

Soviet Law and *Perestroika* Revisited

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Introduction

In the spring of 1982, when I taught Soviet law for the first time, the USSR was muddling through. Its political fulcrum, the Politburo, was a stumbling gerontocracy coping with a stagnant economy, a losing war in Afghanistan, and restless East European satellites. Brezhnev's death the same year did little to energize the leadership: both his successors, Iurii Andropov and Konstantin Chernenko, were dead by early 1985. Almost magically, an aged and ailing leadership devoid of ideas was removed from the seat of power in Moscow.

In March 1985, a comparatively youthful newcomer took center stage: he was the new Party General Secretary Mikhail Sergeevich Gorbachev. There were a few hopeful signs: the plain-spoken British Prime Minister Margaret Thatcher, who had met Gorbachev early on, was impressed, exclaiming that he was a "man with whom she could do business".

Gorbachev, like Lenin a lawyer, recognized the pressing need to reform the ailing economy. He spoke of restructuring it (*perestroika*) and eventually of more openness (*glasnost'*) in society and even democratization (*demokratizatsiia*). Whether such rhetoric, hitherto absent in this notoriously closed system, signaled a positive step toward East-West rapprochement remained to be seen. Western leaders eagerly awaited the Secretary's first moves.¹

Perestroika Revisited

A quarter century has passed since Mikhail Sergeevich and his cohorts in 1986 launched a broad-based legislative agenda for invigorating or even reforming the lagging Soviet economy. The Party's upper echelon received the reforms with seemingly mixed feelings: so long as Gorbachev's reformist program showed promise of success, there were celebrants who welcomed an end to Brezhnev stagnation; staunch conservatives, on the other hand, seemed fearful of navigating uncharted waters.

¹ See M. Gorbachev, *Perestroika: New Thinking for Our Country and the World* (1987), *passim*. For general accounts see Martin Malia, *The Soviet Tragedy: A History of Socialism in Russia, 1917-1991* (The Free Press, New York, NY, 1994) and Stephen Kotkin, *Armageddon Averted: The Soviet Collapse 1970-2000* (Oxford University Press, Oxford, 2008). For a brief discussion of the economy and Gorbachev's economic choices, see Svetlana Savranskaya, "The Logic of 1989" in Svetlana Savranskaya, Thomas Blanton, and Vladislav Zubok (eds.), *Masterpieces of History: The Peaceful End of the Cold War in Europe, 1989* (CEU Press, Budapest, New York, NY, 2010), 25-26 & *passim*; and Donald Barry, *Russian Politics: The Post-Soviet Phase* (Peter Lang, New York, NY, 2002), 30-33.

Western reaction was less critical. The media, however disbelieving they may have been, certainly applauded Soviet reformist pronouncements absent Cold-War rhetoric. Intrigued by mouthings of *glasnost*' and rule of law, Sovietologists organized to dissect whatever lawyer Gorbachev's *perestroika* had to offer. This chapter purports to track early *perestroika* (1986-1987), by scrutinizing both the Gorbachev approach and Western reactions to it. Critical to the latter was the unprecedented interaction between Western and Soviet scholars, the first instance in which Soviet legal scholars were invited and accepted an invitation to participate in an international conference. By doing so they may inadvertently have made *perestroika/glasnost*' a vehicle for lessening Cold-War tensions. This chronicle of scholarly interaction in the past, undeniably anecdotal and unabashedly subjective, seems a crucial link to theme of the Ninth Aleksanteri Conference—'*Cold War Interactions Reconsidered*'—and to this volume.²

The Gorbachev roadmap for modernizing Soviet society, originally packaged in thirty-eight legislative measures, began with the 10 September 1986 resolution of the Presidium of the USSR Supreme Soviet and the USSR Council of Ministers³ and read as follows:

RESOLUTION OF THE PRESIDIUM OF THE USSR SUPREME SOVIET AND THE USSR

[...] *The Presidium of the USSR Supreme Soviet and the USSR Council of Ministers resolve: To confirm the plan for the preparation of USSR legislative acts, resolutions of the USSR government and proposals for improving USSR legislation in 1986-1990* [dated 28 Aug. 1986]

Appendix: Plan for the Preparation of USSR Legislative Acts, Resolutions of the USSR Government and Proposals for Improving USSR Legislation in 1986-1990:

1. Legislation on the Further Development of Socialist Democracy, Socialist Self-Management and Citizens' Rights and Freedoms.

A USSR law on the procedure for public discussion and voting on major issues of national life and on the public discussion of draft decisions by local Soviets. 1987.

A USSR law on the press and information. Second quarter of 1986.

Normative acts on enhancing the role of workers' and office employees' meetings, expanding the range of issues on which labor collectives' decisions are final, creating labor collectives' councils at the enterprise level and gradually expanding the extent to which certain categories of enterprise managers are elected. Second quarter of 1987.

