

Division of Research
Graduate School of Business Administration
The University of Michigan

February, 1980

Continuity and Change in East European Law
during the Early Post-War Period, 1945-1965

by George D. Cameron III

Working Paper No. 206

FOR DISCUSSION PURPOSES ONLY

None of this material is to be quoted or
reproduced without the express permission
of the Division of Research.

Nearly everyone is aware of the massive political, economic and social dislocations caused by World War II. Western colonialism was engulfed in a wave of nationalism. Communist regimes were installed in Eastern Europe, China, and North Korea. National boundaries were redrawn, and millions of people physically relocated. The economies of much of Europe and Asia lay in ruins. What is not so clearly perceived is that these problems also had a legal dimension.

In Eastern Europe, the job of economic and social reconstruction was complicated by the need to "de-Nazify" the political and legal system. At the same time, these countries were being required to adopt the socialist system for virtually all phases of national life. This paper traces the efforts of the East European nations to restructure their legal systems to meet these problems. It begins with a brief look at the area's pre-Nazi legal institutions and ends with the adoption of the Czech and Polish civil codes in 1964, which present two quite different approaches to legal reconstruction.

I. Historical Background of East European Law.

Taken from a historical perspective, the legal systems of the East European nations present an imposing and somewhat bewildering array of ideas, institutions, and practices. The pre-Communist legal systems of these countries ranged all the way from the highly sophisticated and modern codes found in Poland to what was essentially a kind of "common law" system in Hungary. The partitioning and re-partitioning of this area, and its conquest and reconquest by outside Powers, left residues and influences from the Law of Byzantium, Turkey, Russia, Germany, Austria, and others. Against these outside influences the indigenous traditional legal ideas struggled to maintain their existence. The net result has been that the legal systems within these countries have tended to be fragmented and lacking in uniformity, with two or more sets of legal rules being applied in different geographical areas within the same country. This fragmentation is particularly noticeable in the Private Law area (Marriage and Family Law, Inheritance, Property, etc.), and in countries like Poland and Yugoslavia.

Thus, pre-war Poland had four different sets of rules dealing with Family Law (and with Civil Law generally): the German Code of 1896 was in force in the western provinces; the Code Napoleon and the Law of 1836 in the central provinces; the Russian Law of 1840 in the eastern provinces; and the Austrian Code of 1811 in the southern provinces.¹ In this very basic sense, then, the reconstituted Poland continued to be "partitioned" during the entire inter-war period. Attempts at a unified codification of this area of the law were unsuccessful.

The situation in Yugoslavia was much worse; this patchwork-quilt of a nation had at least six completely separate legal systems, with different substantive and procedural laws, and different judiciaries. Some

unification did take place between the World Wars. Public law, including administrative law, criminal law and procedure, and punishment, was unified at the federal level. Some areas of private law (civil procedure,² negotiable instruments, labor law, and corporations) were also unified, but the efforts to draft a uniform Yugoslav Civil Code covering the private law topics in a systematic way were not successful. A Yugoslav lawyer described the pre-war situation as follows:

Pre-war Yugoslav private law was very much influenced by Austrian private law. As a matter of fact, the Austrian Civil Code, enacted in 1811, with all supplementary legislation up to 1918 remained in force in Slovenia and Dalmatia. (The) Serbian Civil Code, enacted for Serbia in 1844, was very similar to the Austrian Code, and "westernized" Serbia. The most original law was the law of Montenegro embodied in its Proprietary Code of 1888. It preserved the features of old Slav law. In Croatia and Slavonia, the Austrian Civil Code was enacted in 1856 with supplementary legislation up to that time. From that time on, the code was supplemented by particular enactments valid for Croatia and Slavonia only. The law of Vojvodina was influenced by Hungarian law, which was in the continental sense "unwritten" law, not enacted by the legislature.

Commercial law . . . was based on the German Commercial Code of 1860. It was still the law in territories that had been Austrian crownlands (Slovenia, Dalmatia). In those territories, special commercial courts with participation of laity were preserved.³

While Yugoslavia is clearly the most extreme example of this pre-war lack of uniformity, such internal legal contradictions also existed in a lesser degree in other nations which had been parts of the Austro-Hungarian Empire. In Czechoslovakia, for example, the constitution of the new republic had declared that the old private law from the Empire would continue in force unless and until subsequently repealed.⁴ But the "conflicts" problem still existed:

The only difficulty present was the fact that the laws of Austria were different from the laws of Hungary, although the principles were very much alike. Consequently, there were two legal systems co-existent in the Czechoslovak Republic, to wit, the former Austrian law in Bohemia, Moravia and Silesia and Hungarian law in Slovakia and Carpatho-Ruthenia.

Extensive efforts to unify these two systems had only partly succeeded when the dismemberment of Czechoslovakia put a halt to these activities.⁵

In Rumania, the provinces of Transylvania, Bukovina, and Bessarabia, which had been returned to Rumania after World War I, retained, for some time, parts of the foreign laws to which they had been subject. The Rumanian Civil Code was extended to Bessarabia in part in 1919, and fully in 1928. This did not occur in Bukovina until 1938, and in Transylvania until 1943 (after the attempt to implement the new Civil Code of 1939 had finally been abandoned). Thus the Rumanian Civil Code of 1865 finally did become the law for the entire country.⁶

Unification of the laws also occurred in Albania in the inter-war period, with the adoption of the Albanian Civil Code of 1928, which drew upon the French, Italian, German, and Swiss Codes. During the period of its existence as an independent nation prior to 1928 (i.e., since 1912) Albanian law was an admixture of the Turkish Civil Code, the Moslem Feriaz and Vesaya for inheritance matters, and three different systems of rules on domestic relations--the Corpus Juris Canonici for Catholics, the Byzantine Ecclesiastical Law for the Orthodox, and the Sherya for Moslems.⁷ The 1928 Code thus represented a substantial step towards a national system. Schlesinger says, however,:

In spite of the adoption of some codes influenced by French and Italian models, it seems that Islamic and Ottoman influences were predominant in the pre-Communist legal system of Albania.⁸

Hungary's legal problems were of a different nature, due to its very different historical development. In that country there had been no "reception" of the Roman Law, nor had there ever been a codification on the grand scale, as had occurred in France, Austria, and Germany.⁹ Instead, during its thousand-odd years of existence, the Hungarian monarchy had relied on its courts to work out a common-law system,

somewhat similar to that of England. Statutes were not unknown in this system, particularly in the public law areas; a comprehensive Criminal Code was enacted in 1875-8 and it had been amended many times.¹⁰ Although there was no written constitution, the Arany Bulla of 1222, the Pragmatica Sanctio of 1723, and the Compromise of 1867 were considered "basic laws."¹¹ The vast bulk of "The Law," however, continued to be found in the customary rules regulating personal behavior, as those rules were announced and enforced in the decisions of the Hungarian courts. The Royal Curia had the power to summarize these rules by rendering what were called "leading decisions" (dontveny; jogegysegi hatarozat).¹² While the law within the greatly reduced pre-war Hungary¹³ was uniform, it was hardly unified. As is true of any common-law system, it suffered from uncertainty, unknowability, and lack of correlation between the various fields of law.

