

# Reflecting On Glasnost

by Dr. Albert J. Schmidt

Communist Party General Secretary Mikhail Sergeevic Gorbachev's *perestroika*, nominally a restructuring of the country's economy, is really much more than that. With its appendage of *glasnost*' (openness), *demokratizatsiia* (democratization), and social justice, it bespeaks of a revolution in the magnitude of that which Joseph Stalin launched six decades ago.

Gorbachev himself spelled this out in his book, *Perestroika: New Thinking for Our Country and the World*, when he said that "*Perestroika* is an urgent necessity arising from the profound processes of development in our socialist

society.... Any delay in beginning *perestroika* could have led to an exacerbated internal situation in the near future, which, to put it bluntly, would have been fraught with serious social, economic and political crises."

In reviewing the book for the *New York Times*, Robert Legvold noted that: "No Soviet leader has ever before written anything like it: a long, impassioned, self-justifying letter to the American people .... Mr. Gorbachev is up to something enormously important within his own land, and, if we hear him out, we begin to understand what drives him, and what is in it for us. Mr. Gorbachev believes deeply in the Soviet system, but he also knows that the system is in profound trouble, and he accepts the need for thoroughgoing change."

The four components of the Gorbachev program — restructuring, openness, democratization, and social justice — are not intended as equals. Restructuring the economy is clearly primary; the others are sweeteners, incentives. The question may well be whether these potentially explosive forces can be contained in this secondary role or whether they even have the motivational qualities ascribed to them for rehabilitating the economy. The obstacles to genuine reform in the USSR today, needless to say, are staggering.

One involves resolving historic legacies: a massive and entrenched bureaucracy, reminiscent of that which flourished in imperial Russia and is now established as an essential of Marxist-Leninist dogma and reality. Its dominance in Soviet life serves as an impediment to ven-

tures into an unknown where pluralistic modes of governance may be lurking.

Another is the relationship of state to society. *Perestroika* assumes a societal autonomy from the state that would have been unacceptable to Lenin, not to mention Stalin. *Glasnost*' and democratization if carried to their logical ends would end the domination of state over society. Imagine the quandry of conservatives over this one!

As Gorbachev endeavors to extricate the Soviet economy from the morass of Breshnevian stagnation and corruption, he is confronted by a third problem: he has bargained with the intelligentsia, offering them *glasnost*' for their support. But *glasnost*', as suggested above, portends political and cultural pluralism — anathema to partisans of the single-party Communist system.

Whatever promises the Bolshevik Revolution held for social justice for the people were sacrificed on the altar of necessity first by Lenin during War Communism and subsequently by Stalin. That this happened revives those nagging problems stemming from tension between the system and the individual. What will it mean to Soviet ideology if Stalinist collectivist principles are breached to favor the individual? What will it mean to the Gorbachev program, on the other hand, if individual need and choice continues to be ignored as in the past? Is compromise even possible?

The regime strives to increase individual efficiency in the interest of *perestroika* and reduce privilege to serve the cause of social justice, but what of the bedeviling problem of incentives? Worker incentives may actually increase income disparities and exacerbate inequalities. The matter will be complicated further should Secretary Gorbachev remove the historic security blankets of housing, food, and transportation subsidies as has been speculated.

These matters call to account the wisdom of a rigid adherence to an ideology that is at odds with reality. While it may be good sport to



dispense with or circumvent inconvenient Marxist-Leninist dogma, the authorities seem little disposed to discard it. What then is the Soviet leadership to do with burdensome ideological baggage that is neither inspirational nor believable?

These questions show that *perestroika* and *glasnost*, the latter more than the former, constitute the most momentous development on the Russian scene since the Stalin Revolution and may be irreversible.

Like all revolutions, Gorbachev's has broad implications for the law. The legislation of *perestroika* and the ethos of the era may well combine to create a critical epoch in Soviet legal history. Here the intent is to suggest how they relate to cycles of law reform since the establishment of the Soviet Russian state.

Law reform in the USSR has had a notable impact on Soviet legal history. The Bolsheviks began the cycle when they created a new law and legal system (notwithstanding tsarist/Romanist elements) — a socialist one, distinct from any earlier one. The revolutionary perception of law was a cynical one: an exploitive tool of capitalists for their market economy, or, to quote Lenin: It "is a political instrument; it is politics."