Normative acts on expanding the range of issues that can be decided by state agencies only with the participation or preliminary consent of appropriate public organization and on granting these organizations rights in a number of instances to halt the implementation of administrative decisions. 1986-1987.

² This conference was held at the University of Helsinki, Finland, in late October 2009.

³ *Vedomosti Verkhovnovo Soveta SSSR i Soveta Ministrov SSSR*, as translated in 38 *Current Digest of the Soviet Press* (1986).

A USSR law on individual labor activity. Second half of 1986.

A USSR law on the procedure for protesting to the courts for relief from legal actions by officials, in violation of citizens' rights. First quarter of 1987.

Proposals for changing legislation with respect to housing allocation and to making rent contingent on the amount and quality of the space occupied. 1987.

2. Legislation on Improving the Economic Mechanism and Economic Management.

A USSR law on the socialist enterprise (association). Second half of 1986.

A USSR law on atomic energy. First half of 1987.

Proposals for changing legislation with a view to improving the system for supplying materials and equipment and increasing the role and responsibility of the USSR State Supply Committee and its local agencies for the uninterrupted supply of material resources to the economy and for their effective use. Fourth quarter of 1986.

Proposals for improving legislation on the utilization of recycled resources in the economy. First quarter of 1987.

Proposals for changing legislation with a view to improving statistics. First quarter of 1987.

Proposals for legislation providing for a systematic restructuring of the price system in light of the directives of the 27th CPSU Congress. Fourth quarter of 1986.

A general statute on USSR ministries. Fourth quarter of 1986.

A general statute on USSR state committees. Second half of 1987.

A statute on interbranch production association and production-and-trade association for the manufacture and sale of light-industry goods. Second half of 1986.

Proposals for improving legislation with a view to further introducing economic management methods, substantially expanding the independence of collective farms and state farms and enhancing their interest in and responsibility for economic results, and developing the collective contract on a broad scale, on the basis of true economic accountability, with the ultimate goal of putting all enterprises of the agro-industrial complex on a self-supporting and self-financing basis. 1986 and 1987.

A legislative act on amending and adding to the Basic Principles of Civil Legislation of the USSR and of the Union-republics. First half of 1990.

Normative acts specifying relations between consumer-service organizations and clients, industrial and trade enterprises and other branches of the economy. Second half of 1987.

3. Legislation on Accelerating Scientific and Technical Progress.

A USSR law on output quality. First quarter of 1987.

A statute on the USSR State Committee for Science and Technology. Fourth quarter of 1986.

4. Legislation on Capital Construction.

A USSR Council of Ministers resolution on the procedure for planning capital investments and confirming approved lists of construction projects. Fourth quarter of 1989.

Regulations governing construction financing and credit. First quarter of 1988.

Regulations governing contractual agreements on capital construction. Fourth quarter of 1986.

Regulations governing contractual agreements on capital repair of buildings and structures. Fourth quarter of 1988.

5. Legislation on Transport and Communications.

Proposals for changes in legislation aimed at improving management of the transport branches, improving the coordination of all types of transport and creating a uniform legal system and rate policy. Third quarter of 1986.

A USSR Statute on Communications. First half of 1988.

6. Legislation on Environmental Protection and the Rational Utilization of Natural Resources.

Proposals for improving legislation with a view to further strengthening environmental protection in the country. Third quarter of 1987.

7. Legislation on Social Development and Culture.

A normative act on the periodic certification of responsible officials of Soviet and public organizations and economic managers and specialists. 1986.

A USSR Council of Ministers resolution on holding more than one job. Fourth quarter of 1986.

A statute on liability for disciplinary action, based on lines of subordination. Second half of 1986.

A normative act on giving pensioners additional incentives for participating in social production. 1986.

A USSR law on the USSR State Archival Fund. Fourth quarter of 1987.

8. Legislation on Other Issues.

A USSR law on USSR state security. 1990.

A USSR Council of Ministers' resolution confirming the Statute on the USSR State Committee on Foreign Economic Relations. Fourth quarter of 1986.

A USSR Customs Code (updated version). Fourth quarter of 1987.

A decree of the Presidium of the USSR Supreme Soviet on enforcing decisions of foreign courts. First half of 1988.

