

# **Marxism and Law**

**The struggle over jurisprudence  
in the Soviet Union**

**by Bill Bland**

**Presentation to the Stalin Society, March 2000**

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# MARXISM AND LAW (THE STRUGGLE OVER JURISPRUDENCE IN THE SOVIET UNION)

A PAPER READ TO THE STALIN SOCIETY  
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## INTRODUCTION

Jurisprudence is

" . . . the philosophy of law".  
(*'Oxford English Dictionary'*, Volume 8; Oxford; 1989; p. 321).

and law is

" . . . the body of rules . . . which a particular state . . . recognises as binding on its members".  
(*'Oxford English Dictionary'*, Volume 8; Oxford; 1989; p. 712).

According to Marxism-Leninism, the state is

" . . . a machine for maintaining the rule of one class over another".  
(Vladimir I. Lenin: *'The State'*, in: *'Selected Works'*, Volume 11; London; 1943; p. 647).

and came into existence when society became divided into classes:

"When there were no classes in society, . . . a special group of people especially separated off to rule and dominate over the rest of society had not yet arisen, and could not have arisen. Only when the first form of the division of society into classes appeared, only when slavery appeared, . . . then . . . it was essential that a state should appear.

And this state did appear -- the slaveowning state, an apparatus which gave the slaveowners power and enabled them to rule over the slaves. . . .

The change in the form of exploitation transformed the slave state into the feudal state. . . .

The feudal state was superseded by the capitalist state. . . .

The state continued to be a machine which helped the capitalists to hold the poor peasants and the working class in subjection".  
(Vladimir I. Lenin: *ibid.*; p. 647, 649, 651, 652).

According to Marxism-Leninism, the base of society

" . . . is the economic structure of society at the given stage of its development. . . .

Every base has its own corresponding superstructure".  
(Josef V. Stalin: *'Concerning Marxism in Linguistics'*, in: *'Selected Works'*, Tirana; 1979; p. 505).

while the superstructure of society

" . . . is the political, legal, religious, artistic, philosophical views of society and the political, legal and other institutions corresponding to them".

(Josef V. Stalin: *ibid.*; p. 505).

### THE DOMINANCE OF REVISIONIST CONCEPTS OF LAW

In the period following the socialist revolution in November 1917, revisionist conceptions of law were dominant in Russia.

This was possible because the view was widely held in legal circles at this time that

" . . . Marxist literature on the general theory of law is very scant", (John N. Hazard: Introduction to: Vladimir I. Lenin et al: 'Soviet Legal Philosophy'; Cambridge (USA); 1951; p. xvii).

so that

" . . . there were very few Marxist works. which could serve as statements of fundamental legal principles".

(John N. Hazard: Introduction to: Vladimir I. Lenin et al; *ibid.*; p. xviii).

although in fact

" . . . the volume of their (Marx's and Engels' -- Ed.) writings either on law or directly relevant to an understanding of law is considerable".

(Maureen Cain & Alan Hunt: 'Marx and Engels on Law'; London; 1979; p. ix).

### THE INTUITIVE SCHOOL OF LEGAL PHILOSOPHY

In the period immediately following the Russian revolution of November 1917, the dominant school of legal philosophy in the young Soviet republic was that of the 'intuitive school' of Mikhail Reisner (1868-1931), who was himself a disciple of Lev Petrazhitsky (1857-1931).

According to Petrazhitsky,

" . . . law is only a psychic phenomenon. . . . It exists only as spiritual experience -- emotions -- in the psyche of human beings. Legal norms themselves, statutes, etc., have no real existence; they are merely figments of imagination, fantastic notions, 'phantasmata' in Petrazhitsky's terminology".

(Sergei A. Golunsky & Mikhail S. Strogovich: 'The Theory of the State and Law', in: Vladimir I. Lenin et al: *op. cit.*; p. 416).

In short, the 'intuitive school' legal theory of law

" . . . denies that law and legal relationships are real, and turns law into an aggregate of concepts, illusions or (in Petrazhitsky's

language) phantasmata".

(Sergei A. Golunsky & Mikhail S. Strogovich, in: Vladimir I. Lenin et al.: op. cit.; p. 417).

But this view -- that ideas are primary and the material world is secondary -- is an

" . . . idealist principle",

('Great Soviet Encyclopedia', Volume 19; New York; 1978; p. 493).

where philosophical idealism

" . . . asserts that only our mind really exists, and that the material world, being, nature, exists only in our mind, in our sensations, ideas and perceptions".

('History of the Communist Party of the Soviet Union: (Bolsheviks): Short Course'; Moscow; 1939; p. 112).

Reisner himself claimed that Petrazhitsky's phantasmata

" . . . needed only to be given a class coloration in order to constitute the Marxist theory of law".

(Sergei A. Golunsky & Mikhail S. Strogovich, in: Vladimir I. Lenin et al.: op. cit.; p. 418).

and he claimed

" . . . that I refashioned Petrazhitsky's doctrine concerning intuitive law, in the sense that I put it upon a Marxist foundation, and thereby obtained not intuitive law in general . . . but the most genuine class law".

((Mikhail Reisner: 'The Theory of Petrazhitsky: Marxism and Social Ideology', in: Vladimir I. Lenin et al.: ibid.; p. 85).

But in reality Reisner's adaptation of Petrazhitsky's idealist theory is not Marxist at all. For whereas Marxism holds that the dominant ideas in a society are those of the ruling class of that society:

"In a class society, the superstructure is of a class nature. It is created by the ruling class and serves the need of the ruling class only",

(Fedor Konstantinov: 'Basis and Superstructure'; Moscow; 1955; p. 10-11).

