Scientific Socialism and Soviet Private Law*

*Bernard Rudden***

On October 15, 1985, the Plenum of the Central Committee of the Communist Party of the Soviet Union adopted a draft of a new revised Party Program.[1] In its entire previous history the Bolshevik Party has proclaimed only three of these: the first, in 1903, called for the overthrow of the Tsar and his replacement by the dictatorship of the proletariat; the second, in 1919, set out the plans for installing socialism in order to make the revolution work; the third, Khrushchev's 1961 program, declared that socialism had been achieved, that the dictatorship of the proletariat had fulfilled its historic mission, and had spelled out the path to true communism.[2]

Strictly speaking, the new draft—which the Party has submitted for public comment throughout the USSR—proposes only revisions of the 1961 Program. In fact, it seems a rather more modest document than the one in which Khrushchev prophesied that the USSR would far outstrip the United States by 1980. Yet, in at least one respect its message is the same as Khrushchev's: soviet socialism is scientifically superior to all other political systems.

The introduction to the new draft traces the history of true socialism from the "scientific communism" of Marx and Engels through "each historical phase" wherein the Communist Party has solved the problems "scientifically based in its Programs."[3] The new document concludes that the years since the adoption of the last Program have "underlined the correctness of the Party's theoretical . . . lines."[4] Elsewhere, the new Program describes the "fruits of its scientific sagacity" and avers that "the experience of the USSR demonstrates the indisputable social-economic, political, intellectual, and moral advantage of the new society as a stage of human progress surpassing capitalism."[5]

---

* Adapted from a speech given at Notre Dame Law School on November 22, 1985.

** Professor of Comparative Law, University of Oxford; Fellow of Brasenose College; Solicitor; M.A., 1960, University of Cambridge; Ph.D., 1965, University of Wales.

1 Pravda, Oct. 16, 1985, at 1.

2 *See* HISTORY OF THE CPSU (BOLSHEVIKS), SHORT COURSE 39-44, 232-33 (Commission of the Central Committee ed. 1939) (official edition).

3 Pravda, Oct. 16, 1985, at 1, col. 2.

4 *Id.* at col. 1.

5 Izvestiia, Oct. 26, 1985, at 1, col. 2. According to the new program the argument is as follows: Marx and Engels founded "scientific communism;" Lenin developed their teaching into a "scientific system;" the Party has united "scientific socialism with the working-class movement;" and, thus, the Party has solved the problems "scientifically substantiated in its programs." *Id.*

In this article I shall discuss the relationship between the Soviet notion of scientific socialism and the ordinary laws which govern all Russian citizens as well as their attorneys. I shall not deal directly with such critical issues as Soviet civil liberties, constitutional rights, dissent, and the like; these important topics, the subject of constant debate, are adequately addressed by others elsewhere. Also, since I am not equipped to deal with the day-to-day realities of Soviet life,[6] I shall limit my discussion to the relatively humdrum codes of procedure, property, contract, and tort law in the Soviet Union.

Each nation's view of the external world affects the laws which that society makes. I almost blush to make such a simplistic assertion. I am not advancing the proposition that "ought" can be derived from "is." I do not claim that any legal (or moral) system is logically entailed in any factual description.[7] My point is simply that perceptions of the external world may provide good, practical reasons for adopting a particular law. This is neither a difficult nor a contentious argument. For example, if we agree that, as a matter of fact, unpasteurized milk may carry the tubercular bacillus; that, on the whole, the costs of tuberculosis outweigh any benefit from leaving milk unpasteurized; and that legislation alone will not sterilize milk (a factual truth); then there is good reason for having a law mandating the pasteurization of milk.

I have deliberately chosen this simple example because almost all will agree with both the factual premises and the conclusion. But it follows that, even if we ourselves do not accept certain beliefs as to fact, we must admit that a society which does hold them will then have perfectly "good" reasons for its laws.[8] If it is generally believed that witchcraft can maim humans and kill cattle, then laws against witches make perfect sense. Such laws were enacted in England and Scotland in 1563, stiffened by the British Act of 1603, and enforced enthusiastically by the good people of Massachusetts and Scotland.[9] When the belief as to facts changed, it made just as much sense to repeal the Witchcraft Act and to substitute a law

6 For a masterful account of these day-to-day concerns with Soviet law, see Ioffe, *Soviet Law and Soviet Reality*, 30 LAW IN EASTERN EUROPE 1 (1985).

7 That this cannot be done is said to have been demonstrated by Book III, part i, section i of D. HUME, TREATISE ON HUMAN NATURE 469 (L. Selby-Bigge ed. 1888). For the purposes of this article, I simply accept the proposition; whether it is, in fact, conclusive is much debated by moral philosophers. *See* THE IS-OUGHT QUESTION (W. Hudson ed. 1969).

8 We are committed to make this admission by the rule of formal justice adumbrated in Justinian's Digest: *quod quisque iuris in alterum statuerit ut ipse eodem iure utatur*. DIG. JUST. 2.1.2. Thus, if we say that our beliefs as to fact are good reasons for our laws, then we must accept other people's different beliefs (even though, to us, mistaken) as good reasons for theirs.

