

2 The Bolshevik experience

The formal law is subordinate to the law of the Revolution. There might be collisions and discrepancies between the formal commands of laws and those of the proletarian revolution . . . This collision must be solved only by the subordination of the formal commands of law to those of party policy.

Andrei Ya. Vyshinsky,
Stalin's procurator-general (1935)¹

The development in Russia of a modern European legal system incorporating concepts of rule of law, protection of citizens' rights *vis-à-vis* the state, and judicial independence was, as we have seen, hampered by a sclerotic and reactionary monarchy overwhelmed by social and political forces beyond its control. The collapse of the monarchy and the successful Bolshevik *coup d'état* against the Provisional Government, rather than destroying the Russian Empire, essentially enabled it to endure, albeit in a new form. For almost three-quarters of a century, power remained centralized in the hands of a few; most citizens were relegated to the status of subjects rather than real participants in political decision-making; Russians enjoyed considerable advantages not shared by other ethnic groups; and law primarily served the interests of the state rather than the individual.

As we have seen, the Russian Empire lagged behind the rest of Europe in developing a capitalist economy, a democratic political system, and a modern legal system, in part due to its physical isolation during much of the seventeenth, eighteenth and early nineteenth centuries. The brief period of reforms and modernization leading up to 1864 had a profound influence on the thin stratum of Westernized urban intelligentsia, but it was cut short by anarchist terrorist provocations eliciting increasingly repressive measures by the police. After the Revolution of 1917, Russia found itself again cut off from the West and Western legal culture for largely ideological reasons.

Given the relative shallowness of the roots of Western legal traditions in Russia and the USSR's long isolation from the West after the Revolution, it is not surprising that the legal system evolved substantially differently than those in Western Europe. In this chapter we examine the seventy-five-year experiment with socialism and the extent to which Marxist–Leninist concepts of law have become ingrained in Russian legal practice and legal culture. We begin by analyzing the ideological roots of the Soviet legal system.

The Marxist concept of law

Law plays a subsidiary role to the economy in Marx's analysis of capitalist society. "The mode of production in material life determines the general character of the social, political and spiritual process of life," Marx wrote.² Thus, law is part of the superstructure built on the economic infrastructure or foundation of society. According to Friedrich Engels: "The economic structure of society always forms the real basis from which, in the last analysis, is to be explained the whole superstructure of legal and political institutions, as well as of the religious, philosophical, and other conceptions of each historical period."³

Marx viewed such abstract concepts of justice, rule of law, and equality before the law as fictions, veiling the true class character of the law. Bourgeois justice, with its emphasis on contract and private property, excluded the masses. In the area of public law in capitalist society, Marx held that law merely reinforces the interests of the owners of the means of production, whose interests are represented through political, legislative, executive, and judicial institutions of the state.

With the abolition of classes under communism, Marx reasoned, there would be no further need of law, since there would no longer be a ruling class needing the law to suppress or coerce other classes. In time, law and the state would wither away altogether. So too, the Marxist interpretation argued that all crime is, at its root, a manifestation of class antagonisms. With the abolition of classes under communism, all crime would vanish. The Marxian conception of law manifested a pronounced degree of utopianism that influenced Russian radicals during the last two decades of the tsarist regime and Bolshevik jurists during the first two decades of Soviet power.

Like many political activists and radicals of his time, Lenin was attracted to the study of law, completing his degree at St. Petersburg University in 1891 as a correspondence student, having been expelled for revolutionary activities. Since the 1860s, the law schools had been

in the forefront of political and social reform, often attracting students dedicated to revolutionary change. Lenin's older brother, Aleksandr Ulyanov, also had been a law student at St. Petersburg University. However, in 1887 he was arrested for his part in an attempt to assassinate Alexander III and was executed. The execution had a profound effect on the young Vladimir Il'ich Ulyanov, who thereafter devoted himself to revolutionary activity under the pseudonym Lenin.

The writings of Marx and Engels provided only scant guidelines for Lenin to follow in constructing a socialist state. Marx was first and foremost a social critic, not an architect of the new economic and political order. In the area of legal administration, Marx offered even fewer prescriptions. He merely stated that all crime is the result of social and economic contradictions; when those differences are eliminated under socialism, crime will vanish. Like Marx, Lenin envisaged the eventual transition to a communist society in which coercive instruments of the state and law would no longer be necessary and would, indeed, wither away. However, Lenin argued that during the transition from capitalism to communism it would be necessary to establish a "proletarian dictatorship" under which law and the state would continue to exist. In this phase, the coercive power of the state and legal institutions would be utilized to defend the interests of the masses, rather than those of a small ruling elite. The only concrete precedents for the administration of justice available to Lenin were the informal, popularly elected revolutionary tribunals established during the Paris Commune (March 28–May 28, 1871) and the 1905 Revolution in Russia.⁴

Decree No. 1 on the courts of the Bolshevik government, published on December 7, 1917, abolished the tsarist judicial system, the Procuracy, and the bar. A new system of people's courts and revolutionary tribunals was established. The people's courts had limited jurisdiction: criminal cases involving sentences up to two years and civil cases of disputes over 3,000 rubles. In order to reflect greater citizen participation, the people's courts included two lay judges who sat with the full-time professional judge. The revolutionary tribunals became a primary vehicle for political repression in defense of the revolutionary order. To promote participation of the masses in the judicial process, one judge and six lay assessors (lay judges) were elected to each tribunal.

The procedures governing the functioning of the newly established people's courts and revolutionary tribunals were kept intentionally simple. The Bolsheviks, reacting to the elaborate and often arcane

system of judicial due process under the tsars, wished to construct a system in which citizens would settle their disputes “with simplicity, without elaborately organized tribunals, without legal representation, without complicated laws, and without a labyrinth of rules of procedure and evidence.”⁵ In some instances, accused persons were brought before public gatherings at which comrades would serve as social accusers or defenders. Guided by a revolutionary sense of justice, the tribunals cracked down on economic crimes. Members of the aristocratic and middle classes were often convicted on flimsy evidence. The collapse of pre-revolutionary legal institutions resulted in a dramatic increase in crime. One account states that the numbers of robberies and murders in Moscow in 1918 were ten to fifteen times higher than in 1913.⁶

The situation Lenin confronted in the lawless and chaotic days following the overthrow of the Provisional Government in November 1917 called for a legal system to provide law and order. He wrote:

