TITLE: IN SEARCH OF THE LAW-GOVERNED STATE

Conference Paper #2 of 17

From Legal Nihilism to
Pravovoe Gosudarstvo: Soviet
Legal Development, 1917-1990

AUTHOR: Eugene Huskey

CONTRACTOR: Lehigh University

PRINCIPAL INVESTIGATOR: Donald D. Barry

COUNCIL CONTRACT NUMBER: 805-01

DATE: October 1991

The work leading to this report was supported by funds provided by the National Council for Soviet and East European Research. The analysis and interpretations contained in the report are those of the author.
NCSEER NOTE

This paper is #2 in the series listed on the following page. The series is the product of a major conference entitled, *In Search of the Law-Governed State: Political and Societal Reform Under Gorbachev*, which was summarized in a Council Report by that Title, authored by Donald D. Barry, and distributed by the Council in October, 1991. The remaining papers will be distributed seriatim.
1. GIANMARIA AJANI, "The Rise and Fall of the Law-Governed State in the Experience of Russian Legal Scholarship."

2. EUGENE HUSKEY, "From Legal Nihilism to Pravovoe Gosudarstvo: Soviet Legal Development, 1917-1990."

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7. GER VAN DEN BERG, "Executive Power and the Concept of Pravovoe Gosudarstvo."

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FROM LEGAL NIHILISM TO PRAVOVOE GOSUDARSTVO: 

SOVIET LEGAL DEVELOPMENT, 1917-1990

Eugene Huskey

Executive Summary

In the minds of the Bolsheviks and their successors, pravovoe gosudarstvo advanced a set of myths, such as impartial justice and limited state power, that masked the class nature of capitalist rule. A champion of formal legal equality and fixed norms and procedures, pravovoe gosudarstvo was fundamentally at odds with the principles of class justice and unconstrained political power that informed Soviet rule. But if the Soviet Union rejected the broad concept of a pravovoe gosudarstvo, it began in the 1920s and 1930s to express its formal commitment to select components of a law-based state, such as the independence of the judiciary and the right of defendants to legal counsel. During subsequent windows of law reform, progressive jurists and their political allies sought to transfer these accepted elements of a pravovoe gosudarstvo from the realm of legal theory into legal norms and legal behavior. Progress was slow, fitful, and, on many fronts, inconsequential. Even when reform edged legal norms in the direction of a pravovoe gosudarstvo, legal behavior often did not follow. State institutions charged with the implementation of law consistently impeded attempts to introduce principles associated with a law-based state.

Seven decades of official resistance to the idea of a pravovoe
gosudarstvo came to an end at the XIX conference of the communist Party, when Gorbachev embraced the concept of a law-based state. This reversal of Soviet legal doctrine launched what is certain to be a difficult and protracted search for a pravovoe gosudarstvo. The introduction of a law-based state in the USSR will require the creation of a new edifice of legal norms and legal ethics. But the most immediate and difficult political task is to dismantle the existing cultural and institutional barriers to reform. The battle has now been joined between those seeking to remove the barriers and those committed to their defense.
Introduction

The Bolshevik Revolution of 1917 broke decisively with pre-revolutionary currents in the direction of a pravovoe gosudarstvo. If politics and society in tsarist Russia offered limited sustenance for a law-based state,\(^1\) the new regime actively rooted out the fledgling idea as alien to socialism. For the Bolsheviks, pravovoe gosudarstvo represented a philosophy of rule designed to consolidate the power of a rising capitalist class. It was a relic of the bourgeois era, not an essential ingredient of a civilized society.

What the socialist future held for law was a subject of much controversy during the first two decades of Soviet rule. Simply put, the makers of the revolution faced a dilemma. Should a revolutionary society dispense with law altogether, or should it create a new, and higher, form of law—socialist law? The struggle over this question led early Soviet legal development through alternating periods of legal nihilism and legal revival. The denouement came only in the mid-1930s, when the political leadership accepted law as an essential instrument of rule.

Once the Soviet Union accepted law as a legitimate component of socialism, legal policy makers confronted a more subtle question. What were the distinctive elements of a socialist legal system? To turn the question around, which ideas, institutions, and procedures could socialist law borrow, or inherit, from earlier legal traditions? Although for the next half-century official
legal thought in the USSR remained unalterably opposed to the broad concept of a pravovoe gosudarstvo, selected components of a pravovoe gosudarstvo figured prominently in periodic law reform debates. On the eve of WWII, in the later years of Khrushchev, and in the middle years of Brezhnev's rule, windows of law reform allowed jurists and policy-makers to engage principles drawn from the concept of a pravovoe gosudarstvo, such as the independence of the judiciary, the right to counsel, and the protection of citizens from bureaucratic abuse. Thus, amid the arbitrariness and rough justice that prevailed in the first 70 years of Soviet rule, the concept of a pravovoe gosudarstvo survived as an alternative source of ideas and inspiration for the reformist wing of the Soviet legal community.

This chapter surveys the path of Soviet legal history from its nihilist origins to the contemporary acceptance of the broad concept of a pravovoe gosudarstvo. At the center of the analysis are the turning points—the perelomnye momenty—of Soviet legal development, moments that illustrate the formation and subsequent reform of a distinctively Soviet legal system. While the chapter is especially sensitive to legal change in the USSR, in particular reforms that may be seen to incorporate elements of a pravovoe gosudarstvo into Soviet legal thought and behavior, it recognizes that Soviet legal history represents in most respects an affront to the idea of a pravovoe gosudarstvo, which sets out clearly the powers of the state and the rights of individuals within it. It is appropriate, therefore, that the
The conclusion should assess the elements of Soviet rule that have impeded, and continue to impede, the introduction of a pravovoe gosudarstvo. By examining the barriers to fundamental legal change, the conclusion offers an agenda for reform against which one may measure the progress of the USSR in its much-publicized effort to introduce a pravovoe gosudarstvo.

The Formation of the Soviet Legal Order

On November 24, 1917, the Bolshevik-led revolutionary government issued Decree No. 1 on the Court, its first directive on legal affairs. In a dramatic break from the Westernizing legal policy of the Provisional Government, the decree proclaimed the end of key legal institutions of the old order—courts, Procuracy, and Bar (advokatura)—and the erection of a new organizational framework for revolutionary justice. The attacks on the old legal order did not, however, bring the immediate elimination of law. The initial Bolshevik pronouncements on law were as much declarations of principles as marching orders for the fledgling state apparatus. In many cases, revolutionary leaders lacked the authority, the personnel, and even the will to see many directives through to implementation. The Bar, for example, was permitted to remain in operation until the autumn of 1918, admittedly on a reduced scale, in spite of its nominal abolition in the first days of the new regime. In general, the first year of Bolshevik rule witnessed an uneasy coexistence of old law and
lawyers with revolutionary decrees and institutions. Where written laws were absent, in conflict, or politically suspect, revolutionary courts and tribunals were encouraged to follow their own revolutionary legal consciousness in resolving disputes.

