

## Soviet Property Law

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# SOVIET PROPERTY LAW

JOHN N. HAZARD

Soviet jurists base their thinking concerning property on the Communist Manifesto of 1848. Twenty-seven years of administrative experience including the Second World War have not caused them to change their approach. They regard the Soviet social and economic structure as unique because of its property base. It will be the purpose of this paper to set forth the major features of the Soviet concept of property law as a guide to lawyers who seek to understand the Soviet Union in terms of concepts with which they are familiar.

## POLITICAL THEORY

"Law is politics," in the words of Lenin.<sup>1</sup> Soviet jurists who have shaped the laws of their country have borne this instruction in mind at all times. From the earliest days of the revolution, Soviet law has been developed as a tool of the political scientist. No law lecture in a Soviet law school and no law textbook fails to make the point clear. Soviet jurists proudly sever themselves from the school of "natural law" jurisprudence. In fact, they criticize the teachings of the "natural law" jurists as designed to confuse the issue which they believe clear, namely that all law at all times has been developed as a tool of politics, whether it be the politics of the slaveowner, the feudal lord, the bourgeoisie, or the proletariat.<sup>2</sup>

Law has traditionally been concerned with property concepts. Soviet jurists find this entirely natural. They believe that law was not developed until society became divided into classes, and classes did not appear until the concept of private property grew out of tribal society to cause the breakdown of the old tribal constitutions and the emergence of the first state.<sup>3</sup> Law, in accordance with their understanding, became the tool of the propertied class, which created and controlled the state, and it was shaped to further the interests of the propertied class in power.

Marx and Engels, in analyzing the society of the XIX Century, in which they matured, came to the conclusion that the source of power of the bourgeoisie and therefore the base of the capitalist system of economy, on which

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<sup>1</sup>See XIV V. I. Lenin, *Sochineniya*, Izd. 2 or 3, Moscow, 1923-1927, p. 212.

<sup>2</sup>For a statement of Soviet theories and a reasoned criticism of other schools of jurisprudence, see *Akademiya Nauk SSSR, Sovetskoe Gosudarstvennoe Pravo*, pod. red. A. Ya. Vyshinskogo, Moscow, 1938 pp. 7-41.

<sup>3</sup>For the Marxian theses on the development of law, see, FREDERICK ENGELS, *THE ORIGIN OF THE FAMILY, PRIVATE PROPERTY AND THE STATE* (Eng. ed., 1902).

the bourgeoisie thrived, lay in the private ownership of the source of large scale wealth, namely the means of production—the land, factories, forests, mines, livestock and means of communication and trade.<sup>4</sup> They decided that the only way to oust the bourgeoisie from its position of power was to deprive it of the economic base of its power. They found this economic base thoroughly protected by law, and they also found that this law was firmly established in the minds of the public as the only one possible in a progressive, free society. Marx and Engels transmitted a basic guiding principle to the revolutionaries who were to follow. They advised that private ownership in the means of production would have to be destroyed before a new society could be developed; the new society to be known ultimately as communism. This instruction did not mean the abolition of private ownership of all property. As Marx and Engels stated specifically in their Communist Manifesto, “The distinguishing feature of communism is not the abolition of property generally, but the abolition of bourgeois property.”

The revolutionaries in Russia, as well as their fellows in Hungary, Germany and ultimately China, remembered the teachings of Marx and Engels when they had a chance to seize power after the last war. Only those in Russia succeeded in retaining power and in carrying out the program to the fullest extent. They now lay their success, and the defeat of their colleagues in other countries, in considerable measure to the manner in which the property problem was handled.<sup>5</sup> They believe that some revolutionaries went too far, as in Hungary where the peasantry was antagonized, while others did not go far enough. In contrast, they find that Lenin kept his hand on the pulse in Russia and provided just the right pressure to achieve the goal desired.

The formula was comparatively simple—destroy private ownership in the means of production, but do not eliminate private ownership in consumers' goods. The detail required to work out the formula was not so simple. It involved hastening forward at some times, and retreating at others, so as to keep the pressure even during the formative stage. Russia was largely an agricultural country at the time of its revolution. It was not the industrialized state in which Marxists had expected their opportunity to come. Its people were almost feudal in their social customs and education. In spite

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<sup>4</sup>See Marx and Engels, *The Communist Manifesto*.

<sup>5</sup>See *Program of the Communist International* (1928 revision) for analysis of the rôle of property in effecting a revolution and the recommended variations in handling the question of property, depending upon the stage of development of the country concerned.

of this fact, the social and economic collapse following the last war was so severe that Marxian leaders saw their opportunity. Through resolute leadership they seized power and retained it in the face of extensive opposition, from the homeland and from abroad. Their struggle can be studied in terms of their laws.

#### STEPS TOWARD SOCIALISM

Soviet jurists, immediately after seizing power, began to inaugurate their program of property law. They did not hope for the coming of communism in one swoop. They anticipated a long preparatory period which would lead to socialism, as the first stage of communism, and they were agreed that during this period the state should be recreated as the dictatorship of the proletariat.<sup>6</sup> No one was in agreement as to how long the iron hand of the dictatorship would be necessary, or as to the manner in which it would ultimately be relaxed. All were in agreement, however, on the necessity for its existence.

Private ownership of land was on the first day's agenda of the Second All-Russian Congress of Soviets, which had seized power when the Winter Palace had been stormed and Kerensky's Provisional Government had been captured and deposed. In the decree of October 28, 1917,<sup>7</sup> rights to large landed property were annulled without indemnification, and the land placed at the disposal of regional agricultural committees and district Soviets until the Constituent Assembly should act. The people of Russia had only just finished preparing to vote in their first truly democratic election for delegates to the Constituent Assembly, which had been promised at the time of the Tsar's abdication on March 2, 1917.<sup>8</sup> The delegates were to assemble shortly from an electorate which contained a large preponderance of strength in the Socialist Revolutionary Party, which held to much less far-reaching revolutionary principles than the Bolsheviks. The Congress of Soviets bore this fact in mind. The decree specifically exempted the small landholdings of peasants from confiscation. Lenin explained to the Congress that many Bolsheviks did not think the decree went far enough, but he urged its accep-

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<sup>6</sup>See V. I. LENIN, *THE STATE AND REVOLUTION* (Eng. ed. 1935).

<sup>7</sup>*Sob. Uzak. R.S.F.S.R.*, 1917, I, No. 1, Art. 3. All dates through January 31, 1918, are given in accordance with the Julian calendar, in force in Russia at the time. By decree published January 26, 1918, *Sob. Uzak. R.S.F.S.R.*, 1918, I, No. 19, Art. 289 the Gregorian calendar was adopted for all dates beginning with February 14, 1918, which would have been February 1, 1918, under the Julian calendar.