The conquest of Eastern Europe by Nazism and Fascism provided new strains on an already fragile legal fabric. Whether there was a complete subjugation of local judicial institutions (Poland), or whether the local tribunals were permitted to function within a severely restricted area (Czechoslovakia), or whether the Fascist regime was a home-grown variety (Hungary), the end result was the same: the Rule of Law and the stability of laws suffered greatly. This imposition of arbitrary statutes and decrees was simply one more example of the tangled legal history of the region; a few more eggs were scrambled into the previously-existing confusion. New attempts at codification and integration would have to await the end of the War.

II. Advent of Communism and the Problem of Continuity.

With the destruction of Nazi power and the liberation of Europe, including Germany, from Nazi rule, there was a feeling that a determined effort should be made to restore the legal status quo ante, by repealing the odious Hitlerite statutes, decrees, and decisions. This attitude was as characteristic of the Western leaders as of the Russians; both sides had agreed at Potsdam on the necessity for purging Nazi laws from the German statute books. The Potsdam Agreement (Part III, Section A, paragraph 4, page 12) required that:

All Nazi laws which provided the basis of the Hitler regime of established discrimination on grounds of race, creed, or political opinion shall be abolished. No such discrimination, whether legal, administrative or otherwise, shall be tolerated.¹⁴

Acting pursuant to this directive, the Allied Control Council for Germany passed Control Council Law No. 1, which repealed some 25 statutes in whole or in part and also contained a general prohibition against applying any law in an arbitrarily discriminatory manner.¹⁵

The real problems, in Germany, arose in trying to apply these general (and ambiguous) provisions to specific parts of the legal system, since the Nazi and the pre-Nazi law had been interwoven to such a considerable extent in many areas. Understaffed legal advisory departments handled the job on a day-to-day basis, as best as they could.¹⁶ Several observers pointed out the dangers which might arise from "abolishing" all Nazi law without being able to replace it with a working structure.¹⁷

The German Civil Code was not repealed in its entirety, even though that might at first blush seem to be the obvious way of solving the problem. It remained on the books in both West and East Germany.¹⁸ In general, the policy of the Western Allies was, by careful surgery rather

than by wholesale repeal, to attempt to restore German Law and the German judicial system to the situation which had existed prior to the Nazi regime.¹⁹ Again, the problem in implementing this objective was that not all "Nazi law" could be located by a simple examination of the statute books. In commenting on this problem, H. O. Pappe noted:

Altogether, administrative and judicial abuses of law appear to have accounted for more of the knotty legal problems of the post-Hitler era than did the legislative enactments of the regime. Moreover, not all decisions arrived at on the basis of objectionable statutes were objectionable per se, while many decisions based upon pre-Nazi statutes were. Neither a purely legislative nor a purely judicial review of the Nazi legacy could offer a comprehensive solution.²⁰

The "continuity" problem thus existed in both West and East Germany, but with different dimensions. After the formation of the Federal Republic of Germany, its Constitutional Court adopted a sociologically-oriented, compromise solution to his problem,

. . . a solution which permits the courts to weed out the unwholesome, while preserving such legal relationships as, though based on Nazi enactments, require preservation in the interest of legal continuity and order.²¹

The problem took on added dimensions in East Germany due to the fact that the new regime there was committed to a program of revolutionary social and economic change. There, it would not be enough just to remove the Nazi legality; it would be necessary to transform the former bourgeois legal system itself, to provide a backbone of "revolutionary legality" for the transition to socialism.

While all the other countries of Eastern Europe were also interested in purging any Nazi-Fascist elements from their national legal systems, it was the revolutionary transformation to socialism which created their most obvious "continuity" problems. (These two aims may have overlapped to some extent, but this was probably accidental rather than planned.) Much if not all of the old public law--constitutional,

administrative, criminal--would have to be repealed. Some private law areas would likewise have to be repealed or modified to permit the proper functioning of the new order; the area of family law, for example, would require both removal of any Nazi laws and provision for the new socialist rules. Another obvious private law area in need of modification was property law, where the old exploitative relationships had to be exorcised and the new socialist property concepts introduced.

There was not a completely uniform set of responses to this common problem. The most obvious solution, the "total" repeal of prior bourgeois law by special decree, a la Soviet, was used in only two of the East European countries: Yugoslavia and Bulgaria. Section 1 of the Yugoslav Law of October 23, 1946, declared that all enactments of the occupation forces and their collaborators were "non-existent," while Section 2 declared that the laws which were in force on April 1, 1943 (the date of the German occupation) "have lost their legal effect."²² But there was a good deal of hedging as to just what this second provision meant. Attempting to refine this latter phrase, Section 4 further divided this category of pre-Nazi, bourgeois laws into those which were, and those which were not, in conflict with the federal and republican Yugoslav constitutions, or laws, or "the principles of the constitutional order."²³ Those in conflict with the new legal order were clearly repealed; those which were not could be declared still in force by the praesidia of the federal or republic assemblies. However, in interpreting the old laws, courts and agencies could not use interpretations made by their bourgeois predecessors.²⁴ In addition, and perhaps as the most basic exception of all to this official doctrine of discontinuity, the organized Bar in Yugoslavia was never officially disbanded.²⁵ Thus despite the repeal of much of the old Yugoslav law,

and the new controls to which lawyers were subjected, the Yugoslav Bar was able to maintain its identity, influence, and professionalism to a much greater degree than had been the case in Soviet Russia.²⁶

The other country enacting a special repeal statute of general effect was Bulgaria. It became the leading East European nation in terms of agricultural collectivization; 97% of its farms, with 85% of its arable land, were collectivized.²⁷ And it was apparently determined to make a similarly-broad, revolutionary transformation in the legal field. Its special repeal Law of November 20, 1951, stated:

All laws and legislative acts enacted prior to September 9, 1944, are hereby repealed and made ineffective as contrary to the Dimitrov Constitution (of 1947) and the socialist legislation enacted in Bulgaria after September 9, 1944.²⁸

In addition to these two special repeal statutes, there were also constitutional provisions adopted in several countries which related to the continuity problem. The constitutions of Yugoslavia (1946), Rumania (1948), Czechoslovakia (1948), and East Germany (1949) contained sections abrogating prior conflicting laws.²⁹ On its face, the language used in these provisions does not appear much different than that found in some non-socialist constitutions; it is the extensiveness of the socialist constitution, especially as regards property relations and similar personal matters, which produces the more widespread repeal of prior private law.