Bolshevik attitudes to the pre-revolutionary legal heritage hardened in the second half of 1918 amid the rise of civil war, allied intervention, and the red and white terror. The result was the atrophy of the legal system. On questions of housing, labor, and economic relations, administrative rules and commands rapidly replaced the already eroding principles of civil law. Citizens increasingly sought remedies in bureaucratic agencies and not in the courts. In criminal law, the army and secret police (the Cheka) assumed an ever larger role in meting out justice. The norms, procedures, and institutions that would have guaranteed defendants' rights in criminal cases were all but eliminated by the end of 1919. The new regime also closed law faculties and legal journals. By the end of the civil war, law itself seemed on the brink of extinction.

The reasons for the rise of legal nihilism in the first years of Bolshevik rule are complex and varied. Hostility to law was, of course, integral to the Bolshevik worldview. If law was an instrument of repression rising on the economic pillars of capitalism, then the collapse of the old economic order should bring down law around it. The personal experience of leading Bolsheviks heightened this enmity toward law. Lenin, for
example, associated law with tsarist repression, lawyers with the political opposition (most notably the Kadets), and legal practice with his own frustrating months as an advocate's apprentice in the 1890s. Furthermore, the Bolsheviks, like revolutionaries of every era, viewed law as a conservatizing force and therefore a practical impediment to rapid social transformation.

The legal nihilism of this era cannot be understood, however, without considering the effects of the wartime emergency on legal policy. If law channels repressive power into stable, regularized procedures, war unleashes that power to men. M. Kalinin noted that the civil war had created "a vast group of men for whom the only law was the expedient use of power. To lead [upravliat'] for them meant to give orders [rasporiazhat'sia] fully independently, not subordinating themselves to the requirements of the law." Thus, law, like the muses, was among the first victims of war. In Cicero's words, "inter arma silent leges." Once silenced, Bolshevik enthusiasts greeted the rundown of law as evidence of the country's rapid progress toward the law-less era of communism.

By the end of the civil war, the collapse of the legitimacy and economic performance of the new regime had largely offset Bolshevik successes on the battlefield. Facing a crisis of confidence in socialism, Lenin and the political leadership rejected the bankrupt wartime policies on law and economics in favor of a New Economic Policy (NEP) that restored important
elements of the old order. The expansion of the capitalist economy required the revival of a sophisticated legal system to regulate economic relations in society and between society and the state. Again, circumstances shaped policy.

In law, the NEP restoration occurred across a broad front, with perhaps the most dramatic changes evident in the administration of justice, which was governed by new codes of criminal law and procedure adopted in 1922. Responsibility for criminal investigation and punishment shifted from the secret police and special tribunals to the regular courts. The traditional institutions of prosecution and defense, which had all but disappeared during the civil war, resurfaced as familiar adversaries in the newly codified criminal process. Alongside the opening of prosecutors' offices, criminal defenders organized themselves throughout the country to revive a profession that before the revolution had been the most ardent supporter of a pravovoe gosudarstvo.  

In civil and administrative law, NEP brought an explosion of new legislation to regulate the rising capitalist sector and to rationalize the operation of a governing bureaucracy. Among the measures introduced in the 1920s were codes of civil law and procedure (1922 and 1923), labor law (1922), and family law (1927). In drafting the new laws, legislators drew heavily on the experience of pre-revolutionary and Western European legal traditions. However, if the laws were bourgeois in form, they were decidedly socialist in content. No legal provision
illustrates this tension better than article one of the new civil code, which held that civil rights elaborated in the code could not be used in contradiction to their social and economic purpose, a provision that established a kind of political litmus test for the use of legal rights. This legal revival represented, therefore, a restoration of many of the structures and techniques of bourgeois law while it limited the ability of individual rights to harm collective interests, as those interests were defined by the ruling party.

NEP rehabilitated legal personnel as well as legal norms and institutions. Thousands of lawyers with rigorous training in tsarist universities returned to legal practice in the 1920s as judges, justice officials, and, most numerously, advocates. They brought with them the values and habits of an era when a pravovoe gosudarstvo, though not in place, was at least a goal of the progressive wing of the legal community. These pre-revolutionary jurists had perhaps the greatest impact on Soviet legal development as scholars and teachers in the newly-opened Soviet law faculties, as legislative draftsmen (N. Krylenko complained that he had to prevent two bourgeois specialists on his drafting commission on criminal procedure from simply rewriting the 1864 statutes), and as contributors to the legal journals that sprung up in the more tolerant atmosphere of NEP.

If the civil war had closed down the sole legal journal in existence after its first four issues, NEP brought a proliferation of legal periodicals. No fewer than seven national
legal journals appeared during NEP, representing a wide range of opinions within the legal community. During NEP legal journals served as a key forum for debate on the way forward in legal theory and policy. A major task before the legal community was the articulation of a socialist theory of law, for which the writings of Marx, Engels, and Lenin provided only very limited guidance. On the pages of Sovetskoe pravo, Pravo i zhizn, and Revolutsionnaia zakonnost', jurists sympathetic to the achievements of pre-revolutionary jurisprudence sought to define a socialist legal theory that accepted a large share of the bourgeois legal inheritance, including essential elements of a pravovoe gosudarstvo.

