

ALEXANDER M. IAKOVLEV *in conversation with* L.C. GREEN

Green: Professor Iakovlev, I know that your real interests are in criminology but there are many issues in connection with the Soviet Constitution that would be of general interest and if you are agreeable, I would like to discuss some of these with you. Article 6, for example, guarantees the privileged position of the Communist Party within the Soviet Constitution. Reports now are that Article 6 is being amended or repealed. Would you agree that by requiring the amendment of Article 6, the entire Soviet Constitution requires amending?

The following is an edited transcript of a conversation between Professor Alexander M. Iakovlev and Professor L.C. Green. Professor Iakovlev is Head of the Department of Theory and Sociology of Criminal Law, Institute of State and Law, Academy of Sciences of the U.S.S.R. He is a People's Deputy, and a member of the Congress of People's Deputies, of the U.S.S.R. and a member of the standing committees on the legislation, Criminal Justice Reform, and committee to draft a new soviet constitution under the Supreme Soviet of the U.S.S.R. Professor Iakovlev was at the University of Alberta in February 1990 to deliver the 1990 Ronald Martland Lecture. Professor Green is a renowned scholar in the law of international relations and University Professor at the University of Alberta. This conversation pre-dated a number of recent developments in the Soviet Union and therefore represents the state of affairs there as of February 1990. [ed.]

As for Gorbachev's role, at this time there is not sufficient information available. On previous occasions in the Supreme Soviet, some people proposed and pressed that he have this power but Gorbachev was strongly against it. He said "I do not want to hold this power. I do not want to be accused of trying to preserve my personal power." It was quite a natural and, from my point of view, a very dignified position. Now he is saying something different -- he is saying that times are changing. Perhaps his personal views are changing and that is as far as my information goes.

Iakovlev: I think the amendment of this article is of no small significance. But I draw your attention to the fact that prior to 1977 there were no such provisions in the Soviet Constitution yet the party unquestionably was the one and only ruler.

G: The Congress of Deputies was called upon to consider the introduction of a presidential system. The rumour is that Mr. Gorbachev will cease to be Secretary General of the party and will become the Executive President. Is it intended that as President he would be in a role akin to President Bush or Prime Minister Thatcher, or more like Mr. Lee Kuan Yew in Singapore? Remember that Kuan Yew has made it very clear that he will be retaining all power to himself. What is the vision for the Soviet President?

I: First of all, about Mr. Gorbachev not being the Secretary General of the Party, I do not see any real possibility that he will resign, at least for the moment. He is one of the top figures reforming the country, and the leader in reforming the Party itself by transforming it into a democratic party which will compete with other parties on an equal footing. I think he will preserve, and I hope will remain the head of, the Communist Party. After all, the leader of the Labour Party might come to power and will not abandon his position as the political leader of the party. The main problem is whether the Communist Party will indeed become a democratic political party or remain a quasi-state body. That is the crucial question.

As for the kind of presidency, I can only discuss this in more or less abstract terms. My personal preference is to have a presidential power in a democratic society. It is, for me, very essential that we have an effective legislative power and independent court systems. That is, to develop simultaneously the three branches of government which would be equal and independent and equalize each other. It is particularly desirable to formulate a real effective legislative power that is the freely elected representative of Soviets from the top to the bottom. If the congress will function effectively, in this situation, the executive may be given a power comparable to the power of the American president. But if the president simultaneously will be usurping legislative power I will be against it.

G: That touches on the body that would be empowered to revise the Soviet Constitution. At the moment the method of selection of delegates to the Chamber of Deputies is done through a pre-selected process whereby you are left with virtually one candidate for every one seat. That means that if we are to have a democratic system, it cannot take place until there has been an amendment to the electoral law. Will the present Supreme Soviet be the body responsible or will there be an electoral commission, and will they be empowered to re-draft electoral laws as distinct from the Constitution?

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**(Iakovlev continued)**

I: I think that responsibility for redrafting the Constitution is within the power of the Supreme Soviet but is subject to the consequent approval of the Congress. Previous Congresses have considered the specific possibility of making needed improvements in electoral laws. Congress may approve or disapprove. But there is the possibility of changing the Constitution within the Supreme Soviet.

G: Let us assume that we have this very powerful post of Executive President and that Mr. Gorbachev, while Secretary General of the Party, were elected or appointed President. Also assume, for the moment, that the Party were to simultaneously lose an election. What then would be the President's position? With the Secretary General of the Party in a very powerful presidential post and an anti-party majority in legislative power, how would the system adjust or is this where we get to discuss your suggestion of a quasi-democracy?

I: I think that the position of President has some peculiarities attached to it. Consider what happens when the United States Congress is predominantly Democratic and the President is Republican. Even if the members of the Communist Party are not represented in every local Soviet, or other representative bodies, this will not deprive the possibility of the President being the General Secretary of the Party. Nor will he lose the legitimate basis for his being President. Although, of course, it depends on whether he will be elected by the Supreme Soviet, by the Congresses, or by the population at large.

G: At the moment it would appear that the reformist element of the Party seems to be holding on to control by virtue of the loyalty of both the army and the police and, apparently, to the extent that it is important, the KGB. In fact it appears that the KGB embraced democracy far sooner than some other elements of the administration. I want to compare this for a moment with what has been happening in South Africa in the last while. You may recall President DeKlerk said, "We will not use the police for political purposes" yet it appears that the police are somewhat deaf to the instructions of the President. The question is, how solid is the government's control over the police and the army, and how loyal are the police and the army? Is there the same reformist element in their leaderships?

I: First of all, I think that the South African situation is peculiar because of the way in which its society is sharply divided. The reaction of the police force is just a reflection of white supremacy both in the country and in the police force. There are no such distinctions in my country.