<sup>8</sup>See *Sob. Uzak. Vrem. Prav.*, 1917, I, No. 54, Art. 344.

tance as the farthest advance possible at the time, in view of the peasant mentality.<sup>9</sup>

Not until the Constituent Assembly had finally met and had been dissolved by a resolute and powerful minority of Bolsheviks was it possible to adopt the complete program of land confiscation. On February 19, 1918,<sup>10</sup> the decree was issued abolishing for all time all property rights in land, sub-soil, waters, forests and livestock, and transferring it without direct or indirect indemnification to the use of the whole toiling population. This principle has been retained as basic in Soviet law to the present day, and has been incorporated as Article 6 of the 1936 Constitution of the U.S.S.R. Only the use of the land is now subject to property rights, as will be set forth below.

Property in fixtures upon the land remained intact for some time after the land was nationalized. In fact, the separation of ownership of land and the buildings upon it has never presented a problem to Soviet jurists. Not until August 20, 1918,<sup>11</sup> was there a decree relating specifically to urban land in which it was declared that title to houses should be removed from private ownership only in cities of over 10,000 inhabitants, and then only when the house was larger than a minimum to be defined by each local Soviet. In Moscow and Leningrad this minimum was set at five apartments without regard to the number of rooms in each. Even though all land had been nationalized the small house-owner in the city and in the country was left the owner of his home.

Property in intangibles of large value has also passed to the state. By decree of December 14, 1917,<sup>12</sup> banking was declared a state monopoly and all private banks merged with the State Bank. The decree provided, however, that the interests of small depositors would be guaranteed in their entirety. Trading in the stock of private corporations was forbidden by a decree published on December 29, 1917,<sup>13</sup> and the payment of dividends and coupon interest of these corporations was forbidden. On January 28, 1918,<sup>14</sup> the principle was extended to bonds issued by former governments of Russia, so that the obligations were annulled, and the December, 1917, coupons were not paid. All government guarantees of private obligations

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<sup>9</sup>For translation of speech, see JAMES BUNYAN and H. H. FISHER, *THE BOLSHEVIK REVOLUTION, 1917-1918; Documents and Materials* (1934) 128.

<sup>10</sup>*Sob. Uzak. R.S.F.S.R.*, 1918, I, No. 25, Art. 346.

<sup>11</sup>*Id.* at 1918, I, No. 62, Art. 674.

<sup>12</sup>*Id.* at 1917, I, No. 10, Art. 150.

<sup>13</sup>*Id.* at 1917, I, No. 13, Art. 185.

<sup>14</sup>*Id.* at 1918, I, No. 27, Art. 353.

were likewise annulled. Exceptions were created for short term obligations and banknotes, and for holders of government bonds not exceeding 10,000 rubles in face value. The latter could be exchanged for obligations of the new government in like denomination.

The merchant fleet corporations were nationalized by decree of January 26, 1918,<sup>15</sup> together with their fleets. The decree followed the established pattern of exempting the small private owner of fishing boats or small co-operatives which used their fleets solely to provide a living for the members of the coöperative. This same pattern was followed twenty-two years later when Esthonia, Latvia and Lithuania entered the U.S.S.R. as republics, and merchant fleets of private corporations became the property of the state.

The private ownership of industry was approached much more slowly. In contrast to the land, industry was not easy to operate and make productive without the skilled owner-manager of Tsarist days. Taking these facts into consideration the Soviet jurists left ownership and management in the hands of those industrialists who were willing to stay. They protected the new state, however, by making stock ownership unproductive of dividends and preventing liquidation of it as the result of sale.<sup>16</sup> Owners were required to register their holdings by a decree of April 18, 1918.<sup>17</sup> Soviet leaders also protected the state by the creation of workers committees who established a controlling hand over the manager.<sup>18</sup> Certain very large industries were nationalized by name, but not until June 28, 1918,<sup>19</sup> when all large enterprises were nationalized, without compensation to the owners, was there a general law. Smaller enterprises were left untouched for more than two years longer, for not until November 29, 1920,<sup>20</sup> were all industries having more than five workmen with mechanical tools or ten workmen without mechanical tools nationalized. Although this principle was relaxed in 1922 for some years, during what Lenin called the strategic retreat of the New Economic Policy, it has been fully restored and retained, even during the exigencies of the Second World War.

As a result of these decrees the Bolsheviks in the first years had firmly established their power on the basis of state ownership of the means of production. They had also followed the Communist Manifesto and had re-

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<sup>15</sup>*Id.* at 1918, I, No. 19, Art. 290.

<sup>16</sup>See decree of December 29, 1917, *Id.* at 1918, I, No. 13, Art. 185.

<sup>17</sup>*Id.* at 1918, I, No. 32, Art. 420.

<sup>18</sup>See Decree of November 14, 1917, *Id.* at 1917, I, No. 3, Art. 35.

<sup>19</sup>*Id.* at 1918, I, No. 47, Art. 559.

<sup>20</sup>*Id.* at 1920, I, No. 93, Art. 512.

tained the concept of private property when dealing with those types of property, which could not be used for the purpose of deriving income from the labor of others.

#### ADMINISTRATION OF AGRICULTURAL LAND

With large scale productive property in the hands of the state, it became necessary to establish the rules for its use, if the economy of abundance for which Soviet economists planned was to become a reality. The resource of greatest value was the land, and, unfortunately for the Soviet planners, it was in the hands of the most politically conservative elements. The steps taken to move forward along the path of the revolution without antagonizing the peasantry were numerous. Only major steps will be reviewed herein, as they led to the system of collectivization under which the vast majority of Soviet agricultural land is now operated.

The decree of February 19, 1918,<sup>21</sup> had set forth the major principles to govern distribution of the use of agricultural land. It was based upon an instruction of the Commissariat of Agriculture of a few days earlier.<sup>22</sup> Priority in distribution was given to agricultural communes or collective groups for the reason that coöperative operation was stated to be the ultimate aim. Land which had been used by former landlords as a unit under specialized cultivation, such as orchards, nurseries, seed gardens, market gardens, experimental fields, agricultural experiment stations and specialized farms, was kept together and turned over to the state for operation as a state farm or *soukhoz*. This form of operation was like that of a factory in that workers were paid wages and the state enterprise operating the business took all the products. The land remaining after creation of the *soukhoz*es was to be divided among peasant households within each *uezd*, in accordance with the principle of equality for every consumer able to toil. A family's allotment was not to take into consideration any hired labor it had or might have. Due to variations in density of population, sharp variations in the size of the allotments occurred.