Even under NEP, however, such voices were on the periphery of the legal debate. The dominant figures in the struggle to define a socialist theory of law were P. Stuchka, Chairman of the Supreme Court of the Russian Republic, and E. Pashukanis, head of the state and law section of the Communist Academy. Of the two, Stuchka was the more sensitive to what he called "the cultural achievements" of elements of bourgeois law. In 1921, in the preface to the first major work on Soviet law, Stuchka felt compelled to justify the idea of scholarship in law. "Without [the justification]," Stuchka noted, "no one in these ultrarevolutionary times would have read analyses of so 'counterrevolutionary' a subject as law." Stuchka distinguished himself, therefore, as the first champion of the idea of Soviet law.
If Stuchka seemed content to overlay socialist principles onto a traditional legal framework, Pashukanis viewed law and socialism as fundamentally incompatible concepts. In what he called the commodity theory of law, Pashukanis viewed law as a form of exchange found only in the capitalist marketplace. Even criminal justice was grounded in contractual relations. By eliminating private property and the limitless individual contractual relations to which it gives rise, socialism removes the preconditions for law. For Pashukanis, then, the debates over socialist law were moot. The issue was how to make the transition to a society without law.15

Where Pashukanis' writings provided the theoretical grounding for a new revolution in law, it was again the events of the day that encouraged political and legal officials to abandon the legal restoration of NEP for a legal order that was at once simpler and more responsive to political commands. From approximately 1928 to 1932, a new kind of war silenced law, a war of the state against selected elements of Soviet society. In this war the enemies were the better-off peasants, who resisted forced collectivization, the bourgeois specialists, who stood in the way of the proletarianization of Soviet life, workers and engineers who failed to keep pace with the demands of rapid industrialization, and the ordinary citizen who failed to respect state property.

This unconventional civil war revived three tendencies of Soviet law that had been restrained, though never eliminated, under NEP.
The first was the delegalization of repressive policy. Instead of using legal institutions and procedures, which serve to legitimate and to constrain state power, the political leadership preferred to apply force directly against society. During the collectivization campaign, for example, armed party detachments often administered justice on the spot without benefit of court or prosecutor. Second, there was a dramatic politicization of legal proceedings, evident in the orchestration of the numerous show trials of the day and in the rapidly changing content of legal norms. New directives on criminal procedure, for example, established a separate, and harsher, justice system for individuals from suspect classes.

Finally, the transfer of Soviet society onto a virtual war footing encouraged a simplification of legal norms. Not wishing to be bound by the stable codes of the NEP era, political and legal officials began to rely on revolutionary-style decrees as substitutes for codified law. These were little more than political commands dressed in legal form. The People's Commissariat of Justice issued so many guiding explanations of criminal procedure that it rendered the existing code inoperative. When Stalin wished to introduce draconian new rules against the theft of state property in the summer of 1932, he did not bother to revise the criminal code, he simply wrote a decree and had the government enact it. In forsaking the traditional structure of legal norms, Stalin and the political leadership ensured the responsiveness of legal institutions and
personnel to rapidly changing political demands.

A naked instrumentalism, therefore, informed Soviet legal policy in the years from 1928 to 1932. When elements of the existing legal order could be mobilized, or amended, to support the campaigns of collectivization, industrialization, or proletarianization, law was embraced. In the postanovlenie "On Assisting in the Struggle for Coal," dated May 22, 1933, the USSR Supreme Court instructed lower-level courts on the means of implementing the industrial policy set out by the Central Committee, the Sovnarkom, and Stalin personally. Where law appeared to impede the leadership's goals, it was ignored or eliminated. In January 1930, Stalin asked: "do [existing] laws and decrees contradict the policy of liquidating the kulaks as a class? Yes of course! Thus, it will be necessary to suspend [otlozhit' v storonu] these laws and decrees in the districts of mass collectivization, which are expanding not by the day but by the hour." Where law appeared to impede the leadership's goals, it was ignored or eliminated. In January 1930, Stalin asked: "do [existing] laws and decrees contradict the policy of liquidating the kulaks as a class? Yes of course! Thus, it will be necessary to suspend [otlozhit' v storonu] these laws and decrees in the districts of mass collectivization, which are expanding not by the day but by the hour." Where law appeared to impede the leadership's goals, it was ignored or eliminated. In January 1930, Stalin asked: "do [existing] laws and decrees contradict the policy of liquidating the kulaks as a class? Yes of course! Thus, it will be necessary to suspend [otlozhit' v storonu] these laws and decrees in the districts of mass collectivization, which are expanding not by the day but by the hour." Where law appeared to impede the leadership's goals, it was ignored or eliminated. In January 1930, Stalin asked: "do [existing] laws and decrees contradict the policy of liquidating the kulaks as a class? Yes of course! Thus, it will be necessary to suspend [otlozhit' v storonu] these laws and decrees in the districts of mass collectivization, which are expanding not by the day but by the hour." Where law appeared to impede the leadership's goals, it was ignored or eliminated. In January 1930, Stalin asked: "do [existing] laws and decrees contradict the policy of liquidating the kulaks as a class? Yes of course! Thus, it will be necessary to suspend [otlozhit' v storonu] these laws and decrees in the districts of mass collective
prosecution and defense began to disappear as institutions. The end of law appeared to be in sight. The instrumental approach to law had, unwittingly, emasculated the instrument.

That the political leadership recognized, and was concerned by, the depth of nihilist currents in legal thought and practice is indicated by the issuance on June 28, 1932 of a decree on revolutionary legality. Calling for renewed respect for law, the decree attacked officials who equated revolutionary legality with revolutionary expediency. Although this decree recalled Stalin's disingenuous accusation in the spring of 1930 that zealous officials had been "dizzy with success" in implementing collectivization, it did more than inoculate the center against criticism. It cautiously signalled the beginnings of a legal revival, which would culminate four years later in the adoption of a new constitution.

By the mid-1930s, a measured restoration of traditional legal norms and institutions presented several advantages for the Stalinist leadership. With the pillars of collectivization, industrialization, and proletarianization in place, the Bolshevik revolution had run its course. The tasks of political leadership shifted, therefore, from system change to system maintenance. Where law had previously seemed a barrier to rapid social transformation, it now appeared to be a guarantor of the new order. Furthermore, in the making of this new order, the center had delegated considerable authority to local and branch officials responsible for implementing policy. To combat the
localism and departmentalism that followed from this devolution of authority, the political leadership turned to law as a means of establishing central control. By stabilizing legal norms, strengthening legal institutions, and enhancing the respect for law among the population, the state sought to discipline the bureaucracy and society and reconcentrate political authority.

The state also embraced law as a much-needed source of legitimacy, both at home and abroad. For those who had suffered through the violence of the collectivization campaign and the sacrifices of forced-draft industrialization, a legal revival promised a degree of protection from state repression. For the West, the introduction of a legal order with familiar bourgeois elements enhanced the image of the Soviet Union at a time when the USSR was searching for security from the Nazi threat.23

Recognizing the advantages of a "stability of laws" for the Stalinist political leadership, the legal revival of the mid-1930s still poses enormous problems of historical interpretation. On the one hand, the actions of the Soviet state returned to respectability many legal principles associated with a pravovoe gosudarstvo. Legal education and legal professionalism were revived.24 Prosecution and defense—and hence the Western idea of adversariness—re-entered the criminal process. The USSR Supreme Court directed judges to observe strictly all procedural norms and to raise the culture of court proceedings. The Constitution of 1936 declared that judges were independent and subject only to law.
Yet these elements of a праvовoe государство remained largely empty declarations under Stalin. Principles of law associated with a law-based state lacked an effective enforcement mechanism and were subject to suspension by the higher law of the Communist Party. The problem, then, was less one of inadequate rights than of underdeveloped remedies. Remedies for injustice and harm were generally provided, if at all, by the party-state directly, without the mediation of law.

