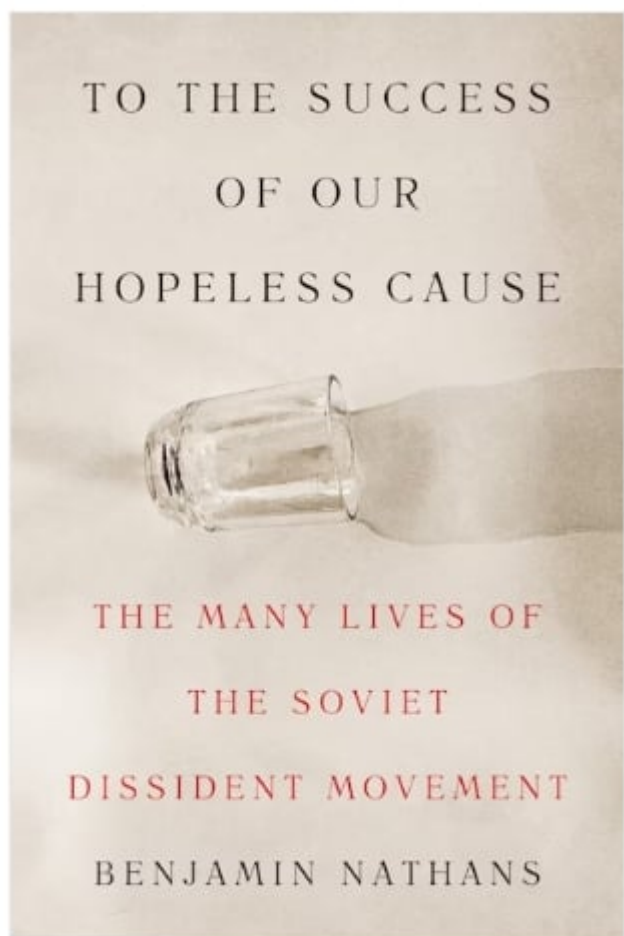


One man's history of Soviet dissident is another man's proof that no country has the rule of law

By Lev Tsitrin

It was something of a sense of guilt that made me purchase and read a massive tome titled "[*To the Success of Our Hopeless Cause: The Many Lives of the Soviet Dissident Movement*](#)." Just seeing it on a bookstore shelf triggered the sense of obligation to the people who made it possible for me to get out of the USSR – the obligation that, I thought, could be at least partially discharged by learning about them.



What I did not expect to learn in this unexpectedly absorbing page-turner (it is an academic publication, after all!), was that the struggle of Soviet dissidents largely took the same form as my own, completely unsuccessful battle against the government censorship right here in the US. Soviet dissidents wanted to practice the freedom of speech – including the freedom to publish their works – and insisted that this freedom was enshrined in the Soviet law. Soviet authorities, unhappy with the antagonistic contents inherent to unregulated, and unregulatable *samizdat* (which is a Russian word for self-

publishing) – publications that of necessity evaded editorial censorship of official press outlets, sought to suppress it – law or no law.

Hence, the clash that gave birth to the dissident movement – the clash between the government that, on the one hand, rejected Stalin’s arbitrary brutality (the new rulers having learned from their experience under Stalin that it could cannibalize them, too – and sought in what Khrushchev called “socialist legality,” i.e. the rule of law – the means of their own self-preservation) – but on the other hand, saw the need to stop what they felt was slander of the Soviet norms by those who disseminated their works via typewriters, or – even worse – by publishing them abroad, so they came back to the Soviet audiences via Russian-language services of BBC, Voice of America, Radio Liberty, and suchlike. In 1965, the authorities put two such writers on trial that was closed to the public and the press – causing an unusual protest by a few dozen members of Moscow intelligentsia who demanded – in language that was loyal to the Soviet Constitution – that the government should follow its own laws and sets the (non)-transgressors free. There being no practice of rule of law in the Soviet Union, the outcome of the trial (and the resulting sentence) being predetermined well in advance in the KGB, the writers got long sentences.

This struggle for practical implementation of freedoms spelled out in the Soviet Constitution is what the 640-page tome (plus another 150 pages of notes and indexes), is really about, its pages sprinkled both with the names that are well-known in the West – Solzhenitsyn, and Sakharov, and Scharansky – as well as the more obscure, but equally important ones, by far the most important among them being Alexander Volpin who came up with the counterintuitive strategy of Soviet dissent: dissidents should claim that the Soviet Constitution is both wonderful and sacrosanct – and that they object not to its deficiencies (there being none; finding any would have indeed counted as “anti-Soviet” activity punishable by Soviet law) but to its practical violations by those in power.

If Volpin was a fictional character in my own book, he would be my alter ego – for, unbeknownst to me, it was precisely his logic that I myself followed in my attempts to not just legitimize, but normalize – by giving it access to the mainstream marketplace of ideas like libraries and bookstores – “samizdat” in America.