A Statute on Socialist Land Status was published on February 14, 1919,<sup>23</sup> and an instruction of March 11, 1919,<sup>24</sup> tried to restore order to the distribution which local authorities had carried out on their own initiative after

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<sup>21</sup>*Supra* note 10.

<sup>22</sup>*Izvestiya Sovetov Rab., Sold., i. Krest. Deputatov g. Moskvy i. Moskovskoi Oblasti*, January 30, 1918, No. 22.

<sup>23</sup>*Sob. Uzak. R.S.F.S.R.*, 1919, I, No. 4, Art. 43.

<sup>24</sup>*Id.* at 1919, I, No. 39-40, Art. 384.

the earlier law. It eliminated variations in the size of the allotments, and required equality within a county, but this law was not obeyed, and finally a Land Code was adopted in 1922,<sup>25</sup> which sanctioned any distribution which had taken place and guaranteed perpetual use of all land factually being worked to the person at that time operating the land.

The Land Code of 1922 became the basic law for agricultural lands tilled by the peasantry until collectivized agricultural operation became predominant in the 1930's. It did not relate to state farms or to the peasants who operated the four per cent of land retained by the state in its land fund or to railroads or industries who were using the land. For these users, there were contracts executed by the local state organs, to which the rules of the civil code on contract law applied and not those of the land code.<sup>26</sup> A lessee under these contracts occupied from period to period and paid rent as stated in the contract, which could be terminated only if the land were used for a purpose other than that set in the contract or because of general misuse of privileges.

Title to land was reiterated by the Land Code to be in the State. A right to use the land could be conferred on a peasant or peasant household under the law, but it could not be alienated on pain of forfeiture.<sup>27</sup> If land subsequently was not being used, the right to use reverted to the state without compensation, except for structures raised upon the land, and the state might again reassign the use through the appropriate organs.<sup>28</sup> Rare exceptions to this rule in the case of temporary incapacity of the principal user during which time another person worked the land under contract with the principal user are not thought to upset the general principles.<sup>29</sup>

Since most of the land was distributed to the use of the traditional peasant household, headed by a chief who made contracts and performed the legal functions required of the household, there was no problem of inheritance of the use of the land. If the head of the family died, the remaining members elected a new representative and the use of the land continued as before.<sup>30</sup> The land, therefore, remained a unit, unaffected by the death

<sup>25</sup>*Id.* at 1922, I, No. 68, Art. 901.

<sup>26</sup>See Explanation of the Plenum of the Supreme Court of the R.S.F.S.R. of October 12, 1925, Protocol No. 17. See *E. S. Yu.* (1925), No. 42-43.

<sup>27</sup>An interpretation of the Land Code, § 27. See D. S. Rozenblum, *Zemelnoe Pravo*, R.S.F.S.R. (2 izd., Moscow, 1928) p. 131, and L. I. Dembo, *Agrarnoe Zakonodatelstvo*, S.S.S.R. (Leningrad, 1922) p. 37.

<sup>28</sup>See D. S. Rozenblum, *ibid.*

<sup>29</sup>See interpretation of D. I. Ivanitskii, *Zemelnyi Kodeks R.S.F.S.R.* (2 izd., Moscow, 1926) p. 99.

<sup>30</sup>See explanation of N. K. Yu., pub. in *E. S. Yu.* (1924), No. 32 and definition of

of an individual member of a peasant household, even though he might have been its head. Divisions of the use were permitted if boys wanted to set up their own family, or girls left the family on marriage.<sup>31</sup> If agreement on the division could not be reached, the *volost* land commission was to decide whether division should be permitted.<sup>32</sup>

A legal right means little to a Russian peasant if it is not symbolized by a formal document. For that reason the Land Code provided for the issuance of a document bearing a solemn declaration of the right to use. It was entitled "*Zakon*," which means simply "a law."<sup>33</sup> This was, in effect, a deed of use, subject to such laws controlling the use as the state might enact. The right of use was not limited in extent of time but was a grant in perpetuity, or until the use was terminated in accordance with the regular rules of the code.<sup>34</sup> Should a person temporarily leave his home area, the use of the land was reserved for him under this act. These rules differed in accordance with the type of work he went away to do.<sup>35</sup>

The right to use conveys the right to erect structures<sup>36</sup> and to plant such crops as are thought suitable,<sup>37</sup> although a tenant may not do anything so radical as to amount to waste in the eyes of the government. Burden of proof is on the government to prove waste, for there is a presumption that the tenant is operating within his rights.<sup>38</sup> Use of the land must not be carried to such an extent that it amounts to a nuisance,<sup>39</sup> and neighbors may sue in court to abate a nuisance, and to remove the tenant if he refuses.<sup>40</sup>

Servitudes upon the right to use are also known, but they must be enumerated in the act concerning the use of the land.<sup>41</sup> The local land organs decide what easements shall exist when they issue the document of use, and these easements which amount to easements by necessity pass to persons who subsequently obtain the right to use by virtue of later distributions. The

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GKK of the Sup. Ct. of the R.S.F.S.R. of June 1, 1926, in the case of Ekgardt, pub. in *E. S. Yu.* (1926), No. 46.

<sup>31</sup>Land Code, R.S.F.S.R., § 75 and interpretation in D. S. Rozenblum, *supra* note 27 at 274.

<sup>32</sup>Land Code, § 80.

<sup>33</sup>The form of this "Law" and the manner of determining boundaries of the land are outlined in §§ 143 and 204 of the Land Code. An exact description of the plot is required.

<sup>34</sup>Land Code, § 11.

<sup>35</sup>*Id.* at §§ 17 and 18.

<sup>36</sup>*Id.* at 24.

<sup>37</sup>*Id.* at § 58.

<sup>38</sup>See D. I. Ivanitskii, *op. cit. supra* note 29 at 65.

<sup>39</sup>Land Code, § 24.

<sup>40</sup>*Id.* at §§ 18 and 20.

<sup>41</sup>*Id.* at § 194.

acquisition of a right by prescription is, in principle, forbidden by Soviet law,<sup>42</sup> but this would not prevent a neighbor from proving before a land organ the need for an easement, as evidenced by long uncontested use.<sup>43</sup>

To establish right to peaceful use, the person in possession might bring a "possessor's suit" before the land commission. This latter, without examining the motives of the person violating peaceful possession was required to order return to the *status quo ante*, even though the trespasser may have entered into possession by force of arms, and might order the payment of any damages suffered by the person disturbed.<sup>44</sup> This same form of action might be availed of to establish the right to peaceful use of buildings upon the land.<sup>45</sup>

Although in 1927 the form of tenancy outlined above was still the basic form of land tenancy, the situation changed radically after that date, and especially so in the early 1930's.<sup>46</sup> Today, only a very small percentage of the agricultural land is worked under the land tenancy system set forth. The rest is operated by coöperative associations of peasants, known as "collective farms," (*kolkhoz*) or by the state enterprises described above as the "*sovkhos*," which operate like factories under a contract of use.

