

**LEGAL NURTURING:
THE EDUCATIONAL FUNCTION OF LAW IN THE SOVIET UNION**

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Abstract. *This paper explores how the educational function of law assumed a distinctive form of “legal nurturing” in the Soviet state. Even though originally socialist education was meant to give the working classes more autonomy, it soon became to be used as a tool of control aimed to shape each citizen into a “New Soviet Man”. Law, both in theory and practice, was recognized as one of the tools for instilling these new values and habits, and the legislature, the courts, and the civic community were put at the forefront of this task. The essay concludes with a brief summary of how legal nurturing facilitated both social progress and political terror and a rumination on the legacy of Soviet legal nurturing in Russia.*

Keywords: *Soviet law, educational function of law, New Soviet Man*

Introduction

The common perception of law in the Soviet state—not just in lay, but also in professional circles—is to associate it, first and foremost, with an exercise of coercive power in its most brutal form. However, while coercion is important to understanding all law, including the law of the Soviet state, it is not the whole picture. In my previous examination of Soviet law in theory and practice (Lukina 2020), I pointed out that, like in any legal system, under the Soviet rule law acted not only as a tool of control, but also as an instrument of coordination. This essay aims to explore the third, educational, function of law. This function of law should not be confused with legal education or laws about education. Instead, it describes how laws and legal institutions help governments to instill desired habits and values within the citizenry. While by no means the only or the main use of law, its educational function is often neglected and needs to be explored further.

The educational function has two “faces”: on the one hand, it can be associated with the state valuing autonomy by attempting to enter into a dialogue with law-subjects; on the other hand, in performing it, the state necessarily establishes a hierarchy in which it is recognized as not just an epistemic, but also a political authority. I will show how Soviet law, despite being framed with an intention of fostering autonomous “good choices” was soon used to impose a hierarchical relationship on Soviet people. As a result, it adopted a distinct form that I will call, building on Berman’s work (Berman 1972: 83), “legal nurturing”—seeking to “make” an entirely new type of citizen.

I will proceed as follows. In the first following section, I will outline what I see as the main currents of thought about the educational function and their application to the Soviet state. Next, I will address the role of education in Marxism and its reception in the Soviet Union as a concept of the “New Soviet Man”. In the subsequent section, I will explore the role of law in legal nurturing, both as conceived in theory and realized in practice. Finally, I reflect on how legal nurturing could be considered as both a progressive and a regressive practice, and how it can be relevant to examining legality in successor states (taking Russia as the paradigm). My investigation is both broad and narrow in its scope. It is broad as it does not focus on a specific stage of development, but tries to find common trends across the 70 years it existed based on examination of various primary and (mostly Western) secondary sources. It is narrow in that it is a historical study; as a result, the paper presents only a brief sketch of the current state of the law in Russia—a gap which I hope will be filled by other contributors to this Special Issue.

Educational function of law in legal thought

1. Origins in ancient and medieval philosophy

As Soviet law was heavily influenced by the Western legal tradition, it makes sense to go back to the latter’s roots. The educational function of law dates back to classical philosophy. Law, according to Plato, Aristotle, and Cicero, was “necessarily an educator” (Burge-Hendrix 2007: 245). In Plato’s *Laws* (Plato 2008: Book IV), the Athenian Stranger proclaims that laws use not merely “force”, but “persuasion”. The practical value of law

is, therefore, “twice as good”. Preambles were one of the ways to create “good-will” among the citizens so they could “more intelligently receive [the law’s] <...> command.” In a similar manner, Aristotle (Aristotle, n.d.: Book II, 1) believed that “lawgivers [could] make citizens good by forming habits in them.” Like Plato, he insisted that “legislators ought to stimulate men to virtue and urge them forward by the motive of the noble, on the assumption that those who have been well advanced by the formation of habits will attend to such influences; and that punishments and penalties should be imposed on those who disobey and are of inferior nature” (Aristotle, n.d.: Book X, 9). In other words, law, by coercing even those badly inclined people into good acts, is uniquely positioned to make them more virtuous. The ancients greatly influenced medieval Catholic thought. Aquinas (Aquinas 1947: Part I-II Q95 A1), building on Aristotle, wrote that law does not just coerce the wicked so they can desist the evil-doing, but also so “that they themselves, by being habituated in this way, might be brought to do willingly what hitherto they did from fear, and thus become virtuous.” Thus, law’s habituation could produce “the motive of the noble” not only in a select few, but also in anyone.