9 Witchcraft Act (England), 1562, 5 Eliz. 1, ch. 16; Witchcraft Act (Scotland), 1563, 9 Mary ch. 9; Witchcraft Act (Great Britain), 1603, 1 Jas. 1, ch. 12.

making it an offense to *pretend* to have magical powers.[10]

The relevance of the preceding to my theme is this. There are two ways of criticizing a law: one is simply to argue that it does not deal efficiently with the problems posed by the admitted facts; the other, and much more powerful attack, is to deny the reality of the facts to which the law is a response. This alternative poses an acute problem for a society which asserts that its cognition of the facts is scientifically verifiable, and tempts its leaders to make the system self-sealing. The facts provoke a set of laws, and one of these laws forbids denial of the facts.

Imagine a country whose "Dairy Products Act" made it an offense to sell unpasteurized milk; and its "Lactic Heresy Act" prohibited the view that raw milk does not make a host for the tubercular bacillus. Now I emphatically do not suggest that the Soviet Union has a *simple* heresy law: indeed, the USSR Constitution itself lays down that "each citizen of the USSR shall have the right . . . to criticize shortcomings in [the] work" of state agencies and that "[p]ersecution for criticism shall be prohibited."[11] But the relationship between the official scientific epistemology and the legal system is, as will be shown, much more complex.

A society's view of the external world may well include a theory of cognition and of understanding—in short, an epistemology. The Soviet Union's view of its own view of the external world is that it is entirely "scientific." How do they know this? Because they are told so by the law and the prophets. As to the law, the preamble to the 1977 USSR Constitution explains that, in writing the Constitution, the Soviet people were "guided by the ideas of scientific Communism." As to the prophets, Karl Marx himself insisted that "the premises from which [communists] begin are not arbitrary, but real . . . . [They] can be verified in a purely empirical way."[12] Friedrich Engels devoted a whole book to making the point: its title is "Socialism, Utopian and *Scientific*."[13] The word "scientific" is a refrain in the draft of the new Program.

Note that all of this operates at two levels. First, by calling its

10 Witchcraft Act, 1735, 9 Geo. 2, ch. 5.

11 U.S.S.R. CONST. art. 49 (1977). The "first amendment" rights of Soviet citizens are conferred thus:

> In accordance with the interests of the working people and with a view to strengthening the socialist system, citizens of the USSR shall be guaranteed the freedom[s] of: speech, press, assembly, meetings, street processions, and demonstrations.

U.S.S.R. CONST. art. 50 (1977). For an English translation of the Constitution of the USSR, see W. BUTLER, BASIC DOCUMENTS ON THE SOVIET LEGAL SYSTEM 3 (1983) [hereinafter cited as BASIC DOCUMENTS].

12 Marx & Engels, *The German Ideology*, in 1 SELECTED WORKS OF MARX AND ENGELS 19-20 (1969) [hereinafter cited as SELECTED WORKS].

13 SELECTED WORKS, *supra* note 12, at 387 (emphasis added).

creed "scientific" the Soviet Union avers that it has got the facts (the world) right. Second, Soviets claim possession of an accurate epistemology. The Great Soviet Encyclopedia of 1972 states that "ideologies can be divided . . . according to the way they reflect reality into scientific or non-scientific, that is illusory."[14] It informs us elsewhere that "the practical function of the political economy of socialism is to elaborate scientific principles for economic policies," that "the scientific conception of historical development that is found in historical materialism serves as a foundation for working out social ideas as spiritual values," and that the "highest type of law is socialist law" because it alone "gives a *true* reflection of *real* interests."[15]

This "scientific" nature of Soviet socialism possesses three other characteristics. First, it is comprehensive. All areas are amenable to scientific socialism's analysis. "As science penetrates the essence of socialist production relations and laws more deeply and reveals their operation as a system more fully, political economy achieves greater success in elaborating scientific principles."[16] Second, it is avowedly antipluralist. Scientific socialism forms a single system, one of whose tenets is that—as a matter of empirical fact—no greatly differing, still less competing, views exist in the Soviet Union. Once again we know this because the law tells us that "socio-political unity of Soviet society has been formed."[17] Third, Soviet socialism is triumphalist. It celebrates two different things: the "real" world of the USSR—production, health care, sporting achievements, and so on; and, *itself*. Almost every day the official press publishes slogans of self-congratulation: "Hail to Marxism-Leninism, the mighty ideological weapon of the working people."[18]

With this as an introduction, I now turn to the two principal themes of this article: the effect of scientific socialism on law; and the effect of law on scientific socialism.

I. The Interrelationship of Scientific Socialism and Soviet Private Law

A. *The Policies of Soviet Private Law*

It is difficult to find a more technical branch of the law than the law of evidence. In a society such as ours, where courts do not aspire to scientific infallibility about facts, the ordinary attorney will

14 10 BOLSHAIA SOVETSKAIA ENTSIKLOPEDIIA (Great Soviet Encyclopedia) 570 (1972) (Istoricheskii Materializm) (Historical Materialism).

