The Hierarchy of Laws in the Communist Party-State System in the Soviet Union

Since the promulgation of the "Stalin" Constitution in 1936, the Soviet political system has evinced an increasing tendency to systematize and rationalize its legal sub-system; and an integral part of this process is the gradual emergence of a complex hierarchy of laws.1

From a practical viewpoint, the prospect of mushrooming commercial contacts between the U.S.S.R. and the West, and the concomitant expansion of legal contacts, renders the problem of determining the procedure of one legal act over another in the Soviet Union of increasing significance.2

The tendency toward classifying Soviet laws is also relevant to Western political and social scientists' efforts to analyze the processes of modernization and institutionalization in the U.S.S.R.3 No comprehensive typology of Soviet laws exists in Soviet or Western jurisprudential literature, although a few limited classifications have been attempted.4 Soviet jurists avoid the problem for political reasons; many Western analysts are mesmerized to some extent by

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1H. J. Berman, Legality vs. Terror: The Post-Stalin Law Reforms, in G. M. Carter and A. F. Westin (eds.), Politics in Europe (New York, 1965), at 179-205; describes six major tendencies characterizing law reform up to 1964, one being "systematization and rationalization of the legal system as a whole."

2The literature on the legal and political aspects of commercial relations with the U.S.S.R. is proliferating; a comprehensive work is Samuel Pisar, Commerce and Coexistence (New York: McGraw Hill, 1970), at 417; in which the growing concern about the applicability of the substance of Soviet Law is clear; "Eastern legislation does not always make clear whether substantive law automatically governs foreign trade and maritime tribunals—a crucial matter for Western traders inasmuch as a vast number of disputes in which they are involved are litigated in these tribunals.

3Political scientists are developing a mode of analysis for examining data on the Soviet political system, called "tendency analysis"; see Franklyn Griffiths, A Tendency Analysis of Soviet Policy-Making, in H. G. Skillings and Franklyn Griffiths, Interest Groups in Soviet Politics (Princeton: Princeton University Press, 1971), at 335-77. An emerging hierarchy of laws is one aspect of the tendency to systematize the legal system and as this article will demonstrate it also facilitates the process of centralization which is the main political consequence of the process of modernization according to the historian Cyril Black, The Dynamics of Modernization, New York, 1966.

4Some partial Soviet classification attempts are: A.I. Denison, Vazhnyi etap razitii Sovetskogo
the absence of law in Stalin's system of rule by terror.\textsuperscript{5}

It is symptomatic of the relative decline of terror, and the embryonic emergence of a more organic process of institutional development, that this Western scholar may attempt to set out the hierarchy of Soviet laws in Tables 1 and 2, as described and analyzed thereafter.

\textbf{Table I}

\textbf{Legal Acts of State Organs}\textsuperscript{a}

<table>
<thead>
<tr>
<th>Transliteration</th>
<th>Translation</th>
<th>Issuing State Organ</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zakon</td>
<td>(Statute)</td>
<td>Acts of Supreme Soviet</td>
</tr>
<tr>
<td>Ukaz</td>
<td>(Edict)</td>
<td>Acts of Presidium of Supreme Soviet</td>
</tr>
<tr>
<td>Postanovlenia\textsuperscript{c}</td>
<td>(Decree)</td>
<td>Acts of Council of Ministers</td>
</tr>
<tr>
<td>Raspiorazhena</td>
<td>(Regulation)</td>
<td>Acts of Ministries</td>
</tr>
<tr>
<td>Prikaz</td>
<td>(Order)</td>
<td>Acts of State Committees</td>
</tr>
<tr>
<td>Reshenia</td>
<td>(Decision)</td>
<td>Acts of Local Soviets</td>
</tr>
<tr>
<td>Court Decisions</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{a}Miscellaneous Legal Acts: instruktsiia and ukazanie, both translatable as "instruction," and issued by Ministries and departments to regulate internal agencies or individuals. A \textit{prikaz} sometimes performs this function as well as other functions. A ustav is a charter, a polozhenie regulates the scope and authority of a lesser state organ.

\textsuperscript{b}The legal nomenclature above applies to legal norms issued by Republic organs, but they are restricted and subordinate in jurisdiction to acts of All-Union organs.

\textsuperscript{c}Postanovlenia issued by all state organs. Usually, they are procedural rules dealing with internal organization, although when issued by the Council of Ministers and local soviets, they usually have substantive impact.


The reluctance of Soviet jurists stems from the dual nature of law as both a restraint on arbitrary rule and an instrument of rule. An unmesmerized exception is HAROLD BERMAN, \textit{JUSTICE IN THE U.S.S.R.} (New York: Vintage, 1963), at 8: "A system of law and a system of force exist side by side in the Soviet Union. . . . there are . . . areas which even under Stalin were on the whole governed by well-defined legal standards. The evidence tends to show a surprising degree of official compartmentalization of the legal and the extralegal." While Berman sees a sphere of law and a sphere of unlaw, generally American students of Soviet law tend to polarize into two mutually exclusive schools, one of terror and one of law; see Zigurds L. Zile, \textit{On Law and Force: Fifty

\textit{International Lawyer}, Vol. 8, No. 2
### Table II

**A Hierarchy of Soviet Laws**

<table>
<thead>
<tr>
<th>Legal Acts (Pravovye Akty) of Organs of State Power and Administration</th>
</tr>
</thead>
</table>

**Osnowoi Zakon (Basic-Fundamental Law)**
- Soviet Constitution
- Constitutional Amendments (2/3 Vote of Supreme Soviet)

**Zakon (Statute) (4 categories)**
- Of Supreme Soviet
  - Fundamentals of Legislation
  - Organic
  - Ordinary or Current
  - Ukaz Confirmed by Zakon