The Bolsheviks really opened a new chapter of Western legal history through several specific innovations: They injected the Communist Party as a paramount entity into the law. "Law was seen," John Hazard has observed, in his book *Communists and Their Law*, "as a flexible instrument of social engineering, to be used after a proletarian revolution to move society toward the goal of abundance and self-discipline set forth by Karl Marx and Friedrich Engels in the *Communist Manifesto of 1848*." Coupled with flexibility, Lenin offered "simplicity and popularity," particularly when he altered the court system in November, 1917. His new people's courts embodied this popularity and informality: professionalism was out. If the state were



Photo: Kathy A. Weydig

Dr. Albert J. Schmidt

to wither away, it was only a matter of time before law would too. Although Lenin changed his mind about this prospect, a substantial school of legal nihilists held fast to it.

Soviet Russia's economic collapse during the frightful period of War Communism required adjustment with capitalism, or so Lenin deemed. His solution, the New Economic Policy (NEP), lasted through most of the 1920s, and in its legal dimension reinstated essentials of the law and legal system only recently abolished. It is significant that NEP, which has over the decades been treated with disdain by Soviet historians, suddenly during *perestroika* has been accorded high marks. The similarities between NEP and *perestroika* are, of course, unmistakable.

*Glasnost*, meanwhile, has raised troublesome questions. One of the most painful has to do with the Leninist regime and Lenin himself. In the USSR today Stalin's villainy and illegalities are widely, though at times grudgingly, acknowledged; Lenin, on the other hand, is uniformly praised. What of Lenin's dictatorship? What of his employment of terror and his perception of the law? ("The court should not be a substitute for terror... it should substantiate and legalize it.") Finally, there was Lenin's policy toward the church, not so harsh as Stalin's and Khrushchev's, but not gentle either.

That the roots of Stalinism had been implanted in Lenin's Russia by no means diminishes Stalin's infamy; it does, however, place it in perspective. Stalin destroyed NEP, but he fooled those legal nihilists — Pashukanis, Stuchka, and Krylenko — who thought they saw in Stalin a kindred purist whom they could manipulate to liquidate law and its system. They were themselves liquidated.

The Stalinist planned economy with its ministerial bureaucracy, the one against which General Secretary Gorbachev has unleashed *perestroika*, carried in its baggage a system of lawlessness coated with only the appearance of legality. The famine he engineered in the Ukraine, the horrors of forced collectivization, overflowing labor camps, and liquidation of the old Bolsheviks were monuments to his criminality.

Yet surface developments like the Constitution of 1936, the promulgation of diverse legislation and law codes, and systemization of the courts did indicate a rejection of legal nihilism and constituted building blocks for significant reform. Andrei Vyshinsky's *Law of the Soviet State*, although obscuring gross violations of legality which occurred during his procuracy, gave theoretical sanction to a stricter adherence to the law and its procedures.

The Khrushchev era is sometimes depicted in the West as one of Soviet liberalism. While reality belies this interpretation, the regime doubtless was less sinister than its predecessor. A campaign of de-Stalinization and cultural "thaw," coupled with Khrushchev's folksy kitchen and cornfield discourses with Richard Nixon and Farmer Garst, have somehow obscured his brutal anti-clericalism and crushing of the Hungarian revolt. It is notable, too, that Khrushchev, whose image after his ouster was badly tarnished — "hair-brained schemes," "clown," etc. — has suddenly, like NEP, found apologists among Gorbachev's men.

Westerners who devise con-



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Red Square in Moscow

structs for Soviet legal history generally concede the importance of the Khrushchev years for re-establishing legality, despite notable lapses, and for wide-ranging legal reform. Harold Berman's catalog of Khrushchev's achievements a quarter century ago still hold: "tendencies" (in all these) toward ending terror, liberalizing both the substance and procedure of the law, systemizing and rationalizing the legal system, creating a decentralized and more democratic means of decision-making, introducing forms of participatory justice, and promoting a new theory of state and law — all are remarkably akin to the ideas underlying *perestroika* and *glasnost*. On the debit side of Khrushchevian justice lay the insidious "parasite laws," retroactive establishment of the death penalty for economic crimes, and a vicious anti-religious policy.