#### THE COLLECTIVE FARM

The manner in which the coöperative associations were to hold land was defined in the first model charter for the agricultural *artel*, issued in 1930,<sup>47</sup> followed by a general law on the collective structure of agriculture, adopted in 1931.<sup>48</sup> The first charter of 1930 was superseded in 1935 by a new model charter.<sup>49</sup> It is under this charter that almost the entire fund of state-owned agricultural land was being operated on the eve of the war.<sup>50</sup> In consequence, the chief agrarian law has become the Model Charter of 1935.

Repeating once again the major principle of Soviet agrarian law that para-

<sup>42</sup>See Explanation, June 29, 1925, of the Sup. Ct. of the R.S.F.S.R. to Art.-59 of the Civil Code, pub. in *Sbornik Razyasnenii Verkhstva, R.S.F.S.R.* (izd. 1935) at p. 45.

<sup>43</sup>Land Code, §§ 191, 194 and 207.

<sup>44</sup>*Id.* at § 26 and D. I. Ivanitskii, *op. cit. supra* note 29, annotation to § 26 of Land Code, at p. 95.

<sup>45</sup>Civil Code, R.S.F.S.R., § 59.

<sup>46</sup>Only 1.7% of the total grain crop of the U.S.S.R. was harvested by collective and state farms in 1927. See *On the Grain Front*, 2 J. Stalin, Leninism (Eng. ed., Moscow, 1933) at p. 14.

<sup>47</sup>*Sob. Zak. S.S.S.R.*, 1930, I, No. 24, Art. 255.

<sup>48</sup>*Id.* at 1931, I, No. 17, Art. 160.

<sup>49</sup>Law of February 18, 1935, *id.* 1935, I, No. 11, Art. 82.

<sup>50</sup>By 1937 18,500,000 peasant families had become collectivized, or 93% of the peasant households of the U.S.S.R. See *20 Let Sovetskoi Vlasti* (Moscow, 1937) at p. 43.

mount title to land is in the state,<sup>51</sup> the model charter sets forth the rules governing the use of land by agricultural coöperative associations. The Model Charter states that the association shall be assigned the use of all of the small plots of land formerly tilled by the persons who become members.<sup>52</sup> When the location of all of these small plots is determined, they are pooled, boundaries between them are removed, and the use of any plots of land lying between the former strips of this pooled land is acquired by state organs in exchange for other land and added to the mass set aside for the association.<sup>53</sup> This land is then defined and new boundaries set, and the entire tract described in a document transferring to the association the use of the land in perpetuity.<sup>54</sup> This document is called an "Act" and is issued by the Executive Committee of the region in which the coöperative association has been organized. The "Act's" formal appearance, bound between red, gold lettered covers over a foot and a half in height, invites respect.

Although the use of new land may be added to that already assigned, the law says that none may be taken away.<sup>55</sup> This rule has led to considerable confusion when land is needed for a railroad or an industrial enterprise. The extent to which the right of perpetual use is preserved is evidenced by a wartime law providing that unused land of a cattle coöperative association may be used by an agricultural coöperative association, but only when the Council of Peoples' Commissars of the Republic grants the license, and when the livestock farm consents.<sup>56</sup> The privilege is confined, however, to the duration of the war.

Not all of the land assigned to the coöperative association in the official "Act" is worked in a coöperative manner. Around each house there is set aside a plot of land varying from one-quarter to one-half or even one hectare, in accordance with the region in which the collective farm is located.<sup>57</sup> This small plot is in addition to the land on which the house actually rests and is tilled by the peasant household around whose house it stands. To carry on this process the household retains the private use of small agricultural tools, and may hire a horse from the association for

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<sup>51</sup>Model Charter, § 2.

<sup>52</sup>*Id.* at 2, par. 1.

<sup>53</sup>*Id.* at § 2, ¶ 3. This acquisition of intervening land was often not carried out, resulting in highly difficult problems in planning the tilling of isolated plots. See speech by Yakovlev in collection of speeches entitled *Soviet Union, 1935*, (Eng. ed. Moscow, 1935) p. 297 at 300.

<sup>54</sup>*Id.* at § 2, ¶ 3.

<sup>55</sup>*Id.* at §§ 2 and 3.

<sup>56</sup>Sec. *Izvestiya*, No. 51 (7737) (March 3, 1942).

<sup>57</sup>Model Charter, § 2, ¶ 5.

heavy work.<sup>58</sup>

No rent as such is paid the state for the use of agricultural land, but users are required to sell a certain percentage of their produce to the state at a fixed price.<sup>59</sup> Inasmuch as this price is lower than the open market price, the difference may in some measure, be considered as the cost of use, although Soviet lawyers would decry any attempt to class it as such.

#### URBAN LAND

Urban land is occupied largely in the same manner as agricultural land. Most of the dwellings in cities are owned by the local city government, known as the city Soviet, so that the question is one of distributing the use. This is done under a body of law too complicated for examination at this point.<sup>60</sup> On the other hand many apartment houses are now erected by state enterprises to house their employees, and since the war there has been renewed emphasis upon the building of private homes in the suburbs by the individuals who will live in them.

A state enterprise in constructing a building out of its own funds becomes the owner of the building,<sup>61</sup> but not of the land on which it stands. This, being the property of the state, is leased to the enterprise. Before 1932 these leases were in contract form for a period of years, providing that if the lease were not renewed, the building would revert to the state, which in turn would repay the state enterprise the value of the building as carried on the books or the cost price as amortized.<sup>62</sup> After 1932 the contracts of lease for a definite term were abolished, both insofar as they already existed and for new construction.<sup>63</sup> In their place a new concept was developed similar to that under which collective farms were being provided with land. The state enterprise obtained from the local Soviet an "Act of Perpetual Use."<sup>64</sup> Under this "Act," ground rent is exacted for the use of the land.<sup>65</sup> The enterprise may hold the land so long as the property right in the building exists.

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<sup>58</sup>*Id.* at § 4.

<sup>59</sup>See Decree of January 19, 1933 relating to grain collections. *Sob. Zak. S.S.S.R.*, 1933, I, No. 16, Art. 95. Other decrees have been issued relating to crops other than grain. Just prior to the war and after its outbreak the basis of computation was changed by a series of decrees from a percentage of production to a fixed quantity determined by the amount of tillable land available.

<sup>60</sup>See JOHN N. HAZARD, *SOVIET HOUSING LAW* (Yale Press, 1939).

<sup>61</sup>Decree of June 29, 1927, *Sob. Zak., S.S.S.R.*, 1927, I, No. 39, Art. 392, ¶ 10.