Reisner, in contrast, holds that Soviet law is

" . . . a complex legal order, whose structure includes large segments of socialist law of the working class. . . . The next place is occupied by peasant class law. . . . The class law of the bourgeoisie . . . is relegated to third place".

(Mikhail A. Reisner: 'Our Law, Foreign Law, Common Law', cited in: Andrei A. Vyshinsky (Ed.): 'The Law of the Soviet State'; New York; 1948; p. 58).

Or, in the words of the Marxist-Leninist legal theoretician

Andrei Vyshinsky, Reisner depicts law as

" . . . a heap of ideological scraps of various classes, . . . as the totality of proletarian law, peasant law and . . . bourgeois law", (Andrei Y. Vyshinsky (Ed.): *ibid.*; p. 58).

and sums up his analysis of Reisner's legal philosophy as follows:

"Reisnerism is one of the varieties . . . of the bourgeois vulgarisation of Marxism, of the mutilation of Marxism by followers of (Sigmund -- Ed) Freud and (Ernst -- Ed.) Mach".

(Andrei Y. Vyshinsky (Ed.): *ibid.*; p. 59).

Since Reisner's legal ideas were so obviously alien to Marxist-Leninist thought, they

" . . . had no lasting influence upon the development of Soviet legal philosophy".

(John N. Hazard, in: Vladimir I. Lenin et al.: *op. cit.*; p. xxvi).

#### THE 'COMMODITY EXCHANGE' SCHOOL OF LEGAL PHILOSOPHY

The 'commodity exchange' school of legal philosophy rejected the Marxist-Leninist thesis that the state came into existence when society became divided into classes, so that machinery became necessary for maintaining the rule of one class over society (p. 1). It

" . . . was founded on the premise that the capitalist system is based upon the institution of exchange (goods, labour, etc.), which also was the origin of law".

(Yuri Starosolsky: 'The Principle of Analogy in Criminal Law : An Aspect of Soviet Legal Thinking'; New York; 1954; p. 38).

The leading figures in the 'commodity exchange' school were Petr Stuchka (1865-1932), Dmitri Kursky (1874-1932), Nikolai Krylenko (1885-1935), Ivan Akulov (1888-1939), and Evgeny Pashukenis (1891-1937).

Stuchka was RSFSR People's Commissar for Justice in 1918-21, and Chairman of the RSFSR Supreme Court from 1923 until his death in 1932.

Kursky was RSFSR People's Commissar for Justice in 1918-28, a Presidium member of the All-Russian Central Executive Committee in 1921-23, a Presidium member of the USSR Central Executive Committee in 1923-24, and USSR Ambassador to Italy in 1928-32.

Krylenko was RSFSR Procurator in 1922-31, RSFSR People's Commissar for Justice in 1931-36, and USSR People's Commissar for Justice in 1936-38,

Akulov was USSR Deputy People's Commissar for Workers' and Peasants' Inspection in 1930-31, 1st Deputy Chairman of the OGPU in 1931-32 and USSR Procurator in 1933-35.

Pashukenis was Director of the Institute of Soviet Construction and Law of the Communist Academy in 1931-36, and USSR Deputy People's Commissar for Justice in 1936-37.

Of these,

" . . . Pashukenis was the paramount figure",  
(Robert Sharlet: 'Pashukenis and the Withering Away of Law in the USSR',  
(hereafter listed as 'Robert Sharlet (1978)', in: Sheila Fitzpatrick  
(Ed.): 'Cultural Revolution in Russia: 1928-1931'; Bloomington (USA);  
1978; p. 170).

while Krylenko, in particular,

" . . . was closely associated with Pashukenis".  
(John N. Hazard, in: Vladimir I. Lenin et al.: op. cit.; p. xxxi).

The school concealed the essentially reactionary character of its ideology behind a false facade of pseudo-left demagoguery. Or, in the words of the Marxist-Leninist Andrei Vyshinsky, it

" . . . was elaborately masked -- veiled by empty and vacuous generalisations".  
(Andrei Y. Vyshinsky: 'The Fundamental Tasks of the Science of Soviet Socialist Law', in: Vladimir I. Lenin et al.: op. cit.; p. 325).

Indeed,

"Pashukenis's theoretical works were noted for their revolutionary phraseology and for their revolutionary fervour".  
(Arkady Vaksberg: 'The Prosecutor and the Prey: Vyshinsky and the 1930s Moscow Show Trials'; London; 1990: p. 127).

The 'commodity exchange' school of legal philosophy took in a fundamentalist way, as 'holy writ', the passage from Engels in which he states that after the conquest of political power by the working class, the state will wither away:

"The proletariat seizes state power and transforms the means of production in the first instance into state property. But in doing this, the government of persons is replaced by the administration of things and the direction of the processes of production. The state is not 'abolished', it withers away".  
(Friedrich Engels: 'Herr Eugen Dühring's Revolution in Science (Anti-Dühring)'; London; 1943; p. 308-09).

Since the 'commodity exchange' school of legal philosophy took so literally Engels' thesis on

" . . . the idea of 'withering away of law'".  
(Robert Sharlet, Peter B. Maggs & Piers Beirne (Eds.): 'P. I. Stuchka: Selected Writings on Soviet Law and Marxism'; New York; 1988; p. xi).

" . . . instead of looking for new forms of Law fitting the needs of the revolutionary state, . . . the adherents of the 'Commodity Exchange Conception of Law' found themselves delivered from having to bother about Law at all.

