

Michigan Law Review

Volume 50 | Issue 6

1952

Lenin, Stuchka, Reisner, Pashukanis, Stalin, Vyshinsky, Yudin, Golunskii, Strogovich, and Trainin: *SOVIET LEGAL PHILOSOPHY*

S. I. Shuman
University of Pennsylvania

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Comparative and Foreign Law Commons](#), [Law and Philosophy Commons](#), and the [Law and Politics Commons](#)

Recommended Citation

S. I. Shuman, *Lenin, Stuchka, Reisner, Pashukanis, Stalin, Vyshinsky, Yudin, Golunskii, Strogovich, and Trainin: SOVIET LEGAL PHILOSOPHY*, 50 MICH. L. REV. 956 (1952).

Available at: <https://repository.law.umich.edu/mlr/vol50/iss6/21>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

RECENT BOOKS

This department undertakes to note or review briefly current books on law and materials closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

SOVIET LEGAL PHILOSOPHY. By V. I. Lenin, P. I. Stuchka, M. A. Reisner, E. B. Pashukanis, J. V. Stalin, A. Y. Vyshinsky, P. Yudin, S. A. Golunskii, M. S. Strogovich, and I. P. Trainin. Translated by H. H. Babb. Introduction by J. N. Hazard. Cambridge: Harvard University Press. 1951. Pp. xxxvii, 465. \$7.50.

The general difficulty of obtaining reliable information about Soviet law has been somewhat abated in recent years by the publications of Schlesinger,¹ Gsovski,² Berman,³ Hazard, and Weinberg,⁴ the English translation of a work by Vyshinski⁵ and now by the present volume. In one respect the last mentioned work is not as valuable as some of the others, since the information presented here has for the most part already been available to readers of languages other than Russian. A number of periodical articles as well as the above mentioned volumes have surveyed, with varying degrees of detail, the period covered by the writings of the individuals represented here. Hence the chief value of the translations lies in making available within the confines of a single volume some of the original source material of these diverse views. I am unable to comment upon the technical proficiency of the translations by Mr. Babb, but as to their readability they measure up to the usual high quality of the former volumes of *The 20th Century Legal Philosophy Series*, of which this is volume five.

If a western reader construed "legal philosophy" as it is usually understood among us, and were to read this volume, he would probably be quite surprised. For, as Lenin put it in his now famous idiom, "Law is politics" for the Soviets. Were we therefore to use terms with their usual "western connotation," this volume might be called, *Soviet Political Philosophy as it Affects Law*. And as Professor Hazard observes in the introduction, "The originality of Soviet jurists lies not in striking out on a novel course but in their interpretation of Marxism to meet the particular conditions of the period in which they wrote."⁶

The application of Lenin's "revolutionary legality" during the period of militant communism immediately following the October Revolution, created a legal milieu best typified by uncertainty and transiency. Within a year of the

¹ SCHLESINGER, *SOVIET LEGAL THEORY: ITS SOCIAL BACKGROUND AND DEVELOPMENT* (1945).

² GSOVSKI, *SOVIET CIVIL LAW* (1948).

³ BERMAN, *JUSTICE IN RUSSIA: AN INTERPRETATION OF SOVIET LAW* (1950).

⁴ HAZARD AND WEINBERG, *CASES AND MATERIALS ON SOVIET LAW* (1950).

⁵ VYSHINSKY, *THE LAW OF THE SOVIET STATE*, trans. by H. Babb (1948).

⁶ Introduction, p. xx.

revolution a decree prohibited the mention of all Tsarist law, and the excessive number of decrees and policy shifts caused many courts practically to cease operating, and some to stop completely. In this situation there could be no legal theory other than the guiding principles laid down by Marx in very general terms to the effect that a legal system is determined by the social system which it is to serve.⁷ Add to this thesis that of the withering away of the state formulated by Engels and later urged by Lenin, and one may more readily appreciate the legal situation which obtained. By November 1918 Lenin was compelled to decree that the laws of the R.S.F.S.R. were to be observed, *unless* "revolutionary expediency" required the contrary. In this decree is explicitly revealed one of the earliest manifestations of what was to typify Soviet political—and consequently, legal—theory. Russia was a dual state.⁸ There were to be rules for stability, "but they could at any time be swept away by the royal prerogative."⁹

