Soviet Marxism and Family Law

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The Soviet regime bases its legitimacy partly on the "superiority" of the Soviet-Marxist social and legal order over that of the West. This claimed superiority includes the area of family matters. The current Soviet text on family law refers, as did its predecessors, to the "distinctiveness of the family law of socialist society" in the USSR and other "socialist countries." Only this law, it is said, ends unequal treatment for women and ends the exploitation of women within the family. Without capitalist ownership of the means of production, an improved type of family—one based on non-materialistic motives—is emerging under socialism.

Soviet publications deny that Soviet law and its treatment of the Soviet family has converged with that of the West. Yet, their own findings present ample evidence of such convergence. Both systems recognize a need for the family as the upbringer of children. Both systems are experiencing some breakdown in the family. Indeed, the underlying causes of such breakdown found in the modern urban life and economy of the USSR are similar to those causes apparently contributing to divorce and declining birthrates in the West. Moreover, Soviet authors writing about the Soviet family look regularly to Western research for insight and method, in fact much more frequently than Western authors look to Soviet research for the same purposes.2

The late Wolfgang Friedmann, writing from a Western comparatist's perspective, looking at the actualities behind the ideology in the family sphere, concluded that Soviet law and its treatment of the Soviet family have converged with that of the West, as have the law and policy of urban industrialized countries throughout the world. Authoritarian though the Soviet political and legal systems may be, according to Friedmann, Soviet law must respond to and fit societal change. Lawmakers must recognize the indispensability of certain social institutions and relations, marriage and the family included,

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1. SOVETSKOE SEMEINOE PRAVO [SOVIET FAMILY LAW] 9-10, 16-17 (V. Riasentsev ed. 1982).

rather that the promptings of ideology.\textsuperscript{3}

Indeed, "despite many basic differences between Soviet and other legal systems, no basic new concepts or legal relationships have developed."\textsuperscript{4} Law, in other words, comes to reflect the nature of modern society rather than its politics. To test this conclusion, this essay selectively reviews both the familiar and the distinctive aspects of Soviet family law and uncovers some aspects of the Soviet system that are distinctive, though not necessarily in ways depicted by Soviet publications.

Soviet family law has existed as an instrument of one group for its plans to transform, then to mobilize, and recently to optimize the family through law. Much of the landscape of contemporary Soviet family law is familiar. Now and then, however, one encounters unfamiliar aspects of Soviet family law; distinctive signs of Soviet Marxism in the legal approaches to marriage and family needs, women's needs in the family, divorce (the least distinctive area), parents' relations with their children, and the struggle against "survivals of local customs."

I. LAW AS AN INSTRUMENT OF THE PARTY

Law is an "expression of Party policy in the sphere of family relations."\textsuperscript{5} It has gone through abrupt changes, reflecting the law's politicization as the Party policy it expresses has changed.\textsuperscript{6} Bolshevik family law between 1917 and 1926 reflected the Party's willingness to sacrifice family stability (though not yet the family) for the sake of its own stability, and to implement a revolutionary social transformation towards women's equality and emancipation in the economy, while ending the grip of religious and patriarchal power. These goals account for secular and equal marriage, easy divorce, and the equality of illegitimate children under law. Stalinist family law between 1936 and 1944 reflected the Party's willingness to sacrifice Leninist principles of freedom of marriage and divorce and women's full equality, as well as free choice for spouses and mothers, and to emphasize instead "strengthening the family," stabilizing it the better to breed and raise new workers and replace those lost in collectivization, the purges and the Great Patriotic War. These goals of Stalinist family law are reflected in the 1936 ban on abortions, the increased restrictions on divorce in 1936 and 1944, and the 1944 bar to recognition of

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\item \textsuperscript{3} W. FRIEDMANN, LAW IN A CHANGING SOCIETY 9-10, 16-17 (1959).
\item \textsuperscript{4} Id. at 9.
\item \textsuperscript{5} SOVETSKOE SEMEINOE PRAVO, supra note 1, at 9.
\item \textsuperscript{6} J. HAZARD, COMMUNISTS AND THEIR LAW 270 (1969).
\end{itemize}
extramarital paternal obligations and rights, alongside a modest program of pro-natalist family support.\(^7\)