The New York Times noted the plan nearly a month after this legislation action, but the article by Serge Schmemmann was tucked away in the inner folds of the paper.⁴ It called the proposed undertaking a five-year endeavor (through 1990) “to codify Gorbachev’s blueprint for the reconstruction of Soviet society”. To Schmemmann, the laws and degrees to be drafted or revised “appeared to cover most of the fields in which Mr. Gorbachev has called for changes in his campaign to modernize and revitalize the economy and society”. [Soviet] “sources could recall no previous instance when a full legislative program was announced in advance”. Gorbachev, Schmemmann wrote, “evidently wants to assure the nation that his blueprint will be the law of the land soon and he also wants to put responsible agencies on notice that they have a deadline to get on with the program”. The account noted that “all these topics have figured in lively press debates since a

⁴ “Soviet to Codify Gorbachev Overhaul”, *The New York Times* (7 October 1986), A21.

Communist Party convention in late February and early March endorsed Mr. Gorbachev's calls for a 'radical restructuring'.⁵ Finally, Schmemmann wondered "how far Mr. Gorbachev is prepared to go on such sensitive issues as private enterprise, voting and access to courts". Such an assessment, he concluded, would "have to await publication of the actual laws and their application in practice".

Despite the humiliation surrounding Chernobyl' and the collapse of nuclear weapon talks with President Reagan at Reykjavik, Gorbachev spent most of 1986 engaged in less dramatic *perestroika* matters of the domestic economy. But Gorbachev was no Khrushchev, not a fighter who put his life on the line. Rather, he was much more the consensus-builder or even, according to some, a procrastinator who got caught up in bureaucratic morass.⁵

There were those far and near who were eying the new Party Secretary and his *modus operandi*. 'Enlightened *apparatchik*'⁶ and foreign policy aide Anatoly Cherniaev, an inveterate diarist, offered insights on Gorbachev's manner and thought during this critical *perestroika*-making period: He marveled that despite the headlines garnered by foreign affairs, domestic matters consumed 95 per cent of the General Secretary's time.⁷ Although the diarist doubted Gorbachev's economic reforms would "change the system's essentials", he thought his 'evolution' during critical 1986, was one of "exceptional courage in words and evaluation of problems and caution in action".⁸ Yet Gorbachev did have moments of pique when matters did not go his way. Cherniaev detailed a scene in the summer of 1987 when the General Secretary grew increasingly frustrated from the lack of progress on *perestroika*: Gorbachev furiously tossed a 'big stack' of letters on the table in front of his colleagues exclaiming:

"They write many different things, but it all comes down to one and the same. What's this *perestroika*? How do we, ordinary people, benefit from it? We don't. [...] Here, in our Soviet state, big bosses enjoy every luxury and remodel their apartments at government expense.

⁵ Vladislav M. Zubok, *A Failed Empire, The Soviet Union in the Cold War from Stalin to Gorbachev* (The University of North Carolina Press, Chapel Hill, NC, 2007), 278; for a fuller appraisal of Gorbachev's operative mode, see 278-302.

⁶ The phenomenon of 'enlightened *apparatchiks*', employed as consultants, dates to the Khrushchev era. Besides Cherniaev, Georgii Arbatov, Fedor Burlatskii, Nikolai Inozemtsev, and Georgii Shakhnazarov were among the 'New Thinkers' surrounding Gorbachev. See *ibid.*, 178.

⁷ Anatoly Chernyaev, *My Six Years with Gorbachev* (Svetlana Savranskaya (ed.), for the National Security Archive at The George Washington University in Washington, DC; this citation is from *The Diary of Anatoly Chernyaev, National Security Archive Electronic Briefing Book* (7 June 1986) No.220. Although Cherniaev was essentially a foreign policy aide, he is very reliable in describing the General Secretary's habits and energetic pursuit of early *perestroika*. As he noted regarding Gorbachev for 7 December 1986:

"I see him every day candidly, with all of the ordinary nuances of his nature, his behavior, his education level—but all of this in no way lowers the greatness of this man in my 'intelligentsia' (snobbish) eyes."

⁸ *Ibid.*, *Postscript for 1986*.

They couldn't care less about the people. [...] I'm warning you—this is our last conversation about such issues. If nothing changes, the next time I'll be talking to different people.”⁹

Archie Brown, another keen observer of early *perestroika*,¹⁰ was initially unclear of what the General Secretary had in mind. He had spoken in 1986 not only of *restructuring* but also ‘radical’ reform;¹¹ then in another speech he appeared to equate *perestroika* with ‘revolution’, as he suggested increased power to factories and collective farms at the expense of the ministries.¹² Cherniaev believed *perestroika* peaked in 1987, but the famous January Plenum raised questions as to who or what would lead it. Both the Party and the Central Committee were unresponsive to the country's ailments; the Party appeared no longer in the vanguard of change.¹³ Related was a growing resistance to *perestroika* among the General Secretary's conservative colleagues.

