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Tel +44 (0) 8865 517530 Fax +44 (0) 510710

Email: mail@harpublishing.co.uk

Published twice a year in May and October.

Annual subscription: £125 UK and Europe, £150 elsewhere, Online only £112.50* worldwide

Reduced rate for individual subscribers: £60 UK and Europe, £75 elsewhere, Online only £54* worldwide

*+ VAT where applicable

This journal should be cited as (2014) 2 *Comparative Legal History*

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COMPARATIVE LEGAL HISTORY

Volume 2 • Issue 1 • 2014

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Law between Revolution and Tradition: Russian and Finnish Revolutionary Legal Acts, 1917–18

Tatiana Borisova and Jukka Siro*

Abstract

This article compares the legislative practices of two socialist revolutions in Russia (the Bolshevik revolution) and Finland in late 1917 and in 1918. Notwithstanding the considerable differences in the social, political and economic conditions in Finland and Russia, the revolutionaries in both countries had similar legislative strategies. The revolutionary legislative policies had the same ends: to secure the success of the revolutions, and, eventually, to build a new and better society. This article seeks to demonstrate the history of revolutionary law-making as a juncture of two main tendencies: the emergence of new ‘revolutionary’ features of legislative politics and the preservation of pre-revolutionary law. We argue that the pre-revolutionary practices of law-making on which the revolutionaries relied shaped their strategies and, to some extent, the criteria by which they judged the ultimate success of their revolutions. We argue that the performative effect of revolutionary slogans should be perceived, at least in part, as a continuity of pre-revolutionary legal and administrative practices. Our comparative analysis of revolutionary law-making provides a more complex understanding of the role of revolutions in modern state empowerment.

I. INTRODUCTION

François Furet observed in his study of the French Revolution:

The revolution was more than the ‘leap’ from one society to another; it was also a conjunction of all the ways in which a civil society, once it had been suddenly ‘opened up’ by a power crisis, let loose all the words and languages it contained.¹

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In any revolutionary context, the legal field is a major arena of this linguistic activity. Political battles in revolution are contested using—and for the sake of—the authority of naming, ie which forces have the power to decide and enforce the definition of terms such as ‘counter-revolutionary’, ‘nation’, ‘people’ as well as who can be classified under such titles. Law is an effective way of legitimising this revolutionary naming, and, accordingly, revolutionary law is in general perceived as an important means of changing reality.² According to the influential ‘linguistic turn’ perspective in the humanities and social sciences beginning in the middle of the twentieth century, language, through its *performative character*, is understood to define our entire social universe.³ This may be true to some extent, but the interpretation that revolution represents a change in reality through the change of words may not be entirely satisfactory. We aim to give a more balanced consideration of the actual process of making revolutionary law, taking into account in particular the heavy reliance on pre-revolutionary legal terms, how they are used in law and how they are enforced.

Successful revolutions have been understood as key historical events, opening ‘new eras’, the grandiosity of which implies a certain revolutionary bias in analysis. This is a simplified view, dictated by the winners, and has been criticised by influential narratives of the nineteenth and twentieth centuries, including those by Alexis de Tocqueville and François Furet.⁴ De Tocqueville and Furet sharply criticised the mythologies of the French Revolution produced by the winners and reproduced by historians. Although they came from different professional backgrounds and wrote in very different historical contexts, they both challenged the understanding of the very sense of the French Revolution. Political philosopher Tocqueville was the first to underline the *continuity* of pre-revolutionary political tendencies of absolutist power, which was exploited by the revolutionaries and which in turn resulted in the acceleration of the re-establishment of the state. Social historian Furet deconstructed the factual substance of the revolution, arguing that analysis of the French Revolution has focused predominantly on great events.

Both Tocqueville and Furet challenged the dominant picture of the past as the embodiment of winners’ ideology: winners tried to present their victory

¹ François Furet, *Interpreting the French Revolution*, Elborg Forster (trans) (Cambridge University Press, 1981) 130.

² Thomas Bender, ‘A Season of Revolutions: The United States, France, and Haiti’ in Thomas Bender, Laurent Dubois and Richard Rabinowitz (eds), *Revolution! The Atlantic World Reborn* (New York Historical Society in association with D Giles Ltd, 2011) 13. On the meaning of the revolutions for development of western law, see the classic study by Harold J Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Harvard University Press, 1983).

³ For an overview of the impact of the ‘linguistic turn’ on history as a discipline, see Elizabeth A Clark, *History, Theory, Text: Historians and the Linguistic Turn* (Harvard University Press, 2004).

⁴ Alexis de Tocqueville, *L’Ancien Régime et la révolution* (Michel Lévy frères, 1856); Furet (n 1).

as inevitable in order to legitimise the lack of radical alternatives for the present, except those alternatives already established by the elites. On a broader level, the twentieth century provided many inspiring approaches to the critique of the dominant ideologies, which in turn affected the very ethos of historical research. As Walter Benjamin wrote in his essay 'Theses on the Philosophy of History': 'The only writer of history with the gift of setting alight the sparks of hope in the past is the one who is convinced of this: that not even the dead will be safe from the enemy, if he is victorious. And this enemy has not ceased to be victorious.'⁵

Benjamin's appeal is especially relevant to the situation discussed here, when the State—a key actor in the writing of the traditional history—has gained enormous power. This may be a principal reason why the ideas of those intellectuals who witnessed and reflected on the totalitarianism of the 1930s—such as Walter Benjamin, Carl Schmitt and Hannah Arendt—are of great interest to us today. In our analysis of revolutionary legislation, we found the Schmittian theory of genealogy of sovereignty to be very inspiring. Schmitt thoroughly investigates revolutionary regimes, where sovereignty and dictatorship have become fused in new sovereign dictatorships.⁶ After the French Revolution, Schmitt argues, the revolutionary leadership claimed to exercise authority to decide on legal exceptions in the name of the French people, even while they were ruling them by dictatorial methods. Contrary to the absolutist sovereign, a sovereign dictator creates a new constitution not by his own authority but in the name of the people. The dictatorial action was used by revolutionary governments to create a new situation of normality that would allow a new constitution to come into force.⁷

However, when power was seized, the new regime had to function as a legitimate one. Here the revolutionaries had to take into account a tradition of authority in a certain society. According to Weber, authority that is based on rational grounds rests on a belief in the legality of patterns of normative rules and on the right of those elevated to authority under such rules to issue commands. Such authority is derived from the popular perception that the government's power derives from established law and custom.⁸ The revolutionaries

⁵ 'Nur dem Geschichtsschreiber wohnt die Gabe bei, im Vergangenen den Funken der Hoffnung anzufachen, der davon durchdrungen ist: auch die Toten werden vor dem Feind, wenn er siegt, nicht sicher sein. Und dieser Feind hat zu siegen nicht aufgehört' (translation by Tatiana Borissova). Walter Benjamin, 'Über den Begriff der Geschichte' in Walter Benjamin, *Erzählen: Schriften zur Theorie der Narration und zur literarischen Prosa* (Suhrkamp, 2007 [1940]) 129.

⁶ Carl Schmitt, *Die Diktatur. Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (Duncker & Humblot, 1994 [1921]) 127.

⁷ *Ibid.*, 150–67.

⁸ Max Weber, *The Theory of Social and Economic Organization* (Oxford University Press, 1964) 324–41.

had obvious difficulties in claiming that they had been elevated to authority under commonly accepted rules. The revolutions in Russia and Finland were not lawful actions and thus no formal legal grounds for the new regimes could have been presented. However, it appears that, already at the beginning of their rule, the revolutionaries seem to have relied on pre-revolutionary patterns of law-making, using the authority of the previous regime.

Our article examines how revolutionary governments used legal order to create a 'normal situation' in their regime. We will address the legislative strategies of two socialist revolutions, those in Russia (the October, or Bolshevik, Revolution) and Finland in late 1917 and in 1918. We will analyse the phenomenon of revolutionary law with special attention to the old/new dichotomy, which is obviously crucial for any revolution. We will trace the common 'revolutionary' features of legislative practices with attention to the features of pre-revolutionary law that was preserved by both regimes. However, we will also demonstrate that, in performing their revolutionary dictatorships, the revolutionaries heavily exploited, and soon reverted to, older customary legislative practices, despite their outspoken willingness to reform the state completely and create a new society. Finally, we will try to evaluate the interrelationship of the old/new tendencies in terms of the Weberian theory of legitimacy and the Schmittian theory of revolutionary transformation of the sovereign.

Finland and Russia in 1917–18: close but different

The Finnish and the Bolshevik Revolutions happened at the same time in the same region, but the Russian and Finnish revolutionaries had different motives, goals and backgrounds. Also, even though the Finnish Revolution eventually failed, the Finnish Socialist revolutionaries remained in power for so long that it is possible to examine their method of state-building and law-making. This was not the case for most revolutions after the First World War.

