

## Free University Moscow

### СТАНОВЛЕНИЕ СОВЕТСКОГО ПРАВА (1917-1948) SOVIET LAW, ITS ORIGINS AND DEVELOPMENT (1917-1948)



#### Instructor

**Anna Lukina** is a PhD student at the University of Cambridge, having completed a Bachelor of Arts in Jurisprudence (University of Oxford), a Bachelor of Civil Law (University of Oxford), and a Master of Laws (Harvard Law School). Her academic interests include jurisprudence, Soviet law, legal history, and public law. Her PhD project is entitled ‘Towards a Jurisprudence of Evil Law’.

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#### Course description

This course is going to examine the way the concepts of the law and state evolved during the first thirty years of the Soviet state, focusing on the intersections of revolution and evolution, politics and law, and terror and legality in the light of a detailed examination of primary and secondary sources.

#### Admission information

Students at any level are welcome, provided that they are interested in the course themes. It might be of special interest to university students focusing on law, history, philosophy, political theory and similar disciplines.

You can study in a **Russian** or an **English** group (by language of instruction).

To apply, submit:

- Your name
- Your e-mail
- Group preference (Russian or English)
- An essay of no more than **500 words** replying to a prompt ‘**Soviet law: an oxymoron?**’. Essays would be assessed based on the following criteria: (i) focus on the question answered; (ii) quality of argumentation; (iii) structure; and (iv) originality.

## INFORMATION FOR STUDENTS



### Collaborative work

To take the course, you need to access the Google Classroom (the classroom code will be given to all admitted students upon admission). There, you can find all materials, ask questions and leave comments, and submit written work for grading.

### Preparing for seminars

Before every seminar you should **read all materials** that are listed in the syllabus for that day. If there is no hyperlink given, you will be able to find this source in Google Classroom and the corresponding course Google Drive. Everyone who is not taking the course can find these materials [here](#).

If the syllabus lists only certain parts or pages of the source, only that material will be discussed at the relevant seminar. However, if you want to base your response paper on that source, you are recommended to read it in full to get broader context.

Materials in Russian are marked 'RUS'. Where able, translations, summaries, or alternatives have been provided. **You do not have to read those sources if you do not speak Russian.** However, if you are interested in skimming them to get more context, I recommend using [DeepL](#) and [Google Translate](#).

### Grading

The course is graded on a scale from 1 to 100, where **50+** is a **passing grade** and **90+** means that the course has been completed with **distinction**.

Your final grade is comprised of the following components:

- **50% - active participation in seminars**
- **50% - written work**

Every student should write two **1500-2000 word** response papers. The deadlines are listed in the syllabus – they should be submitted by the **4<sup>th</sup>** and **8<sup>th</sup>** seminars.

Response paper is a reflection on one of the sources studied as a part of this course. **It should not be a summary of this source.** You are allowed – and encouraged – to draw not just on that source, but also on other course materials and your own knowledge. You can find a good resource on writing response papers [here](#).

### Accessibility policy

The instructor is committed to creating a learning experience that is as accessible as possible. If you have a disability, or if you think you may have a disability, please contact the instructor to discuss any accommodations you may need.

# SYLLABUS



## 1. Approaches to Soviet Law

### *Secondary sources:*

- *S. Fitzpatrick – Revisionism in Soviet History*
- *D. Sagatiené – Framing Legal History: Competing Western Interpretations of Soviet Law*
- *H. Berman – The Comparison of Soviet and American Law*
- *E. Huskey – A Framework for the Analysis of Soviet Law*

### *Topics:*

- Is ‘Soviet law’ an oxymoron? [*Students were asked to write a 500-word response to this question as part of the admissions process.*]
- Approaches to Soviet law: historiography and legal theory

## 2. Law and State in Marxism

### *Primary sources:*

- *K. Marx – On the Jewish Question (1844) (fragment)*
- *K. Marx, F. Engels – The German Ideology (1844) (fragment)*
- [\*K. Marx, F. Engels – The Communist Manifesto \(1848\), parts I, II\*](#)
- [\*K. Marx – Preface to A Contribution to a Critique of Political Economy \(1859\)\*](#)
- *F. Engels – On the Housing Question (1872) (fragment)*
- *K. Marx – Critique of the Gotha Programme (1875) (fragment)*
- *F. Engels – Anti-Dühring (1878) (fragment)*

### *Secondary sources:*

- *B. Leiter – Marx, Law, Ideology, Legal Positivism, especially pp. 1-10*

### *Topics:*

- Marx and Engels as the theoretical foundation of Soviet law
- Law as a “superstructure”
- “Withering away” of the law and state

### 3. Law and Revolution

#### **Primary sources:**

- V. Lenin – [State and Revolution \(1917\)](#)
- [The Constitution of the RSFSR \(1918\)](#)

#### **Secondary sources:**

- P. Beirne, A. Hunt - *Law and the Constitution of Soviet Society: The Case of Comrade Lenin*
- [D. Kivotidis – Dictatorship of the Proletariat](#)

#### **Topics:**

- Lenin on law and state
- “Proletarian dictatorship” and “revolutionary justice”
- October Revolution: dismantling pre-revolutionary law

