

T H E L A W O F T H E S O V I E T S T A T E

Andrei Y. Vyshinsky

GENERAL EDITOR

TRANSLATED FROM THE RUSSIAN BY

HUGH W. BABB

*Professor & Head of the Department of Law
of the College of Business Administration,
Boston University*

INTRODUCTION BY

JOHN N. HAZARD

*Professor of Public Law,
Columbia University*

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Foreword

THE Russian Translation Project of the American Council of Learned Societies was organized in 1944 with the aid of a subsidy from the Humanities Division of the Rockefeller Foundation. The aim of the Project is the translation into English of significant Russian works in the fields of the humanities and the social sciences which provide an insight into Russian life and thought.

In the difficult problem of the selection of books for translation, the Administrative Committee has had the counsel and cooperation of Slavic scholars throughout the United States and Great Britain. It is thought that the books chosen will be useful to general readers interested in world affairs, and will also serve as collateral reading material for the large number of courses on Russia in our colleges and universities.

Since Russian history is a continuum, the volumes translated are of various dates and have been drawn from both the prerevolutionary and post-revolutionary periods, from writings published inside and outside of Russia, the choice depending solely on their value to the fundamental aim of the Project. Translations are presented in authentic and unabridged English versions of the original text. Only in this way, it is believed, can American readers be made aware of the traditions, concepts, and ideologies by which the thinking and attitudes of the people of Russia are molded.

It should, of course, be clearly understood that the views expressed in the works translated are not to be identified in any way with those of the Administrative Committee or of the Council.

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Introduction

EVERY Soviet student of government and law reads Vyshinsky's book. Administrators and jurists use it for reference. It is, in a sense, the militant handbook of those engaged in government. It provides a guide through the intricacies of the central and local levels of administration, an explanation of the Constitution, and a documented analysis of the laws relating to the courts, elections, and rights and duties of citizens. It is designed also as a means of instilling in the public official a firm conviction that he is a part of a system of government which has no equal in the world outside.

Much of the determination of Soviet soldiers in the war just ended can be traced to sources typified by this book. Much of the persistence and confidence evidenced by Soviet diplomats in international councils can likewise be traced to the same sources. Vyshinsky and his team of collaborators present the doctrine which Soviet men and women are taught in their schools and general reading. In view of this fact, Vyshinsky's book provides one avenue of approach to an understanding of the habit of thought which has become characteristic of Soviet citizens.

Americans will find interest in this book not only because it is a statement of a creed and an outline of the structure of the Soviet form of government: the book is also revealing of Soviet pedagogical techniques. American readers will be introduced to the vigorous, uncompromising manner in which Soviet teachers present their thesis. There is to be found the highly critical and even scornful approach to non-Soviet systems of government. There is to be found frequent repetition of ideas in varying forms. All of this is characteristic of the Soviet textbook, whether it be written for mass consumption or for the advanced student in the professional school.

A brief statement of the setting in which the book was written may aid the American reader who approaches Soviet political and legal literature for the first time. It will be remembered that the year 1936 was a milestone in Soviet constitutional history. A constitutional drafting commission under Stalin's chairmanship brought forward a draft of a new constitution in June, 1936, to replace the constitution under which the Union of Soviet Socialist Republics had come into being. The Draft Constitution was enacted by the Eighth Congress of Soviets on December 5, 1936. It was heralded as a reflection of the changed economic and social conditions which had resulted from

the industrialization of the country under the five-year plans and the collectivization of agriculture.

The year 1936 was accepted as the date for which many had been waiting. It marked the end of many of the controls established by the Revolution to make certain that no combination of forces would arise which could threaten seriously the continued existence of the Soviet government and the political and economic system for which it had become known. Whole classes of the population had previously been discriminated against in legislation relating to education, military service, and even the obtaining of employment. The 1936 Constitution changed all of this by eliminating discrimination on the ground of social origin or occupation. Procedures, including the secret ballot and direct elections, were introduced, although the fundamental position of the Communist Party remained unchanged. To many an age of greater tolerance seemed to be dawning.

The process of establishing the Soviet government on a firm foundation had been long and arduous. Vyshinsky's book is a chronicle of the steps which were taken and the experiments which were tried. American readers will be able to learn much about the problems of Soviet government from the account. It may be helpful to bear in mind that Lenin maintained that Marxism provided no precise blueprint for the future government of revolutionary Russia. He foresaw the need for experimentation, and the record of the constitutional and legal history of the USSR has borne out his expectation. Various measures have been tried and abandoned to the accompaniment of bitter criticism, both within the USSR and abroad.