2. Education and personal autonomy

There are therefore two paradigms to be found in the classical description of law’s educational function. On the one hand, Plato’s “persuasion” alludes to a more horizontal relationship between a lawgiver and a law-subject. Education is impossible without some degree of consent – or at least engagement – of the educator. This aspect of law-making was downplayed by early legal positivism, which perceived law as a command of a sovereign (Austin 1995: 1 ff.). As Burge-Hendrix (Burge-Hendrix 2007: 254) argues, “positivism inherited from the command theory its tendency to de-emphasize the communicative, indeed the educative, features of legal systems.” The remedy is to reflect more on the place of personal autonomy in law today (Burge-Hendrix 2007: 254), which was partly achieved by the more liberal legal positivism of Hart and Raz that “that relates individuals to rules and reasons rather than to the will of other, superior individuals” (Burge-Hendrix 2007: 252). Raz’s “service conception” of authority is the clearest expression of this idea. Raz believed that practical authority, or the ability to impose duties, is justified when

the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly. (Raz 2003: 53)

This model emphasizes the role of the state as an epistemic authority that, thanks to its resources, can aggregate knowledge about the world better than individual citizens and therefore serve as a guide for them to better organize their lives.

3. Education and hierarchy

On the other hand, education through habit, especially in Aquinas’s formulation, presupposes a top-down relationship in which the educator not only has epistemic authority over the educated, but can also reinforce it via coercive means. To those who value autonomy, this hierarchy problematizes the educational function of law. For instance, the liberal idea of individual autonomy made the paternalism of law engaging

in a supposedly private enterprise of forming one's moral character repugnant. Mill's insistence that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (Mill 2001: 13), is the most famous of such formulations. This was further claimed by Hart (Hart 1963), who, in his debate with Devlin (Devlin 1968), echoed Mill in arguing that criminal law had no business in enforcing morality, while Devlin made a contrary case for the sake of maintaining stability within the community.

4. Soviet law as "parental law"

Berman recognized the educational function of Soviet law in his 1963 monograph "Justice in the USSR". He wrote that while the educational function of law was not a new phenomenon, in the Soviet Union, it was uniquely identified as "central to the concept of justice itself" (Berman 1963: 283). This version of educational function exhibited hierarchical tendencies, legal moralism, and paternalism. Unlike in the West, where a law-subject is "the rugged individualist" who is responsible for his actions, the Soviet citizen

is treated less as an independent possessor of rights and duties, who knows what he wants, than as a dependent member of the collective group, a youth, whom the law must not only protect against the consequences of his own ignorance but must also guide and train and discipline. (Berman 1963: 283)

This paternalistic turn is even reflected in language—in Russian-language sources that he builds on, "educational [function]" is translated as "vospitatel'naya [funktsiya]", a word meaning "nurturing" (Berman 1972: 83). "*Legal nurturing*", as I will call it, is a distinct form of the educational function of law that does not just encourage some socially beneficial habits and values, but considers them as parts of an integrated schema aimed to develop a new type of citizen—"New Soviet Man".

This vision of law, as I will demonstrate, was a result of an evolution in philosophy, legal theory, and legal practice. While the original Marxist promise was to liberate workers from the confines of bourgeois ideology through socialist education—corresponding to the autonomy model—it transformed into a desire to "trap" them, along with other Soviet citizens, in a new social role, gradually embracing the hierarchical model.

Education and transformation of Soviet society

1. Bourgeois law and ideology

Speaking somewhat crudely, Marx and Engels saw law as a part of the "superstructure" resting on the "base", or foundation, of relations of production (Marx 1996: 503). This "legal and political superstructure" (Marx 1996: 503) is both determined by this base and sustains it. It expresses the common interest of the ruling class (Marx and Engels 1975: 90) (under capitalism—bourgeoisie) and keeps the conflict between the ruling and the exploited class (under capitalism—proletariat) to the minimum (Friedrich Engels 1970: 326). It does so not only by "holding down by force the exploited class" (Engels 1987; Kelsen 1955: 2), but also by deception. These superstructures are forms of

“ideology”, a false consciousness opposed by the social reality that exists in order to protect the material conditions of the society from being questioned. In “The German Ideology”, ideology is compared to a camera obscura that reverses the image it receives; the image is recognizable, yet distorted (Marx & Engels 1975: 25). In other words, if law-as-ideology is in any way “educational”, this education is not directed towards getting closer to the truth, but rather to hiding the reality of exploitative relations of production and justifying them. Law under capitalism is thus akin to a “bad” teacher, not in terms of mastery of his craft, but in terms of his purpose.

