



Teaching Soviet Law in the 21st Century

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Abstract

This article, addressing the need to cultivate an understanding of the interplay between law and politics, aims to explore the possibility—and necessity—of teaching Soviet law, where this mutually beneficial relationship assumed a particularly palpable form. In doing so, firstly, it analyses how Soviet law was taught both within the Soviet state and abroad historically, locating the main challenges in doing so in lack of academic freedom and immersion in the political context respectively. Secondly, it makes a case for reviving these practices in the modern day as Soviet law can say a lot about Soviet history, law in general and its interaction with politics, and modern legal and political developments in Russia. Thirdly, it provides an indication of how Soviet law can be taught in current times based on the authors' experiences of designing and teaching courses on Soviet law.

Keywords

Soviet law – Russian law – law and politics – pedagogy – curriculum design

1 Introduction

The relationship between law and politics is complex. While many perceive them as diametrically opposed as politics is often seen a site of dramatic disagreements, and law—of dispassionate inquiry, the two, in fact, are closely connected. Law often serves as an instrument through which political ambitions of lawmakers and other legal officials are transformed into specific rights and obligations bearing on the law-subjects. This, in particular, applies to the experience of authoritarian and totalitarian regimes that, unlike democracies, are not genuinely interested in keeping the political and the legal separate. The history of the Soviet Union is one such example. The 1917 October Revolution gave birth not only to the new Soviet state, but also to a new, distinctive system of law. Evolving from the continental law system, it shared some of its features such as the prevalence of statutory law and the lack of precedent, but differed in that it was based on a socialist economy, served Communist ideology, and fused the legal and the political by rendering the Communist Party of the Soviet Union its most powerful organ. Since its inception, Soviet law in all its complexity became a topic of much interest not only within the new polity, but, gradually, also abroad. In both the Soviet Union and the West, Soviet law was not only a subject of research, but also something to be taught to future generations of academics, lawyers, and public servants.

Yet, the utility of having Soviet law on the curriculum seemingly came to an end in the early 1990s. Following the dissolution of the Soviet Union, its contingent features such as economy and political structure ceased to exist, and its ideology weakened and lost its superior role, Soviet law was gradually replaced by new legislation of post-Soviet states, including the modern-day Russia. In this paper, it will be argued, however, that one ought not exorcise Soviet law from the classroom so readily, as there are reasons of both theoretical and practical importance for having it on the teaching agenda. This does not mean that we ought to revert back to how Soviet law was taught in the eras gone by. New times call for new approaches to teaching Soviet law that not only restate the legal rules, but problematise and contextualise them against the backdrop of the 21st century.

This paper will proceed as follows. Firstly (Section 2), it will give a short history of how Soviet law was taught in both the Soviet Union and the United States, identifying important political and pedagogic challenges faced by the Soviet law teachers in those contexts. This discussion will build not just on available secondary literature, but also on a series of more than 20 unstructured interviews with students who studied Soviet law and instructors who taught it, both in the Soviet Union / post-Soviet countries and the West, whose

initials appear in the parentheses in the text. While the number of respondents (19 students and 10 professors, of whom 11 students and 3 professors studied or taught in the Soviet Union, and 8 students and 7 professors—in the West) is too small to draw definitive conclusions, it is substantial enough to provide a flavour of what studying and teaching Soviet law was like at the time. Secondly (Section 3), this article will give reasons as to why teaching of Soviet law needs to be revitalised. Thirdly (Section 4), it will provide some suggestions on how it can be done, based on the authors' own experience of designing and delivering their courses on Soviet Law, extended versions of those courses' syllabi provided in Appendices 1 and 2.

2 Teaching Soviet Law: A History

2.1 *Soviet Union*

What was legal education like in the Soviet Union? To address this, one should look at the very beginnings of Soviet law and state. The need to provide proper teaching of courses on new Soviet law, necessitated by an overhaul of the political order, was proclaimed by the representatives of the new regime shortly after the Bolshevik Revolution of 1917. Following the decision of the Fifth (v) All-Russia Congress of Soviets (1918), courses focusing on the study of the 1918 Constitution of the RSFSR, its explanation and interpretation were added to the curricula of all national institutions of Soviet Russia.

The course 'History of the Soviet State and Law' was offered even in so-called 'rabfaks'.¹ Legal training was focused mainly on the study of fundamentals of constitutional law (which was referred to as 'state law' under the Soviet rule)—usually to the prejudice of other areas of law. During the first years of the Soviet rule, teaching of law was affected by general attitude towards law as a temporary phenomenon belonging to the period of the dictatorship of the proletariat.² After the victory of Communism law was, according to the

1 *Rabfaks* were remedial schools for workers and peasants established under the RSFSR Sovnarkom Decree of September 17, 1920, with the purpose to prepare workers and peasants for higher education.

2 This line of thought was an explicit reference to Marx, who defined the dictatorship of the proletariat as a period of transformation of capitalism into communism and further explored by Lenin as a rule of the proletariat over the bourgeoisie. Vladimir Lenin, 'The State and Revolution', in *Collected Works (Volume xxv)*, 1974, 397.; Karl Marx, 'The Critique of the Gotha Programme', in *The Collected Works of Marx and Engels (Volume xxiv)*, 1989, 95. For an account of the development of the idea of the dictatorship of the proletariat, see Anna

predominant ideology at the time, supposed to inevitably ‘wither away’³ together with the state, family, *etc.* Teaching of law in the 1920s was therefore limited, based on the Bolshevik ideology and strongly politicised and a proper methodology of teaching law was missing. As a famous Soviet legal scholar Ivan Peretersky, who taught law both before and after the Bolshevik Revolution, noted in 1927, the available methods of teaching Soviet law were insufficient, whereas the proper teaching of Soviet law was vitally important.⁴ That was the time when the process of re-evaluation of the role of law in the Soviet State already started. Initially the Bolsheviks proudly declared their break with the Russian legal tradition, yet as Vladimir Lenin and Joseph Stalin faced the challenge of governing, they were forced to contemplate what role law should play in what they saw as a newly created socialist society.⁵ By the 1930s, it became clear that early revolutionary ideas about the inevitable demise of law, state, family, and other basic institutions were unrealistic. But as discussed above, the state kept the criminal law for reasons of expediency.

However, later the course was changed. Andrei Vyshinskii, the Procurator General of the USSR from 1935 to 1939, had been writing since 1930 about the importance of law as the means of defending what he perceived as the new socialist state.⁶ Pomeranz quotes Vyshinskii’s statement that rather than withering away, the law would serve as the bedrock of socialism.⁷ In the early 1930s, the idea that law, family and the state will inevitably wither away disappeared from the domestic political agenda. Together with ‘socialist statehood’ and family, ‘socialist legality’ became a part of the ‘new Holy Trinity of the party ideology.’⁸ Change of attitude towards law stimulated the need for well-educated lawyers. That was a challenging task. For nearly two decades Soviet politicians took the low educational level of their legal cadres for

Lukina, ‘Between Exception and Normality: Schmittian Dictatorship and the Soviet Legal Order’, *Ratio Juris* 35, no. 2 (2022): 139–157, <https://doi.org/10.1111/raju.12355>.

3 This idea was first introduced by Engels in Frederick Engels, ‘Anti-Dühring’, in *The Collected Works of Marx and Engels (Volume xxv)*, 1987, 268.

4 Ivan Peretersky, ‘О Методике Преподавания Правовых Дисциплин в Университете’, *Vestnik Universiteta Imeni O.E. Kutafina*, no. 12 (28) (2016): 246–259, <https://doi.org/10.17803/2311-5998.2016.28.12.246-259>.

5 William Pomeranz, *Law and the Russian State: Russia’s Legal Evolution from Peter the Great to Vladimir Putin* (London: Bloomsbury, 2018), 73.

6 Peter H. Solomon, *Soviet Criminal Justice under Stalin* (Cambridge: Cambridge University Press, 1996), 157.

7 Pomeranz, *Law and the Russian State*, 86.

8 See Wendy Z. Goldman, *Women, the State and Revolution: Soviet Family Policy and Social Life, 1917–1936* (Cambridge: Cambridge University Press, 1993).

granted and did almost nothing to change it.⁹ In the 1920–1930s, higher legal education was in decline. During the 1920s, a production of lawyers averaged a mere 500 per year in the RSFSR. In the 1930s, the figure dipped to mid-300s, and in 1933 only 180 lawyers graduated.¹⁰ Late 1930s saw the beginning of politicisation of legal education.¹¹ In 1938, Vyshinskii offered strong criticism of ‘harmful “theories”’ of withering away of state and law and provided the doctrinal definition of law, including Soviet law, as ‘the aggregate of rules of conduct expressing the will of the dominant class and established in legal order, as well as of customs and rules of community life confirmed by state authority, the application whereof is guaranteed by the coercive force of the state to the end of safeguarding, making secure and developing social relationships and arrangements advantageous and agreeable to the dominant class¹². Discussing Soviet legal education in the 1930s, Hazard notes that it was completely centralized and points out that until 1936 each juridical institute was divided into two faculties called the court prosecutor faculty and the civil law faculty.¹³ The number of institutions of higher legal education was obviously insufficient. In 1946, the Soviet Union had 9 law schools, the law school of the Institute of Commerce, the Military Law Academy and 9 law faculties at the universities in Leningrad, Moscow, Tbilisi, Yerevan, Kyiv, Lviv, Baku, Riga, Tartu and Vilnius.

After WWII, the Resolution of the Central Committee of the All-Union Communist Party of Bolsheviks of 05 October 1946 set up the goals of the continuing development of the Soviet system of legal education. New curricula for law schools as approved by the USSR Ministry of Higher Education included dialectic and historical materialism, history of foreign affairs, economics and politics of foreign countries.¹⁴ Gradually curricula of the institutions of higher legal education were supplemented with several new courses that ensured further politicization of Soviet legal education: ‘History of the Communist Party of the Soviet Union’, ‘Marxist—Leninist Philosophy’, ‘Political Economy of Capitalism and Socialism’, ‘The Marxist—Leninist and Professional Ethics’.