The Soviet . . . had to drop Law, as an essentially capitalist institution. . . . The withering away of the categories of Bourgeois Law implied the withering away of Law in general, that is to

say, the gradual disappearance of Law from human relations. . . . So the theory of 'withering away of the Law' was made to imply the immediate possibility of the withering away of the Soviet State". (Rudolf Schlesinger: 'Soviet Legal Theory: Its Social Background and Development'; London; 1945; p. 202).

Consequently, the 'commodity exchange' school of legal philosophy

" . . . held that Soviet legislators and jurists 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". (John N. Hazard: Foreword to: Piers Beirne & Robert Sharlet:(Eds.): 'Pashukenis: Selected Writings on Marxism and Law'; London; 1980; p. xi-xii).

In fact, a key feature of the views of the 'commodity exchange' school of legal philosophy was that the state and law would, following the socialist revolution, wither away. Pashukenis expressed this view by saying

" . . . that since law had arisen in private exchange of commodities . . . the state will gradually disappear . . . with the emergence of a society based on public property/planned economy". (Evgeny Pashukenis, in: John N. Hazard: 'The Abortive Codes of the Pashukenis School', in: Donald D. Barry, Ferdinand J. M. Feldbrugge & Dominik Lasok (Eds.): 'Codification in the Communist World: Symposium in Honour of Zsoly Szirmai: 1903-1973'; Leiden (Netherlands); 1975; p. 146).

Thus, most members of the 'commodity exchange' school denied that such a thing as 'proletarian law' could exist:

"We cannot even speak of proletarian law, because the purpose of the socialist revolution is to abolish law". (P. I. Stuchka: 'Proletarian Law', in: Robert Sharlet, Peter B. Maggs, & Piers Beirne (Eds.): op. cit.; p. 9).

Consequently, they characterised Soviet law as

" . . . imported, borrowed bourgeois law". (Andrei Y. Vyshinsky: op. cit.; p. 54).

The 'commodity exchange' school of legal philosophy

" . . . was centred within the Communist Academy. Most of its adherents wrote for the Academy's law journal . . . ('The Revolution of the Law' -- Ed.), which began publication in 1927"). (Robert Sharlet (1978): op. cit.; p. 170.

The 'Communist Academy' was

" . . . a higher educational and scientific and research institution in social and natural science (1918-36), founded by a decree of the All-Union Central Executive Committee of the RSFSR on June 25, 1918, in Moscow. . . .



The 'Communist Academy' was liquidated by the decree . . . of Feb. 8, 1936, which aimed at the unification all scientific workers into one state scientific centre -- the 'Academy of Sciences of the USSR'".

('Great Soviet Encyclopedia', Volume 1; New York; 1973; p. 596

By the late 1920s, the 'commodity exchange ' school of law

" . . . had come to dominate the intellectual apparatus of the legal culture"

(Robert Sharlet: 'Stalinism and Soviet Legal Culture' (hereafter listed as 'Robert Sharlet (1977)'), in: Robert C. Tucker (Ed.): 'Stalinism: Essays in Historical Interpretation'; New York; 1977; p. 161).

York; 1977; p. 161). .

and 'commodity exchange' jurists

" . . . occupied a network of strategic positions that enabled them to maximise and extend their influence over Soviet jurisprudence, including major academic positions, key publishing posts, official legislative drafting commissions and executive ranks in the justice apparatus. A few, notably Krylenko and Stuchka, even held higher Party office".

(Robert Sharlet 'Pashukenis and the Withering Away of Law in the USSR', (hereafter listed as 'Robert Sharlet (1978)', in: Sheila Fitzpatrick (Ed.): 'Cultural Revolution in Russia: 1928-1931'; Bloomington (USA); 1978; p. 171).

On Pashukenis's initiative,

" . . . the influence of the commodity exchange school was extended to correspondence courses in law. The Correspondence Division of the Institute of Red Professors, established in 1929, had a law section".

(Robert Sharlet (1978): op. cit.; p. 184).

and a campaign was launched for the removal of Marxist-Leninists -- depicted as 'bourgeois' -- from the field of academic law:

"While eliminating bourgeois jurists from the law schools and advocating their removal from the state apparatus, the commodity exchange school was in process of reconstructing the organisation and content of legal education".

(Robert Sharley (1978): ibid.; p. 183).

and the campaign was then extended to the state apparatus proper:

"By mid-1930, sufficient progress had been made in eliminating bourgeois professors from Soviet legal education for the commodity exchange school to be able to turn its attention to the bourgeois legal advisers in the state apparatus".

(Robert Sharlet (1978); op. cit.; p. 183).

In some places,

" . . . judges began to close their courts. Students of law schools passed resolutions expressing doubt as to whether their studies could

possibly be of use any longer".

(S. Dobrin: 'Soviet Jurisprudence and Socialism', in: 'Law Quarterly Review', Volume 52 (1936); p. 420-21).

So, by the end of 1930,

" . . . 'bourgeois' law professors had been purged from the teaching faculties and research staffs, and 'bourgeois' legal disciplines had been dropped from the curriculum".

(Robert Sharlet: 'Stalinism and Soviet Legal Culture' (hereafter listed as 'Robert Sharlet (1977)') in: Robert C. Tucker (Ed.): 'Stalinism: Essays in Historical Interpretation'; New York; 1977; p. 162).

The 'commodity exchange' theory of law so dominated the field of Soviet law that it

" . . . was soon accorded the status of the Marxist theory of law".