The unraveling of the so-called cohort of the ‘founding fathers’ revealed itself in the loss of support from Politburo members like Egor Ligachev and Gorbachev's increased reliance upon reformers like Aleksandr Nikolaevich Iakovlev, Eduard Shevardnadze, Nikolai Ryzhkov, and Vladimir Kudriavtsev (the latter director of the Institute of State and Law). Boris El'tsin's emergence proved especially galling. Cherniaev's characterization of him as ‘loud, abrupt, and demagogically saturated’ most likely mirrored Gorbachev's own view. Although El'tsin was banished from the inner circle before year's end, his presence had cast a long shadow over *perestroika* proceedings during the latter half of year 1987.¹⁴

Vladislav M. Zubok, a Russian-trained historian, worked as a junior researcher at the Soviet Institute of US and Canada Studies in Moscow during early *perestroika* and later at the National Security Archive in DC before he joined the Temple University faculty. Zubok observed that in the summer of 1987, Gorbachev revealed his intentions only to a narrow circle, which included Iakovlev and Cherniaev, that he intended overhauling ‘the whole system—from economy to mentality’.¹⁵ By that time, the General Secretary had few worries

⁹ *Ibid.*, Summer, 1987.

¹⁰ I am reliant here on the chapter entitled “The First Phase of Soviet Reform, 1985-6” in Archie Brown, *Seven Years that Changed the World: Perestroika in Perspective* (Oxford University Press, Oxford, 2007), 69-101. Written in late 1986, this chapter initially appeared in 4(1) *World Policy Journal* (Winter 1986-1987) No.1 under the title: ‘Soviet Political Developments and Prospects’.

¹¹ *Ibid.*, 73.

¹² *Ibid.*

¹³ Said Cherniaev: “The famous January Plenum was devoted to staff policies; here for the first time since Lenin the Party's and the CC's culpability for what had happened in the country, for the country's critical situation, was brought up. [...] From then on, the Party never found the wish nor the ability to be the vanguard of change.” (*Diary, Postscript, 1987.*)

¹⁴ *Ibid.*, *Postscript, 1987.* See, also, Herbert J. Ellison, *Boris Yeltsin and Russia's Democratic Transformation* (University of Washington Press, Seattle, WA, 2006), 14-21.

¹⁵ Zubok, *op.cit.* note 5, 301.

from conservatives in the Politburo and party *nomenklatura*; rather, complaints came from new men like El'tsin who, as Moscow Party head, grumbled at the slow pace of domestic reform.

While Gorbachev is treated here as one essentially focused on revamping the homeland economy, he was, of course, a savvy actor on the world stage. Cherniaev, whose expertise was foreign affairs, has been unrestrained in praising Gorbachev in this area:

“The year 1987 is distinguished with a breakthrough into the outside world. Gorbachev’s international recognition and fame are quickly growing. In the West people are slowly convinced that the ‘Gorbachev phenomenon’ in the USSR is not the Kremlin’s tricky maneuver, that *perestroika* is for real. A new and powerful factor arises in foreign policy—trust. This factor will later make possible the end of the Cold War. [...] Gorbachev’s book, *Perestroika and New Thinking for Our Country and the World*, which became an international bestseller, played an enormous role in the formation of Gorbachev’s and the Soviet Union’s new image.”¹⁶

Still 1987 fell short of expectations for Cherniaev:

“As it were, when speaking of the year 1987 in the history of the country, one has to acknowledge: the year of the 70th anniversary of the Revolution did not gain enough potential for development that people had counted on in preparation for it.”¹⁷

Not surprisingly, Gorbachev’s view was different. Ignoring the original intent of his 1986 program and discounting evident failures, he observed:

“It was during the years of *perestroika* and *glasnost* that the foundation of the transition to democracy, rule of law, and a market economy was created. Anyone who knows our country will agree that if this was all we did, *i.e.*, just lay a foundation, this would have been sufficient to be recognized and praised by future generations, because it was very difficult to do.”¹⁸

The Making of the Bridgeport Symposium

Having read the Schmemmann article and the 38 measures in detail, I conceived organizing—in the autumn of 1986—an international symposium of law scholars to examine Gorbachev’s proposed *perestroika* legislation. The late Dean Terence Benbow of the University of Bridgeport Law School (where I was professor) had promised funding. I conferred with two colleagues, Donald Barry and William Simons, both of whom offered valuable suggestions regarding symposium structure and participants.

¹⁶ Chernyaev, *op.cit.* note 7, *Postscript*, 1987.

¹⁷ *Ibid.*

¹⁸ F. Joseph Dresen and William E. Pomeranz (eds.), *The Russian Constitution at Fifteen: Assessments and Current Challenges to Russia’s Legal Development*, Kennan Institute Occasional Paper (2009) No.304, 12.

