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of course, was the existence on the Washington campus of the Far Eastern Department and the Far Eastern Institute—departments devoted to the study of the languages, culture, and institutions of Far Eastern countries. To include in these studies the law and legal institutions of the Far East was a natural development and one which might be expected to add to the high standing of the University in this field. Finally, there was the fact that for many years the Law Library of the University has been collecting materials on the law of oriental countries, especially Japanese law, and now has one of the finest collections in the United States.

The Far Eastern Section will be devoted chiefly to the publication of articles on the law and legal institutions of Russia, Japan, and China, although other countries in the Far East will not be neglected. Most of the articles will probably be written specifically for the *Review,* although it is expected that the section will frequently publish translations of significant materials not otherwise available in English.

The University has generously made available the funds necessary for the addition of this section to the *Law Review.* If the members of the bar find within its pages something of interest and benefit, we will be gratified, if they do not, they can simply skip it without feeling shortchanged, since the amount of traditional material in the *Review* will not be diminished.

THE SPIRIT OF SOVIET LAW

HAROLD J. BERMAN*

Revolution is the violent establishment of new law Not only new rules of law but also new legal institutions, new categories and principles of law, new conceptions of justice are forged in the fire of revolutionary terror and civil war. To the victims and the onlookers, and often to the revolutionaries themselves, this law-creative process is not immediately apparent. On the one hand, all legality seems to be swallowed up in the whirlwind of destruction, on the other hand, a new heaven and new earth is proclaimed, in which all will live in brotherhood and harmony, without need of law But when the smoke of violence settles, and the dust of utopia is wiped from the eyes, there remains — new law

This is the only justification of revolution, and those who respect the legal system under which they live must also pay their respects to the revolution which created it. For in the West, at least, every great nation owes its law to a revolution. Even the United States, which created no new legal system but adopted instead the Common Law of England, was compelled to fight a Revolutionary War in order to se-

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cure to the American colonists "the rights of free Englishmen." The close dependence of the Code Napoleon on the French Revolution of 1789 is generally recognized. More controversial is the connection between the English Common Law and the English Revolution of 1640: the Puritans asserted that they were only "restoring" the medieval and Anglo-Saxon law which had been abrogated during 150 years of Tudor "despotism." Yet none would deny that this "restoration" was a step into the future, that it inaugurated a new era in the development of the English legal system. Likewise the so-called Reception of Roman Law in sixteenth century Europe was, in fact, a re-creation rather than a mere reception of ancient law and was a direct result of the German Reformation of 1517 If we push further into the past, we find that the cornerstone of all the legal systems of Europe was the renovated Roman and Canon Law of the eleventh and twelfth centuries, which was a product of the Papal Revolution of 1075 and the consequent establishment of the Roman Catholic Church as a separate legal entity, distinct from secular law, with the Pope as its legal head and the Papal Curia as a court of last resort throughout Western Christendom.[1]

The Russian Revolution of 1917 seems to fall into the pattern of the great European revolutions. As with its predecessors, its original fury was unleashed against all legality, and its original vision was directed toward a society which would be free of the very idea of law Like them, it has in the course of time settled down, and in settling down has invoked "stability of laws."[2] In fact, orthodox principles have been restored, since the mid-1930's, in one field of Soviet law after another.[3] Nevertheless, Soviet jurists claim that their law is "law of a new type, essentially different from all types of law known to history, particularly bourgeois law"[4] Despite many similarities between present-day Soviet law and, for example, American law—despite its striking resemblance especially to pre-revolutionary Russian law—

[1] For the story of the European revolutions, see ROSENSTOCK-HUESSY, OUT OF REVOLUTION: THE AUTOBIOGRAPHY OF WESTERN MAN (1938).

[2] Stalin, in a speech in 1936 to the Extraordinary Eighth Congress of Soviets, said. "We need stability of laws now more than ever." This became the chief slogan of the subsequent reforms.

[3] See articles by the present author on Soviet family law, criminal law, contract law, and property law, appearing in 56 YALE L. J. 26 (1946), 56 YALE L. J. 803 (1947), 35 CALIF. L. REV. 101 (1947), 96 U. OF PA. L. REV. 324 (1948).

[4] *Cf.* Kareva, *The Role of Soviet Law in the Education of Communist Consciousness,* BOLSHEVIK, No. 4 (1947) (in Russian) 47

Vyshinsky and other leaders of the Soviet legal profession assert emphatically that their law is "socialist in form and in content."