The de-Stalinization of family law brought new and significant signs of convergence with Western family law. The regime listened to the pleas of doctors about the dangers of illegal abortions and again legalized non-therapeutic abortions in 1955. Meanwhile, the obstacles to divorce and the unequal treatment of "extramarital" children were attacked by a virtual reform movement led by women lawyers allied with prominent professionals.\(^8\) Nikita Khrushchev held firm, but the Brezhnev leadership allowed liberalization of divorce law in 1966, and then undertook a general overhauling of domestic relations law through the widely-discussed Fundamental Principles of Domestic Relations Legislation of the USSR and Union Republics (Fundamentals), which became effective in October 1968. The 1968 Fundamentals compromised on ending illegitimacy in law, and balanced freedom of choice with the enforcement of family obligations. The Fundamentals were the Party's response to the issues raised by the reformers, and a simultaneous attempt, if no longer to transform the family, at least to prod it to maximize its contribution to building a communist society.\(^9\) Law as a reflection of policy had evolved from transformer to mobilizer, and then to maximizer of the family's social potential. The law has given extraordinary constitutional recognition to the family. Article 53 of the 1977 USSR Constitution places the family "under the protection of the state," while highlighting the family's reproductive and upbringing functions.

Unawed by the Constitution and laws, ever more non-Moslem Soviet families have ceased to be stable units for reproduction and upbringing. Divorce rates rank second only to those of the United States. Divorce rates in Moscow (5.6 per 1000 inhabitants in 1979) are higher than those in New York (3.7 in 1979), higher in Leningrad than in Los Angeles, and higher in Kiev than in Chicago.\(^10\) Birthrates remain below levels the Party leadership views as necessary for replenishing the population and the work force. Sociological Research recently described the "high ratio of divorces to marriages, the grow-

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ing number of incomplete families, the drop in birthrates apparent in many parts of the country, the decrease in the reliability and effectiveness as upbringers of a considerable proportion of all families.”

In contrast to its Stalinist predecessors, the Soviet leadership now eschews the compulsion evident in barriers to divorce and bans on abortion. The leadership has listened to expert findings on the processes of change reflected in the environment of the family: the devaluation of the family as an economic unit and as a stronghold of traditional religious morality; the ascension of new values among younger people, and the new demands and expectations of spouses, especially wives, for fulfillment in both their individual and their married lives; and an increased willingness of a wife to divorce or separate from a husband who falls short of the wife’s expectations. The leadership’s chief response to the breakdown of the family and these expert findings has been the implementation between 1981 and 1983 of a new package of pro-natalist assistance to mothers and families, as well as new counselling and “get-acquainted” services.

The Soviet experience in fitting law to family and politics at first moved Soviet family law sharply away from Western models, then sharply toward near-convergence with them. Neither law nor family withered away as Marxist classics predicted and as many Bolsheviks expected. Law moved from transformer of the family to mobilizer and then tooptimizer, and from the product of fiat to the fruit of party-monitored compromise. This compromise reflects the limits of coercion and complexities of life and motivation in the fragile families of the Soviet European majority.

II. MARRIAGE AND FAMILY NEEDS

Soviet marriage law has emerged in a familiar form: the constitutionally and legally recognized voluntary and equal union of woman and man. Marriage law is secular and nondiscriminatory with re-

garding to race, nationality or religious beliefs. Homosexual unions not only are unrecognized, but also may be punished with up to five years deprivation of freedom under criminal law.\textsuperscript{14} Marriage rests on the material foundations of the obligation to support the needy spouse and the community of property acquired through earnings during marriage.\textsuperscript{15} Yet, Soviet Marxism also has left distinctive marks on invalidation, registration, marriage with foreigners, and the exchange between family and economy.

If an interested third party brings a court action to invalidate a "fictitious" marriage (a marriage registered "without the intention of starting a family" and evidenced by non-consummation), the court must invalidate such a marriage.\textsuperscript{16} This is an unusual and distinctive feature of Soviet law. Often a fictitious marriage is concluded to gain the material advantages of a residence permit (\textit{propiska}) or job assignment after college graduation, or both, in a desirable city such as Moscow.