2. Pre-revolution: Marxism as a teacher

To Marx and Engels, while education (like law) could reproduce capitalism, it can also be used (unlike law) to undermine it. Even though a revolution was deemed historically inevitable, Marx (Marx 2010: 10) recognized the importance of communist movements in “shorten[ing] and lessen[ing] the birth pangs.” According to Engels,

an educated proletariat will not be disposed to remain in the oppressed condition in which our present proletariat finds itself. (Frederick Engels 1975: 243)

In this way, Marxism was seen as an educational enterprise, aiming to make the proletariat aware of true reality hiding behind ideology and lead a revolution, ultimately dispensing with all machinery of the previous order, including the law and state. As Lenin would later say,

By educating the workers’ party, Marxism educates the vanguard of the proletariat, capable of assuming power and leading the whole people to socialism, of directing and organizing the new system, of being the teacher, the guide, the leader of all the working and exploited people in organizing their social life without the bourgeoisie and against the bourgeoisie. (Lenin 1974: 404)

However, this educational enterprise, while aiming to increase workers’ autonomy, is also hierarchical. While in Marxism the proletariat is deemed the main historical agent, it too, in the words of Gouldner, needs to be “summoned” by someone (Gouldner 1985: 2). On a more cynical view, Marxism is, ironically, a product of intellectuals who have been “shopping for an agent” to enact the change they desire, which does not place it very far from the bourgeois ideologues it despises (Gouldner 1985: 22–25). But it could also be seen as an emancipatory project undertaken by intellectuals who reject their elitist status and counter the socialization of workers into submission by the capitalist regime (Blackledge: 2007). Either way, educating the proletariat and, on the second interpretation, also educating oneself was recognized as important. Marx, Engels, and their heirs, therefore, did not only recognize the importance (and danger) of the ideological power of capitalist law, but opposed it with the same means, even to some extent internalizing the hierarchical thinking behind it.

3. Post-revolution: the New Soviet Man

“It is apparent,” Berman (Berman 1963: 284) notes, “that the Soviet emphasis on the educational role of law presupposes a new conception of man.” To Lenin, political education was profoundly important – one of the phrases he is still known for is his call to “learn, learn, and learn” (“*uchit’sya, uchit’sya i uchit’sya*”). Originally, this phrase was used

by him in 1899 in his admiring description of the ambition of workers under capitalism who, despite their circumstances, “develop into conscious Social Democrats, the ‘working intelligentsia¹’” (Lenin 1967: 269). Later, it morphed into the imperative directed towards all Soviet people, each of which had to envision themselves as the “New Soviet Man²” or “*Homo Sovieticus*”, a term popularized by Zinoviev in his satirical exploration of Soviet culture in the late 1980s (Zinoviev 1986). The unironic use of this concept, however, can be dated back to the 1920s works of Bogdanov (Soboleva 2017: 68 ff.), who claimed that the proletarian culture, properly developed through education, was uniquely suited to become a driving force behind the transition of society to communism because of its combined collectivism and rationality (Bogdanov 1990: 332; Soboleva 2017: 68–70). That idea was challenged by Trotsky, who, keeping in mind the end-goal of a classless society, argued instead for a new “revolutionary” or “socialist culture” post-revolution (Trotsky 1960; Soboleva 2017: 70–71). Trotsky’s concept, built upon by prominent Party functionaries such as Lunacharsky, Krupskaya, and Kalinin, prevailed despite its author’s eventual demise, and by the 1930s the “New Soviet Man”—committed to Marxist ideology, internationalist and collectivist, socially active and harmonious as a person (Soboleva 2017: 73–74)—had become a recognized trope. Both Bogdanov and Trotsky, despite their differences, were convinced that social change was needed to create a “new kind of humanity” unseen before (Soboleva 2017: 71–72). However, Soboleva argues that while Bogdanov’s original concept implied “the evolutionary, free, and rational development of a person”, its subsequent evolution entailed “violent <...> homogenization of Soviet society according to the proclaimed socialist ideals <...> by means of the centralized system of communist education” (Soboleva 2017: 78–79). In other words, it gradually emphasized hierarchy, and not autonomy, in the process of education. This move can also be traced through the history of Soviet law in theory and practice.