That Khrushchev was virtually a non-person during the Brezhnev decades suggests a non-period for legal reform, but that was not exactly the case. Legislation, diverse new codes, and even an embellished Constitution in 1977 gave the Brezhnev years a tinge of legal reformism despite the hounding of dissidents and gross show of privilege — both contradictions to the verbiage of "mature socialism," "socialist legality," and social jus-

tice which reverberated through the statutes and Constitution. In the final analysis, Brezhnev was no reformer; at most he sought stability. Pervasive corruption, even within his own family, and a stagnant economy especially tarred the late Brezhnev era as an unjust society, making it the object of unsparing criticism by the *perestroika* people.

That Soviet legal history is segmented into the "reigns" of its leaders is an inevitable consequence of the power inherent (the "cult of personality?") in the office of general secretary. If *perestroika* and *glasnost* successfully generate legal reform, then General Secretary Gorbachev, by the force of his personality and office, will have been largely responsible. In turn, it is the perception of the present Soviet leadership that law is the means by which reform is generated.

Consider Andrei Gromyko, aging President of the USSR Supreme Soviet: "*Perestroika* is an irreversible process .... It is with the help of law, of legislation that we translate into the concrete language of practice ... the expansion of *glasnost*, the underpinning of a citizen's status."

Ponder Gorbachev: "We still have to underpin (*glasnost* and democratization) with a proper legal foundation. We must unleash people's best creative forces."

The University of Bridgeport School of Law Symposium addressed the issue of "Restructuring through Law" in the belief that *perestroika* will constitute a major epoch in Soviet legal history. The perceived need for an early discourse on its legal components was the compelling reason for organizing the conference. Occurring as it did on the occasion of the seventieth anniversary of the Bolshevik Revolution, on the eve of the third Reagan-Gorbachev summit, and in the midst of both *perestroika* euphoria and tension from the Eltsin episode — the UB symposium was well-timed and drew one of the largest and most diverse gatherings of Soviet legal scholars law ever assembled.

Illustrating clearly the *glasnost* mood, the first scholars from the Soviet Union — Professor Svetlana Polenina and Dr. Vladimir Entin of the Institute of State and Law of the Academy of Sciences of the USSR — participated with those from the West. Academician V. N. Kudriavtsev, director of the Institute of State and Law of the USSR Academy of Sciences in Moscow, although unable to come to the symposium, was nonetheless responsible for Soviet participation in it.

The symposium also laid the groundwork for establishing *perestroika* as an important epoch in Soviet legal history. The agenda for the symposium was really Secretary Gorbachev's — his 38-point legislative blueprint for the immediate future. To a degree the Sovi-



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Soviet leader Mikhail Gorbachev

ets did not cooperate with the scholars: Their legislative program is well behind schedule, but the absence of new statutes hardly inhibited the discourse. If anything, it indicated the need for a follow-up meeting two years hence, one which the Soviet guests have suggested could be hosted by the Institute of State and Law in Moscow.

The single most important criterion for judging the success of a scholarly symposium is not so much its fortunate timing or who attended; rather it is its contribution to scholarship. In focusing early on an important theme, the Bridgeport symposium on "Law and *Perestroika*" provided the occasion for preliminary appraisals and the prospect of future meetings on the same topic.

Mr. Gorbachev's 38 pieces of projected legislation formed clearly do not constitute his entire program of reform. Present policy toward the church appears to be easing; one hears of the prospect of new legislation affecting the state's relationship with religious bodies. If Second Secretary Ligachev survives politically, he seems destined to bring forth reforms in education. Legislation enlarging the co-op movement recently appeared as a supplement to the proposed legislation. The highly controversial emigration statute was not included in symposium considerations.

In conclusion, while the 38-point blueprint is by no means an all-inclusive one for the Soviet future, it appears central in articulating goals into the next decade. By then the world will have had time to assess whether *perestroika* is the stuff of great historical consequence — the assumption which lay behind the symposium — or whether it is withering from the fire of opposition ideologues and vested interests.