How can Soviet law be at the same time so similar and so different? The Soviet explanation is based on the intricacies of Marxist-Leninist-Stalinist theory A simpler answer may be this: that both in form and in content there is a similarity in letter, a difference in spirit. Accepting this answer as a hypothesis, I propose to examine the spirit of Soviet law—first in the "revolutionary" period of 1917 to 1936, then in the "post-revolutionary" period from 1936 to the present—and to single out certain basic attitudes which underlie Soviet law today and give it a distinctive character.

I

On November 22, 1917, within a month after they had seized power, the Bolsheviks abolished the Tsarist courts and instructed judges of the new Soviet courts to apply Tsarist laws only insofar as those laws were not superseded by revolutionary law and were not in conflict with "revolutionary legal conscience." A year later, on November 30, 1918, a second statute on courts forbade every reference whatsoever to Tsarist laws.

The new government produced a host of revolutionary decrees in rapid succession. Most of these were directed to the abolition of pre-revolutionary legal institutions—inheritance, private property in land and the means of production, private trade, ecclesiastical control of family relations, and so forth. Others were designed to give positive recognition to proletarian power· thus a decree of November 16, 1917, provided that "the workers [in each enterprise] shall control the methods of production, the purchase and sale of the products and raw materials, their storage, and the finances of the business", and the 1918 Constitution of the Russian Republic declared the State to be a "proletarian State," in which only the proletariat could vote for the Soviets. Still other of these early decrees, however, went beyond proletarian dictatorship and were thought of as measures ushering in Socialism itself, that is, a classless society These included the nationalization of banks, of industry, of foreign trade, of houses; general compulsory labor; the establishment of state and cooperative trade; the distribution of all commodities by ration cards; moneyless transactions between state enterprises; the payment of wages partially in kind, the appropriation of farm surpluses in the villages; and the establishment of State farms.

This was what was later described as "the heroic period" of the Russian Revolution. War raged against counter-revolution from within and intervention from without. A system of revolutionary tribunals enforced what was officially termed the "Red Terror." At the same time, the imminent advent of world-wide Socialism—in the Marxian sense of a classless society—was preached and believed. "We are approaching the complete abolition of money," wrote Zinoviev in 1920. "The Communist Manifesto written by Marx and Engels is still to us today the gospel of the present revolution," stated Bukharin. Lenin himself wrote in 1918 that "our Revolution has succeeded in coming to immediate grips with the complete and practical realization of Socialism," and he spoke of Socialism in the villages as something already achieved. According to Trotsky,[5] "the Soviet government hoped and strove to develop these [early] methods of regimentation into a system of planned economy in distribution as well as production. In other words, from 'War Communism' it hoped gradually, but without destroying the system, to arrive at genuine Communism." Trotsky explains this by "the fact that all calculations at that time were based on the hope of an early victory of the revolution in the West."

The spirit of Soviet law in these first years, from 1917 to 1921, was thus a spirit of nihilism on the one hand, and of apocalypticism on the other—of ruthless destruction of everything pre-revolutionary, and of glorious transition to a new order of equality and freedom *without* law It was the spirit of Cheka, predecessor to OGPU and NKVD—and the spirit of anarchism in its literal significance. In spite of Lenin's warnings against "the sickness of leftism," the new Soviet law was afflicted with that congenital revolutionary disease.

With the introduction of the New Economic Policy in 1921, the radical legislation of the earlier period was repudiated as the product of a war emergency " 'War Communism' was necessitated by the war and by the ruin of the country," Lenin stated in a speech of April 9, 1921. "It was not and could not be a policy answering the economic needs of the proletariat. It was but a temporary measure." Again. "We went too far on the path of nationalization of commerce and industry, and in the suppression of local trade. Was it a blunder? Yes, without question."