It is tempting, therefore, to view law as little more than useful camouflage for injustice in the 1930s. It served this function, of course. But law was also an alternative means of social control, at once more legitimate and stable than terror. Only by understanding that law and terror competed for the favor of the Stalinist leadership can one appreciate the significance of even a partial restoration of law in the 1930s. For millions of Soviet citizens even the compromised, self-serving, and "suspendable" legal system of Stalinism was better than no-law.

As the Soviet Union turned away from the radical analyses of law set out by Pashukanis and others, it fell back on familiar Western legal structures and ideas. In this impoverished theoretical climate, Western law became the only standard of measurement available for the maturity and sophistication of the new Soviet legal order. Indeed, the main architect of the Stalinist legal restoration, A. Vyshinsky, believed that "one of the most important tasks of Soviet science is to appropriate the science and culture of capitalist society outright and
utterly. Vyshinsky and other Soviet legal theorists claimed, of course, that their law was superior to capitalist law. Only under socialism, they argued, could law reach its fullest expression. They nonetheless measured themselves against many of the legal ideals articulated in the West, which resulted in the backhanded legitimation of Western legal principles in the USSR. By treating features of a pravovoe gosudarstvo as already incorporated elements of Soviet law, legal theorists established a line of continuity to the bourgeois inheritance that had been rejected by more radical writers in the socialist tradition. In so doing, they institutionalized a policy of official hypocrisy, if hypocrisy is the nod that vice (Soviet reality) gives to virtue (pravovoe gosudarstvo). During subsequent decades, reformist jurists periodically sought to reduce this official hypocrisy in legal affairs by transferring accepted elements of a pravovoe gosudarstvo from theory to practice.
The ending of the Great Terror in December 1938 opened briefly the first window for law reform. In most respects, this reform episode was less an attempt to change the legal system than to complete, or at least deepen, the restoration work that had been interrupted by the Terror. Whereas the constitution of 1936 had formally embraced certain traditional legal principles, such as the right to defense, reform-oriented jurists now sought to give substance to these declarations. For example, in January 1939, at the inaugural session of the All-Union Institute of Legal Sciences, Professor Cheltsov-Bebutov advocated access to professional counsel at the very beginning of the criminal process, calling it "an inalienable guarantee of the rights of the accused." He also pushed for the introduction of adversarial proceedings into the initial court hearing (predanie sudu) and the extraordinary protest (nadzor) stage of the criminal process. These proposals, like many made at this session, informed the reform agenda for decades to come. One is indeed struck by the radicalism of legal reform proposals of the late 1930s in comparison with subsequent reform debates. Whether because of the pre-revolutionary training of many of the participants in these debates (or their teachers) or the early Bolshevik tradition of relatively open and vigorous discussion,
the agenda and forthrightness of legal reformists in the late 1930s set a standard that has only been matched in the Gorbachev era.

The outbreak of war in Europe in the fall of 1939 abruptly ended this brief reform episode. Where the restoration efforts of the mid-1930s had envisioned the early enactment of codes in every major area of Soviet law, only the Law on Court Organization (1938) and the Statute on the Bar (1939) received legislative approval before WWII. Work on legal codes resumed after the war but in an environment deeply hostile to legal reform. In the years of postwar reconstruction, therefore, the governing norms in most areas of Soviet law remained either hastily-drafted decrees of the 1930s, such as the 2 August 1932 decree on theft of state property, or revised versions of NEP era-codes. A full-scale reprise of the codification of Soviet law had to await the death of Stalin in 1953.

Stalin's death triggered a decade of reassessment in Soviet law, during which reform advanced on three major fronts. First, responsibility for the administration of justice shifted away from the secret police and toward judicial and prosecutorial organs. As part of the dismantling of the apparatus of mass terror, the leadership abolished special courts and secret police tribunals (troiki), annulled the laws on summary procedures, and strengthened the oversight functions of the Procuracy. The leadership also signalled its dissatisfaction with the party's routine interference (podmena) in judicial decisions. Coinciding
with the rise of Khrushchev, these measures represented an attack on terror as a method of social control.

Once Khrushchev had consolidated political power, the focus of law reform shifted from the remaking of legal institutions to the codification of a new generation of Soviet laws. By enacting new legislation, the Khrushchev leadership sought to rationalize a still chaotic legal system and to liberalize selected legal norms. Based on all-union fundamentals of legislation (osnovy) that began to be enacted at the end of the 1950s, individual Soviet republics adopted codes in the early 1960s in the key branches of Soviet law, notably criminal and civil law and procedure. These codes, and the debates that surrounded them, revealed the continuing attraction of principles of a pravovoe gosudarstvo to jurists on the reform wing of the Soviet society.28

The legal legacy of Khrushchev was ambiguous, however. While the Khrushchev leadership encouraged the development and liberalization of traditional legal institutions, procedures, and norms, Khrushchev himself launched campaigns that moved Soviet law away from the principles of a pravovoe gosudarstvo. Seeking to recover the simplicity and revolutionary elan of the early years of Soviet rule, Khrushchev encouraged a partial deprofessionalization of Soviet law through the establishment of people's militia and comrades' courts.29 He also enlisted law as a weapon in his struggle to root out parasitism and private economic activity. These campaigns eroded respect for legality.
by treating law as a naked instrument of political rule. The leader's disregard of traditional standards of legality was nowhere more apparent than in his insistence on the retroactive application of the death penalty to two entrepreneurs whose illegal economic activity was the target of a party campaign. Thus, the Khrushchev era championed the development of parallel approaches to law, one based on the complexity and professionalism of a modern legal order, the other grounded in the utopianism and legal nihilism of revolutionary rule.