Fiancées must wait a month between application and registration of marriage. The law leaves registration offices the option of shortening the wait in emergencies or lengthening the wait up to three months if the seriousness of the applicants is doubted. This option, as well as the difficulties in emigration (especially for men) and occasional political intervention, may complicate marriage between a Soviet citizen and an émigré or a foreigner.\textsuperscript{17}

Religious weddings have no legal force since Soviet priests and rabbis may not act as delegated representatives of the state to receive the act of registration. New "Soviet civil ceremonies" in wedding palaces or clubs now compete with and replace religious ceremonies and their symbolic importance. Relatively few Soviet couples have church ceremonies in addition to civil registration.\textsuperscript{18} Consequently, a couple's freedom of individual choice, conscience and expression, and the opportunity to add personal touches to their own wedding, is seriously curtailed by solemnized, assembly-line proceedings in the USSR.

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\textsuperscript{14} RSFSR Criminal Code, art. 121.

\textsuperscript{15} Fundamentals of Legislation on Marriage and the Family, supra note 13, arts. 1(2), 3, 4, 6, 9(1), 9(2) & 10-13.

\textsuperscript{16} Id. art. 15(2).


\textsuperscript{18} V. RUDNEV, OBRIADY NARODNYE I OBRIADY TSERKOVNYE [POPULAR AND CHURCH RITUALS] (1982).
Laws enforcing a collectivist exchange between the family and the economy also have left a distinctive mark. Soviet constitutional and other guarantees of the right to work, the relatively high job security in the Soviet Union, the right to free health care, social security, education, and even the right to placement in a job after college graduation, all tend to cushion a family and to influence its planning and budgeting for the future (though children of Jewish families face special obstacles in college admissions and career choices).

This impact of Soviet-Marxist state paternalism on family life is reflected in the bewildered and even disappointed reactions of Soviet émigrés abroad. Emigrés at times are aghast and even horrified by the freedom of choice, the burdens on individuals, and the lack of intervention and support for the family to which citizens are accustomed in the USSR. Elements of Soviet political culture and socialization under Soviet law certainly are reflected in the émigrés' difficulties of adjustment.

A second distinctive impact of Soviet Marxism, regarding the exchange between family and economy, lies in the limits on the ownership and use of "personal property." During the present period of transition to communism, under civil law the right remains to own personal property for the purpose of "satisfying material and cultural needs." One permanent dwelling house or apartment is deemed sufficient for a family to satisfy its needs. If a second home is inherited, one of the dwellings must be sold. Government housing rules place limits on the permissible floorspace of a dwelling, depending on the occupation of the owner, and the size of the family. Housing and other personal property "may not be used to acquire unearned income." A family or family member may not rent a house at above government-approved rates, or else it will be liable for civil penalties. They may not buy or sell personal property for profit (speculation) or engage in private enterprise; both are punishable under criminal law. The exception to the rules legally banning family enterprise is the right of the collective farm household (dvor) to farm a garden plot and to sell its products in the "collective farm market" or "bazaar."

Many families violate bans on private enterprise by participating in the Soviet "second economy." The legal rules, however, transform such profit-makers and entrepreneurs into lawbreakers, as well as add

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19. USSR CONSTITUTION, supra note 13, arts. 40, 42, 43 & 45.
the risk of punishment. In addition, the rules limit the supply of legal goods and services conveniently available to the family, thus making life more difficult for many homemakers. Private enterprise in this area has been urged, but without any results to date.\footnote{21} Soviet limits on private enterprise remain among the most strict in the orbit of socialist countries: a distinctive mark not of "Marxism" itself but indeed of Soviet Marxism. One does not look for a "family store" in the Soviet Union.

Cleansing family relations of material motivations does not preclude inheritance either by will or under rules of intestacy. There remain obstacles, however, to full inheritance from abroad, and even greater obstacles to willing property to persons living abroad and especially outside the socialist bloc.\footnote{22} As in marriage and emigration, Soviet national borders raise formidable political and legal barriers to family members' freedom of choice.

In sum, Soviet Marxism establishes controls over the familiar institution of marriage which reflect the political and economic distinctiveness of the Soviet system. There is a distinctively statist and collectivist influence on Soviet family life, which includes the role of women.

III. \textbf{Women's Needs and the Family}

Women always have been central in Soviet family policy and law. Soviet family law has successively expanded, eroded, and then partially restored the equal rights of women. The emancipation of women was a central purpose of Bolshevik family law, but was distinctive in Soviet history. Women bore the brunt of Stalin's quest to replenish the labor force and were prodded by law in 1936 and 1944 to assume the duties of wife, mother and worker. Women's rights in the family figured prominently as issues in the post-Stalin reforms of family law. Today, women's exercise of reproductive choice presents the Soviet regime with the "acute population problem" of under-replenishment, lamented by Leonid Brezhnev. Women's material needs are central to Soviet pro-natalism.