(Robert Sharlet (1978): op. cit.; p. 170).

There were, of course, theoretical

" . . . differences within the commodity exchange school",  
(Robert Sharlet (1978): ibid.; p. 171).

but

" . . . these essentially theoretical differences were deliberately muted and carefully contained within the halls of the Communist Academy in order that a unified commodity exchange school could better confront its opponents on the 'legal front'".

(Robert Sharlet (1978): ibid.; p. 171).

The theoretical deviations from Marxist-Leninist principles of the dominant revisionists of the 'commodity exchange' school were, of course, reflected in the field of legislation. For example, in the discussions on the draft Criminal Code that was finally enacted in May 1922, People's Commissar of Justice Dmitri Kursky argued

" . . . that the new code should not include special and exact definitions of the particular crimes. 'Experience tells us', he said, that an exact definition is not necessary; it appears more advisable to make general mention of a few actions as being criminal and have the judge fill them with content. We are not going to give exact definitions of the kind found in bourgeois codes; we are going to give just a few general characteristics which would provide guidance".

(Yuri Staroslavsky: op. cit.; p. 14).

However, as a result of strong opposition from the Marxist-Leninist minority within the legal profession, the legislators

" . . . did not follow Kursky's suggestion".

(Yuri Starosolsky: ibid.; p. 14).

although eight years later, in in 1930,

" . . . Krylenko took it up again in his drafts".  
(Yuri Starosolsky: *ibid.*; p. 14).

Nevertheless, the code as adopted at the time gave wide scope to judicial discretion:

"The most important principle permeating the new criminal code was judicial discretion. Most of the articles defining crimes gave judges a broad choice of sanctions -- including at least a spectrum of terms of custody and other non-custodial options as well, . . . The code instructed judges to choose in accordance with their socialist 'legal consciousness'".

(Peter H. Solomon, junior: 'Soviet Criminal Justice under Stalin' (hereafter listed as 'Peter H. Solomon, junior (1996)'); Cambridge; 1996; p. 32).

The new code also gave wide scope to analogy, defined as:

" . . . a court's decision on a particular case not directly provided for by law which is reached either by applying a law covering other similar cases or by applying general and legal principles".  
(*'Great Soviet Encyclopedia'*, Volume 1; New York; 1973: p. 376).

Article 10 of the 1922 Criminal Code read:

"In case of the absence of a direct provision for a particular kind of crime in the Criminal Code, the punishment . . . shall be applied . . . according to those articles of the Criminal Code which provide for crimes most similar as to importance and kind.

Thus, the principle of analogy in its complete formulation was introduced into Soviet criminal law".

(Yuri Starosolsky: *op. cit.*; p. 16)

However,

" . . . the introduction of this principle was not without opposition. . . . The problem of analogy provoked a heated discussion at the meeting; some speakers tried to brand the opposition as enemies of the Soviet government".

(Yuri Starosolsky: *ibid.*; p. 16).

Indeed, in the discussions on the Code prior to its adoption, the principle of analogy was at first rejected in favour of that of 'nullum crimen, nullum poena, sine lege' (no crime, no punishment, without pre-existing law).

(Yuri Starosolsky: *op. cit.*; p. 16).

This rejection

" . . . forced Commissar Kursky and his colleague Nikolai Krylenko to plead with the delegates to the All-Russian Central Executive Committee to restore analogy to the code. Krylenko repeated his argument that the young state could not anticipate all of the crimes that its enemies would devise and therefore judges needed the extra flexibility.

His voice carried the day, and analogy became a part of Soviet criminal law".

(Peter H. Solomon, junior (1996): op. cit.; p. 31).

However, within a month of this, in June 1922, Marxist-Leninist jurists succeeded in getting the People's Commissariat of Justice (Narkomiust) to issue a circular letter in which

" . . . analogy was characterised as something that should be applied only exceptionally".

(Yuri Starolovsky: op. cit.; p. 62-63).

Returning to the battle in 1927, Krylenko suggested a review of the Criminal Code, proposing

" . . . detention of the socially dangerous person for a time not determined by law or the sentence, but according to need, as long as the person is considered 'dangerous'.

(Yuri Starosolsky: ibid.; p. 39).

and, in Article 6 of Krylenko's draft, even the imprisonment of those

" . . . who had not committed any crime . . . at all, but because of their connections with criminal surroundings or because of their past activity, they give reason to expect that they could commit some crime".

(Yuri Starosolsky: ibid.; p. 40).

In their draft of 1930 for a new Criminal Code, Pashukenis and Krylenko revived the earlier tendencies

" . . . and carried them to an extreme. 'Bourgeois legality' ought to be replaced by the application of repressive measures according to considerations of expediency, without any claim that these repressive measures should correspond to individual guilt".

(Rudolf Schlesinger: op. cit.; p. 208).

Article 6 of the draft 1930 Code declared:

"Measures of class oppression, and of enforced educational influences, may be applied to persons who have committed a certain delinquency as well as to persons who, in spite of not having committed a definite crime, justify the serious apprehension that they eventually may commit delinquencies in consequence of their relations to criminal surroundings or of their own criminal past".

(Rudolf Schlesinger: ibid.; p. 208).

The effect of this would, of course, have been that

" . . . the security of law enjoyed by the average Soviet citizen . . . would have been destroyed".

(Rudolf Schlesinger: ibid.; p. 208).

But before the new draft Code could be adopted, the Marxist-Leninists struck successfully against the revisionists and it never became law.