The N.E.P (New Economic Policy) was a retreat from a bankrupt War Communism; it was not, however, a retreat from the revolution-

[5] TROTSKY, THE REVOLUTION BETRAYED, 22.

ary principle of preparing Russia for Socialism, nor was Socialism conceived differently after the introduction of the N.E.P Lenin called it a "strategic" retreat. Money reappeared; state distribution was replaced by private trade; the peasants were given large measures of freedom on their individual farms and well-to-do peasants ("kulaks") emerged, private businesmen ("nepmen") were allowed to take over factories under a state licensing system, one-man management was restored as against workers' control. At the same time, there was strict supervision by the Workers and Peasants' State. Kulaks and nepmen were restricted, disfranchised, heavily taxed. A large "Socialist sector" of industry—the "commanding heights" of banking, insurance, large-scale transport, production of raw materials, foreign trade—remained in the hands of the State. By 1923, in fact, the strategic retreat was terminated (although the N.E.P was not officially abandoned until 1928) wholesale trade was again taken out of private hands, very low prices were fixed by the State for its purchase of grain from the peasants, and the gradual return to socialism was inaugurated.

The encouragement of private initiative under the N.E.P., the restoration of the market, the desire to attract foreign capital made necesary the construction of a legal system. In addition it was realized that law could be very useful to the proletarian State, and with the temporary postponement of full Socialism there were no theoretical obstacles to either State or law Therefore, in 1922 and 1923, numerous codes were hastily drawn up and enacted, including a Civil Code, Land Code, Criminal Code, Code of Civil Procedure, Code of Criminal Procedure, and a new Labor Code to replace that of 1918. Inheritance was restored, though with drastic limitations. A 1923 decree on State industrial enterprises established corporate independence for trusts. Meanwhile, a Judiciary Act of 1922 abolished the system of revolutionary tribunals and created a hierarchy of courts on the European model. The 1918 Family Code was replaced in 1926, and a new Criminal Code was issued in the same year.

The codes were in large measure copied from European examples, especially the German. There were, however, certain revolutionary provisions, especially in the Family Code and the Criminal Code. Also, "revolutionary legal conscience" remained the underlying principle for the decision of doubtful cases. Non-proletarians were consciously discriminated against both in private and public law Underlying the whole system was the basic assumption that law is essentially an

instrument of State policy, and that the State, in turn, is merely the "executive committee of the ruling class"—in this case, the proletariat.

N.E.P law and N.E.P legal theory were thus dominated by the spirit of temporary and impatient compromise with "bourgeois" principles of private rights and due process. Law was considered to be by its very nature oppressive. It was tolerated only because the advance to Socialism had been slowed down. In Lenin's words, "While there is a State, there is no freedom; when there is freedom, there will be no State."

In 1928 the N.E.P compromise was abandoned; total planning was inaugurated as a means of rapid industrialization, militarization, and feverish collectivization. Gradualness was replaced by a gigantic leap. The immediate transformation of the Soviet Union into a classless Socialist society—independently of world revolution—was envisioned. Particularly, the Second Five-Year Plan of 1933-1937 had for its specific purpose the achievement of Socialism. As Premier Molotov put it to the Communist Party Conference which approved the draft of the Plan. "The leading idea of the Second Five-Year Plan is that all classes and their causes are to disappear by 1937 in the U.S.S.R." The Party Conference declared. "The chief political task of the Second Five-Year Plan is to do away with the capitalist elements and with classes in general, to destroy fully the causes giving rise to class distinctions and exploitation; to abolish the survivals of capitalism in the economy and the consciousness of the people; to transform the whole working population of the country into conscious and active builders of a classless society" This explicitly included the aim of "destroying the difference between the worker and the peasant"—that is, establishing a basic equality, a political and economic identity, between urban and rural workers.

Now for the first time positive content was given to the Marxist idea of the "withering away" of the State (and of law) under Socialism. Law as an instrument of the class-dominated State would be replaced by Plan as the manifestation of the will of a classless society Through the Plan, all the characteristics of the original Marxist vision would be made manifest. Planning would eliminate exploitation, money, private property, the family as a legal entity, crime in the legal sense, the State itself. The Plan would give unity and harmony to all relationships. The Plan itself would not be an instrument of compulsion but

simply an expression of rational foresight on the part of the planners, with the whole people participating and assenting.

The "withering away" of law under Socialism was actively anticipated during the First and Second Five-Year Plans. The N.E.P codes became largely obsolete and were not replaced. In the cases and the statutes, and particularly in the vast structure of administration, what compromises had been made under the N.E.P with the formality of law, with its basis in rights and duties, with its essential stability—were more and more surrendered in the name of economic expediency, rapidly shifting social policy, and administrative flexibility Underlying Soviet law in this period was the spirit of economic planning, the spirit of war Communism revived.