**Ukaz (Edict) (3 categories; See Table III)**
- Of Presidium of Supreme Soviet

**Postanovlenia (Decree)a**
- Of Supreme Soviet (Both Chambers)
- Of Presidium of Supreme Soviet
- Of Council of Ministers
- Of Supreme Soviet (Individual Chambers)
- Of Supreme Soviet Commissions (2 categories)b
  - predlozhenia (proposal)
  - recomendationsia (recommendations)
- Of Local Sovietsc
- Of Courts

**Rasporiazhenia (Regulation)**
- Of Council of Ministers
- Of Ministries
- Of State Committees and Boardsd
- Of Mass Organe
- Of Local Soviets

**Reshenia (Decision)**
- Of Courtsf
- Of Local Soviets

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*a*Postanovlenia of all state organs are usually acts regulating internal procedure, except those of the Council of Ministers.

*b*For the Normative impact of predlozhenia and recomendatsia see infra p.77-78.

*c*Local Soviets issue postanovlenia, rasporiazhenia, prikaz and reshenia. The latter is most frequent.

*d*These bodies sometimes issue legal acts called prikaz; their normative impact is in dispute.

*e*Theoretically, mass organs such as trade unions are not state organs, although, if authorized, they may issue legal acts.

*f*Theoretically, Soviet courts merely apply law, they do not interpret it; thus, in theory, they do not make it.

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*International Lawyer, Vol. 8, No. 2*
The Nature of the Soviet Hierarchy

Hans Kelsen is perhaps the most maligned of Western legal scholars by Soviet jurists for a whole host of reasons reflecting the theoretical nature of the Soviet hierarchy of laws. Soviet jurists reject his purely logical hierarchy of laws because of its implication that law possesses an independent legitimating authority of its own, distinct from that emanating from the Party or the proletarianized masses. They reject his unsociological approach to law as underlining the Marxist-Leninist sociological approach to jurisprudence.

Let us stress that this subordination of sources is not at all a logical scheme like Hans Kelsen's "pure" normativist theory of law. The subordination of the sources of Soviet law reflects the actual relationships between state organs with different competence in the sphere of law-making. Each source of law occupies a place corresponding to that which the organ creating the source holds within the system of state organs.

Thus V. M. Chkikvadze, Director of the Soviet Institute of State and Law, argues that the hierarchy of Soviet laws rests on the nature and place of the institution in the system of state organs from which the legal acts issue; rather than from a logical system of norms moving from the abstract to the concrete, as Kelsen would have it.

The System of State Organs

The system of state institutions of the U.S.S.R., from which all Soviet law emanates, is divided into two bureaucratic pyramids, the organs of state power, which are the Soviets at all levels, headed by the Supreme Soviet of the U.S.S.R.; and the organs of state administration, which are the Councils of Ministers and Ministries at all levels, headed by the Council of Ministers of the U.S.S.R. The basic theoretical distinction is that the Supreme Soviets are elected by the people, and thus embody a principle of popular sovereignty; while the Council of Ministers are appointed by the Supreme Soviets, and are, therefore, in theory, executive-administrative bodies.

In the hierarchy of laws, legal acts emanating from elective bodies are superior in law to legal acts issued by the non-elective organs of state administration at the same level—i.e. either the All-Union or the Republican or the local level. There are other criteria of normative subordination, but it is this criteria that is distinctive in the Soviet hierarchy of laws and distinguishes it from Kelsen's.

For Kelsen, law is entirely autonomous and self-contained; and therefore, its validity is not to be conceived in terms of any other extraneous system; it is not distilled out of a socio-economic order or a system of state organs based on that order as the Soviet legal order is. Analysis of the Soviet hierarchy of laws cannot be divorced from its political context; the legal and political systems in the U.S.S.R. are intimately intertwined.


*Konstitutsia (Osnovi Zakon) Soiuza Sovetskikh Sotsialisticheskikh Respublik (The Constitution of the U.S.S.R.), Izdatel' stvo "Iuridicheksaia Literatura," Moskva, 1966; on the Supreme Soviet see Articles 30-56; on the Council of Ministers see especially Articles 56 and 64-70.
Hierarchy of Laws in the Soviet Union

The Party and State Organs: The Sources of Legitimacy and Legality—Respectively

The source of Imperial Russian law was the Tsar, the divine interpreter of the messianic orthodoxy of the church. Russian law derived its legitimacy from the Tsar's special position in Russian history as symbol and voice of both political and religious authority. In other words, the Tsar was the source of both legitimacy and legality; he was the sovereign power.

Legitimacy for Marx resided in a socio-economic class, the proletariat. For tactical political reasons Lenin extended it to the peasantry, but argued that the voice of this proletarian class was the Bolshevik Party.

The basic distinction is that the Party (CPSU), on the one hand, represents social and historical legitimacy, stemming from its representation of the will of the proletariat which has been pre-ordained by history to liberate mankind. This really is a variation of divine origin, with history replacing God. On the other hand, the state converts social legitimacy into legality; thus, in the Soviet polity there is a clear distinction between legitimacy and legality. The Party legitimates; the state legalizes.

In theory and practice, the Soviets distinguish between "supreme power," which is the ultimate lawmaking power (or sovereignty in Western jurisprudence); and "supreme state power," which is the power to ratify or confirm.

Legitimation of basic policy norms rests with the Party; their ratification and conversion into legal norms is the role of the State. In practice the Party issues policy directives through its Central Committee, and the appropriate state organ converts them into detailed legal norms and ratifies them.

Controlling the Legal System: The CPSU and Its Apparatus

The Party (CPSU) has always maintained firm control over the legislation and administration of the law.

The control by the Marxist-Leninist party is the most important condition, and the necessary prerequisite for the smooth operation of all state organs, and the principal factor in the successful implementation of tasks facing them.