15 *Id.* at 78; 20 BOLSHAIA SOVETSKAIA ENTSIKLOPEDIIA 220 (1972) (Politicheskaia Ekonomiia) (Political Economy); *id.* at 477 (Pravo) (Law).

16 *Id.* at 344 (Pravo).

17 U.S.S.R. CONST. preamble (1977). *See also* BASIC DOCUMENTS, *supra* note 11, at 3.

18 Pravda and Izvestiia, Oct. 16, 1977, at 1.

know what to do if the facts reveal "x," and what to do if they do not. But he also needs to know what to do if he does not know how to categorize the facts; or, to put it prosaically, he needs some fail-safe allocation of the burden of proof.

The role of the burden of proof—whether in civil or criminal cases—is precisely to cope with our society's admission that we often cannot tell what really happened. By contrast, the standard Soviet work on evidence states that forensic proof "is a form of the cognition of objective reality" and that those systems which use devices like "the balance of probabilities" or "reasonable doubt" are not merely wrong, they are scientifically refutable. "The Soviet theory of evidence proceeds from the thesis that the truth can be established in court with no less success than scientists working in other fields," *i.e.*, the laboratory sciences.[19]

Article 14 of the Soviet Civil Procedure Code provides that "the court is bound, without restricting itself to the materials and explanations produced [by the parties], to take all steps provided by law for the all-round, full, and objective elucidation of the true facts of the case and of the rights and duties of the parties." Article 50 deals with the problem of inadequate evidence by providing that "[i]f the evidence presented is insufficient, the court may direct the parties . . . to supply additional evidence or it may collect such evidence on its own initiative." Article 56 provides that, in order to reach a final decision at the end of the day: "A court weighs the evidence according to its own inner conviction based on an all-round, full, and objective consideration at the trial of all the circumstances of the case, looked at as a whole, being guided by the law and its socialist legal conscience."[20]

The current edition of the standard Soviet textbook on legal theory states that "in contrast to the . . . legal systems of bourgeois countries, . . . the legal systems of socialist countries, incarnating all that is positive [and] socially valuable . . . are the normative systems, which are built on and function on a truly *scientific* law."[21] We see, then, a system whose economic and political policies are pro-

19 A. TRUSOV, INTRODUCTION TO THE THEORY OF EVIDENCE (1962). Similar points are made by the official work, U.S.S.R. PROCURATOR'S OFFICE, 1 TEORIIA DOKAZATEL'STVA (Theory of Evidence) 38 (1966).

20 The Code of Criminal Procedure does not, in so many words, lay down a presumption of innocence. There is considerable dispute among Soviet jurists as to whether it is implicit. *See* Strogovich, *The Presumption of Innocence and the Termination of Prosecutions for Non-Rehabilitative Reasons*, 2 SOVETSKOE GOSUDARSTVO I PRAVO (Soviet State and Law) 70 (1983), *translated in* J. HAZARD, W. BUTLER & P. MAGGS, THE SOVIET LEGAL SYSTEM: THE LAW IN THE 1980's 57-58 (1984) [hereinafter cited as LAW IN THE 1980's]; H. BERMAN, SOVIET CRIMINAL LAW AND PROCEDURE 57-62 (2d ed. 1972).

21 S. ALEKSEEV, 1 OBSCHAIA TEORIIA PRAVA (General Theory of Law) 143 (1981) (emphasis added). *See also* LAW IN THE 1980's, *supra* note 20, at 8.

foundly different from that of capitalist countries. We see a system which teaches as "scientific and empirically verifiable truth" that law is determined by the economic infrastructure. The Preamble to the Russian Soviet Federative Socialist Republic (RSFSR) Civil Code of 1964 announces that socialism has triumphed, that Communism is nigh, and that the task of civil law is to create the latter's material-technical base and the ever greater satisfaction of the citizenry's material and spiritual needs.[22]

B. *The Unexpected Form of Soviet Private Law*

Based upon this "scientific socialism" one might expect the *form* of Soviet law to be unique. Yet, when we look at the form of Soviet private law—at the structure of their system, the words of its rules—we rub our eyes in amazement. Suppose that an educated lawyer is given a blind test with the RSFSR Civil Code, is presented with it, that is, without its title or preamble; is simply told that this is a set of rules of private law regulating the legal relationships of enterprises and citizens of some state. What would that attorney discover?

He would find 569 articles; 560 of which are not merely utterly familiar to him, but also contain rules in force in both Switzerland and California. This educated lawyer would recognize that the general structure of the RSFSR Civil Code derives from Justinian's Institutes of 533 A.D.; he would see, in the "General Principles" with which it begins, a simplification of the German Bürgerliches Gesetzbuch (BGB) of 1900 with some of its terms and distinctions translated directly. If he is an astute common lawyer, he will be delighted to discover that provisions for remedies come early. Article 6 lists them: action for declaration, restoration of the *status quo ante*, specific performance, cancellation, and damages. If he wishes to know what this last remedy entails, he will find that it includes liquidated damages (articles 187-91); and that the general principle is that the award must cover expenses, losses sustained, and profits foregone—in other words, reliance and expectation interests (article 219).