II

In 1936 it was officially announced by Stalin that Socialism had been achieved. The proletarian dictatorship, properly speaking, was over; such classes as existed—the workers, the peasants, the intelligentsia—were "friendly" classes, not "hostile" economic classes in the Marxist sense. But instead of the "withering away" of money, property, the family, criminal sanctions, the State, law, there was a wholesale restoration of these "bourgeois" institutions on a new "socialist" basis. Stalin called for a Socialist State—to Marx and Lenin a contradiction in terms—supported by "stability of laws."

The full extent of this restoration has not generally been appreciated. It has been obscured by the purges which accompanied it, even though these can only be properly understood as the liquidation of those groups which had stood for the pre-restoration principles. It has been obscured by the war and the prewar preparations, which some have interpreted as giving a temporary emergency character to Soviet internal developments. It has been obscured by the Soviet fiction of continuity, which represents Russian history since 1917 as a single unbroken advance "according to Marx."

In whatever direction one turns, one finds a new spirit dominating Soviet institutions since the mid-1930's and the proclamation of the achievement of Socialism. In its cultural aspect, Soviet society has returned to Russian history, national traditions, patriotism; to strong bonds—legal and economic as well as spiritual—of family life; to a recognition of religion as having a legitimate role in the values of the people. Economically, the emphasis has been on competition and personal initiative both among workers, who since 1935 have been paid

on a piece-rate (Stakhanovite) basis, and among managers, who since 1936 have been accorded a large measure of freedom of contract and may distribute extra profits as bonuses; efforts after 1928 to re-establish workers' control in new forms have been supressed, and one-man management re-emphasized in theory and practice; financial stability has been encouraged as a check on the overexuberance of production drives; within the planning system itself there has been increasing decentralization; business operations have been more and more freed from rigid control; earlier attempts to treat workers and peasants as a single economic unit have been abandoned, and instead a balance has been struck between their different interests. Politically, the 1936 Constitution removed the onerous franchise restrictions from non-proletarians; lines—admittedly wavy—have been drawn between legislative, administrative, and judicial functions; certain important administrative powers—for example, that of taxation—have been made reviewable in the courts; legality, due process of law, has been stressed in theory and has made important strides forward in practice.

There has been a return to the N.E.P codes, which, though never formally rescinded, were fast losing their importance under the First and Second Five-Year Plans. A significant example of this is the requirement, first acknowledged in the late 1930's, that *Gosarbitrazh*, the special system of courts which hears cases involving State business enterprises, must decide disputes not merely in terms of the plans issued for those enterprises but also in terms of the Civil Code. This means that economic expediency, whether from the point of view of the public or that of the individual enterprise, is no longer sufficient to justify a breach of contract. *Pacta sunt servanda*, formerly challenged as a bourgeois fiction, is now proclaimed as a governing principle of Soviet Socialist contract law [6]

Likewise in criminal law, the "bourgeois" rule of "no crime, no punishment, without a [previous] law" has been reasserted as a Socialist principle, and the famous doctrine of analogy severely limited.

Personal ownership—a category created by the 1936 Constitution as distinct from State and socialized ownership—has been increasingly extended and protected. Inheritance has been freed from crushing taxation and freedom of testation introduced. A judicial process of divorce has been established for the first time since the Revolution.

[6] Agarkov, *Debtor's Discharge from Liability when Performance is Impossible* (under the Soviet law), 29 JOURNAL OF COMPARATIVE LEGISLATION, 9 (1947).

A new Judiciary Act was promulgated in 1938 to lay the foundation for more orthodox trial procedure. Vyshinsky, leader of the movement for the new Socialist law, has emphasized the need for "judicial culture" (that is, proper court procedure) and "judicial authority." "Judicial activity requires the deepest trust in the court," he stated in 1938.[7] "The judge must fight for that trust."

The spirit of Soviet law since 1936—as revealed both before and after the war, in both the statutes and the court cases — is one of struggle for legality, for orthodoxy It is a continuing struggle rather than an accomplished fact—for many reasons. One is Russia's historic backwardness in legal consciousness; Russian law has never played the same role as that of Western law, it has never been so highly developed or so highly valued. Another reason is that although the Revolution has "settled down" it has not stopped, and whenever it feels itself seriously theatened it tends to disregard the new legality A third reason is that although *Law* has been raised to equal rank beside *Plan*—Law expressing the stability of the Soviet social order, Plan its dynamic quality—the equilibrium between the two is itself a shifting one. But despite these limitations, Soviet Socialist law is no myth. The condemnation of earlier theories which saw even in Soviet law a temporary instrument of class rule and suppression—and the ruthless purging of their authors—was no teapot tempest. In Soviet law since 1936 "the sickness of leftism" has once and for all been cast out.