Both Russia and Finland are known for their late development of the legal profession. However, this lack of a legal profession has been articulated very differently in legal scholarship. In Finnish legal culture, scholars have highlighted the accessibility of law to literate citizens who are not legal experts.⁹ In contrast, Russian legal culture is often described as dominated by administra-

⁹ Pia Letto-Vanamo, *In the Name of Law, by the Will of the People: Moments of Finnish Justice in the 70s* (Edita, 2005) 70–75; Kevät Nousiainen, *Prosessin herkuus. Länsimaisen oikeudenkäytön 'modernille' ominaisten piirteiden tarkastelua ja alueellista vertailua* (Suomalainen Lakimiesyhdistys, 1993) 575–80; Heikki Pihlajamäki, *Kansan ja esivallan välissä. Suomalaisen asianajajakunnan historia* (Edita, 2009) 139–42.

tive rule, existing somewhat in parallel with the formal, legal state.¹⁰

Our research on revolutionary law-making in both states in 1917–18 provides a great opportunity to analyse the legal consciousness of revolutionary legislators from very different socio-cultural contexts and acting within different political traditions. Revolutionary decrees show why Finnish and Russian revolutionaries used that *form* of law for their policies. We will use the extensive literature on the political history of both revolutions, and will study metamorphoses of revolutionary legal language in a political context.¹¹ Existing research on the legislative policies of the Finnish and Russian Revolutions has concentrated mainly on the *substance*—not on the *form*—of new regimes' legal acts.¹² Our purpose is, on the contrary, to study the relationship between *form* and *substance*. Thus we will use extensively the legislation in both countries as a primary source as well as memoirs of participants and archival documents.

Even though Finland was part of the Russian Empire prior to its independence (declared on 6 December 1917 and recognised by the Bolsheviks on 31 December 1917¹³ and thereafter by other states), the Finnish Revolution was not simply a reflection of the events in Russia. It was rather a consequence of the disintegration of the Russian Empire, the declaration of Finnish independence and the power vacuum this caused. Furthermore, Finland was not a Russian

¹⁰ See eg Laura Engelstein, *Keys to Happiness: Sex and the Search for Modernity in Fin-de-Siecle Russia* (Cornell University Press, 1992); Richard Wortman, 'Russian Monarchy and the Rule of Law: New Considerations of the Court Reform of 1864' (2005) 6 *Kritika: Explorations in Russian and Eurasian History* 145.

¹¹ On Russia in this period, see Alexander Rabinowitch, *The Bolsheviks in Power: The First Year of Bolshevik Rule in Petrograd* (Indiana University Press, 2007); MP Iroshnikov, *Sozdanie sovetskogo tsentralizovannogo gosudarstvennogo apparaata. Sovet narodnykh komissarov i narodniye komissariaty* (Nauka, 1967); Thomas Henry Rigby, *Lenin's Government: Sovnarkom 1917–1922* (Oxford University Press, 1979); EN Gorodetskii, *Rozhdenie Sovetskogo gosudarstva (1917–1918)* (Nauka, 1984). Most of the literature on the Finnish Civil War has been written in Finnish or Swedish. References thereto can be found in, for example, the following English and German monographs: Risto Alapuro, *State and Revolution in Finland* (University of California Press, 1988); Anthony F Upton, *The Finnish Revolution 1917–1918* (University of Minnesota Press, 1980); Heikki Ylikangas, *Der Weg nach Tampere. Die Niederlage der Roten im finnischen Bürgerkrieg 1918* (Berlin-Verlag Arno Spitz GmbH, 2002); Clemens-Peter Haase, *Die Neuformierung der finnischen Linken nach dem Bürgerkrieg* (Westfälische Wilhelms-Universität Münster, 1986); Osmo Jussila, Seppo Hentilä and Jukka Nevalainen, *From Grand Duchy to Modern State: A Political History of Finland since 1809* (Hurst, 1999).

¹² There is some interesting research, however, on the form of the Russian Revolution: see eg Orlando Figes and Boris Kolonitskii, *Interpreting the Russian Revolution: The Language and Symbols of 1917* (Yale University Press, 1999). On the transformation of language, see Michael S Gorham, *Speaking in Soviet Tongues: Language, Culture and the Politics of Voice in Revolutionary Russia* (Northern Illinois University Press, 2003).

¹³ For Russia, we will use the Julian calendar for dates before 14 February 1918, and the Gregorian calendar for dates after its adoption on 14 February 1918. All dates for Finland are in the Gregorian calendar.

province but an autonomous Grand Duchy. Finland had relative autonomy as well as many privileges that were unknown in other parts of the Empire. The Grand Duchy had its own legislative assembly, the Diet, and a judicial system staffed exclusively by Finnish bureaucrats. Finland was allowed to retain its old (Swedish) laws; Russian laws did not automatically apply there. The administration and the judiciary were not under the direct control of the Imperial authorities. Finland was separated from the Empire further by having a customs barrier and, from 1860, its own currency.

Ideologically speaking, revolutionaries in both countries shared Marxist ideology, although in Finland its more moderate, Kautskyist variant was more popular than the radicalism of the Russian Bolsheviks. Economic difficulties and radicalisation during the First World War, as well as the disintegration of tsarist rule, led both countries to political turmoil and eventually to revolution. The February Revolution put an end to the institution of the autocracy on 2 March 1917 in the Russian Empire. Afterwards, in Russia, the socialist October Revolution took place on 25 October 1917, whereas the Finnish Revolution began on 26 January 1918. Revolution inevitably led to civil war, which in Russia ended in 1922 in favour of the revolutionaries. In Finland, after a short yet cruel war, the revolutionaries were defeated by conservative 'White' forces, which regained power in May 1918.

This article will, to a certain extent, explore the Bolsheviks' own view that only 'their' October Revolution was 'revolutionary':¹⁴ they regarded there to be a radical difference between their October Revolution and the earlier February Revolution in which the tsar was forced to abdicate and power was given to the provisional government. However, we acknowledge that, in Russia, much of the legislation passed between February and October 1917 was *also* revolutionary. In this article, for several reasons, we will concentrate on the October, rather than the February, Revolution and compare it with the Finnish Socialist Revolution. Both revolutions were socialist and sought to retain power by using both revolutionary terror and state-building via legislation, although the extent to which they used these measures varied. We will not consider the February Revolution, since it was not social and, though it was declared a democratic revolution, it did not bring in a new ideology of state-building. Also, it functioned on the basis of governmental practices of tsarist times.

In both Russia and Finland, the Left had for years criticised the capitalist order for its various failures and promoted the semi-religious idea that progress was possible only through the implementation of Socialist principles in

¹⁴ On the revolutionary legislation of the February Revolution, see Tatiana Borisova, 'Zakon "v godinu tiazhkikh ispytanii": Sobranie uzakonenii i rasporiazhenii pravitel'stva v 1917–1918 gg' (2002) 123(5) *Istoricheskie zapiski* 129, 129–44.

state- and society-building. In this article, we use the broad term 'legislative act' in order to cover a wide range of measures: decrees, proclamations and resolutions. We will discuss them as an attempt to impose *authority* by various political means.

II. THE TWO REVOLUTIONS: THE TOTAL RENEWAL

Power in Russia was seized by the leaders of the Bolsheviks on 25–26 October 1917. The aims of the new regime were declared in its first official document, the 'Appeal to the Citizens of Russia by the Petrograd Military Revolutionary Committee', as the following: peace, the rejection of private ownership of land, workers' control over production, and Soviet government.¹⁵ All of these aims, except workers' control,¹⁶ were the subject of legislation passed during the Second All-Russian Congress of Soviets on 25–26 October 1917. The first two decrees of the Congress targeted the two most pressing problems of the time—war and a shortage of land for peasants—and in doing so they constituted the decisive breakdown of the former state and the beginning of a new era. By withdrawing from agreements with Russian allies in the decree 'On Peace',¹⁷ the Bolsheviks broke with the international community, and, in rejecting private property in the decree 'On Land',¹⁸ they disavowed the basis of the national socio-economic structure. Actually, these two decrees recognised what had already occurred in many parts of the country and on the frontlines of the First World War. This recognition, in legal form, to a certain extent also legitimised the new government, the Council of People's Commissars, which was established by the third decree, passed on 26 October 1917.¹⁹

In both countries, revolutionaries replaced the old state apparatus with a new one.²⁰ In Russia, power was transferred to the local Soviets of Workers', Soldiers' and Peasants' Deputies. The Soviets and their Congress were declared

¹⁵ Obrashchenie Petrogradskogo voenno-revoliutsionnogo komiteta 'K grazdsanam Rossii', 25 October 1917, *Dekrety sovetskoi vlasti* (hereinafter DSV) (Gosudarstvennoe izdatel'stvo politicheskoi literatury 1957), vol 1, 2.

¹⁶ This was decreed later on 14 November 1917.

¹⁷ Decree 'O mire', 26 October 1917, DSV, vol 1, 14–16.

¹⁸ Decree 'O zemle', 26 October 1917, DSV, vol 1, 17–20.

¹⁹ On the legal aspects of the legitimacy of the Soviet regime, see Tatiana Borisova, 'The Legitimacy of the Bolshevik Order, 1917–1918: Language Usage in Revolutionary Russian Law' (2012) 37(4) *Review of Central and East European Law* 395.