The symposium would be of Soviet law experts from all parts of the globe.¹⁹ Scheduled for the autumn of 1987, it would focus on *Soviet Restructuring through Law*. The program introduction, spells out this theme:

“Soviet Restructuring Through Law. Just as the adoption of the USSR Constitution a decade ago required significant subsidiary legislation, so will the current Restructuring Program by Secretary Gorbachev. Such legislation has always been publicized well in advance of its approval. For example, a ‘Plan of Organization on Bringing Legislation of the USSR into Correspondence with the USSR Constitution’, adopted by the Presidium of the USSR Supreme Soviet in December, 1977, charted Soviet legislation into the 1980s. [...]”

The program continued with a description of *Change Through Law*:

“This symposium will focus on change in the USSR today, change as facilitated by law. A key to understanding the Soviet system is ‘Socialist Legality,’ defined as the ‘unwavering fulfillment of laws and related legal acts by the organs of the state, officials, citizens and public organization.’ Although we may question whether this fulfillment occurs when matters of state security are at issue, for Soviet society (as for all societies) law is intended as a stabilizing factor: No Longer does one hear of legal nihilists, who, in the 1920s and early 1930s, demanded the ‘withering away of state and law.’”

Finally, the program touched on *Gorbachev as a Lawyer*:

“‘Socialist Legality’, of course, did not originate with Mikhail Gorbachev; nevertheless, as the first lawyer since Lenin on the Politburo, he brings to the decision-making apparatus a legal perspective. It is instructive, perhaps crucially so, to analyze his blueprint for Restructuring, which projects fundamental change in Soviet society for the balance of this century.”

The invited participants, their presentations, that part of the legislation to which they directed their remarks²⁰—and a list of distinguished guests and other attendees—were as follows:

Gianmaria F. Ajani, Faculty of Law, University of Trento, Italy (*Perestroika and Social Organization: Past Problems and Future Trends*).

**George Armstrong*, Associate Professor of Law, Louisiana State University, Baton Rouge, LA (‘Invention and Innovation’).

Donald Barry, Distinguished Professor of Political Science, Lehigh University (‘A Law on Atomic Energy: Preliminary Observations’).

**Harold Berman*, Woodruff Professor of Law, Emory University and James Barr Ames Professor Emeritus of Law, Harvard (‘Gorbachev’s Law Reforms in Historical Perspective’).

¹⁹ The Soviet Law symposium was sponsored by the University of Bridgeport (now Quinnipiac) Law School. See my own account of the Gorbachev program, in “Law and Perestroika”, 9(2) *University of Bridgeport Law Review* (1988), 298-323 and the introduction to Albert J. Schmidt (ed.), *The Impact of Perestroika on Soviet Law* in F.J.M. Feldbrugge (ed.), *Law in Eastern Europe*, No.41 (Martinus Nijhoff Publishers, Dordrecht, The Netherlands, 1990), xxi-xxvii. This latter work is a full account of the symposium as of 1990.

²⁰ I obtained from each a reasonable commitment to speak to an aspect of the Gorbachev blueprint. These participants appear here alphabetically with a short title of his/her presentation.

William E. Butler, Professor of Comparative Law in the University of London ('Modern Patterns of Law Reform in the USSR').

Vladimir Entin, Institute of State and Law, Moscow ('Lawmaking and Mass Media in the Period of Restructuring').

F.J.M. Feldbrugge, Professor of Law, University of Leyden, The Netherlands and Director of the Documentation Office for East European Law, Leyden ('The Legal Status of the KGB').

George Ginsburgs, Distinguished Professor of Law, The Rutgers University School of Law, Camden, NJ ('Execution of Foreign Arbitration Awards: the Heritage of Domestic Legislation, Bilateral Treaties, and Intro-COMECON Ententes').

Marshall Goldman, Class of 1919 Professor of Economics, Wellesley College and director of the Russian Research Center, Harvard University ('Economic Reform in the Soviet Union--Why a Need for Checks and Balances').

**John N. Hazard*, Nash Professor Emeritus of Law, Columbia University ('Gorbachev's Vision of the State Enterprise').

Susan Heuman, Visiting Assistant Professor of History, Pratt Institute, Brooklyn, NY ('Transforming Subjects into Citizens: A Historical Perspective on the Gorbachev Legal Reforms').

Thomas W. Hoya, Administrative Law Judge, US Department of Commerce, Washington, DC ('Soviet Foreign Trade Law: A Comment').

Peter H. Juviler, Professor of Political Science, Barnard College ('Law and Individual Rights').

**Serge L. Levitsky*, University of Leyden Faculty of Law ('Changes in the Fundamental Principles of USSR Civil Legislation Part IV, Copyright').

**Dietrich A. Loeber*, Professor of Law and Dean of the Faculty of Law, University of Kiel, Federal Republic of Germany ('*Glasnost*' as an Issue of Law: On the Future USSR Law on Press and Information').