## The Battle of Ideas over Jurisprudence

In the 1930s,

" . . . there occurred in Soviet legal history what is known as the 'struggle on the legal front'".

(Walter E. Butler (Ed.): Introduction to 'Russian Legal Theory'; Aldershot; 1996; p. xlii).

This was a battle of ideas between Marxist-Leninists and the dominant revisionist school based on the thesis of 'commodity exchange'. Supporters of the 'commodity exchange' school were called by their opponents 'nihilists' (from the Latin 'nihil' meaning 'nothing'), where 'nihilism' signifies

" . . . the rejection of all traditional values'.

(Jennifer Bothamley: 'Dictionary of Theories'; Andover; 1993; p. 376).

The struggle to replace the dominant revisionist positions on legal theory by Marxist-Leninist positions was led by Andrei Vyshinsky (1883-1954).

Vyshinsky was RSFSR Procurator in 1931-33, USSR Deputy Procurator in 1933-35, USSR Procurator in 1935-39, USSR Deputy Minister for Foreign Affairs in 1940-49, USSR Minister for Foreign Affairs in 1949-53, and USSR Permanent Representative at the United Nations in 1953-54.

In May 1931,

" . . . Andrei Vyshinsky was appointed Procurator of the RSFSR".

(Arkady Vaksberg: op. cit.; p. 54).

The Soviet Procurator's Office had been established in May 1922

" . . . to supervise the observance of the laws and to assist in efficient crime prevention".

('Great Soviet Encyclopedia', Volume 21: New York; 1978; p. 221).

Until 1933 the Procurator's Office was part of the system of People's Commissariats of Justice in the republics, but in July 1933 the supervisory power of the Office was centralised in the USSR Procurator's Office.

('Great Soviet Encyclopedia', Volume 21; New York; 1978; p. 221).

In Ancient Rome, the Procurator was the

" . . . government financial agent".

('New Encyclopaedia Britannica', Volume 9; Chicago; 1994; p. 718).

but later became the state prosecutor, functioning as

" . . . the government official responsible for representing the state in court".

('Encyclopedia Americana', Volume 22; New York 1997; p. 667).

The word survives in Scotland in the 'Procurator-Fiscal', where

'fiscal' means

" . . . pertaining to the fisc or treasury of a state".  
('Oxford English Dictionary', Volume 5: Oxford; 1989; p. 962).

A 'procurator-fiscal' is, in Scotland, a local state prosecutor.  
The term

" . . . originally designated the official who had to collect and administer the fines, fees and other payments accruing to the . . . courts".  
('Oxford English Dictionary', Volume 12; Oxford; 1989; p. 558).

In July 1933, the Politburo of the Central Committee of the CPSU ordered

" . . . the creation of the office of Procurator of the USSR. . . . The new Procurator of the USSR was to have supervision over all courts, secret and regular police, and other procurators in the entire Soviet Union".  
(J. Arch Getty & Oleg V. Naumov: 'The Road to Terror: Stalin and the Self-Destruction of the Bolsheviks: 1932-1939'; New Haven (USA); 1999; p. 119).

and Ivan Akulov was appointed USSR Procurator, with Andrei Vyshinsky as his deputy.

(J. Arch Getty & Oleg V. Naumov: *ibid.*; p. 120).

In 1934, the USSR Procuracy

" . . . acquired its own journal 'For Socialist Legality' , with Akulov and Vyshinsky as Editor and Deputy Editor respectively.

The new journal . . . was soon dominated by Vyshinsky's presence as a frequent contributor".

(Robert Sharlet & Piers Beirne 'In Search of Vyshinsky: The Paradox of Law and Terror', (hereafter listed as 'Robert Sharlet & Piers Beirne (1984)') in: 'International Journal of the Sociology of Law', Volume 12, No. 2 (May 1984); p. 170).

In June 1930, Stalin publicly threw his weight behind the Marxist-Leninist denunciation of the revisionist legal philosophers when he told the 16th Congress of the CPSU:

"We stand for the withering away of the state. At the same time we stand for the strengthening of the dictatorship of the proletariat, which is the mightiest and strongest state power that has ever existed.

The highest development of state power with the object of preparing the conditions for the withering away of state power -- such is the Marxist formula. Is this 'contradictory? Yes, it is 'contradictory'. But this contradiction is bound up with life, and it fully reflects Marx's dialectics".

(Josef V. Stalin: Political Report of the Central Committee to the 16th Congress of the CPSU, in: 'Works', Volume 12; Moscow; 1955; p. 381).

As John Hazard notes,

" . . . Pashukenis's theories on the withering away of the state had come under attack by Josef Stalin, although Pashukanis's name was not mentioned".

(John D. Hazard, in: Vladimir I. Lenin et al.: op. cit.; p. xxviii).

This passage in Stalin's report

" . . . marked what was later to become evident as the turning point in Soviet political philosophy and, among other effects, it led to Pashukenis's ouster in 1937".

(John D. Hazard, in: Vladimir I. Lenin et al.: op. cit.; p. xxvii).

The adoption in November 1936 of the new 'Stalin Constitution' of the USSR

" . . . is regarded as the formal turning point of the nihilistic trend in Soviet legal theory".

(Yuri Starosolsky: op. cit.; p. 42). ,

In November 1936, in his report on the new draft Soviet Constitution, Stalin declared:

"Laws should be stable. And we need the stability of laws more than ever".

(Josef V. Stalin: Report on the Draft Constitution of the USSR, in: 'Works', Volume 14; London; 1978; p. 191).