The rejection of the need for a separate women's movement is characteristic of Marxist movements. The Marxist view is that women's emancipation will be achieved by the triumph of socialism, by


the end of private property and class exploitation, and by liberation from patriarchal bonds (as women work in production). In Soviet Russia, what was ideologically unnecessary eventually was banned by law, along with any and all other autonomous groups and movements outside the range of the approved, official Soviet Women's Committee and other approved social organizations. Nowhere has there been greater discrepancy between the importance of women and their political opportunities than in the Party leadership. Yekaterina Furtseva, a protegé of Khrushchev, has been the only female member of the ruling Politburo. An effort to form an autonomous women’s feminist organization quickly was crushed in 1979 and 1980.23 There are no equivalents in Russia of women’s self-help organizations like rape crisis and abuse centers with their 24-hour hotlines.

The issue of emancipation must be placed in the Soviet context. The lack of a women’s or feminist movement has not stopped women from being recruited into the work force at the world’s highest rate. Virtually all women who are not studying, caring for infant children, or disabled are employed. Instead of the moral support of the Feminine Mystique24 and the U.S. women’s movement, women in the Soviet Union have had the moral support of the socialist work ethic, peer approval and economic pressure, as well as the desire for both personal and financial independence.25 Nor has Soviet family policy and law entirely deprived women of the chance to discuss the issue of feminism and female identity or to voice their complaints in the Soviet press about the double burden of work and housekeeping, and about husbands who cannot adjust to “strong women” in the home or at work. Moreover, Soviet family policy and law has not halted the informal discussion of problems between women and their friends and workmates; this is one reason some women value even dull jobs.26

The ban on autonomous women’s movements and organizations, however, has limited the empowerment of women and their capacity to help themselves and to advocate in their own defense. Thus, after Stalin, the high points in the advocacy of women’s family rights came with the informal, loose movement of women lawyers and other pro-

fessionals, and supportive men in law and other fields, who pushed for fourteen long years for the 1968 reforms in domestic relations law.

A certain amount of consciousness-raising by the government (which often shows up in trade union literature) urges men to be good husbands and help their wives. Lawyers, sociologists and demographers stress the national economic interest and its link to satisfying the needs of mothers as a way to raise the birthrate. This has helped to bring moderate material improvements to working young mothers. The vital presence of a women’s political self-help movement to change attitudes, language and conduct in order to remove sexism from daily life, however, is missing from the Soviet scene. The political and legal barriers to autonomous organization take us beyond the realm of family law. Nevertheless, these barriers may well have considerable impact on women’s positions at work and at home, as well as on further family law reform.

In family law itself, one socialist offspring—the Cuban Family Code—signals that as far as the state sees things, husbands have obligations to do their share of family chores:

Both partners must care for the family they have created and each must cooperate with the other in the education, upbringing, and guidance of the children according to the principles of socialist morality. They must participate to the extent of their capacity or possibilities, in the running of the home, and cooperate so that it will develop in the best possible way.27

This law, though it is of dubious practical meaning and generally is not enforced in Cuban courts, has symbolic value and reflects governmental attitude and policy. Yet though equality, or equivalence of males in helping females in Soviet families, figures as an issue and desideratum in sociological works, it is only of secondary importance in the Soviet government’s pro-natalist program. No equivalent of Cuba’s Article 26 appears in the Fundamentals or Soviet codes of domestic relations law.28 Although the Soviet codes were passed five to eight years before the Cuban law, the USSR has had many more decades of socialist liberation of women during which to instill such principles as expressed in Article 26.

What is distinctive, though, about Soviet family law and policy,

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in contrast to the Western counterpart, is not the domestic relations law *per se*, but the legal, political and economic framework of the Soviet woman's conflicting roles as worker and homemaker. That framework decidedly and distinctively restricts her rights to organize and to advocate, and indirectly affects her position, rights and chances of fulfilling her needs and expectations in the family.