Yuri Luryi, Professor of Law, University of Western Ontario and York University; Research Associate, Center of Russian and East European Studies, University of Toronto; Visiting Fellow, Center of Criminology, University of Toronto.

Peter Maggs, Professor of Law, University of Illinois ('The 1987 Decree on the USSR State Committee on Science and Technology').

Hiroshi Oda, Associate Professor of Law, Faculty of Law, University of Tokyo ('Judicial Review of Administration in the USSR').

Svetlana Polenina, Institute of State and Law, Moscow ('Development of Soviet Legislation Based on the 1977 Constitution: Tendencies and Prospects').

Stanislaw Pomorski, Distinguished Professor of Law, The Rutgers University School of Law, Camden, NJ ('Law on Individual Labor Activity').

John Quigley, Professor of Law, The Ohio State University College of Law ('The Soviet Bar as an Institutional Lobby for Rights').

Albert J. Schmidt, Arnold Bernhard Professor of History and Professor of Law, University of Bridgeport, CT ('Soviet Legislation for Protection of Architectural Monuments: Background').

Louise I. Shelley, Professor in the School of Justice and the School of International Service, The American University, Washington, DC ('Democratization and Law').

William Simons, Cole, Corette, and Abrutyn, Washington, DC and London; formerly of the University of Leyden Faculty of Law and presently in private law practice ('The Reform of Soviet Foreign Trade Through *Perestroika*: Decentralization Without Deregulation').

Peter Solomon, Professor of Government, University of Toronto ('Judicial Reform under Gorbachev and in Russian History').

Wim Timmermans, Research Officer, Documentation Office for East European Law, University of Leyden Faculty of Law (Article 37: A New USSR Customs Code').

**Ger van den Berg*, Senior Research Officer, Documentation Office for East European Law, University of Leyden Faculty of Law ('Developments in Soviet Labor Law under Gorbachev').

**Zigurds L. Zile*, Foley and Lardner-Bascom Professor of Law, University of Wisconsin Law School ('By Command, Bribe and Cajolery: Soviet Law on Output Quality').

*Deceased.

Distinguished (Invited) Guests

Martin Fincke, Professor of Law, University of Passau, Federal Republic of Germany.

**Olympiad S. Ioffe*, Professor of Law, University of Connecticut School of Law and formerly head of the Department, of Civil Law, Leningrad State University Faculty of Law.

**Leon Lipson*, Henry R. Luce Professor of Law, Yale University School of Law.

Henry Morton, Professor of Political Science, The Queens University of the City of New York.

Gabrielle Crespi Reghizzi, Professor of Comparative Law and Deputy Rector, University of Pavia, Italy.

Robert Sharlet, Professor of Political Science, Union College, Schenectady, NY.

Attendees

Randy Bregman, International Law Institute, Washington, DC and Adjunct Professor of Soviet Law, Georgetown University Law School.

Albert Boiter, Georgetown University Law School.

Susan Finder, East-Asian Legal Studies Program, Harvard Law School.

Christine Genis, US Embassy, Moscow.

Jane Giddings (now *Henderson*), Centre for European Law, King's College, University of London.

Malcolm L. Russell-Einhorn, Adjunct Professor of Soviet Law, Boston College of Law.

Christopher Senie, Senie, Stock and LaChance, Westport, CT.

Alan B. Sherr, Director of Project on Soviet Foreign Economic Policy and International Security, Brown University.

Stanislaw Soltysinski, Professor of Law, Universities of Cracow and Poznań, Poland and Visiting Professor of Law, University of Pennsylvania School of Law.

Lowry Wyman, Assistant Dean, DePaul University College of Law, Chicago.

This symposium became a Cold-War landmark in that it marked an end to the isolation of Soviet legal scholars from their counterparts in the West; their subsequent participation would provide such gatherings with a new intellectual and social dimension.²¹

Over the Christmas/New Year break in 1986-1987, I had this thought in mind as I traveled to Moscow to urge Soviet inclusion. I visited the Institute of State and Law on Frunze Street to explain the symposium and leave invitations for both Academician Vladimir Kudriavtsev, head of the Institute, and General Secretary Gorbachev himself. While I harbored no illusions about receiving acceptances from either, I thought it important to inform the Institute people of this international venture concerning *perestroika* hoping that it might generate a surprise response. That I had a friendly reception from a very curious front office *apparatchik* encouraged me, for I had a rich history of curt dismissals from such people.