9 Solomon, *Soviet Criminal Justice under Stalin*, 35.

10 Ibid.

11 David H. Lempert, *Daily Life in a Crumbling Empire—The Absorption of Russia into the World Economy* (Boulder: Columbia University Press, 1996), 522.

12 Andrey Vyshinsky, ‘Fundamental Tasks of Soviet Law’, in *Soviet Legal Philosophy*, tran. Hugh W. Babb (Cambridge (Mass): Harvard University Press, 1951), 336.

13 John N. Hazard, ‘Legal Education in the Soviet Union’, *Wisconsin Law Review* (1938): 571.

14 Alexander Shebanov, ‘Развитие Юридических Высших Учебных Заведений После Великой Отечественной Войны’, in *Юридические Высшие Учебные Заведения* (Moscow: Высшая Школа, 1963), <https://cyberleninka.ru/article/n/razvitie-yuridicheskikh-vysshih-uchebnyh-zavedeniy-posle-velikoy-otechestvennoy-voyny/viewer>.

Teaching of the new course ‘Scientific Atheism’ started in 1959–1960—first as elective, which became a mandatory course in early 1970s.¹⁵ Shebanov offers the following categorization of mandatory courses in curricula of Soviet law schools in early 1960s. The first category is the methodological and historical sciences, including courses such as ‘Marxist-Leninist Theory of State and Law’, ‘History of State and Law of the USSR’ and others. The second one (Special legal sciences), included ‘Soviet State Law’, ‘Soviet *Kolkhoz* Law’, ‘Soviet Criminal Law’, *etc.* Shebanov notes that while teaching this course, instructors had to demonstrate the fundamental differences between these areas of Soviet law and corresponding areas of law in bourgeois countries. Third category was represented by courses on state and law of foreign countries and regulation of foreign relations, such as ‘State Law of Socialist Countries’, ‘State Law of Bourgeois Countries’, and ‘International Law’. Fourthly and finally, there were classes essential for administration of justice and proper application of law by state organs and officials, examples being ‘Forensics’ and ‘Soviet Legal Statistics and Bookkeeping’. Importantly, the curricula were almost identical, and the uniform law school curriculum implied the uniformity of teaching and sources.¹⁶

Some courses that were mandatory only to those majoring in certain areas of law (such as criminal law) were also strongly politicised, covering topics such as ‘Implementation of decisions of the XXVII Congress of the Communist Party of the Soviet Union in Fighting Economic Crime’, ‘Contemporary Problems of the Administration of Justice, and The Reactionary Nature of the Bourgeois Criminal Procedure’¹⁷. The courses that included information on the foreign states, which were not a part of the Warsaw Treaty: ‘International Private Law’, ‘State Law of Bourgeois and Developing Countries’, ‘Civil and Commercial Law of Capitalist Countries’, were supposed to present a critical view of capitalist countries. Comparing the law schools’ curriculum of 1980s with the curricula of early 1960’s and 1937–1938,¹⁸ one can easily see that the list of courses did not undergo fundamental changes. Military training, which was mandatory for men and in some places also for women, was a part of curricula of Soviet institutions of higher education since 1926.¹⁹

15 Mikhail Smirnov, ‘Scientific Atheism in Soviet Higher Education : Periodization and Content.’ Newsletter of the Leningrad State University, 3, no. 1 (2018): 153–155, <https://cyberleninka.ru/article/n/nauchnyy-ateizm-v-sovetskom-vysshem-obrazovanii-periodizatsiya-i-soderzhanie/viewer>.

16 Shebanov, ‘Развитие Юридических Высших Учебных Заведений После Великой Отечественной Войны.’

17 Moscow State University (MSU) Law School Curriculum 1982–1987.

18 Hazard, ‘Legal Education in the Soviet Union’, 570–571.

19 *Decree of the USSR Central Executive Committee and Sovnarkom*, 1926.

As noted by several interview respondents, general guidelines and tasks of legal education at that time included the formation of, inter alia, respect to the Soviet state, law and socialist legality; desire and skills to actively protect the interests of the state, society and individuals; and skills to resist incorrect views on the state and law, and to debunk such views. The instructors, who taught these politically sensitive courses, were required to consistently demonstrate the advantages of Soviet rule and criticised 'capitalist' institutions and practices. For example, a frequently asked question of why the electoral system, where two or more candidates are running per constituency, is worse than the Soviet system, which allows only one candidate per constituency, usually received the following answers: 'the Soviet Union does not need a multi-party system—Soviet people have the same goals, which are expressed by one political party' (OK), or 'elections, where one candidate runs per constituency, constitute one of the most impressive achievements of socialism' (GM). Failure to do that could result in a punitive reprimand imposed by the *partkom* (the Communist party committee of the law school or the university level) or, in the worst case scenario, could seriously impede the career of such an instructor.²⁰ Teaching Soviet law was less risky than courses involving some sort of a 'foreign element', and some instructors allowed and even encouraged discussion in the classroom, provided the discussion did not involve open criticism of the Soviet system. Answering interview questions, most respondents highlighted the role of instructors as there were professors, who were able to talk about boring things in a really interesting manner. One respondent mentioned a professor who invited students to think about why many normative legal acts originated in the Central Committee of the Communist Party (OK). This was highly unusual for the Soviet times: the powers of the CPSU and its highest organ could not be questioned. Another respondent pointed out that another professor made a difference comparing to other faculty members since he initiated discussions and explained the defects of the existing system of power (OS).

Usually the instructors were reserved in class and kept their feelings and views hidden; their comments (if any) usually addressed the outdated normative legal acts and almost never specific historical events (EA). Nevertheless, in private conversations with students they could be open (SK). One of the

20 In 1969, while speaking at the conference in the Kazan University, Professor August Mishin (Law School of the Moscow State University (MSU)) noted that the 'bourgeois' electoral system, where two or more candidates are running per constituency, is not that bad. One of the attendees reported this 'incident' to the Central Committee of the CPSU, which re-directed the report to the President of the MSU. Mishin was a decorated war veteran, so he was not fired, but received a reprimand from the MSU Communist Party committee and was not allowed to travel abroad for 10 years since he was not 'trustworthy'.

interviews mentioned negative and stressful aspects of teaching Soviet law, such as formation of pseudo-legal institutes and procedures that ensured the Soviet, socialist nature of law were heavily influenced by the Communist party politics; excessive regulation of social relations characterised by penetration of state to the spheres and areas that laid beyond their control; highly regulated legal education manifesting in uniformity of teaching plans, sources, forms and methods of teaching, need to coordinate every little detail with the instructor's supervisors, excessive accountability, as well as almost total lack of the opportunity to express individual viewpoints and to offer new courses; and a massive gap between theory and practice, the knowledge received in the university and subsequent professional behaviour (EA).

It is clear that, law being necessary for creation and maintenance of a new political order, legal education in the Soviet state was also put to the same effect. Teaching law became, quite explicitly, an ideological task on top of being a matter of academic and professional importance. This affected what was taught and how it was taught.

2.2 *The West*

It is now time to turn to how Soviet law has been taught in the West, primarily in the United States that emerged as a major locus of legal Sovietology.²¹ As Sagatienė writes, '[b]efore WWII very few Western scholars were interested in Soviet law and most of them were located in Europe.'²² She cites the following reasons for that: general scepticism for the emerging anti-capitalist state, the lack of relevant primary materials, constant report on terror, the language barrier, and fluidity and uncertainty surrounding the role of law acknowledged by the Soviets themselves.²³ Still, despite these concerns, some pioneers emerged. One of them, John F. Hazard, stands out in particular. A practising lawyer and a scholar, he studied abroad at the Moscow Juridical Institute (now the Faculty of Law at the Moscow State University), and was one of the creators of Soviet law as a field. Most importantly, in 1946, he established the Russian Institute at Columbia (now the Harriman Institute), the first 'area studies' institute in the United States that brought together specialists in different aspects of Sovietology and set the tone for any investigation of Soviet Union

21 Due to the space constraints this history would necessarily be incomplete. For a more detailed account, see Dovile Sagatienė, 'Framing Legal History: Competing Western Interpretations of Soviet Law', *SSRN—Max-Planck Institute for European Legal History Research Paper Series* (2016), <https://doi.org/10.2139/ssrn.3709277>. Note, however, that Sagatienė's contribution deals with Soviet law research rather than teaching.

22 *Ibid.*, 5.

23 *Ibid.*

as an interdisciplinary inquiry.²⁴ In this capacity, Hazard became a mentor to the next generation of Sovietologists, including such names as Donald Barry, Harold Berman, William Elliott Butler, George Ginsburgs, Peter Maggs, John Quigley, and Robert Sharlet.²⁵

Unlike in case of Soviet legal education as described above, law schools in the United States were a graduate rather than undergraduate enterprise. Moreover, as is more important for the inquiry here, there, comparative—and, even more so, foreign—law formed a minor part of the curriculum due to those degrees' focus on the core domestic law subjects. Nevertheless, the teaching of Soviet law gained some sizable presence. While those in the West would want to style their approach to law as not 'political' in the pejorative sense of the word, unlike in the Soviet Union, politics still played a major role in accelerating the interest in Soviet law teaching. Firstly, Winterton attributes the growing popularity of comparative law, including Soviet law, to the postwar internationalist movement that saw 'the study of the law of foreign nations <...> [as] the best means of ensuring World peace.'²⁶ Secondly, another major reason for the rising popularity of Soviet law in particular, was the advent of the Cold War. In that context, teaching Soviet law had an explicitly ideological purpose. In 1951 Hazard wrote, drawing a parallel with how the 'bourgeois' law was taught in Soviet law Schools, that 'it is possible to utilize comparative law in the American law schools for the same purpose, namely for perfecting American law and for convincing American law students of the desirability of their system of law.'²⁷ 'In this way,' he added, 'the study of comparative law could become an instrument in the current ideological struggle'²⁸. One can be sympathetic to this statement as an attempt to make a pragmatic case for study of Soviet law as the tensions ran high and hostility against everything Soviet was prevalent, but it still captured the mood of the moment.