The opening shot in the direct battle against the revisionists who dominated the field of legal philosophy was fired by the Marxist-Leninist philosopher Pavel Yudin (1899-1968).

Yudin was Director of the Institute of Red Professors in 1932-38, Director of the Institute of Philosophy of the USSR Academy of Sciences in 1938-44, USSR Deputy High Commissioner in Germany in 1953, and USSR Ambassador to the People's Republic of China in 1953-59.

In January 1937,

" . . . 'Pravda' published a vigorous attack upon him (Pashukenis -- Ed.) as an 'enemy of the people'".

(John N. Hazard, in: Vladimir I. Lenin et al.: op. cit.; p. xxix).

and in September 1937,

" . . . the short article was expanded by the same author, P. Yudin, in the Communist Party's magazine 'Bolshevik'".

(John N. Hazard, in: Vladimir I. Lenin et al.: op. cit.; p. xxix).

This article was entitled 'Socialism and Law', and in it

" . . . Yudin denied the paucity of Marxist literature to serve as a guide for Soviet legal philosophy".

(John N. Hazard, in: Vladimir I. Lenin et al.: op. cit.; p. xxix).

Criticising the revisionists for saying that Soviet law is

'bourgeois law', Yudin wrote:

"Their reasoning was approximately this: in bourgeois law there is the concept of a statute; in Soviet law there is likewise a concept of a statute. Soviet law was consequently borrowed from bourgeois law".  
(Pavel Yudin: 'Socialism and Law', in: Vladimir I. Lenin et al.: op. cit.; p. 293)

In fact, insisted Yudin,

" . . . the dictatorship of the proletariat is a state of a new type, and the law created by that state is law of a new type".  
(Pavel Yudin: ibid.; p. 290).

and he denounced 'those spurious Marxist-Leninists' for whom

" . . . the greatest productions of Marx, Engels, Lenin and Stalin failed to furnish the theoretical foundations of the legal order of the new society in any -- even the slightest -- degree. . . .

The enemies of the people -- who assumed charge in this area -- knew how to occasion no little injury to us. They preached -- and not without success -- the theory of our state withering away and of the law withering away".

(Pavel Yudin: ibid.; p. 289, 299).

In this battle of ideas, Krylenko initially

" . . . carried out passive resistance to Vyshinsky's programme".

(Peter H. Solomon, junior: 'Soviet Criminal Justice and the Great Terror' (hereafter listed as 'Peter H. Solomon, junior (1987)'), in: 'Slavic Review', Volume 46, No. 3/4 (Fall/Winter 1987); p. 394).

the Procuracy being Vyshinsky's power base, while Krylenko's was the RSFSR People's Commissariat of Justice, with its influential journal 'Soviet Justice'.

(Eugene Huskey 'Vyshinsky, Krylenko and the Shaping of the Soviet Legal Order', in: 'Slavic Review', Volume 46, No. 3/4 (Fall/Winter 1987); p. 394).

but Krylenko's

" . . . was an increasingly isolated voice in the Soviet legal community".

(Eugene Huskey: ibid.; p. 423).

In the light of Stalin's intervention of July 1930, in 1930 Pashukenis

" . . . found it desirable . . . to publish an article correcting his errors".

(John N. Hazard, in: Vladimir I. Lenin et al.: op. cit.; p. xxvii).

In this article, entitled 'State and Law under Socialism', he criticised his earlier work of 1924, 'The General Theory of Law and Marxism' for saying that the Soviet law and state



" . . . were simply declared to be bourgeois forms which cannot be filled with a socialist content and which must wither away in proportion to the realisation of such content. This grossly mistaken position, foreign to Marxism-Leninism, distorts the meaning of the proletarian state . . . and distorts the meaning of Soviet law as the law of the proletarian state which serves as an instrument in the construction of socialism".

(Evgeny Pashukenis: 'State and Law under Socialism', in: Piers Beirne & Robert Sharlet (Eds.): op. cit.; p. 355).

Then, in 1931,

" . . . Pashukenis gave a speech, published subsequently in a brochure entitled 'For a Marxist-Leninist Theory of the State and Law'.

In this speech he set forth further errors he was prepared to admit"..

(John N. Hazard, in: Vladimir I. Lenin et al.: op. cit.; p. xxviii).

His 1931 speech

" . . . was intended as a recantation of some of his ideas".

(John N. Hazard, in: Vladimir I Lenin et al: ibid.; p. xxxi).

The first authoritative public criticism of Krylenko

" . . . accompanied the elevation of Vyshinsky to the post of Procurator".

(Eugene Huskey: ibid.; p. 419).

while in May 1935

" . . . the public criticism of Krylenko was resumed . . . with an attack by Vyshinsky on Krylenko's proposals for a new draft code of criminal law. At a joint meeting of the Communist Academy and the Institute of Criminal Policy, Vyshinsky accused Krylenko of sanctioning a system of criminal justice where laws did not bind but only oriented judges".

(Eugene Huskey: op. cit.; p. 419)

In July 1938, the victory of the Marxist-Leninist legal philosophers was signalled when

" . . . 600 legal workers, teachers and practitioners assembled in Moscow to attend the '1st Conference on Questions of the Science of the Soviet State and Law'. The aim of the Conference, organised by A. Y. Vyshinsky, was to lay down a single true Marxist-Leninist . . . general line in legal science".

(Walter E. Butler: op. cit.; p. xliii).

and Vyshinsky

" . . . succeeded Pashukenis as the effective leader of the Soviet legal profession".