Khrushchev's successors did not share his enthusiasm for the popularization of justice or for leadership initiatives that openly pitted party spirit (partiinost') against legality (zakonnost'). But neither did they embrace unhesitatingly the Khrushchev-era liberalization of legal codes. The legal policy of the Brezhnev era encouraged instead rationalization without liberalization, that is, it sought ways of enhancing the integrity, efficiency, and legitimacy of the legal system without constraining party rule.³⁰ It was, of necessity, a tortuous policy, hesitant to move beyond technical improvements in the law toward the genuine reform of legal relations. In some areas, in fact, the Brezhnev-era policies drove Soviet legal practice back to earlier, and more repressive, traditions. In the treatment of the opposition, for example, the political authorities relied heavily on extralegal measures to discourage dissentient behavior.

Attempts to rationalize Soviet law under Brezhnev came in
several waves. The end of the 1960s and the beginning of the 1970s witnessed the completion of the codification campaign begun under Khrushchev and interrupted by the post-Khrushchev succession. While new all-union fundamentals appeared in the more specialized branches of Soviet law, such as land (1968), labor (1970), and family law (1968), the union republics continued to enact branch codes. With law reform again a sanctioned topic of debate, some reform-oriented jurists sought to resubmit for consideration proposals that had been rejected or diluted during the initial round of post-Stalin codification. In some cases, incremental reforms did pass. One example was the expansion of the right to counsel in criminal proceedings.31

In the mid-1970s, the call for the adoption of a new constitution, the first since 1936, opened another important window of law reform in the Brezhnev era. In general, the adoption of a constitution is a radical exercise, both in terms of the issues raised and the follow-on requirements for recodification in light of new constitutional principles. But if earlier Soviet constitutions had been crafted in periods of dramatic political change, this constitution took shape in a moment of political stagnation. Predictably, the drafting, national discussion, and enactment of the constitution proceeded within narrowly-defined parameters.

Amid the conservatism of the debate and the constitution itself, there were, however, surprising moments of reform. The new constitution, for example, contained two important innovations
that promised to enhance the accountability of the state before society, one of the essential values of a pravovoe gosudarstvo. The first was the recognition of the referendum as an instrument for the expression of popular will. The second was the granting of constitutional authority for the introduction of legislation to enable citizens to bring suits against bureaucrats who violate their rights. In the event, both of these constitutional provisions remained dormant during the Brezhnev era.

Changes in legal affairs under Brezhnev were cosmetic repairs to a decaying edifice. By the early 1980s, the Soviet legal system had shown itself to be incapable of assuring the legitimacy, efficiency, or discipline required in a modern state. After a series of unsuccessful campaigns in the mid-1980s to shore up the legal order forged under Stalin, the Soviet political leadership in 1988 abandoned attempts to salvage the existing legal system. It championed instead a campaign to introduce a pravovoe gosudarstvo.

A Pravovoe Gosudarstvo in the USSR: From Theory to Practice

The analysis above has argued that few ideas from the old regime were as suspect in the Soviet era as pravovoe gosudarstvo. In the minds of the Bolsheviks and their successors, pravovoe gosudarstvo advanced a set of myths, such as impartial justice and limited state power, that masked the class nature of capitalist rule. A self-described champion of formal legal
equality and fixed norms and procedures, pravovoe gosudarstvo challenged the legitimacy of Soviet rule, which rested on the very different political and legal principles of class justice and unconstrained power. Thus, when M. Gorbachev embraced the concept of pravovoe gosudarstvo at the XIX Party Conference in June 1988, he broke dramatically with seven decades of Soviet political and legal tradition. 37

Precisely what the political leadership understood, and understands, by pravovoe gosudarstvo remains a subject of debate. If the goal of a pravovoe gosudarstvo is to institutionalize the new political and economic relations in the USSR, there is as yet no consensus on the meaning of pravovoe gosudarstvo or how it is to be introduced. In the search for the core concepts of a pravovoe gosudarstvo, some Soviet writers have wholly appropriated the language and values of "bourgeois" political theorists such as Locke, Montesquieu, and Jefferson. 38 Other legal scholars have sought the origins of a pravovoe gosudarstvo in the Greek and Roman traditions, whose very antiquity places them in less questionable political company. 39 For their part, many establishment politicians seem less willing to import the idea of a pravovoe gosudarstvo ready-made from abroad. As if to inoculate Soviet rule against the full force of changes implicit in the introduction of a Western-style pravovoe gosudarstvo, Gorbachev's protege, A. Lukianov, warned at the end of 1989 that:
We are constructing a law-based state grounded on socialist choice [vybore] and no other... We are constructing a law-based state in a Soviet form, that is, in the form that the people chose as a result of the Great October Socialist Revolution. This gives a distinctive stamp to the whole political system.40

The ambiguity of Lukianov’s comments may appear less menacing to reform if one recognizes that in legal affairs, as in other areas of Soviet life, events have a way of overtaking theory. A measure of the movement toward a pravovoe gosudarstvo in the Soviet Union is not to be found in taxonomical debates or in the hastily-drafted legislation that has poured from Soviet parliaments, government, and president during the Gorbachev era. One looks instead to evidence that the USSR has begun to lift the longstanding institutional and cultural barriers to a pravovoe gosudarstvo.

Two of the most important institutional barriers to the introduction of a pravovoe gosudarstvo have been localism (mestnichestvo) and departmentalism (vedomstvennost’). For all of the extraordinary measures in this century to concentrate power in the USSR, many local authorities and ministerial officials continue to exercise princely authority within their territorial or institutional fiefdoms.41 These areas of prebendal authority have impeded the emergence of one of the essential pre-conditions of a pravovoe gosudarstvo, state
sovereignty. In the late 1980s, the redistribution of power in Soviet politics began to erode these pockets of resistance to the rationalization of state authority. Competitive electoral politics and a vigorous, open press made local and departmental officials increasingly accountable to the public, and therefore more likely to be accountable to law. However, Gorbachev's assumption of extraordinary presidential powers in 1990, while ostensibly designed to overcome dangerous partial interests in Soviet society, has thus far served to protect the already institutionalized interests of localism and departmentalism.

In traditional Soviet thought, the most powerful antidote to localism and departmentalism is party rule. Only a single, disciplined party, it is argued, can assure the unity of a diverse society and a large bureaucracy. Yet party rule itself has impeded the development in Russia of a *pravovoe gosudarstvo* by undermining the integrity of the state and blurring the lines between political and legal authority. Alternatively substituting itself for the state and integrating itself into the state, the party has consistently subordinated the law of the state to transitory political considerations. In so doing, it has denied sovereignty to the state and to its procedural regime, the law.