The teaching of Soviet law had emerged not without its challenges. Some of the barriers those who taught Soviet law initially faced were pragmatic. At the time of Hazard's mission to Moscow, it was next to impossible to access Soviet

24 On Hazard's life, see Oscar Schachter, 'John Newbold Hazard (1909–1995)', *American Journal of International Law* 89, no. 3 (1995): 583–586, <https://doi.org/10.1017/S0002930000202418>. John N. Hazard, *Recollections of a Pioneering Sovietologist* (New York: Oceana Publications, 1987).

25 Some of them were mentioned by Sagatiene, 'Framing Legal History', 7.

26 George Winterton, 'Comparative Law Teaching', *The American Journal of Comparative Law* 23, no. 1 (1975): 93, <https://doi.org/10.2307/83954>.

27 John N. Hazard, 'Comparative Law in Legal Education', *The University of Chicago Law Review* 18, no. 2 (1951): 273.

28 Ibid.

sources—both legal documents and writings of Soviet legal academics—in Russian, let alone in English. However, after WWII they multiplied. As one of the interview respondents said, ‘I believe of all foreign language legal systems, there was more Soviet law material available in English than for any other system—a sort of Cold War bonus to those of us teaching in that field’ (JH). As time passed, Western scholars started developing their own English-language teaching materials—the two rival textbooks were ‘The Soviet Legal System: Contemporary Documentation and Historical Commentary’²⁹, edited, first, by John Hazard, and Isaac Shapiro, Peter Maggs, and William Butler later (PM, WB, WP, KH), and ‘Ideas and Forces in Soviet Legal History: A Reader on the Soviet State and Law’ by Zigurds Zile (PM, JT).³⁰ Butler’s ‘Basic Documents on the Soviet Legal System’³¹ (WB, JH) contained English translations of Soviet statutes. Another respondent noted, however, that it was still hard to get access to administrative regulations (‘подзаконные акты’) as they were not available even within the USSR due to the policy of total secrecy pursued by the Soviet state (PS).

Other, more prescient, issues with teaching Soviet law in the West had to do with conveying broader context in which Soviet primary sources developed. There were two schisms around this particular era of inquiry. Firstly, some of the interview respondents lamented that their professors were not sufficiently attuned to the political underpinnings of Soviet law. Two of them, for example, criticised their professor’s approach (self-described as a ‘documentary approach to comparative law’ (WB)) as too focused on ‘the law on the books rather than delving into the social realities that might have existed’ (KH), with one even saying that it served as a counter-example in his own research that sought, in their words, to ‘locate law [and] see how [it was] embedded in society’ (EH), the classic example being ‘telephone law’ (‘телефонное право’)—the way the courts would decide cases under direct pressure by government officials (EH). Other respondents also felt that alternative approaches to this ‘legalistic’ way of teaching Soviet law—namely, the law and society approach embodied of Robert Kagan (KH) and political science approach of Peter Reddaway (EH)—better suited for examining Soviet law in its entirety.

29 John N. Hazard, Isaac Shapiro and Peter B. Maggs, *The Soviet Legal System: Contemporary Documentation and Historical Commentary*, Rev. ed. (New York: Oceana Publications, 1969).

30 Zigurds L. Zile, ed., *Ideas and Forces in Soviet Legal History: A Reader on the Soviet State and Law* (Oxford University Press, 1992).

31 William Butler, *Basic Documents on the Soviet Legal System* (New York: Oceana Publications, 1992).

Another respondent, a political scientist, explained how his students 'did not read laws or codes' as 'they weren't going to be lawyers and <...> reading codes in every language is difficult' (WP). Instead, he sought to 'give them flavour of the law without getting to the codes' (WP).

Secondly, another dialogue centred around how to present Soviet law in the light of its political values clashing with Western ideas of what is good and just. One interviewed teacher of Soviet law was described by his students as 'having enormous respect for socialist legal systems' (EH) and 'was <...> at pains to take a neutral stance as much as possible' (KH). This, to one of them, was not 'sufficiently critical, or realistic' (EH). The same professor, however, defended his teaching approach in a following statement, worth quoting in its entirety:

There's not much point in doing a comparative law course that is nothing but a criticism of somebody else's legal system. What's the point of it? The real point of it is to learn something from the experience of others. That may be a good experience or may be a bad experience. But if you're unwilling to only concentrate on the negative side of things, I don't think it's really worth anybody's time (WB).

Overall, while those teaching Soviet law in the West were not constrained in their academic freedom like those doing it within the Soviet state, this did not mean that politics was off the table. The main challenge for them, however, was not to play by a certain political script, but to make genuine sense of the interplay between law and politics in that context. The language barrier, cultural differences, and lack of access to Soviet sources thus forced Western academics to think more creatively when designing their Soviet law courses.

3 Why Teach Soviet Law in the 21st Century?

3.1 *Learning More About Soviet History*

Studying and teaching Soviet law now may seem puzzling. The Soviet legal system does not exist anymore so its examination might be of interest only to a small group of legal historians. Furthermore, one can argue that Soviet law would not be of any interest even to historians—there is a commonly held opinion that it was just 'window dressing' and had little relevance to how the Soviet state operated in practice. This view is misguided for two reasons. Firstly, while not all Soviet law was followed in practice, the Soviet Union consciously embraced legality as part of its political project and utilised it for its ends—especially after the so-called 're-fetishisation' of law in the

early 1930s. The Soviet Union was, to borrow Fraenkel's term, a 'dual state'.³² Berman,³³ Sharlet,³⁴ and Smith³⁵ shared the view that two legal systems existed in the Soviet Union—one being legalistic, and the other—political. As a result, at least some Soviet law operated properly, and one need not dismiss it out of hand.

Furthermore, even the political or prerogative sphere was deeply entangled with law as, as Berman admits, the division between the two spheres '[w]as not so neat'.³⁶ One of such examples were show trials³⁷—from early 'demonstration trials' after the Revolution to Moscow Trials of Stalinist period to Rokotov—Faibishenko Case decided under Khrushchev—that used the court rituals to condemn the 'enemies of the state' not just to imprisonment or death, but also to infamy in the eyes of the public. Moreover, private terror behind closed doors was also facilitated using legal instruments. One of such examples was the infamous People's Commissariat of Internal Affairs (NKVD) Order Number 00447 of July 30, 1937 'Concerning the Repression of Kulaks, Criminals, and Other anti-Soviet Elements' that prescribed targets for local authorities on how many of such 'elements' ought to be exiled, imprisoned, or killed, and established murderous extralegal tribunals, or troikas, for fulfilling them.

Secondly, even if Soviet law was indeed 'fake' in the way mentioned above, it does not make it an illegitimate subject of study. Understanding how 'window dressing' and propaganda work is key to making sense of a totalitarian regime, as much of its success depends on such 'window dressing' and propaganda and much of the life in that regime revolves around that.

As a result, in the words of Berman,

The Soviet system is dangerous not because it is lacking in law and justice, but rather because it is developing a new type of law which, while

32 Describing the way law worked in Nazi Germany, Fraenkel divided it into two regimes—arbitrary 'prerogative state' and legalistic 'normative state'. Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (Oxford: Oxford University Press, 2017), xiii.

33 Harold J. Berman, 'Soviet Justice and Soviet Tyranny', *Columbia Law Review* 55, no. 6 (1955): 801, <https://doi.org/10.2307/119483>.

34 Robert Sharlet, 'Stalinism and Soviet Legal Culture', in *Stalinism: Essays in Historical Interpretation*, ed. Robert C. Tucker (New Brunswick: Transaction Publishers, 1999), 155 ff.

35 Gordon B. Smith, 'Socialist Legality and the Soviet Legal System', in *Soviet Politics: Continuity and Contradiction* (London: Macmillan Education UK, 1988), 137.

36 Berman, 'Soviet Justice and Soviet Tyranny', 801.

37 Or 'purge trials'. As noted by *Ibid.*

helping to satisfy men's needs for justice in their personal and social relations, is reconcilable with political and ideological tyranny.³⁸

This 'true nature' of the relationship of law and politics in the Soviet state, he added, would only be 'obscured' by '[v]iolent and self-righteous denunciation of the Soviet system.³⁹ This distinct type of law is therefore worth studying to fully appreciate how the Soviets instrumentalized the legal form to achieve, for better or for worse, their ends.

3.2 *Learning More About Law*

Furthermore, through studying Soviet law one might acquire a more nuanced view about the nature of law at large and get a fuller understanding of its interaction with politics. As Lobban argued, studying legal history in general 'insofar as a theory aims to provide a timeless universal explanation of legal phenomena, history poses a challenge to see whether the data it provides can be explained by the model.⁴⁰ The importance of Soviet law in particular is underscored by the fact that despite Western legal theory's aspirations of comprehensiveness and universality and their common recognition as successfully matching these goals, its, in Lobban's words, 'model' seems to be based on a limited range of 'data' from 'typical' instances of legal systems. Soviet law expands the pool of these examples and thus subverts some of the intuitions we might have about law at large.

Firstly, most Western jurisprudential writings seem to only have two major legal families at the core of their inquiry—common law or civil law. While Soviet law retained some features of civil law that were a hangover from the Russian legal system before the October Revolution,⁴¹ it can still be construed as a legal system recognised by many to be of a different kind—that of socialist law. René David first described socialist law as a separate legal family⁴² being unique for three reasons. First, socialist law was designed as a temporary (or 'revolutionary') rather than a permanent order.⁴³ Second, in a socialist legal sys-

38 Ibid., 807.

39 Ibid.

40 Michael Lobban, 'Legal Theory and Legal History: Prospects for Dialogue', in *Law in Theory and History: New Essays on a Neglected Dialogue*, eds. Maksymilian Del Mar and Michael Lobban (Oxford: Hart Publishing, 2016), 16.