<sup>62</sup>Civil Code, §§ 71 and 83.

<sup>63</sup>Decree of August 1, 1932, *Sob. Usak. R.S.F.S.R.*, 1932, I, No 66, Art. 295.

<sup>64</sup>*Id.* at §§ 5 and 19.

<sup>65</sup>*Id.* at § 10.

Privately owned dwellings are built in accordance with contracts made with the local Soviet.<sup>66</sup> This contract defines the term of occupancy as a specified number of years. Ground rent is paid for the use of the land. This form of construction has been much favored since the war and is expected to be an important factor in reconstruction.<sup>67</sup>

Coöperative building societies formerly existed in large numbers, and these obtained the use of the land under a contract of lease or an "Act of Perpetual Use," similar to that under which state enterprises hold land, and paid ground rent in the same manner.<sup>68</sup> Except in suburban areas the coöperative building associations have now been abolished.

#### GOVERNMENT CORPORATIONS

Productive resources other than land are exploited by government corporations in accordance with a vast body of law which has become a primary concern of the Soviet lawyer. These government corporations operate under charters defining the scope of their activity under the supervision of the People's Commissariat by which they were created.<sup>69</sup> They are given a capital fund by the agency creating them. This fund includes the buildings, furnishings, equipment, supplies of fuel, raw materials, finished and semi-finished products and ruble balance allocated to the corporation. These are inventoried and evaluated and the list is affixed to the corporate charter.<sup>70</sup> The list does not include the land, forests and water supply occupied or used by the corporation, although their dimensions and a description are set forth in the charter for the purpose of record. This asset of the state is held under the terms common to all land.

Strict rules of contract law relate to the manner in which government corporations obtain and dispose of property in the ordinary course of business,<sup>71</sup> but the basic assets may not be disposed of unless a decision to liquidate the corporation is made, in which case superior state agencies

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<sup>66</sup>For law on private construction, see Civil Code, §§ 71-81d.

<sup>67</sup>During the war, village soviets have been criticized for limiting the period during which privately constructed homes may be occupied to periods less than the 50 years permitted by law. See Civil Code (1943 edition), p. 171. One other type of tenure exists by virtue of a decree of June 10, 1932, *Sob. Uzak. R.S.F.S.R.*, 1932, I, No. 56, Art. 246 permitting the transfer to an individual of a life estate in a small building in recognition of meritorious service to the cause of the revolution. The municipality as the representative of the state retains the reversionary interest.

<sup>68</sup>Decree of August 19, 1924, *Sob. Zak., S.S.S.R.*, 1924, I, No. 5, Art. 60, ¶ 27.

<sup>69</sup>The basic form of charter was outlined by decree of June 9, 1927. *Id.* at 1927, I, No. 39, Art. 392.

<sup>70</sup>*Loc. cit. supra* note 61.

<sup>71</sup>See decree of February 18, 1931, *Sob. Zak., S.S.S.R.*, 1931, No. 10, Art. 109.

arrange for distribution in accordance with the dictates of the economic situation. The details of this operation are too complicated for the present review and may be found elsewhere.<sup>72</sup>

#### THE POSITION OF CONSUMERS' GOODS LAW

The growing importance of law relating to the use and administration of state-owned property came close, for a time, to eclipsing the law relating to consumers' goods. This body of law was relegated to the realm of relics of the past, while the body of law relating to producers goods was termed "economic-administrative law" and heralded as the law of the future. Civil law was thought of as dying out, as the Soviet state advanced towards complete socialism, and ultimate communism—the period which Engels had prophesied as being the period in which law would disappear and there would be only the problem of administering things.<sup>73</sup>

The political theory underlying this development is important because of its far-reaching effects. It must be remembered that many Soviet jurists thought the new state formed in 1917, on the basis of Marxian teaching as to what was necessary to assure an effective social and economic revolution, would have no use at all for property law.<sup>74</sup> When Lenin decided it was necessary to resort to the New Economic Policy in 1921 and to utilize private enterprise in limited form to restore the economy which had been ruined by war and the long period of intervention by foreign armies, civil law became necessary to regulate the property relationships anticipated under the new program.

Jurists trained in the old school, but thinking in terms of the revolution tried to devise a code which would meet the needs of private enterprise, but which would preserve the political principles for which the revolution had been fought. They adopted provisions proposed by an Imperial Commission which had been working on a revised Civil Code for the Tsarist Empire before the revolution,<sup>75</sup> and they also drew upon the more progressive Civil Codes of the Continent. They explained that although law was the product of the market place and essentially bourgeois in character,

<sup>72</sup>John N. Hazard, *Soviet Government Corporations* (1943) 41 MICH. L. REV. 850-871.

<sup>73</sup>P. I. Stuchka, *Kurs Sovetskogo Grazhdanskogo Prava* (2 izd., Moscow, 1931), Vol. 1, p. 75.

<sup>74</sup>*Id.* at pp. 67-76 for review of theories on Soviet Civil Law.

<sup>75</sup>The report of this Commission is published in twelve volumes under the title *Grazhdanskoe Ulozhenie, Proekt Vysochaishe uchrezhdennoi Redaktsionnoi Kommissii po sostavleniyu Grazhdanskogo Ulozheniya*. St. Petersburg 1899-1903.

it was something required for a time until the new Soviet state could firmly establish itself.<sup>76</sup>

In keeping with this theory the Soviet jurists said they drafted a Civil Code which was bourgeois in form but socialist in substance. It was enacted in 1922. After the New Economic Policy had served its purpose, and was taxed out of existence, the Code remained, although large sections were superseded by new decrees on the administration of state-owned property.

Jurists of the early revolutionary school decided that the law they had incorporated in their Civil Code as bourgeois in form should begin to pass from the scene.<sup>77</sup> They ceased teaching it as a separate course in the law schools, and ceased publishing textbooks about it. They taught it apologetically at the end of the course on "Economic-Administrative Law" and placed it at the end of textbooks on the same subject.<sup>78</sup>

The economic situation changed as the Five-Year Plans progressed. State-ownership of the means of production became firmly imbedded in the national consciousness, but the use of property incentives became predominant in the organization of production. This finally flowered in the Stakhanov movement, under which workers who could exceed the expected daily output or "norm" were paid at a higher rate for the excess production. With these increased earnings the workers sought to purchase increased quantities of consumers' goods, including homes, and they deposited more money in the State Savings Banks. Although the provisions of the Civil Code relating to the conduct of private enterprise were not important, the other provisions relating to the use of consumers' goods regained importance. This change was recognized in the new Constitution of the U.S.S.R. of 1936, which guaranteed property rights in consumers' goods including the right of inheritance.<sup>79</sup>

Jurists, who had previously been little known, ousted the old school in 1937. The new men explained that the older men had not learned their Marxist theory correctly.<sup>80</sup> They had erred when they concluded that law was

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<sup>76</sup>E. PASHUKANIS, *OBSSHCHAYA TEORIYA GOSUDARSTVA I MARKSIZM* (Moscow, 1929).