In Hungary, the common-law nature of the legal system produced a different initial response. The new Hungarian Supreme Court was ordered by decree in 1949, ". . . to review, annul, amend, or sustain the leading decisions of the Royal Curia."³⁰ Presumably this meant that there had been no total repeal of the old legal rules, but that it was up to the Supreme Court to figure out which were applicable to the new social and

economic situation and which were not. The Polish courts were given similar instructions, probably as a result of the generally confused state of Polish law.³¹

In any event, to whatever extent the old bourgeois principles were allowed to remain temporarily in force, they were to be interpreted in a new spirit and given a new content. As to whether this new, socialist content was created automatically by the coming to power of the new regime, or whether it was to be worked out area by area by the judges and lawyers, there was some difference of opinion. Those suspecting a lack of revolutionary fervor on the part of the legal profession were reluctant to give the judges and lawyers so much discretion in formulating the rules of the "socialist common-life." On the other hand, the judges and lawyers argued that this problem was essentially a legal one and that the legal method was the most appropriate for its solution.³² Given the realities of the situation--the uncertainties, the inconsistencies, the social and economic flux during the early transitional stage--the courts necessarily had to be given a considerable amount of latitude in applying the legal rules.

III. Sovietization of East European Law.

The initial stages of this process of pouring new socialist legal "wine" into the old bourgeois legal bottles may be described generally as a process of "Sovietization." But the problem involved much more than a simple copying of the Soviet codes then in force. It was necessary, in many areas, that a unification and true "nationalization" of the law take place first, or at least that this be part of the process.

In any case, there was little in the Soviet legal system, in terms of legal substance, which could be applied to the East European nations. The administrative structure of Soviet justice, with its procurator, people's courts, people's assessors, et al., could be copied. So could some aspects of Soviet court procedure, and some parts of the criminal law, especially those dealing with "economic crimes" against the new socialist property system. But in general, the Soviet codes of the NEP period were badly outdated, uncertain of application, and subject to some question on ideological grounds.³³ A movement was afoot to re-examine the functioning of these legal codes in the Soviet socialist society, and perhaps to do a substantial redrafting job on them at the All-Union level.³⁴ The role of law in Soviet society had not been definitively established on solid theoretical grounds.

Perhaps the most authoritative statements regarding the nature of these NEP codes had been made by Lenin himself, in State and Revolution. While not generally concerned with legal problems, he did paraphrase Marx and Engels on the role of law after the Revolution:

In the first phase of communist society (generally called socialism) "bourgeois law" is not abolished in its entirety, but only in part, only in proportion to the economic transformation so far attained, i.e., only in respect of the means of production. "Bourgeois law" still recognizes them as private property of

separate individuals. Socialism converts them into common property. To that extent, and to that extent alone, does "bourgeois law" disappear.³⁵

Lenin had thus indicated that the law which would be in force during the dictatorship of the proletariat would consist of both bourgeois law and socialist law; the bourgeois elements would not be eliminated until the final stage of communism was reached. Lenin went on to point out that Marx considered this continuation of bourgeois legality as a "defect" of the transitional period,

. . . but it is unavoidable during the first phase of communism; for if we are not to fall into utopianism, we cannot imagine that, having overthrown capitalism, people will at once learn to work for society without any standards of law; indeed, the abolition of capitalism does not immediately lay the economic foundations for such a change--and there is no other standard yet than that of "bourgeois law." To this extent, therefore, a form of state is still necessary.³⁶

Since the "People's Democracies" of Eastern Europe were clearly transitional in nature,³⁷ there seemed to be solid theoretical bases for permitting at least some of the pre-revolutionary, pre-war bourgeois law to remain in force--temporarily. Moreover, since it was precisely this law which needed modernization and unification, the new regimes in Eastern Europe undertook those tasks along with that of making the necessary "socialist" adjustments in their national legal orders.

In Poland, for example, while new codes were adopted in many areas of the law, many of them had no particularly "socialist" content, and their language had been taken over verbatim, or nearly so, from the pre-war drafts dealing with these subjects. Church opposition prior to the War had prevented the new draft family code from being enacted. Now, with the Communist Party in control of the political machinery of the country, any such opposition could be overridden, and was. The same

basic situation existed in most of the other areas covered by the new Polish codes; according to Rudzinski:

. . . the task of unification of civil law, by decision of June 12, 1945, was declared by the Council of Ministers . . . to be of great urgency, and the Ministry of Justice was instructed to prepare the respective statutes. The speed with which the task was performed is quite remarkable. During exactly seventeen months, sixteen statutes were enacted by governmental decrees covering personal status, marriage law, law on property relations in marriage, statute on vital statistic records, domestic relations, guardianship and curatorship, property law, statute on real estate records, inheritance and succession law, and general provisions of the civil law as well as the respective introductory and transitional provisions to each of them and some procedural statutes.³⁸

But the real credit for this outpouring of unifying and modernizing legislation goes not to the Communist government, but to the careful and agonizing work of the pre-war codification commissions. In only three areas--inheritance, persons, and general provisions--were there no ready-made pre-war drafts. Even some of the personnel was the same, and several of these former bourgeois lawyers received decorations from the Communist regime in honor of their achievements in developing these "socialist" codes.³⁹

A family code which emphasized civil marriage ceremonies at the expense of religious ones, and which overrode Catholic doctrine by permitting divorce would clearly lessen the temporal power of the Church and its control over the lives of the Polish people. This result, of course, fitted in with general Communist objectives. But one should not then be led to conclude that Polish family law is in completely "communist," any more than one could say that the law of Nevada is more "communist" than that of Poland because Nevada has easier divorces.

Czechoslovakia presented many problems of a similar nature. Whatever the nature of the regime that might have prevailed in post-war Czechoslovakia, it would have had to deal with the problems of national

minorities, reintegration of the society, rebuilding the economy, etc. In other words, the Czech government had to deal with the problem of the degree to which Slovak autonomy would be permitted within the reconstituted state; this problem would have existed whether the national government had been capitalist, fascist, or socialist. The fact that the national government was communist, did, however, point towards a particular kind of solution. Because of an inherent distaste for autonomous power centers within its country, the communist regime would seem naturally predisposed towards an integrating, "all-Czechoslovak" approach. In the legal field, this sort of approach would be reflected in statutes which provided uniform national solutions to legal problems and which refused to recognize special status Slovak institutions. This was, in fact, the approach which was taken, so that the new Czech codes were truly national in scope, and the dualism in the country's legal system was repudiated to a considerable degree.

