

**SOVIET LAW
AND SOVIET SOCIETY**

GEORGE C. GUINS

SOVIET LAW AND SOVIET SOCIETY

ETHICAL FOUNDATIONS OF THE SOVIET STRUC-
TURE. MECHANISM OF THE PLANNED ECONOMY.
DUTIES AND RIGHTS OF PEASANTS AND WORKERS.
RULERS AND TOILERS. THE FAMILY AND THE
STATE. SOVIET JUSTICE. NATIONAL MINORITIES
AND THEIR AUTONOMY. THE PEOPLE'S DEMOCRA-
CIES AND THE SOVIET PATTERN FOR A UNITED
WORLD



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PREFACE

Soviet power rests on two main supports: the complete economic dependence of the citizens upon the state and the unlimited political control of the government over the economic, social and even cultural life. History knows various kinds of despotisms, dictatorships and regimentations of economic activity, but the U.S.S.R. represents a unique kind of dictatorship based on the one-party system and integral planning with the specific goal of realization of communism. Mankind had never before known such a system. Even the best of possible comparisons, the analogy with the period of Ptolemies in Egypt, is good only in so far as it concerns the regimentation of all kind of economic activity. There was in the past no ideology pretending to be adjusted to the needs of the toiling masses, no planning system on the same scale and no Communist party apparatus. As concerns the modern world the comparative method is necessary for giving the most graphical characterization of the differences between the Western democracies, with their ethical traditions, rule of law and the principle of the inviolability of individual rights, and, on the other hand, the Soviet monolithic state, with its unscrupulous policy, extremities of regimentations and drastic penalties.

Since the end of World War II, Bulgaria, Czechoslovakia, Eastern Germany, Hungary, Poland, the Baltic Republics, Romania, and Yugoslavia in Europe; and China, a part of Indo-China and Tibet in Asia are subject to regimes modelled on the Soviet pattern. It has become evident that every nation which accepts the Soviet program has to accept its legal order also. There is no other choice. A study of the Soviet legal system becomes, therefore, indispensable for anyone who wants to understand the peculiar regime under which no less than a billion people have to live in the present world.

A study which aims to make clear the unique and specific

characteristics of the Soviet regime is not a simple matter; it requires an economic, psychological and sociological analysis of the legal order established for realization of the communist program. It is not the details but the foundations and basic principles of the Soviet system which ought to be expounded first and foremost, and for that purpose an almost encyclopedic review of all branches of the Soviet law is necessary. The subject of such a study is thus exceedingly complex and hardly exhausted in the present work.

The Marxist philosophy of Law is based on an erroneous assumption that all legal institutions are purely an instrument of class domination. Because of that one-sided and erroneous approach, the cultural significance of some of the basic principles of the traditional system of law and their beneficial, stimulating, and educative effects are ignored. In fact, some legal institutions, like property rights and family law, have roots in human nature itself and therefore cannot and must not be eradicated completely. Some others are the result of lasting development and struggle for the perfection of the social order. We, people of the XXth century, are so accustomed to live under the protection of such legal rules that we forget sometimes how they were acquired and established by our forefathers. The attempt against certain rules, penal law and judicial procedure cannot be characterized except as reactionary and demoralizing and cannot be justified.

The present writer is a follower of the late eminent scholar Leo Petrażycki, the founder of the Russian psychological school of Law and known throughout the world for his work „Die Lehre vom Einkommen”. In his works published in Russian the present writer has developed the original theory of his teacher having utilized methods acquired from modern social psychology and sociology. A comparative study of the two different systems of law, the Soviet and the traditional system of the Western world as it is offered in the present work will be worthwhile not only for understanding and appraising of Soviet law but also as an essay illustrating the new method of studying law in general and, in particular, the influence of law on the development of national economy.

Two circumstances encouraged and stimulated the preparation

of this work for publication: the interest and generous support on the part of the Institute of Slavic Studies at the University of California and the success of the International Congress of Jurists assembled in West Berlin in July, 1952, whose resolutions, adopted unanimously by the jurists of 42 countries, stressed the significance of a good understanding of the legal order of a communist state.

For possible errors of fact and for interpretation here given the author alone is responsible.

University of California
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G. C. G.