IV. Divorce

Should women's needs and expectations not be fulfilled, there is always divorce. A vast majority of divorces are initiated by women, who cite the drunkenness of their husbands as justification in nearly two out of three petitions.\(^29\)

Soviet divorce law converges with Western law, at least in its basic principles. It reflects the movement from indissolubility to dissolubility of marriage, from lifetime marriage to marriage upon the pleasure of one or both partners, from guilt to no-fault breakdown and consent as grounds for divorce, from adversarial to inquisitorial procedure with judges actively attempting reconciliation. Counselling and attempts at reconciliation mark the introduction of preventive efforts to stem divorce. Children's interests temper divorce grounds and influence custody decisions.\(^30\) These are the principles contained in the codes, Supreme Court directives and texts.

Attendance at Soviet divorce trials indicates that, in practice, they are speedy, routine, almost mechanical rituals with rare refusals once they reach the second and final hearing. The court's divorce verdict awards custody when disputed, decides disputes over support and property divisions, and determines the registration fee of from 50 to 200 rubles, and who will pay it.

An additional, non-court track of divorce registration in cases of mutual consent was inaugurated in the 1968 reforms. Non-court divorce may occur only in the absence of minor children to the marriage. More significantly, there is a three-month delay between application and divorce. Court divorce is so speedy that to avoid this delay couples sometimes fabricate disputes, thus mandating court divorce. Another indication of the limited impact of divorce by registration, when compared with the original reforms in court divorce, is that divorce rose from 1.6 to 2.8 per thousand inhabitants in 1965-66 after the court divorce reform went into effect. It actually decreased


from 2.7 to 2.6 per thousand inhabitants in 1969, the first full year that the direct registration track was made available.\textsuperscript{31}

On occasion, the centralized nature of Soviet law and justice becomes apparent. The divorce of a prominent dissident writer may be held up, for example, thus preventing him from remarriage. Directives may flow from the USSR Supreme Court ordering courts to apply divorce rules more carefully, to attempt more reconciliations, and not to rush to find irreversible breakup. Under present law, the reigning principle is "freedom of divorce under the control of the state."\textsuperscript{32}

V. PARENTS AND CHILDREN

The recurrent Marxist and Soviet ideal of communalized upbringing, one potential source of distinctiveness in Soviet family law, has never become a general practice in the Soviet Union. After S.G. Strumilin, the venerable Soviet political economist, once again advocated child rearing apart from the family as part of his 1960 project for urban deconcentration in "residential and labor communes," Nikita Khrushchev specifically repudiated such communitarian visions and reaffirmed the indispensability of the family in his speech to the Twenty-Second Party Congress in 1961: "Those who maintain that the family will become less important in the transition to communism and that with time it will disappear are entirely wrong." Khrushchev's own projects for mass boarding schools also fell by the wayside.\textsuperscript{33}

As in the West, Soviet law imposes specific obligations on parents to support their children and to provide them with a suitable upbringing. This obligation is so important that it is included not only in domestic relations law and in appropriate regulations of guardianship agencies and Commissions for Juvenile Affairs, but also in Article 66 of the USSR Constitution of 1977: "USSR citizens are obligated to care for the upbringing of their children, to prepare them for socially useful work, to raise worthy members of socialist society. Children are obligated to care for their parents and to help them."\textsuperscript{34}

Family support in the Soviet Union actually entails more far reaching family obligations than does Western family law. Grown children may be ordered by the courts to support and care for needy parents who have retired or are unable to work. When minor chil-


\textsuperscript{32} Sovetskoe semeinoe pravo, supra note 1, at 18.

\textsuperscript{33} Juviler, Soviet Families, 60 Survey 52-56 (1966).

\textsuperscript{34} USSR constitution, supra note 13, art. 66.
children become orphans, courts may order a grandparent, brother, sister, stepfather or stepmother to support them. In addition, courts may order the support of a disabled, needy adult by a grandchild or stepchild, in the event that the adult in need has no spouse, parents or grandchildren. This legal network of family obligations preserves remnants of the importance of the extended family in a once largely peasant society.