This same official telephoned me shortly after I had returned to the US to say that Academician Kudriavtsev was honored but otherwise committed and therefore respectfully declined the invitation, as did Secretary Gorbachev. Kudriavtsev did, however, offer a counter proposal. He would nominate two colleagues, one a senior and former Brezhnev aide Dr. Svetlana Polenina, and the other English-speaking Dr. Vladimir Entin. Both he thought would be worthy participants in the symposium. The speed of this reaction was surprising if not unprecedented. This much accomplished, I had only to be sure that their visa applications would be approved.²² Another flash point was the refusal by a Russian expatriate Olympiad S. Ioffe—who had originally accepted—to participate with Soviet scholars. Unable to reach a compromise in this matter, I refused to rescind the Soviet invitation.

The symposium came off well if one can judge from post conference comments. Entin wrote: "I join [Professor Svetlana Polenina] in expressing the gratitude for your hospitality and magnificent organizational effort."²³ Entin and Polenina had made the most of this trip, stopping off in Boston for the American Association for the Advancement of Slavic Studies meeting on 5-8

²¹ The timing *was* good, for since October 1985, scholars in the Soviet Union had increasingly been granted the hitherto rare privilege of traveling abroad and interacting with foreigners. Zubok, *op.cit.* note 5, 282.

²² I confirmed with Entin and Polenina the invitation to participate in the international "Soviet Law Symposium on Perestroika" (12-15 November 1987). Further, in order to avoid any problem with visas, I informed the State Department that their participation was "essential for international legal cooperation and success of symposium".

²³ Letter (14 December 1987).

November, much shopping, and considerable socializing. Hal Berman thought: “The conference went splendidly. I learned a great deal from it.”²⁴ André Loeber from the University of Kiel thought the conference ‘stimulating and successful’, and Henry Morton from Queens College offered the following: “You certainly know how to run an international conference. [...] It was truly a great privilege to be among an international galaxy of Soviet law experts. And you even succeeded in importing two Soviet legal beagles.”²⁵ Louise Shelley’s letter was one of thanks for “organizing such a wonderful conference. People all over Washington are eager to have a report”.²⁶ Participant Yuri Luryi was effusive:

“Please accept my heartfelt congratulations: It was fantastic! You managed to muster up and to run smoothly a really unique International Symposium. The flawless organization allowed you to cope with the agenda good enough for two ordinary conferences. The participation of two Soviet scholars attached some peculiar piquancy to the meeting and was both interesting and instructive as well. People familiarized themselves with the Soviet ways of arguing and reasoning.”

He added that they even made jokes about the *KGB* and *CIA*.²⁷ Finally, participant Peter Maggs wrote thanking me for “your marvelous hospitality! It was the best Soviet law conference I ever attended, both in terms of content and organization!”²⁸

The symposium also received recognition in Soviet scholarly circles. Polenina and Entin published a brief account in *Sovetskoe gosudarstvo i pravo* in which they observed that for the “first time Soviet attorneys participated together with their Western colleagues in an international symposium on Soviet law”. Although they did not initially mention Gorbachev reform legislation which generated the program (rather they resorted to old clichés—the marking of the seventieth anniversary of the Soviet State and the tenth anniversary of the adoption of the 1977 USSR Constitution), they eventually did focus on *perestroika* legislation and participant analysis of it. They noted that participants included “prominent American, English, Dutch, Japanese, Italian, and West German Sovietologists, many of whom [had] visited the USSR and collaborated with the scholars of the Institute of State and Law of the Academy of Sciences of the USSR”.²⁹

Academician Kudriavtsev also wrote approvingly about both the symposium and the improved state of Soviet-US relations:

“I share your satisfaction with the successful conclusion of the summit meeting between General Secretary Gorbachev and President Reagan and look forward to further developments. [...] It seems to me rather significant that you have the possibility to publish the

²⁴ Letter (23 November 1987).

²⁵ Letters (16 February 1988 and 18 November 1987 consecutively).

²⁶ Letter (18 November 1987).

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ ‘*Sovetskoe pravo i perestroika*’ (1988).

reports and commentaries made by Professor S. Polenina and Doctor V. Entin during the symposium. I'll be glad to see you to discuss the possibilities of further cooperation in the field opened up by your efforts."³⁰

The grandiose legislative plan projected in 1986 by General Secretary Gorbachev was variously received: some parts of it won approval; others were altered or never enacted.³¹ Rarely did approval arrive as scheduled. There was no abandoning the notion that *perestroika* would and should follow a legislative route. That was lawyer Gorbachev's way.

Legislation on Improving the Economic Mechanism and Economic Management (Part II), proved especially troublesome to the reformers and was therefore significantly revised. The Law on State Enterprise (II.8)—which allowed for state enterprises to operate essentially as in a market economy—was slated for passage in 1986 but was not approved by the Supreme Soviet until July 1987. Delay also applied to the 1987 Law of Individual Labor Activity (*VII. Legislation on Social Development and Culture*).