But there was no immediate wholesale repeal of the old legal concepts. Even though the Czech Constitution of 1948 was "communist-inspired," it retained, for the time being, the selection of all judges by appointment, in contrast to the elective system of the Soviet Union.⁴⁰ At the same time, people's assessors were added to all trial courts.⁴¹ Thus, both continuity and change, both conservative and revolutionary elements, were present in the post-war system.

In a mature state, revolution did not necessarily involve "the abolition at one stroke of the whole of one juridical system and its complete replacement by a new, revolutionary juridical system."⁴²

This initial compromise document gradually gave way before a process of continued sovietization. Judicial administrative was "fundamentally reorganized by constitutional and ordinary laws in 1952, which had

introduced the elective principle for all courts and had created a general procuracy on the Soviet model."⁴³ The regime, as early as 1950, also moved to further sovietize substantive and procedural law.

It enacted a new Communist Civil Code, a Code of Civil Procedure, and four Codes of Criminal Law--the Criminal Code of Criminal Procedure for Courts, the Administrative Criminal Code and the Code of Criminal Procedure for Administrative Authorities.

All these Codes, together with their later amendments of 1952, 1953, 1956 and 1957, apply to the entire territory of the State. Thus, these codes and their amendments achieved the unification of the Czechoslovak legal and judicial system.⁴⁴

These codes were officially proclaimed to be patterned after the Soviet model. The Cabinet message introducing the Civil Code, for example, stated:

Our pattern for this codification is first of all the Soviet Socialist Civil Law.

The main principles of the Soviet Civil Law as they are pronounced in the Stalinist Constitution are our guidance in the first line.

...

Besides the main principles of Soviet civil law, the starting point for the codification of our civil law is also the development of Soviet civil law.⁴⁵

But despite this official rhetoric, the gradualist approach taken by the Czechoslovak regime seems in marked contrast to the early radicalism of the Soviets themselves.⁴⁶

At least initially, a gradualist approach was also adopted in Albania. Law No. 61, adopted by the Presidium of the Anti-Fascist Council of National Liberation in 1945, provided that laws in force prior to April 7, 1939, ". . . shall continue in force also in the future if not contrary to the new democratic spirit, to the declarations, decisions and laws enacted by the Anti-Fascist Council of National Liberation of Albania, and the orders of the Democratic government."⁴⁷ Apparently there were some second thoughts on this provision, because Decree No. 392 of January 25, 1947,

. . . stated in effect that the entire legal system of the past was abrogated and only some pre-war norms were to be used as examples in judicial practice alone. The courts were permitted to use these whenever people's laws did not exist, and such rules were not contrary to the legal order.⁴⁸

The adoption of new statutes, however, was actually done on a piecemeal basis: Domestic Relations and Family Law in 1948, Inheritance in 1954, and Property Law and the General Part of the Civil Law in 1955.⁴⁹ In the interim period, and presumably in any area of the law not covered by "people's laws," the Albanian courts apparently continued to apply the old laws. All parts of a new, "communist" Civil Code were enacted in the period 1954-1957, although not all at the same time, so that it seems that the civil-law topics have now been covered completely.⁵⁰

IV. Modernization, Liberalization, and "Reform."

So long as the Soviet Union was accepted as the only model and the only path to socialism, Bloc countries would feel bound to pattern their own institutional developments after those of the U.S.S.R. At the same time, the sorry state of Soviet civil law made this all but impossible to achieve in the legal field. Obviously, the Eastern European countries had gone through a very different revolutionary experience, and their pre-revolutionary development had not been the same as that of Russia. To attempt to blindly copy the tortuous legal development of the Soviet Union, in the very different historical context of Eastern Europe, would surely have led to disaster and dislocations of great magnitude. Perhaps it was the realization of these considerations which led most of the states of East Europe to adopt a gradualist approach to the problems of the legal order.

The break-away of Tito's Yugoslavia and the rise of Mao's China opened the door to the possibility of alternative national roads to the same socialist millenium. The Hungarian Revolt of 1956 and Poland's assertion of increased independence from Soviet domination were but the most obvious examples of a growing tendency in Eastern Europe towards more national autonomy within the Bloc. Part of this movement has been an effort to find more truly national solutions to individual national problems, including legal ones.

But meanwhile, within the Soviet Union, the post-Stalin period had produced some truly remarkable reforms in the legal area, including the drafting and adoption of "Fundamental principles" for both criminal and civil law. At the 21st Party Congress, held in January, 1959, the demand had been made for new laws which would reflect the Soviet

society's movement into the "Stage of Communism."⁵¹ Khrushchev had already called for preparations to be made for the Communist stage, when the regulatory functions of the State (and Law) would be taken over by "public organizations."⁵² A new, more traditional definition of "Law" was adopted as part of this reform program, i.e.,

. . . a normative act enacted by the Supreme Soviet, creating general rights and obligation, of universal applicability, and having primacy over the acts of any other organ of governmental authority.⁵³

These new codes were adopted at the national (All-Union) level, and they corresponded roughly to the "General Part" found in most European civil codes. The more detailed provisions (the "Special Part") were to be adopted by each Republic, thus permitting some flexibility of approach to specific problems.⁵⁴ Such a federal approach could be an acceptable pattern for a country like Yugoslavia, or even Czechoslovakia or Poland.

Hand-in-hand with these new, comprehensive statutory enactments went a high-level theoretical discussion on the role of Law in the Communist society. According to the analysis of Dr. N. G. Aleksandrov, the senior legal theoretician of the Communist Party, the time had not yet come for the progressive "withering-away" of the State and Law to commence. But he did not rule out the idea that this progression can start at some future time, when Soviet man is more fully developed morally.⁵⁵ According to another leading legal theorist, A. I. Denisov:

For the state to wither-away entirely, it is essential that all adult citizens be comprehensively developed and trained and that they know how to administer the affairs of society by themselves. . . . Communist society and its members will have crossed the narrow, limited horizon of so-called bourgeois law, of whose vestiges under socialism Marx wrote in "Critique of the Gotha Program," and V. I. Lenin in "State and Revolution."

The question of so-called bourgeois law was subjected to detailed analysis at the 21st Party Congress. It was noted that the vestiges of that law (the legal form that had remained from capitalist society and that is unavoidable under socialism) would

vanish forever under complete communism. The form of the law, while endowed with certain (relative) independence, can express diverse and even dramatically opposite content.