41 As emphasised in René David, *Major Legal Systems in the World Today* (London: Stevens & Sons Ltd, 1985), 26.

42 Ibid.

43 Ibid. This was also highlighted, much later on, by Butler. William Elliott Butler, 'What Makes Socialist Legal Systems Socialist', *Law of Ukraine: Legal Journal (Ukrainian)* 2019 (2019): 139, <https://doi.org/10.33498/louu-2019-03-131>.

tem, law is 'subordinate to [that] <...> task of creating a new economic structure'⁴⁴. Third, in this legal family, 'private law has lost its pre-eminence—all law has now become public law'⁴⁵. As a result of Soviet law being distinct in third way, focusing on it presents a unique opportunity to study a legal system that is different in nature, therefore allowing us to check our general jurisprudential assumptions against it.

Secondly, Western jurisprudence has liberal democracies rather than authoritarian or totalitarian regimes in mind, the Soviet State once again providing a useful counterfactual, as it is in this context that the connection between law and politics takes the most palpable form. For instance, a lot of jurisprudential debates rest on the assumption that there exist a democratically elected legislature and independent courts. However, these assumptions were not applicable in the case of the Soviet Union. First, while it maintained the appearance of a democracy in electing the Congress of Soviets, and later Supreme Soviet, in practice the elections were single-candidate and single-party and, more importantly, the true locus of power lied within the highest echelons of the Communist Party. Second, like prosecutors, courts, and even defence attorneys, were both formally and practically subordinated to the interests of the Soviet state. The authoritarianism of Soviet law, once again, allows us to re-examine our background assumptions as to what is at stake in debates about the nature of law and politics, in particular investigating the way in which law works under undemocratic conditions.

Thirdly, most legal theory builds on just and good rather than unjust and evil law. While not all Soviet law was morally iniquitous, this label could readily apply to at least some laws at some significant points in time, such as the Stalinist period. Focusing on morally iniquitous law like that highlights an important, both theoretically and practically, truth about the nature of law. Law is an instrument that can be used for good and evil—even evil regimes need law although it constrains them in the same way lawlessness does not.⁴⁶ This is not just an important conceptual truth, but something that can prevent undue valorisation of law and make us more alert to the risks it poses. As a result, Soviet law matters for advancing our understanding of law in general.

44 David, *Major Legal Systems in the World Today*, 26.

45 *Ibid.*, 27.

46 On that, see Anna Lukina, 'The Problem of Evil Law', in *Research Handbook on the Politics of Constitutional Law*, eds. Mark Tushnet and Dimitry Kochenov (Cheltenham: Edward Elgar, 2023), 710–728.

3.3 *Understanding Modern Legal Developments*

Studying Soviet law provides a unique viewpoint from which one can understand both law and politics of modern Russia and other post-socialist states. As Sagatienė stated, ‘without understanding Soviet legal past it is impossible to grasp the legal reality in nowadays Russia and former communist states and to predict their nearest future too’.⁴⁷ This particularly rings true in the light of ‘re-Sovietisation’ happening in some post-Soviet states. Due to space constraints, this will be demonstrated on the basis of Russia alone.

After the breakup of the Soviet Union, Soviet law became an archaic phenomenon. However, the underlying attitudes in practices laid dormant instead of being gone for good, and ‘woke up’ in the 2000s. This could be attributed to at least two factors. One was the revival was possible due to the Russian state and society’s inability to make a ‘clean break’ with the Soviet legacy. The reckoning with the horrors of the Soviet past was rather brief and did not inspire a lot off self-reflection. Even more strikingly, there was no attempt at lustration, which meant that a lot of Soviet-era cadres remained in key positions in law and government. The other reason why Soviet legal practices were brought back had to do with them being desirable. Soviet law had been proven quite effective for consolidation and retention of power. The Russian President, Vladimir Putin, who was firstly elected in 2000, and his allies, thus found taking advantage of that inheritance particularly valuable for their own longevity.

The first signal of the re-birth of the Soviet Law was sent in 2003, when initiation of criminal cases against Mikhail Khodorkovsky and Platon Lebedev revived such recognizable features of Soviet times as selective application of law, personification of punishment, accusatory bias and open ignoring of the presumption of innocence. These cases were followed by a number of proceedings instituted against the YUKOS employees, which opened the Pandora’s box of re-Sovietization and manifested the second advent of the worst traditions and practices of Soviet law.

The 2010s saw the re-birth of the ‘concept of enemy’—an inalienable part of Soviet ideology that seeped into law, as existence of domestic and external enemies justified harsh measures, escalation of criminal repression and political persecution.⁴⁸ The ‘class enemies of the Republic of Soviets’ (the 1918 Constitution of Soviet Russia), ‘enemies of the Soviet state’ (the 1924 Constitution of the USSR, the 1926 Criminal Code of the RSFSR), ‘enemies of

47 Sagatienė, ‘Framing Legal History’, 4.

48 See further Ekaterina Mishina, ‘Штрихи к Портрету Врага в Российском Нормотворчестве 2010–2020 Гг. Советские Истоки’, *Palladium* 6 (2023): 2, <https://doi.org/10.55167/d3d7aa09677e>.

the people' (the 1932 "Law on Three Spikelets" and the 1936 Constitution of the USSR), and 'traitors of the Motherland' (the 1936 amendments to Criminal Codes of the Republics) became an important part of Soviet reality and could be found everywhere—from the rhetoric of Stalin's show trials and the 'Short Course of the History of the All-Union Communist Party (of Bolsheviks)' to publications of the Newsletter of the USSR Academy of Sciences. After the dissolution of the Soviet Union, the concept of enemies disappeared both from the legislative framework and from the social-political discourse.

The first group of post-Soviet domestic enemies appeared in the Russian legislation in July of 2012, when amendments to federal laws on non-commercial organizations and public associations reinstated the almost forgotten Soviet notion of a foreign agent. It was claimed to be a symmetrical response to the US Foreign Agents Registration Act (1938), however, on further analysis these laws differ, predominantly in their application, as only the Russian laws were actively used to stifle opposition within the state.⁴⁹ From the moment the first one in the series of these laws was enacted, Russian NGOs and/or Russian legal entities that receive 'funds and other property' from foreign sources and engage, 'including in the interest of foreign sources, in political activities' carried out in the territory of Russia have been considered foreign agents.⁵⁰ In its Resolution No 10-P of 08 April of 2014, Russian Constitutional Court ruled on constitutionality of these norms and warned that any attempts to find the outdated Soviet stereotypes and negative connotations in the wording 'foreign agent' have no constitutional legal grounds. 'Foreign agents' legislation was repeatedly amended and now can be applied also to foreign media, Russian individuals or legal entities and foreign citizens. The new law of July of 2022 further extended the list of foreign agent and introduced the concept of 'foreign influence. Further prohibitions followed in 2022–2024.

Ambiguous and flexible wording of numerous norms, intended to give legal officials maximum flexibility in the application of the law, revives another Soviet tradition, dating back to Lenin's instruction 'to formulate as broadly as possible'⁵¹ and Vyshinskii's advocacy of legal uncertainty.⁵² In modern Russia, the 2012 wording of 'high treason' (Art. 275 of Russian Criminal Code) provides

49 For a detailed analysis, see Samuel Rebo, 'FARA in Focus: What Can Russia's Foreign Agent Law Tell Us about America's?', *Journal of National Security Law and Policy* 12 (2022): 277.

50 *Федеральный закон 'О некоммерческих организациях'*, 1996, Art 2, Part 6.

51 Vladimir Lenin, 'Дополнения к Проекту Вводного Закона к Уголовному Кодексу РСФСР и Письма Д. И. Курскому', in *Полное Собрание Сочинений*, vol. 45 (Moscow: Izdatel'stvo Politicheskoi Literatury, 1970).

52 Evgenii Tonkov, 'Историческая Перспектива Российского Правового Реализма', in *Труды Института Государства и Права РАН*, vol. 15, № 6, n.d., 38.

a particularly striking example: this norm is so vague that committing almost any act by any Russian citizen may be qualified as high treason.

In 2012, the case of Pussy Riot revived biased approach to evidence demonstrated by Judge Marina Syrova⁵³—totally in line with Bolshevik instructions provided in the 1918 Decree ‘On People’s Court of the RSFSR’: ‘People’s Court shall not be constrained by any formal evidence, and it’s up to the court to decide on admissibility of evidence according to the circumstances of the case.’ Maximum penalty of five years for peaceful gatherings stipulated in the infamous ‘Dadin’s Article’⁵⁴ displays two Soviet features: disproportionately severe punishments and treating the freedom of assembly as a threat to the current political system.

Lawfare, the strategic use of legal proceedings to intimidate or hinder an opponent, is another Soviet practice, which is actively used in modern Russia, where criminal frame-up is the usual way to treat people who look dangerous or suspicious from the viewpoint of the authorities. Sometimes phoney criminal proceedings are brought against family members of opponents of the regime.⁵⁵ Intimidation and prosecution of family members of political activists and ordinary people bring up parallels with the Soviet Union of the 1930s, when collective criminal responsibility of family members of the offender became ‘the new normality’.

In 2022, after Russia’s full-scale invasion of Ukraine the defensive nature of Russian criminal law escalated in a very Soviet way. In March 4, 2022, and then July 14, 2022, criminal liability was established for several new crimes committed against Russia’s interests and security (as they are understood by the current Russian regime).⁵⁶ One of these new norms, Art.207.3, became a multi-purpose tool, which is actively used both against political opponents of Putin’s regime and anti-war protesters. Outlawing spreading ‘deliberately false’ information about the Russian military led to the silencing of nearly all anti-war statements and news that clashes with the Kremlin’s narrative of the war. The list of politicians, who have been convicted under Art.207.3, includes Alexey Gorinov, Ilya Yashin, and Vladimir Kara-Murza. Disproportionately severe punishments envisaged by Art.207.3 bring up parallels with the 1932

53 Mikhail Dmitriev, ‘Pussy Riot. Анализ Состава Преступления.’, *Закон.Ру*, 2012, https://zakon.ru/blog/2012/8/28/pussy_riot_analiz_sostava_prestupleniya.