III

Granting that law now plays a positive role in the Soviet social order, granting that traditional standards of law and justice have been grafted onto the Socialist planned economy, there remains the principal question wherein is this Soviet law different; wherein does it justify the description "socialist in form and content"?

For better or worse—perhaps for better *and* worse—Soviet law, with all its orthodoxy, has introduced new conceptions, new attitudes, and new spirit. This is not immediately apparent from reading the codes or studying Soviet legal theory The codes are still the old ones of the N.E.P., amended but not fundamentally rewritten, despite the provision of the 1936 Constitution that new all-union codes are to

[7] VYSHINSKY, THE SOVIET COURT AND SOCIALIST ADMINISTRATION OF JUSTICE, 53 (1938) (in Russian)

replace the old republican ones. The theory is still rudimentary, consisting chiefly in a repudiation of the earlier theories and the repeated assertion that Soviet law "expresses the will of the whole Soviet people." In fact it has been suggested[8] that the reason for the unusual delay in drafting new codes is the confused state of legal theory, which has been "unable to find its bearings in the struggle between the exigencies of day-to-day life and the Marxian interpretation of Sovietism." Where, then, is the new spirit to be found? It may be found in part on the fringes of the written law and of the theory; in part in certain unique legal institutions—of which I shall describe two, the divorce procedure and the settlement of so-called pre-contract disputes; but chiefly in judicial practice, *i.e.*, the cases themselves. Of what does the new spirit consist? It consists of a new attitude toward persons, toward the community, and toward the relationship of law to both.

(1) *The cases.* The Judiciary Act of 1938, Article 3, states that "By all their activities the courts educate the citizens of the U.S.S.R. in the spirit of devotion to the Motherland and to the cause of Socialism, in the spirit of strict and undeviating observance of Soviet laws, of care for Socialist property, of labor discipline, of honesty toward State and public duty, of respect for the rules of Socialist common-life." This educational role of the courts involves a different conception of the person with respect to whom judgments are rendered, and of the community for which he is being educated. The Soviet litigant or accused is treated not merely as one possessing rights and duties, not merely as an independent individual who knows what he wants and must stand or fall by his own claim or defense; he is treated also as a dependent member of the collective group, a child or youth whom the law must not only protect but also guide and train. The Soviet judge speaks to the litigant or accused in an unusual manner; he may upbraid or counsel him as a father, may explain to him what is right and what is wrong as if he were a child. If the defendant is a member of the Communist Party, the judge may forcefully recall to him that he bears a greater responsibility than others, that his light must shine among men as a beacon of the future Communist "good society." Although the parties may be represented by lawyers, and although the "adversary" character of the trial has received more stress in recent years, nevertheless the judicial contest is waged against the back-

[8] H. A. Freund, Russia from A to Z, 347 (1945).

ground of a more intimate relationship among all the participants, a relationship more akin to that of a family than to that of an impersonal "civil" society

(2) *Divorce procedure and the settlement of pre-contract disputes.* That the Soviet judge is like a father or teacher to those who come before him with their grievances is illustrated in the divorce procedure instituted in 1944. A Soviet citizen may file a petition for divorce with the People's Court, which summons the respondent and by conversation with respondent and petitioner seeks, first, to ascertain the motives for the divorce and, second, to reconcile the parties. If no reconciliation is effected, the petitioner may file a second petition for divorce with a higher court, which may grant the divorce.

In discussing the measures which the People's Court should take to reconcile the parties, Soviet commentators have stated:[9] "It is impossible to expect any ready-made recipes. Here experience, tact, and the authority of the court are necessary Far from always do the spouses come into court with a firm decision to separate. Often the suit is the result of a recent quarrel, the product of impetuousness and not a thought-out decision. Some the court may reconcile by means of a quiet explanation of the incorrectness of their behavior; it may convince others of the necessity of explaining to each other in court and forgiving each other; and others it may give time for reconsideration "