Bourgeois law considers the means of production to be private property and pronounces it sacred and inviolable. Inasmuch as socialism turns these means into public property and proclaims it sacred and inviolable, it breaks fully and forever with bourgeois law.⁵⁶

Thus, paradoxically, at the very time when the Eastern European nations were successfully asserting their independence from Soviet leadership and Soviet influences, the Soviets were for the first time in a position to provide them with more realistic legal models at both the theoretical and practical levels. But these countries showed no indication that they were prepared to engage in a new round of uncritical aping of Soviet institutions, such as characterized the immediate post-war period.⁵⁷ They increasingly turned to their own legal history for solutions to current legal problems. There was a new recognition that their own national, pre-communist civil-law systems contained many highly developed rules which could be useful even in a country with a communist economy.⁵⁸ Moreover, a highly critical view was taken of then-current "socialist" law, including that found in the Soviet Union.

Thus, from the earliest stages of its deliberations (in 1957), the Polish codification commission was looking very objectively at all sources of Polish law.

In the course of discussion, practically no axiom which was considered fundamental for the socialist order in Polish law was spared criticism. It was admitted that the slavish imitation of Soviet law and institutions had disastrous effects in Poland. The dogma that socialist law is more nearly perfect only because it is the law of a higher stage of social development was thrown overboard. On close consideration the present situation in Poland was found to be far below the standards achieved in the past.⁵⁹

According to one of these critics:

In 1956 our minds go back to the legal situation under the rule of the partitioning powers in Poland one hundred years ago.

The Russian judicial reform of 1864 seems to be more than we can afford at present.⁶⁰

Even the Minister of Justice referred the commission to the work of its (pre-communist) predecessor for inspiration; he indicated that socialist legal theory would require a great deal of work before it achieved the same "precision of legal formulation" as had capitalist legal scholars. "Soviet legal achievements were dismissed as practically without significance, having contributed little if anything to the development of socialist legal concepts."⁶¹

After passing through at least six very different versions (the earlier ones being heavily Soviet-oriented), the new Polish Civil Code was finally adopted on April 23, 1964, to go into effect on January 1, 1965. It had been slightly preceded by the new Czechoslovakian Civil Code, which was enacted on February 26, 1964. (In both countries, new Family Codes were also adopted, but in separate enactments.)⁶² Although they differed from each other in many respects, these two Civil Codes showed the kind and quality of legal thinking then found in Eastern Europe.

The new Polish Civil Code was conservative, moderate, and stabilizing, rather than dynamic and revolutionary. It followed the traditional Western pattern of organization: Book I. General Part; Book II. Property and other rights in re; Book III. Obligations; Book IV. Inheritance (Estates). Its major organizational divergence from tradition was the separation of Family Law, and in this it followed the Soviet Union. It also excluded some other specialized subjects, such as negotiable instruments, patents and copyrights, and mortgages. Its provisions were quite detailed (1,088 articles) and largely free of ideological claptrap.

In crass contradiction to the Czechoslovak code, a strong effort is evident throughout the Polish code to preserve and maintain the integrity and unity of civil law inside its new confines (after family law has been left out), not merely in the purely scholarly sense, as an academic teaching subject or in juridical textbooks, but as a branch of legislation as well, Civil law has to cover and regulate in a single code all forms of property and all commodity-money relations entered into on the basis of legal equality of the parties.⁶³

The Polish Code, recognizing existing realities, established three main categories of property--"social," "personal," and "private." The first and last categories were further subdivided. Social property included both state property and cooperative property; private property, both the individual farms of working peasants and individual property of a capitalist character (e.g., rental real estate). A hierarchy was established, based on the degree of legal protection which was afforded to each category. Social property enjoys the "special" protection of the law, with many special privileges (and with more for "state" than for "cooperative"). Personal property was given the "complete" protection of the law. The individual farms of working peasants get legal "protection" (sans adjective), while no constitutional-legal guarantee was made for capitalist-type property, even that of artisans.⁶⁴ The permanence of treatment given to the first four types--including the peasant's private property--indicated that these four types were expected to exist for some time. The special inheritance provisions designed to preserve the size and unity of existing peasant farm units is further legal evidence that this institution was accepted as a more or less permanent part of the Polish economic structure.⁶⁵

In other areas as well, a decided conservative bias was noticeable. "The same tendency to preserve as far as possible uniform and general legal regulation and traditional legal concepts is evident in the field of obligations."⁶⁶ Although special rules were introduced for some

transactions, the section covered generally all exchanges of goods and services, regardless of the nature of the parties to the transaction-- socialist enterprises; citizen and socialist enterprise; citizens; or the state and foreign nations. While a special body of "Economic Law" a la Pashukanis⁶⁷ was rejected, the fact of national economic planning was recognized in the code by the creation of a "duty to contract," which may be incumbent on both sides.⁶⁸

At least in the area of Tort Law, the drafters admitted their conservative preferences.

When explaining in the official comments accompanying the last draft why the traditional principle of culpability (French principle of faute) was retained as basis for liability for damages, they stress that it was done "in spite of theoretical doubts" because it "made possible the retention in force of a rich body of judicial decisions which solve in accordance with social needs the many problems raised by the accepted provision."⁶⁹

In doing so they rejected Soviet strict liability concepts.⁷⁰ They also rejected the Soviet idea that there should be no recovery of money damages for "pain and suffering" caused by tortious conduct; in this they went back to the traditional Polish concept of "moral harm" (krzywda).⁷¹

Thus, while the 1964 Polish Code did contain some sections of a "socialist" nature, (e.g., those pertaining to the exercise of rights in the spirit of socialist intercourse), it was in many respects both non-socialist and non-Soviet. It was by no means that clear break with the past envisaged by Marx and attempted in the early Soviet practice.

The Czechoslovak Civil Code, however, was a horse of another color-- much "redder," with a "programmatic ideological preamble."⁷² It was relatively short, and its omissions were perhaps as important as its inclusions. As indicated above, it excluded family law, but it purported to make a significant ideological advance by completely divorcing

property considerations from family relations, and by therefore including marital property relations in its property sections.⁷³ (Whether this is a realistic approach remains to be seen.)

It made a radical break with both the Polish Code and the new Soviet Civil Code by eliminating from its coverage those contract relations which occur between state and cooperative enterprises.⁷⁴ This also represented a substantial theoretical step forward (or backward, depending on one's point of view). The existence of such marked differences among the socialist states seems to indicate rather conclusively that the legal order is something much more than the mere reflection of an economic "base."

The Czechs also instituted new property concepts and, more basically, infused the whole of civil law with a new revolutionary socialist spirit.