²⁰ We should note here that in Russia the older state apparatus was in fact itself a 'revolutionary' (post-February) apparatus. However, many civil servants of tsarist governmental institutions remained in post, so there was a certain continuity, which the Bolsheviks opposed, at least in public.

to be the main source of power and legitimacy of the Revolution. However, as Anna Liisa Heusala has observed, for Lenin, class struggle and the new state-building implied a centralisation of power.²¹ That is why the dictatorial prerogatives were given to the revolutionary government, the Council of People's Commissars. Its members, the People's Commissars, replaced pre-revolutionary ministers; the ministries below them were renamed as the People's Commissariats. The Council of People's Commissars and the Commissariats were the main legislative organs in the Russian Soviet Federative Socialist Republic (RSFSR). The subordinate position of the Soviets was later set out in article 65 of the RSFSR Constitution 1918, which specified that the first and most important duty of the Soviets was to 'Carry out all orders of the respective higher organs of the soviet power'.²²

In Finland, the Revolution lasted for only four months, from the end of January to the beginning of May 1918. Only the southern part of the country was ever held by the revolutionaries. Due to the Russian revolutionaries' own problems, no significant military or administrative assistance was ever received. The Finnish Revolution was led by a body called the People's Delegation, which consisted of 15 leaders of the Social Democratic Party that had decided on the seizure of power and functioned as the revolutionary government. The People's Delegation was responsible for nearly all the revolutionary legislation and important political decisions. Theoretically, executive power in revolutionary Finland was in the hands of the People's Delegation, but in practice it did not have complete control over its army, the Red Guard.²³

When power was seized, the Finnish revolutionaries called for a total renewal of the state structure, which implied a removal of the bureaucracy that was comprised mostly of liberal bourgeoisie who were hostile to the Revolution. The abolition of unnecessary administration was one of the objectives of the Revolution.²⁴ The Finnish 'Declaration of Revolution', issued at the very beginning of the Revolution, declared that the bureaucracy should be crushed so that it would never again dominate the people. Resentment towards the former institutions of government was so great that the revolutionaries promised

²¹ Anna-Liisa Heusala, *The Transitions of Local Administration Culture in Russia* (Kikimora Publications, 2005) 117–32.

²² Konstitutsia (Osnovnoi zakon) RSFSR (1918) (hereinafter RSFSR Constitution 1918) in DSV, vol 2, 550–64.

²³ Jaakko Paavolainen, *Poliittiset väkivaltaisuudet Suomessa I* (Tammi, 1966) 283–313; Osmo Rintatassi, *Kansanvaltuuskunta punaisen Suomen hallituksena* (Valtion painatuskeskus, 1986) 158–60, 330–1.

²⁴ Suomen vallankumoushallitus, 28 January 1918. This and all other Finnish revolutionary legal acts are published in *Kapinan aikana painetut Suomen asetuskoelma numerot 10–33* (Suomen Senaatti, 1918).

that even the name of the former cabinet, the ‘Senate’, was to disappear.²⁵ The same applied to the term ‘civil servant’, which was changed to the cumbersome phrase ‘holder of public office’.²⁶

However, in practice, the Finnish revolutionaries were not as radical as those in Russia. They did not, for example, nationalise private property on the same scale.²⁷ The Draft Constitution, which by all accounts was really intended to be the new Constitution of Finland, relied on the Swiss model of direct democracy and popular participation.²⁸ Unlike the RSFSR Constitution 1918, suffrage was universal and no social group was excluded from decision making. Red Terror was less severe in Finland than in Russia: in a country of two million, around 1,600 ‘Whites’ were murdered,²⁹ in Russia, the Revolution resulted in severe civil war, which ended in 1921 after thousands of people perished. Perhaps consequently, the revolutionary state machinery, on both municipal and national levels, resembled the pre-revolutionary system. The new organs of government had similar names and functions as their pre-revolutionary counterparts. There was even a quasi-democratic revolutionary parliament, the Workers’ General Council, which rubber-stamped the decisions made by the People’s Delegation.³⁰ In addition, the revolutionary government did not replace state officials and specialists who held offices that were unrelated to the ongoing revolutionary struggle and did not oppose the People’s Delegation. Thus, despite the anti-bureaucratic rhetoric, the state apparatus was not revolutionised but rather partially re-staffed. In many spheres of administration, such as communications, agriculture and finance, attempts were made to prevent current civil servants from resigning and only the top officials were changed.³¹

The legislative process was not completely reformed. Instead, in this area, the Finnish revolutionaries operated in a way that was highly reminiscent of the former system. The Red legislation was drafted by the Legislative Council. The Council bore the same name as its pre-revolutionary counterpart and drafted the new statutes in a manner that was analogous to the way in which law had been drafted before the Revolution. The Council was responsible for the technical drafting of proposals and worked under the supervision of two People’s Delegates of Justice, the journalist and former Member of Parliament Lauri Letonmäki and the carpenter Antti Kiviranta. They were not experts in

²⁵ Suomen Kansanvaltuuskunnan Julistus, 28 January 1918.

²⁶ Suomen Valtiosäännön Ehdotus, 23 February 1918.

²⁷ Rinta-Tassi (n 23) 374–6.

²⁸ Hannu Soikkanen, *Kohti kansanvaltaa I* (Sosialidemokraattinen Puolue, 1975), 281; Rinta-Tassi (n 23) 323–24.

²⁹ Paavolainen (n 23) 323.

³⁰ Rinta-Tassi (n 23) 151–7.

³¹ *Ibid.*, 243–61.

this area, but had been appointed for this task amidst a desperate lack of lawyers or otherwise more competent persons. Sometimes special commissions were established to find a solution to a single problem. In all, the process of drafting new legislation needed much effort. This inevitably led to the People's Delegation being criticised by the more radical revolutionaries and by the army for paying excessive attention to creating new legislation. In general, the Finnish revolutionary state was ruled in a way that was much closer to the Bolshevik model than its leaders wanted to admit. This was not necessarily because the Finns followed the Russian example, but because similar situations tend to lead to similar outcomes. Admittedly, the Finnish left-wing newspapers had correspondents in Petrograd who eagerly reported news and propaganda to Helsinki. The Finnish revolutionary leaders could thus observe the events in Russia and tried to copy, for example, the administrative innovations of the Bolsheviks. In particular, as Rinta-Tassi demonstrated, terminology was borrowed from Russia. For instance, the words 'people' (*kansa*) and 'Soviet' (*neuvosto*) started to appear in the names of various governmental bodies.³² However, the brevity of the Finnish Revolution and the lack of effective means of transport and communication meant that a comprehensive understanding of the events in Russia was not achieved. The fragile nature of the Bolshevik rule at that time meant that the Russians could only set an example. There was no direct Russian influence in the daily politics of the Finnish Revolution: there were no Russian political advisors at the disposal of the Finnish revolutionary government and no representatives of the Bolshevik regime had time to go to Finland to supervise or assist the Finnish revolutionary leaders in building their society. Even military assistance was unsubstantial. As the Bolsheviks had their own revolution to save, the Finnish revolutionaries were mostly left to their own devices.

In Russia, analysis of the legislation passed during the first days and months of revolutionary rule demonstrates that the Bolsheviks were more focused than their Finnish counterparts on propaganda relating to new social goals and authority. Little anti-bureaucratic propaganda, in general, is found in the legislation. Although ministers of the former cabinet of the provisional government were arrested, the bodies of the central state apparatus were urged to cooperate with new regime.

A story from the diary of Senator Mikhail Chubinskii provides a good example. According to Chubinskii, along with archival documents, the Senate—the highest judicial organ of the Russian state—did not irritate the Soviet government until 20 November 1917. On that day, the senators refused to accept their October wages, which were brought to them with the 'insulting' explanation that the payment was made by the People's Commissariat of Justice because

³² *Ibid.* 275–81.

the Senate 'had worked normally and had not sabotaged [the new regime]'.³³ On 23 November, the senators prepared a ruling in which they claimed that the new regime was illegal,³⁴ but it was not printed because the general meeting of workers of the Senate's Typography decided that 'being against the very essence of the Senate ruling, [the meeting] did not find it possible to publish'.³⁵ The next day the Senate was shut down by the Bolsheviks. This story reveals a lot about the administrative practices of revolution, in which minor actors, often blue-collar workers of state bodies, rather than the ideology and political ends of revolutionary leaders, played a crucial role.

In general, the Russian revolutionaries took the same pragmatic approach to state functioning as the Finns. Studies on the period of the establishment of the Soviet state highlight the role of old specialists in the building of new institutions.³⁶ Civil servants were considered to be important 'technical personnel' and thus were urged to continue to work in the governmental administration under the Soviets. Since the legislative policies of the revolutionary regime were formed by the People's Commissariats—to be precise, in most cases by their secretariats responsible for legislative materials—it is hard to underestimate the importance of the previous legislative structure.

III. REVOLUTIONARIES AND DRAFTING THE LAW

In pre-revolutionary Socialist thought in Finland, Russia and much of Europe, sharp criticism was directed towards the bureaucracy and the mechanisms of state apparatus, which were considered to be used as a means of class suppression. Here the Socialists agreed with Marxist theory, that law and bureaucracy are parts of the superstructure defined by, and used in the interests of, the prevailing bourgeoisie.

In Socialist propaganda before the revolutions of 1917–18 and, in fact, long afterwards too, state officials and the bureaucracy were considered to be biased

³³ MP Chubinskii, 'God revolutsii (1917) (Iz dnevnika)' in PV Volobuev (ed), *1917 god v sud'bakh Rossii i mira: Oktiabrskaia revoliutsia ot novykh istochnikov k novomu osmysleniju* (Institut Rossiiskoi istorii RAN, 1998) 325.

³⁴ Opredelenie Pravitel'stvuiushchego Senata 23 November 1917 g in Rossiiskii gosudarstvennyi istoricheskii arkhiv (Russian State Historical Archive) (hereinafter RGIA), fond 1341, opis 548, delo 105, list 140. See the document published in NM Korneva, 'Rossiiskii Senat mezdu Fevralyom i Oktiabryom 1917' (2009) 47(4) *Klio* 63, 66.