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Introduction

A LEGAL APPROACH TO THE STUDY OF COMMUNISM

Soviet law cannot be analyzed and understood as a mere phase of the development of Russian law. Its artificial and specific character is confirmed by the fact that it may and has been adopted almost without change by countries with a totally different history and legal structure. All parts of the Soviet legal system (State law, Labor and Land law, Criminal code, and even provisions supporting the existing social stratification in the Soviet Union) are closely connected with the Integral Planning System and characterize the peculiar 'Soviet Socialism.' For the same reasons any essential evolution of the existing Soviet legal order is impossible unless the whole system is changed, and the existing legal order may be considered as a stabilized system.

A simple descriptive method of the Soviet legal system would be insufficient for its understanding, especially because very many provisions of the Soviet Constitution and various Soviet codes, except the Penal code, are purely decorative, and administrative decrees and circulars have replaced, in fact, the statutory law. A mere description, which is so often characterized as 'objectivism,' neither explains the peculiarities of the Soviet legal order, nor helps to evaluate them in the light of both moral principles and practical expediency.

The forthcoming study is based, therefore, on an analysis of the Soviet legal system first and foremost from the point of view of its economic functions, psychological effects and social and political consequences.

I

Law is a social and cultural phenomenon which can be studied from different points of view. As a system of norms it can characterize each age and nation which applies it, reflecting the realities

of life. The legal order of a period of slavery differs from that of feudalism and capitalism. The social structure of a nation finds its reflection in the state law which protects or abolishes privileges of certain social groups. Family law characterizes domestic life, interrelations between men and women and the power of the head of the family. According to the provisions of a penal code one may describe the mores and ethical principles of a certain age and nation as well as the methods with the aid of which a certain regime supports its power. The penal code and justice also characterize the troubles which a government has to overcome, what kind of violation of law threatens the public order and what kind of behavior disturbs the normal development of social life.

In codes of law it is possible to see as in a mirror not only the customs and habits of a people, but also the peculiarities of its national psychology. Thus, the law of an oriental nation may reflect the veneration of ancestors, a particular respect and protection of their graves, opium-eating, a predilection for games of chance, and a disdain for human dignity and life. ¹

Legal norms can be analyzed with the same objectivity as legal documents of unknown origin or ancient date. Some of them are better than statistics as evidence of economic achievements and failures. Soviet legislation concerning agricultural economy may be used as the best illustration.

Another approach to the study of law consists in an analysis of the psychological effects of a certain legal order. Law encourages some kinds of actions, and prohibits others. ² It creates motives either to act or to restrain, it educates people in the consciousness of their rights and duties. ³ It can breed citizens or slaves.

As a dynamic force, law regulates human behavior, and the legal norms create new incentives and educate people in conformity with the tendencies of the legislator or sometimes contrary to his will; the legislation may be unsuccessful and produce negative phenomena not foreseen by the legislator. Studying law as a regulator of human behavior and as educator of the economic and social psychology of man, one may, therefore, reach a conclusion as to whether some negative phenomena are accidental or unavoidable derivatives of the system itself. A study of law from that point of view will disclose whether it is conducive to industry, initiative and thrift, or whether, on the contrary, it

creates an excessive bureaucracy which produces inevitable failures unknown to another system. In the light of such an analysis, descriptions of Soviet economy from a purely economic standpoint acquire additional significance. The joint efforts of economic and legal research will undoubtedly produce an adequate evaluation of Soviet 'socialism' and make a competent appraisal of its positive and negative traits. A similarity of findings in different fields will tend to substantiate the conclusions reached.

The legal system of a communist state is a logical whole just as the legal system of free economy and rule of law is a logical whole of a democratic state. The Soviet economic system pre-determines the peculiarities of the Soviet state order, as the needs of the integral planning system demand from the population unconditional obedience and unlimited sacrifices. Each part of the Soviet legal system is logically interconnected and interrelated and cannot be considered as a temporary expedient or an accidental design. A juridical analysis gives evidence that Soviet man is absolutely dependent upon the state and is, therefore, deprived not only of economic but also of spiritual freedom. Optimists may object that it is a temporary phenomenon, but they will be forced to prove that it would be possible to change the political regime and the administrative system as they exist in the Soviet Union without subverting the entire one-party regime which is the basis and support of the whole Soviet structure.

Constitutions of the East-European nations and Mongolia illustrate the general trend of World Communism to reorganize other countries in conformity with the Soviet pattern and they prove that the same system and the same tendency to establish a one-party regime are applied in all Soviet controlled countries. The same system will be the foundation of the potential world-wide organization as it is blue-printed by the Soviet experiments in the Eastern Europe. Cominform and Comecon, the two central organs uniting the nations of the Eastern Europe under the control of Moscow are prototypes of such a potential world organization corresponding to the needs of a planned world economy.