The law student will be happy to find that all those dreary rules on offers, revocation, acceptance, counter-offer, and so on, are dealt with in lucid and reasonable provisions (articles 160-65). A feudalist will be reassured to learn that real property may never be owned by a subject but may only be held in perpetuity (article 95.2), and that the statute of limitations does not run against the

22 RUSSIAN SOVIET FEDERATIVE SOCIALIST REPUBLIC (R.S.F.S.R.) CIV. CODE preamble (1964), *translated in The Soviet Codes of Law*, 23 LAW IN EASTERN EUROPE 391 (F. Feldbrugge ed. 1980) [hereinafter cited as LAW IN E.E.].

state, as it did not run against the monarch (article 90(2)). A devotee of continental customs will recognize the life-rent (article 253).

The rules regarding acquisition of goods from a nonowner (article 152) are much like those of Anglo-Saxon London or modern Paris, and those on restitution (article 473.1) are the same as in current Israeli law.[23] Finally, a Romanist will recognize the same list of contracts as those studied in law schools for the last 2,000 years: sale, hire, partnership, agency, and the "real contracts"—the loan of something whose equivalent is owed (such as money); the loan of something to be returned in specie; and deposit, or what the common law calls bailment (articles 237-57, 269-94, 342-49, 396-438).

Although Soviet lawmakers have changed the order a little, they have kept the same classifications and in many, although apparently minor, ways have adopted the ancient Roman rules. Occasionally the nomenclature adds a certain novelty, but a moment's reflection reveals the Soviet law's pedigree. Thus, chapters five through nine of the USSR Basic Principles of Civil Legislation of 1958 (which are elaborated upon in the Civil Code of each Republic) deal with the hire of goods, works contracts, and carriage, but are presented as if bereft of any connection. Nevertheless, in fact they are all arrangements which the Romans grouped together under the name *locatio-conductio*,[24] and the modern Soviet treatment as well as the rules themselves can often be traced through the 1922 Civil Code of the Russian Republic to the Napoleonic Code of 1804 and from there through Pothier in the 18th century, Voet in the 17th, and the medieval jurists back to the collection of classical Roman rules grouped under Justinian's Digest 19.2.

C. *Scientific Socialism and the Form of Soviet Private Law*

The prior observations on the similarity between the Soviet private law and other systems of law are not new.[25] But how can we account for the fact that, at least in the field of private law, scientific socialism does no more than repeat the ancient system? The explanation of this paradox comes at three levels: (1) the nature of the rules themselves; (2) the sphere of operation of the rules within the Soviet Union; and (3) the interrelationship between Soviet rules and the nonlegal norms of scientific socialism.

1. The Nature of the Rules

The first explanation for the fact that the Soviet rules are so

23 UNJUST ENRICHMENT LAW 5739 (1979).

24 DIG. JUST. 19.2 (*Locati conducti*).

25 *See, e.g.*, W. FRIEDMANN, LAW IN A CHANGING SOCIETY 24 (2d ed. 1972).

similar to those laid down in countries which do not preach scientific socialism is one which I offer with genuine diffidence, since it contradicts the theses of teachers in both the USSR and USA. In the former country, Marxism-Leninism explains to us that the legal rules of a particular society are—in a rather complex way—a mere reflection of its economic structure.[26] In the latter, the far-from-Marxist doctrine of the "Chicago school" appears to posit much the same thing. No less an authority than Judge Richard Posner tells us that "a major theme" of his *Economic Analysis of Law*[27] is that "many of the doctrines and institutions of the legal system are best understood and explained as efforts to promote the efficient allocation of resources," and Posner (with Coase) sees "an implicit economic logic" in the English law of nuisance.[28]

How, then, can we explain that 560 of the 569 articles of the RSFSR Civil Code (which genuinely seem to have no inbuilt connection with a particular economy, morality, or power-structure) are much the same as those devised some 2,000 years ago in a slave-owning society, brought to technical and lapidary perfection in the 2nd century A.D. (by lawyers employed by such tyrants as Caracalla) and pondered, refined, and systematized over the centuries by lawyers worldwide? The concepts, techniques, and even the very words of these rules turn up in nonfeudal Western societies at all stages of economic development—whether slave owning, capitalist, or socialist—could it be they are genuinely *value free*? They cannot be reduced directly to an economic system or to the interests of a particular ruling class. The Roman concepts are like stones; they outlive civilizations, but they go where they are kicked.

2. The Operation of the Rules in the Soviet System

The second explanation for the persistence of ancient forms in modern socialism is the easiest of the three to put forward. It amounts to no more than the observation that, although the form of the rules may be familiar, their context and function are not. The Soviet *context* provides for a *new function*.

"Every owner," says the RSFSR Civil Code, "has the right to possess, use, and dispose of his property within the limits laid down by law" (article 92). In 1804, the Napoleonic Code of the French bourgeoisie defined ownership in identical terms: "Ownership is the right to enjoy and dispose of things in the most absolute manner, provided that one does nothing forbidden by laws or regula-

26 The *locus classicus* is Marx, *Preface to a Contribution to a Critique of the Gotha Program*, in SELECTED WORKS, *supra* note 12, at 503. *See also* H. COLLINS, MARXISM AND THE LAW 77-159 (1982).