A traditional continental lawyer is struck by the abandonment of the centuries old civil law system of legal concepts and categories dating back to Justinian's Corpus Juris elaborated in the Usus modernus Pandectarum and accepted by the authors of the Code Napoleon as embodiment of natural reason itself.⁷⁵

Personal property was completely redefined as a kind of residue or derivative from socialist property. Section 123 provides:

Things intended for the personal need of individual citizens shall be transferred from socialist social ownership to the personal ownership of the individual or shall be left to them for personal use.⁷⁶

The strict limits within which these rights are to be permitted were indicated by Section 130.2:

Things accumulated contrary to the social interest in excess of the personal needs of the owner, his family and his household do not enjoy the protection of personal property.⁷⁷

Clearly, the 1964 Czech code attained here a degree of confiscation or potential confiscation which had not been achieved in either the new

Polish code or the new Soviet code. Whether this simplistic, purely consumptive approach to property law can be made to work in a modern industrial society is yet to be demonstrated. In any case, a great deal of court interpretation will have to be added to make these vague provisions (e.g., "personal needs") more meaningful.

Along with its rejection of traditional property concepts, the new Czech code also consigned to "the museum of antiquities" the basic civil-law categories of "obligations" and "contracts," and has substituted novel socialist-oriented ideas. Contract between socialist organizations and citizens, whereby the former undertake to supply the latter with goods or services, are classified as "services" relationships. A new type of relations between private citizens, called "civic assistance," has been created.⁷⁷ There is more here than just a simple relabeling, since such "civic assistance" is normally to be rendered in a spirit of the socialist common-life, i.e., no interest should be charged on a loan of money by one citizen to another, for example. The traditional institution of private contract, in which each party agrees to the transaction because he sees a benefit therein for himself, is completely downgraded by such an approach.

Further, in the general area of what was "obligations," the Czechs imposed a new, all-encompassing duty "to prevent injury to health or property and undue material gain detrimental to society or an individual."⁷⁸

In sum, Rudzinski evaluated the Czech code in the following way:

. . . , this new piece of civil legislation must be considered as a truly revolutionary civil code, even more revolutionary (in a specific sense) than the French Code Napoleon was in its time. . . . The new Czechoslovak Civil Code rejects traditional Western Civil law doctrine, explodes its categories of the law of obligations and law of contracts, introduces its own categories such

everyday transactions of their contractual character. These changes transcend by far the purely technical legal field. They introduce a new spirit, a new application of law. They have profound political eloquence and importance as well. To put it crudely in Marxist terms; the superstructure has changed. There is no longer the same legal form borrowed from the capitalist world but covering a different socialist content. Now there is a new socialist form as well.⁷⁹

V. Summary and Conclusions.

The main tendencies in the legal field in Eastern Europe are illustrated by the 1964 Polish and Czech Codes. The codes were alike in that they represented national solutions to national legal problems and in that both of them freely used non-Soviet solutions. They were dissimilar in that the Polish Code drew much more heavily on the nation's past, on its old "bourgeois" legal system. The Czech Code, on the contrary, was an obvious attempt to go beyond what the Soviet Union had done in the legal field, and to construct a new set of rules which were both theoretically and practically "socialist" in nature. Prior to this effort, there was little that was uniquely socialist in the private law area in Eastern Europe or in the Soviet Union. (Whatever legal "uniqueness" there was occurred in the criminal law area.) Both theoretically and practically, most of civil law was merely adapted from traditional legal concepts.

Aside from Czechoslovakia, much of the "new" civil legislation in Eastern Europe represented long-overdue reforms in the structure and applicability of a national system of civil law, with no particularly socialist content. Much of it was based on the work of pre-War "reform" commissions, in some cases on actual pre-War draft proposals. Another area of change was that dealing with the Nazi-Fascist legislation and decrees which were imposed on these countries during the War. Here, too, while the new Communist regimes may have used the repeal of such legislation as a partial excuse for imposing their own legal ideas, much of this large-scale repeal would have occurred whatever the nature of the post-War regime.

There were, to be sure, some changes that were instituted solely on the basis of the socialist nature of the regime; nationalization of

many areas of the economy, for example, did require a package of new legal rules. But even here, in discussing "socialist property" rules, one should take care to strip away the ideological verbiage in order to examine more closely the actual content of the law. As a matter of fact, most of the Eastern European nations simply transformed the bourgeois set of rules on the sanctity of private property into a set of rules on the sanctity of socialist property.

Making sure a close examination of actual legal content, one cannot perceive any clear, uniform trend with respect to the basic issue: the issue of "totalitarianization" versus "liberalization." By Loewenstein's definition,

. . . , totalitarianism is the successful attempt to bring most if not all private relationships under the guidance, direction and supervision of the state and of the single party identified with the state. The totalitarian technique consists in narrowing the range of autonomous private relations to the point where most of them are conducted under state control. From the juridical viewpoint totalitarianism is the supersession of private by public law.⁸⁰

It is precisely at this point that the Stalinist legacy provides its main message for today's jurists, both East and West. As much as anything, the cause of the Stalinist perversions of the machinery of justice was the attempt to make the law, and the public interest, extend to every transaction, every relationship, every facet of life. It is this substitution of some mythical "public interest" for any and all private interests which accounts, in large part, for the arbitrariness and unpredictability of the law during the Stalinist period.

The basic incompatibility of the rule of law and the totalitarian approach was indicated by Ernest Barker, when he wrote:

A legal system cannot be based on the idea of totality; nor can it attempt to cover and regulate every aspect of life. Any legal system must deal with a definite and specific area--the definite and specific area of external relations and conduct,

which can be brought (and which alone can be brought) under certain and fixed legal rules capable of certain and fixed legal enforcement. This is a limited area, as all experience proves. It is an area which excludes the play of social taste, the movement of the inward conscience, the general march of the mind, and the general building of culture. These are all things which escape legal rule and legal compulsion, for the simple reason that they possess the quality of quicksilver. The Weltanschauung which is vowed to totality will seek to escape the limitation of area inherent in the nature of law; but in the very act of seeking to reform and "totalize" law it will deform what it touches, and it will abolish all the precision and certainty of law.⁸¹

The Czech code looked towards this future legal totality in a communist state; the Polish code still sought to preserve an area (and a rather wide area) with which private relationships are to operate. In this very basic sense, there were two contradictory legal trends observable in Eastern Europe. Only time would tell which of the two would predominate.