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*The "Stalin" Constitution of 1936 extended legitimacy to all the Soviet people on the premise that they were imbued with a proletarian mentality; however, it simultaneously juridically sanctified the role of the Party as leading core (Article 126) of all political institutions, including the state. Thereby, implicitly, if not explicitly, emerged a latent ambiguity in the nature of Soviet legitimacy. If society had imbibed the proletarian mentality en masse, why did it require a leading core? Theoretically, Stalin had rationalized this ambiguity away by pointing to the foreign threat, which necessitated continuing guidance of society by the Party during the period of capitalist encirclement. A presumption of the unity of popular and Party wills remains the fundamental underlying legal fiction in the Soviet legal system. Thus law is an expression of popular will as well as the will of the Party.


Osnovy teoriy gosudarstva: prava (The Fundamentals of the Theory of State and Law),
The Party itself is controlled by an inner core of Party bureaucrats—the Party apparat, who are the staff of all the higher organs of the Party machine.

This Party apparat overlaps and interlocks with the highest levels of the legislative organs of state power and administrative organs of state administration) pyramids of the state machinery. Almost all high officials of the state are also high officials of the Party apparat, a device which has always been the key practical instrument of the apparat’s dominance of the Soviet legal and political systems.14

The Principles of Normative Subordination
in the Soviet Hierarchy of Laws

Since no Soviet authorities have established a precise hierarchy of legal norms, Tables 1 and 2 represent an extrapolation from Soviet jurisprudential literature of the sixties and early seventies, much of which is vague and overlapping.15 The tables classify Soviet legal acts (pravovye akty) according to four principles of normative subordination:

1. The nature of the institutional source: organ of state power or organ of state administration;
2. The form of the act itself: general norm or administrative regulation;
3. The function of the act: substantive or procedural;
4. The geographical jurisdiction of the act: all-Union, Republican or local.

The nature of the institutional source refers to whether it is elective or non-elective; acts of the latter are subordinate to the former. The nature of the act itself refers to whether it is a broad, general, fundamental norm or a detailed administrative regulation; the former is superior to the latter. The function of the act refers to the substantive-procedural dichotomy, the former being superior to the latter.16

The geographical jurisdiction of the act refers to the territorial extent of the act’s coverage, the broader an act’s geographical coverage, the more superior because of the principle of popular sovereignty—i.e., more people are subject to the rule. These four principles establish the complex hierarchy of laws shown in Tables 1 and 2.

SVERDLOVSK LAW INSTITUTE, Moscow, 1969, at 197-98.

*Peter Vanneman, op. cit. supra note 12 and Vernon Aspaturian, op. cit., supra note 11 at 613-18.

*See note 4 above. The major Soviet law journals are: (1) Sobetskoye gosudarstvo i pravo, a monthly journal of the Institute of State and Law of the U.S.S.R. Academy of Sciences. Its substance is political and social as well as legal, since political science does not exist as an academic discipline in the U.S.S.R. (2) Sotsialisticheskaya zakonnost, the organ of the U.S.S.R. Supreme Court and the Procuracy. (3) Sovetskaya Yustitsia (bi-monthly), promulgated by the RSFSR Council of Ministers and Supreme Court. Both (2) and (3) deal primarily with procedural questions. (4) Pravovedenize (bi-monthly), promulgated by the U.S.S.R. Ministry of Higher and Secondary Specialized Education. Its orientation is theoretical-jurisprudential. Two other valuable sources of information on the development of Soviet law are the Zasedania Verkhovnogo Soveta SSSR (documentary record of sessions of U.S.S.R. Supreme Soviet and Vedomosti Verkhovnogo Soveta SSSR (News of the Supreme Soviet), a bulletin of activities of the Supreme Soviet and its auxiliary bodies.

*Koslova, op. cit., supra note 4, classifies rules of procedure according to four criteria: (a) the sphere regulated; (b) importance of objective; (c) form; and (d) legal consequences. His effort represents one of the more sophisticated attempts at legal classification.
Forms of Legal Acts

The problem of classifying laws is an old one in Russian history, which Tsars resolved by two fundamental classifications: *Ukaz* which were edicts or decrees of the Tsar; and *zakon* which were great compendiums of previous edicts of the Tsar.

In Soviet law, theoretically, a *zakon* is a fundamental normative act, but even among Soviet jurists there remains the tendency to confuse merely collecting laws with classifying them according to some relevant logical criteria.

Over 400,000 legislative acts and Government decisions, which have not yet been systematically arranged, have been published since the USSR was established. Since 1927 the publication ceased not only of a systematic collection of the legislation in force, but even of a chronological one.17

Stalin sought to juridically elevate the *zakon* (statute); and it emerged as a fundamental law enacted through the Supreme Soviet exclusively, thus distinguishing it to some extent from Tsarist *zakon* which were chiefly codifications of previous decrees of the Tsar. The *zakon* was the highest legislative act of state authority; it was normative, prescribing general rules, seeking to achieve definite goals.18

Most recent Soviet sources identify four basic forms of legal acts issued by the highest organs of the state: *zakon* (statutes), *ukaz* (edicts), *postanovlenia* (decrees or resolutions), and *rasporiazhenia* (regulations). A fifth form, the *prikaz*, is issued by state committees, but its status in the hierarchy is unclear. A sixth form, *reshenia* (decisions), is issued by local Soviets and the courts, but not by the higher organs of state power and administration, which are the sources of the four basic forms.

Only the Supreme Soviet itself may enact *zakon*. The Presidium of the Soviet Supreme issues edicts (*ukaz*), which are often independent norms; and decrees (*postanovlenia*), which are procedural regulations.