There is no doubt that we live in a sea of illegality and that local influences are one of the greatest, if not the greatest obstacle to the establishment of legality and culture . . . It is clear that in light of these conditions we have the firmest guarantee . . . that the Party create a small, centralized collegium capable of countering local influences, local and any bureaucratism and establishing an actual, uniform conception of legality in the entire republic and the entire federation.⁷

In the face of the deteriorating situation, Bolshevik jurists grappled with the problem of coercion and law. Some favored an end to state coercion. For instance, one tribunal official proclaimed, “The socialist criminal code must not know punishment as a means of influence on the criminal.”⁸ Others were reluctant to abandon punishment altogether. Lenin opted for strict state coercion to stamp out vestiges of bourgeois society. In the political pamphlet *State and Revolution*, he had outlined the fundamental principles of revolutionary justice: smash the old state machine and set up new revolutionary tribunals; make these tribunals simple, informal, and open to mass participation; subordinate law to revolutionary goals and the party (for all law has a class character; if it does not serve the Bolsheviks’ purposes, it will be serving the purposes of counterrevolutionary elements); and use merciless force toward the eventual goal of reaching a society in which there will be no need for coercion. He concluded, “to curb increases in time, hooliganism, bribery, speculation, and outrages of all kinds . . . we need time and we need an iron hand.”⁹

Thus, in the early days of the Soviet regime, there coexisted two countervailing trends in Soviet law: the Marxist, utopian trend, which stressed both the withering away of the state and the creation of popular, informal tribunals to administer revolutionary justice, and the dictatorial trend, which advocated the use of law and legal institutions to suppress all opposition.¹⁰

Two of the leading proponents of the utopian trend in law were Piotr Stuchka and Evgeny Pashukanis. Stuchka was one of the founders of the Communist Party in Latvia. He graduated from St. Petersburg University faculty of law in 1888. After the revolution he became the first commissar of justice and chief of the Section of Law and State and the Institute of Soviet Construction, both part of the Communist Academy. Later he was named the first president of the USSR Supreme Court. Stuchka's legal philosophy was very much in line with that of Lenin; he advocated the creation of a distinctive, revolutionary "Soviet law" to govern the transitional period from capitalism to communism. Stuchka also argued, like Lenin, for a class-based conception of law. Only after all classes were abolished under communism would law and the state wither away.

The withering away of law figured much more prominently in the work of E. B. Pashukanis. Pashukanis, the son of a Lithuanian peasant, also studied law at St. Petersburg University prior to World War I, but due to his revolutionary activity he was forced to leave Russia and finished his legal education at the University of Munich. Pashukanis argued that contract relations in capitalist society extended to virtually all branches of the law. Thus, labor relations were seen as a series of worker/employer contracts; family law as a series of contracts among family members; and public law a series of contracts between the citizen and the state.

For Pashukanis, law mirrors the capitalist notion of commodity exchange relations and reaches its highest point of development under capitalism. The "commodity exchange theory of law" came to dominate Soviet juridical thinking in the late 1920s. Pashukanis argued that "Soviet jurists and legislators were not creating a proletarian or socialist system of law, but were merely putting to their own use the bourgeois law that they had inherited."¹¹ The task confronting Soviet jurists, he argued, was not the creation of a distinctive body of Soviet law, rather the transformation of pre-existing laws to meet the needs of the Revolution during the transitional period to communism, at which time law and the state would no longer be necessary. Pashukanis' major work, *The General Theory of Law and Marxism*, was written

during the midst of the New Economic Policy (NEP) that marked a tactical retreat from the gains of the Revolution.¹² Just as private ownership was permitted under the guise of “proletarian state capitalism,” Pashukanis argued that the Bolsheviks could use legal norms to seek tactical revolutionary aims of destroying the old order, yet he never lost sight of the central Marxist tenet: “the withering away of law is the yardstick by which we measure the degree of proximity of a jurist to Marxism.”¹³

Pashukanis and other utopian jurists envisioned the day when economic planning and technical regulation supplant the need for legal coercion: “the role of the purely legal superstructure, the role of law – declines, and from this can be derived the general rule that as [technical] regulation becomes more effective, the weaker and less significant the role of law and the legal superstructure in its pure form.”¹⁴

By 1930, the Communist Academy had brought all Soviet legal scholarship and education under its control and Pashukanis’ theories were the accepted dogma. Rival schools of thought were discouraged; the Institute of Soviet Law was absorbed into the Communist Academy, its scholarly journal was abolished and the institute’s director, A. A. Piontkovsky, a noted expert on criminal law, was dismissed. Piontkovsky had been one of Pashukanis’ harshest critics, charging that Pashukanis had confused the ideal-type concept of commodity exchange relations with a theory of law. Other critics disagreed with Pashukanis’ position that all law is the product of capitalist society, thus ignoring the importance of Roman law and feudal law, or the possibility of a distinctive Soviet law. In the early 1930s, the tone of Pashukanis’ critics became increasingly strident; some accused him of “bourgeois legal individualism,” “legal nihilism,” and even his former associate, Stuchka, openly criticized his approach.¹⁵

With the end of NEP and Stalin’s initiation of rapid industrialization and collectivization of agriculture, official support for the withering away of the state and law rapidly diminished. Stalin’s program for the rapid, forced reconfiguration of Soviet society called for a strong and stable state apparatus and effective mechanisms to enforce its policies and laws. In his address to the April 1929 Central Committee Plenum, Stalin warned against promoting hostile and antagonistic attitudes toward law and the state among the masses.¹⁶ Renewing his campaign against the wealthy peasants (kulakhs), he argued for an intensification of the dictatorship of the proletariat, rather than the withering away of the state. Stalin awkwardly tried to reconcile the

Marxist notion of withering away of the state with his own need for a stable and powerful legal regime:

We are for the withering away of the state, while at the same time we stand for strengthening the dictatorship of the proletariat which represents the most potent and mighty authority of all state authorities that have existed to this time. The highest development of state authority to the end of making ready the conditions for the withering away of state authority: there you have the Marxist formula. Is this "contradictory"? Yes, it is "contradictory". But it is a living, vital contradiction and it completely reflects Marxist dialectics.¹⁷

In an effort to preserve his status as the leading legal theoretician, Pashukanis revised his theories, by stressing the role of the state and state coercion in guaranteeing the functioning of the legal superstructure. Writing in 1932, Pashukanis notes:

Law in the conditions of the proletarian dictatorship has always had the goal of protecting the interests of the working majority, the suppression of class elements hostile to the proletariat, and the defense of socialist construction . . . As such, it is radically different from bourgeois law despite the formal resemblance of individual statutes.¹⁸