To achieve *pravovoe gosudarstvo*, then, there must be a deepening of what has been termed the depoliticization of society, that is, the transformation of the Communist Party from a vanguard party, which governs directly, to a parliamentary party, which governs
through the elected institutions of state. As a vanguard institution, the Communist Party itself issued directives and joint party-government decrees that had the force of law. It denied to the state and the people the task of leadership selection. It maintained a professional apparatus that interfered in the day-to-day operation of the state, including the courts and law enforcement organs. And it organized party cells within each state institution in order to insure the implementation of party commands and campaigns. In a word, the Communist Party elevated itself to a position of sovereignty in the Soviet political system. "The principle of complete party hegemony has reigned" to the detriment of political legitimacy, G. Shakhnazarov writes. "A part of society, deputized by no one, lacking a mandate to rule, exercised power as it saw fit."  

Since 1988, depoliticization has begun to undermine the familiar pillars of party rule. The XIX Party Conference in June 1988 and the opening of a competitively elected parliament in May 1989 signalled the beginning of a transfer of law-making authority from the party to the state. The parliament, the government, and, more recently, the presidency have now eclipsed the Communist Party as sources of guiding legislation. Following the XIX Party Conference, for example, the party agreed to halt the practice of issuing joint party-government decrees. It also appears to have abandoned its regular use of the Supreme Soviet presidium as a funnel for party-sponsored revisions of
legal codes. Since the adoption of the RSFSR Criminal Code in 1960, its 269 articles had been amended more than 400 times by presidium decrees. Often drafted in secret by party-ministerial working groups, these amendments tended to set stiffer penalties and expand criminal liability.\(^4\)

The dismantling of the party's extraparliamentary apparatus has begun with the closure of departments that shadowed governmental institutions and with the atrophy of many primary party organizations. Traditionally, secretaries, department heads, and instructors in the Communist Party apparatus closely supervised the activities of the courts and government legal institutions. Through its administrative organs departments (from 1988, state and law departments), the party enjoyed broad patronage powers in legal institutions, set performance standards for legal personnel, and, in some cases, interfered directly in cases sub judice. But in the summer of 1990, the head of the USSR MVD, V. Bakatin, asserted that oversight responsibilities relating to his institution had been transferred from the party to the Soviet state, specifically to the president and the council of ministers.\(^4\) The recent transfer of 17 party functionaries from the Central Committee's state and law department to sinecures in the armed forces suggests that the department is distancing itself from the state.\(^4\) Other reports indicate, however, that in certain cases the department is still attempting to coordinate the activities of the procuracy, the MVD, the KGB, and the Supreme Court.\(^4\)
Primary party organizations within legal institutions have also served as serious impediments to the introduction of a pravovoe gosudarstvo. Embracing virtually the entire professional staffs of the judiciary, the Procuracy, the MVD, and the KGB, primary party organizations encouraged legal professionals to place party spirit (partiinost') ahead of legality (zakonnost'). When party directives clashed with legal norms, it was party instincts (obychai) and not professional loyalties that usually prevailed. To the question of what guides legal-personnel when "law and the rules of the CPSU are in conflict," the raikom responds that "party rules are the law for communists." 50

To lay the necessary groundwork for a pravovoe gosudarstvo, radical reformists have advocated the complete elimination of primary party organizations within legal institutions and the armed forces. Such a move would insure the integrity of the state against party encroachment as well as the integrity of legal institutions against internal political competition involving rival political parties. Not to ban primary party organizations in their traditional venue, the production unit, is to invite these institutions to become a political battleground, with primary organizations from competing parties vying for support and membership in the workplace. Soviet politics would return to its revolutionary origins. Speaking in October 1990 at a session of the USSR Supreme Soviet, a reform-minded army colonel warned fellow parliamentarians that "if we do not outlaw CPSU membership in the army and law enforcement organs, the
appearance of other parties will create genuine chaos." For reformists and conservatives alike, there would seem to be advantages to limiting the political arena to the streets and the parliaments.

Initiatives to remove party organizations from legal institutions and the armed forces have originated on several levels. In selected procuracy offices and courts around the country, communists have turned in their party cards in order to eliminate party apparatus interference in their work. Some of these resignations seem to have been made out of principle, others as a reaction against specific instances of interference by local party officials. At its September 1990 meeting, the Constitutional Oversight Committee declared itself a depoliticized institution. In certain areas of the country, such as the Baltic and Moldova, republican parliaments have sought to depoliticize legal institutions throughout their jurisdictions. In Lithuania, for example, the republican supreme soviet passed a resolution in the spring of 1990 that required parties to suspend their activities in administrative and law enforcement organs. But while the independent Lithuanian Communist Party complied with the request, the Moscow-based Communist Party refused to close down its organizations. The Latvian and Moldovan parliaments adopted similar measures in June and July, 1990, respectively.

In the summer of 1990, radical reformists in the USSR Supreme Soviet launched a legislative initiative to depoliticize legal
institutions across the country. The vehicle of reform was the new law on public associations (obshchestvennye ob'edineniia), specifically article 16 of the law, which governs the activities of parties within the armed forces, the KGB, the MVD, the Procuracy, state arbitrazh, and the courts. Where deputies representing the party and military establishment sought to resolve the issue institution by institution, with party activities to be governed by forthcoming legislation on each of the abovementioned organs, radical reformists proposed a clear prohibition against military or legal personnel taking part in political activity of any kind. Seeking to retain the "production principle" in Communist Party organization, the chair of the soviet's legislative committee proposed a compromise variant that sanctioned primary party organizations in legal institutions and the armed forces but forbade personnel to hold leading party posts or to be governed by party directives. The Supreme Soviet of the USSR enacted the law with the compromise variant on October 9, 1990, leaving in place for the moment one of the institutional pillars of the vanguard party.56

Even if primary party organizations are ultimately removed from legal and administrative institutions, legal personnel are likely to remain dependent on party and government authorities for the provision of scarce goods. With few institutional resources of their own at local levels, judges and procurators must rely on party and soviet57 organs for housing, day care, and transportation. This "goods dependency" binds the enforcers
and adjudicators of law to politicians in ways inappropriate to a state based on law. In the words of the Belorussion procurator, G. Tarnavskii:

The prosecutor requires some kind of protective wall--he himself is not protected from the bureaucratic system. Let us say that I arrive in the republic and that I am appointed by Moscow. I have to live somewhere, make arrangements for my family, set up a decent office. If I don't adapt in some sense, they will force me to adapt. 58

A full depoliticization of legal institutions will require, therefore, the unmediated access of legal personnel to essential goods and services, whether through administrative or market reforms. 59