The Council of Ministers issues decrees (*postanovlenia*) and regulations (*rasporiazhenia*), both of which are in the nature of administrative regulations, although the latter (regulations) usually lack the quality of a legal norm. In other words, *rasporiazhenia* (regulations) appear to be both substantive and procedural. They emanate (one might say proliferate) from the Council of Ministers, and also from the ministries, authorized mass organs and local authorities.

The distinction between *postanovlenia* and *rasporiazhenia* at higher levels is particularly fuzzy. The procedural-substantive dichotomy—often a thin line even in Western jurisprudence—is even more vague in Soviet juridical literature. In fact, its nature appears to have been seriously debated only in the late sixties.

Several other forms of legal acts appear occasionally in Soviet juridical literature, but do not properly fit into a hierarchy of normative subordination, because they are internal acts, or acts of general reference which lack the quality of a legal norm.

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In science and ukazanie, translated as instruction, are internal acts of the Council of Ministers and Ministries. Terms of general reference are polozhenie and ustov, translated as charter, which usually refer to a body of rules governing a local government organization's procedures such as the local Soviets. Akt refers to any legal act.

Let us turn now to a detailed description and analysis of Tables 1 and 2 setting out the hierarchy of laws according to the principles of normative subordination, previously set forth.

Constitutional Law ("Osnovnoi Zakon"): The Basic or Fundamental Law

In Soviet legal theory the Constitution stands at the pinnacle of any hierarchy of laws. The Director of the Institute of State and Law of the U.S.S.R. Academy of Sciences declares that: "The Constitution is the most important source of Soviet law and the highest type of law."\(^1\)

Soviet constitutional law derives its importance, according to Soviet authorities, from the fact that it sets out the main features of the social and state system, defines the competence of state organs and the normative acts which they may issue, sets out the fundamental principles underlying the power of state bodies, and establishes the procedures governing modification of rules of law in every branch of law.

On December 5, 1936, the Eighth Congress of Soviets adopted the Constitution of the Union of Soviet Socialist Republics. It can be amended by a two-thirds vote of the U.S.S.R. Supreme Soviet pursuant to Article 146; but few major amendments have been passed. The two-thirds requirement has proved to be a mere formality since the Supreme Soviet has approved all amendments by a unanimous vote. The Constitution is referred to as the fundamental or basic law, Osnovnoi zakon.

The Soviet constitution is a mixture of general principles and specific detailed legislation. For example, changes in the industrial management apparatus require a constitutional amendment—which is hardly in the nature of a general principle of law. In fact, most amendments to the Constitution have related to these economic reorganizations, which affects Articles 70, 77, and 78 concerning the structure of the Council of Ministers.

The prospect of a new constitution has been on the horizon for over a decade, since 1962 when N. S. Khrushchev was appointed Chairman of a new constitutional commission by the Supreme Soviet. His successor as head of the CPSU, Leonid Brezhnev, was elected in December 1964 to succeed Khrushchev as Chairman of the constitutional commission also. On December 22, 1972, Brezhnev announced that a new draft constitution will be ready in time for the next Party Congress.\(^2\)

Statutes (Zakon): Statutes (zakon) are enacted through the Supreme Soviet of the U.S.S.R. by a majority vote, although in fact only three non-unanimous votes have ever been recorded in that body.\(^3\)

In 1936 the "Stalin" Constitution introduced a notion of popular sovereignty into Soviet legal theory, located it exclusively in the Supreme Soviet, and

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\(^1\)Chkivadze, op. cit., supra note 7, at 227.


\(^3\)Zasedania Verkhovnogo Soveta SSSR, First Convocation, first session, 1938, pp. 49-50; and 56.
designated the statute \((zakon)\) as the highest vehicle for expression of that popular will. As Andrei Vyshinsky proclaimed:

In socialist society a statute \((zakon)\) is the highest act of state authority, responsive to the interests of the consciousness of the masses which augments the force of a Soviet statute. In contrast to the ever-increasing part played in capitalist countries by executive authority at the expense of legislative authority, the Stalin Constitution emphasizes the supremacy of the socialist statute as expressing the will of the sovereign Soviet people.\(^2\)

Statutes may be divided into four categories constituting an implicit hierarchy of \(zakon\); according to implied legal precedence, they are:

1. Fundamentals of legislation;
2. Organic laws;
3. Ordinary or current legislation; and
4. \(Ukaz\) confirmed by \(zakon\).

The fundamentals of legislation lay down the basic principles and institutions of the legal system throughout the Union.

These fundamentals of legislation are authorized by Article 14 of the Constitution; and the effect of passing many of these statutes over the decades of the fifties and sixties has been to centralize the Soviet legal system considerably, since all other legal acts must conform to the fundamentals.

The organic laws regulate procedures of state bodies as authorized by the Constitution such as the elaborate procedure on the recall of Supreme Soviet deputies pursuant to Article 142. The third category of \(zakon\), current legislation, deals with policy matters such as marriage or pensions—in the common sense meaning of ordinary legislation.

As mentioned previously, the \(zakon\) derives its authority from the fiction that it represents the will of the people, having been enacted by an elected, representative organ of the people. In theory, all normative acts emanate from the will of the people in the sense that their authority derives from \(zakon\), to which they must conform, and which embody the will of the people as enacted by a representative body (the Supreme Soviet) for all of the Union. Authority to issue other normative acts is in a sense delegated by the Supreme Soviet pursuant to relevant constitutional provisions.\(^23\)

**Acts of the Presidium of the Supreme Soviet: Ukaz and Postanovlenia**

Although there is some debate among them, most Soviet jurists view the norm-regulating activities of the Presidium of the Supreme Soviet as authority delegated from the Supreme Soviet.\(^24\) The Presidium issues two kinds of normative acts: edicts (\(ukaz\)), specifically authorized by Article 49 of the Constitution; and decrees (\(postanovlenia\)), which are implied from Article 49 of the Constitution and are in the nature of internal procedural acts.