By justifying the political role of the state and state coercion, on the one hand, and the withering away of criminal law and judicial due process, on the other hand, Pashukanis inevitably contributed to Stalin's reign of terror. Pashukanis and his associate, Nikolai Krylenko, drafted new codes of "criminal policy" to replace the existing codes of criminal law and process. These draft codes subordinated judicial process to political expediency, thus legitimizing the use of terror. Arguing for "political elasticity" of laws and against the notion of stability of law, Pashukanis declared: "For us revolutionary legality is a problem which is 99 percent political."¹⁹

By the time of the 17th Party Congress in 1934, Stalin's position had definitely shifted to emphasize legal formality and stability of laws. Andrei Vyshinsky, Stalin's newly appointed procurator-general, criticized Pashukanis and Krylenko for "legal nihilism."²⁰ Contract law was resurrected in order to rationalize economic relations among emerging state enterprises. In 1936, during the drafting of a new constitution, family law was revived and strengthened. Divorces were harder to obtain and abortions were outlawed. The new constitution inserted the right of ownership of personal property and calls for new codes of civil and criminal law implied an end of Pashukanis' emphasis on "criminal policy" and "elasticity." Stalin proclaimed, "stability

of the laws is necessary for us now more than ever."²¹ Pashukanis was arrested in January 1937 and disappeared into the labor camp system (Gulag). The experiment with the Marxist concept of withering away of the state and law had ended. Law and the state had become the handmaidens of Stalin's dictatorial power.

The dual state

One of the enduring paradoxes of Soviet legal history is that after years of neglect due to the influence of the Marxist notion of withering away of the state and law, important strides were made under Stalin in reinstating Romanist concepts of law, a professional bar, and formal courts deciding cases based on sophisticated, written codes of criminal and civil law and procedure. At the same time, however, the power of the state was used to stamp out all opposition to Stalin and his regime. This included the widespread use of legally sanctioned terror against Soviet citizens.

In his hallmark study of the Nazi legal order, Ernst Frankel developed the concept of the "dual state," consisting of the "prerogative state" in which the political leadership enjoys virtually unchallenged power and the law merely reinforces its rule by force and political expediency, and the "normative state" in which sanctioned legal norms prescribe the permissible boundaries of citizen-state relations.²² The legal system in the USSR under Stalin clearly resembled Frankel's "dual state."

Stalin's policies of forced industrialization and collectivization of agriculture called for stable laws to enforce his directives. At his insistence, the Procuracy's jurisdiction was expanded in 1932 and again in 1935, professional legal education resumed in 1937, and new drafts of criminal and civil law and procedure appeared in 1938.

The single biggest contribution of Stalin to the enlargement of the normative state, however, was the enactment of a new constitution in 1936. The constitution clearly set out the powers of the state and the rights and duties of Soviet citizens. The areas of state and administrative law, which had been banished from law school curricula under Pashukanis' influence, were revived. Article 14 of the constitution called for the drafting of new all-union civil and criminal codes. Those codes, which appeared in draft form in 1937, reestablished the individual as a "juridical person" with the capacity to enter into legal relationships. Similarly, the civil code defined and classified various types of property: state property, collective property, and personal

property. In their influential texts on civil and criminal procedure, Kleinman and Strogovich criticized the atmosphere of "procedural nihilism" that had characterized Pashukanis' approach. They argued that the simplicity and "elasticity" favored by the utopian Marxist jurists resulted in the weakening of the role of civil and criminal proceedings and undermined the authority of the courts.²³

While the renewed respect for law and the normative state under Stalin can be seen as a progressive step, law was used to reinforce Stalin's dictatorship and much of the terror was carried on outside of established judicial institutions. The authoritarian tone of legal policy was voiced by Andrei Vyshinsky, Stalin's procurator-general and chief prosecutor in the great purge trials of the 1930s. Vyshinsky defined law as a set of rules laid down by the state and guaranteed by the state's monopoly of force.²⁴ In the wake of Stalin's dictatorial legal policies, utopianism all but vanished. Vyshinsky, speaking before a group of public prosecutors in 1936, stated: "the old twaddle about the mobilization of socially active workers . . . must be set aside; something new is needed at the present time."²⁵

Inevitably, the lines dividing the "prerogative state" and the "normative state" were fuzzy. In many instances, laws were vaguely defined intentionally in order to permit state prosecutors maximum flexibility in apprehending and convicting "enemies of the people." Perhaps the clearest example of the carryover of Pashukanis' ideas of "elasticity" in the law was the infamous doctrine of analogy. Analogy was introduced into Soviet criminal law during NEP and reflected the emphasis of that time on revolutionary justice. According to the doctrine of analogy, a person could be punished for committing an act that, although not expressly prohibited in the criminal code, is analogous to a prohibited act. The effect of the doctrine of analogy was to widen the already wide definition of political crimes afforded in Article 58 of the Russian criminal code of 1926. Article 58 included fourteen sections, concerning crimes ranging from "anti-Soviet agitation" to "sabotage" and "terrorism."

Much of the legal administration of the Stalin years was carried on outside of established judicial institutions. Special boards of the Ministry of Internal Affairs were set up to facilitate campaigns against anti-Soviet elements and to silence potential opponents. The boards were given extraordinary powers and were not required to follow established judicial procedure. They had the authority to imprison or exile for a term of up to five years anyone considered to be "socially dangerous." In the late thirties and again in the 1940s the maximum

sentence was extended to ten and then twenty-five years. Proceedings of the boards were not public, the accused had no right to counsel, and there was no appeal of verdicts. The laws enforced by the boards were often changed abruptly and without publication, so that numerous persons were convicted for acts that they did not know to be illegal. The boards consigned millions of Soviet citizens to "corrective labor camps." Some Western analysts estimate the prison labor force by 1941 at 3.5 million.²⁶ Thus, the security police apparatus was the single largest employer in the Soviet Union and wielded not only political but tremendous economic power.