Educational function of Soviet law in theory and practice

1. Theory

In my previous work, I argued that the dictatorship of the proletariat—the transitional stage between capitalism and communism envisioned in classical Marxism—gradually crystallized into a new legal order (Lukina 2020). This can be tied to the Soviet state’s growing need not just for coordination, but also education through law. Even at the concept’s inception, Marx acknowledged that this “dictatorship” would retain certain remnants of the legal form such as the doctrine of individual right (Marx 1989: 87) while Engels straight-up characterized it as “commonalty”, or a self-dissolving state (Engels 1991: 64).

Written at the backdrop of the October Revolution, Lenin’s “The State and Revolution” (1917) was one of his main works on the matters of law and state. Lenin, in

¹ This phrase was also used in (Lenin 1970: 391).

² Here and elsewhere in the use of the term, “man” means “person”. “The New Soviet Man” ideal as examined for the purposes of this article applied equally to men and women. Additional pressures faced by the New Soviet *Woman* are out of scope of this inquiry. For more on those, see, e.g.: Attwood 1990.

line with classical Marxism, called for the immediate abolition of the previous order via all means necessary. The dictatorship of the proletariat was supposed to be “unrestricted by law” and “based on force¹”. Nevertheless, for him, like for Marx and Engels, “communism in the first phase retain[ed] “the narrow horizon of bourgeois law and state (Lenin 1974: 471)”. Law and state, according to Beirne and Hunt, for Lenin, were needed to eradicate the remnants of bourgeois power and suppress dissent (control function), acquire control over the capital (coordination function), and, finally, “educate and foster discipline” (Beirne & Hunt 1990: 72–77). The new state is supposed to play a significant role in this education. Lenin writes that the worker’s state would establish an “iron discipline” under which “the [officials’] functions of control and accounting, becoming simpler and simpler, will be performed by each in turn, will then become a habit and will finally die out as the special functions of a special section of the population (Beirne & Hunt 1990: 426).” Therefore, to Lenin, law in a transitional period is not just inevitable (as for Marx and Engels), but also necessary. This has proven true at the advent of the new Soviet legal order. Stuchka, Lenin’s reformer-in-chief, has famously recognized the transitional arrangement as a new, “Soviet”, legal order rather than merely a remnant of pre-revolutionary times. While bourgeois law was taken to advance the interest of the bourgeoisie, Soviet law would defend the interests of the proletariat and aim to destroy the former ruling class (Stuchka 1951: 51). Stuchka writes that Soviet law, like any law, does not only have to constrain, but also to “persuade” law-subjects, but do so for the benefit of the masses (Stuchka 1951: 67–68).

However, the idea of distinctively Soviet law had opponents at its earliest stages. For instance, Pashukanis circumscribed law only to establishing property rights and regulating the production and distribution of goods (Pashukanis 1980b: 61–62)². To him, unlike Stuchka, there was no law other than bourgeois law, and thus no place for Socialist or Soviet law other than law-like, but not properly legal (on his conception) rules of administration (Pashukanis 1980b: 88–89). Thus, Pashukanis’ approach, deemphasizing the role of law in Soviet society, constituted a break from recognition of its educational value. The only time Pashukanis mentioned “socialization and re-education” as goals of law was in his final work, “State and Law Under Socialism” (Pashukanis 1980a: 360), in which he “repented” for his previously held views when a more formalist analysis of law had become the new orthodoxy³.

The appreciation of the educational function of law reached its peak in the works of Vyshinsky, who was, ironically⁴, the key figure in dismantling, in Huskey’s terms, the “nihilism”, or the position that law and socialism were incompatible, of the previous era, and turning to “statism”, or the idea that “socialism is not only compatible with law, [but] provides an ideal environment for it” (Huskey 1991: 55, 57). Wholly rejecting Pashukanis’s

¹ As attributed to Lenin by Stalin (Stalin 1953: 118), but not detectable in the text of “The State and Revolution” itself.

² However, he saw it quite broadly, for example, including criminal law rules as an outgrowth of “an eye for an eye” exchange (Pashukanis 1980b: 111 ff.). *ibid* 111 ff.

³ See explanatory note by Maggs (Pashukanis 1980a: 346–48).