³⁵ RGIA, fond 1341, opis 548, delo 105, list 143.

³⁶ Gorodetskii (n 11); Iroshnikov (n 11); Peter Holquist, "'In accord with State Interests and the People's Wishes': The Technocratic Ideology of Imperial Russia's Resettlement Administration" (2010) 69(1) *Slavic Review* 151; James Heinzen, "'Alien' Personnel in the Soviet Revolutionary State: The People's Commissariat of Agriculture under Proletarian Dictatorship, 1918–1929" (1997) 56(1) *Slavic Review* 73.

against the working class.³⁷ Abolishing the unjust rule of the bureaucracy was one the goals of the revolutionary parties, one which enjoyed unreserved support among the masses; many people could, from their own experience, testify to the bias and lack of accountability of state officials. Moreover, the complexity of legislation was considered unnecessary and it was widely felt that its only purpose was to serve the prevailing classes.

The leaders of the October coup were revolutionaries who had made a career in the illegal, underground struggle against the ruling regime, and who had used its drawbacks for anti-governmental propaganda. The leader of the Bolsheviks, Vladimir Lenin, and a number of his comrades had university degrees in law: quasi-qualified criticism of the faults of tsarist legislation was used often in propaganda calling for Tsar's abdication. This criticism was aimed not only at the policies embodied in the legislation but also at the form of the law itself, which was seen as alien to the people. Lenin's disparaging comments on the sources of Russian law—the *Digest of Laws of the Russian Empire* and the *Collection of Legislation and Resolutions of the Government*—came from the socialists' general anti-bureaucratic sentiment. The logic of his indictment was simple: the bureaucratic form of laws, with their meticulous regulations and difficult, inaccessible bureaucratic language, aimed to make the law alien to ordinary people in order to conceal its anti-popular substance.³⁸ This criticism was made in Finland too. The Social Democratic Party had called for the simplification of legislation so that every citizen could have access to justice without having to seek costly legal advice from a specialist lawyer.³⁹

After power was seized, the revolutionaries soon drafted new legislation. In two first months of the Bolshevik Revolution, from 26 October until the end of 1917, there were 185 legislative acts published in the *Collection of Legislation*; in the first 'long' year of the new regime (14 months from the October uprising until the end of 1918), 1,006 acts were published. These figures are not impressive when compared to legislative activity in Imperial Russia: the average number of legal acts published in the Legislative Bulletin annually in the 1910s was higher.

In Finland, the revolutionary government drafted 48 statutes and prepared around 30 more; most were passed during the first two months of its rule.⁴⁰ This was a high number given that the Finnish Senate had previously passed

³⁷ See eg Jacques Droz (ed), *Histoire générale du socialisme* (Quadrigé, 1974) 181–2.

³⁸ EA Skripilev, 'VI Lenin i voprosy izucheniiia istorii prava i zakonodatel'stva' (1965) 4 *Sovetskoe gosudarstvo i pravo* 3; Jane Burbank, 'Lenin and the Law in Revolutionary Russia' (1995) 54(1) *Slavic Review* 23.

³⁹ Jukka Siro, *Tuomiovalta kansalle* (Suomalainen Lakimiesyhdistys, 2009) 47–49.

⁴⁰ Rinta-Tassi (n 23) 310–21.

approximately 120 statutes per year.⁴¹ Most statutes dealt with the practical difficulties that the People's Delegation faced, in particular the food supply and state finances. Acts were also issued on, for example, road maintenance and equality between men and women. The new court system was created with another three statutes. Most of the new statutes were technical in nature but some of them were entirely propagandist.⁴²

Given the propagandist value of the new legislation, extensive attention was paid to its distribution. The Finnish Legislative Bulletin was printed in thousands of copies and given away for free all over the country. Attempts were made to disseminate it to the enemy-controlled parts of the country. Every company in the Red Guard was, if possible, required to be informed of new statutes.⁴³ The Legislative Bulletin was not the only way to distribute the new statutes: the most important acts, such as the Martial Code, were printed separately as leaflets and also published in newspapers.⁴⁴

Likewise in Russia, according to a resolution of the Petrograd Military Revolutionary Committee of 28 October 1917, thousands of copies of the new authorities' decrees were printed and displayed in the streets.⁴⁵ Also, the decrees were published in the central newspapers of the victorious Soviets and in the Bolshevik party paper, *Pravda*, along with official newspapers.⁴⁶ The Russian revolutionaries also used telegraph and radio in order to organise the fastest and most effective transmission of new revolutionary measures to the local Soviet administrators. This transmission of the legislative acts is confirmed in the archival documents of the People's Commissariat of Justice.⁴⁷

IV. REVOLUTIONARY FEATURES IN THE LEGISLATION

Especially at the beginning of the Revolution, the revolutionary statutes contained features that were uncommon in acts of the former regimes. Both their content and form indicated a break with the past. Statutes were often declar-

⁴¹ *Collections of Statutes 1915–1918* (Suomen asetuskokoelma, 1915–18).

⁴² *Kapinan aikana painetut Suomen asetuskokoelman numerot 10–33* (n 24).

⁴³ Rinta-Tassi (n 23) 296.

⁴⁴ The leaflet was printed as Suomen punaisessa kaartissa käytännössä olevat säänökset toveri- ja sotaoikeuksista (Suomen Kansanvaltuuskunta 1918); Rinta-Tassi (n 23) 294–7.

⁴⁵ See the Instruction of the Military Department of the Executive Committee of the Soviets of Workers' and Soldiers' Deputies to the Commissar for the Printing of *Izvestiia*, 28 October 1917 in Gosudarstvennyi Arkhiv Rossiiskoi Federatsii (State archive of the Russian Federation) (hereinafter GARF), fond R-130, opis 1, delo 111, list 1.

⁴⁶ The other two official gazettes in 1918 were *Armiia i flot* (Army and Navy) and *Izvestiia* (News). See further in Borisova (n 19) generally.

⁴⁷ GARF, fond R-130, opis 1, delo 662, list 23. For more on the distribution of revolutionary legislation, see Borisova (n 19) 145–60.

tory and propagandist, and some acts bore no resemblance to the statutes drafted and written in tsarist times. In fact, they were laws in name only, since their purpose was something other than to ascribe anyone rights or obligations, or to define the legal relationship between a citizen and the state.

The revolutionary leaders were well aware of the declarative nature of decrees. Not to mention Lenin's famous statements,⁴⁸ we will take a remarkable article of Nikolai Osinskii, the first head of the Highest Council of the People's Economy RSFSR, in which he confessed that he and the majority of his colleagues at the Council were mistakenly sceptical of declarative decrees in the first months of the Revolution. In November 1918, he wrote that they then fully recognised their political importance:

Declarative legislation in the form of decrees is extremely important during the critical moments of the revolution ... At this moment of massive attack on capital, it is necessary to declare a goal in the form of a decree that the masses should strive toward.⁴⁹

This feature of revolutionary legislation was an embodiment of Soviet politics, and was planned carefully in advance. In his work 'State and Revolution', Lenin argued that the task of a new revolution is to break the state itself, rather than to improve its institutions as the provisional government—and the Soviets which had cooperated with it—had tried to do.⁵⁰ Written in the summer of 1917, the ideas set out in Lenin's book were implemented in the first decrees of the Soviet authorities, 'On Peace' and 'On Land'.⁵¹ As was mentioned above, these decrees constituted the decisive breaking-down of the former state and the beginning of a new era.

Already at the very beginning of Soviet power, the source of its legitimacy was declared to be the people and their representatives, which form the 'Soviets'—local organs of representation. This understanding was established for the first time in practice at the Second All-Russian Congress. Thereafter, it was postulated in the first article of the 'Declaration of Rights of the Working and Exploited People', enacted on 3 January 1918:

⁴⁸ See more in Borisova (n 19) generally.

⁴⁹ V Obolenskii (N Osinskii), 'Iz pervykh dnei Vysshego Soveta Narodnogo Khoziaistva' (1918) 11 *Narodnoe khoziaistvo* 14.

⁵⁰ VI Lenin, *Gosudarstvo i revoliutsiya: uchenie marksizma o gosudarstve i zadachi proletariat v revoliutsii* in VI Lenin, *Polnoe sobranie sochinenii*, (Izdatel 'stvo politicheskoi literatury, 5th edn 1974) vol 33, 1–120, 30. Lenin's dismissive reading of the provisional government's legislation of course had a political reasoning. We need to note here that some pieces of revolutionary legislation of the provisional government—often quite declamatory in its own right—were like the Bolshevik decrees.

⁵¹ Decree 'O mire', 26 October 1917, *DSV*, vol 1, 14–16; decree 'O zemle', 26 October 1917, *DSV*, vol 1, 17–20.

Russia is hereby proclaimed a Republic of Soviets of Workers', Soldiers' and Peasants' Deputies. All power, centrally and locally, is vested in these Soviets.⁵²

The Declaration was later included as the first chapter of the 1918 RSFSR Constitution.⁵³ However, on the key issue of the use of executive power, the Declaration was not implemented. In reality, the dictatorship of the proletariat was highly centralised and regulated by the means of the governmental, legislative acts implemented by the Soviets.