The failure of a revolution in the west,¹⁰ the excesses of militant communism, and the general famine of 1921, among other things, added impetus to the strategic retreat from the "heroic period" of the revolution. By 1921 the N.E.P. and its compromises required a new legal formulation to fit the Marxism of the times. The legal reconciliation of the revived elements of capitalism¹¹ with the then existing socialism was achieved by Pashukanis' exchange theory, the basis of which was the mutual recognition of property rights.¹² And although the exchange theory sufficed for some fifteen years, it was eventually seen to be weak in important respects. The most important failure of Pashukanis was his too close adherence to Bukharin's interpretation of the withering away process. Agreeing, as he did, that the withering away was to be by degrees and that the state would last until the exchange elements had been rooted out, Pashukanis emphasized the administrative aspects of the law. This view was quite in keeping with Lenin and Engels, but unfortunately for Pashukanis, Stalin and Vyshinsky subsequently recognized the need for greater stability, and hence stressed the rules of law rather than administrative agencies once they became cognizant of the need to retain the state beyond the time when a particular system of production and distribution had been achieved.

For the above reason Pashukanis was later denounced as nihilistic, "a spy" and "a traitor," and disappeared shortly after the Stalin Constitution in 1936.

⁷ Cf. Gsovski, "The Soviet Concept of Law," 7 *FORDHAM L. REV.* 1 at 5-7 (1938).

⁸ This term is coined by FRANKEL, *DUAL STATE* (1941). It is applied to Russia by Rheinstein, Book Review, *Cases and Materials on Soviet Law*, 19 *UNIV. CHI. L. REV.* 152 (1951).

⁹ Rheinstein, Book Review, *Cases and Materials on Soviet Law*, 19 *UNIV. CHI. L. REV.* 152 (1951).

¹⁰ TROTSKY, *THE REVOLUTION BETRAYED* (1937).

¹¹ Among the elements introduced under the N.E.P. may be listed the limited denationalization and the introduction of codes. It has been suggested that these codes were essentially those of the Imperial Regime prepared in 1913, but never introduced because of the war. Cf. Gsovski, "The Soviet Concept of Law," 7 *FORDHAM L. REV.* 1 at 27 (1938).

¹² For a fuller statement of Pashukanis' views, cf. Fuller, "Pashukanis and Vyshinsky: A Study in the Development of Marxian Legal Theory," 47 *MICH. L. REV.* 1157 ff. (1949).

Krylenko, who had shared Pashukanis' conviction as to the incompatibility of law and socialism, and who had been a leading figure in the formulation of the Stalin Constitution, was also repudiated in the 1937-38 purges. Pashukanis tried to "correct" his position in 1936, as he had done once before in 1930 (after the decline of the N.E.P., officially abandoned in 1928),¹³ but he was unable to rectify the error of holding that so long as there was exchange there would be law, and so long as there was law, it would be bourgeois law—he was too much of a Marxist. When Pashukanis began to decline, his pupil Dozenko sought to replace the master's wayward teachings by a return to the simple thesis of Marx: law was an instrument of the state for transforming relations, especially economic relations. But Dozenko, too, failed and was subsequently purged.

Although the purpose of the first and second five year plans was the enforcement of socialism, aimed at the abolition of classes and the remnants of capitalism, there was still provision made for the personal ambition of the individual.¹⁴ It has been from here on that there commenced the real development of Soviet law; from this point on the Soviets sought to achieve *stability* in their law, no longer was the withering away thesis to be a *practical* consideration for Soviet jurisprudence. By the time of the 1936 Constitution, Stalin was heard to say, "and now more than ever there is a need for stability of laws,"¹⁵ and since that time Soviet jurists have come to speak of "socialist legality" instead of "revolutionary legality." However, this shift has not in any way minimized the dual character of the Soviet state, for there was always the saving force of the first article of the Civil Code: "Civil rights shall be protected by the law except in instances when they are realized in contradiction with their socio-economic purpose."

It was during this period of reorientation that Vyshinsky came to the fore. His entire approach is characterized by the concession that law is a necessity and the consequent effort to distinguish Soviet law from bourgeois law, so as to accommodate legal stability with the early principles of the revolution.¹⁶ The most fundamental of these early rules was, of course, not jeopardized by this policy change, for still, "law [is] in the last analysis nothing but the implementation of policy," as Vyshinsky said before the third session of the United Nations General Assembly.