⁴ Later, Vyshinsky would be known as the prosecutor at the infamous Moscow Show Trials and one of the architects of the Great Terror.

understanding of law and further developing that of Stuchka¹, he conceived of Soviet law as a new, “bigger, better, and purer” (Fuller 1949: 1163), legal order. Just as Lenin, he claimed that this new form of state would “annihilate” capitalism even “in human consciousness” (Vyshinsky 1948: 50) as the new habits become entrenched. The shift to communism that was at the center of the communist theory of law in the past did not disappear, but was significantly postponed to the point it became nebulous. As per Fuller, this is a deeper change than rooting out the element of exchange or reciprocity of performances from the economic system as described by Pashukanis—it involved training and conditioning men into following the rules necessary to social order without coercion (Fuller 1949: 1163). In other words, it demanded building new morality and mentality, not just as a superstructural change naturally following an economic transformation, but as an end goal of its own. As such, it corresponded to the New Soviet Man ideal that, by that time, became fully entrenched in ideology and policy. For the same reason, Vyshinsky advocated for his own version of “morality of law²”, or “socialist legality”,

men must know, or think they know, where they stand before the courts. (Fuller 1949: 1165)

This was not incidental but linked to law’s coordinative and educational functions—in order for both specific instructions and general statements of values to be understood and correctly responded to (which is a part of both coordination and educational functions of law), laws need to avoid vagueness and self-contradiction, be applied consistently, and generally conform to the rule-of-law desiderata (Raz 1979). One need not be deceived by this rhetoric—Velikanova, for instance, warns that “the low tide in Stalinist policies during 1933–1936, with the [1936 ‘Stalin’s’] constitution as its component, did not mean the end of repression and mobilization as a mode of administration” (Velikanova 2018: 42). However, even though “socialist legality”, as we will see, did not always reign supreme in practice, the very fact that this value, previously deemed as “bourgeois”, was resurrected, speaks to its importance to the developing Soviet state.

2. Practice

A. Legislation

Our examination of legal nurturing in practice should start with legislation. First of all, legislation can directly communicate value-laden messages to law-subjects. This was recognized even by Plato, who recommended attaching “preludes”, or preambles, to laws as an essential part of “persuading” the citizens (Plato 2008: Book IV). Early Soviet legal documents, such as the three Bolshevik Decrees of 1917 following their success in the October Revolution, the 1918 Declaration of Rights of Working and Exploited People, the first 1918 Constitution of the RSFSR, and the 1924 Constitution of the USSR establishing a Union of Soviet republics, in particular, were in the form of political

¹ One should note that Vyshinsky, while directing most of his ire towards Pashukanis, also criticized Stuchka for “reducing law to economics” (Vyshinsky 1951: 330).

² This is Fuller’s term for what is also known as the rule of law—eight desiderata, according to which legal rules shall be general, publicly promulgated, prospective, clear, free of contradictions, stable, possible to obey, and administered in a way that does not diverge from their apparent meaning (Fuller 1969: 33).

manifestoes rather than “dry” black-letter law. For instance, Article II of the 1918 Declaration (also referred to as the “smaller Constitution” or “*malaya konstitutsiya*”) and of the Article 1 Part 3 1918 RSFSR Constitution defined the main goals of the Soviet state:

the abolition of the exploitation of men by men, the entire abolition of the division of the people into classes, the suppression of exploiters, the establishment of a socialist society, and the victory of socialism in all lands. (*Deklaratsiya prav* 1918; *Konstitutsiya* 1918)

Even later laws, that were more formalistic in character, often referenced Marxist-Leninist concepts to explain the motivation behind legal rules.

Secondly, it is obvious that written laws, by rewarding some and punishing other behavior, form habits and values. This legislative technique was heavily utilized in Soviet law. For example, the 1936 and 1977 Soviet Constitutions explicitly recognized not just the rights, but the “duties” of Soviet citizens. One of these duties was the duty to work, captured in Article 130 of the 1936 Constitution (“to maintain labor discipline”) (*Konstitutsiya* 1936) and Article 60 in the 1977 Constitution (*Konstitutsiya* 1977). This constitutional duty was enforced in practice by “anti-parasite” laws authorizing people’s courts (courts of first instance) to resettle those who refrain from work “or commit other antisocial acts”, confiscate their “unearned” income, and force them to work in the place of resettlement¹. Instead of taking a liberal approach of letting law-subjects choose how to spend their time and sustain themselves, Soviet law not only persuades, but also forces them to become model workers, exemplifying the hierarchical model. More importantly, the punishment for “parasites” is not meant as a mere threat aimed to scare them into compliance, but is itself a course of re-education for the benefit of the community.

Thirdly, the very language of these laws was made to influence public consciousness—referring to offenders as “parasites” conveyed disapproval of their actions (or, rather, lack of actions) and, in addition to the formal legal sanction, invited their fellow citizens to shun them informally as, quite literally, a foreign and harmful organism in the fabric of society. In another striking example, Article 131 of the 1936 Constitution stated that “persons committing offenses against public, socialist property [were] *enemies of the people (vragi naroda)* [emphasis mine]” (*Konstitutsiya* 1936), cementing this language, which would later become the hallmark of the Great Terror, in public discourse.