The same declaratory ethos can be found in some Finnish revolutionary acts. Even though they were issued by the revolutionary government and published in the Legislative Bulletin, they contained little, if any, material that could, strictly speaking, have been described as legislative. Instead, some of them consisted of propaganda and lists of the objectives that the revolutionaries wanted to achieve. In addition, some statutes were evidently issued only for propagandist reasons without full consideration of their practical implications. Such a statute was the 'Law on the Emancipation of Tenant Farmers', according to which the tenant farmers gained ownership of the farms that they had previously rented. The difficult question of land ownership had been a major contributing factor to the outbreak of the Revolution. The essential content of the statute was already in its name: it did not have any provisions on the precise scope or the details of the transfer of land, let alone on how disputes between parties would be settled. These matters were to be dealt with in a forthcoming statute, but such an act was never passed.⁵⁴ Further, as will be shown, the law had to be supplemented by explanatory newspaper articles.⁵⁵

In addition to the published statutes, the Finnish revolutionaries partially drafted numerous statutes that were never finished. Among these were a significant number of statutes that fell into the category of declaratory statutes. These statutes included an act on the right to hunt freely and acts on the abolition of noble ranks, religious education in schools and physical chastisement of children.⁵⁶ The fact that these drafts were never published shows that the People's Delegation had more pressing affairs to take care of than finishing and making decisions on these entirely unpractical and somewhat confusing drafts. At the same time, their existence shows that the revolutionary government was,

⁵² 'Deklaratsiaa prav trudiashegosia i ekspluatiruemogo naroda', 3 January 1918, DSV, vol 1, 21–24. For an English translation, see VI Lenin, *Collected Works* (Progress Publishers, 4th English edn 1964) vol 26, 423.

⁵³ RSFSR Constitution 1918, DSV, vol 2, 550–64.

⁵⁴ Laki torpparien, lampuotien ja mäkitupalaisten julistamisesta maanomistajista riippumattomiksi, 31 January 1918.

⁵⁵ See eg newspaper *Työmaies*, 2 February and 26 March 1918.

⁵⁶ The statutes can be found in Lainvalmistelukunnan arkisto, Suomen kansanvaltuuskunnan arkisto, Finnish National Archive.

as in Russia, aware of the possibility that legislation could be used as a means of propaganda.

In borrowing the form of the *decreet* from revolutionary France, Russian revolutionaries used the historical experience of their French predecessors. The Bolsheviks introduced into Russia the form of the decree, even using the word '*dekretirovat'*. In 1917, words borrowed from revolutionary France first appeared in Russia; the concept of *propaganda* is the best example. There is every reason to believe that they were borrowed to serve one purpose: as propaganda to hold on to power. Lenin himself said that decrees served as 'a form of propaganda', and that without them the Bolsheviks would not be able to occupy leading positions of state.⁵⁷ This was not the case in Finland, as a result of the extensive development of the Finnish language in the spirit of cultural nationalism in the second half of the nineteenth century.

In general, there were several common revolutionary features in Russian and Finnish legislation of the first months of the new regime. First, the revolutionary statutes were usually short. An act longer than five paragraphs would be considered to be long for the period. Most of the statutes had only one purpose—to fix something that was considered to be a problem—and did not regulate any larger issues. Quite often the legislation resembled military orders. This was particularly true of the statutes that were proposed by the People's Delegate of Agriculture in Finland, and decrees of the Russian revolutionary government, the Council of the People's Commissars.

Secondly, the statutes were vague and much was left to the discretion of the official who would apply the law. For instance, as the Finnish 'Decision on the Confiscation of Potatoes' stipulated, the confiscating officials should leave the farmers as many seed potatoes as 'necessary'—no precise amount was decreed.⁵⁸ Finnish and Russian laws on suppressing 'counter-revolutionary' activity were also vague. For example, the same process was set out in both countries to abolish 'counter-revolutionary' newspapers: a newspaper was declared to be 'counter-revolutionary', then its publication was prohibited and its printing presses confiscated. It was not, however, clear who should make that decision, on what grounds they could do so, or what, exactly, should be defined as 'counter-revolutionary'.⁵⁹ Of course, such vagueness enabled the revolutionary officials to interpret the law as they pleased. On the other hand, certain statutes were so insufficient that they had to be explained and supplemented through newspapers. For example, the 'Law on the Emancipation of

⁵⁷ Cited in Iroshnikov (n 11) 120.

⁵⁸ Suomen Kansanvaltuuskunnan määräys perunain takavarikoimisesta, 8 March 1918.

⁵⁹ Suomen kansanvaltuuskunnan määräys vastavallankumouksellisten sanomalehtien toistaiseksi lakkauttamisesta, 2 February 1918.

Tenant Farmers' was clarified in a lengthy article.⁶⁰ The statute had been a failed attempt to solve the complicated matter of land ownership in the countryside in only four paragraphs. The manifestly inadequate statute left citizens confused and uncertain about the scope of the transfer of land.

Thirdly, in statutes passed in both countries, we can see how the revolutionary legislator had to consider the recipient of the legal message to a greater extent than had previously been the case. This was evident in the justifications that were written into statutes as well as in their (sometimes entirely) declarative nature. The justificatory parts were usually written in the preambles in a way that was not entirely unknown in pre-revolutionary legislation. For instance, the Finnish 'Temporary Law on the Revolutionary Courts' had a preamble that read:

The People's Delegation has, considering it important that laws be applied in order to safeguard the accomplishments of the Revolution and to ensure the legal protection of the citizens, passed the following provisions on the Revolutionary Courts
...⁶¹

The same justifications were frequently used by the People's Commissars in Russia. Usually, these revealed the particular problem that the legislation was to address. It is of great interest that the campaign for the nationalisation of industry was accomplished by law issued in relation to particular companies. One of the first was a regulation entitled 'On the Confiscation of the Markushhevich Factory'. It started with the following justification:

In view of the fact that the owner of a factory making military uniforms, Markushhevich (Petrograd, 75 Zabalkanskii Pr), has disappeared without a trace, as have his trustees, thus leaving the factory to the will of fate, the Soviet of People's Commissars has decided to confiscate all of the factory's property, whatever that may consist of, and to declare it the property of the Russian Republic.⁶²

Sometimes propagandistic, justificatory passages were written amid otherwise neutral paragraphs. In the 'Decision on the Red Guard', which was issued to settle the matter of who should pay the salaries of the soldiers, it was stated that 'because the cruel enemies of the state, around the country, continuously

⁶⁰ See eg newspaper *Työmie*, 2 February and 26 March 1918.

⁶¹ Väliaikainen Laki vallankumousoikeuksista, 1 February 1918. Likewise, the Finnish 'Decision on the Use of Grist' began with a similar justification: 'Because earlier provisions are still circumvented and because those who live on self-sustained farms are privileged in comparison with those who live on rations, the People's Delegation hereby decrees ...'; Suomen Kansanvaltuuskunnan päätös syömäviljan käytöstä, 20 March 1918.

⁶² *Sobranie uzakonenii i rasporiazhenii rabochego i krest'ianskogo pravitel'stva* (hereinafter 'SU') (1918) no 18, 26 January 1918, item 266.

fight against democracy, the people need now, and will need for some time, a guardian of their interests'.⁶³ The same appeal to emotions, especially pity for the poor, was also used by Russian revolutionary legislators. For instance, the act 'On the Collection of a Tax on Public Shows and Entertainment' urged the people to pay the tax, because:

Thus, every citizen will be doing a great deed for all of the poor, homeless, and forsaken citizens, and will also be helping in the extremely difficult and arduous time of the Great Democratic Workers' Russia and its People's Government.⁶⁴

It is important to emphasise that, in the time of severe crisis of state functioning, revolutionary legislators used rhetoric most extensively to justify primary state functions (taxes, armed suppression) and a new revolutionary policy—nationalisation of industry in Russia. Such use of rhetoric in revolutionary law-making has a long history. As the twentieth-century political philosopher Hannah Arendt observed, poverty and distress were used as political factors in the policies of the revolutionaries. Compassion for the poor was also exploited on more than one occasion by the French revolutionaries of 1789, Maximilien Robespierre, Louis Antoine de Saint-Just and other Jacobins in their propaganda.⁶⁵

The fourth feature common to both revolutions followed naturally from the other peculiarities of revolutionary law-making listed above. Statutes were sometimes published in newspapers, accompanied by justificatory articles. These articles had a semi-legal status as they were published in the governmental newspapers, usually next to the relevant statute, and were evidently meant to explain the changes that the revolutionary leaders had wished to accomplish. For example, when the Finnish People's Delegation abolished the death penalty, the 'Law on the Abolition of Capital Punishment' was printed in all the national newspapers, accompanied by an article that explained in detail why such a measure had been taken.⁶⁶

Lastly, the revolutionary statutes contained almost no references to pre-revolutionary legislation. It was not a question of ability, but one of politics. The number of lawyers and otherwise well-educated people among the Russian revolutionary leaders was high. The members of the Finnish Legislative Council responsible for the technical drafting of the statutes had a good knowledge of pre-revolutionary legislation and time after time even proposed that new

⁶³ Suomen Kansanvaltuuskunnan päätös Punaisesta Kaartista, 2 February 1918.

⁶⁴ SU (1918), no 14, 9 January 1918, item 205.

⁶⁵ See Hannah Arendt, *On Revolution* (Viking Press, 1965, rept Penguin Books, 1990) ch 2.