If the People's Judge is unsuccessful in effecting a reconciliation, the case goes for trial in the higher court, where witnesses may be heard and arguments made. Official Soviet legislation gives no grounds for divorce; however, unofficial instructions which were sent to the judges at the time the new divorce law was enacted state that such factors as marital infidelity, desertion, cruelty, and the like, should be taken into consideration. The basic principle governing the court is that "divorce should be granted only in those cases where it is actually impossible to re-establish the broken family, where the breach between the spouses is so deep that it is impossible to reconcile them and to prolong their married life."[10] Thus where the spouses were married eight years and had three children, it was held that incompatibility was not a sufficient ground, though under other circumstances it might

[9] Tadevosian and Zagorye, *Practice of the Application of the Decree of the Presidium of the Supreme Soviet of the U S. S. R. of July 8, 1944 in Cases of Dissolution o fMarriage,* 8 SOCIALIST LEGALITY, 1, 5 (1945) (in Russian).

[10] H. A. FREUND, *op. cit.,* 8 *supra* note (1945).

be. Likewise, where a man and wife, sixty-five and sixty-one years old respectively, had quarreled over how to bring up their grandchildren, a decree of divorce granted on that ground was overruled by the Supreme Court.

It is apparent that concepts of contract and tort play a very minor role in Soviet divorce law Anglo-American doctrines of connivance, condonation, collusion, and recrimination would be entirely incomprehensible to the Soviet jurist, while the common American practice of granting uncontested divorces automatically would be equally alien. Soviet divorce law is designed to encourage actively and consciously the stability of marriage. These differences reflect a different conception of the nature of the family, and ultimately of the nature of the person, before the law Soviet husbands and wives are, in effect, wards of the court, requiring encouragement and guidance in the path of socialist family life. The Soviet citizen is a child, a pupil, the law is his parent, his teacher.

The same spirit is manifest in regard to corporate persons. Here too there are important literal similarities, both in form and in content, between Soviet law and the law of non-socialist countries. Soviet State business enterprises have been recognized as independent legal entities, operating on a profit-and-loss basis, entering into contractual relations with each other. There is a surprising amount of inter-corporate litigation in Soviet courts, and the rules of contract, agency, bills and notes, sales, and so forth, upon which the decisions rest, would not shock an American lawyer. It is true that Soviet freedom of contract is limited by economic plans issued by superior economic organs, and that the court in interpreting a contract will look at the plan; however, this is not an absolute limitation, and insofar as the nature of business law is concerned, there is a similarity between the effect of planning on Soviet contract law and the effect of public policy and public control on American contract law However, the spirit in which the Soviet rules are applied is a new one. Here again the law plays the role of father and educator.

An example of this is the judicial settlement of so-called pre-contract disputes. These are disputes which arise after the obligation to enter into a contract has been imposed by plans of distribution, where the parties thus obligated are unable to agree on the terms of the contract to be made. Either party may bring suit to have the disagreement resolved, or the dispute may be brought to court on the initiative of

the Council of Ministers (which has promulgated the plan of distribution) or on the initiative of the court itself (a special court, *Gosarbitrazh,* whose judges are both jurists and economic experts) The court hears the parties and renders a decision—based on the plans, the general law, the so-called "basic conditions of supply" issued by superior economic organs, and the circumstances of the particular transaction—which in effect creates a contract between them.

Soviet jurists have found difficulty in interpreting the juridical nature of the planned obligation to contract. They have analogized it to the *pactum de contrahendo* of Roman law [11] Perhaps the closest analogy in American law is the obligation to bargain collectively under the National Labor Relations Act. However, the Soviet court requires not merely that the parties attempt in good faith to reach an agreement, but also that the agreement reached conform to the interests of the economy as a whole. Conditions whereby one or both parties attempt to escape subsequent liability for nonperformance—as, for example, the right to be released from the contract if the supplier fails to receive certain materials from a third party, or the right unilaterally to decrease the quantity of goods to be delivered if the supplier receives orders from other enterprises—have been annulled in pre-contract cases, on grounds of what we would call "public policy "[12]

Soviet divorce procedure and pre-contract cases are examples of new legal institutions produced by the Russian Revolution. Here Soviet law differs in letter from that of other countries—both in form and in content. However, they are also illustrations of a different spirit which runs throughout Soviet law, underlying even those rules and institutions (of which there are many) that are identical in letter with our own. Soviet business enterprises in their commercial relations, like Soviet husbands and wives in their family relations, "go to school" to the law

(3) *The written law.* The codes and statutes present a picture of Soviet law which in general is surprisingly similar to our own law, with differences chiefly in degree and emphasis. There is, of course, a far greater degree of State ownership. Criminal law is emphasized much more strongly, especially as a means of deterring and punishing infringements of State economic policy Administrative law predomi-

[11] *Cf.* No. 2 Shkundin, *The Influence of Plan on Obligation,* SOVIET STATE AND LAW, 34, 37-8 (1947) (in Russian).