FOOTNOTES

1. D. Lasok, "Legal Concept of Marriage and Divorce: A Comparative Study in Polish and Western Family Law," International and Comparative Law Quarterly, IX (January, 1960), 53-95. Cf. Aleksander W. Rudzinski, "Sovietization of Civil Law in Poland," American Slavic and East European Review, XV (April, 1956), 216-243. Rudzinski also notes that Hungarian statutes were preserved in the south, in Spisz and Orawa. Perhaps these internal conflicts explain in part why Poland was one of the first countries to codify its "choice of law" rules (Act of August 2, 1926). Jerzy Rajski, "The New Polish Private International Law, 1965," International and Comparative Law Quarterly, XV (April, 1966), 457-469.
2. This first code of civil procedure was simply a translation of the 1895 Austrian Code of Civil Procedure into Serbo-Croat (possibly with mistakes). Frank R. Lacy, "Yugoslavia: Practice and Procedure in a Communist Country," Oregon Law Review, XLIII (December, 1963), 1-41.
3. Matej Roesmann, "Comparative Law: Yugoslavia," Cleveland Bar Association Journal, XXVI (March, 1955), 71, 81-84; see also A. Goldstajn, "Tort Liability and Insurance of Enterprise in Yugoslavia," American Journal of Comparative Law, III (Spring, 1954), 247-249.
The Serbian legal tradition goes back to that nation's days of glory in the fourteenth century under Stephen Dushan. "His code of laws can be compared to the Magna Carta." Nicholas Halasz, In the Shadow of Russia, (New York: Ronald Press Company, 1959), pp. 115-116.
4. For example, Chapter XXVI of the Imperial Civil Code of 1811, "Employment Relations and Periods of Notice," was not officially repealed until the new Czechoslovak Labor code went into effect on January 1, 1966. International Labour Review, XCIII (January, 1966), 80-89.
5. Paul J. Edwards, "Trend of Law in Czechoslovakia," Wisconsin Law Review, MCMXLVII (July, 1947), 654-680; see also Vladimir Gsovski and Kazimierz Grzybowski, editors, Government, Law and Courts in the Soviet Union and Eastern Europe, (New York: Frederick A. Paeger, Inc., 1960), p. 1,238 et seq.
6. Gsovski and Grzybowski, op. cit., p. 1,345. Bulgaria apparently never even reached this stage.
7. Ibid., pp. 1,187-1,188.
8. Rudolf B. Schlesinger, Comparative Law, (Brooklyn: The Foundation Press, 1959), p. 197 fn 44.
9. Hungary had been brought under the Austrian Code of 1811 for a brief period after the 1848 Revolution failed; the Austrian Code was repealed and the "common law" reinstated in 1867. The 1959 Civil Code was thus the first truly "Hungarian" codification. Kazimierz Grzybowski and Jonathan L. Alder, "Legislative Trends," Problems of Communism, XIV (March, 1965), 126-131.

10. Stephen Schafer, "Some Basic Principles of Hungarian Criminal Law," Modern Law Review, XXII (March, 1959), 164-174; see also Tibor A. Marczali, "Criminal Law in Communist Hungary," Slavic Review, XXIII (March, 1964), 92-102; see also Schlesinger, op.cit., pp. 175 & 197.
11. Marczali, op. cit.
12. Gsovski and Grzybowski, op.cit., pp. 309-314.
13. Halasz, op. cit., pp. 165-166.
14. Elmer Plischke, "Denazification Law and Procedure," American Journal of International Law, XLI (October, 1947), 807-827.
15. Ibid.
16. See, e.g., C. P. Harvey, "Sources of Law in Germany," Modern Law Review, XI (April, 1948), 196-213.
17. See, e.g., F. Roetter, "The Impact of Nazi Law," Wisconsin Law Review, MCMXLV (July, 1945), 516-562.
18. E. J. Cohn, "German Legal Science Today," International and Comparative Law Quarterly, II (April, 1953), 169-191; Schlesinger, op.cit., p. 255 fn.
19. K. Loewenstein, "Reconstruction of the Administration of Justice in American-occupied Germany," Harvard Law Review, LXI (February, 1948), 419-467.
20. H. O. Pappe, "On the Validity of Judicial Decisions in the Nazi Era," Modern Law Review, 23 (May, 1960), 260-274.
21. Ibid.
22. Gsovski and Grzybowski, op. cit., p. 483.
23. Gsovski and Grzybowksi, op. cit., p. 483.
24. Ibid.
25. Ivo Lapenna, "Bar in the Soviet Union and Yugoslavia," International and Comparative Law Quarterly, XII (April, 1965), 631-648.
26. Ivo Lapenna, "Outlines of the Judicial System and the Rights of the Accused in Yugoslavia," Solicitor Quarterly, II (January, 1963), 59-70.
27. George W. Hoffman, "Transformation of Rural Settlement in Bulgaria," Geographical Review, LIV (January, 1964), 45-64.
28. Gsovski and Grzybowski, op. cit., p. 484.

29. Ibid., p. 485. Insofar as the Czechoslovak State itself was concerned, however, even the Communist recognized the constitutional continuity of the pre-war regime, the Government-in-exile, and the post-war non-communist regime. H. Gordon Skilling, "The Czechoslovak Constitutional System: The Soviet Impact," Political Science Quarterly, LXVII (June, 1952), 198-224.
30. Gsovski and Grzybowski, op. cit., p. 494.
31. Ibid., p. 493.
32. Gsovski and Grzybowski, op. cit., pp. 495-497.
33. Ulc called them "outdated, neglected and moribund through prolonged disuse." Otto Ulc, "Class Struggle and Socialist Justice: The Case of Czechoslovakia," American Political Science Review, LXI (September, 1967), 727-743, at p. 727.
34. John N. Hazard, "Soviet Codifiers Receive New Orders," American Journal of Comparative Law, VI (Summer, 1957), 540-546.
35. As quoted in Hans Kelsen, The Communist Theory of Law, (New York: Frederick A. Praeger, Inc., 1955), pp. 57-58. (Emphasis mine.)
36. As quoted in Kelsen, op. cit., p. 58.
37. Branko M. Peselj, "Legal Trends in 'People's Democracies': The Satellite States," George Washington Law Review, XXII (April, 1954), 513-553.
38. Aleksander W. Rudzinski, "New Communist Codes of Czechoslovakia and Poland: A General Appraisal," Indiana Law Journal, XLI (Fall, 1965), 33-68.
39. Ibid.
40. H. Gordon Skilling, "The Czechoslovak Constitutional System: The Soviet Impact," Political Science Quarterly, LXVII (June, 1952), 198-224.
41. Gsovski and Grzybowski, op. cit., p. 674.
42. H. Gordon Skilling, "Revolution and Continuity in Czechoslovakia," Journal of Central European Affairs, XX (January, 1961), 357-377.
43. H. Gordon Skilling, "The Czechoslovak Constitution of 1960 and the Transition to Communism," Journal of Politics, XXIV (February, 1962), 142-166, at p. 160.
44. Gsovski and Grzybowski, op. cit., pp. 675-676.
45. Gsovski and Grzybowski, op. cit., p. 1,240.