B. Courts

The Soviet court has always played a special role in the task of legal nurturing. The origins of this relationship are rather unusual. As Wood points out in her study, between 1919 and 1933, what she calls “agitation” trials, mock proceedings performed as plays in order to instill new Soviet values, were a popular practice. These trials covered a wide range of issues, including sex, murder, medical malpractice, prejudice, hooliganism, social relations, and the state (Wood 2018: 1). Wood writes that while the earliest examples of such trials involved more ambiguity and dialogue, they later were more dogmatic (Wood 2018: 8). This tracks the turn from “education as autonomy” to

¹ Berman mentions “anti-parasite” laws as a particularly vivid example of “parental legislation” (Berman 1963: 291 ff.). Here, the RSFSR Edict of May 1961 (*Ukaz* 1961) is quoted.

“education as hierarchy” as the concept of the New Soviet Man became more demanding. The hierarchical relationship between the educator and the educated became further reinforced as the educational function of trials spread to real proceedings that eventually replaced the imaginary ones. As Vyshinsky said,

Justice, public and open, contributes more than all else to an understanding of the court’s authority and assures that its activity will achieve social and educational results. (Vyshinsky 1948: 517)

Later, this goal was emphasized in Article 3 of the 1938 Legislation on the Judiciary of the USSR, Soviet, and Autonomous Republics (*Zakon SSSR 1938*) and Article 3 of the 1958 Fundamental Principles of the Legislation on the Judiciary of the USSR, Soviet, and Autonomous Republics, that the Soviet court

educates Soviet citizens in the spirit of faithfulness to their Motherland and the task of socialism, in the spirit of precise and steady obedience of Soviet laws, careful attitude towards socialist property, honest attitude to state and public duties, and respect for the rules of socialist society. (*Zakon SSSR 1958*)

This function was performed on two levels¹. Firstly, Soviet judges often encouraged the parties in the trial to reflect on their words and actions and produce “right” answers on spot. Consider this snippet from what Feifer called a “typical” People’s Court proceeding:

- Defendant, we are waiting. The court is waiting to hear how you can explain your unsatisfactory performance as a worker. <...> I repeat, how you explain your record? You misbehaved, you systematically violated work discipline. Why? You were a burden to the administration and your fellow workers. What prompted you to act that way?
- <...> I don’t consider myself a bad worker. Not worse than average; I’ve a decent record. You’re just collecting all my sins.
- You have a record of consistent violation of discipline and have had plenty of opportunity to pull yourself together. Evidently you are not interested in leading an honest life as a Soviet worker.
- I admit I was wrong. I’m sorry. (Feifer 1967: 29–31)

To the reader, it might seem like the proceeding was concerned with work discipline; however, it was a criminal trial dealing with the theft of rubber boots (Feifer 1967: 32). Nevertheless, the judge, in an informal manner resembling an (albeit disgruntled) parent or teacher, still sought to perform a didactic role beyond simply establishing the fact of theft and the defendant’s fault. This did not stop even at the sentencing stage—often, even if the defendant had been acquitted, the judge would produce an official “admonition” warning them of the criminal “potential” of their activity (Berman 1963: 1307).

Secondly, the court (in the broad sense described above) had to reach the wider public. It is no coincidence that the majority of proceedings—from petty disputes such as the case of the boot thief to (in)famous “show trials”—were open to an audience and often

¹ While this paper focuses on criminal law examples, the same tendency could be noted with regards to civil proceedings, especially those of family courts (Berman 1963: 308–11, 330–45).

publicized. This (partial) transparency was by no means particular to Soviet law, but was used to extend the educational effect of the proceedings to the maximum number of law-subjects. There were even “travelling sessions” that brought the court to work collectives in which crimes were committed (Feifer 1967: 107 ff.). Consequently, the judge did not just decide outcomes of specific cases, but was also tasked with communicating a “Soviet legal narrative” to the wider public (Lukina 2016: 63), pronouncing on the situation at hand as an illustration of the interplay of broader socialist values. For instance, in the verdict of the RSFSR Supreme Court as of 1936 in relation to the murder of a doctor at a polar station (“The Semenchuk Case”), an ordinary killing, most likely for personal reasons, was turned into a “morality tale”, in which the accused, the head of the station, monopolized his power and oppressed the native population, perpetuating long-forgotten colonialism of the Tsarist era (Lukina 2016: 80 ff.).