Vyshinsky's book was published two years after the adoption of the new Constitution. Much had occurred in those two years to affect the outlook of Soviet leaders. The imminence of the Second World War had become apparent to all. International tension had been reflected in the domestic life of the USSR. Production was the principal requirement for war, and the government had indicated that nothing was to be permitted to impede it.

Multicandidate elections, of which Stalin had spoken favorably to Roy Howard in 1936, had never materialized. A single candidate appeared on the ballot in electoral districts for deputies to the Supreme Soviets of the Union government and of the republics. Labor legislation had been enacted to place strict curbs upon labor turnover and to require discipline. Jurists who thought that the state should begin to "wither away" as socialism was achieved were denounced and removed from their positions.

The spirit of war psychology is clearly reflected in Vyshinsky's book. Outsiders have sometimes felt that restrictive legislation and practices were the result of a need to prepare for war and could have been explained to the public in such terms. Vyshinsky is, apparently, of a different view. He has

fitted the tightening of controls into the general plan of his book as a logical development of the process of government, and has given little reason to suppose that they were to be abandoned with the coming of peace.

Events since the publication of Vyshinsky's book in 1936 have been momentous. In some ways they have definitely "dated" the book. There has been a world war and the beginning of a period of reconstruction. Every country of the world which participated in the war found it necessary to modify its governmental structure to meet the emergency. The USSR was no exception.

Changes in the Soviet structure concerned an increase in the number of commissariats to administer the new types of production required by the war. There also came into being immediately after the USSR was invaded in 1941 a State Committee for Defense with supreme authority over government and Communist Party agencies. In 1944 the relationship between the republics and the federal government was affected by amendments to the Constitution. The republics regained the authority which they had surrendered at the time of union in 1922, and in some cases earlier, to establish their own commissariats of foreign affairs and defense. The new commissariats were required by the amendments to follow the policies established by the commissariats of the same name in the federal government, but the change of 1944 affected the international status of the republics; two of them, indeed, the Ukrainian Soviet Socialist Republic and the Byelorussian Soviet Socialist Republic, even gained separate admission to the United Nations.

Since the end of the war, changes in the Soviet structure of government have continued to occur. The State Committee for Defense has been abolished, and the established agencies of government have resumed their constitutional functions. Elections have been resumed after having been postponed during the war. The commissariats in the federal government and in the republics were given the name of ministries by constitutional amendments in 1946. The Council of People's Commissars became the Council of Ministers. The Prosecutor of the USSR was renamed the Prosecutor General of the USSR. The number of members of the Presidium of the Supreme Soviet of the USSR has been reduced to make the body easier to assemble. At the same time the number of ministries has continued to rise. Molotov has explained that this was made necessary as new functions were assumed by government or as efficient administration demanded a splitting of a single industrial ministry in two, as was done with the Ministry of the Coal Industry.

Changes of the nature referred to have been largely matters of detail. Those who have familiarized themselves with the basic material in Vyshin-

sky's book will have no trouble keeping pace with these and the changes which can be anticipated in the future by following the pages of American political science reviews and comparative-government textbooks. Readers will do well to remember that the pace of translation and publication is always so measured that only those who can follow Russian language originals can hope to keep up to date.

A few words may be appropriate for those interested particularly in political theory. American readers will find that most of the great names in the history of political and legal theory will be found in Vyshinsky's book. Vyshinsky presents his interpretation of what the non-Marxists believed and taught; he then adds his criticism of their teaching. This technique is familiar in all Soviet textbooks for adult readers. Vyshinsky's aim is to acquaint the Soviet reader with what others have said and why he believes it to have lost validity. Such an approach is designed to bring the Soviet student to believe confidently in the strength of the political theory adopted by his country's leaders, and to understand why the theories proposed by others have been discarded.

Vyshinsky's method may have important effects upon international relations. His book aims to make certain that a Soviet student who reasons his way through the ponderous passages of this and similar works does more than memorize the fact that the accepted doctrine in the USSR is the preferred theory. From my own observation as a foreign student in a Soviet law school a decade ago, I believe that Vyshinsky's purpose was achieved with most of the students. If this is a correct observation, it explains the tenacity of Soviet citizens in argument with people of the West. The arguments of the West do not come to Soviet citizens for the first time when they are presented by diplomats, newspapers, radios, or in informal conversation between Soviet citizens and American students, government officials, businessmen, or tourists. The Soviet citizen has met these arguments before and is prepared with an immediate response. Consequently, few of them seem to be quickly moved by argument alone.