[12] *Cf.* Berman, *Commercial Contracts in Soviet Law,* 35 CALIF. L. REV. 191, n. 42 and 225-7 (1947).

nates; the law of inheritance or of personal property is not very highly developed. Nevertheless, there is sufficient resemblance to give an American lawyer the feeling that he is in familiar territory

On the fringes of the written law, however, may be detected evidences that this is "law of a new type." An example is the law concerning counter-revolutionary crimes. For the most part this resembles the usual law of treason; however, also prohibited is "counter-revolutionary propaganda and agitation," and, moreover, a necessary element is "counter-revolutionary intent," which may mean something more—or less—than the intent to overthrow the government by force. Reported cases of counter-revolutionary crimes are rare. In 1944, however, a Soviet citizen charged with that offense was acquitted, the court stating "the witnesses incorrectly interpreted the true meaning of his opinion, relating to one of the most offensive episodes of the charge, concerning an evaluation of the Constitution of the U.S.S.R.

> [I]t is clear that these opinions were not evoked by any orientation against Soviet authority, which is an indispensable condition for finding them counter-revolutionary "[13]

How far the term "counter-revolutionary" has become synonymous with "anti-State" is difficult to determine. Insofar as a different type of society is implied, a society bound not simply by politics but by an idea to which politics is subservient, a society in revolution, there is involved a kind of law differing in spirit from our own.

(4) *Theory.* Prior to the upheaval of the mid-1930's, it was believed that by the creation of a new economic order there would inevitably be produced a new type of man. The emphasis was on economics and on techniques; law played an inferior role. Since 1936 the emphasis has been, in Stalin's words, on cadres—as opposed to technique. The advance from Socialism to Communism will be achieved, it is now thought, not by any fundamental change in the political or economic order, but by what is called "the perfection of man." Law is important, therefore, not merely in giving stability to the political and economic processes, but also in re-making Soviet man, strengthening him morally for the tasks of building the good Communist society

On the fringes of Marxist theory, quite far removed from the original doctrine that law is a superstructure reflecting economic class interests, an insight into the attitudes underlying Soviet law may be gained.

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[13] Case reported in Hazard, MATERIALS ON SOVIET LAW, 3-4 (mimeographed) (1948).

Soviet society is thought of as a moral or "moral-political" unity; its members are but youths and children, requiring training and education, Soviet law educates them to a Communist social-consciousness, "ingrafting upon them," in the words of a recent Soviet writer,[14] "high, noble feelings." However repressive the Soviet legal system may appear to the "reasonable man" of American tradition, the importance of the underlying conception of *Law as a teacher* should not be minimized.

[14] Kareva, *The Role of Soviet Law in the Education of Communist Consciousness,* BOLSHEVIK, No. 4 (in Russian) (1947).

MONGOL LAW—A CONCISE HISTORICAL SURVEY

V A. RIASANOVSKY*

Two basic systems of law, one Chinese, the other Mongol, coexisted in Eastern Asia. Because they arose from contrasting cultural bases, the systems were entirely different. Chinese law sprang from a settled agricultural way of life while the law of the Mongols arose from a nomadic, pastoral economy The Chinese developed the fundamental institutions of settled agrarian culture and law in the Far East which greatly influenced the peoples of Korea, Japan, Annam, and so forth. The Mongols unfolded the basic institutions of nomadic, pastoral law and culture which likewise affected the nomadic tribes of Asia which once formed parts of the empire of Jenghis Khan and his successors—the modern Buriats, Kirghiz, Tunguses, etc.

The Mongol law is interesting from the standpoint of comparative jurisprudence and sociology There, in the nineteenth and twentieth centuries, we find, well-preserved, a manifestation of the legal principles of a mode of life through which the modern European and American nations passed long ago (over 1,000 years). We meet here, not only with the patriarchal mode of life which preceded our era, but with one even more ancient—the epoch of the matriarchate.

For the convenience of study, we may divide the history of Mongol law into the five following periods: (1) General Mongol law of the epoch of Jenghis Khan and his successors; (2) Local national law of

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