The free world must and can know what it has to expect in the case of Soviet domination.

II

Soviet law deserves a detailed study only insofar as it can serve as an indication of the basis of policy and of current trends in the Soviet Union. Soviet law has no traditions, recognizes no innate rights nor established conventions. Although it recognizes 'The Fundamental Rights and Duties of Citizens' ⁴ and, as Stalin has explained, ⁵ does not deprive individuals of their personal rights, however, it is concerned first and foremost with the policy of socialist state reconstruction; it is adapted to current needs and, therefore, is easily and constantly changed to conform to the Soviet policy of a given period. 'Law is politics,' in the words of Lenin. 'Law is nothing unless connected with a definite policy,' wrote Vyshinskii in a Soviet magazine. 'He repeated this thesis at the Danube Conference in August, 1948, when he retorted to an allegation of the Western diplomats: 'I do not accept the contention that policy ends where law begins. Law is an instrument of politics.' ⁷

Soviet law is connected with the policy of socialist reconstruction; it is dictated by the All-Union Communist Party; it is subordinate to the established order and it distributes rights as a reward for services to the state. Some elements of the Soviet legal system are ephemeral, as is everything reflecting the needs of current politics. There are, however, the final goals and unchangeable principles characterizing the essence of 'socialist' law.

'The policy of the Soviet regime,' said a Soviet jurist, 'always subordinated to one and the same supreme task, always remaining a concentrated expressions of economics, is compounded of measures which vary in accordance with historical conditions ... Just as policy is a concentrated expression of economics, so laws are a concentrated expression of policy.' ⁸

Consequently a pure legalistic approach and a literal interpretation of the Soviet legislation, if not based, or accompanied by, an explanation of its political significance, remains sterile and un instructive.

Since 1936, the Soviet legal system has acquired permanent form. The so-called Stalin constitution has formulated not only the achievements of the preceding period of socialist construction,

as Stalin has stated in his report, but also the legal foundations of the new order. In contradiction to the previous doctrine supported by Pashukanis⁹ and his followers, on the withering away of law in the socialist state, Stalin proclaimed the necessity of strengthening the state before abolishing law. Consequently, all legal principles adopted by the Soviet state became stable and lasting — *vserioz i nadolgo* ('in earnest and for long time'), according to an expression then popular in the Soviet Union. Soviet law is at present a stable system in its main outlines.

III

A comparative study of Soviet law has to display the difference between the Soviet legal system and the law of other countries. There are already some valuable and instructive works concerning Soviet legal theory and the specific branches of the Soviet legal system such as Soviet civil law, state law, and international law. These works are irreplaceable for specialists and pave the way for the next step, a preparation of a general review of Soviet law, comprising an analysis of the Soviet ethical system, the legal foundations of the Soviet economic law and state law, as well as the principles of international relations as regarded by the Soviet statesmen.

Some provisions of Soviet law correspond to the most progressive trends of the democratic Western world. For the most part the legal terminology of the two opposed legal systems is the same; even some legal provisions are similar. However, these similarities can be misleading if they are isolated from the main body of Soviet law and read without a commentary on the essence of Soviet law and an understanding of its tendencies.

The Soviet Civil Code contains provisions concerning personal property, contracts, and inheritance. However, these laws do not entirely reflect the system of integral planning and do not give a correct idea of the significance of these traditional rights unless they are juxtaposed against the requirements of the centralized economy; that is, the correlation between the sectors of state economy on one side, and personal property on the other. Soviet law considers collective farms as cooperatives. The law contains

provisions concerning trade unions and collective bargaining, but an analysis of the legal nature of the collective farms and of the Soviet Labor Law discloses that the kolkhozes have nothing in common with cooperatives, and that Soviet trade unions, as well as kolkhozes, are but agencies of the Soviet state.

Many provisions in the Soviet Constitution create the impression that the Soviet state has borrowed the most progressive principles of democratic regimes. Yet for an understanding of Soviet constitutional law it is necessary to be familiar with the unlimited and uncontrolled power of the Communist Party in the Soviet state. On the other hand the significance of the 'Fundamental Rights and Duties of the Citizen' as established in the Soviet Constitution, must be studied in connection with the realization that the Soviet state gathers into its own hands both political and economic power, and that no one can exist in the Soviet state unless he directly serves the state and is loyal to the regime. Moreover, the legal nature of individual rights in the Soviet Union is unorthodox according to the standards of other nations. Individual rights have no legal guarantees, they are secured by the 'socialist order.'