⁶⁶ Laki kuolemanrangaistuksen poistamisesta, 2 February 1918. See eg newspapers *Työmaies* and *Suomen Kansanvaltuuskunnan tiedonantoja*, 3 February 1918.

acts should be only amendments to the pre-revolutionary ones, or at least make a reference to them.⁶⁷ The People's Delegation, however, usually declined in order to keep the revolutionary legislation distinct from the laws passed before the Revolution. This, in part, indicated the breach between old and new that was the objective of the revolutionary leaders.

V. TRADITIONAL FEATURES OF THE REVOLUTIONARY LEGISLATION

As the revolutions progressed, statutes began to contain more features that were essentially traditional. It can be argued that some later statutes did not differ in their form from their pre-revolutionary counterparts, despite the fact that the revolutionaries called for such a change. This was more apparent in Russia because there the revolutionary rule prevailed, but in Finland the People's Delegation was also soon in need of professional drafters. In the course of time, revolutionaries in both countries soon realised how dependent they were on pre-revolutionary practices. The demands for simplified legislation had to be set aside in order to govern the state properly.

The Bolshevik government, as well as their Finnish counterpart, needed administrative resources in the same way as the former regimes had. Also, the criteria by which the people assessed administrators' efficiency did not change with the Revolution. Therefore, the Bolsheviks put in place, as far as possible, a technical administration. As we mentioned above, administrative skills appeared to be crucial in formulating Soviet legislative politics. The decree 'On the Voting Principle and on the Organization of Authority in the Army' of 16 December 1917 included a specific clause that individuals with a technical education were placed on a special list.⁶⁸ In the first instance, this referred to telegraph operators, doctors and engineers. Government officials were also included in the group known as 'specialists' (*spetsy*), and were supposed to lend their expertise to those who had worked almost exclusively on the destruction of former governmental regimes and institutions. The revolutionaries were in great need of this sort of technical support, as the first Commissar for the Ministry of Justice, Georgii Oppokov (Afanasii Lomov), openly wrote:

There were among us a lot of extremely highly qualified workers, there were the most devoted revolutionaries ... Every one of us could have listed all of the prisons in Russia with a detailed description of the conditions that existed in them. We knew where they beat people, how they beat them, where and how they kept prisoners in

⁶⁷ Siro (n 39) 63, 70.

⁶⁸ Decree of 'O vybornom nachale i ob organizatsii vlasti v armii', 16 December 1917, *DSV*, vol 1, 244–5.

isolation, but we did not know how to govern a country, and we were not familiar with banking practices or with the work of ministries.⁶⁹

The need to enlist specialists for technical duties was present in Finland, too. Lawyers were persuaded to take positions in the revolutionary administration and judiciary.⁷⁰ It was considered imperative that specialists would look into these affairs; the competence of the mostly uneducated revolutionary leaders was considered inadequate. The Red legislation was prepared in the Legislative Council (*Lainvalmistelukunta*), which was staffed with the best legal experts that the People's Delegation had at its disposal. Of the seven members of the Council, four were former Social Democrat Members of Parliament. The only two lawyers that had chosen the Red side were also given posts at the Legislative Council.⁷¹ This meant that the Council was better staffed than, for example, the Supreme Revolutionary Court, in which there was not a single judge with a degree in law.⁷² This was, of course, due to the fact that most of Finland's 1,500 lawyers opposed the Revolution and refused to cooperate with the revolutionary government.

This approach towards legislation was seen in changes in the statutes themselves. Traces of pre-revolutionary practices began to appear. First, the names of the statutes were similar to those that had been passed before the Revolution. Instead of creating new terms, the revolutionary statutes bore the traditional names: law, decree, decision and regulation.⁷³ The logic that was applied to the naming also remained the same: laws and decrees were enacted by the supposedly more representative People's Delegation, whereas decisions and regulations were passed by individual People's Delegates. As had been the case before the Revolution, laws and decrees were the more important legislative devices, and their scope was more far-reaching than that of decisions and regulations. There was, however, one novelty: 'temporary laws'. Calling laws 'temporary' was motivated by the People's Delegation's wish to convince citizens that certain drastic measures were only of a temporary nature.⁷⁴

⁶⁹ GI Lomov, 'V dni buri i natiska' (1927) 10 *Proletarskaia revoliutsiiia* 171–2.

⁷⁰ Olavi Anttila, 75 vuotta sosialidemokratiaa Lahdessa (Lahden sosialidemokraattinen työväenhdistys, 1975) 170; 'Report for the People's Delegation on the Appointment of Judges of the Supreme Revolutionary Court' in the file of Kaarlo Harvala, Finnish National Archive, VRYO 23471.

⁷¹ Siro (n 39) 61–62.

⁷² *Ibid.* 64–65.

⁷³ In Finnish, 'laki', 'asetus', 'päätös' and 'määäräys'.

⁷⁴ The temporary laws 'On Revolutionary Courts', 'On the Extension of the Revolutionary Courts' Jurisdiction' and 'On the Municipal Taxation Boards and on the Banking System during the Revolution' had characteristics that were either in sharp contrast to the Rule of Law or were at least unpopular with the actual or potential supporters of the Revolution.

The revolutionary statutes were sometimes written and formulated traditionally. This was seen, for example, in technical issues: laws and decrees were divided into numbered paragraphs, whereas other statutes were not, just as had been the case before the Revolution. Likewise, the paragraphs were divided into subsections that were identified as they had been in the pre-revolutionary statutes. And as is typical of legal texts, the revolutionary statutes were written in a way that was not always compliant with the grammatically correct or colloquial use of the language.⁷⁵ Other features of the old legal language were also found in the revolutionary statutes, such as shortened sentences, subordinate sentences and a noun-based writing style. These were typical features of the early twentieth-century Finnish legal language, but certainly not of normal prose, let alone of the colloquial style that dominated in propaganda. The 'Reds' even chose to use the archaic imperative that was normally found only in legal and religious texts. None of this literary finesse was in use in the everyday spoken language, especially not in the language spoken by the typically uneducated revolutionaries.

As an example, we may look at one of the many statutes on taxation, the 'Law on the Duty to Report Income for the Municipal Taxation', enacted on 6 March 1918.⁷⁶ In the act, it is possible to find features that were in sharp contrast to the normal socialist style of writing. The law had characteristics that were more traditional than revolutionary in nature.

The purpose of the statute was to ensure that people would report their income properly so that the officials of the nearly bankrupt Red regime could collect taxes efficiently. The law contained sophisticated provisions concerning, among other things, how different revolutionary authorities should calculate tax and what income taxpayers had to report and how they should do so. The 'Law on the Duty to Report Income for the Municipal Taxation' was an unusually long statute, consisting of 20 paragraphs. Its drafters evidently had a good knowledge of both Finnish tax law in general and the specific issues regarding the taxation procedure.

The lexicon of the statute was conservative and distinctively legal. Moreover, the statute used technical taxation terminology that must have been strange for anyone not thoroughly familiar with taxation procedures. The same is true of the syntax. Sentences consisting of around 50 words or more were maybe typical for legal language, but quite difficult for the citizens who were

⁷⁵ When a paragraph contained a cross-reference to other paragraphs, the number of the latter was indicated in a way that was grammatically incorrect but conventional for legal documents. The same is true of the styling of dates: instead of writing them in the usual manner, the drafters of revolutionary statutes wrote them in the manner used traditionally in legal acts.

⁷⁶ Laki tulojen ilmoittamisvelvollisuudesta kunnallisverotuksessa, 6 March 1918.

meant to understand the statute. In addition, the law contained certain specific and complex legal concepts, such as the re-examination of a person's income. If a person had not reported his full income, the taxation board could, under certain circumstances, re-examine his taxation retroactively following a procedure laid down by the statute. Reliance on pre-revolutionary terminology, and perhaps unnecessary complexity, was not limited to statutes on taxation but were features of other statutes, in particular those on state finances and the court system.⁷⁷

Additionally, some statutes were perhaps unnecessarily extensive and bureaucratic. For example, the 'Decision on Postage' recognised fees for 25 different kinds of deliveries.⁷⁸ Such pedantic provisions were maybe excessive when the postal system as a whole suffered severely from a lack of qualified personnel and the post was at times not delivered at all. Likewise, the 'Decision on the Confiscation of Fodder' contained exhaustive lists regarding the amount of fodder that farmers were allowed to keep for their own animals.⁷⁹ Confiscations were usually met with such hostility that these detailed provisions were not ever likely to have been followed, which should have been obvious to the People's Delegation.

The same tendency can be seen in Soviet legislation. An analysis of the *Collection of Legislation* in the first months of the Soviet regime leads to the conclusion that the language used in legislative acts was becoming more specialised and technocratic. As in Finland, the regulations of the People's Commissariat of Finance appeared to be the most conservative. It used the same form for legislative acts and continued previous taxation policies that aimed to extract essential resources in the early Soviet period.⁸⁰ The revolutionary taxation laws could be distinguished by a particular traditionalism with roots in the tsarist regime. As the basis for the decrees, the Commissariat pointed to pre-revolutionary legislation, with due reference to the tsarist *Collection of Legislation*. Contrary to other regulations, the acts of the People's Commissariat of Finance were devoid of almost any sort of rhetoric, although they did threaten the severe punishment of imprisonment.⁸¹

⁷⁷ See eg Väliaikainen laki vallankumousoikeuksista, 1 February 1918; Laki tulojen ilmoittamisvelvollisuudesta kunnallisverotuksessa, 6 March 1918.