Barriers to the introduction of a pravovoe gosudarstvo have cultural and philosophical as well as institutional anchors. The recent lifting of the ideological barrier to a pravovoe gosudarstvo has not removed the deep-seated cultural antagonism to law in Russia. Throughout Russian history, peasant and intelligent alike have looked askance at law, which has traditionally been associated not with justice but proizvol, or tyranny. Furthermore, in a country with a penchant for collectivism and for uncompromising attitudes to morality, law
has appeared a champion of individual interests that is content with procedural, and not absolute, truth. Thus, law and the civil society in which it is imbedded have always seemed to occupy a weak middle ground between the two great poles of Russian social thought—full etatization (polnoe ogosudarstvlenie) and the complete elimination of state and law (polnoe obobshchestvlenie). Until a civil society emerges in the USSR that champions the role of law as a mediator between the legitimate and conflicting interests of state and society, philosophical support for the introduction of a pravovoe gosudarstvo will remain limited.60

Another philosophical pre-condition for a pravovoe gosudarstvo is the idea of full formal equality before the law.61 If in pre-revolutionary Russia membership in a social estate could determine standing before law, social and occupational background has continued in the Soviet era to give rise to distinct procedures in law. In the first two decades of Soviet rule, for example, persons from suspect social classes were the subjects of special legislation that denied them the franchise and applied harsher procedures in criminal cases. More recently, dissidents, military personnel, and workers in sensitive government enterprises have had their criminal cases conducted according to special procedures. Some segments of Soviet society have benefitted from the institutionalization of preferential treatment in legal cases. Since the 1920s, the Communist Party has reserved the right to decide whether party members under
criminal investigation will be indicted. 62 Only in 1990 did revisions of the party rules signal the elimination of this special pleading.

Social inequality before law in Soviet history has been widespread in civil law as well, whether in the disadvantaged position of the peasants in the passport regime or of the limitchiki, the holders of temporary residence permits who are denied basic housing and labor rights. 63 In designing a new market-based economy, even the reform-oriented Moscow City Council has fallen back on the traditions of Russian social estates. In a decision of January 1991, the Council established six categories of "private entrepreneurs," each invested with different property, investment, and hiring rights. 64 Before a pravovoe gosudarstvo can take hold, the Soviet Union must rid itself of a mentality accustomed to a socially differentiated approach to law and legality. 65

Finally, a pravovoe gosudarstvo requires a level of professionalism and technical competence in law not yet present in the USSR. The Soviet Union must train and nurture professional legal personnel who can work effectively and impartially in a sovereign state with clear jurisdictional responsibilities. 66 Although the sloppiness and confusion of Gorbachev-era laws stem in part from hurried political compromise and, in some cases, deliberate obfuscation, they also reflect the low level of elite legal culture. 67 In Moscow in the summer of 1990, the chairman of the Moscow Bar was asked when a pravovoe
gosudarstvo would be introduced in the USSR. Glancing at the volumes of the tsarist code on his shelves, he replied, as soon as we have developed the technical expertise to write law of that quality.\textsuperscript{68}
1. The most serious attempt to introduce a pravovoe gosudarstvo in Russia and the Soviet Union came in the wake of the February Revolution of 1917, when the Provisional Government advanced a far-reaching Western-style legal reform. The legal policy of the Provisional Government has been largely neglected by Western and Soviet historians. One important exception is E. Skripilev, Karatel'naia politika vremennogo pravitel'stv i apparat ee provedeniia. Doctoral dissertation, Moscow, 1970.


5. On this last point, see the doctoral thesis in preparation by Will Pomeranz, School of Slavonic and East European Studies, University of London.

7. Local justice officials were especially vehement in their advocacy of a nihilist approach to law. See the debates in Tret'ii vserossiiskii s"ezd deiatelei sovetskoi iustitsii, Materialy Narodnogo Komissariata Iustitsii, vypusk 11-12, Moscow 1921, and Vserossiiskii s"ezd deiatelei sovetskoi iustitsii, Moscow 1922.

8. V. Kuritsyn, Perekhod k NEPu i revoliutsionnaia zakonnost', Moscow 1972, 101-122.

9. "'Doklad N. Krylenko,'" Revoliutsiia prava 1928 No. 1, 104.


11. R. Livshits, "'Sotsialisticheskii ideal i pravovoe gosudarstvo,'" Sotsialisticheskoe pravovoe gosudarstvo, op. cit., note 6, 89, and M. Piskotin, "'Pravovoe gosudarstvo i iuridicheskaia kul'tura,'" Sotsialisticheskoe pravovoe gosudarstvo, op. cit., note 6, 134.

12. See Huskey, op. cit. 147.

13. S. Alekseev, Pravo i perestroika: voprosy, razdum'ia, prognozy, Moscow 1987, 42.


17-44.


19. "O sodeistvii bor'_ be za ugol'," Sbornik postanovlenii, raz'iasnenii i direktiv Verkhovnogo Suda SSSR deistvuiushchikh na 1 aprelia 1935 q., Moscow 1935, 5. Similar decrees were issued in this period for other branches of industry and agriculture.

20. Cited in O. Latsis, "Perelom," in Stranitsy istorii KPSS: fakty, problemy, uroki, Moscow 1988, 386. One of the most vigorous critics of traditional notions of legality and of legal professionalism was the party official A. Sol'ts. There are good laws and bad laws, he explained. We should only enforce the good ones. Ibid., 432.


22. "O revoliutsionnoi zakonnosti," Sobranie zakonov i
23. That the new emphasis on legality was taken seriously by Western observers is indicated by the reaction of the American ambassador in Moscow to the purge trials. In a cable to the Secretary of State, dated March 17, 1938, Ambassador Davies noted that the crimes of which Bukharin and other defendants had been accused "were established by the proof and beyond a reasonable doubt to justify the verdict of guilty of treason and the adjudication of the punishment provided by Soviet criminal statutes." J. Davies, Mission to Moscow, New York 1941, 272.


27. See H. Berman, op. cit. note 2, 66-73.


30. A classic example of this policy was the launching of a Свод законов in the 1970s to put in order a very untidy set of Soviet laws.


32. This proposal was first advanced in 1921. See A. Elistratov, "Ob utverzhdenii zakonnosti v sovetskom stroitel'stve," Sovetskoe pravo 1922 No. 1, 129. It was apparently blocked by high-ranking officials who claimed that the Soviet judiciary was as yet immature and that the law might be used by Nepmen and bourgeois elements hostile to Soviet rule. Kuritsyn, op. cit. note 8, 121.