54 *Уголовный Кодекс Российской Федерации*, 1996, Art 212.2 (amended).

55 Yury Zhdanov, father of Ivan Zhdanov, director of Navalny’s Anti-Corruption Foundation, was sentenced to three years in penal colony, served his time and was released in early November of 2023.

56 See further Ekaterina Mishina, ‘Lawmaking of the Countermotion State’, *Free Russia Foundation*, 2023, <https://www.4freerussia.org/lawmaking-of-the-countermotion-state/>.

Law on Three Spikelets, under which a person could be sentenced for ten years with confiscation of property for picking several spikelets on a *kolkhoz* field. In November of 2023 an anti-war activist Sasha Skochilenko was sentenced to 7 years in a penal colony under Art. 207.3 for replacing 5 price tags in a supermarket with anti-war stickers.⁵⁷

Escalation of homophobia constitutes another similarity with the Soviet times. After establishing administrative liability for gay propaganda in 2013 and the Constitutional Court ruling on constitutionality of this legislative provision in 2014, in 2020, ‘protection of marriage as a union of a man and a woman’ was enshrined at the constitutional level. In 2022, new anti-LGBT norms banned ‘propaganda of non-traditional attitudes and preferences, pedophilia, and gender reassignment’, including information that can ‘make children want to change their sex’⁵⁸ and sent a clear signal that today’s Russia is literally one step away from recriminalizing same-sex relationships. After November 30, 2023, when Russia’s Supreme Court ruled that the ‘international LGBT movement’ is an ‘extremist organization’, this step became smaller. In March of 2024, the ‘international LGBT movement’ was put on the list of terrorist and extremists.

Sadly, today many Soviet legal concepts and practices are back, reflecting, protecting and supporting the return of political features of the seemingly bygone era. In the light of this, teaching Soviet law is becoming very important. Knowledge of the specifics of Soviet law will serve as a helpful tool for understanding and assessing regulatory impact of contemporary legislative developments in Russia in the context of its political re-Sovietisation more generally speaking. Understanding of the fundamentals of Soviet law will help students apprehend possible ramifications of declaring the state a constitutional value, reinstating of retroactivity of criminal law or adoption of ambiguous and vague norms, which can be arbitrarily construed by law-enforcers—as was the case under the Soviet rule.

57 On 1 August 2024, Yashin, Kara-Murza, and Skochilenko were pardoned as a result of a prisoner exchange between Russia and the United States.

58 *Федеральный закон ‘О внесении изменений в Федеральный закон “Об информации, информационных технологиях и о защите информации” и отдельные законодательные акты Российской Федерации’, 2022.*

4 How to Teach Soviet law: Methods and Experiences

4.1 *Anna Lukina: 'Soviet Law, Its Origins, and Development (1917–1948)'*

4.1.1 Content

Anna Lukina's course was taught in the Fall of 2021 at the Free University (Brīvā Universitāte), a nonprofit established in 2020 as a response to the dwindling of academic freedom in Russia by providing a platform for experts who wish to teach an in-depth free online course in any area of their interest and expertise.⁵⁹ The course amassed a diverse group of students coming from a variety of countries and disciplinary backgrounds.

The course syllabus specified eight 1.5 hour seminars. The first one, 'Approaches to Soviet Law', was a 'bird's eye' exploration of Soviet law through the lens of historiography, aimed to explore different frameworks that could be applied to study of Soviet law. The next six seminars were arranged in a chronological order:

- 'Law and State in Marxism', focusing on the concept of law in the works of Marx and Engels;
- 'Law and Revolution', on Lenin's vision of law in *State and Revolution* (1917) and how it came to be realised in the early years of the Soviet state;
- "'Legal Experiments" of the 1920s', considering competing visions for the place of law in the new Soviet state given by Stuchka and Pashukanis during the period of transition to a new legal order;
- 'Return to Legal Formalism', covering Vyshinsky's legal thought and his work as a legal reformer in early 1930s, culminating in the 1936 'Stalin's' Constitution;
- 'Law and Terror', on the role of law in the Great Terror of 1936–1938;
- and 'Soviet Approaches to International Law', focusing on Soviet postwar efforts to influence the newly emerging international legal order exemplified by the Soviet role in the Nuremberg Trials and Vyshinsky's criticism of the Universal Declaration of Human Rights.

The last seminar of the course, 'Soviet Law Now', tried to bridge the gap between the studied period and the world today, discussing the continuity of legal systems, memory politics, and transitional justice—a topic particularly important in the light of the current 're-Sovietization' described in Section 3.C above.

59 In 2023, the University was designated an 'undesirable organisation' by the Russian government, but its Professors still continue their work individually even in the face of that political pressure.

There were three limitations to the course's syllabus design. Firstly, the course focused on the origins of Soviet law rather than the complete history of the phenomenon. The instructor only considered Soviet law between 1917 (the October Revolution) to 1948 (Vyshinsky's speech about the Universal Declaration of Human Rights in the UN). This is what, admittedly, made the last seminar particularly difficult as a large part of the historical context needed to understand post-Soviet developments was missing. In this sense, Lukina's course as outlined below was more suited for discussing the challenges of re-Sovietisation.

Secondly, the course ended up a history of 'Soviet law' as a concept rather than a study of individual Soviet laws. While the instructor occasionally referenced some legal documents and provided background information—such as the state structure—necessary for students to understand the historical context of the class discussions, she designed the course to be centred on big philosophical and theoretical questions rather than meticulous analysis of legal provisions. One of the students wrote: 'at the first few seminars I felt that there was too much emphasis on "theory" of Soviet law at the expense of "practice" [translated from Russian].'

Thirdly, the legal sources used in the syllabus covered mostly constitutional and occasionally criminal law. As one of my students put it, '[i]t would have been interesting to see if and how some traditional institutions [of civil law—addition mine] changed under the new economic system.'

4.1.2 Instruction

In bringing this syllabus to life, the instructor used the two teaching methods—flipped classroom and the Socratic method. Firstly, students were assigned a number of primary and secondary sources to read (or watch / listen to—as some of the primary sources included videos) before each of the seminars and were supposed to systematise, correct, and build on that knowledge in class.

Secondly, in the classroom, the instructor tried to foster an interactive discussion of those readings. First, she incorporated elements of lecturing, introducing the plan for the class and some historical or theoretical context to frame the readings. Second, she encouraged the students to volunteer to give answers to questions she posed to the whole class, which would then trigger a discussion gradually involving more students. Third, she acted as a facilitator, occasionally intervening to highlight valuable points made by students, correct misunderstandings, and keep the discussion from going 'off track'.

Keeping the classes in the format of a pre-read guided discussion aimed to 'bring' the Soviet law 'alive' and incentivise students to critically engage with the course materials as opposed to simply memorising the facts. The instructor

was very heartened to receive positive feedback from her students, one of whom called the Socratic method ‘perfect for the subject of the course [translated from Russian]’.

4.1.3 Assessment

The summative assessment consisted of students’ participation in class, as well as two 1500–2000 word response papers. These assignments had to tackle one of the sources from the syllabus—either primary or secondary, and not just summarise what the source is saying, but analyse it in the light of other sources in the syllabus, as well as in-class discussion. When writing their response papers, students engaged with a variety of sources. They also employed a wide range of approaches—critiquing the arguments made in the materials, placing them into a broader context, and finding their novel applications.

Response papers were chosen as an assignment form for two reasons. First, that allowed students to demonstrate the understanding and not just knowledge of the material described in the syllabus and be creative in their assignments, something which a, say, multiple choice quiz covering the factual content would not do. Second, they were not as demanding of a higher level of knowledge and understanding as, say, writing a long dissertation on themes of the class, which was particularly important considering that the students were from varied backgrounds and mostly not immersed in Soviet law and its context. The response paper format presented a good balance that made the assignment both rigorous and manageable.

4.2 *Ekaterina Mishina: ‘Soviet Law and Impact of the Soviet Past on Reforms in post-Socialist States (Path Dependence). Second Advent of Soviet Law’*

4.2.1 Course history

Ekaterina Mishina’s course resulted from the strong desire to complete one of the tasks which the INDEM Foundation, one of the oldest and most reputable Russian think tanks, was planning to fulfil as a part of the comprehensive project entitled ‘Judicial Reform in Russia (2007–2009)’, including a comprehensive study of judicial reforms in the post-socialist countries and the development of a course on the same topic.

The first iteration of the course considered here, ‘Judicial Reforms in Post-Socialist Countries’, was taught in the Fall of 2011 at the São Paulo Law School of Fundação Getulio Vargas, Brazil. The course included only 2 lectures (4 hours) on Soviet law. The response of the students, who were fascinated by this previously unknown type of law, made it clear that the part featuring Soviet law should be deepened.

This short version was then developed into a full-fledged course on Soviet law and its impact on judicial reforms in several post-socialist and post-Soviet countries, which was taught at the Law School of the University of Michigan, USA, in the Fall semesters of 2012 and 2013. The enlarged part of the course dedicated to Soviet law included constitutional law, criminal law, and fundamentals of Soviet criminal procedure. In evaluation forms, the students noted that they enjoyed the opportunity to take the course on post-Soviet states, to learn about a different legal system and different conceptualizations of law, provided that it was the only course that offered any instruction on law of and relating to the countries of the former Soviet Union.

In 2013 and 2014, this course was taught in Russian at the law school of the National Research University—Higher School of Economics in Moscow, Russia as an elective for undergraduate and Master's in Public Law students. In addition, the same year the book 'The Long Shadow of the Soviet Past' (Russian name: 'Длинные тени советского прошлого')⁶⁰ was published in Russian and used as a foundation for the course. The program of the course including grading criteria was also the same, but the form of the final exam was different, constituting an oral exam of two questions randomly selected from the course program.