Although the dictatorial trend in Soviet law reached its peak in the mid-1930s, the intrusion of the prerogative state in Soviet law was already apparent as of the end of NEP in 1928 and 1929. By June 1930, the RSFSR procurator complained to the 16th Party Congress that political authorities were not only commandeering and preempting legal institutions in the rural areas, but were actually interfering with them in their campaign against the kulakhs.²⁷ Laws enacted in November 1929 provided compensation to victims of "kulakh violence" and established severe criminal sanctions for the "rapacious slaughter of livestock."²⁸

With the introduction of Stalin's "revolution from above," the whole society began to work on a command basis. Internal passports were issued in 1932 to cut down on workers moving from one job to another, and labor books were introduced to record an individual's work record. Collective farmers were not issued internal passports and, consequently, were unable to leave their farms. Criminal penalties were imposed for labor violations. The death penalty was extended to various economic offenses such as hoarding of silver coins, "wrecking" (sabotage), negligence resulting in damage to state property, and theft of public property. Absenteeism or chronic tardiness in appearing for work was interpreted as an act against the state and punished by up to five years in prison. In line with Stalin's conservative family policies, abortions were outlawed except in cases of medical necessity, and laws on divorce were made much more restrictive.

The secret police combed the streets at night in their infamous "black marias" (black sedans), stopping at apartments to pick up people whom "informers" had reported. Rumors or a careless comment by a child at school were sufficient to result in imprisonment or death for a parent. Many Soviet citizens recall the years when they had suitcases packed with warm clothing waiting by the door in case

they should be awakened by the secret police in the night and taken away.

Under Stalin's lead, the secret police were authorized to shoot their victims without trial, most frequently for supposedly sabotaging Stalin's economic campaigns. Among those secretly tried and executed and those executed without trial were bacteriologists charged with causing an epidemic among horses; officials of the food industry charged with sabotaging food supplies; and several agricultural experts, state farm officials, and academics accused of mismanagement and "wrecking." Higher-level officials charged with sabotage were treated to elaborate show trials at which most confessed after long periods of interrogation and torture by the secret police.

In April 1935, not long after the assassination of Leningrad party boss Sergei Kirov, a new provision was introduced into the law that extended criminal penalties including execution, to children as young as twelve. The purpose of the law was to allow police interrogators to threaten those under investigation with the prosecution and execution of their children.

The terror culminated in three major show trials of Stalin's political rivals during the period from 1936 to 1938. The first trial began on August 19, 1936. Sixteen persons, including Stalin's former associates on the Politburo, Zinoviev, and Kamenev; were charged with being members of a Trotskyite terrorist circle. The trial was held in the October Hall of the House of Trade Unions and heard by the Military Collegium of the Supreme Court. The audience consisted of a group of carefully selected, well-rehearsed employees of the security police (NKVD) and approximately thirty foreign journalists and diplomats.²⁹ With only two exceptions, the accused pleaded guilty to a long list of charges, including organizing the murder of Kirov and plotting the murder of Stalin and several other members of the Presidium of the Communist Party. No evidence was offered in the trials other than the confessions wrested from the accused while they were held by the secret police. All were convicted and executed within twenty-four hours of the verdict. No appeals were permitted.

With Zinoviev eliminated, Stalin turned his attention to two remaining adversaries, Bukharin and Rykov. Before plotting their elaborate show trials, however, he first dismissed Henry Yagoda as head of the NKVD and replaced him with Nikolai Yezhov. Six months after his dismissal, Yagoda was arrested and later he was tried and executed. Yagoda carried to his grave extensive knowledge of Stalin's involvement in Kirov's murder and countless other atrocities.

The second major show trial took place in Moscow in January 1937. Among the seventeen persons arraigned were Grigori Pyatakov, deputy commissar for heavy industry, and the publicist Karl Radek. In a new twist, many of the defendants were accused of economic sabotage (wrecking trains, introducing gas into coal mines, and so on). All were found guilty, and most were shot.

Throughout 1937, Yezhov rounded up and liquidated Yagoda's former senior subordinates in the NKVD. More than 3,000 NKVD officers were executed in 1937 alone.³⁰ Many others committed suicide, some by leaping from the windows of their Lubyanka offices in full view of the Moscow populace. The purge, known as the *Yezhovshchina* after the newly appointed secret police chief, reached a climax in May through September 1937. Arrests, exile, imprisonment, and execution affected all sections of the population, but focused especially on the elite. Stalin's terror machine continued unabated until the German invasion of the Soviet Union in 1941 and resumed not long after the victory was secured in 1945.

Both the war and the reconstruction after the war required the imposition of strict controls on Soviet society. In 1946 Stalin launched a campaign against the intelligentsia and the arts. A new decree on collective farms eliminated virtually all forms of private economic activity. In 1948 purges resumed in Leningrad. The party officials who led the city through the 900-day siege were arrested and shot.

On January 13, 1953 an ominous item appeared in *Pravda*, announcing the arrest of a group of Kremlin physicians who had supposedly confessed to the murder and attempted murder of various leading Soviet figures. Stalin was apparently planning to use the alleged "Doctors' Plot" as an excuse to launch a new wave of purges. However, on March 4, before the purge could begin, it was announced that Stalin had suffered a stroke two days earlier. He died on the evening of March 5, 1953. The circumstances surrounding Stalin's death remain obscure.

Stalin dominated the Soviet political and legal system for more than a quarter of a century, and his influence was felt long after his death. Stalin created and perfected the use of mass terror to insure his primacy in the system and the blind obedience of his advisors and the citizens. While state-sponsored coercion had been very much in evidence under Lenin during the revolution and the civil war, Stalin carried the use of police terror to new levels. Western estimates, now corroborated by Soviet authorities, indicate that more than 40 million

Soviet citizens may have perished as a direct consequence of Stalin's brutal policies.³¹

While use of terror and arbitrary pseudo-judicial procedures under Stalin greatly expanded the "prerogative state," they also generated a consensus after his death that extra-judicial means should be brought under control. The excesses of the Stalin period created an atmosphere that afforded Soviet jurists their first opportunity in more than thirty years to introduce meaningful legal reforms. Not surprisingly, the most important area of needed reform was in protecting citizens' rights *vis-à-vis* the state.

Perhaps the greatest legacy of Stalin was the defeat of the utopian, Marxist school of jurisprudence that favored revolutionary, informal justice, and the creation of a coherent and powerful system of state judicial administration. Subsequent efforts to reform it notwithstanding, Stalin's organizational edifice for the Soviet legal system survived more or less in its original form until the demise of the USSR in December 1991. We turn now to a brief survey of the Soviet legal system that Stalin created.