IV

The special character of Soviet legal philosophy is not less apparent in problems of international law. If the Soviet state is not subject to any inviolable principles of law in its internal policy, it is even less so in the field of international law.

International law is still the most imperfect branch of juridical science and, due to the lack of sanctions, gives the weakest protection to vulnerable parties. Chiefly it is law regulating interrelations between independent, sovereign nations in conformity with their treaties and agreements, and makes a nation responsible to the other party only, and not to an international court, for its torts and violations. Nevertheless, the general flow of intercourse between nations takes them toward mutual protection of international ethics by legal means, and the recent development of international law promises further progress in this direction. It becomes, when necessary, a system of public law (*jus publicum*), with the submission of the private interests of

particular states, including the great powers, to the interest of the community of nations. The United Nations was inaugurated in order to support the principles of law and justice over might and violence as the bases of international relations.

This noble and progressive trend does not meet with a sympathetic attitude on the part of the U.S.S.R., which takes for granted the irreconcilability of interests and the inevitability of conflict with the capitalist world. ¹⁰

The Soviet attitude toward international law relegates it to the period of temporary coexistence between the socialist and the bourgeois nations, neutralizing and paralyzing inimical forces, ¹¹ and strengthening the position of the socialist bloc. Duplicity and instability are correspondingly inherent in the Soviet attitude toward various principles of international law.

The above observations lead us to the following conclusions: *a)* the study of Soviet law promotes the understanding of many distinctive features of the Soviet system and reveals the basis of Soviet policy; *b)* for the study described above a simple résumé, systematization or description of statutory law and jurisprudence is wholly inadequate; *c)* general comprehensive principles of Soviet law must be formulated independently of the legal theories of Soviet jurists since their theories are dictated by Soviet policy to no less a degree than is Soviet legislation; *d)* Soviet law must be interpreted with reference to Soviet policy and to the particular characteristics of the Soviet social system, and especially the Soviet economic system, since the principal characteristics of the Soviet legal system spring from the economic system; *e)* a method of study must be devised which will also include an analysis of the motivating and educative functions of law, and *f)* for understanding the Soviet legal order it is important to distinguish the legal provisions which organize the Soviet economy and provide sanctions in support of it from other legal provisions (for example, most of the Stalin Constitution) which are, in conformity with Lenin's suggestions, purely propagandist in character. In the case of the latter provisions, it is necessary to describe the realities rather than to analyze the sources of law and to refer to factual data from various reliable sources rather than to the legal provisions themselves.

PART I
SOVIET PHILOSOPHY OF LAW

Chapter I

SOVIET LAW AND THE LEGACY OF THE PAST

There are only a few jurists of the western world who regard the Soviet legal system and Soviet justice as a challenge or as a new achievement of social culture.¹ A legal system which overloads citizens with obligations and does not give them any guarantees of rights or freedoms cannot attract those who understand the advantages of the 'rule of law.' There are, however, some jurists who are more or less indulgent toward the arbitrariness and ruthlessness of the Soviet legal system, since they consider it to be only a successor to the pre-revolutionary Russian law known to the Russian people for generations. Such a point of view is supported by a general theory of law as a psychological phenomenon passing 'from generation to generation' and 'intimately bound up with a people's whole historical development.' Soviet law is, consequently, regarded as built on the foundations of the Russian past and permeated with 'Russian ruthlessness.'²

References to the Russian past are not useless, but not for explaining the peculiarities of the Soviet legal order. The Soviet state structure represents a completely new type of state organization which has little in common with Russian traditions. The planned economy and classless Soviet social structure are also based on completely new foundations, as compared with those of the pre-revolutionary period. Kolkhozes differ from the pre-revolutionary village communes. Labor law in a country where there are no private entrepreneurs cannot be identified with the previous legislation protecting workers from exploitation by the capitalists. The organization of justice in Soviet Russia bears only a slight resemblance to the organization of justice in Tsarist

Russia. The system of penalties and rewards in the pre-revolutionary period differed essentially. Even family law and inheritance, despite the fact that they are based everywhere on foundations common to mankind, have been subject to novel regulations. Where private property is reduced to a minimum and cannot be a factor in economic development; where not only economic, but also cultural and political life, are completely dependent on the planning system and policy determined by the central authorities; where individual initiative and self-determination, if any, have but a subsidiary character, tolerated only insofar as they are useful to the state — there it is more rewarding to start with the study of the peculiarities of the legal system rather than its similarities to other systems and its connection with the national traditions.