27 R. POSNER, ECONOMIC ANALYSIS OF LAW (2d ed. 1977).

28 *Id.* at 17-18.

tions."[29] What *has* changed is not the immediate content of the norm, but rather the objects which may be owned, the status of the owner, and the limits laid down by other rules of law.

In the early 1960s, Khrushchev prophesied a reduction in the number of things which individuals would own. Not, of course, because they would be worse off; but, because more and more of their needs would be met by collective consumer funds—lending libraries of books and records, fleets of collectively owned automobiles, and the like.[30] This vision has dimmed somewhat and, in recent years, many Soviet writers have pointed out that it is simply not very cost effective to maintain public holdings of washing machines and vacuum cleaners.

Nevertheless, Soviet law provides that goods can be personally owned only if they are acquired through labor in the public sector and are used for consumption, *i.e.*, not for trade or production. Article 13 of the 1977 Constitution says: "Labor incomes shall comprise the basis of personal ownership of citizens of the USSR. Articles of everyday use, personal consumption, convenience, and subsidiary household husbandry, a [i.e., one] dwelling house, and labor savings may be in personal ownership."[31] The Soviet citizen may own things only as consumer not as producer, subject to certain theoretically slight exceptions for subsidiary farming and artisans.[32]

Ownership is the right to use and dispose of property within the limits laid down by law. The Soviet limits are undoubtedly much narrower than those in other countries. For instance, if you and your family own one house and inherit another, although there is nothing wrong in that, you cannot keep both. One of them must be sold within a year; if it is not, the local authority may purchase the second home compulsorily.[33]

The Soviet Republics have recently amended their Civil Codes to bring them into line with a provision (of studied vagueness) in

29 CODE CIVIL DES FRANCAIS art. 544 (1804).

30 N. KHRUSHCHEV, O NEKOTORYKH TSIFRAKH RAZVITIIA NARODNOGO KHOZIASTVA SSSR PO 1959-1965G (On Certain Figures of the Development of the National Economy for 1959-1965) 53 (1965). *See also* Malfliet, *The Economic Function and Purpose of Soviet Personal Property and its Legal Implementation*, 11 REV. SOCIALIST LAW 27, 30 (1985).

31 The USSR principles of Civil Legislation art. 25 was amended to repeat this text. *See* 44 Vedomosti Verkhovnogo Soveta S.S.S.R. (U.S.S.R Supreme Soviet Gazette) 1184 (1981), *translated in* LAW IN THE 1980's, *supra* note 20, at 228.

32 *See* R.S.F.S.R. CIV. CODE art. 105 (1964). *See also* LAW IN E.E., *supra* note 22, at 419. In fact, the provision of services by private artisans and, even more, the produce of theoretically "subsidiary" household plots are of enormous importance. In 1982, the latter made up 61% of the potatoes, 28% of the meat, 27% of the milk, and 25% of the eggs in Russia. These figures, and the resulting doctrinal debate on the nature of ownership by citizens, are well analyzed in Malfliet, *supra* note 30.

33 R.S.F.S.R. CIV. CODE art. 107 (1964). *See also* LAW IN E.E., *supra* note 22, at 420.

the 1977 Constitution. After defining personal ownership, these provisions add that "[p]roperty individually owned by citizens may not be used as a source of unearned income."[34] One derives "unearned" income from his house or summer cottage, for instance, if he leases part of it at a rent higher than that permitted by law. In such a case, the local authority may confiscate it *without compensation*.[35] Similarly, although the basic property norm permits the owner to dispose of his possessions, owners can sell cars only through a state commission shop and only at *the* price given in official lists.[36]

As we have seen, although the central definition of ownership is the same as that of capitalist countries, it is severely limited in other ways. As with ownership, "obligation" is defined in words which are almost 2,000 years old: "By virtue of an obligation, one person (the debtor) is bound to perform in favor of another person (the creditor) some defined action, such as: to transfer property, carry out work, pay money, etc., or to refrain from some defined action, and the creditor has the right to require the debtor to perform his duty."[37] About 200 A.D., the Roman lawyer Iulius Paulus said the same: "The substance of obligations . . . consists . . . in that another is bound to us to transfer something or to do something or to provide some service."[38]

Here, the Soviet context again determines a new function. The types of obligations permitted the citizen—contractual arrangements—are *only* those needed to satisfy his or her personal needs. Thus, the contract of partnership is defined in traditional terms but citizens may form partnerships only "for the satisfaction of personal domestic needs."[39] The contract of loan is expressed traditionally, but citizens who lend may not charge interest.[40] And all of the law of contract is dominated by an article which invalidates transactions which are deliberately contrary to state or social interests; if both parties know of this contrariness, everything received by each under the deal is forfeited to the State.[41]

The interaction between the limits Soviet law places upon the laws of property and contract are exemplified by a case reported in

34 R.S.F.S.R. CIV. CODE art. 105 (1964). *See also* LAW IN E.E., *supra* note 22, at 419.

35 R.S.F.S.R. CIV. CODE art. 111 (1964). *See also* LAW IN E.E., *supra* note 22, at 422.

36 1 BIULLETEN NORMATIVNYKH AKTOV (Bulletin of Normative Acts) 33 (1983). *See also* LAW IN THE 1980's, *supra* note 20, at 116-17.