Sources of Soviet law

Drawing on its Romanist roots, the Soviet legal system was a civil law system, in which comprehensive codes of law play a central role. In contrast to the Anglo-American tradition of common law with its emphasis on judicially created laws through precedent, the Soviet legal system emphasized statutory laws – primarily codes and statutes – that were legislative enactments. According to Soviet constitutional theory, all power rested in the people, who in turn, elected representative bodies (soviets), which had sole power to pass legislation.³² The 1936 Constitution envisaged the drafting of centralized uniform codes of law for all the constituent republics, however the only one to be adopted was the 1938 Law on Court Organization. In 1957 the constitution was amended giving the union-republics the power to draft codes of law. The Supreme Soviets of the fifteen union-republics enacted a number of codes of law spanning a broad array of legal issues: civil law and procedure, criminal law and procedure, family law, land law, labor law, corrective labor law, water law, health care law, public education law, mineral resources law, and forestry law. All-union codes existed for air transport, merchant shipping, and customs law, while all-union charters (*ustavy*) were enacted for com-

munications, rail transport, and inland water transport. In addition to these codes, legislative bodies enacted more specific laws, decrees, and edicts. For example, all-union laws were enacted on universal military service, on the protection and use of historical and cultural monuments, and on the Procuracy.³³

Subordinate to these legislative acts were a wide array of “normative acts”: decrees (*postanovlenie*), regulations (*rasporyazhenie*), edicts (*ukazy*), orders (*prikazy*), instructions (*instruktsiie*), and rules (*pravila*). Decrees and regulations were normally issued by the USSR Council of Ministers and occasionally by individual ministries and state committees in directing the economy and executive apparatus. Edicts, orders, instructions, and rules were enacted by ministries, state committees, and other administrative agencies. Normative acts of executive bodies were issued on the authority delegated from superior executive and legislative bodies and could be annulled by them. In addition, the Procuracy had the right to supervise the conformity of such normative acts to the law; however, the Procuracy’s power was advisory; it did not have the right to suspend or annul normative acts of Soviet state administration.

Due to its unusual nature, the socialist economy resulted in the need for legally binding acts managing employment relations and property and contract disputes within state enterprises, collective farms, trade unions, and social organizations. Disputes *within* such organizations were resolved by internal administrative procedures and, to a limited extent, by judicial proceedings. Disputes arising *between* state, cooperative, and other institutions and organizations were resolved through a system of state arbitration tribunals (*arbitrazh*).

The system of *arbitrazh* was created in 1931 primarily to reconcile disputes between state enterprises; however, by the mid-1930s it evolved into a system of economic courts. The tribunals had the power to summon parties and witnesses, require submission of documents, and consult experts. According to the 1960 Statute on State *Arbitrazh*, the tribunals could force compliance with contracts, settle tort claims between enterprises, and impose fines. *Arbitrazh* decisions were binding, there was no judicial appeal process, and awards were enforced by warrant.

Another peculiarity of the Soviet legal system was the special status and quasi-governmental role of the Communist Party. Article 6 of the 1977 Constitution proclaimed the CPSU “the leading and guiding force of Soviet society, the nucleus of its political system and of [all] state and public organizations.”³⁴ Party organs issued numerous resol-

utions, decisions, decrees, programs, directives, rules, statutes and instructions. While most of these were limited to internal party matters and, therefore, not officially considered normative acts, they were binding on all party members and set the programmatic agenda for official state enactments. In many cases, important pieces of new legislation were initiated with joint decrees by party and government bodies. Such joint decrees, however, were largely symbolic and not considered by Soviet legal scholars to be superior to legally binding normative acts of official state bodies.

Technically judicial determinations in the Russian legal system do not establish precedents and are not a source of law. Nevertheless, judicial practice and appellate court judgments inevitably influence court decisions at subordinate levels. Although codes of law are quite comprehensive, they nevertheless contain gaps which the courts attempt to fill. For example, the noted scholar of Soviet law, William Butler, has demonstrated that the doctrine of necessary defense owes much to judicial decisions.³⁵ The USSR Supreme Court and the supreme courts of the union-republics also issued guiding explanations which were binding on lower-level courts and other agencies and were often cited along with references to legislative acts when courts decided cases.³⁶

Because the Soviet legal system did not recognize precedents, most judicial decisions were not published. Even many Supreme Court decisions remained unpublished. During the Stalin era, judicial proceedings were often conducted in closed chambers and court decisions were considered state secrets.

Since law does not evolve by judicial precedents, it falls to legislative bodies to undertake periodic revisions of the law codes, bringing them up to date and responsive to new developments. Codification is, however, a laborious process. For example, work on the revision of the 1926 criminal code began in 1939 and was completed only in 1960. As we have seen, major codification efforts were undertaken during Stalin's reign (although few came to completion) and even more active codification followed his death in 1953.

Court structure and procedure

Although there were several revisions in the supervision and competence of Soviet courts between the late 1920s and the collapse of the USSR in 1991, the general court structure remained essentially the same. At the lowest level were district or city people's courts which

heard approximately 95 percent of all civil and criminal cases of first instance.³⁷ Local courts were divided into “chambers” or divisions for civil and criminal cases. Usually several judges served in each chamber and they often specialized in particular types of cases (family law, criminal law, labor law). In some cities and regions, judges divided the region into zones with a judge hearing all the cases arising from that particular zone. At this lowest level, cases were heard by one professional judge and two people’s assessors. Until the reforms of 1989 professional judges were elected in general elections in their respective districts for a term of five years. No prior legal experience or education was required. In the 1930s the majority of judges had no legal training, but by the early 1960s more than 95 percent of all judges had a higher legal education.³⁸

Given the crucial role of the judge in the Soviet legal system, it is not surprising that the party carefully screened all candidates for election to the bench. Virtually all Soviet judges above the local level were party members, and all judges fell under the party’s power of appointment, or *nomenklatura*.³⁹

As in other civil law systems employing inquisitorial rather than adversarial procedure, judges in the USSR played an active part in judicial proceedings. They were the first to call for evidence and question witnesses – before either the prosecution or the defense. Their function was not only to determine innocence or guilt, but also to educate the accused and all present in the courtroom about Soviet morality. Soviet judges were an important instrument of socialization. When pronouncing sentence, judges often berated the accused for failing to uphold socialist values, for being drunk in public, or for setting a bad example to children.