What is important to note is that all the ‘actors’ in court often acted as a single organism. Not only judges, but also prosecutors, witnesses, and sometimes even defense attorneys¹, as well as defendants themselves², often assumed the educational role on both micro and macro levels – drawing lessons for both themselves and society at large. This almost theatrical feature of Soviet justice was most visible in infamous “show trials”, each of which read like a scripted play due to the total absence of spontaneity characteristic of unconstrained adversary proceedings.

C. Citizen participation

The mock trials of early Soviet Russia outlined in Wood’s study were also unique in that they allowed the members of the public not to just passively observe the proceedings, but also to assume roles of judges, prosecutors, and defense attorneys. This was likely a result of popular educational ideas at the time that emphasized the effectiveness of “dramatization” as a teaching method (Wood 2018: 25–29).

... soldiers, students, workers, and peasants all responded to seeing themselves on stage. They were transformed from a passive “class” into active learners who showed initiative and even creativity in putting on this kind of a dramatic lesson. (Wood 2018: 28)

Through “playing” as those wielding power, ordinary citizens gained knowledge about the rights and responsibilities of state officials and a greater appreciation of their role in the new Soviet state. It is interesting that after the functions of agitation trials were relegated to ordinary courts, this element of play did not go away as there were ways in which ordinary citizens could take on legally significant roles without entering the legal profession.

One of the examples of citizen participation in justice is the institution of lay assessors (“narodnye zasedateli”), lay citizens elected by citizens’ assemblies, work collectives and, in case of higher courts, councils of people’s deputies—to serve on courts

¹ “[Talking about a chauffeur accused of reckless driving] His own lawyer, counsel for the defense, grills him determinedly. Had he behaved well? No, very badly. Not badly, the lawyer says, but criminally.” (Feifer 1967: 55).

² “I stole and I lied and I falsified. I don’t know whether I shall ever be able to redeem myself.” (Feifer 1967: 62)

alongside judges¹. Established in 1917 by the Decree on Courts, they survived the fall of the Soviet Union and were only abolished in 2003 in civil cases, and 2004 in criminal cases. Two such assessors had to sit on courts and pass judgment both of law and fact alongside the judge, having the same procedural rights as judges whom they could theoretically outvote. However, despite these extensive powers, in practice most lay assessors were reported to be passive and deferential, partly because the judges' superior knowledge of the law gave them epistemic leverage (Barry & Barner-Barry 1982: 157; Łoś 1985: 454). For this reason, in professional legal slang, they were known as “noddors” (“*kivaly*”). “Furniture!” is how one young Soviet lawyer contemptuously described them (Feifer 1967: 81–82)².

From 1958, lay members of the public were allowed to take part in legal proceedings as “social” (“*obšestvennye*”) accusers and defenders. They were usually nominated by work collectives or public organizations the defendant belonged to and sought to represent communal, but not governmental interest in the case (Berman 1963: 94; Feifer 1967: 103–4). Similarly to lay assessors, the social accusers and defenders “rarely [knew] much about the law”, and turned their attention towards “the accused as a man – his character, his rate of production, his attitude towards his work and his fellows, his family life, his crime in the perspective of everyday life (Feifer 1967: 104–5).” If the accused expressed sincere repentance, the social defender was often tasked with asking the court to release him so he could be “re-educated” within the collective (*Ugolovnyi Kodeks RSFSR* 1960, art. 52; Kuznetsov 1961: 12; Taylor 1964: 50–51). As such, the nurturing function was able to reproduce itself—the “students”, lay persons educated by law, thus became the “teachers” to their still “ignorant” comrades.

This “re-education” often happened through the medium of comrades’ courts (“*tovarishcheskie sudy*”), quasi-legal institutions fully run by members of the public that were tasked with reprimanding the members of collectives for minor legal and moral transgressions. The comrades’ courts were around from the early days of the Soviet state and were used widely in the Civil War period and early 1930s. In the late 1950s, they experienced a renaissance (Łoś 1985: 456–57), partly as a way to relieve the judicial system of minor but cumbersome cases (Gorlizki 1998: 403). The sanctions imposed by these courts had “educational” rather than punitive character and included a public apology to the victim, a warning, social censure, a reprimand, a small fine, compensation to the victim, or a recommendation that the offender is demoted or fired (Łoś 1985: 457). Łoś warns, however, that in reality the comrades’ courts were not as horizontal as one might think, as they tended to be used as a tool of control by factory and collective farm managers, doing the “dirty work” of legitimizing firings, the responsibility for which they did not want to assume (Solomon 1981: 33–34; Łoś 1985: 459–61). Even when the management was not involved, comrades’ courts created a new hierarchy, in which the

¹ This institution, like many more, was not unique to Soviet Russia—Bolsheviks likely followed the example of *Schöffengericht*, German courts of first instance consisting of one professional and two lay judges.