\(^2\)Vyshinsky, *op. cit.*, p. 337.
\(^23\)Vanneman, *op. cit.*, *supra* note 12, chapter II.
\(^24\)A proponent of the predominant delegation view is: L. Mandelshtam, *Istina i domysly*, Izvestia, July 30, 1966, at 3. An opponent is G.V. Barabashev and K. F. Sheremet, *Sovetskoye stroitel'stvo* (Moscow, 1965), at 76-7. For a detailed analysis of the many legal positions on this question as well as the political implications see Vanneman, *op. cit.*, *supra* note 12 Chapter VIII.
Table III
A Hierarchy of Acts
of the Presidium of the S.S.

<table>
<thead>
<tr>
<th>Ukaz (substantive)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 categories</td>
</tr>
<tr>
<td>1. Ukaz: subsequently ratified by zakon.</td>
</tr>
<tr>
<td>2. Ukaz: concretizing zakon.</td>
</tr>
<tr>
<td>3. Ukaz: as independent legislation.</td>
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</table>

Postanovlenia (procedural)
Regulate internal procedure, awards, appointments, etc.

Ukaz actually set out behavioral norms and fall into three categories: first, those which elaborate, concretize or fill in the details of Supreme Soviet zakon—in effect, administrative regulations pursuant to Supreme Soviet statutes; and second, those that are in effect new laws which must be ratified subsequently by the Supreme Soviet.

Some Soviet jurists argue that the Presidium also has a third independent power to issue ukaz without Supreme Soviet ratification. However, this violates the central juridical fiction that all law emanates from the will of the people as expressed through acts of an elected representative body. The Presidium of the Supreme Soviet is elected by the Supreme Soviet, not the people.

Ukaz of the Presidium of the Supreme Soviet, which are later ratified by the Supreme Soviet, may be thought of as a sub-category of current legislation which is justified by its urgency (see Table II), or as a separate category of ukaz (see Table III), according to Soviet rationale. The urgency argument as expressed by the Director of the Institute of State and Law is that:

There is a specific group of statutes within the ordinary statutes group which, before becoming statutes, had operated in another juridical form, namely, as decrees of the Presidium of the Supreme Soviet of the U.S.S.R. The need to have the earliest possible regulation of the important matters frequently arises in between the sessions of the Supreme Soviet, in which case its organ, the Presidium which it elects, adopts a normative decree. But because the promulgation of statutes is the exclusive prerogative of the Supreme Soviet (Art. 32 of the Constitution), such decrees are subject to approval by the following session of the Supreme Soviet, whereupon they become statutes.

Under the extraordinary conditions of World War II, the Presidium by ukaz amended the Constitution, creating two commissariats. Again, urgency was probably the underlying rationale although this practice embarrasses some...
Soviet jurists who are attacking it. The majority of the jurists seem to view *ukaz* which are later ratified by the Supreme Soviet either as the lowest category of *zakon*; or the highest category of *ukaz*, as indicated in Tables II and III.

*Postanovlenia* (decrees), the second form of legal act issued by the Presidium of the Supreme Soviet, deal with internal organizational or procedural matters enumerated in Article 49, such as: convening Supreme Soviet sessions, pardons, appointments to high office, awarding medals, conducting referendums, dissolving the Supreme Soviet, etc.

**Internal Acts of the Supreme Soviet and Its Auxiliary Bodies**

There are a multiplicity of internal legal acts issued by the Supreme Soviet and its auxiliary bodies (cf. Table II) designed to accomplish one of two general purposes: First, as described above, *postanovlenia* regulate the internal organization and procedure of the state bodies; second, *predlozhenia* (proposals) and *rekomendatsia* (recommendations) facilitate fulfillment of the norms laid down by *zakon*. If the acts involve major reorganization of the Supreme Soviet, such as the 1967 statute on the commission system, they are usually elevated to the status of *zakon*.28

*Postanovlenia* may be issued by vote of both houses of the Supreme Soviet or by an individual house. They are not usually substantive acts; they regulate internal procedure and organization. The Presidium of the Supreme Soviet may also issue decrees regulating its own procedure and organization. Each decree applies only to the body which enacts it.

A second category of internal acts are proposals and recommendations of the commissions of the Supreme Soviet which usually lack the quality of a legal norm. These acts are issued to the Presidium of the Supreme Soviet, to the Supreme Soviet itself, or to the Council of Ministers or to the individual ministries. Their function is to point out inefficiencies or defects in the fulfillment of norms established by *zakon*.

Normally, the acts are merely recommendations, which can be reviewed and ignored by the bodies to whom they are addressed. The authority to issue such acts is implied from Article 51 of the Constitution which grants the Supreme Soviet the power to create commissions for investigation and audit. The Presidium may convert such recommendations into *ukaz* under the power of concretizing *zakon*—that is, in effect, issuing a further administrative regulation to facilitate the faulty implementation of a *zakon* which has been uncovered by the commission’s investigations.

A *predlozhenia* from the Supreme Soviet commissions to the Council of Ministers is recommendatory unless converted to a *ukaz* by the Presidium of the Supreme Soviet. However, such a resolution to the ministries appears to be legally binding and mandatory and must be carried out. Thus, a *predlozhenia* of a commission of the Supreme Soviet to one of the sectoral ministries takes on

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29Ibid., Article 23.
the character of a binding legal norm, although they are primarily investigatory in nature.30

Another binding form of predlozhenia impliedly authorized by Article 51 (and perhaps Article 71), of the Constitution, requires the Council of Ministers and the ministries to submit to the commissions all documents and materials necessary to any audit or investigation of these bodies' activities in implementing a zakon.