(Robert Sharlet (1978): op. cit.; p. 187).

and on his (Vyshinsky's) initiative,

" . . . the process of reconstructing and consolidating 'Soviet socialist legal culture' proceeded with great speed until halted by the outbreak of war in 1941".

(Robert Sharlet (1977): op. cit.; p. 170).

In January/February 1939, the All-Union Institute of Juridical Science of the USSR People's Commissariat of Justice approved a new draft Criminal Code which declared:

"Nobody shall be subject to criminal responsibility or punished except on the strict basis of the Criminal Code of the USSR".

(in: Yuri Starosolsky: op. cit.; p. 49-50)

In reorganising the Soviet legal profession along genuine Marxist-Leninist lines, Vyshinsky distinguished between the great majority of legal workers who had been honestly misled and a handful who were found, after investigation, to have deliberately and criminally sabotaged the legal sciences.

The majority of those who had followed the path of Pashukenis and Krylenko were regarded as

" . . . honest jurists who, being educated in and penetrated by the old legal culture and science, were unable, just because of their weak Marxist-Leninist preparation, effectively to resist the saboteurs".

(Andrei Y. Vyshinsky, in: Harold J. Berman: 'Justice in the USSR: An Interpretation of Soviet Law'; Cambridge (USA); 1963; p. 172).

Thus, some of the followers of Pashukenis and Krylenko

" . . . who were relieved of their teaching positions, such as Professor Grigory Amfiteatrov, were returned to their posts after a period of absence. Some of those whom Vyshinsky criticised in violent terms, but without the epithet 'enemy of the people', such as Professor Evgeny A. Korovin, were never removed at all. . . . Yet their theoretical errors seem to have aroused the same amount of criticism".

(John D. Hazard, in: Vladimir I. Lenin et al.: op. cit.; p. xxxii).

Petr Stuchka, who had

" . . . died in 1932 and was buried in Red Square",

(Roy A. Medvedev: 'Let History Judge: The Origins and Consequences of Stalinism'; London; 1972; op. cit.; p. 202).

was posthumously declared

" . . . a deliberate wrecker in the field of jurisprudence".

(Roy A. Medvedev: ibid.; p. 202).

while a handful who were still alive were arrested and charged with the criminal offence of diversionism, a diversionist being defined as

" . . . a saboteur".

('Oxford English Dictionary', Volume 4; Oxford; 1989; p. 887).

Vyshinsky referred to this kind of activity in his 1938 speech entitled 'The Fundamental Tasks of the Science of Soviet Socialist Law':

"At the present time we hardly understand adequately the truly diversionist character of this work -- 'diversionist in the direct sense of the word as it is used in Article 58 . . . of the RSFSR criminal code. I characterise this as . . . diversionist work on legal theory -- work directed at discrediting Soviet law in the eyes of the very persons working in the field of justice and in the eyes of workers in contact with them, to the end of developing a nihilist attitude to Soviet law, to Soviet justice and to the Soviet statute: the basis of all our activity".

(Andrei Y. Vyshinsky: 'The Fundamental Tasks of the Science of Soviet Socialist Law', in: Vladimir I. Lenin et al.: op. cit.; p. 314).

In short, what was now the Marxist-Leninist majority in the leadership of the CPSU concluded that Pashukenis had

" . . . devised his theories not as an honest attempt to find the truth, but as a deliberate effort to undermine the basis of law on which the Soviet system rested".

(Arkady Vaksberg: op. cit.; p. 11).

with the underlying intent

" . . . to overthrow the Soviet government".

(John D. Hazard, in: Vladimir I. Lenin et al.: op. cit.; p. xxxiii).

Consequently, Evgeny Pashukenis was arrested in January 1937, Ivan Akulov in August 1937, and Nikolai Krylenko in January 1938.

(J. Arch Getty & Oleg V. Naumov: op. cit.; p. 485; Arkady Vaksberg: op. cit.; p. 1332, 136).

They were charged (as in the case of Pashukenis) with having been

" . . . engaged in counter-revolutionary activity in the sphere of the theory of Soviet law".

(Arkady Vaksberg: ibid.; p. 129).

or (as in the case of Krylenko) with

" . . . having created in the bodies of the legal profession a wrecking organisation and having led it".

(Arkady Vaksberg: ibid.; p. 133).

In 'Pravda' of 9 April 1937, Pashukenis

" . . . was linked by Vyshinsky with Bukharin as a wrecker 'who has now been exposed'.

(Robert Conquest: 'The Great Terror: Stalin's Purge of the Thirties'; London; 1973: p. 276

Pashukenis

" . . . confessed to having worked as a terrorist from 1933 . . . and to being a member of the Bukharin-Rykov-Tomsky-Uglov group". (Arkady Vaksberg: op. cit.; p. 129).

while in February 1938, Krylenko

" . . . wrote a statement . . . in which he confessed to having joined the conspiracy against Lenin even before October 1917, and to having been enticed by Bukharin in 1922 into an organisation preparing a coup". (Arkady Vaksberg: ibid.; p. 146).

At their trials, Pashukenis, Krylenko and Akulov were found guilty of diversionism. Pashukenis and Krylenko were sentenced to death and executed, while Akulov was sentenced to imprisonment and died in prison in 1939.

(Heinrich E. Schulz, Paul K. Urban & Andrew I. Lebed (Eds.): 'Who was Who in the USSR'; Metuhen (USA); 1972; p. 9; Arkady Vaksberg: op. cit.; p. 142, 294).