A final word is necessary about Andrei Yanuaryevich Vyshinsky. His reputation as Deputy Minister for Foreign Affairs of the USSR has already become so well established that he almost needs no introduction. Yet, because of this very fame in the diplomatic field his career as a jurist is sometimes overlooked. Before entering the Ministry of Foreign Affairs during the war he had been Prosecutor of the USSR. In this position he had supervised the preparation for, and conducted the prosecution in, the trials of Bukharin, Pyatakov, Kamenev, Radek, and their colleagues for treason against the USSR.

Vyshinsky has also evidenced qualities as a legal scholar by lecturing at

the Moscow Juridical Institute and at meetings of Soviet jurists in Moscow and elsewhere. When the school of jurists, headed by E. B. Pashukanis, was ousted in 1937 because of its support of a program of progressive "withering away" of the state, Vyshinsky came forward as the principal organizer of the new jurisprudence. He became editor of the leading law review, *Sovetskoye Gosudarstvo i Pravo*. He was also named a member of the Academy of Sciences of the USSR and was a leader in the work of the Section of Economics and Law of the Academy.

In spite of his duties in the Ministry of Foreign Affairs, Vyshinsky has found time during and since the war to write and lecture extensively on law. In 1947 he was awarded a Stalin prize for a textbook on the law of evidence. In preparing the volume on Law in the Soviet State, Vyshinsky made use of his colleagues in the Institute of Law of the Academy of Sciences. The volume is a composite of their work, but Vyshinsky is well known in the USSR as an editor who takes great care with any manuscript on which his name appears. As a product of Vyshinsky's editing, this volume carries the weight of considerable authority.

The original Russian language edition of Vyshinsky's work contained no index. The index to the translation has been prepared by Kathryn and Henry Clarenbach to facilitate use of the volume by American political scientists familiar with American index headings and terminology. In consequence, the arrangement and choice of words may sometimes be unfamiliar to such Soviet jurists and American specialists on Soviet terminology as happen to examine this edition.

The translation of Hugh Webster Babb of Boston University has been prepared from a similar point of view. The Russian sentence structure has been changed in many instances to reduce the occasions in which American readers might have been hampered by an unfamiliar style. Professor Babb's effort to retain the original spirit and textual accuracy is notable, however. The translation reflects the translator's facility in Russian and legal scholarship.

JOHN N. HAZARD

THE RUSSIAN INSTITUTE
COLUMBIA UNIVERSITY

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I *Introduction*

SEC. 1: THE OCTOBER SOCIALIST REVOLUTION AND THE STATE

THE great October Socialist Revolution of 1917 destroyed the bourgeois state and created one of a new and higher type—the state of the proletarian dictatorship. Thereby it opened a new epoch in world history—the epoch of the socialist state of workers and peasants.

In doing away with the old bourgeois state machine, the Russian proletariat, under the guidance of the party of Lenin and Stalin, followed the great historical instructions of Marx and Engels, the founders of scientific socialism. On the basis of the experience of the Paris Commune, they established the proposition that “the working class cannot simply take possession of a state machine ready prepared and set it in motion for its own ends,”¹ but must demolish and utterly break up this machine and build its own new state machine.

Lenin, on the eve of the great October Socialist Revolution of 1917, wrote on this same subject:

The revolution consists in the proletariat’s *destroying* the apparatus of government and the *entire* state apparatus, putting in its place a new apparatus, composed of armed workers. . . . The revolution must consist not in the fact that a new class manages with the help of the *old* machinery of state, but in *smashing* the old and commanding and managing with the aid of new machinery.²

The violent seizure of authority by the proletariat, the demolition of the exploiting society’s machinery of state, and the organization (in lieu of the old state machinery, now reduced to fragments) of a new state is the most important thesis of the Marxist-Leninist doctrine of proletarian revolution.

¹ Marx and Engels, *Manifesto of the Communist Party* (Russian ed., 1938), p. 6.

² Lenin, *Selected Works* (Russian ed.), Vol. XXI, p. 450.