The 1967 zakon on the commission system further implements this constitutional power, requiring an answer from the Council of Ministers and the ministries within one month. Article 71 requires a verbal or written reply to a deputy's inquiry within three days, but has been ignored until legally reinforced by that same zakon.31

Legal Acts of the Organs of State Administration

The organs of state administration are the councils of ministers and the ministries, at all levels of government; and state committees, commissions and boards. They are empowered by the Constitution (Article 73) to issue legal acts in pursuance of zakon. In theory, such orders are administrative regulations filling in the details for the implementation of the more general zakon.

On the basis of acts of the USSR Supreme Soviet and its Presidium the Council of People's Commissars (now the Council of Ministers) of the USSR issues its orders and directives. On the basis of all these acts, the People's Commissariats operate. The orders and instructions of People’s Commissariats are binding upon organs subordinate to them. Thus an unbroken series of acts is here formed, each of which has complete force insofar as it is issued in conformity with operative laws and the acts of superior organs emanating therefrom.32

Any acts of the organs of state administration are, in law, clearly subordinate to acts of the organs of state power—both the zakon of the Supreme Soviet and ukaz of the Presidium of the Supreme Soviet, which represent the will of the people as expressed through an elective representative body. Any act of an organ of state administration contravening a zakon of the Supreme Soviet is illegal and must be rescinded. It is not legally binding in theory.

The Council of Ministers issues two kinds of legal acts as authorized by Article 66 of the Constitution. They are decrees (postanovlenia) and regulations (rasporiazhenia). The former establish legal norms; the latter are usually internal procedural acts. The postanovlenia of the Council of Ministers are in the nature of administrative regulations, adding details to a general norm set out in a zakon.

At least this is the theory. In fact, frequently they constitute new legislation which may later be approved by the Supreme Soviet through tacit consent or formal ratification. They are not procedural like the postanovlenia of the Presidium of the Supreme Soviet.

The Council of Ministers also issues regulations (rasporiazhenia) which are usually procedural in nature—that is, they concern the internal organization and procedures of the government and do not set behavioral norms. Under

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30Ibid., Articles 21 and 24.
31Ibid., Articles 21 and 22.
32Vyshinsky, op. cit., note 7, at 370.
Article 69, a regulation of the Council of Ministers may also annul regulations of the ministries and suspend decrees and regulations of Councils of Ministers of Union Republics. The ministries may also issue regulations under Article 73 which elaborate on zakon, ukaz or Council of Ministers' regulations or decrees, but only within their sectoral sphere of jurisdiction.

Legal Acts of State Committees

The frequent reorganizations of the organs of state administration for political or economic reasons have left the status of the acts emanating from various state boards, commissions and committees somewhat unclear in the hierarchy of laws. One Soviet jurist recently summarized the confusing picture:

*Today there is no uniform form for the legal acts adopted by state committees.* The USSR Council of Ministers' State Committees on Labor and Wages, on Science and Technology, and on Construction issue decrees [postanovlenia], the Supply Committee issues regulations [rasporiazhenia], and the others issue their decisions as orders [prikazi]. In practice, the issuance of orders by state committees creates serious difficulties, inasmuch as that form cannot reflect the diversity of content of community decisions, many of which are actually recommendations and are addressed to agencies not within the system of the committee nor subordinate to it. Therefore state committees, upon the issuance of decisions addressed to ministries and agencies, are compelled to formulate them as minutes of committee meetings, or to circulate various letters or instructions or to term their acts committee decisions.

In view of the practices of a number of state committees, it would be desirable to establish in the general statute that committee decisions shall be in the form of decrees (postanovlenie). . . .

Here again we perceive a concern for rationalizing and classifying legal acts because a multiplicity of different forms—postanovlenia, rasporiazhenia, and prikaz—emanate from the same type of government organ. The jurist above appears to represent the generally accepted opinion that the postanovlenia is the highest form of act issued by organs of state administration. Of course, since state committees and boards are created by the Council of Ministers pursuant to Article 68(f) of the Constitution, their acts are subordinate to those of their creator.

Normative Acts of Mass Organs

The mass organs such as the trade unions, the Komsomol, etc., may also issue acts which regulate behavior. They may be merely procedural regulations governing membership and organization of the mass organ; and as such, they are not legally binding. However, the state may authorize mass organs to issue acts which are legally binding. An example of this is the power of the trade unions to interpret and apply labor legislation providing protection for laborers and administering social insurance.

Such specific rule-making power must be specifically authorized by a state organ. Thus, in theory, the rule-making powers of the mass organs, like all legal acts, descend in theory from the fountain of legality, the Supreme Soviet. In theory, this law-making power of the mass organs is in the nature of the

33V. S. Pronina, Improving the System of Agencies in the USSR, Sovetskoye gosdarstvo i pravo, 8 (1968).

34Chkikvadze, op. cit., supra note 7, at 234.
"concretizing" powers of the Presidium of the Supreme Soviet and the organs of state administration—that is, administrative regulations elaborating ultimately upon a zakon.

LEGAL ACTS OF LOCAL STATE ORGANS (RESHENIA)
The local soviets and their executive committees join the systems of state power and state administration at the base of the federal pyramids. They may issue legal acts of a normative nature, just as Republic state organs may. The acts are binding within the jurisdiction of the locality. Like all legal acts they must, in theory, conform to the zakon of the Supreme Soviet. They concretize and implement legislation at the grass-roots, thus in theory, they are the final link between the highest state organs and the people. Their form may be either postanovlenia, rasporiazhenia or reshenia in that order of normative subordination. The latter is most frequent.