Even now we are seeing very good signs in KGB activities. First, the KGB has published the exact number of the people who were persecuted. They are responding to the demands of, and even helping, people who are organizing the memorial movement which commemorates the victims of Stalinist terror. The need to put an end to the uncontrolled activity of the KGB is on the agenda of the Supreme Soviet. I do not see any vested interests which will stimulate these forces to act against the Constitution. However, the KGB always deserves to be watched. Democracy is a process and process needs to be constantly reinforced. It is not a finished building. As political activity is on the rise, so will political activity continue and so will the activity of People's Deputies. It is in the political views of the people that lie the main hope and the main force to control any governmental body.

G: If there are all these constitutional changes it will obviously mean that there will be fundamental changes in, what you and I might describe as, Soviet jurisprudence; the legal philosophy of the State itself. Many of the books now being written on Soviet law, or just recently published, can be reviewed with one sentence: out-of-date. Particularly books that deal with the legal position of the Party. If there is a rejection of the current Soviet theory of law, what I might call the Vyshinsky theory of law or the international law of Tunkin fifteen years ago, is there any possibility of seeing a return to the legal theories of the transitional period? I have in mind, of course, Pashukanis with his Marxist theory of law, Korovin, and others who were victims of Stalin and now have been rehabilitated.

I: My impression, and my desire, is to see Marxism itself not as an all-embracing ideology but as a serious school of philosophical thought. We would study it exactly as we would any philosophical school. The history of Soviet law, if it merits being called law at all, would be studied as an attempt, or embodiment, of the Marxist interpretation of law. Look at Marx himself. In one of the Marx's earlier writings he wrote about the law as being a measure and the being of freedom - that is also Marx, if you like.

G: It has now been agreed that the Stalin/Hitler pact with regard to the Baltic countries was illegal. The argument at present is whether the three Baltic Republics, despite the fact that their annexation was illegal, nevertheless should remain parts of the Soviet Union. We are also seeing nationalist uprisings in Azerbaijan by the Armenians, and to a lesser extent in the Ukraine and in some of the Islamic Republics. How do these events fit in with conceptions of freedom, human rights, and self-determination? Will there be a right to secession? Will the Union become a federation?

I: This is the central problem for the future development of the whole State. I would like to mention at least three points. First, from a purely legal point of view, the right to separate should be stated unequivocally in the Constitution. Then one will not be able to deny the right of any republic to separate from the State. Secondly, there are no legal mechanisms for putting such a choice into effect, by making it workable, democratic, peaceful, and so on. We need legal instruments which will provide for the mutual regarding of the interests which may be involved in connection with this decision. A lot of different interests may be involved. Third, for better or for worse the Soviet Union was developed as a whole, united union and not as a federation. The economy was not developed in a way which reflected the local situations in certain Republics. It was centrally controlled, so that all parts of the Soviet Union are very tightly tied up in a predetermined fashion through economic channels which were laid out for them. For example, the oil from Siberia goes to Lithuania. The crop from the Ukraine goes to Azerbaijan, and the cotton from Uzbekistan is converted in Lithuanian factories into fabric, and so on. Just severing these ties will bring immeasurable and inevitable economic disaster. Of course, this reality must not be used as a pretext to refuse a right to separate. I hope that restructuring will create the basis for a real federation, moving through a false federation into real federation, and that we will discuss the conventions which may be the foundation for a new democratic state. We will develop these mechanisms for secession I have been speaking about, and simultaneously transform the economy by way of a free market economy. My hope is that all of the Union, as a common market, will produce a democratic way. From my point of view, the free market is the greatest liberator of nations.

G: That is an interesting statement.

I: It permits the preservation of serenity, political autonomy and cultural identity in Western Europe without paying special attention to borderlines. It is paradoxical that Europe is now striving to become a confederation. It would be quite illogical if its neighbour tried to separate into feudal models.

G: If you are moving towards this new democracy does this mean that we are now likely to see the Soviet Union abandon its old policy and become a party to the various international conventions on human rights. I refer back to Litvinov's statement with regard to the Permanent Court of International Justice as only a court, and that only archangels can judge the Soviet Union. Would this mean that your attitude towards international law in general, the International Court of Justice, human rights, and fundamental freedoms will move along the way in which we hope?

I: Exactly. I think the permanent and biggest results of the new thinking were achieved in two spheres: first, internal political freedom in my country, and, second, the quite new international relations outside the country. So, the era of Vyshinsky and other similar views, is practically at an end. Of course, other avenues are being explored. Now that our state, as well as Hungary and Poland, is being granted status as guests at the European Parliamentary Assembly, and I have attended one of its sessions, is a very good beginning. The idea of one whole European law, so to speak, is a very productive one.

One significant document is the draft foundation for criminal legislation. You may find there an article providing that any international treaties which were signed by the Soviet Union have authority, and that there is an obligation that this criminal law be in accordance with internationally recognized treaties. This was in the draft legislation and I think it will be preserved. I have in mind that this be transferred to the Constitution itself.

G: That would be wonderful because, as you know, one of Prime Minister Thatcher's big problems is that she refuses to enact legislation to give effect in England to the European Convention on Human Rights. This is why England is always being taken to the European Court and always losing.

I: When the channel is under storm, as Mrs. Thatcher might say, then Europe is isolated from England.

G: That is a good way in which to end our discussion.

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*On 13 March 1990, Article 6 of the Soviet Constitution was repealed and, two days later, Mr. Gorbachev was elected the Soviet Union's first President by the Congress of People's Deputies. On 3 April 1990 the Supreme Soviet passed a new law providing for secession by republics. It requires, among other things, a two-thirds majority vote of the population, approval of the Soviet legislature, and a five year transition period. [ed.]*

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