The extramarital obligations of fathers also evoke remnants of a patriarchal past. Rather than restore the full legal equality of illegitimate children, the 1968 reforms only partly ended the Stalinist rule of absolute inequality of rights of extramarital children vis-à-vis their fathers. Even after the reforms, iron proof of biological paternity is not enough to get a suit accepted for a court hearing, let alone a court judgment. To obtain standing in a paternity suit against a father who does not wish to acknowledge paternity and shoulder his obligations and rights, a plaintiff must submit evidence either that the putative father has in the past acknowledged paternity, or that he joined in the support or upbringing of his child, or that he cohabited with the mother and maintained a common household. Under pro-natalist measures adopted in 1981, the child allowance to unwed mothers increased from five rubles a month until age 12, to 20 rubles a month up to age 16 (or to age 18 if the child is in school without a stipend). The limits of women’s legal claims against fathers of their children who are not their husbands distinguish Soviet law from the law of other communist countries.35

If the Soviet law of support is not clearly distinctive, the legal stipulations regarding the obligations of parents as upbringers certainly are. Proper upbringing is viewed as a particular ideological obligation. Law is called upon in Article 1 of the Fundamentals to contribute to “the upbringing of children in organic combination with public education in the spirit of devotion to the Motherland, of a communist attitude to work and the preparation of children for active participation in the building of a communist society.” Article 18 obligates parents to raise children “in the spirit of the moral code of a builder of communism.” These stipulations are an example of the way in which law is enlisted to compel the abandonment of old and ideologically undesirable values and customs, and to promote ideologically desirable values and customs. “Soviet law,” writes M.N. Ku-

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lazhnikov, "serves as an important means of struggle in overcoming old traditions and customs — harmful survivals of the past."\(^{36}\)

Religion is one of these "harmful survivals." The family is crucial to the effort to eliminate religious influence. Decrees passed between 1961 and 1963 under Khrushchev forbid children under 18 from enrolling in religious organizations or from participating in religious services or rituals of any kind. Also unprecedented in earlier Soviet practice and law (even under Stalin) is the complete ban on organized religious instruction to children. Developments under regulations on religion indicate that children may be taken from parents who are believers and who insist on organized religious instruction. Parents may be deprived of parental rights under the flexible provisions of domestic relations law, and may be subjected to criminal prosecution under union republic criminal codes, for violating rules on the separation of church and state and of school and church, or for violating rules against worshipping in organizations not approved by and registered with the government. The deprivation of parental rights is based upon the legal stipulation that parents "must raise their children in the spirit of the moral code of a builder of communism," and that "parents' rights may not be exercised contrary to the interests of children."\(^{37}\)

The rights of family members also are affected distinctively by Soviet Marxism in the sensitive and symbolic area of the Soviet frontiers. Compared with emigration from other industrialized countries, emigration from the Soviet Union is extraordinarily difficult. Working rules of the Party organizations where would-be émigrés work, and their children and spouses live, penalize with demotions or firings close family members of those seeking to emigrate, notwithstanding the similar penalties which await the applicants themselves. Moreover, administrative rules applied by the Ministry of the Interior and its visa department, OVIR, require the parents of applicants who emigrate to give their permission, even though the applicants themselves may be adults.\(^{38}\) If parents give permission, they themselves face possible retaliation.

Another distinctive feature of Soviet emigration rules and procedures is their inherent irony. In many cases, including that of the Soviet Jews, emigration is based on the rationale that the applicants are going to join relatives abroad. Yet often, at the authorities' discre-
tion, these rules and procedures may entail penalizing the relatives of applicants. Emigration rules are applied according to the political situation at the time, both at home and in relations with Western countries, especially the United States. In a year or two, emigration of a given group can fluctuate from a stream to a trickle. This political fluctuation of emigration policy may occur under various authoritarian regimes, just as politicization of immigration policy may occur in the host democratic countries, with a devastating impact on the families involved.

VI. SURVIVALS OF LOCAL CUSTOMS

The Soviet government has attempted through legal means to rebuild family relations among people largely of Moslem descent in the least-assimilated, national minority areas of the Soviet Union. Many Moslems still live a family life steeped with a tradition that is alien to the principles of communist morality in family relations. Principles and law of the Islamic shariah continue to compete with the principles and laws of the Soviet state.

