circumstances of communist past and the democratic present, notably the tally of victims, but the modern scapegoats (if the word martyr appears too loaded) surely bear witness to the same betrayal by their own leaders. It is just another sign of changed times that where once it was novelists, satirists and poets who fell foul of the state, Mikhail Khodorkovsky represents that new and foreign concept that the Russians admiringly call a 'biznyes-men' (*sic*).

7 February 2007