### 4. ‘Legal Experiments’ of the 1920s

#### **Primary sources:**

- P. Stuchka – *The Revolutionary Part Played by Law and the State (1924)*, chapters 1 “What is Law” and 4 “The Organized Authority of the Dominant Class and the Law”, in H. Babb (ed.), *Soviet Legal Philosophy*<sup>1</sup>, pp. 17-28, 52-71
- [The Constitution of the USSR \(1924\)](#)
- **RUS:** [The Constitution of the RSFSR \(1925\)](#)
- E. Pashukanis – *The General Theory of Law and Marxism (1929)*, introduction “The Task of the General Theory of Law”, chapters 3 “Relationship and the Norm” and 10 “Law and Violation of Law”

#### **Secondary sources:**

- P. Solomon – *Soviet Criminal Justice Under Stalin*<sup>2</sup>, chapter 1 ‘The design of an experiment’, pp. 17-49

#### **Topics:**

- Creating a new Soviet law
- Stuchka and Pashukanis on law and state
- Legal nihilism of late 1920s-early 1930s

#### **Assignment:**

- **RESPONSE PAPER 1**

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<sup>1</sup> *Soviet Legal Philosophy* can be found [here](#). You have to register on the archive.org website and ‘borrow’ the book to read it online. Do not worry – it is [free](#).

<sup>2</sup> Peter Solomon’s *Soviet Criminal Justice under Stalin* can be found [here](#). You have to register on the archive.org website and ‘borrow’ the book to read it online. Do not worry – it is [free](#). However, I recommend that you purchase this text for your collection – it is amazing and much more easily available than the volume above in the above footnote.

## 5. Return to Legal Formalism

### Primary sources:

- [The Constitution of the USSR \(1936\)](#)
- A. Vyshinsky – *Fundamental Tasks of Soviet Law (1938)*, in H. Babb (ed.), *Soviet Legal Philosophy*, pp. 303-343

### Secondary sources:

- P. Solomon – *Soviet Criminal Justice Under Stalin*, chapter 5 “Returning to the traditional legal order”, pp. 153-196
- H. Berman – *The Spirit of Soviet Law*
- L. Fuller – *Pashukanis and Vyshinsky: A Study in the Development of Marxian Legal Theory*

### Topics:

- Return to legalism in theory and practice
- Vyshinsky: his life and works
- “Socialist legality”
- “Stalin’s” Constitution of 1936

## 6. Law and Terror

### Primary sources:

- [A. Vyshinsky - Prosecutor's speech at the Third Moscow Trial \(1938\) \(transcript\) + video \(RUS\)](#)
- **RUS:** [Объяснительная бывшего начальника Кожевниковского РО НКВД Салтымакова Дмитрия Кондратьевича \(1956\)](#) (An account by D. Saltymakhov, a former NKVD officer)
- **RUS:** [Мой ГУЛАГ - Воспоминания Тухановой Валентины Александровны \(2016\)](#) (An interview with V. Tikhonova, a step-daughter of V. Antonov-Ovseyenko, an ‘Old Bolshevik’ who fell victim to the Great Terror)

### Secondary sources:

- P. Solomon – *Soviet Criminal Justice Under Stalin*, chapter 7 “The Great Terror and Criminal Justice”, pp. 230-267
- A. Lukina - *The Semenchuk Case of 1936: Storytelling and Propaganda above the Law in the Soviet Criminal Trial*, especially pp. 71-80
- T. Martin – *The Origins of Soviet Ethnic Cleansing*
- **RUS:** A. Байбурин – *Советский паспорт: история, структура, практики* (A. Baiburin – *The Soviet Passport*), chapter 3 «Введение паспортной системы в СССР (1932-1936 гг.)», especially pp. 127-133

### Topics:

- Law and terror
- The anatomy of a show trial
- Political terror in the eyes of victims and perpetrators

## 7. Soviet International Law

### *Primary sources:*

- **RUS:** [Выступление министра иностранных дел СССР А. Я. Вышинского на 3-й сессии Генеральной Ассамблеи ООН о Всемирной Декларации Прав Человека \(9 декабря 1948\)](#) (A. Vyshinsky - *Speech in the UN on the Universal Declaration of Human Rights*) (1948) + transcript
  - o A summary in English can be found in my paper below

### *Secondary sources:*

- F. Hirsch – *The Soviets at Nuremberg: International Law, Propaganda, and the Making of the Postwar Order*
- A. Lukina – *Russia and International Human Rights Law: A View from the Past, especially pp. 46-53*

### *Topics:*

- The USSR and international law
- The Soviet concept of human rights in the UN
- Cold War ‘lawfare’

## 8. Soviet Law Now

### *Primary sources:*

- [M. Gessen – My Grandmother, the Censor](#) (1998)
- **RUS:** *Особое мнение судьи Конституционного Суда Российской Федерации А.Г. Арановского по делу о проверке конституционности положений статьи 13 Закона Российской Федерации «О реабилитации жертв политических репрессий» (2019)* (The RCC Decision on the Victims of Political Terror Law, ‘Special opinion’ (concurrency) by A. Aranovsky), **pp. 29-41.**

### *Secondary sources:*

- E. Mishina - *The Re-Birth of Soviet Criminal Law in Post-Soviet Russia*

### *Topics:*

- Where are we now? A discussion on the continuity of legal systems, memory politics, and transitional justice.

### *Assignment:*

- **RESPONSE PAPER 2**