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978-0-521-88174-6 - Soviet Legal Innovations and the Law of the Western World

John Quigley

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SOVIET LEGAL INNOVATION AND THE LAW OF THE WESTERN WORLD

The government of Soviet Russia wrote new laws for Russia that were as revolutionary as its political philosophy. These new laws challenged social relations as they had developed in Europe over centuries. These laws generated intense interest in the West. To some, they were the harbinger of what should be done in the West and, hence, a source for emulation. To others, they represented a threat to the existing order. Western governments, like that of the Tsar, might be at risk if they held to the old ways. Throughout the twentieth century, Western governments remade their legal systems, incorporating an astonishing number of laws that mirrored the new Soviet laws. Western law became radically transformed over the course of the twentieth century, largely in the direction of change that had been charted by the government of Soviet Russia.

John Quigley is the President's Club Professor in Law at the Moritz College of Law at the Ohio State University. After earning his A.B., LL.B., and M.A. at Harvard University, he was an instructor in Russian at Massachusetts Institute of Technology, a Research Fellow at the faculty of law of Moscow State University, and a research associate at Harvard Law School and has written three books regarding Russian law. He has served as the editor of the *Bulletin on Current Research in Soviet and East European Law* and has published numerous articles on Soviet law.

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This book is dedicated to

Harold J. Berman

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Abbreviations

The following abbreviations for frequently cited items are used in notes in lieu of full citation.

AJIL	<i>American Journal of International Law</i>
CEDAW	“Convention on the Elimination of All Forms of Discrimination Against Women,” December 18, 1979, <i>United Nations Treaty Series</i> , vol. 1249, p. 13
Civil Code 1922	Grazhdanskii kodeks [Civil Code], SU RSFSR no. 71, item 904 (1922)
Chloros	A. G. Chloros (ed.), <i>The Reform of Family Law in Europe (The Equality of the Spouses – Divorce – Illegitimate Children)</i> (Deventer: Kluwer, 1978)
Constitution 1936	USSR Constitution, confirmed by Decree of the Eighth Extraordinary Congress of Soviets of the USSR, published in <i>zvestiia of the Central Executive Committee of the USSR and the All-Union Central Executive Committee</i> , December 6, 1936, no. 283
Criminal Code 1922	Ugolovnyi kodeks [Criminal Code], SU RSFSR, no. 15, item 153 (1922)
Criminal Code 1926	Ugolovnyi kodeks [Criminal Code], SU RSFSR, no. 80, item 600 (1926)
DSB	U.S. Government, <i>Department of State Bulletin</i> , U.S. Government Printing Office, Washington DC
ESC	United Nations, Economic and Social Council
ESCOR	United Nations, Economic and Social Council Official Records
Family Code 1918	Kodeks zakonov ob aktakh grazhdanskogo sostoianiia, brachnom, semeinom i opekunskom prave [Code of

Abbreviations

	Laws on Acts of Civil Status and on Marriage, Family, and Guardianship Law], SU RSFSR, no. 76–77, item 818 (1918)
Family Code 1926	Kodeks zakonov o brake, sem'e i opeke [Code of Laws on Marriage, the Family, and Guardianship], SU RSFSR, no. 82, item 612 (1926)
FRUS	Foreign Relations of the United States, U.S. Government Printing Office, Washington DC
FRUS Paris	U.S. Government, <i>Foreign Relations of the United States: the Paris Peace Conference 1919</i> (published 1943)
GA	United Nations, General Assembly
GAOR	United Nations, General Assembly Official Records
Labor Code 1918	Kodeks zakonov o trude [Code of Laws on Labor], SU RSFSR, no. 87–88, item 905 (1918)
Labor Code 1922	Kodeks zakonov o trude [Code of Laws on Labor], SU RSFSR, no. 70, item 903 (1922)
League Covenant	Treaty of Peace with Germany, Versailles, annex: Covenant of the League of Nations, June 28, 1919, <i>Consolidated Treaty Series</i> , vol. 225, p. 195
LNTS	<i>League of Nations Treaty Series</i>
PSZ	Polnoe sobranie zakonov Rossiiskoi imperii [Full Collection of Laws of the Russian Empire]
RSFSR	Rossiiskaia sovetskaia federativnaia sotsialisticheskaiia respublika [Russian Soviet Federated Socialist Republic]
SC	United Nations, Security Council
SCOR	United Nations, <i>Security Council Official Records</i>
SGP	Sovetskoe gosudarstvo i pravo [Soviet State and Law] (periodical)
SU RSFSR	Sobranie uzakonenii i rasporiazhenii rabochego i krest'ianskogo pravitel'stva RSFSR [Collection of Enactments and Regulations of the Worker-Peasant Government of the RSFSR]
SSSR	Soiuz Sovetskikh Sotsialisticheskikh Respublik [Union of Soviet Socialist Republics]
Svod zakonov	Svod zakonov Rossiiskoi Imperii [Collection of Laws of the Russian Empire] (1913)
SZ SSSR	Sobranie zakonov i rasporiazhenii rabochego-krest'ianskogo pravitel'stva SSSR [Collection of Laws and Regulations of the Worker-Peasant Government of the USSR]

Abbreviations

UN	United Nations
UN Charter	Charter of the United Nations, June 26, 1945, U.S. Congress, Statutes at Large, vol. 59, p. 1031
UNTS	<i>United Nations Treaty Series</i>
Vedomosti SSSR	Vedomosti verkhovnogo soveta SSSR [Gazette of the Supreme Soviet of the USSR]

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In the autumn of 1887, Vladimir Ilich Ulianov, a young Russian of a middle-class family, enrolled to study law at the Imperial Kazan University. Ulianov was not destined, however, to do well at the university. His elder brother had just been executed for an attempt on the life of the tsar. Like his brother, Ulianov traveled in anti-tsarist circles. At the university, Ulianov associated with revolutionary-minded students, and in December of 1887 he was expelled.