37 R.S.F.S.R. CIV. CODE art. 158 (1964). *See also* LAW IN E.E., *supra* note 22, at 434.

38 DIG. JUST. 44.7.3.

39 R.S.F.S.R. CIV. CODE arts. 434-37 (1964). *See also* LAW IN E.E., *supra* note 22, at 501.

40 R.S.F.S.R. CIV. CODE arts. 269-70 (1964). *See also* LAW IN E.E., *supra* note 22, at 459.

41 R.S.F.S.R. CIV. CODE art. 49 (1964). *See also* LAW IN E.E., *supra* note 22, at 405.

1980.[42] "A" owned a car and wanted to sell it to "B." As stated above, although the general law of ownership appears to permit owners to dispose of their property, particular limits are imposed on automobiles: sales must be made *via* a state commission shop at listed prices. A's deal proceeded in the authorized way at the official price of 2,750 roubles. But B subsequently (and privately) paid A an extra 3,450 roubles. When the local procurator began to investigate this, the seller first explained that the extra money was for spare parts he had sold. The buyer said it was for seat covers. Nonetheless, during the investigation, A gave the extra money back and got a receipt from B.[43]

The case, litigated at four levels in the courts of the relevant Republic, wound up holding (1) that, whatever might be wrong with the extra payment, the official sale of the car was valid and stood; (2) that the side payment was knowingly contrary to the interests of state and society and so ought to be recoverable by the State Treasury from the seller; but (3) since A had given the extra roubles back to the buyer, such monies could not be recovered from either of the parties.[44]

The USSR Supreme Court vacated the lower rulings and remanded the case for a new hearing. The Court stressed that the buyer was to participate. The only help which the Soviet Supreme Court gave the lower tribunal was its order that the lower court elucidate the true circumstances of performing the basic and supplementary legal transactions, and adopt a decision in accordance with the requirements of the law.[45] This may have meant no more than that, one way or another, the local authority should recover the side payment. This would not be a very efficient way of limiting private trade; for even if the *buyer* has to disgorge the extra roubles, he was already quite prepared to pay *someone* that sum for his car.

Perhaps the Soviet Supreme Court was hinting that both the sale of the car and the side payment were unlawful. In that case, the buyer will lose the car and will have to hand over the side payment as well. The seller, moreover, will have to hand over the amount of the official price which he received. If this is the intended result, then the Soviet constraints on property and contract rights are very binding indeed.

I turn now to Soviet tort law. Again, one finds the basic norms expressed simply—even elegantly. For ordinary activities the de-

42 8 SOTSIALISTICHESKAIA ZAKONNOST (Socialist Legality) 74, 75 (1980), *translated in* LAW IN THE 1980'S, *supra* note 20, at 308-10.

43 *Id.*; LAW IN THE 1980'S, *supra* note 20, at 308-09.

44 *Id.*; LAW IN THE 1980'S, *supra* note 20, at 309-10.

45 *Id.*; LAW IN THE 1980'S, *supra* note 20, at 310.

fendant is liable for damage caused by his negligence.[46] If the defendant engages in ultrahazardous activities, he is strictly liable.[47] The Soviet scheme is, thus, the same as that of the American Restatement (Second) of Torts; although the Soviet version, which dates from 1922, is earlier. There is, of course, a twilight area of activities which do not fall clearly into either one of these two categories. Nevertheless, on the whole, the Soviet courts have provided sensible answers to this problem.[48]

As with property and contract law, the Soviet difference is not in the tort law rules. Rather, it is found in other parts of the system, particularly in the area of liability insurance. The Soviet Union has a state insurance firm which issues the usual fire, accident, and endowment policies. Yet it is forbidden to cover the tort liability of USSR citizens. Since motoring is an ultrahazardous activity in the Soviet Union (legally), it is easy for the pedestrian injured by a vehicle to obtain judgment in his favor. But getting compensation from a private motorist is quite a different matter. There is simply no permitted insurance coverage.

The reason Soviets give for this pertains to their world view of fact. The Soviets apparently believe (as a "scientific fact") that tort liability deters careless driving; and, that if this liability could be covered by insurance, drivers would be even more negligent. Consequently, "civil liability insurance—so widespread in capitalist society—is, in principle, categorically inapplicable to socialist society and law."[49] Thus, although Soviet law looks like the laws with which we are familiar, it works quite differently.

3. The Interrelationship of Legal Rules and Scientific Socialist Norms

The third reason for the survival within Soviet law of the familiar ancient maxims is peculiar to socialism: the rules of the legal system do not function in isolation from other socialist norms. The private law of Western countries, even if it contains largely the same formal rules, is somewhat isolated (or insulated) from all the other norms imposed by morality, ethics, social bonding, and political creed. Western compartmentalization of the norms appears not merely natural but also (at least somewhat) proper.