In the Winter semesters of 2014, 2015 and 2016, the light version of this course was taught at the Department of Political Science of the University of Michigan. In order to adjust the course for non-law undergraduates, the instructor had to modify both the course syllabus and the way of instruction. Before addressing the fundamental concepts of Soviet law, she walked her students through the specifics of the continental legal system and explained its key features. The Soviet law part of the course was expanded, adding a brief description of early Soviet civil law, labor law, and the key acts of the New Economic Policy of 1920s. In 2015, a separate lecture on early Soviet family law was included.

In the Fall semesters of 2014 and 2015 at the Department of Political Science of the University of Michigan the instructor taught another course, 'Comparative Constitutional Law: Vertical Comparative Studies', where the traditional horizontal comparison of constitutional systems of several European and post-Soviet countries was supplemented with vertical comparison, highlighting historic background of each country of study featuring key acts of constitutional importance and major political and legal developments. The lecture

60 Ekaterina Mishina, *Длинные Тени Советского Прошлого* (Moscow: Liberal Mission Foundation, 2014). Ekaterina Mishina, *The Long Shadows Of The Soviet Past: A Picture Of Judicial Reforms In The Transition Era* (Moscow: Liberal Mission Foundation, 2020).

on Russia included an analysis of the Soviet constitutions. Remarkably, in the 2015 and 2016 teaching evaluations, many students mentioned socialist constitutional systems (Soviet Constitutions and the 2013 Constitution of Vietnam) and Soviet criminal law as the most interesting albeit hard parts of my courses. They emphasised that knowledge of specifics of social constitutional systems and fundamentals of Soviet criminal law essentially expanded their horizons.

4.2.2 Course Final Form

4.2.2.1 *Content*

When the instructor joined the Free University (Brīvā Universitāte) in early September of 2020, she started teaching two courses: ‘Comparative Constitutional Law: Vertical Comparative Studies’ (Russian name: ‘Сравнительное конституционное право: вертикальная компаративистика’) in the Fall semester and ‘Soviet Law And Its Impact on Judicial Reforms in Post-Socialist States. Second Advent of Soviet Law’ (Russian name: ‘Советское право и влияние советского прошлого (path dependence) на судебные реформы в постсоциалистических государствах. Второе пришествие советского права’) in the Spring semester. Students’ applications clearly demonstrated the increasing interest in Soviet law. Many students were attracted by the opportunity to learn about Soviet constitutional law, criminal law, and family law and were fascinated by the sources of early Bolshevik law and their specific features. Moreover, both courses involved a lot of discussion of contemporary matters to address the signs of re-birth of the worst Soviet legal concepts and practices in 2010s–2020s there.

By Spring 2024, the program of the second course was again re-worked with the purpose to enlarge the re-Sovietization part and address the most recent legislative developments and case law in Russia. The course was structured as follows:

- The course began by giving an account on Soviet law, Soviet courts, Soviet judges, and Soviet judicial mentality.
- Next part of the course addressed judicial and police reforms in Poland, Bulgaria, the Baltic states, Ukraine, Kyrgyzstan, and Georgia and see how the path dependence factor worked in these countries.
- Further on, Russia became the main country of study due to the fact that re-Sovietization is going at full steam. In order to track this way from de-Sovietization to re-Sovietization, the course focused on the analysis of the Andrey Sakharov’s constitutional draft (1989), the concept of judicial reform (1991), the Constitution of the Russian Federation (1993), and legal reforms of the 1990s.
- The understanding of subsequent re-Sovietization in Russian law included analysis of cases of Mikhail Khodorkovsky, Platon Lebedev, Vasilii

Alexanyan, ‘Pussy Riot’, Alexey Navalny, Ildar Dadin, Andrey Pivovarov, Vladimir Kara-Murza, ‘DOXA’, Evgeniya Berkovich, Svetlana Petriychuk, Sasha Skochilenko, and others.

- Students were then walked through the main features of the second advent of the Soviet law, among them transformation of the role of punishment, personification of punishment, selective application of law, revival of the concept of enemy, vague and flexible wordings of new pieces of Russian legislation, increase of the role of the state, and revival of the defensive nature of Russian criminal law.
- At the end of the course, students discussed the phenomenon of Vladimir Putin’s legalism, his unlawful laws, discriminatory legislation, and lawfare.

4.2.2.2 *Instruction*

In class, discussion was very important. Each lecture was followed by a Q&A session. Given the amount of reading materials, every class started with 10-minute discussion of the topics from the previous session to make sure everything was clear and students were not confused. Students were strongly encouraged to make 7–10 minute presentations on topics relevant to the course.

4.2.2.3 *Assessment*

The instructor designed a novel grading system due to the fact that her students were very diverse in terms of age, background and educational level. The usual form of exam was a final paper of 1000–2500 words, which was used by the students who did not enjoy speaking in class. Students who made presentations in class and who actively participated in class discussion could use one of the three exam options. Since all students who took the course were from post-Soviet countries, where oral exams are in common use, the instructor adjusted the grading system accordingly and included the option of a small oral exam (option No 1) consisting of three randomly selected questions addressing different parts of the course. Another option (No 2) was a shorter final paper of 700–1000 words. In 2022, she added a final option (No 3)—an exam based on participation in the final conference of the course. The participants had to make 10–15 minute presentations, which were then evaluated by the instructor and two external experts from the Free University.

5 Conclusion

This article aimed to investigate the ways Soviet law was taught historically, present a case for bringing it into modern curricula for students of law,

especially comparative law, and history (as well as, in an abridged form, for those studying political theory, journalism, and other disciplines), and provide some suggestions with how to proceed with that. Firstly, it has been shown that, in the past, both Soviet and Western students of Soviet law faced their own distinctive challenges that can be summarised as lack of space for free academic discussion and lack of background knowledge respectively, impairing full discussion of particularly thorny issues of Soviet jurisprudence. Somehow, both of these challenges were faced by the authors while designing and delivering their courses. First, one of the platforms for said programs, Free University, encountered significant pressure from the Russian government, facing certain constraints in conducting educational activities culminating in its designation as an ‘undesirable organisation’ in 2023. Second, teaching Soviet law in the post-Soviet era meant that most of the students needed extra help in contextualising the covered legal materials by providing necessary historical detail. The courses aimed at successfully dealing with both of these hurdles, employing the knowledge process that was both intellectually free and thorough.

Secondly, there are three reasons as to why teaching Soviet law is needed in the first place. Studying Soviet law is important for understanding Soviet history as legal rules became a crucial part of Soviet governance, appreciating how the law works in general, especially in its interplay with politics, due to uniqueness of the Soviet legal system, and cultivating understanding of modern post-Soviet legal systems, specifically focusing on Russia, whose many features can be traced back to its historical inheritance. These goals were not just stated, but incorporated into teaching, making sure that the students are able to place Soviet law in its historical, philosophical, and political context.

Thirdly, the article discussed the practical application of those considerations, focusing on the courses taught by the authors at Free University, São Paulo Law School, University of Michigan and National Research University—Higher School of Economics. This account showed that one is able to respond to challenges and fulfil goals of teaching Soviet law in the modern day and age in different ways. Anna Lukina’s course, ‘Soviet law, Its Origins, and Development (1917–1948)’, zoomed on the philosophical dimension of Soviet law pre-1948, focusing on developing understanding of its intellectual history through Socratic dialogue and writing exercises. Ekaterina Mishina’s courses, culminating in the ‘Soviet Law and Impact of the Soviet Past on Reforms in post-Socialist States (Path Dependence). Second Advent of Soviet Law’, on the contrary, took a more practical route by providing a detailed description of Soviet Constitutions, Codes, legislative acts and normative decrees followed by analysis of the role of path dependence in post-Soviet transformation and study of key pieces of legislation and case law of contemporary Russia. As a

result, Soviet law is incredibly versatile as a subject for teaching and can be used to fulfil many different pedagogical goals.

Finally, this article aims sparks a discussion in the scholarly community, leading to more syllabi and teaching methodologies to be developed. The revival of Soviet law teaching has just begun and it is exciting to see what is in store. Onwards!

Acknowledgments

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Appendix 1—Syllabus of Anna Lukina's Course

Free University (Brīvā Universitāte)

Soviet Law, Its Origins and Development (1917–1948)

Russian Name: Становление советского права (1917–1948)

Information for Applicants

Course Description

This course is going to examine the way the concepts of the law and state evolved during the first thirty years of the Soviet state, focusing on the intersections of revolution and evolution, politics and law, and terror and legality in the light of a detailed examination of primary and secondary sources.

Admission Information

Students at any level are welcome, provided that they are interested in the course themes. It might be of special interest to university students focusing on law, history, philosophy, political theory and similar disciplines.

You can study in a **Russian** or an **English** group (by language of instruction).

To apply, submit:

- Your name
- Your e-mail
- Group preference (Russian or English)
- An essay of no more than 500 words replying to a prompt ‘**Soviet law: an oxymoron?**’. Essays would be assessed based on the following criteria: (i) focus on the question answered; (ii) quality of argumentation; (iii) structure; and (iv) originality.

Information for Students

Collaborative Work

To take the course, you need to access the Google Classroom (the classroom code will be given to all admitted students upon admission). There, you can find all materials, ask questions and leave comments, and submit written work for grading.

Preparing for Seminars

Before every seminar you should **read all materials** that are listed in the syllabus for that day. If there is no hyperlink given, you will be able to find this source in Google Classroom and the corresponding course Google Drive. Everyone who is not taking the course can find these materials here.

If the syllabus lists only certain parts or pages of the source, only that material will be discussed at the relevant seminar. However, if you want to base your response paper on that source, you are recommended to read it in full to get broader context.

Materials in Russian are marked ‘**RU**’. Where able, translations, summaries, or alternatives have been provided. **You do not have to read those sources if you do not speak Russian.** However, if you are interested in skimming them to get more context, I recommend using DeepL and Google Translate.