Ulianov did not give up on law study, however. He applied for re-admission at Kazan. Refused there, he requested permission from the government to go abroad to a university. That, too, was refused. Knowing that he would not be admitted to any Russian university in the normal way, he applied to become an external student at the university in St. Petersburg. That route would let him qualify in law, but he would not attend classes. He would study on his own. Ulianov's mother wrote a letter in support of his application, and he was admitted.

Ulianov learned and re-learned the law of tsarist Russia. Tsarist law was distasteful to Ulianov. For him, it rationalized and reinforced unequal social relations. It ensured that the downtrodden would remain so.

Despite his disdain, the youthful Ulianov studied what he needed to learn of tsarist law. In 1891, he sat for the examination in St. Petersburg to qualify for the practice of law. He not only passed, but scored the highest possible mark on every sub-part of the examination, the only

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student that year to do so. Ulianov knew the hated law of the tsar better than any of his peers.¹

A generation later, Ulianov, by then known as Lenin, declared the tsar's legislation void – lock, stock, and barrel. Not an article of what Ulianov had mastered in 1891 would remain on the books. In its place would come new enactments, differently grounded, containing norms that would change the face of Russia.

Beyond Russia, Lenin's repudiation of tsarist law had worldwide ramifications. Lenin and the Bolshevik party he headed espoused legal concepts that challenged the foundations of Western society. The governments of the Western world did not provide a good life for their people, the Bolsheviks charged. People could live better, more productive lives without fear of the hardships that might befall them through the playing out of the forces of the market.

The overthrow of the tsar and his law set an uncomfortable precedent for the West. If the law of Russia could be overturned at the stroke of a pen, what then of the law of other countries? Could the common law of England, or the Roman law of Europe, as easily be turned aside?

As matters developed, the leaders of the Western world were able to maintain themselves and their legal orders. But to do so, they could not run in place. They parried Lenin's thrusts to blunt the impact in their realms of his biting critique of their rule. A dialectic developed between the Soviet Union and the West. In its efforts to counter the Soviet Union, the West absorbed many of the ideas it found threatening.

As Western leaders adjusted their policies, they changed the legal systems of their countries. The change did not come overnight or in a single package of new laws. Nor did it come at the same pace everywhere in the Western world. But come it did, and with a force that would render Western law by the turn of the twenty-first century light years different from Western law at the turn of the twentieth. Western law did not disappear, but it did not remain the same.

This interaction between the Soviet Union and the West was little understood when the Soviet Union departed the international scene

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in 1991. To Western leaders and to most analysts, the Soviet demise marked the end of an unpleasant episode, without a tomorrow. The Soviet Union was seventy years of a tragic mistake.

Communism was dead. Capitalism had defeated it and would replace it in the countries that had purported to follow it. The United States sponsored “rule of law” seminars and personnel exchanges, to plant the ideas of law as understood in the West. Communism was safely buried, and in its grave lay whatever ideas its advocates had promoted. This book explores how the ideas about law espoused by Lenin and his associates were received in the West.

I was launched into the study of law in the Soviet Union by the satellite (Sputnik) that was launched by the Soviet Union in 1957. The American government determined it must know more about the Soviet threat, a task that was complicated by the fact that American scholars had little access to Soviet society. The U.S. Congress passed the National Defense Education Act. Efforts were to be made in higher education to understand the USSR and to counteract the Soviet threat. President Dwight Eisenhower negotiated a treaty with the Soviet Union for the exchange of scholars. The Soviet government sought access to the West, and the West sought access to the Soviet Union. Each calculated that it would gain more than it would lose.

I was part of this high-stakes chess match. My base of operation was just up the hill from the Kremlin, the center of Soviet political power. Leonid Brezhnev had assumed control, and the Cold War showed no signs of abating. I gained an opportunity to observe, albeit within limits, the society whose confrontation with the West was the defining circumstance of an era.

What was striking to a young scholar about the concepts promoted in Soviet legal and political philosophy was precisely the challenge they posed to the West. Everything I had previously been told was good was evil. The free market was bad. Only an organized economy could serve social needs. The rule of law, seen in the West as the basis of social order, was only a stop-gap approach to the proper regulation

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of life in society. Instead, life should be organized so that law is not needed. Rather than punishing individuals who violate rules, society should reorganize itself to eliminate the urge to bad conduct.

One might embrace this philosophy as foretelling an improvement over society as conceived in the West. One might reject it as utopian, or, even worse, as a cover for institutionalized force. In any event, it was a point of view that required a re-thinking of concepts.

At the level of international politics, statesmen too were examining the Soviet ideas and reacting to them. Their reaction forms the subject of this book. In that reaction may be found a key to what differentiates Western law of today from Western law as it stood when Lenin sat for the St. Petersburg law examination in 1891.

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