"Survivals of local customs" are punishable under the criminal codes of the union republics of Central Asia, the Caucasus, Kazakhstan, and the RSFSR. Under the codes, "survivals" include accepting or paying a bride price, compelling a woman to marry or stay married, abducting a bride, concluding agreements according to local custom with a person under marriage age, engaging in bigamy and polygamy, and the refusing by relatives of a victim of a blood feud to reconcile differences. These provisions in Soviet criminal law reflect the multinational basis of Soviet Marxism. The unique provision "crimes constituting survivals of local custom" occupies a special chapter in the criminal code of the RSFSR. Formally, the articles of this chapter are applicable only in cases where there are considered to be survivals of local custom. Bigamy apparently is not a "local custom" in Moscow, for there it entails no criminal punishment.39

VII. CONCLUSION

There are ample signs of East-West convergence in the Soviet concepts and rules of marriage and family needs, divorce, and the relationship of parents and children. Alongside these signs of convergence, there also are important signs of divergence in the legal framework of family life in the Soviet Union from Western models. The distinctive Soviet-Marxist political and legal order has infused certain

39. Id. at 227.
principles and provisions into the various branches of Soviet law in ways which directly affect the rights, obligations and expectations of Soviet families.

Soviet-Marxist theory and practice places limits on the freedom of marriage. According to the Soviet official theory, this loss of freedom is good; indeed, it is no loss at all. The discretion of registry offices in waiving or in extending the waiting period to marry, for example, is treated as an individualization of rules to fit the circumstances and characteristics of the particular persons involved. Annulling a “fictitious marriage” fully accords with the social purposes of the family and the communist image of marriage “free of material motivations.” The offering of new civil marriage ceremonies as optional alternatives to simple registration, and the legal and ideological climate against religious ceremonies, are depicted in Soviet publications not as infringements on young people’s freedom of choice and conscience, but rather as opportunities solemnly to symbolize the importance of marriage while keeping it beyond the reach of religion. Maintaining a tight reign on marriages with foreigners may well strike Soviet leaders as being fully in accord with both the interests of Soviet citizens’ moral health and happiness and the interests of Soviet state and society. Judgment of these views is not at issue here. The point is that Soviet Marxism leaves a distinctive mark on marriage law in the USSR and the experience of marriage there.

Soviet-Marxist economic collectivism provides valued economic security for the family through constitutionally guaranteed employment, health protection, social security, housing and education. While these forms and sources of security may seem empty blessings for the poorest and least privileged Soviet citizens, they leave a distinctive mark on the laws, and on the rights of many millions of families.

Soviet-Marxist economic collectivism means “socialist ownership of the means of production,” leaving to individual Soviet citizens “personal property” in the form of “articles of everyday use, personal consumption and convenience, the implements and other objects of a garden plot, a house, and earned savings.”40 Family business is not permitted, for Article 13 of the Constitution also stipulates that “[P]roperty owned or used by citizens shall not serve as a means of deriving unearned income, or be used to the detriment of the interests of society.” Those interests leave no room for private commerce.

Soviet political collectivism culminates legally in Article 6 of the USSR Constitution, which stipulates that “the Communist Party of

40. USSR CONSTITUTION, supra note 13, art. 6.
the Soviet Union is the leading and guiding force of Soviet society and the nucleus of its political system, of all state organizations and social organizations." Thus, there cannot exist autonomous groups for women’s advocacy (although, in reality, such women’s advocacy can emerge). Here again, Soviet Marxism leaves a distinctive mark on the position of women in the family and politics, and limits their freedom to advocate changes in laws affecting the family.

Soviet laws and directives raise barriers to the exercise of family choice involving the movement of persons or property across Soviet national boundaries. These choices concern marriage with foreigners, emigration, the reunification of families and inheritance. Freedom of choice in the family is affected also by the impact of Soviet-Marxist socialism on religious instruction, beliefs and practices.

We have traversed only parts of the vast legal landscape laid out as "family law" by Wolfgang Friedmann. Even the sketches of that landscape drawn in this essay reveal a panorama of Soviet family law at once familiar, and different, from a Western perspective. The differences constitute the state-collectivist impact of Soviet-Marxist socialism on family law. The impact reveals both distinctive support for and distinctive intrusion into family life, when compared with the concepts and relationships embodied in Western family law.

Soviet Marxism has had a significant impact on Soviet family law during three major cycles of policy and change: revolutionizing after 1917 and through the 1920's, mobilizing in the thirties and forties, and optimizing since the late fifties. This impact suggests that Soviet family law reflects not only universal and converging social imperatives, but also distinctive facets of political and legal culture in the Soviet system where that law has emerged.