The Law on Cooperatives, a remarkable piece of legislation, proved a deceptive if not dubious stimulus to a market economy. A throwback to Lenin's NEP, it was not included, as such, in the 38 pieces of projected legislation.³² Whatever its ancestry, the Law on Cooperatives, enacted in May 1988, was arguably the most radical element in the *perestroika* package.³³ In allowing for private ownership of some businesses in areas of manufacturing, service, and foreign trade, the law effectively removed the economy from Party control and opened the floodgates to diverse capitalist ventures.³⁴ The unintended consequence was that it became a vehicle for free-wheeling post-Soviet capitalists. Oligarchs like Aleksandr Smolenskii and Mikhail Khodorkovskii proved especially adept in manipulating it for their own gain in the 1990s. While these people used their wealth to accumulate great power in El'tsin's Russia, they were largely undone in Putin's.³⁵

³⁰ Letter of V.N. Kudriavtsev (17 February 1988) responding to mine (11 December 1987).

³¹ For a detailed analysis of the economics of *perestroika* by a former Soviet scholar, see Vladimir Mau, "Perestroika: Theoretical and Political Problems of Economic Reforms in the USSR", 47(3) *Europe-Asia Studies* (1995), 387-411.

³² It became essentially an elaboration of II.10.

³³ See Ulrich Weissenburger, "The New Soviet Law on Cooperatives: Use of Private Initiative to Overcome Supply Bottlenecks", 25(4) *Economic Bulletin* (Sept. 1988), 6-9.

³⁴ 'Russia: Unforeseen Results of Reform' as re-published from the Library of Congress *Country Studies* and the *CIA World Factbook*.

³⁵ See, especially, David E. Hoffman, *The Oligarchs: Wealth and Power in the New Russia* (Public Affairs, New York, NY, 2002), *passim*. Hoffman does cite oligarchs—besides Smolenskii and Khodorkovskii—Anatolii Chubais, Boris Berezovskii, and Vladimir Gusinskii.

That the Soviet Union would actually disappear at the end of 1991 was an outcome unforeseen by attendees, non-Soviet and Soviet alike, at the Bridgeport conference in 1987. They had come to scrutinize legislation and discuss reform in the USSR, not the Soviet state's dissolution.

From the vantage point of a quarter century, we can assess the goings on of 1986-1987 and the years following. We know that the Soviet Union reached a turning point; yet, in critical respects, it failed to turn. The question that haunts us: could it have ended differently and for the better? Could the old Soviet Union have achieved democratic reform, as seemed possible in 1986-1987, in accord with the rule of law?³⁶ Gorbachev in a recent writing, not surprisingly, thought that 'the breakthrough to freedom and democracy' was *perestroika's* and *glasnost's* enduring legacy. But that had hardly been his chief motive in early *perestroika*; nor has that legacy been as lasting as he suggests.

Stephen F. Cohen offers a more convincing analysis.³⁷ As does Citizen Gorbachev, Cohen believes that the removal of power from the 'hands of the Communist Party, which had monopolized it, to those to whom it should have belonged according to the Constitution—to the soviets through free elections—could have done the trick. There was the need only to buttress verbiage and structure with will.³⁸

The scholars at Bridgeport were, however, wedded to law, not to power brokers and the law's manipulators; that being the case, they—like most others—misread the tea leaves.

³⁶ See Stephen F. Cohen, "The Breakup of the Soviet Union Ended Russia's March to Democracy", *The Guardian* (13 December 2006). Calling the 'breakup' the most "consequential event of the second half of the 20th century", Cohen concludes this essay by observing that:

"Political and economic alternatives still existed in Russia after 1991, and none of the factors contributing to the end of the Soviet Union were inexorable. But even if democratic and market aspirations were among them, so were cravings for power, political coups, elite avarice, extremist ideas and widespread perceptions of illegitimacy and betrayal. It should have been clear which would prevail."

Cohen has spoken frequently on 'end of Soviet Union' and 'end of Cold War' matters. See his remarks at the Woodrow Wilson Center (Kennan Institute) seminar in Washington, DC on "The Fifteenth Anniversary of the End of the Soviet Union: Recollections and Perspectives" (13 December 2006) on the internet. Cohen, making some of the same points, spoke to a Cold-War Conference at the Gorbachev Foundation in Moscow (1 March 2006); see H-Diplo Commentary on the internet.

³⁷ "Was the Soviet System Reformable?", 63(3) *Slavic Review* (Autumn 2004), 488. The article has a superb bibliography interspersed in the footnotes.

³⁸ Early in 2010, Gorbachev wrote an op-ed piece ("*Perestroika* Lost") in *The New York Times* (13 March 2010) in which he observed:

"Our main mistake was acting too late to reform the Communist Party. The party initiated *perestroika*, but it soon became a hindrance to our moving forward. The party's top bureaucracy organized the attempted coup in August 1991, which scuttled the reforms."