If I were convicted of theft and the judge wrote a confidential

46 R.S.F.S.R. CIV. CODE art. 444 (1964). *See also* LAW IN E.E., *supra* note 22, at 503.

47 R.S.F.S.R. CIV. CODE art. 454 (1964). *See also* LAW IN E.E., *supra* note 22, at 505.

48 *See* Rudden, *Soviet Tort Law*, 42 N.Y.U. L. REV. 583 (1967); Rudden, *The Role of the Courts and Judicial Style Under the Soviet Civil Codes*, in CODIFICATION IN THE COMMUNIST WORLD, 19 LAW IN E.E. 317 (F. Feldbrugge ed. 1975).

49 Rakhmilovich, *O strakhovanii grazhdanskoi otvetsvennosti* (On Civil Liability Insurance), 4 SOVETSKAIA IUSTITSIIA (Soviet Justice) 21 (1962).

letter to my parish priest, I would be not merely embarrassed but also shocked. And this is true even though I know that theft is not merely a crime but also a sin. I should be equally surprised if he wrote of my crime to my employer.

Soviet socialists, by contrast, quite deliberately seek to blur the boundaries between legal, political, ethical, and social pressures. They seek to enforce not only Soviet legal rules, but also Soviet moral (social) standards: to institutionalize these rules and place their control in the hands of various local organizations managed by the miscreant's peers. These are not legal bodies; they are not direct organs of the State; they are professional or neighborhood groups: the trade union at the workplace, or the comrades' court elected from among the violator's neighbors in his apartment block.

The 1977 Constitution refers four times to "morality"[50] and in other places imposes standards of honor, decency, and constant concern for public opinion (article 9). "Labor collectives shall . . . nurture their members in the spirit of communist morality" (article 8), "the State shall concern itself with . . . the moral and aesthetic nurturing of Soviet people" (article 27), and "[t]he duty and matter of honor for every citizen . . . shall be conscientious labor" (article 60). Similarly, the RSFSR Code on Marriage and the Family provides that "the family is based on the principles of communist morals" (article 1), while the National Education Act imposes on parents the duty "to cultivate in their children a spirit of high communist morality" (article 77).

Soviet criminal laws speak of *kara*—atonement; they provide that, for certain minor offenses, the court may drop the proceedings and refer the accused to his social peers, at work or at home. However, the court is not permitted to do this where the accused persists in a plea of not guilty. One may see this as an interesting type of plea bargaining or as an instance of the call to "repent and be saved."[51]

At the investigatory stage, when "the fact of the crime is obvious and the person who committed it may be corrected by measures of social pressure," the procurator may, instead of filing charges for minor crimes, send the dossier to an informal tribunal of peers (the comrades' court) or to a social organization made up of the accused's workmates.[52] Similarly, where someone files an information concerning conduct which is a disciplinary offense or a

50 U.S.S.R. CONST. arts. 8, 13, 27, 35 (1977). *See also* BASIC DOCUMENTS, *supra* note 11, at 5-6, 6-7, 9, 10.

51 R.S.F.S.R. CRIM. CODE art. 52 (1977). *See also* LAW IN E.E., *supra* note 22, at 80.

52 R.S.F.S.R. CODE OF CRIM. PROC. art. 10 (1970). *See also* LAW IN E.E., *supra* note 22, at 165.

breach of "the rules of socialist communal life," the procurator may send the accused's dossier to a tribunal of his peers.[53] And for all criminal cases which end in a guilty verdict, the court must—where appropriate—"bring such facts to the attention of a social organization comrade's court, collectives of working people, or the administration of the appropriate enterprise or institution for the taking of social, disciplinary, or administrative measures of pressure."[54]

It is much the same in the routine civil law, in cases on property, inheritance, housing leases, and road accidents. First of all, the RSFSR Civil Code provides that, in exercising their rights, citizens must comply with the moral principles of a society which is building communism.[55] Then, when a case comes to trial, if the evidence in the suit reveals violations of the rules of socialist community life, not just by the parties but by anyone, the court may report the violations to the appropriate peer group.[56] These peer groups, such as the comrades' court, may *not* impose heavy financial penalties.[57] They may, however, recommend, for instance, that the miscreant be struck off the housing list.[58]

For many people, the psychological effect of organized and public disapproval will be sanction enough. This can be shown by examining the use of "neighbors" in Soviet law. For some misconduct both civil and criminal penalties exist. But they are often not used. For instance, although, as in most countries, the Soviet State may prosecute a father who deliberately fails to contribute to the support of his dependent family, and enforce a judgment against the father by attachment of his earnings, "[m]any procurators behave correctly in handing over the facts about defaulters for adjudication at meetings of workers' collectives and comrades' courts."[59]

Thus, we read that:

> The Vygonichskii procurator . . . put Cherkasov's behavior before a meeting of the inhabitants of the village of Uta. More than 200 people came. Those present told him to find himself a job at once and to make regular payments of maintenance.