Nevertheless, historical parallels are not without some significance. The Russian nation was not familiar with the advantages of the 'rule of law' during the course of its history. It was a great tragedy of the Russian people that their history consisted not of an organic development, but of several very distinct periods separated from each other by sudden and radical changes. The normal development of cultural life was several times interrupted or stopped, and, therefore, conditions for the development of a legal order were unfavorable. Although a new organization of justice was established in the 'sixties' of the nineteenth century, the older national psychology survived. Russia could justly be proud of the judicial system organized in 1864, which produced many famous Russian judges, lawyers and law teachers, but the re-education of the masses of the population in understanding the significance of law and of legal methods of organizing social relations and protecting rights had not been achieved. Thus, the key to the understanding of the fate of law in Russia must be sought in her psychology rather than in her legal institutions.

On the eve of the Revolution of 1917, the 'rule of law' was making rapid and successful progress in Russia and the Russian state was approaching a new stage when it could be transformed in conformity with western patterns. But the Soviets have again interrupted the organic development of a legal order and turned the stream of life into another channel. ³ If there are some similarities between the existing Soviet order and the past, they are

more with the distant Muscovy period of the fifteenth and sixteenth centuries, with its ruthlessness, violation of rights, and suspicion toward foreigners and 'unorthodox' people, than with the time immediately preceding the revolution. Instead of superficial comparisons between periods basically different, an historical examination of the development of culture in Russia may help us to understand much that is puzzling in the present-day Soviet Union. It may also explain why it has been so easy for the Bolsheviks to break with the pre-revolutionary legal order and why they have not met strong resistance on the part of the great majority of the Russian population.

1. Traditional Indifference toward Law

A citizen of the modern civilized world is accustomed to living under the beneficent protection of law. The modern state is a legal state (*Rechtsstaat*). The existing political and social order is governed by the 'rule of law.' The 'rule of law' is based on two systems, one, public law and the other, private law: the first supporting authority and requiring discipline and submission; the second, protecting individual initiative and securing for individuals and groups of individuals the opportunity to exercise their rights according to their own wishes and goals (property right and freedom of contract). The two great functions of law are to organize social and economic life and to protect the distribution of the means of production and the disposal of private property.

Public law is adapted to the first function, private law to the second. If both functions of law are concentrated in the hands of the state and, consequently, both are supported by a system of public law, then the legal order becomes autocratic and dangerous to individual freedom.

The 'rule of law' means, besides, that the state, as an organization uniting millions of people in peaceful existence, is limited in its own power. It is limited not only by the provisions of the constitution guaranteeing individual rights and control over the governmental authorities but also by the existence of independent social and political organizations vested with the right of self-government. The success of the 'rule of law' depends not only upon legal institutions, but also upon the conduct and political consciousness of the people.

The combined action of both public and private law inculcates a special type of legal psychology: respect for the legal order, discipline and consciousness of duties toward the state and society, and, at the same time, the self-respect of citizens who know their rights and do not allow violations of them. If not only public duties and obligations, but also private rights and freedoms are protected by the law, and every social group may represent and defend its interests, then justice is identified with equality before the law; legislation is emancipated from the influence of privileged groups and arbitrary discriminations. The legal system is complex, the conception of right acquires a high value (*jus est ars aequi et boni*), and the science of law achieves a high stage of development and takes an honorable place among other disciplines.⁴

The stage of legal order, justice, and science of law described above is associated with a high level of 'legal culture.' A typical citizen educated in the atmosphere of such a culture conscientiously fulfills his duties, and also energetically protects his rights. The famous German jurist, Rudolph von Jhering, in his *Der Kampf ums Recht*,⁵ tells about an Englishman who, in trying to prove his right to free candles in his hotel, spent much more than the charge for the candles. He had the psychology of a man educated in a consciousness of law, justice, and individual rights. Such a psychology was foreign to the Russian people because of the unfavorable conditions of their historical development.