People’s assessors were citizens, elected at general meetings of factories, offices, collective farms, or residential blocs and screened by local party officials, who served for a term of two and one-half years. Their function resembled that of a jury in a common-law system, however they not only decided guilt or innocence, but also were full, participating members of the bench with the right to call and question witnesses, examine evidence, and set punishment. All judicial decisions were voted on in closed chambers, so it is not known what impact people’s assessors had on the courts’ decisions. It is assumed that the judges’ prestige and legal education were deciding factors in the resolution of cases. At the appellate level and above, where the questions under review were procedural or involved technical points of law, cases were decided by panels of three professional judges.

Above the local courts were regional courts and the supreme courts of the union-republics and autonomous republics of the former USSR. These courts acted as the courts of first instance in cases designated by law or in cases deemed too complex for local courts. They also heard cases on appeal or protest. Protests generally were made by the prosecutor or the president of the people's court in a criminal case when the lower court acquitted, or in a civil case where the prosecutor felt a mistake or error in judgment had been made.⁴⁰ Appeals or protests had to be filed within seven days for criminal cases and within ten days for civil cases. Such actions suspended execution of the court's judgment. Protests against a verdict that had entered into force could be brought within one year.

At the pinnacle of the Soviet judicial system stood the USSR Supreme Court. The Supreme Court played a substantially different role than the Supreme Court in the United States. It was not a constitutional court, ruling on the constitutionality of acts of executive or legislative bodies. Its primary functions were to hear appeals of cases arising from the republic supreme courts and from military tribunals and to issue instructions and guidance to lower-level courts. The USSR Supreme Court consisted of twenty judges appointed by the USSR Supreme Soviet for a term of five years with the possibility of reappointment.⁴¹

The party and legal policy-making

The Communist Party, as Lenin stated, was the self-proclaimed "mind, honor, and conscience of the Soviet people." Political decision-making authority lay in its highest ranks. The 1986 Party Program called for the "further enhancement of the role and importance of the Communist Party as the leading and guiding force of Soviet society." In the realm of judicial policy, the program stated: "the strengthening of the legal basis of state and social life, the unswerving observance of socialist legality and law and order and the improvement of the work of the judicial organs, organs of supervision of the prosecutor's office, and justice and internal affairs organs have been and remain a matter of constant concern for the Party."⁴²

The party's hegemony in the administration of justice derived from several sources. Party approval was required before a person could be appointed to any influential position in the legal apparatus: judge, procurator, advocate, or police official. This power to fill personnel positions – nomenklatura – was a significant control device that the

party used to maintain its strict hold on administration. Party organs also directly nominated persons for election, including judges and even people's assessors. The personnel screening process extended to the lowest levels of the party organization. The result was that all those who investigated, prosecuted, defended, presided, and even studied the administration of justice in the Soviet union had to pass through a system of political filters before they could take office or assume their responsibilities.

The party also played a central role in coordinating the work of all judicial bodies. Party officials met with local law-enforcement officials on a frequent and regular basis to plan anti-crime campaigns. A single campaign against a specific type of crime in a region might require the participation of the Procuracy, police, courts, the republic's Ministry of Trade, factory managers, comrades' courts, trade unions, councils on crime prevention, and primary party organizations. Commissions on juvenile affairs, Komsomol organizations, fire, public safety, and pollution inspection agencies, and the State Standards Committee might also be involved. The party played the central role of overseeing the general coordination of these agencies.

Despite the inclusion of a judicial independence clause in both the 1936 and 1977 Constitutions, Soviet jurists never fully adopted the notion of an independent judiciary in the Western sense. Party organs were instructed to play an active role in supervising the judicial process. A 1971 editorial in the USSR Ministry of Justice's journal, *Sovetskaya yustitsiya*, stated: "Guidance by the Communist Party surpasses all political and judicial means of assuring that the courts observe socialist legality in their actions . . . The task of local Party organizations is, while not interfering in the judicial process, actively to influence courts to improve their work, to instill in officers of the court a high sense of discipline, and fulfill party and government decisions."⁴³

In 1956, a study group of the prestigious Institute of State and Law of the Academy of Sciences was impaneled to address the issue of the legal abuses of the Stalin years and to suggest measures to avoid repetitions. While establishing the principle of non-interference in legal cases, the authors concluded that "the court does not stand and cannot stand outside of politics . . . beyond the guidance of the Party."⁴⁴

There is a fine line, however, between party supervision and direction, on the one hand, and party interference, on the other. Impermissible party interference in the administration of justice occurred not infrequently when a party organ or official directly intervened in the disposition of an individual case by bringing political pressure to bear

on the arresting officer, investigator, prosecutor, judge, or defense attorney. Former Soviet defense lawyers who emigrated to the West reported that judges rarely received instructions in individual non-political cases. They noted, however, a more subtle influence. "Judges got the word from the way the wind was blowing."⁴⁵ This was especially the case during organized campaigns against various crimes. During an anti-bribery campaign, one Soviet defense attorney privately exclaimed, "If you have a bribery case these days, you might as well give up."⁴⁶ Thus, anti-crime campaigns tended to blur the line between administration and adjudication. During campaigns, there was the risk that party and police organs would usurp the proper role of judicial institutions.

Party interference was not restricted to anti-crime campaigns, however. Advocates, judges, procurators, police, and investigators were required to make monthly, quarterly, and annual reports to the party apparatus on the cases in which they had been involved. A former advocate from Leningrad observed that too many acquittals were frowned on by party officials.⁴⁷ Rapid increases of the crime rate also reflected badly on police officials, procurators, and local party secretaries.

Even more damaging to professional careers than underfulfilling quotas for arrests, convictions, or a reduction of the crime rate was the discovery of a major scandal involving official corruption or organized crime. Regional party secretaries were held ultimately responsible for coordinating all services of the central ministries in their respective regions.⁴⁸ This included supervision of the orderly fulfillment of economic development programs, provision of social services, and maintenance of law and order. Should top-ranking personnel in a principal industrial enterprise be arrested for embezzlement or theft of property from the factory, should a scandal surface concerning graft and corruption in the allocation of housing or other social services, or should it come to light that the police and the Procuracy in the region have conspired to falsify reports understating the extent of crime, the regional secretary was likely to be held personally accountable. For example, a well-publicized case of high-level corruption in the Azerbaijan Republic in 1975 resulted in five executions and prison sentences for fifty-nine other officials, including several local party secretaries.⁴⁹ If the secretary managed to save his own position, it was because he had successfully disassociated himself from his subordinates – the factory manager, the heads of regional social service department, or the chief of police and the procurator.