<sup>77</sup>See annotation to Art. 403 of the Civil Code (1936 edition) p. 130 to the effect that the Article is not characteristic of Soviet Law but was borrowed from the civil law of bourgeois (for example French) codes and therefore must be interpreted and applied narrowly.

<sup>78</sup>*Kurs Sovetskogo Khozyaistvennogo Prava*, pod. red. L. Gintsburga and E. Pashukanisa, Moscow, 1935. Also, B. M. Rubinshtein, *Sovetskoe Khozyaistvennoe Pravo*, Moscow, 1935.

<sup>79</sup>Arts. 7 and 10.

<sup>80</sup>P. Yudin, *Protiv Putanitsy, Poshlosti i Revizionizma, Pravda*, No. 20 (6986), January 20, 1937, p. 4.

the product of the market place, and therefore subject to a withering away process as bourgeois economy was replaced with socialist economy. They should have noted that while Marx used bourgeois society as the basis of his analysis of the state, he, and especially his collaborator, Engels, had traced back their studies to the origin of the state. This had occurred with the development of the principle of division of labor and exchange of goods. As society progressed, law had been put to use by the slaveholders, the feudal lords and the bourgeoisie, in that order, and would be put to use by the proletarians when they constructed their new society. Law was, therefore, not a creation and servant of the bourgeoisie, but of each ruling class in society, and it would continue to exist with the proletariat as its political tool until the economy of communism should be achieved. There could be no question of a withering away process while the new economy was still being built and especially while capitalist economy existed in all the rest of the world and motivated hostility toward the Soviet Union.

The new jurists explained that the earlier men had confused the "terminology" of the codes which had been copied in preparing the Soviet Civil Code with "form," and that it was incorrect to say that Soviet law was bourgeois in form. Similarity of terminology has nothing to do with similarity in form, for form derives its character from its substance or content, so that Soviet law, being socialist in substance must also be socialist in form.<sup>81</sup> This principle of Hegelian philosophy was declared basic.

During the war, Vyshinsky as the dean of the Soviet legal profession has re-emphasized the importance of law and criticized those who anticipated any process of withering away during the continuation of capitalist encirclement and while the new economy is being built.<sup>82</sup> Civil law has regained its prestige and its future is assured.

#### SOURCES OF INCOME

With the abolition of private ownership in the means of production, no Soviet citizen derives income by way of dividends on corporate stocks or interest on corporate bonds. The basic source of income is one's own labor, and the labor law becomes the principle regulator of activity from which income springs.

This does not mean, however, that the basic source of income is the only one. To aid in financing the state's activities, the Soviet government has

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<sup>81</sup>P. Yudin, *Sotsializm i Pravo, Bolshevik*, No. 17, September 1, 1937, p. 31 at 40.

<sup>82</sup>*Pravda*, Nos. 144 and 145 (9601 and 9602), June 16 and 17, 1944 for lecture on the Soviet State in the War for the Fatherland.

resorted to borrowing from its citizens. It has done this by issuing government bonds from time to time, as the occasion demanded, the terms of the offering being set forth in a decree.<sup>83</sup> These bonds are in various forms, the most usual of which are the interest-bearing and the lottery forms. The interest bearing bonds pay annual interest of 3 per cent or 4 per cent, in accordance with the issue, while the lottery bonds pay no interest but if they are called in the quarterly lottery, the bearer receives from 150 to 3,000 rubles per 100 ruble obligation.<sup>84</sup> The principal of each type is paid on the due date, and the bearer may request payment within one year thereafter.

To make the purchase of government bonds even more attractive they are exempt from federal or local taxation, both as to principal and interest. This includes exemption from the inheritance tax. The right of property in the bond extends to the right of sale, gift, inheritance or hypothecation, in accordance with the rules of the Civil Code. State Savings Banks may give loans on government bonds up to 30 per cent of their face value for periods not exceeding six months, at a monthly rate of interest of  $\frac{1}{2}$  per cent, which is raised to 1 per cent per month after due date of the loan. The pledged bond becomes the property of the Bank when the loan is granted, and on repayment of the loan a new bond of like face amount is issued. Thus the borrower receives neither interest nor lottery winnings paid after the bond is pledged.

Income may also be obtained in the form of interest on deposits in the State Savings Bank. These Banks operate under a statute of February 20, 1929,<sup>85</sup> outlining their structure and powers. They have the standing of juridical persons and are responsible with their property for losses in operations. All deposits are guaranteed in full, however, by the government.

Depositing in the Bank is encouraged by exempting the deposits from execution or garnishment to meet obligations of the depositor. If the sentence in a criminal court authorizes such action, the court officer may levy execution upon the deposit. In further encouragement of depositors, the deposit and interest on it are exempt from taxation, including the inheritance tax.

A third source of income resulting from the ownership of property rather than from toil, is the rent which may be derived from leasing a spare room

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<sup>83</sup>For examples, see *Sob. Zak. S.S.S.R.*, 1936, I, No. 38, Arts. 329 and 331, *Id.* at 1937, I, No. 40, Arts. 165 and 166, *Sob. Post.*, S.S.S.R., 1938, No. 31, Art. 189, *Id.* at 1939, No. 47, Art. 364, *Id.* at 1940, No. 16, Art. 384.

<sup>84</sup>For a review of the principles established by decrees relating to the issuance of government bonds, see *Vsesoyuznyi Institut Yuridicheskikh, N. K. Yu. Soyuz S.S.R., Finansovoe Pravo, Moscow*, 1940 at p. 114.

<sup>85</sup>*Sob. Zak. S.S.S.R.*, 1929, I, No. 17, Art. 140.

in a home built by the occupant under a contract with the local soviet.<sup>86</sup> The possibility of making large profits from this type of operation is limited by two factors. The owner may not operate an apartment house but is limited to leasing spare rooms in a small house built for his family needs, but in which a vacancy has developed, and the rent must be limited to establish rates.