Grading

The course is graded on a scale from 1 to 100, where 50+ is a **passing grade** and 90+ means that the course has been completed with **distinction**.

Your final grade is comprised of the following components:

- 50%—**active participation in seminars**
- 50%—**written work**

Every student should write two 1500–2000 **word** response papers. The deadlines are listed in the syllabus – they should be submitted by the **4th** and **8th** seminars.

Response paper is a reflection on one of the sources studied as a part of this course. It should not be a summary of this source. You are allowed—and encouraged—to

draw not just on that source, but also on other course materials and your own knowledge. You can find a good resource on writing response papers here.

Accessibility Policy

The instructor is committed to creating a learning experience that is as accessible as possible. If you have a disability, or if you think you may have a disability, please contact the instructor to discuss any accommodations you may need.

Syllabus

1. Approaches to Soviet Law

Secondary Sources:

- S. Fitzpatrick—Revisionism in Soviet History
- D. Sagatiené—Framing Legal History:
- Competing Western Interpretations of Soviet Law
- H. Berman—The Comparison of Soviet and American Law
- E. Huskey—A Framework for the Analysis of Soviet Law

Topics:

- Is ‘Soviet law’ an oxymoron? [Students were asked to write a 500-word response to this question as part of the admissions process.]
- Approaches to Soviet law: historiography and legal theory

2. Law and State in Marxism

Primary Sources:

- K. Marx—On the Jewish Question (1844) (fragment)
- K. Marx, F. Engels—The German Ideology (1844) (fragment)
- K. Marx, F. Engels—The Communist Manifesto (1848), **parts I, II**
- K. Marx—Preface to A Contribution to a Critique of Political Economy (1859)
- F. Engels—On the Housing Question (1872) (fragment)
- K. Marx—Critique of the Gotha Programme (1875) (fragment)
- F. Engels—Anti-Dühring (1878) (fragment)

Secondary Sources:

- B. Leiter—Marx, Law, Ideology, Legal Positivism, especially pp. 1–10

Topics:

- Marx and Engels as the theoretical foundation of Soviet law
- Law as a “superstructure”
- “Withering away” of the law and state

3. *Law and Revolution*

Primary Sources:

- V. Lenin—State and Revolution (1917)
- The Constitution of the RSFSR (1918)

Secondary Sources:

- P. Beirne, A. Hunt—Law and the Constitution of Soviet Society: The Case of Comrade Lenin
- D. Kivotidis—Dictatorship of the Proletariat

Topics:

- Lenin on law and state
- “Proletarian dictatorship” and “revolutionary justice”
- October Revolution: dismantling pre-revolutionary law

4. *‘Legal Experiments’ of the 1920s*

Primary Sources:

- P. Stuchka—The Revolutionary Part Played by Law and the State (1924), chapters 1 “What is Law” and 4 “The Organized Authority of the Dominant Class and the Law”, in H. Babb (ed.), *Soviet Legal Philosophy*, pp. 17–28, 52–71
- The Constitution of the USSR (1924)
- **RUS**: The Constitution of the RSFSR (1925)
- E. Pashukanis—The General Theory of Law and Marxism (1929), introduction “The Task of the General Theory of Law”, chapters 3 “Relationship and the Norm” and 10 “Law and Violation of Law”

Secondary Sources:

- P. Solomon—Soviet Criminal Justice Under Stalin, chapter 1 ‘The design of an experiment’, pp. 17–49

Topics:

- Creating a new Soviet law
- Stuchka and Pashukanis on law and state
- Legal nihilism of late 1920s-early 1930s

Assignment:

- **RESPONSE PAPER 1**

5. *Return to Legal Formalism*

Primary Sources:

- The Constitution of the USSR (1936)
- A. Vyshinsky—Fundamental Tasks of Soviet Law (1938), in H. Babb (ed.), *Soviet Legal Philosophy*, pp. 303–343

Secondary Sources:

- P. Solomon—Soviet Criminal Justice Under Stalin, chapter 5 “Returning to the traditional legal order”, pp. 153–196
- H. Berman—The Spirit of Soviet Law
- L. Fuller—Pashukanis and Vyshinsky: A Study in the Development of Marxian Legal Theory

Topics:

- Return to legalism in theory and practice
- Vyshinsky: his life and works
- “Socialist legality”
- “Stalin’s” Constitution of 1936

6. *Law and Terror*

Primary Sources:

- A. Vyshinsky—Prosecutor’s speech at the Third Moscow Trial (1938) (transcript) + video (RUS)
- RUS: Объяснительная бывшего начальника Кожевниковского РО НКВД Салтымакова Дмитрия Кондратьевича (1956) (An account by D. Saltymakhov, a former NKVD officer)
- RUS: Мой ГУЛАГ—Воспоминания Тихановой Валентины Александровны (2016) (An interview with V. Tikhonova, a step-daughter of V. Antonov-Ovseyenko, an ‘Old Bolshevik’ who fell victim to the Great Terror)

Secondary Sources:

- P. Solomon—Soviet Criminal Justice Under Stalin, chapter 7 “The Great Terror and Criminal Justice”, pp. 230–267
- A. Lukina—The Semenchuk Case of 1936: Storytelling and Propaganda above the Law in the Soviet Criminal Trial, especially pp. 71–80
- T. Martin—The Origins of Soviet Ethnic Cleansing
- RUS: А. Байбурин—Советский паспорт: история, структура, практики (A. Baiburin—The Soviet Passport), chapter 3 «Введение паспортной системы в СССР (1932–1936 гг.)», especially pp. 127–133

Topics:

- Law and terror
- The anatomy of a show trial
- Political terror in the eyes of victims and perpetrators

7. *Soviet Approaches to International Law*

Primary Sources:

- **RUS:** Выступление министра иностранных дел СССР А. Я. Вышинского на 3-й сессии Генеральной Ассамблеи ООН о Всемирной Декларации Прав Человека (9 декабря 1948) (A. Vyshinsky—Speech in the UN on the Universal Declaration of Human Rights) (1948) + transcript
- A summary in English can be found in my paper below

Secondary Sources:

- F. Hirsch—The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order
- A. Lukina—Russia and International Human Rights Law: A View from the Past, especially pp. 46–53

Topics:

- The USSR and international law
- The Soviet concept of human rights in the UN
- Cold War 'lawfare'

8. *Soviet Law Now*

Primary Sources:

- M. Gessen—My Grandmother, the Censor (1998)
- **RUS:** Особое мнение судьи Конституционного Суда Российской Федерации А.Г. Арановского по делу о проверке конституционности положений статьи 13 Закона Российской Федерации «О реабилитации жертв политических репрессий» (2019) (The RCC Decision on the Victims of Political Terror Law, 'Special opinion' (concurrency) by A. Aranovsky), pp. 29–41.

Secondary Sources:

- E. Mishina—The Re-Birth of Soviet Criminal Law in Post-Soviet Russia

Topics:

- Where are we now? A discussion on the continuity of legal systems, memory politics, and transitional justice.

Assignment:

– RESPONSE PAPER 2

Appendix 2—Syllabus of Ekaterina Mishina's Course

Free University (Brīvā Universitāte)

Soviet Law and Impact of the Soviet Past on Reforms in post-Socialist States (Path Dependence). Second Advent of Soviet Law

Russian Name: Советское право и влияние советского прошлого (path dependence) на судебные реформы в постсоциалистических государствах. Второе пришествие советского права.

Syllabus

Lecture № 1. Soviet law and its main features. Soviet Constitutions: Constitution of the RSFSR (1918) Constitution of the USSR (1924), Constitution of the USSR (1936), Constitution of the USSR (1977)

Reading materials: Constitution of the RSFSR (1918) Constitution of the USSR (1924), Constitution of the USSR (1936), Constitution of the USSR (1977).

Ekaterina Mishina *“The Long Shadows of the Soviet past: A Picture of Judicial Reforms in the Transition Era”*. Moscow, 2020. William E.Pomeranz. *“Law and the Russian State. Russia's Legal Evolution from Peter the Great to Vladimir Putin. The Bloomsbery History of Modern Russia series”*. London, Great Britain, 2019. E. Mishina. *“Union of Unfree Republics: From Dawn to Dusk”* (2021) Available at <https://imrussia.org/en/analysis/3389-union-of-unfree-republics-from-dawn-to-dusk>.

Lecture № 2. New Economic Policy. Main Features of Soviet Family Law

Reading materials: Joint Decrees of the All-Russia Central Executive Committee (VTsIK) and Soviet of People's Commissars (Sovnarkom) *“On Divorce”* of 16 (29) December 1917, *“On Civil Marriage, Children and Vital Office Records”* of 18 (31) December 1917, the RSFSR Code on Marriage, Family, and Guardianship (1918), the RSFSR Code on Marriage, Family and Guardianship (1926), Decrees of the Presidium of the USSR Supreme Soviet of 8 July 1944 *“On increase of government aid to pregnant women, multiple children mothers and single mothers”* and 10 November 1944 *“On the procedure of recognizing informal marriage in the event of one of the partners dying or going missing”* E. Mishina *“The Long Shadows of the Soviet past”* (2020). E.Mishina. *Soviet Family Law: Women and Child Care (from 1917 to the 1940s)*. 5 (4) *Russian Law Journal* 69–92 (2017).