LEGAL ACTS OF THE JUDICIARY (RESHENIA)
Placing the legal acts of the judiciary in the Soviet hierarchy is complicated by the multiplicity of such acts, and the apparently evolving importance of the judiciary, which has been traditionally a relatively unimportant state organ. The Constitution (Art. 104) charges the Supreme Court "with supervision of the judicial activities of the judicial organs . . . within statutory limits." The Supreme Court may interpret zakon, but not the Constitution. The power of judicial review rests in the Presidium of the Supreme Soviet. In law, the activation of the Supreme Court since 1957 suggests that the Party leadership may view it as one potential instrument, among many, for monitoring the norm-creating powers of the organs of state administration.

The term reshenia, employed herein, is a generic term referring to all of the various legal acts of the Supreme Court and its three divisions. In practice, all of them are subordinate to acts of state administration at the equivalent federal level, since the organs of state administration have always been a major vehicle for creating and concretizing legal norms. However, a conflict between the two institutions, if not resolved secretly in party arenas, would be resolved legally by the Presidium of the Supreme Soviet, the highest judicial authority, which is dominated by high Party officials.

The Supreme Court issues three major types of norms, which serve slightly different functions as a general rule, but which are difficult to place in a hierarchy; they are: postanovlenia which are usually regulations of internal procedure; opredelenie, which are substantive decisions; and guiding explanations which advise lower courts on the application of legislation.

The role of judicial norms has always been relatively subordinate in a legal system lacking judicial review, a system of precedent, and a doctrine of separation of powers. Courts have also always remained somewhat dependent on the powerful Prosecutor's Office (Procuracy). In practice the usual presumption is that judicial acts are subordinate to acts of state organs at the same level.

Joint Acts and the Hierarchy
Most of the legal acts in our hierarchy have emanated from three important institutions—the Supreme Soviet, the Presidium of the Supreme Soviet, and the Council of Ministers. There is another category of legal acts which aggravates
the problem of classifying Soviet legal acts even further.

Acts endorsed or signed by more than one institution have always played an important role in the legal system. These multiple or joint acts emanate from several combinations of institutions, which at first may appear somewhat bewildering but, upon further examination, seem to conform to the principles inherent in our previous hierarchy.

First of all, the Supreme Soviet does not participate in signing joint acts, although it usually confirms them in the normal manner of ratifying a ukaz of the Presidium of the Supreme Soviet. This maintains the facade of a rather strict separation between the highest structure of legality, the Supreme Soviet, and the structure of legitimacy, the Party, which the regime has always fostered—but especially since Stalin's death.

After all, an important part of the law's utility to the Party apparat is the extra increment of legitimacy imparted to Party directives which are confirmed by zakon. If the distinctiveness of the Supreme Soviet as a separate structure of legality becomes too blurred, this increment of legitimacy is lost. Therefore, the Supreme Soviet is never one of the institutions signing joint acts, although in most cases it does confirm them.

All major joint acts are issued by two or three of the following: the Central Committee of the Party, the Council of Ministers, and the Presidium of the Supreme Soviet, representing the structures of legitimacy, executive-administration, and legality, respectively. Triple joint acts are issued by all three bodies, thus placing the seal of approval of three of the most important political institutional structures on the act.

With the seal of the highest organ of legitimacy, the Party Central Committee, and the highest organ of the executive-administrative apparatus, the Council of Ministers, and one of the higher organs of state power on it, there can be little doubt that such joint triple acts sit highest in the hierarchy of joint legal acts. The rest of the hierarchy includes joint acts of the Party Central Committee and the Council of Ministers, and joint acts of the Presidium of the Supreme Soviet and the Council of Ministers, as shown below in Table IV.

Table IV
A Hierarchy of Joint Acts

<table>
<thead>
<tr>
<th>Triple:</th>
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<td>(1) Party Central Committee, Council of Ministers, Presidium of the Supreme Soviet</td>
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<table>
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<th>Double:</th>
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<tbody>
<tr>
<td>(2) Party Central Committee and Council of Ministers&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td>(3) Presidium of the Supreme Soviet and Council of Ministers</td>
</tr>
</tbody>
</table>

<sup>a</sup>Strictly speaking, this joint act has no legal validity, and its use is declining. When it has been used since Stalin's death, it usually refers to a zakon from which it derives its authority, which legalizes it and is the essential rationale for its number 2 position in the hierarchy above.
Triple acts are usually ratified by the Supreme Soviet, which clearly puts them at the top of the hierarchy of multiple acts. The most famous instance of this practice occurred at Stalin's death. Only the Central Committee and the Council of Ministers signed the announcement of his illness; but his death announcement, which was a legal event, was a triple decree endorsed by the Presidium of the Supreme Soviet also, as was the formation of the new regime.  

The act forming the new regime is an aberrant case, necessitated by the extraordinary fear of internal disruption if the succession problem was not immediately solved. It came very close to violating the Constitution, but arguably it did not.

Although the Supreme Soviet alone is empowered to appoint the Council of Ministers, most jurists agree that the Presidium of the Supreme Soviet may act in urgent cases until the Supreme Soviet is called into session for ratification—which it was within nine days. Thus, the triple decree appointing the government, having been signed by the Presidium of the Supreme Soviet, and later ratified by the Supreme Soviet, was not a violation of the spirit, at least of the Constitution.

Double joint acts, of the Council of Ministers and Party Central Committee, have an ambiguous legal standing in the hierarchy of the joint acts, unless they refer to a zakon for their authority, which is increasingly the case. In Stalin's day this was the exception, although one might argue that its legal standing would not change, reference or not, because all legal authority in theory must descend from zakon.

Despite their theoretical standing in the hierarchy, these joint acts often constitute the most vital authority in the field (e.g., physical education and sports); however, the increasing activity of the organs of state power may gradually erase their importance.