Inheritance provides another means of obtaining property apart from toil. Although inheritance was abolished after the revolution since it would have perpetuated property distinctions which the revolution had doomed,<sup>87</sup> it was reintroduced in limited form during the New Economic Policy,<sup>88</sup> partly to encourage the development of private initiative and partly to provide a means of caring for dependents, until the State should have developed another means. Finally all restrictions were removed on the amount that might be inherited.<sup>89</sup> The Civil Code now provides that persons in a descending line of relationship and the surviving spouse, and any dependent actually receiving complete support from the decedent for not less than one year before his death shall inherit on a per capita basis.<sup>90</sup> Inheritance taxation is levied on a graduated scale reaching 90 per cent on all property,<sup>91</sup> except that inherited from abroad,<sup>92</sup> and government bonds and State Savings Bank deposits. A decedent estate may be distributed in accordance with a testamentary declaration,<sup>93</sup> but this declaration may not bequeath property to any one outside of the class of inheritors who would have taken if the testator had died intestate, nor may a minor child be cut off with less than  $\frac{3}{4}$  of the share it would have received by way of intestacy.<sup>94</sup> Wills must be witnessed by a notary, unless they are noncupative during military operations,<sup>95</sup>

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<sup>86</sup>*Op. cit. supra*, note 60.

<sup>87</sup>Decree of April 27, 1918, *Sob. Uzak*, R.S.F.S.R., 1918, I, No. 34, Art. 456.

<sup>88</sup>Civil Code, § 417 (1923 edition).

<sup>89</sup>Decree of January 29, 1926, *Sob. Zak.*, S.S.S.R., 1926, I, No. 6, Art. 37.

<sup>90</sup>Civil Code, § 418. By amendment of March 14, 1945, grandchildren are removed from the class of heirs, unless their parent dies after the decedent but before the estate is opened for distribution, in which case, they take per stirpes. The class of heirs is simultaneously enlarged to include non-able-bodied parents, even if they cannot qualify as dependents for one year before the decedent's death. In the absence of heirs, the estate is distributed to able-bodied parents, and in the absence of such, to brothers and sisters of the deceased. *Trud*, March 18, 1945.

<sup>91</sup>Decree of February 6, 1929, *Sob. Zak.*, S.S.S.R., 1929, I, No. 8, Art. 78 and amendments in *Id.* at 1930, I, No. 3, Art. 34, and No. 49, Art. 511.

<sup>92</sup>Decree of September 10, 1933, *Id.* at 1933, I, No. 58, Art. 349.

<sup>93</sup>Civil Code, § 422.

<sup>94</sup>*Id.* at § 422, note 2.

<sup>95</sup>*Id.* at § 425.

Two types of labor are hard to recompense without resort to a system of royalty payments. These types are the production of literary works and the development of inventions. Soviet law provides means of obtaining income from both.

Inventions are made the source of income by a law which has progressed through various enactments, the most recent of which is dated March 5, 1941.<sup>96</sup> This law provides a system under which an inventor may submit his invention to the Commissariat or agency concerned and receive an author's certificate or a patent. The choice is his, except in certain cases, as when the inventor worked with state-aid to develop the invention, or was employed in an experimental institute or laboratory, or when the invention concerns an article relating to medical care or nourishment not obtained through a chemical process. In these cases, only author's certificates may be issued. After issuance, the author's certificate or patent is registered in the Invention Bureau of the State Planning Commission and published in its journal.

A patent gives the right to the inventor of licensing its use for fifteen years. In view of the limitation on the development of private industry, the patent owner, who is required to put his invention to use in industrial production if he is to obtain benefit, must license its use to a state enterprise on the basis of a contract, under which the terms of payment are set forth. If the patent holder does not grant such a license, the Council of Peoples Commissars of the U.S.S.R. may confiscate the patent, and determine the extent to which the patent holder shall be compensated.

Under the author's certificate, the inventor receives a percentage of the savings resulting to the state as a result of the use of the invention, and he is also exempted from the income tax on receipts up to 10,000 rubles. Also, special privileges are given the inventor, such as being placed on the preferred list for vacancies in scientific experimental institutes, other things being equal, and having a notation made in his labor passport. Under Soviet conditions, the author's certificate is generally considered the preferable form of assuring benefits from an invention. The patent is said to be a form selected primarily by foreigners.<sup>97</sup> If an invention is used without consent of the inventor, he may bring an action in court to establish the amount which must be paid him.<sup>98</sup>

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<sup>96</sup>*Sob. Post. S.S.S.R.*, 1941, No. 9, Art. 150.

<sup>97</sup>*Vsesoyuznyi Institut Yuridicheskikh Nauk N. K. Yu. S.S.S.R., Grazhdanskoe Pravo*, Moscow, 1938, Vol. 1, p. 272.

<sup>98</sup>*Id.* at 277.

Literary, artistic and scientific productions are protected by a copyright act of May 16, 1928,<sup>99</sup> which has been carried into the law of each republic.<sup>100</sup> Under its provisions the work may be protected if it is published in the U.S.S.R., whether by a citizen or foreigner. Citizens also have the right to protect the work by copyrighting it abroad. No formalities are necessary on the part of the author for copyrighting in the U.S.S.R., except in the case of photographs, which must bear on each copy the name of the photographer or publisher with the address, as well as the year of publication. The publishers of literary works, none of whom are private individuals or corporations, have an obligation to deposit copies of the work in the state libraries of the principal cities.

The duration of a copyright is the life of the author plus fifteen years from January 1 of the year of the author's death. Choreographic, pantomimic, moving picture scenarios and films are protected for ten years. Photographic and quasi-photographic works are protected for five years, when they are single pictures, and for ten years when they are published as a collection. In these cases an heir obtains the right of exploitation only for the balance of the period of protection remaining on the death of the author. But there may be only one transfer to an heir, for if the heir should die, or if there should be no heir on the death of the author, the right is extinguished.

The author may alienate his copyright, and often does so in his contract with the state publisher. The copyright may also be declared the property of the state, and the author or his heir is compensated, as determined by the Commissariat of Education of the republic concerned, in agreement with the Commissariat of Finance. Except in such instances an author may prevent others from publishing his works, unless they be in translation.<sup>101</sup> Criminal prosecution may be resorted to against a person who publishes a work without permission if there was criminal intent.<sup>102</sup> In such cases and in cases where there is no criminal intent there may also be a court action under Article 403 of the Civil Code to recover damages in accordance with a table established by the Commissariat of Education, based upon the type of work, the number of pages, and the size of the edition.<sup>103</sup>

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<sup>99</sup>*Sob. Zak. S.S.S.R.*, 1928, I, No. 27, Art. 246.

<sup>100</sup>For example, in the R.S.F.S.R., see *Sob. Uzak. R.S.F.S.R.*, No. 132, Art. 861.

<sup>101</sup>This provision excludes works in English from copyright protection in the U.S.S.R. It has been Soviet practice to create a ruble account to the credit of the foreign author, from which royalty payments may be withdrawn for use within the U.S.S.R., but not for exchange into foreign currencies.

<sup>102</sup>Criminal Code, R.S.F.S.R., § 177.