34. These include the discipline campaigns of 1983 and 1985 and the "humanization" campaign of 1987.

35. The best introduction to the subject of правовое государство


38. See Sotsialisticheskoe pravovoe gosudarstvo: problemy i suzhdenia, Moscow 1989, passim. For a discussion of the rehabilitation of bourgeois ideas of pravovoe gosudarstvo, see V. Mushinskii, "Pravovoe gosudarstvo i pravoponimanie," SGiP 1990 No. 2, 21-27. Many of the jurists responsible for reviving the works of liberal and democratic political theorists are associated with the Institute of State and Law in Moscow. The Institute recently advanced its own draft theses on a constitution of a pravovoe gosudarstvo, which contain a detailed declaration of individual rights in the American and French traditions. Konstitutsionnaiia reforma v SSSR: aktual'nuye problemy, Moscow 1990, 119-126.

40. "Vsesoiuznaia nauchno-prakticheskaiia konferentsiiia 'Formirovanie sotsialisticheskogo pravovogo gosudarstva' (obzor materialov)," SGiP 1990 No. 6, 24.


system, the Communist Party has been able to wield power without assuming the legal or moral responsibilities of rule. Both political blame and the messy tasks of governing have been left to the пра ви тель с тво. On this point, see A.M. Yakovlev, "Constitutional Socialist Democracy: Dream or Reality?", Columbia Journal of Transnational Law 1990 No. 1, 119. "The guiding role of the Communist Party in our political system," one jurist wrote, "has been a historical, political, and social, but not a legal, fact." Mushinskii, op. cit. note 38, 27.


47. V. Bakatin [Response to Reader's Letter], Argumenty i fakty, 1990 No. 29, 8. Bakatin also suggests that the party has relinquished its nomenklatura powers over the ministry. Although it is not known to what extent party organizations across the country continue to influence the selection of legal personnel, party organizations in many areas have restricted their intervention in personnel decisions involving state personnel. See "Proshchaniye s nomenklaturoi," Izvestiia, 4 September 1990, 2.

48. "Nel'_zia idti vpered, gliadia nazad," Argumenty i fakty 1990 No. 39, 3. This does not mean, however, that party officials have ceased interfering in legal affairs, only that it is less institutionalized than before. The chair of a people's court in a small town in Vladimir oblast complained in October 1990 that the practice of telephone justice continues. "New people come to power but they arm themselves with the same old methods." P. Mel'_nikov, "Sud bez telefonnogo prava,'" Izvestiia 8 October 1990, 3.

50. V. Sharov, "Prokurorskii bunt," Literaturnaia gazeta, 4
July 1990, 12. The conflict between partiinost' and zakonnost'
has been especially acute in rural areas and smaller cities,
where communist judges, advocates, procurators, and police are
united into a single primary party organization.

51. "Armiia bez KPSS?," Izvestiia, 2 October 1990, 1. In a
related development, Gorbachev issued a presidential decree on 3
September 1990 that called for the reform, and possibly the
elimination, of the political organs of the armed forces, KGB,
MVD, and rail transport police. "O reformirovanii
politicheskikh organov Vooryzhennykh Sil SSSR, voisk KGB SSSR,
vnutrennykh voisk MVD i zheleznodorozhnykh voisk," Izvestiia 5
September 1990, 1.

52. V. Sharov, op. cit. note 49, 12; "Prokurory vykhodiat iz
partii," Izvestiia, 3 September 1990, 2; "Militsiia bez
partorganizatsii," Izvestiia, 10 October 1990, 2.

53. "Konstitutsionniy komitet prinimaet resheniia," Izvestiia,
15 September 1990, 1.

54. "Party Membership Suspended," Izvestiia, 8 March 1990, 2,
CDSP, 1990 No. 10, 28. Where 80% of the communists in the
republican MVD belong to the independent party, 20% remain loyal
to Moscow. Ibid.

55. "At Union Republic Supreme Soviet Sessions," Pravda 27
June 1990, 3, CDSP, 1990 No. 26, 19, and "Toward
Depoliticization," Izvestia 28 July 1990, 2, CDSP 1990 No. 30,
27.

57. There is evidence that the soviets are overtaking local party organs as violators of judicial independence. See Yu. Feofanov, "Democracy Demands Independent Judiciary," Moscow News 1990 No. 35, 3.

58. "Increased Role for USSR Procuracy Viewed," Izvestiia 18 March 1990, 3, FBIS 25 April 1990, 64. How long Moscow will retain the power to appoint republican and regional procurators is not known. The Procurator-General of the USSR recently struck down a decision of the Latvian parliament that usurped his authority by appointing the republic's procurator. "Zaiavlenie General'nogo prokurora SSSR," Izvestiia 28 September 1990, 2.


60. This argument is developed in E. Huskey, "A Framework for the Analysis of Soviet Law," Russian Review 1991 No. 1.

61. See Nersesians, op. cit. note 39, 52.

63. a: See B. El'tsin, Ispoved' na zadanniiu temu; Princeton 1990, 53-54.

64. "O programme perekhoda k razgosudarstvleniiu i privatizatsii torgovli, obshchestvennogo pitaniia i bytovogo obsluzhivaniia v Moskve," Vedomosti Mossoveta 1991 No. 2, 12.

65. See V. Chalidze, "The Law and Corruption," Moscow News 1990 No. 25, 6. These comments are not meant to suggest that income, race, gender, and other social characteristics do not influence legal behavior in the West. They do not, however, give rise to formal inequalities in legal standing.

66. The high rate of turnover among judges, police, and procurators is an indication of the lack of professionalism in the legal system. In the RSFSR, 37% of people's court judges have less than three years of judicial experience. "Kakim budet nash sud," Izvestiia, 1 September 1990, 3.

For several years Soviet law professors have been designing a new and more rigorous legal curriculum, though legal education is itself as yet little changed. "K razrabotke kontseptsii razvitiia iuridicheskogo obrazovaniia v SSSR na 1990-2000gg.," SGiP 1990 No. 5, 35-47. There has also been much debate about the need to raise the legal culture of the people through a curriculum in the schools that enhances respect for and knowledge of the law.

67. On the problem of elite legal culture and legislative
drafting, see V. Kopeichikov and V. Borodin, "'Rol_† pravovoi kul_†tury v formirovanii sotsialisticheskogo pravovogo gosudarstva," SGiP 1990 No. 2, 28-34.

68. Personal interview with F. Kheifets, Chairman of the Moscow City College of Advocates, Moscow, July 17, 1990.