Party members were subject to a certain amount of double jeopardy, being accountable both to regular courts and to disciplinary action by the CPSU. Article 12 of the Party Rules states: "A Party member shall bear dual responsibility to the state and the Party for the violation of Soviet laws. Persons who have committed indictable offenses are expelled from the CPSU."⁵⁰ In fact, it was not unusual for judges to ask whether accused party members had been disciplined by their party organizations for alleged offenses.⁵¹ Such information could be highly prejudicial since party scrutiny of accused members did not afford the same procedural guarantees granted to criminal defendants in court and the standards for assessing "guilt" were quite different.

Crime in the USSR

According to Marx, crime is the manifestation of class antagonisms. With the abolition of classes under socialism, all crime should vanish. Although crime did not vanish in the USSR, certain types of criminal activity were much less prevalent than in Western societies. Comparing crime rates is, however, difficult because crime statistics in the Soviet Union were considered classified "state secrets." Nevertheless, there appeared to be far fewer robberies, murders, and other violent crimes by Soviet citizens than in the United States. Strict gun control, the threat of harsh punishment, the omnipresent police, and the low incidence of drug abuse largely accounted for this. There was also less monetary incentive for violent crime in the USSR than in the West. Most Soviet citizens had ample amounts of money; consequently, there was less motivation to commit robbery. The theft of desirable consumer goods was quite common, however, because they were in great demand and difficult to obtain legally.

Soviet sources indicated that between 80 and 85 percent of all violent crimes were committed under the influence of alcohol and usually involved family members, close friends, or neighbors.⁵² Committing a crime under the influence of alcohol is not a mitigating factor, according to Soviet law, but an aggravating factor. Alcohol abuse, which was widespread in the former USSR, is the primary cause of almost three-fourths of all divorces.⁵³ Overcrowded housing conditions combined with alcohol abuse often result in domestic violence.

Anonymous street crime, until recently, was much less frequent in the Soviet Union than in other societies, although there were reports in the press of youth gangs attacking total strangers on the street "simply for something to do."⁵⁴ Juveniles accounted for approxi-

mately 12 percent of all murders, 22 percent of all robberies, 59 percent of burglaries, and 49 percent of all rapes in the mid-1970s.⁵⁵ The portrait of the juvenile offender in the USSR does not differ greatly from that in other societies: the offender was usually male, lived in a city, came from a broken home, and undertook delinquent acts while under the influence of alcohol and as a member of a group. School dropouts were twenty-four times more likely to engage in criminal activity than were juveniles who remained in school. Similarly, youths who came from homes in which violence was common were nine to ten times more likely to become juvenile offenders.⁵⁶ A Soviet sociological study of juvenile offenders found that three-quarters were introduced to alcohol in the home – almost half before the age of thirteen.⁵⁷ As a rite of passage around the age of twelve or thirteen, a boy was expected to split a bottle of vodka with his father to celebrate becoming a man.

Punishment and rehabilitation of offenders

Marxist–Leninist ideology was perhaps more evident in sentencing and corrections than anywhere else in the Soviet legal system. Soviet ideology stressed state property over private property, and this was reflected in criminal law. The maximum sentence for the theft of personal property was two years; the maximum sentence for the theft of state property was three years.⁵⁸ Negligent destruction of private property could be punished by deprivation of freedom for a term of up to one year, while the term extended to three years for the negligent destruction of state property.⁵⁹

Some activities that are normal in other societies were illegal and strictly punished in the USSR for ideological reasons. According to Marxist–Leninist doctrine, charging interest, speculation, and profiteering are all means of obtaining “unearned income” and are, therefore, exploitative. Speculation was defined as “buying up and reselling goods for the purpose of making a profit” and could result in a prison term of two years, confiscation of property, and a fine of 30 rubles.⁶⁰ The penalty for speculation on a grand scale was two to seven years.

Article 154-1 of the Criminal Code of the RSFSR illustrated one of the more Kafkaesque aspects of the Soviet planned economy. In the USSR, the price of bread was artificially kept low in order to make it affordable for the average citizen. The price of feed for chickens and livestock, by contrast, was quite high. Consequently, many Soviet citizens bought bread to feed to their animals on their private land plots.

Article 154-1 was introduced in 1963 specifically to stop this practice. A fine was levied for the first offense, but for subsequent offenses the penalty could include up to one year of deprivation of freedom.

The maximum sentence for a first-time offender in the former USSR after the 1958 reform of criminal law was fifteen years, but for most crimes the sentence was no more than seven years.⁶¹ Soviet jurists were highly critical of Western legal systems that routinely mete out life sentences. One prominent jurist exclaimed, "How can you say that you have a system of corrections in the United States when you lock up prisoners for life?" By Soviet logic fifteen years should be adequate time to rehabilitate a criminal.

Soviet law allowed the parole or conditional release of prisoners who had served as little as one-half of their sentences. Parole with compulsory work assignment could also be awarded after serving just one-third of the sentence. In addition, periodic amnesties were granted, usually commemorating a political holiday. In 1970, for instance, the sentences for most inmates were reduced in honor of the hundredth anniversary of Lenin's birth. In 1979, a selective amnesty was announced for many categories of women and juvenile inmates in honor of the International Year of the Child. Presumably, amnesties were intended to underscore socialist values. By releasing a prisoner early in honor of Lenin's birth or some other patriotic event, it was hoped that the former inmate would be more supportive of the party and the values it sought to uphold.

The death penalty, by shooting, was applied in the former USSR in cases of treason, espionage, terrorist acts, sabotage, banditry, disrupting the work of prison camps, hijacking, and intentional homicide committed under aggravating circumstances (e.g. murder for profit, murder to cover up a previous crime, murder of a pregnant woman, rape-murder, or especially brutal murder). Capital punishment was also occasionally employed to punish state or party officials among others in extreme cases of theft of state property, counterfeiting, speculation on a large scale, and bribe-taking under certain circumstances.⁶² Party and state officials were expected to be model Soviet citizens. If they abused their positions of public trust for their own profit, they were severely punished. For instance, in 1985, the head bookkeeper of a construction firm in the Ukraine was accused of forming a criminal conspiracy with a number of stores in Kiev to steal state property. Over a period of years, the group systematically embezzled more than 327,000 rubles (almost \$225,000). The Kiev

oblast criminal court sentenced the bookkeeper to death. His accomplices were sentenced to long terms in labor colonies.⁶³