It is clear that the official acknowledgment of the necessity for stability was due to the rejection of the notion of the gradual withering away of the state. But, interestingly enough, the "withering away" thesis has not been abandoned,

¹³ The decree of May 21, 1932 specifically abolished the N.E.P. and prohibited the opening of shops by private persons.

¹⁴ For example, premiums for efficiency and on piece work production, and allowing the collective and private farmer to sell his surplus directly to the consumer.

¹⁵ Stalin, Speech at VIIIth Congress of Soviets, 1936, *MOSCOW NEWS*, No. 48.

¹⁶ Cf. VYSHINSKY, *THE LAW OF THE SOVIET STATE* (1948).

instead the Bukharian interpretation has been replaced by a Marxian dialectic. In the best Hegelian tradition, Stalin has said: "The highest development of the government power for the purpose of preparing conditions for the withering away of the government power, this is the Marxian formula. Isn't it 'contradictory'? Yes, it is, but this contradiction is life, and it reflects completely the Marxian dialectic."¹⁷

Despite the acceptance of the seeming axiom for contemporary civilization, namely the necessity for state and law, the Soviets have not relinquished the ideals forsaken by necessity within ten years of their institution. Hence there has been a persistent effort to distinguish between Soviet law and bourgeois law, between the Soviet state and a bourgeois state. Above all there is no problem as to the Soviet hierarchy of state and law; the only restraint upon the state is the end which it is to serve; the function of the law in relation to the state is to protect the citizen from the state officials, but not from the state. As to the distinguishing feature of socialist law, all Soviet jurists have made prolific protestations as to their conviction that there is a difference, but as the state has become more permanent, so the law has become more conventional¹⁸—conventional as regards its essential principles, if not its actual procedure and administration.

If there is a uniqueness to socialist law, it is possibly the end which it is to serve. By 1936 it was officially acceded that a classless society was not to be had, and so the classes were described as "friendly" rather than "hostile." Consequently the new policy became that only when the nature of man had been made over could there obtain a civilization devoid of state and law, and it was to this end that law was to be directed. Law was to be not only an instrument for achieving economic policy, but it was also to be a teacher.

"By all their activities the courts shall educate the citizens of the U.S.S.R. in the spirit of devotion to the Motherland and the cause of socialism. . . ."¹⁹

This use of law can hardly be said to be peculiar to the Soviets; the social function of law is a thesis thoroughly familiar to contemporary American jurisprudence. Perhaps it is different to the extent to which law is used as propaganda and as a device for reform. The official Soviet legal philosophy seems to be a kind of inverted natural law: instead of man's sense of justice controlling

¹⁷ Stalin, Speech of June 27, 1930. Quoted by Gsovski, 7 *Fordham L. Rev.* 1 at 38 (1938).

¹⁸ One might think that it is the point of orientation that differentiates Soviet and American law; the former utilizing a collectivistic approach, the latter, individualistic. But in these days one need hardly be reminded that since the mid-1700's American law has become increasingly less individualistic. For examples, see POUND, *NEW PATHS OF THE LAW*, c. II (1950).

¹⁹ Article 3, Judiciary Act of 1938. Quoted by Berman, "Challenge of Soviet Law," 62 *HARV. L. REV.* 453 (1949).

his legal relations, man's legal relations shall change and re-educate his sense of justice, and consequently his "sense" of economics.

In conclusion, it may be well to note that although American lawyers could readily profit from a reading of this volume, one need always keep in mind that there still exist in Russia the Special Boards of the Ministry, and other comparable administrative agencies. Although the Soviet legal system may with increasing accuracy be characterized by stability, uniformity and even due process, one need retain cognizance of the fact that Russia is still a dual state. Perhaps, as Professor Hazard has recently suggested,²⁰ the dualism between courts with due process and special boards without it, are for two publics, one in Russia and already being re-educated, and the other outside Russia and still in need of a shining example.

*S. I. Shuman**

²⁰ Hazard, "Soviet Socialism and Due Process of Law," 48 MICH. L. REV. 1061 ff. (1950).

* Ph.D. University of Pennsylvania 1951; former instructor in Philosophy, University of Pennsylvania.—Ed.