American government – just like that in the former Soviet

Union – does not like it when people speak out of their own mouths, without going through the channels that properly “vet” their speech. Accordingly, the government agency tasked with making books visible in the marketplace – the Library of Congress – denies its services to “samizdat” productions;; only the books published, and therefore censored, by corporations need apply. If corporations don’t approve, or are not accessible – too bad. Unless corporations take the middleman’s cut, the book cannot enter mainstream circulation. This being clear-cut regime of censorship (and crony capitalism), I sued – re-enacting Volpin, it turns out – and learned how American legal system actually operates. Now that I read about dissident encounters with the Soviet legal system, I realize that the two systems are by no means dissimilar: what drives both is not the “due process” and “rule of law” – but the desire to attain the desired outcome. I learned in my litigation that in the US, federal judges do not adjudicate cases submitted to them by the plaintiff; they do not weigh plaintiff’s argument against that of the defendant. Cases they adjudicate are completely different, totally fictional cases of judge-authored plaintiff’s argument against judge-authored defendant’s argument. Federal judges first re-lawyer the cases, replacing parties’ argument with judges’, and only then issue a decision – a decision adjudicating judge’s own argument, thus awarding the victory to the judge.

Is this legal? Yes, say federal judges – when I sued a bunch of them for fraud, they defended themselves with a self-given in *Pierson v Ray* right to act from the bench “maliciously and corruptly.” Hence, if judges act according to law and evaluate parties’ argument (as “due process” demands that they do), they obviously follow the law. However, if that procedure will not produce the desired outcome and they choose violate “due process” by replacing parties’ argument with the utterly bogus, judges’ one – they *also* follow due process because judicial violation of “due process” is in itself, according to *Pierson v Ray*, an integral part of “due process.”

This is no less Kafkaesque than the Soviet method of judging, described in the book as a “telephone law” – i.e. a judge gets a phone call from Kremlin or KGB telling him or her what the verdict in a given dissident’s case should be. But just

because in the US a federal judge get no such phone calls does not make the "procedure" any less grotesque.

Nor is the role of the press in two seemingly opposite societies any different, it turns out. For one, the press is a powerful force – hence, both governments want to control it, suppressing "samizdat" and channeling expression through third-party censor-publisher. Soviet dissidents had power only insofar as they could funnel information to Western sources, which made it available to the Soviet public via short-wave radio, and buttress in the West its contempt for the Soviet system. To get their message across, dissidents exploited the great-power rivalry.

In my case, there was no such rivalry to exploit – and in both systems the press is selective, and finds certain topics to be too sensitive to handle. Despite contacting innumerable American journalists, I found it impossible to make them tell the story of the arbitrary nature of judicial decision-making in the federal courts, to make them see that there is something wrong with judges being legally allowed to be "malicious and corrupt," or that the government suppression of American samizdat is brazenly illegal. Those subjects are as much a taboo for American mainstream media as Soviet "telephone law" was for the Soviet press. Volpin had no trouble with Western press simply because it was eager to expose the hypocritical nature of the Soviet system. The hypocrisy of American legal system which, as I was told, aims not at justice (attained via due process) but at keeping power and wealth in their current place – and which deploys thoroughly illegal methods to attain that goal – is of no interest to American press, and hence, is not covered.

One of the interesting revelations of the book is the cynicism of America's ruling class – no less a figure than Henry Kissinger deplored in conversation with another architect of the detente, Ambassador Kennan, American press' hypocrisy in covering the dissident movement – which to Kissinger's mind has become an obstacle to detente. Who cares whether the Soviet Union observes or violates human rights when control of the nuclear arsenals is in play?

And it is not just governments. The much-lauded human rights defender Amnesty International, when offered acceptance by Kremlin as a legitimate interlocutor, was irritated by

dissidents' requests to be accredited as its Soviet branch. When the choice was between being received by Brezhnev, or welcomed to some obscure dissident's kitchen, high-minded principles were cast to the winds, and Amnesty representatives suddenly started to doubt whether dissidents were indeed confined to mental institutions and treated with anti-psychotic drugs – or whether this was just anti-Soviet slander.

The larger lesson of the book for me is this – governments will be governments, elites will be elites – whether in the US or in the USSR. Their first priority is the defense of the ruling class; if that goal can be attained by the rule of law, than fine and good. If not, too bad for the rule of law. This, overriding law of governance, applies universally – be it the Soviet Union, or the United States.

Some things are just too important – and the rule of law is not one of them. That, to me, is what the book is really about – the lesson that Volpin learned in the oppressive Soviet Union – and the lesson I learned right here, in the land of the free that is the United States, the country “with liberty and justice for all.”

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