<sup>103</sup>For tables setting forth the scale of payments, see Directive of the Peoples Com-

## DEPRIVATION OF PROPERTY RIGHTS

Property may be confiscated only in the event of conviction for crime, when the criminal code provides for confiscation of property as a penalty for a criminal act,<sup>104</sup> when a person has fled abroad for political reasons and has not returned at the time of confiscation, and when a person uses property in a manner not permitted by law. The latter class concerns a group of situations defined precisely in the law,<sup>105</sup> in which case the administrative agency concerned may confiscate without a court order, as in the case of property brought into the country without the payment of customs duties, property on which an excise tax has not been paid, or property sent by mail or common carrier in violation of the health and safety regulations of the Commissariats concerned. The latter class also concerns cases not defined precisely by the law, but covered generally by Article 1 of the Civil Code, which provides that "civil rights are protected by law, except in those instances when they are exercised in conflict with their social-economic purpose for existing." Confiscation under this section requires a court order. Cases of this type have been studied in some detail and cover instances when a valuable industrial property is destroyed by the owner, or when an owner fails to operate a useful plant or to use a needed building, or where waste or nuisance is caused or an owner prevents emergency entry upon or use of his property.<sup>106</sup>

Requisitioning of property is permitted only when the property is required for purposes of the state or its agencies.<sup>107</sup> Payment of the average market price must be made, as established by a special administrative commission, when presented with the certificate prepared by the requisitioning agency on the day of requisition, and delivered to the person owning or keeping the property not less than three days later. Complaints against requisitioning or illegal confiscation carried out by way of administrative procedure may be directed to the agency concerned, and if the central authority of the agency does not support the individual officer, the property is returned and the officer is prosecuted under the criminal code for misuse of his authority.<sup>108</sup>

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missariat of Education of the R.S.F.S.R., June 8, 1930, published in *Osnovnye Direktivy i Zakonodatelstvo o Pechati*, sostavil L. G. Fogelevich, Moscow, 1937, p. 78.

<sup>104</sup>Civil Code, § 70.

<sup>105</sup>Decree of March 28, 1927, *Sob. Uzak. R.S.F.S.R.*, 1927, I, No. 38, Art. 248 and amendments in *Id.* at 1929, I, No. 79, Art. 774 and No. 87-88, Art. 872.

<sup>106</sup>Valerean E. Greaves, *The Social-Economic Purpose of Private Rights* (1934-5) 12 N. Y. U. L. Q. Rev. 165, 439.

<sup>107</sup>Civil Code, § 69 and *lex, supra* at note 105.

<sup>108</sup>Criminal Code, §§ 109-114.

Property may be levied upon by a court in payment of an obligation established by a court.<sup>109</sup> In cases of non-payment of a check or note or non-payment of fines or alimony, execution may be levied without a court decision.<sup>110</sup> Certain types of property may not be levied upon,<sup>111</sup> such as a minimum of agricultural implements or livestock believed necessary to sustain the debtor, as set forth in the law, a minimum of winter and summer clothing, as inventoried in the law, and a minimum of household linen, utensils, furniture, fuel, workmen's tools and raw materials to permit continued earning power.

Sale of property to a bonafide purchaser will not extinguish the property rights of a person who has lost the property or who has been deprived of it by a thief,<sup>112</sup> unless it is money or bills or notes of marketable character.<sup>113</sup> Not only must the property be returned, but the holder must pay over any income derived from it after the time the holder knew, or should have known that he had no clear title to it, or from the time he received the complaint in the action to obtain return of the property. He may deduct from the payment of income received any expenditures made on behalf of the property.<sup>114</sup>

As a general rule, finders have no right to the property they find, even if the owner does not appear to claim it.<sup>115</sup> It passes to the state, if the owner does not appear within a limited period. A finder is obligated by law immediately to notify the owner of property which is found, or to deliver the object to the police or village soviet.<sup>116</sup> Owners are likewise obligated to pay the finder the cost of keeping the property until it is returned and twenty per cent of its value,<sup>117</sup> unless a court determines that the relative wealth of the finder and loser would not make the application of the law equitable.<sup>118</sup> The Peoples Court decides the value, if there is a dispute in determining the twenty per cent payment.<sup>119</sup>

All actions for return of property must be brought within the statutory period, unless the plaintiff is a government corporation or agency, in which case no period of limitation applies.<sup>120</sup>

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<sup>109</sup>Code of Civil Procedure, R.S.F.S.R., § 87.

<sup>110</sup>*Id.* at 255.

<sup>111</sup>*Id.* at § 271 and Decree of November 3, 1934. *Sob. Uzak*, 1934, I, No. 39, Art. 243.

<sup>112</sup>Civil Code, § 183.

<sup>113</sup>*Id.* at §§ 59 and 60.

<sup>114</sup>*Id.* at § 59.

<sup>115</sup>*Id.* at § 63d.

<sup>116</sup>*Id.* at § 68a.

<sup>117</sup>*Id.* at § 68b.

<sup>118</sup>*Id.* at § 68c.

<sup>119</sup>*Id.* at § 68c.

<sup>120</sup>*Op. cit. supra* note 97, at p. 175.

Damages to property may be recovered under an action bearing resemblance to an action in tort in Anglo-American jurisdictions.<sup>121</sup> The usual Continental rules relating to contributory negligence are applied, however. A court must evaluate the contribution of each person to the damage, and assess defendants only to the extent of their contribution.<sup>122</sup> Contributory negligence is therefore no defense.

#### CONCLUSION

Soviet property law has been developed to implement the Marxian thesis that political power rests in property rights. Ownership of the means of production has been denied to the individual and transferred to the state created by the revolution of 1917. Private ownership of consumers' goods continues to be protected by the law, subject to restrictions designed to prevent use which would be detrimental to the state, as the representative of the interests of the new society. Private ownership of small scale implements of production likewise is protected by law, in accordance with principles enunciated in the Communist Manifesto, but subject to state controls.

Within this framework of law the Soviet citizen lives and dies. He carries on activities, common to mankind in the rest of the world—farming, handicrafts, production, invention, writing, saving, exchange and numerous others. This paper has traced the application of basic Soviet concepts to these activities, as they relate to property. This method of approach may clarify thinking on the Soviet system by providing concrete examples of what that system means to activities which are the daily concern of the American practitioner. Some attorneys, especially those familiar with continental law, will find much that they will recognize. There may be added by this process one additional source of information to those already available for evaluating the effect of the Soviet system upon the life of the individual.

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<sup>121</sup>Civil Code, § 403.

<sup>122</sup>Decision of G.K.K. of Supreme Court, R.S.F.S.R., 1926, printed as annotation to Civil Code, § 403.