53 R.S.F.S.R. CODE OF CRIM. PROC. art. 113 (1960). *See also* LAW IN E.E., *supra* note 22, at 199.

54 R.S.F.S.R. CODE OF CRIM. PROC. art. 209 (1960). *See also* LAW IN E.E., *supra* note 22, at 236-37.

55 R.S.F.S.R. CIV. CODE art. 5 (1964). *See also* LAW IN E.E., *supra* note 22, at 394.

56 R.S.F.S.R. CODE OF CIV. PROC. arts. 42 & 225 (1980). *See also* LAW IN E.E., *supra* note 22, at 559, 610-11.

57 R.S.F.S.R. Comrades Court Statute 1977 (as amended 1982), 12 VEDOMOSTI R.S.F.S.R. 254 (1977); 49 VEDOMOSTI R.S.F.S.R. 1822 (1982), *translated in* BASIC DOCUMENTS, *supra* note 11, at 238.

58 State housing is allocated on a listed priority basis. Other sanctions include censure, public and published reprimand, and fines up to 50 roubies.

59 Nikivorov & Merkulova, *Okhrana prav zhenschin i detei* (Protection of the Rights of Women and Children), 12 SOTSIALISTICHESKAIA ZAKONNOST (Socialist Legality) 35, 36 (1960).

> Cherkasov carried out the decision of the meeting; he was accepted as a member of the collective farm and paid off the arrears.[60]

Another normative connection between Soviet law and scientific socialism is the Communist Party. Article 6 of the 1977 USSR Constitution provides that the Party is the "guiding and directive force of Soviet society and the nucleus of its political system and of state and social organizations." There is no doubt whatsoever that the latter include the courts.

The USSR Supreme Court Bulletin prints a report of the Court's party meeting which "made it an obligation of communists to react sharply in uncovering court errors when reviewing complaints and statements of citizens."[61] The converse process occurs when the Supreme Court itself issues a direction on "improving the administration of justice in the light of party decisions."[62] The decree is addressed to all lower courts and draws their attention "to their obligation to improve still further the level of administration of justice, bearing in mind that all their activity must be carried out in accordance with the tasks assigned by the Party."[63] The Party is also the nucleus of the Procurator's Office. Its standard work on criminal evidence emphasizes that "the most important principle of our theory of cognition is the principle of communist party-mindedness of our outlook."[64]

D. *The Purpose of the Interrelationship Between Soviet Norms and Law*

The aims of the Soviet overlapping of norms and statutes are as follows: (1) to produce the desired behavior; (2) to blur the distinction between moral or social obligations and those imposed by law; and (3) to reinforce the "scientific" basis of the whole system.

Orthodox Marxism recognizes that the socialist superstructure may react on its own infrastructure, including its epistemology. Thus, the Great Soviet Encyclopedia of 1972 states that "Marxism-Leninism is hostile to any attempts at revision of its scientific ideology" and that "law is a factor in molding communist consciousness."[65] In a similar vein, Soviet jurists emphasize what they see as a new—and specifically socialist—feature of their law: "Soviet law does not limit itself to traditional functions. To it belongs a new

60 *Id.*
61 6 Bull. Verkh. Suda S.S.S.R. 19, 21-22 (1981) (Sup. Ct. U.S.S.R.).
62 3 Bull. Verkh. Suda S.S.S.R. 7 (1976) (Sup. Ct. U.S.S.R.).
63 *Id.*
64 U.S.S.R. PROCURATORS' OFFICE, TEORIIA DOKAZATEL'STVA V SOVETSKOM UGOLOVNOM PROTSESSE (Theory of Evidence in Soviet Penal Procedure) 42 (1966).
65 20 BOLSHAIA SOVETSKAIA ENTSIKLOPEDIIA (Great Soviet Encyclopedia) 478 (1972) (Pravo) (Law).

function, unknown to all previous types of law—that of educating workers in a spirit of high consciousness."[66]

Soviet laws influence behavior in concrete cases, of course. But,

> They go further and not infrequently bring about greater or lesser alterations in the spiritual world of the individual. . . . The Soviet system has as its aim the attainment of a profound understanding by each person of the *correctness* of the legal and moral norms and of . . . the *inevitability* of observing them.[67]

II. Conclusion

I began with a discussion of the new revised draft of the Party Program, and shall end by observing that this revised program emphasizes the task of forming in the Soviet people a "scientific outlook, worldview."[68] It is scientific socialism which determines the adoption of laws both legal and moral; and, the laws themselves reveal the "correctness" of scientific socialism.

What we hear is *feedback*. Soviets describe the world of fact according to a particular "scientific" system. This leads, readily enough, to certain laws and norms. Finally, these rules include an obligation to *believe* the scientific nature of the description which provoked the law and norms themselves. Once this is accepted, the system is sewn up. Soviet socialism must be scientifically true. Why? Because Soviet law says so.

66 Baimakhov, *Sochetanie pravovogo i nravstennogo vospitaniia lichnosti v obshchestve razvitogo sotsializma* (Combination of Legal and Moral Education of the Personality in a Society of Developed Communism), 12 SOVETSKOE GOSUDARSTVO I PRAVO (Soviet State and Law) 31, 34 (1977).

67 *Id.* (emphasis added).

68 Izvestiia, Oct. 26. 1985, at 4, col. 3. The Russian word "mirovozzrenie" (translated here as "worldview") is perhaps best translated by the German "weltanschauung."