⁷⁸ Suomen Kansanvaltuuskunnan määräys erinäisten postimaksujen korottamisesta, 26 February 1918.

⁷⁹ Suomen Kansanvaltuuskunnan päätös karjanrehun takavarikoimisesta, 20 March 1918.

⁸⁰ Yanni Kotsonis, "'No Place to Go': Taxation and State Transformation in Late Imperial and Early Soviet Russia" (2004) 76(3) *Journal of Modern History* 531.

⁸¹ Decree 'O vzimanii priamykh nalogov', 24 November 1917, *DSV*, vol 1, 142; Regulation of the Council of People's Commissars' 'O novom poriadke nachisleniya nalogov na tabachnuiu produktsiiu', 24 November 1917, *DSV*, vol 1, 143.

Lastly, that revolutionary legislators reverted to customary practices to govern the state and legitimise their authority can be shown by examining the Legislative Bulletins and the promulgation of new legal acts. The promulgation of new revolutionary legislation was very conservative. The revolutionary governments in both Russia and Finland continued the time-honoured practice according to which a law did not enter into force until it was published in the official Legislative Bulletin.

In Finland, Acts of Parliament had for years been promulgated by publishing them in a Legislative Bulletin called 'The Statutes of Finland'. The People's Delegation considered on the second day of the Revolution the issue of the publication of revolutionary statutes, and decided that new legislation should be published as it had been before.⁸² Thus, statutes were published in the very same bulletin that had been in use for decades. Its name, outward appearance and numbering system were unchanged. Because nine acts had already been passed in 1918, the first revolutionary statute, the 'Declaration of the Revolutionary Government', was given the statute number 10.⁸³

In Russia, on the fifth day of the Revolution, 30 October 1917, the Council of People's Commissars published the decree 'On the Procedure for the Affirmation and Publication of Laws'.⁸⁴ The importance of this decree was indicated by its rhetorical conclusion, 'in the name of the Republic', which was included only in legislative acts of fundamental political importance. Instead of publication by the Senate, the decree stipulated a new procedure: 'The Department of Legislative Proposals, under the Soviet of People's Commissars, shall periodically publish *The Collection of Legislation and Resolutions of the Government*, which will have the force of law'. The first of such acts was issued on 1 December 1917.

This 1917 decree had been drafted with great attention to the details of procedure, which formed a remarkable contrast to well-known, early, principal decrees of the Soviet government. Unlike those early Soviet decrees, which emphasised the revolutionary breakdown of previous institutions and practices, here was an important but different intention: to continue the practice of publishing legislation in official editions.

This continuation of the practice of the old order of legitimising acts by publication in a special bulletin was emphasised by retaining the name of the bulletins.⁸⁵ It is clear that the old name and form of the Legislative Bulletins

⁸² Minutes of the People's Delegation, 30 January 1918, Suomen kansanvaltuuskunnan arkisto, Finnish National Archive.

⁸³ Kapinan aikana painetut Suomen asetuskoelma numerot, 10–33.

⁸⁴ Decree 'O poriadke utverzhdeniya i opublikovaniia zakonov', *Gazeta Vremennogo Rabochego i Krest'ianskogo pravitel'stva*, 30 October 1917.

⁸⁵ In the Soviet Union, the Bulletin retained its pre-revolutionary foundation—*Sobranie uzakonenii i rasporiazhenii pravitel'stva* ('Collection of Legislation and Resolutions of the Government')—throughout the first 20 years of the Soviet regime. Subsequent modifications were insignificant.

were kept not because of a shortage of time or imagination; the conclusion cannot be avoided that the revolutionary leaders retained it intentionally.⁸⁶ This adherence to the old names can be explained by the fact that, for those who had seized power, the very name of the Bulletins, retained from the previous regime, was used as an additional source of power or, in terms of Weber's classification, 'rational/legal/bureaucratic legitimacy'.⁸⁷

However, we should also take into account that, to a certain extent, usage of the Bulletin's old name and in general old forms in the publication of laws was an easy way to use old structures for a new rule. The two important requirements of efficiency in the implementation of new norms and the responsibility of authorities inevitably necessitated continuity in administrative practices. In any case, the customary form of the law was paramount both for the consolidation and legitimisation of power. It was so important that even the instrument with which the power was formally exercised had to be left intact. The publication of these Bulletins shows how tradition played an important role in the formal process of enacting laws. It is indicative that such an instrument, which lies at the heart of public order and the exercise of power, remained intact despite the manifest urge to destroy the remnants of the capitalist society and bureaucracy.

VI. CONCLUSIONS: REVOLUTIONARY LEGALISM

The revolutionary regimes in both Finland and Russia appeared to be quite legalistic in the sense that they enthusiastically drafted new laws and tried to legitimate their rule by legislative means. This shows that the form of legislation was held in high regard and that they tried to base their legitimacy on 'legal order'. At the same time, revolutionary law could take various forms: some legislative acts resembled former 'bureaucratic' legislation that the revolutionaries had previously criticised so sharply, whereas others were nothing more than

From October 1917 to 1920, it was called *Sobranie uzakonenii i rasporiazhenii rabochego i krest'ianskogo pravitel'stva* ('Collection of Legislation and Resolutions of the Government of Workers and Peasants'). From 1920 to 1924, it was called *Sobranie uzakonenii i rasporiazhenii rabochego i krest'ianskogo pravitel'stva RSFSR* ('Collection of Legislation and Resolutions of the Government of Workers and Peasants of the RSFSR'). From 1924 to 1938, it was called *Sobranie uzakonenii i rasporiazhenii rabochego i krest'ianskogo pravitel'stva SSSR* ('Collection of Legislation and Resolutions of the Government of Workers and Peasants of the USSR'). Only after 1938 was its name radically changed: *Vedomosti Verkhovnogo Soveta SSSR* ('Gazette of the Supreme Soviet of the USSR').

⁸⁶ We shall leave aside the issue of whether this was also in any way a result of the disorganised nature of the Soviet state.

⁸⁷ Here we rely on the in-depth comparative study of legal linguistics by Heikki Mattila, who demonstrates that the authority of antiquity and old forms is grounded in the law: Heikki ES Mattila, *Comparative Legal Linguistics* (Ashgate, 2006) 81–88.

revolutionary declarations. How one can explain the legalism of these Revolutions, notwithstanding the paradoxical mixture of genres used in law-making?

In light of Schmittian theory, law-making is an important dimension of sovereign power, since it is related to the sovereign's essential prerogative to create a situation, control it and make its development predictable.⁸⁸ Law establishes predictability, thus legal order is an essential part of sovereign rule. As we saw, the revolutionary governments in Russia and Finland often used decrees to retrospectively confirm as legal something that had been done in the course of the Revolution. In general, their laws served the goal of formally justifying their rule, of establishing their authority in written word. However, the main contribution of Schmittian understanding of sovereignty and law is that the sovereign is not bound by his own law. To do this, sovereign needs authority; revolutionary sovereign is not an exception.⁸⁹

In his classification of pure types of legitimacy, Weber considered *rational/legal* legitimacy as being the most modern, a result of the evolution of two earlier types: *traditional* legitimacy and *charismatic* legitimacy.⁹⁰ Our research demonstrates that the revolutionary legislation exploited all three types of legitimacy: rational/legal, traditional, and charismatic. In contrast to the use of (revolutionary) violent force, state power needed what the political philosophers of today call 'political legitimacy',⁹¹ which would provide popular, voluntary compliance with authority, thus making the domination legitimate.⁹² This understanding was in line with the practical approach to state power of revolutionary ideologists Karl Marx and Friedrich Engels. They both stressed that the state was needed in order to fulfil a certain functional role, that is, to suppress the proletariat's rivals.⁹³

The revolutionary chronology provides us with an example of the Weberian evolutionary approach to legitimacy. The very first decrees of a declarative nature aimed to demonstrate the *charismatic daring of the revolution*. The other

⁸⁸ Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (University of Chicago Press, 2005).

⁸⁹ *Ibid.* 31–33.

⁹⁰ Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (University of California Press, 1978) 212.

⁹¹ For a discussion of the basic aspects of the theory of political legitimacy, see Peter Fabienne, 'Political Legitimacy' in Edward N Zalta (ed), *Stanford Encyclopedia of Philosophy* (Summer 2010 edn), <http://plato.stanford.edu/archives/sum2010/entries/legitimacy>.

⁹² Weber (n 90) 212.

⁹³ This view was developed in the 1870s in their criticism of the Gotha Program of the German Social Democratic Party (1875), on which see Karl Marx, 'Kritik des Gothaer Programms' in Karl Marx and Friedrich Engels (eds), *Werke* vol 19 (Dietz Verlag, 1973) 13–32. Engels' critique can be found in his letters to leading Social-Democrats August Bebel (18–28 March 1875, 12 October 1875), Wilhelm Bracke (11 October 1875) and Karl Kautsky (January–February 1891); see www.mlwerke.de.

tendency which was also in use already in the first month of the Revolution was exploitation of a *tradition of domination*, embedded in the legal language, along with other legislative practices borrowed from the pre-revolutionary regime. The second tendency almost inevitably conditioned the development of the third one—*rational/legal legitimacy of revolutionary regime*. We will consider this in more detail below.