*Dr. Albert Schmidt is professor emeritus of law and history.*

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## Participants In The Soviet Law Conference

**Giamaria Ajani**, Faculty of Law, University of Trento, Italy

**George Armstrong**, Associate Professor of Law, Louisiana State University School of Law

**Donald Barry**, Distinguished Professor of Political Science, Lehigh University

**Ger van den Berg**, Senior Research Officer, Documentation Office of East European Law, University of Leiden Faculty of Law

**Harold Berman**, Woodruff Professor of Law, Emory University School of Law and James Barr Ames Professor Emeritus of Law, Harvard University

**William E. Butler**, Professor of Comparative Law in the University of London

**Gabriele Crespi Reghizzi**, Professor of Comparative Law and Deputy Rector, University of Pavia, Italy

**Vladimir Entin**, Institute of State and Law of the USSR Academy of Sciences, Moscow

**F. J.M. Feldbrugge**, Professor of Law, University of Leiden Faculty of Law and Director of the Documentation Office for East European Law, the University of Leiden, The Netherlands; 1987-89, Sovietologist-in-Residence, NATO

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

**George Ginsburgs**, Distinguished Professor of Law, The Rutgers School of Law, Camden, New Jersey

**Marshall Goldman**, Class of 1919, Professor of Economics, Wellesley College and Associate Director of the Russian Research Center, Harvard University

**John N. Hazard**, Nash Professor Emeritus of Law, Columbia University School of Law

**Susan Heuman**, Assistant Professor of History, Lehman College, CUNY

**Thomas W. Hoya**, Administrative Law Judge, U.S. Department of Commerce, Washington, D.C.

**Peter H. Juviler**, Professor of Political Science, Barnard College

**Serge L. Levitsky**, University of Leiden Faculty of Law

**Dietrich A. Loeber**, Professor of Law and Dean of the Faculty of Laws, University of Kiel, Federal Republic of Germany

**Yuri Luryi**, Professor of Law, University of Western Ontario and York University, Canada; 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 School of Law

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

**Hiroshi Oda**, Associate Professor of Law, University of Tokyo Faculty of Law

**Svetlana Polenina**, Institute of State and Law of the USSR Academy of Sciences, Moscow

**Stanislaw Pomorski**, Distinguished Professor of Law, The Rutgers University School of Law, Camden, New Jersey

**John Quigley**, Professor of Law, The Ohio State University College of Law

**Albert J. Schmidt**, Arnold Bernhard Professor of History and Professor of Law, University of Bridgeport School of Law

**Robert Sharlet**, Professor of Political Science, Union College, Schenectady, New York

**Louise I. Shelley**, Professor in the School of Justice and the School of International Service, The American University, Washington, D.C.

**William Simons**, Counsel for the Fike Corporation, Independence, Missouri; formerly of the University of Leiden Faculty of Law

**Peter Soloman**, Professor of Government, University of Toronto

**Wim Timmermans**, Research Officer, Documentation Office for East European Law, University of Leiden

**Zigurds Zile**, Foley and Lardner-Bascom Professor of Law, University of Wisconsin School of Law

## Distinguished Guests

**Randy Bergman**, International Law Institute, Washington, D.C. and Adjunct Professor of Soviet Law, Georgetown University Law School

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

**Christine Genis**, U.S. Embassy, Moscow

**Jane Giddings**, Center for European Law, Kings College, University of London

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

**Christopher Senie**, Senie, Stock and LaChance, Westport, Connecticut

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

**Stanislaw Soltysinski**, Professor of Law, University of Cracow, Poland and Visiting Professor of Law, University of Pennsylvania School of Law

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

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**On the cover:** George F. Taylor, UB Alumnus 1955 and Chief Executive Officer of Citytrust. Photo by Kathy A. Weydig. See Banking Booms in Bridgeport story page 15.

**Editor:** Kenneth Best '73

**Writers:** Scott E. Ames, Sharon Cohen, Neil J. Morse '73, Dr. Albert J. Schmidt, Barbara Suarez and Susan A. Zavadsky

**Designer:** Elizabeth Helling

**Production Assistant:** Barbara Hoyt

**Photographers:** Kathy A. Weydig '82 and Joseph Sia

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We are pleased to present the Fall issue of The Quarterly, which has a new look and expanded content. The color on the front cover will change with each edition, reflecting the current season. We hope you enjoy The Quarterly in this magazine format, and welcome your comments.