Lecture № 3. Specific Features of Soviet Criminal Law

Reading materials: Criminal Code of the RSFSR (1922), Criminal Code of the RSFSR (1926), Criminal Code of the RSFSR (1960). Joint Decree of the USSR Central Executive Committee and Sovnarkom of 7 August 1932, “*On protection of Property of the State-Run Enterprises, Collective Farms, and Cooperatives and Strengthening of the Public Socialist Property*” (the *Law on Three Spikelets*). Joint Decree of the USSR Central Executive Committee and Sovnarkom of 22 August 1932 “*On Fighting Blackmarketeering*”, Decree of the USSR Central Executive Committee of 8 June 1934 “*On amending provisions on crimes against the state (counterrevolutionary crimes and crimes against administrative order) with articles on betrayal of the Motherland*”. Harold J. Berman. Principles of Soviet criminal law. The Yale Law Journal. Vol. 56 : 803 (1947). E.Mishina “*The Long Shadows of the Soviet past*” (2020). A. Lukina—*The Semenchuk Case of 1936: Storytelling and Propaganda above the Law in the Soviet Criminal Trial*. In: Review of Central and East European Law. Online Publication Date: 22 Sep 2016.

Lecture № 4. Courts and Judges in the Soviet Union. Specific Features of Soviet Judicial Mentality

Reading materials: Decree on Courts No. 1 of 22 November 1917, Instruction for Revolutionary Tribunals of 19 December 1917 Decree On People’s Courts of the RSFSR of 30 November 1918.

Gorbuz A.K., Krasnov M.A., Mishina E.A., Satarov G.A., *Transformation of Russian Judiciary, a Complex Analysis*, (Norma Publishing House, Moscow-St. Petersburg, 2010), E.Mishina “*The Long Shadows of the Soviet past*” (2020). Kathryn Hendley, Peter H. Solomon Jr. “*The Judicial System of Russia*”, Oxford University Press, 2023.

Lecture № 5. Path dependence. Judicial reforms in Poland and Bulgaria during Transition to Democracy and Market Economy

Reading Materials: Constitution of Bulgaria (1991), Judicial System Act of Bulgaria (1991), Strategy Paper on the Reform of the Bulgarian Judicial System (2001). Marcin Aslanowicz. National Report on Polish Judicial System (2009).

Gorbuz A.K., Krasnov M.A., Mishina E.A., Satarov G.A., “*Transformation of Russian Judiciary—a Complex Analysis*” (Norma Publishing House, Moscow-St. Petersburg, 2010), E. Mishina “*The Long Shadows of the Soviet past*” (2020). R.Nureev, Yu. Latov. *What is path dependence and how it is studied by Russian economists*. Social Sciences and Modernity, 2006. № 2.

Lecture № 6. Judicial Reforms in the Baltics during Transition to Democracy and Market Economy

Reading materials: Estonia: Constitution (1992), the Courts Act (1991), the Status of Judges Act (1991), the Law On Courts (2002). Latvia : the Law on the Judicial Power (1992). Lithuania: the Law on Courts (1994, the Law on Administrative Courts of 1999.

E. Mishina “*The Long Shadows of the Soviet past*” (2020). Gorbuz A.K., Krasnov M.A., Mishina E.A., Satarov G.A., “*Transformation of Russian Judiciary—a Complex Analysis*” (2010). Mart Laar, *Little Country That Could* (Centre for Research into Post-Communist Economies, London, 2002).

Lecture № 7. Judicial reforms in Ukraine and Kyrgyzstan during Transition to Democracy and Market Economy

Reading materials: the Law “*On the Judiciary and the Status of Judges of Ukraine*” (2010), the Law of Ukraine “*On Restoring Confidence in the Judicial System of Ukraine*” (2014), the Law of Ukraine “*On Government Cleansing*” (2014). The Law of the Kyrgyz Republic “*On the Courts of Acksakals*” (2002), the Law of the Kyrgyz Republic “*On the Courts of Acksakals*” (2024), Constitutional law of the Kyrgyz Republic “*On the Status of Judges*” (2021).

Oleksandr Yevsieiev. *Judicial Power in Ukraine: between Law and Politics*. Comparative Constitutional review. 2015, No 2 (105). Venice Commission. Interim Opinion on the Law on Government Cleansing (Lustration Law) 12–13 December 2014. E. Mishina “*The Long Shadows of the Soviet past*” (2020).

Lecture № 8. Police Reform in Post-Soviet States. Reforms in Georgia

Reading materials: Niels Uildriks, *Police Reform and Human Rights: Opportunities and Impediments in Post-Communist Societies*, (Intersentia, 2005), E.Mishina “*The Long Shadows of the Soviet past*” (2020). Federal Law of the RF “*On Police*” (2011). USAID Report on Georgia. “*The Judicial System. Past reforms and Future Perspectives*” (2017).

Lecture № 9. Reforms in Russia in 1990s. Judicial Reform in Russia during Transition to Democracy and Market Economy. Courts and Judges in Modern Russia

Reading Materials. Constitution of the Russian Federation (1993), the Concept of Judicial Reform (1993). Gorbuz A.K., Krasnov M.A., Mishina E.A., Satarov G.A., *Transformation of Russian Judiciary, a Complex Analysis*, (2010), E. Mishina “*The Long Shadows of the Soviet past*” (2020). Kathryn Hendley, Peter H. Solomon Jr. “*The Judicial System of Russia*”, Oxford University Press, 2023. Solomon, Peter H. Jr. “*Threats of Judicial Counterreform in Putin’s Russia*,” 13 (3) *Demokratizatsiya* (Summer

2005). Hendley K. *Everyday Law in Russia* (Cornell University Press—Ithaca and London, 2017). William E. Pomeranz. *Law and the Russian State. Russia's Legal Evolution from Peter the Great to Vladimir Putin* (2019).

Lecture № 10. The Second Coming of Soviet Law in Modern Russia. Transformation of the Role of Punishment. Personification of Punishment. Cases of Mikhail Khodorkovsky, Platon Lebedev, Vassily Alexanyan, "Pussy Riot"

Reading Materials: E. Mishina "The Long Shadows of the Soviet past" (2020). E. Mishina. *The Re-birth of Soviet Criminal Law in Post-Soviet Russia. Russian Law Journal.* 2017;5(1). V. Chelischeva. *How they were killing me.* "Novaya Gazeta" Publishers, 2020.

Lecture № 11. Domestic and Foreign Enemies: Legislation on "Foreign Agents", "Undesirable Organizations", Protection of Historic Truth

Reading Materials: Resolution of the Constitutional Court of the RF No 10-P of April 08 2014. "Foundations of the state policy on preservation and strengthening of traditional Russian moral and spiritual values" (approved by the Decree of the Russian President No 809 of 09 November 2022.) E. Mishina. "Some Details of the Portrait of An Enemy in Russian rule-making of 2010–2020s" *Palladium* # 6 (5) 2023, *Free University Journal*, eissn 2592-916x · issn 2592-9232 · doi: 10.55167/82c438e14763. Maxim Krupskiy "The Impact of Russia's "Foreign Agents "Legislation on Civil Society". Available at <https://sites.tufts.edu/flecherrussia/the-impact-of-russias-foreign-agents-legislation-on-civil-society/>.

Lecture № 12. "Rubber Legislation" and Application of Law. Art. 275 "High Treason" of the Russian Criminal Code. The Dadin's Art. 212.1 of the Russian Criminal Code. Cases of Ildar Dadin, A.Pivovarov, V. Kara-Murza, DOXA Student Online Magazine

Reading Materials: Criminal Code of the Russian Federation (1996) with amendments. E. Mishina "The Long Shadows of the Soviet past" (2020). E. Mishina. "The Transition Project. Establishing the Rule of Law" (2024). Available at <https://www.4freerussia.org/the-transition-project-establishing-the-rule-of-law/>.

Lecture № 13. Putin's Legalism and its Main features (Unlawful Laws, Discriminatory Legislation, Criminalization of Acts that Impose No Danger to the Society, Disproportionally Cruel Punishments, Lawfare. Case of Businessman Y. LGBT Legislation and Ruling of Russian Supreme Court of November 30, 2023. Cases of Evgenia Berkovich and Svetlana Petriyчук

Reading Materials: E. Mishina. "The Transition Project. Establishing the Rule of Law" (2024). E. Mishina. Lawmaking of the countermotion state (2023). Available at <https://www.4freerussia.org/lawmaking-of-the-countermotion-state/>.

Lecture № 14. Re-birth of Defensive Nature of Soviet Law. Escalation of the Role of the State. Lawmaking of the Wartime. "Traditional Values" and Attempts to Reinstate Official State Ideology. Sasha Skochilenko's Case. The 2024 Law on Confiscation of Property

Reading Materials: E. Mishina. "The Transition Project. Establishing the Rule of Law" (2024). E. Mishina. Lawmaking of the countermotion state (2023). "Foundations of the state policy on preservation and strengthening of traditional Russian moral and spiritual values" (approved by the Decree of the Russian President No 809 of 09 November 2022).

Final Paper Requirements and Grading System

General exam requirement: a final paper of 1000–2500 words (topics must be relevant to the course and previously coordinated with the instructor).

Options for students who made presentations in class and took an active part in class discussion:

Option No 1—A brief oral exam consisting of three randomly selected questions addressing different parts of the course.

Option No 2—A shorter final paper of 700–1000 words.

Option No 3—Participation in the final conference of the course. Participants are expected to deliver 10–15 minutes presentations (topics must be relevant to the course and previously coordinated with the instructor). Participants are expected to make 10–15 minutes presentations, which will be evaluated by the instructor and two external experts from the Free University (Brīvā Universitāte).

Paper grading criteria include but are not limited to:

- Quality of understanding and operating with basic concepts discussed in the course (e.g., main characteristics of Soviet law, Soviet constitutional system, specific features of early Soviet family law, specific features of Soviet criminal law, the principle of analogy, retroactivity of criminal law, the role of courts and judges under the Soviet rule, Soviet judicial mentality, judicial independence).
- Logical consistency.
- Factual accuracy.
- Adherence to topic chosen.
- References to the *original text* (or translation) of a Constitution or a legislative act of the country studied are required. Using secondary sources instead of original texts does not count as such reference.
- Bibliography of at least 5 distinct items for a final paper (1000–2500 words) or at least 3 distinct items for a shorter version of the final paper (700–1000 words) (might be a book, a scholarly article or a legislative act). *Wikipedia entries are not considered bibliography items.*