46. A similar piece-by-piece approach seems to have characterized both the Rumanian and Hungarian systems. Ibid., pp. 1,345 et seq. and pp. 1,277 et seq.
As to Hungary, George Torzsay-Biber wrote: ". . . sovietization of private law was achieved through the reinterpretation of the existing legal provisions by the newly introduced soviet political rather than legal concepts without substantial changes in the text of the rules of law." Ibid., p. 1,278. This was certainly true prior to 1959, but perhaps not now, with the new Hungarian Civil Code in force.
47. Ibid., p. 1,186.
48. Gsovski and Grzybowski, op. cit., pp. 1,186-1,187.
49. Ibid., p. 1,186.
50. Ibid., pp. 1,188 et seq.
51. Kazimierz Grzybowski, "Reform of the Civil Law in Hungary, Poland, and the Soviet Union," American Journal of Comparative Law, X (Summer, 1961), 253-265.
52. Herbert Ritvo, "Totalitarianism without Coercion?," Problems of Communism, IX (November-December, 1960), 19-29.
53. Note the emphasis on the role of the Supreme Soviet, and the idea of legislative supremacy, which this definition includes. George Ginsburgs, "'Socialist Legality' in the U.S.S.R. Since the XXth Party Congress," American Journal of Comparative Law, VI (Autumn, 1957), 546-559. Compare the statements in the official Soviet text edited by P. S. Romashkin on the class nature of socialist law; e.g., "In essence, it is the will of the working class and all the working people, which is determined by the material conditions of Soviet society, and which has become law." P. S. Romashkin, editor, Fundamentals of Soviet Law, (Moscow: Foreign Languages Publishing House, no date), p. 20.
54. The painful and hesitant process involved in the drafting of these new codes can be followed in the writings of John N. Hazard. See his articles: "Drafting New Soviet Codes of Law," American Slavic and East European Review, VII (January, 1948), 32-44; "The Future of Codification in the U.S.S.R.," Tulane Law Review, XXIX (February, 1955), 239-248; "Soviet Codifiers Receive New Orders," American Journal of Comparative Law, VI (Autumn, 1957), 540-546; "Laws and Men in Soviet Society," Foreign Affairs, XXXVI (January, 1958), 267-277; "Soviet Codifiers Release the First Drafts," American Journal of Comparative Law, VIII (Winter, 1959), 72-81.
55. John N. Hazard, "The Function of Law," Survey, XXXVIII (October, 1961), 72-79.
56. "Law Journal on the 'Withering Away of the State'," Current Digest of the Soviet Press, XII (number 22), 17-20; cf. the views on this withering-away process expressed by P. S. Romashkin, "Conference Hears Proposals for Constitution Changes," Current Digest of the Soviet Press, XII (number 46), 3-7.

57. Razi cites the following article as typical of this period:
"The development, the organization and the content of Soviet legal education constitutes for us a rich experience and shows us the place and the role of juridical science in a socialist state. The Soviet state, the first socialist state in the world, has used from the very beginning the statute and the decree on one hand and the courts and their activities on the other as levers of first order in its way for the realization of a socialist society
". . . The jurists have the noble task to build a new juridical science, a new system of law after the Soviet model and in the historical and concrete circumstances of the construction of socialism in our country."
G. M. Razi, "Legal Education and the Role of the Lawyer in the Soviet Union and the Countries of East Europe," California Law Review, XLVIII (December, 1960), 776-804.
58. Zoltan M. Mihaly, "The Role of Civil Law Institutions in the Management of Communist Economies: the Hungarian Experience," American Journal of Comparative Law, VIII (Summer, 1959), 310-328.
59. Kazimierz Grzybowski, "Reform and Codification of Polish Laws," American Journal of Comparative Law, VII (Summer, 1958), 393-402.
60. Ibid.
61. Ibid., p. 398; cf. Grzybowski and Alder, op. cit., p. 123.
62. Rudzinski, "New Communist Codes, . . .," op. cit. This entire discussion of the Polish and Czech Codes of 1964 relies very heavily on Rudzinski's extensive and scholarly article.
63. Ibid., p. 48.
64. Ibid., pp. 48-51.
65. Ibid., pp. 61-62; cf. D. J. Shaw, "Problem of Land Fragmentation in the Mediterranean Area: A Case Study," Geographical Review, LIII (January, 1963), 40-51.
These special provisions are perhaps the only major area of difference from Western inheritance systems. The Poles have been very much concerned with establishing the "reciprocity" of their system so that Polish heirs could inherit in U.S. Courts. See Ryszard L. Krzyzanowski and George Naschitz, "American Heirs under the Law of Poland," Buffalo Law Review, XV (Fall, 1965), 105-119, and cases there cited.
66. Rudzinski, "New Communist Codes . . .," op. cit., p. 53.
67. See his articles, "The General Theory of Law and Marxism," and "The Soviet State and the Revolution in Law," in Hugh W. Babb, editor, Soviet Legal Philosophy, (Cambridge: Harvard University Press, 1951).
68. Rudzinski, "New Communist Codes . . .," op. cit., p. 54.

69. Ibid., p. 59.
70. Whitmore Gray and Raymond Stults, translators, Civil Code of the Russian Soviet Federated Socialist Republic, (Ann Arbor: University of Michigan Law School, 1965). See also the chapter by Gray in Wayne R. LaFave, editor, Law in the Soviet Society, (Urbana: University of Illinois Press, 1965).
71. Rudzinski, "New Communist Codes . . .," op. cit., p. 59.
72. Ibid., p. 37.
73. Ibid., p. 37.
74. Ibid., p. 38. The elimination of this category of "Economic Law" from the coverage of the Civil Code seems to adopt the position taken by Pashukanis in the Soviet legal debates of the 1930's. See fn. 62, supra.
This debate was reopened in the Soviet Union during the discussions on the new draft principles of the civil law, but the "economic-law" jurists lost out again. The issue, however, has not really been resolved with finality. See "On Draft Principles of Civil Legislation," Current Digest of the Soviet Press, XIV (number 5), p. 10.
75. Rudzinski, "New Communist Codes . . .," op. cit., p. 39.
76. Ibid., pp. 39-40.
77. Ibid., pp. 41-43.
78. Ibid., pp. 43-.
79. Ibid., p. 46.
80. K. Loewenstein, "Law and Legislative Problems in Occupied Germany," Yale Law Journal, 57 (March & April, 1948), 724-760 & 994-1,022.
81. Ernest Barker, Reflections on Government, (London: Oxford University Press, 1942), pp. 394-395.