The peoples of Western Europe have absorbed Roman law since the Middle Ages, and generation after generation has been educated to respect the law and individual rights. Russia was the inheritor of Byzantine culture. Converted to Christianity in the tenth century, when Byzantium was a half-oriental empire in which Roman law had already lost its significance, Kievan Russia was unprepared to adopt the developed system of Roman law, even in its Byzantinized form. It fell under the influence of the church and its canon law, only partly inspired by Roman law.

The further development of Russian law was interrupted by the Mongol occupation.⁶ For more than two centuries, Russia was isolated and dismembered.

After the emancipation from the Mongol yoke, the consolidation of the Russian lands started under the initiative of the

Moscow princes. This period, too, was hardly favorable for the development of the consciousness of rights and the principles of legality. During the formation of large states, the legal order commonly becomes more severe and more ruthless. The founders of empires demand obedience first of all; they break the opposition and punish recalcitrants. Muscovy became a patriarchal monarchy whose power was presumed to have indisputable moral authority supported by the Church. A new, more complete code of laws was issued in 1649, but it was still backward compared with the West-European legal system of that time. Further evolution at a normal tempo seemed inevitable, but Russia lagged far behind the West, and Peter the Great, with his impetuous character and large-scale reforms interrupted normal development once more. His reign can be characterized as a revolution from above, and, as always during a revolution, law remained in the background.

Conditions for the development of legal culture became more favorable in the second half of the eighteenth century. Communications were improved and the Russian nobility acquired an increasing knowledge of European languages. After the establishment of the first Russian university in Moscow in 1755, ideas of law as the foundation of individual rights became familiar to many Russian intellectuals. The new ideas borrowed from the French Encyclopedists found their reflection in that famous document of the eighteenth century, 'The Instructions of Empress Catherine II to the Commission for Drawing-up a New Code.'⁷ From the first article this remarkable document expressed a new political philosophy: ideas of liberty, equality, freedom from fear, and the use of such words as 'humanity,' 'mankind' and 'work for the commonwealth' offered new principles of state power. 'To govern, not only to command,' and 'Not to consider people as subjects, but as citizens and assistants;' such new words, new legal principles and new slogans expressed in an official document by the highest authority stimulated thought and encouraged the development of modern ideas. Unfortunately, this did not continue very long. First, the ruthless Pugachev rebellion, and then, the French Revolution provoked a reactionary period on the part of the Empress. Radishchev, a gifted writer, author of a satire on contemporary customs and especially on serfdom, was

banished, and his book was prohibited and burned.⁸ His contemporary, Novikov, a journalist and publisher, was jailed.

Nevertheless many intellectuals became familiar with the new principles and ideas, and from the end of the eighteenth century, a liberalizing movement began to develop. Contrary to the movement in Western Europe, it rarely formulated a program of legal reforms. The peculiarities of the Russian national psychology, bred by the whole of Russian history, found reflection in the lack of legal consciousness and an indifference toward law.

Indifference toward law and legal reforms was expressed many times.⁹ The anarchist Bakunin said that a state is the foundation of freedom for Germans but only a tomb for Russians.¹⁰ C. Leontiev, one of the most original Russian thinkers of the nineteenth century and a conservative social philosopher, characterized the formalism of the legal order with a touch of contempt.¹¹ Russia surpassed other nations in the number of her famous anarchists: Prince Kropotkin, Bakunin, Leo Tolstoy.¹²

There were certain other trends among the Russian intelligentsia and writers. A group of the so-called Westernizers believed that Russia must improve her legal order in accordance with the pattern of the West. Their ideological successors later formed liberal and progressive political groups whose influence gradually increased. They occupied a middle place between the reactionary and conservative elements, and radical and extremist political currents represented by various groups of socialists.

After 1905, when the autocracy gave way to a constitutional monarchy, Russia entered a new and decisive stage in which she proved to have her last chance to modernize her legal order and overcome extremist trends from left and right. During the ten years between the organization of the State Duma and World War I, Russia developed with great success in various fields, but as subsequent events proved, her successes were inadequate to her needs. After the military defeats of 1915 and 1916 and inner conflicts between the state authorities and the progressive groups, revolutionary extremists came to power.

In spite of essential improvements, many defects in the political economic and social structure of the Great Russian Empire remained, and there were very few supporters of the principles of legality and legal reforms.