The revisionists were able to score only one partial victory in the struggle. They succeeded in having the arrests, and trials of the convicted diversionists kept secret 'for security reasons'. The accused persons simply 'disappeared'. This was totally contrary to the policy of the Marxist-Leninists, who were firm upholders of the educational role of law:

"Ever since the early years of the Soviet State, a heavy emphasis has been placed, both in legal theory and in legal practice, on the educational role of law in Soviet society".

(Harold J. Berman: 'The Educational Role of Soviet Criminal Law and Criminal Procedure', in: Donald D. Barry, William E. Butler & George Ginsburg (Eds.): 'Contemporary Soviet Law: Essays in Honour of John N. Hazard'; The Hague: 1974; p. 1).

Clearly, arrests and trials which were kept secret could play no educational role, but made it easier for the guilty persons to be 'rehabilitated' by revisionists at a later date.

#### Stalin's 1939 Statement on the Future of the State

The definitive interpretation of Engels' passage to the effect that, following the socialist revolution, the state will wither away: was given by Stalin to the 18th Congress of the CPSU in March 1939:

"Is this proposition of Engels correct?

Yes, it is correct, but only on one of two conditions: 1) if we study the socialist state only from the angle of the internal development of the country, abstracting ourselves in advance from the international factor, . . .; or 2) if we assume that socialism is already victorious . . . in the majority of countries, that a socialist encirclement exists instead of a capitalist encirclement, that there is no more danger of foreign attack, and that there is more no need to strengthen the army and the state.

Well, but what if socialism has been victorious only in one country, and if, in view of this, it is quite impossible to abstract oneself from international conditions -- what then? Engels' formula does not furnish an answer to this question. As a matter of fact, Engels did not set himself this question, and therefore could not have given an answer to it. Engels proceeds from the assumption that socialism has already been victorious . . . in a majority of countries, more or less simultaneously.

We have no right to expect of the classical Marxist writers, separated as they were from our day by a period of forty-five or fifty-five years, that they should have foreseen each and every zigzag of history in the distant future in every separate country. It would be ridiculous to expect that the classical Marxist writers should have elaborated for our benefit ready-made solutions for each and every theoretical problem that might arise in any particular country fifty or one hundred years afterwards, so that we, the descendants of the classical Marxist writers, might calmly doze at the fireside and munch ready-made solutions,. (General laughter) But we can and should expect of the Marxist-Leninists of our day that they do not confine themselves to learning by rote a few general tenets of Marxism; that they delve deeply into the essence of Marxism".

(Josef V. Stalin: Report on the Work of the Central Committee to the 18th Congress of the CPSU, in: 'The Land of Socialism Today and Tomorrow'; Moscow; 1939; p. 47-48,

In the period of the construction of socialism, Stalin continued: . . .

" . . . our state performed two main functions. The first function was to suppress the overthrown classes inside the country. . . . The second function was to defend the country from foreign attack. . . . Our state had yet a third function: this was the work of economic organisation and cultural education performed by our state bodies with the purpose of developing the infant shoots of the new socialist economic system and re-educating the people in the spirit of socialism". (Josef V. Stalin: *ibid.*; p. 49-50).

After the capitalist elements of town and country had been eliminated, continued Stalin,

" . . . the functions of our socialist state changed accordingly. The function of military suppression inside the country wasted away; for exploitation had been abolished, there were no more exploiters left, and so there was no one to suppress. In place of this function of suppression, the state acquired the function of protecting socialist property from thieves and pilferers of the people's property. The function of defending the country from foreign attack fully remained; consequently, the Red Army and the Navy also fully remained, as did the punitive organs and the intelligence service, which are indispensable for the detection and punishment of spies, assassins and wreckers sent into our country by foreign espionage services. The function of economic organisation and cultural education by the state organs also remained, and was developed to the full".

(Josef V. Stalin: *ibid.*; p. 50).

Finally, Stalin asks, will the state still exist when

socialism has given way to communism, when the principle 'to each according to his needs' has become operative?

"Will our state still remain in the period of communism also?

Yes, it will, unless the capitalist encirclement is liquidated, unless the danger of foreign military attack has disappeared. . . .

No, it will not remain and will atrophy if the capitalist encirclement is liquidated and a socialist encirclement takes its place.

That is how the question stands with regard to the socialist state". (Josef V. Stalin: *ibid.*; p. 50-51).

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### EPILOGUE

After receiving his law degree in St. Peterburg in 1891 at the age of twenty-one, Lenin worked for some months in his provincial home town of Samara as a lawyer-in-training. The low opinion he sometimes expressed of lawyers is thus drawn from personal experience. In 1905, for example, he wrote to a woman comrade in prison in Moscow advising her how to conduct her defence in court:

"Lawyers should be kept well in hand and made to toe the line, for there is no telling what dirty tricks this intellectual scum will be up to. They should be warned in advance: Look here, you confounded rascal, if you permit yourself the slightest impropriety or political opportunism, (if you speak of socialism as something immature or wrong-headed, or as an infatuation, or if you say that the Social Democrats (i.e., the Communists -- Ed.) reject the use of force, speak of their teachings and their movemnt as something peaceful, etc., or anything of the sort), then I, the defendant, will pull you up publicly, right then and there, call you a scoundrel, declare that I reject such a defence, etc. And these threats must be carried out".

(Vladimir I. Lenin: Letter to Yelena D. Stasova and Other Comrades in Prison in Moscow', (January 1905), in: 'Collected Works', Volume 8: Moscow: 1962; p. 68).

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