The ideological stress in the USSR on the value of labor was reflected in corrections and the punishment of criminals. Few prisons exist in the former Soviet Union, and they are only for hardened criminals who are too dangerous to be supervised at the normal labor colonies. The majority of inmates serve their sentences in labor camps that are stratified in terms of degree of security, difficulty of work, quality and quantity of food, and privileges. For example, one source indicates that in a strict-regime camp (maximum security), inmates are expected to work in difficult jobs (frequently involving outdoor work such as construction, lumbering, mining, and so on). At a medium-security facility, the work is usually indoors, and the ration consists of bread, salt, and water with one hot meal every other day.⁶⁴ Inmates may be transferred from one regime facility to another as a reward for good behavior. Infringement of the rules of the labor colony can also prolong the sentence of an inmate or even result in a transfer to a stricter regime facility. Thus, there is every incentive for the inmate to cooperate with the camp authorities. The Soviet correctional system had an astonishingly high success rate. In the early 1970s it was estimated that only 9 to 23 percent of all inmates repeated offenses, compared to more than 60 percent in the United States.⁶⁵

The educational role of Soviet law

As in other societies, law in the USSR both guided and punished. Whether it emphasized the rehabilitation of offenders or communicated a "moral lesson" by executing officials guilty of stealing state property, the Soviet legal system was designed to play an educational role. Law is a teacher; it conveys and enforces societal values and channels behavior into acceptable norms and patterns. Harold Berman notes a paternalistic strain marked Soviet law and practice:

The subject of law, legal man, is treated less as an independent possessor of rights and duties, who knows what he wants, than as a dependent member of the collective group, a youth, whom the law must not only protect against the consequences of his own ignorance, but also must guide and train and discipline . . . It is apparent that the Soviet emphasis on the educational role of law presupposes a new conception of man. The Soviet citizen is considered to be a member of a growing, unfinished, still immature society, which is moving toward a new and higher phase of development. As a subject of law,

or a litigant in court, he is like a child or youth to be trained, guided, disciplined, protected. The judge plays the part of a parent or guardian; indeed, the whole legal system is parental.⁶⁶

Paternalism is not a recent development in Soviet law. In 1917, D. I. Kursky, Lenin's commissar of justice, remarked, "It does not matter that many points in our decrees will never be carried out; their task is to teach the masses how to take practical steps."⁶⁷ Soviet law, apart from governing the interactions of citizens and the relation of their rights and duties, was concerned with the development of citizens' moral well-being and their "law-consciousness." Article 20 of the RSFSR Criminal Code stated that the goal of punishment was not only retribution for undertaking a crime, but it also strove to achieve the "correction and reeducation of the criminal in a spirit of honest orientation to labor, exact observance of laws and respect for the rules of the socialist community."⁶⁸

The dual purpose of Soviet law – to punish and to educate – surfaced in various concrete legal policies. In 1957, for example, Khrushchev initiated "anti-parasite" laws aimed at those profiting from the fringe economy: prostitution, begging, vagrancy, private speculation, and other sources of "unearned income." Any able-bodied adult who was found leading an "antisocial, parasitic way of life" could be brought before a general meeting of townspeople and banished. Proceedings were neither trials nor the actions of a court; as such, they were condemned by many jurists as inconsistent with the concepts of "rule of law" and socialist legality. Proponents argued, however, that the parasite laws and their method of enforcement pointed toward realization of the utopian Marxist notion of the withering away of the institutions of the state.

Anti-parasite legislation was introduced in nine republics. With the exception of Latvia, parasite laws were not enacted in any of the European republics of the USSR where Western traditions of law were more ingrained. While jurists appear to have been unable to alter the draft parasite laws, their objections were heeded in the major republics.

The legal establishment in general, and the Procuracy in particular, chafed under Khrushchev's policies of informal judicial proceedings and public participation in the administration of justice. Not only did these anti-parasite tribunals circumvent established judicial institutions, thus lowering their credibility, they often were guilty of gross violations of citizens' rights. Furthermore, no appeals were permitted.

Gradually, legal populism became eclipsed by another significant legal development in the late 1950s – the codification of fundamental principles of criminal law and criminal procedure. A trend toward the “juridization” of law swept Soviet jurisprudence after Stalin, enhancing the role of established legal institutions and the legal profession. Jurists associated with this orientation argued that measures pertaining to fringe elements in Soviet society should be relegated to the general area of criminal law. A benchmark of this trend toward “juridization” was the May 4, 1961 RSFSR decree on parasitism that subsequently served as a model for similar legislation in most of the other republics. The decree gave jurisdiction over parasite cases to the criminal courts, bypassing the comrades’ courts, which could give only light sentences. Also spurned in the legislation were the public meetings of residential units. For cases of parasitism, the new legislation specified punishments of two to five years of exile with compulsory labor.

In the first six months after the enactment of the decree, there were at least 600 convictions.⁶⁹ Of those convicted in 1961, more than half received sentences of four or five years.⁷⁰ Despite this harsh policy, there apparently was considerable selectivity in enforcement and prosecution, even during a time of increasingly strident public campaigns against parasites. In the first half of 1961, approximately 96 percent of all parasites were given warnings, not prosecuted, because they heeded the warnings and found proper work.⁷¹

The case of the anti-parasite legislation illustrates several aspects of the Soviet legal system. The anti-parasite laws were originally initiated to punish anti-social behavior and to socialize Soviet citizens by enlisting their assistance in combating parasitism and hooliganism. In time, however, the professional legal establishment exerted its influence and incorporated the anti-parasite laws into regular judicial procedure. Since Khrushchev, such “juridization” has been a hallmark of socialist legality.

The case of the anti-parasite laws also illustrates the use of law in the USSR as a means of social engineering, that is, as a means of ordering human relations to further the values of Soviet society. This practice is not unique to the Khrushchev era. Gorbachev’s much publicized anti-alcohol campaign mobilized the legal establishment in order to discourage alcohol consumption. Prosecutions for public intoxication increased dramatically, and those convicted received harsher penalties.

The USSR's seventy-five-year experiment with socialist law has left an indelible imprint on the Russian legal system and the way in which Russians view the law. As we have seen, law in the USSR emphasized the role of the state over the rights of the individual. Although the utopian, Marxist influences on law declined during the Stalin era, overshadowed by the dictatorial trend, they were not eliminated entirely. It was also during the Stalin years that a third trend, most often referred to as "socialist legality" began to emerge. "Socialist legality" was associated with stability of laws, codification, due process and judicial independence, concepts valued and promoted by an increasingly active legal profession. In chapter 3 we will explore the process of legal reforms from the mid-1950s to the present.