2. *Insufficiency of Legal Reforms*

The Russian Constitution (Fundamental Laws) of 1906 was of course defective and included only an inferior equivalent of the Bill of Rights to guarantee political freedom. Nevertheless the establishment of the State Duma bettered conditions. The legal order began to expand and become stronger everywhere. But there was still much to do in order to democratize the formerly absolute monarchy. ¹³

The administrative system of the pre-revolutionary period still had a bureaucratic character. There was constant competition between the bureaucracy and the zemstvos. 'We' and 'They'—these words usually characterized the opposition of one side to the other, of society to officialdom, and vice versa. ¹⁴

Furthermore, many parts of Russia had no self-government at all. The villages had no zemstvos of their own and their representation in the district and provincial zemstvos was inadequate.

The Russian bureaucratic machine had many defects. At the top, in its central apparatus, there were many intelligent men who were often of a very progressive turn of mind. However, the irresponsible forces behind the throne often paralyzed the initiative of the best ministers. ¹⁵

The best feature of the pre-revolutionary government was undoubtedly its judicial system. Russia had every right to be proud of her courts, judges, and members of the bar. The courts enjoyed genuine independence and the judges were well-trained jurists.

Nevertheless, the system of administrative arbitrariness survived the period of liberal reforms, and sometimes it paralyzed the legal processes and invalidated the guarantees of the progressive judicial system.

The great majority of the Russian population still used its own obsolete courts and customary backward law. ¹⁶ The peasants were under the jurisdiction of their own cantonal (*volost*) courts, which were controlled by the land captains. This system was reorganized and essentially improved only in 1912. Many regions in Asiatic Russia continued under the jurisdiction of the pre-reform courts until the Revolution, and many of the tribes employed their own imperfect system of justice. ¹⁷

The same duality characterizes the pre-revolutionary system of Russian statutory law, which was systematized by the brilliant

statesman and jurist, Count Speransky, from 1826 to 1832. The Code of Laws (*Svod zakonov*) consisted of sixteen volumes.¹⁸ The Code was a collection of laws actually in force, and it was continuously revised and re-edited in accordance with the newly promulgated laws.¹⁹

Unfortunately the Code of Laws did not replace the customary law of the Russian peasantry either in the fields of property rights or family life. Because of the peasant village commune, the great majority of the population did not have private property. Other dark spots in the Russian legal order were the backward customs of the Asiatic tribes. These tribes also continued to use their patriarchal system of administration, which was run by representatives, usually elected from the influential rich.²⁰ Improvements were made after the annexation of the remote parts of Siberia and Turkestan (Central Asia),²¹ but the backward conditions of these regions were far from ended.

Thus, the whole Russian legal system presented a strange mixture of modern and progressive elements side by side with archaic tribal structure; of advanced laws, with barbarous customs; of an effective and advanced judicial system, with mercenary and ignorant people's courts. Practically every phase of legislation demanded further development and improvement. The representative organs (The State Duma and the State Council) had to be reorganized to form a genuine parliament; the system of self-government needed expansion and strengthening; other legislative measures required essential renovation. On the eve of the revolution, the legal system awaited a new period of Great Reforms.

3. *Legal Education and Science of Law*

In spite of the significant progress of Russian jurisprudence during the second half of the nineteenth century, Russia still lagged behind her western neighbors in the science of law. Until the epoch of the Great Reforms (1861-4), legal science was practically non-existent in Russia. When at the beginning of the nineteenth century a Russian jurist, Professor Kunitsin, began to teach his students natural law and its principles of equality and freedom, he was dismissed, and the philosophy of law was banned for a long time.²²

But after the abolition of serfdom and the reform of the judicial system in 1864, it became necessary to study law from every point of view; to interpret it; to adapt it to new needs; to criticize its defects and to suggest improvements. Then ideas of equality and freedom began to appear less strange. Comparative and even theoretical jurisprudence developed very rapidly. At the end of the nineteenth century, Russia had several brilliant scholars whose works in the field of law were acknowledged everywhere as exceedingly valuable contributions to the science of law.²³

Correspondingly, legal education in Russian universities rose to a very high level. Colleges of Law were established in all of the universities (twelve in 1917), and in addition there were five special institutions of higher learning in law, namely, the Military Academy of Law, the School of Jurisprudence (*Uchilishche Pravovedeniia*), and three lyceums, in St. Petersburg, Moscow, and Jaroslavl, where administrators and diplomats especially were trained.

Members of the faculties in St. Petersburg, Moscow, Kiev, Kazan, Kharkov, and Juriev were for the most part eminent scholars. A number of them were further trained abroad after graduation from Russian universities. Several times the Russian government sent the best young jurists to Germany and France to continue their studies and to prepare to teach law at home.²⁴ The system of theoretical and comparative teaching was borrowed from French and German universities and this system favored legal education on a large scale.