² Feifer, however, points out that there were a number of cases in which the assessors were invested enough to influence a judgment, describing a case in which they successfully pushed for a Not Guilty verdict (Feifer 1967: 82–83).

collective superseded the individual. The nurturing function of law was not transformed, but merely delegated to the community.

This citizen participation in justice can be read in two ways. On the one hand, in theory it can be praised as an example of a horizontal engagement of government with its citizens. But in practice these institutions were either ineffective in this regard, preserving old hierarchies between citizens and the state and managers and workers, or effective in promoting collectivism in which individual interests were subjugated to collective ones. Either way, legal nurturing reigned supreme.

Conclusion: the two “faces” of legal nurturing

I have tried to explore the way the idea of law as an educational tool was realized in the Soviet Union through “legal nurturing”. Any law is designed to have an impact on habits or values. However, it is in the Soviet state that this process was put on an industrial scale. The legislature, the judiciary, and the community at large, as well as other actors that fall out of the scope of this article, worked together not to just incentivize good behavior, but to mold every citizen into the New Soviet Man. This holistic and hierarchical approach can be read in works of prominent jurists, traced in legal practice, and observed in everyday life.

Legal nurturing need not be pathologized; nor was it always sinister. As Berman (Berman 1972: 92) points out, “there is, generally, something of great value in the idea that the court—in certain types of cases, at least—should look beyond the specific acts that brought the parties before it and should explore, and not only explore but also seek to influence, the underlying situation.” The same can be said about the role of the legislative branch and the community as a whole. Western lawyers would do well to learn from this approach—and have been adopting some of its aspects regardless of whether they are ready to acknowledge the Soviet connection. It is generally a good idea to look at and address the causes of criminal offences, protect a vulnerable party in a civil transaction, or try to draw moral lessons from a legal dispute.

Still, legal nurturing had many excesses—not bugs in the system, but programmed into its design. Paternalism sits badly with individual rights and convincing rhetoric is often incompatible with truth. Most rightly associate the idea of law as propaganda with the infamous “show trials” for ideological crimes, in which, instead of at least trying to get to the bottom of “objective truth” underlying the case, false conspiracies were created to turn the public against various “enemies of the state”. Even though, at the first sight, political terror can be perceived as undermining the sincerity of calls to nurturing through law, I agree with Berman in that law and terror did not work at cross purposes, but were just different ways of achieving the same objectives. Terror “served as an instrument of political and ideological discipline”, while law—“as an instrument of moral and social discipline” (Berman 1955: 807). In other words, both performed the nurturing function, albeit on different levels.

For better or worse, legal nurturing was—and remains—a phenomenon worthy of more attention and exploration, and not the least because we experience some of its

legacies now. The modern Russian legal system sees itself as not just performing the Millian role of preventing harm, but also making sure that the public is instilled with the “right” values. In a notable example, in 2012 three members of Pussy Riot, a feminist punk rock band, were charged with ‘hooliganism’ (*Ugolovnyi Kodeks RF* 1996, art. 213, part 2) for an unauthorized performance in a Russian Orthodox cathedral and sentenced for two years imprisonment. The prosecution heavily relied on the perceived offensiveness of the performance, which has drawn ire from the Church and its parishioners. In the aftermath of the case a law criminalizing “public actions that convey blatant disrespect to society and are committed for the purpose of offending religious sentiments of the faithful” (*Federal’nyi Zakon* 2013b, art. 1; *Ugolovnyi Kodeks RF* 1996, art. 181(1)). Similar effort to regulate public morality resulted in the infamous “gay propaganda law” that imposed “administrative” (misdemeanor) liability for “propaganda of non-traditional sexual relations among minors” (*Federal’nyi Zakon* 2013a, Art. 3; *Kodeks* 2001, Art. 6.21). The “foreign agents” laws (starting with the *Federal’nyi Zakon* 2012) and the new “educational activities” law (*Federal’nyi Zakon* 2021) that effectively regulate the values one can disseminate as part of their political or educational activity, finish the triad. As such, legal nurturing will be a useful tool for examining the connection between law and morality in modern Russia.

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