1. Charismatic Trends in Revolutionary Law-Drafting

One of the first things that the new leaders did was issue statutes to mark the change of authority and the beginning of revolutionary rule. The form of the first statutes already testified to their revolutionary character. They were meant to demonstrate the breach between the suppression of the old regime's practices and the new, just legislation that was to be drafted for the common good by the revolutionaries. Statutes such as 'On Peace' and 'On Land' in Russia and 'The Law on the Emancipation of Tenant Farmers' in Finland highlighted in a poignant way the beginning of the eagerly anticipated revolutionary rule. That these manifestations of political theory were enacted as statutes elevated their significance for the revolutionaries. To a large extent, these statutes legalised the practice of violating private property rights on land and earlier acts of desertion from the army at the front; by doing so they brought political strength to the revolutionary government. The propagandistic message of the first statutes was clear: more of this was to come from the revolutionary authorities. It was secondary that these statutes were rather useless as legal instruments and had to be amended or explained later. It would not be an exaggeration to say that the publication of decrees became an effective means of propaganda for the new regimes.

One important feature of the revolutionary statutes was their vagueness. During the turbulent times of the Revolution, the legislator could not take into account all possible situations to which an act could be applied, since the laws were often drafted and passed hastily. Under such circumstances, the wide margin of discretion left to those who would apply the law, the revolutionary officials and courts, served an obvious purpose. The rule of revolutionary law was not violated as long as statutes were followed, and leaving them vague made them easier to follow.

To analyse this charismatic trend in revolutionary law, the 'performativity' of revolutionary legislation should be discussed in more detail. Indeed, John L Austin's concept of a legislative act as performative seems to be a good analytical tool.⁹⁴ In line with his 'speech acts' theory, he argued that legal statements

⁹⁴ John L Austin, *How to Do Things with Words* (Clarendon Press, 1962).

can act as performatives in the sense that they actually *make* the actions that carry out the letter of the law.⁹⁵

Another important feature of the revolutionary statutes was that they were meant to be accessible to the widest possible audience. Propagandist decrees written during the revolutionary period used linguistic and rhetorical means—even more than legal means—to create a new political framework of reality. The regulation's recipient was supposed, through a sense of compassion, to adopt this new revolutionary picture of the world and to take part in its creation.

However, there is a risk that the performative aspect of the revolutionary legislation is overestimated. Our research demonstrates that the performative character of the new laws actually worked as a result of the *continuity* of the pre-revolutionary, traditional legal order and administrative practice. The crucial role of this legislative context and its remarkable influence on the very substance of revolutionary law has not been fully analysed. Thus, the emphasis on the performativity of revolutionary slogans in decrees may be misleading. As our research shows, the construction of a new revolutionary reality was possible through the efficient, though unacknowledged, use of the old practices of state control and domination based on formal rules.

2. The Exploitation of a Tradition of Domination

The borrowing of pre-revolutionary practices can be explained by the revolutionaries seeing legislation as a means of exercising power and an administrative tool that ought to be exploited in much the same manner as telephone lines, railway stations and telegraphs.

In the first months of the Revolutions, the new rule was under question. The Revolution in Finland was abortive: the People's Delegation was never able to establish its position as the legitimate government, and the Finnish revolutionary government never achieved the position of the established, stable and accepted legislator. In Russia, too, the Bolsheviks were, at this point, not the undisputed rulers of the country: the revolutionaries needed to legitimise their rule in the areas that their military controlled. This was reflected in the revolutionary statutes that were formulated to appear as legitimate as possible—and what could be more legitimate than statutes that resembled the pre-revolutionary ones with which people, especially the administrators, were familiar? The content had to be dictated by the revolutionary situation and policies pursued, but the form of the statutes could be left intact. Thus the symbolic power of the customary form of the law also played a role by helping to legitimise the administrative ambitions of the new regimes.

⁹⁵ *Ibid*, 11–12.

The continuation of the pre-revolutionary traditions of writing and promulgating legislation can be considered as merely a technical re-establishment of the pre-revolutionary administrative order. As our analysis of revolutionary legislation on finance and taxation demonstrates, in these areas revolutionaries of both countries appeared to be the most conservative. The lack of rhetoric along with use of the traditional language of pre-revolutionary statute law is to be found in both Finnish and Russian revolutionary legislation on taxation. In Russia, there were even references to the pre-revolutionary norms of tsarist legislation. The reason for such continuity could be that, in a situation of economic crisis, the revolutionaries quickly approached the task of governance from a technocratic point of view and, in their own legislative policy, they tried to reduce to a minimum the cost of implementing new laws by using existing methods of governance.

Further, this general continuity can be explained as result of the revolutionaries' agenda overlapping in key respects with the statist agenda of certain segments of Russia's political class, as has been suggested by the historians Alessandro Stanziani, Don Rowny, James Heinzen and Peter Holquist.⁹⁶ This conclusion reminds us of Alexis de Tocqueville's discussion of the continuity of the pre-revolutionary regime after the French Revolution, especially in relation to the significant growth of state power. De Tocqueville wrote on the continuity of *substance* of politics, while our research underlines continuity of important interrelationship of *substance* and *form* in legislative politics.⁹⁷ The revolutionary legal acts that constituted the new era had to operate in the context of traditional practices of law implementation. In the next section, we will consider how this traditional context affected the substance of legislative politics and Revolution itself.

3. Rational/Legal Legitimacy of the Revolutionary Regime

Bolshevik law-making provides good support for our conclusion that adherence to the old administrative techniques perverted the revolutionary proclamations of demolishing the oppressive structures of past. This is especially true of the discriminatory use of legal language, which could serve to establish local revolutionary authorities and to regulate the participation of lay people in them.

⁹⁶ On which, see Alessandro Stanziani, *L'économie en révolution. Le cas russe, 1870–1930* (Albin Michel, 1998); Heinzen (n 36); Peter Holquist, *Making War, Forging Revolution: Russia's Continuum of Crisis 1914–1921* (Harvard University Press, 2002); Peter Holquist, "Information is the Alpha and Omega of our Work": Bolshevik Surveillance in its Pan-European Context' (1997) 69(3) *Journal of Modern History* 415; Don K Rowney, 'Narrating the Russian Revolution: Institutionalism and Continuity across Regime Change' (2005) 47(1) *Comparative Studies in Society and History* 79.

⁹⁷ See de Tocqueville (n 4) generally.

For instance, the analysis of the form of legislation demonstrates that, notwithstanding acts of a revolutionary nature written for lay people, the intended readership for most of the decrees published in the first half of 1918 in the Russian *Collection of Legislation* was not the public but qualified administrators.⁹⁸

By engaging administrators from the former regime in Soviet central and local institutions, the Bolsheviks were trying to fulfil the will of the party leadership immediately. At the same time, they retained the tradition of excluding citizens from any meaningful participation in matters of governance. This gap between the proclaimed power of the Soviets, declared in articles 1 and 10 of the RSFSR Constitution 1918, and their actual subverted position was acknowledged in article 65. This listed as the first and most important duty of the Soviets: 'Carry out all orders of the respective higher organs of the soviet power.'⁹⁹ Legal and rational legitimacy for the Soviets' power was both *implied* and *provided* by its articulation in the authoritative legal source, the RSFSR Constitution 1918.

Revolutionary experience provides us with a better understanding of an important function of legal legitimacy, which can be called instrumental or technical. As we have seen, legislation was used by the revolutionary authorities solely as an instrument of administration. The revolutionary regimes highlighted the violent nature of state authority when every act of power was moral in itself. The analysis of revolutionary law provides us with important insights into the remarkable potential of power and legitimacy attributed to law and legal rationality.

Use of the law as an instrument clearly demonstrates the importance of a recent observation of Jeffrey Jowell, that modern understanding of the Rule of Law implies not positive legislation but 'a principle of institutional morality',¹⁰⁰ otherwise any regime could act as Rule *by* Law, relying on the legitimacy of what Weber called 'rational/legal rule'.¹⁰¹

On the theoretical level, our analysis of the pluralism of the legal means used by revolutionary legislators provides a deeper understanding of Carl Schmitt's inspired thinking on the theological nature of the modern state's enormous power, described by Schmitt as follows:

The state intervenes everywhere. At times it does it as a deus ex machina, to decide according to positive statute a controversy that the independent act of juristic perception failed to bring to a generally plausible situation; at other times it does so as

⁹⁸ See textual examples in Borisova (nn 14, 19) generally.

⁹⁹ RSFSR Constitution 1918 (n 22).

¹⁰⁰ Jeffrey Jowell, 'The Rule of Law and its Underlying Values' in Jeffrey Jowell and Dawn Oliver (eds), *The Changing Constitution* (Oxford University Press, 7th edn 2011) 5.

¹⁰¹ Weber (n 90) 212.

the graceful and merciful lord who proves by pardons and amnesties his supremacy over his own laws. There always exists the same inexplicable identity: law-giver, executive power, police, pardoner, welfare institution ... a huge a cloak-and-dagger drama, in which the state acts in many disguises but always as the same invisible person. The 'omnipotence' of the modern lawgiver, of which one reads in every textbook, is not only linguistically derived from theology.¹⁰²

As we have seen, the revolutionary situation is a perfect example of the unrestricted ambitions of a sovereign power that disguised itself in the idiosyncratic mixture of revolutionary and traditional language and genres used in revolutionary legislation. The coexistence of revolutionary and traditional forms in the situation of moral anomaly served to accelerate the merger of the sovereign and technical state.

¹⁰² Schmitt (n 88) 38.