These joint acts referring to a zakon raise the question of whether the Party Central Committee (in theory the highest Party body) is subjected, from the point of view of legal theory, to the Supreme Soviet by this reference to its zakon as the source of authority.

Soviet jurists would probably argue that the Central Committee signature represents only formal acknowledgment of the Party's guiding role in formulating legislation—a role which is more or less understood even with zakon. Thus, in no sense is Party subordination implied.

This fear of some inference of the Party being legally subordinate to any body, probably is one reason why no joint decrees of the party and the Presidium of the Supreme Soviet have appeared. The other reason is that the overlapping and interlocking of the personnel of the higher Party organs and the Presidium of the Supreme Soviet are increasing so that the Presidium of the Supreme Soviet acts more or less for the Party Central Committee in legal matters.

Thus, the third form of joint act, the decree of the Presidium of the Supreme Soviet and the Council of Ministers, is a sort of de facto triple decree in that the Party Central Committee's endorsement is implied by the Presidium's endorsement. We have placed it third in the hierarchy of joint acts because it does not claim to derive its legal authority from a zakon; or its legitimacy from a

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3Pravda, March 4, 1953, at 1; Pravda, March 6, 1953, at 1; Pravda, March 7, 1953, at 1.
clear endorsement of the structure of legitimacy, the Party.

The Inverse Hierarchy: Conversion of Lower to Higher Norms

An analysis of the hierarchy of Soviet laws should not ignore the implications inherent in the practice of Soviet organs issuing acts which take normative effect immediately and then are later ratified by higher organs. The process is not totally unlike the practice in the United States where local and state acts are tested in the higher courts to determine their conformity with the Federal Constitution.

By a process of rationalizing, new meaning is often added to the literal wording of the Constitution. In effect, local practice is tried, tested and accepted or rejected. This is one fundamental aspect of an organic system of law. In the United States, the courts play the leading role in the process.

This process of testing and incorporating lower norms into higher ones is embryonic in the Soviet Union. The best example is the issuance of ukaz which are then ratified by zakon. But another example is the issuance of acts by the organs of state administration which usually cite the zakon which authorized them.

The logical conformity of these acts to zakon is often arrived at only by rather tortuous reasoning not unlike that sometimes found in the constitutional law of the United States. As we have seen, even the Constitution of the U.S.S.R. is occasionally amended de facto by lesser bodies through acts which are then later ratified by the Supreme Soviet.

This inverse hierarchy of legislating runs contrary to the logic of democratic centralism, which is a bulwark of Communist Party-State systems, but is characteristic of the growth of organic legal systems, and thus provides an embryo worth watching.

Unpublished Laws in the Hierarchy

A major reason for the apparently growing concern of Soviet jurists over the problem of rationalizing the legal system is the vast body of unpublished laws in the Soviet Union. For example, in 1965 only thirteen percent of the Council of Ministers' postanovlenia were published and twelve percent of the R.S.F.S.R. postanovlenia.

Even a few zakon are known to remain unpublished and are transmitted to administrative agencies which they regulate in the form of an administrative order known as prikaz. Not publishing laws is in fact itself legal, and there are thirty known legal acts regulating the practice of not publishing laws.

One criticism of this practice of not publishing laws is that it subverts a cardinal principle of the rule of law that every man is presumed to know the law. One person is even known to have been sentenced to death for violating an unpublished law. Legal scholars, as professionals, seem to be particularly distressed by their lack of access to unpublished laws.

In effect, most postanovlenia and raspriazhenia of the Council of Ministers or ministries are for internal use by the agency they regulate, and are kept by that agency in its archives and neither scholars nor the public have general

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access to them. Since most zakon are published; and since only a tenth of ukaz and almost no rasporiazhenia are of a normative character, the postanovlenia of the Council of Ministers appear to be the chief source of unpublished laws.

One estimate puts the ratio of zakon to ukaz to postanovlenia from 1945-1965 at 1:50:285. In other words, for every zakon there are fifty ukaz and 285 postanovlenia.

Since most postanovlenia deal with regulation of the economy, one suspects that criticism leveled at unpublished laws derives not only from citizens and jurists worried about the rule of law and access to legal research materials, but also from supporters of the economic reform which could hardly be facilitated by legal obscurantism.

Any move from a command toward a market economy, where bargaining and adjudicating between agencies is increased must suffer seriously from a proliferation of internal, unpublished regulations.

Thus, one can imagine the juriconsultants (a sort of in-house legal counsel) at the enterprises being continually frustrated by lack of access to economic regulations hidden in the archives of another agency. The following comment by a juriconsultant in the Moscow Autoworks barely masks his irritation:

Legal advisers anticipate from the USSR Ministry of Justice the organization of systematic legal information about the issuance, repeal and amendment of normative documents.

It would be desirable to begin work to codify business legislation and to think out the publication of methods and aids for the work of legal advisers. . . .

At the same time, the apparat of those organs of the Party and state administration whose positions are threatened by the institutional reforms implicit in the economic reform clearly benefit from exclusive access to relatively secret laws.

Conclusion

The proliferation of enough Soviet jurisprudential literature to enable a Western scholar to extrapolate this tentative hierarchy of laws for the Soviet Union reflects to a degree the extent to which law has been sucked into the vortex of politics there. Terror is the essence of unlaw; its decline has crystallized somewhat amorphous factions and interest groups—each intent upon promoting law for its own purposes.

There is little disagreement about expanding the sphere of law; only the question of who controls the legal system and for what purpose remains a source of political conflict. Analysis of that is beyond the scope of this study, which has sought primarily to set out the apparent hierarchy that exists, and the accepted rationale for its pyramid of normative subordination.

"Loebber, op. cit., supra note 36 at 74-76.