On the eve of the Revolution, Russian jurisprudence reached its maturity. Its prestige had become indisputable. A number of Russian jurists presided at international conferences and at the International Tribunal; others (M. Kovalevsky, P. Sokolovsky, P. Vinogradov) taught law in foreign countries. Many Russian jurists published their articles in French and German. Some of their scientific works were translated and published abroad, and many works of foreign scholars were in turn translated and published in Russia. Several legal periodicals²⁵ offered Russian judges and scholars the opportunity to keep in touch with new ideas of legal science and legislation in other countries, and to analyze and comment upon the recent laws and rulings of the Senate.²⁶

Despite all these achievements in the field of the science of law,

there was still much to be done for the domestic needs of the Russian legal order. It is sufficient to compare Russia with England, France and Germany, with their secular legal traditions, numerous universities and libraries, where the works of glossators and commentators of the twelfth, thirteenth and fourteenth centuries are numerous together with many works of later periods. This helps one to understand that Russia, even at the beginning of the twentieth century, had not caught up with Western Europe in education or legal service. Moreover, the western countries had jurists in far greater number than Russia. Only the central administrative institutions possessed a staff of officials adequately educated for the public service. The problem of the reorganization of the peasant courts could not be solved satisfactorily because it was impossible to secure reliable judges in the villages. Many land captains who controlled the members of the peasant courts had no legal education whatever.

Large-scale business itself did not have enough legal counselors. Commercial law in Russia lagged behind its counterpart in highly-developed industrial countries. Even law on cooperatives, in spite of the very rapid development of the cooperative movement, was very primitive. The draft of the new Civil Code was to have satisfied the needs of the country, but its discussion by the legislative body was retarded because of the peasant law reforms concerning liquidation of the village commune and because of expected reforms due after the Revolution of 1905.

Russia still awaited the further development of legal education and science just as she awaited new advanced legislation in all spheres of her national and economic life.

4. Consequences of the Revolution

The February Revolution of 1917 completely destroyed the reactionary and even the conservative groups in Russian political life. The Revolution was welcomed by the Russian intelligentsia as its happiest moment, when all dreams for the democratization of the Russian social and political structure were to have a chance to be realized at last. The Provisional Government began the reorganization of the old order with enthusiasm. During the short period of its existence, this government succeeded in issuing a series of laws which had long been expected.

Local self-government had to be reorganized. The zemstvos, which before the revolution had no police force at all at their disposal became masters of the whole administrative machine of the provinces after the revolution. Chairmen of the provincial zemstvos were named commissars of the Provisional Government and replaced the former governors of the provinces. The police were reorganized into *militia* and were under the control of the municipalities.²⁷ Villages were included for the first time in the network of zemstvos by the organization of a volost semstvo,²⁸ a petty zemstvo unit which had long been discussed. Zemstvos were also established in Siberia, but were not elected because of the fall of the Provisional Government.

The judicial system did not require any significant changes. It was necessary only to eliminate all the perversions of the original provisions of the Statutes of 1864 which had crept into the law during the time of reaction. The hated military courts were abolished.²⁹ The outmoded peasant courts were replaced by the newly organized courts of the Justices of the Peace.³⁰ A special law on the civil and criminal responsibility of officials was issued,³¹ and administrative courts were established for trying the illegal actions of administrative organs or organs of self-government.³²

Russian society expected new freedoms from the revolution, and the Provisional Government issued several laws, which taken together, were equal to a Bill of Rights.³³ All citizens were given the right to organize associations and corporations, and also unions of associations, provided they did not violate the criminal laws. Every one had the right to publish periodicals without special permission, but they were required to give to the appropriate authorities the name of the publisher, the editor and the place of publication. All discriminations and restrictions connected with religious differences were abolished. Women received equal rights with men, both in voting and in the public service.³⁴ All limitations of a national character were abolished.³⁵ Legislation favorable to the development of all types of joint stock companies and cooperatives was substantially improved.³⁶

It is easier, however, to issue perfect laws than to manage their execution successfully. Russia was still not sufficiently

prepared for the reforms which were undertaken. Its lack of 'legal culture' became obvious once more. It soon became clear that the country did not have a sufficient number of properly trained personnel for the reorganized administrative and judicial institutions. This is apparent from a series of laws regarding qualifications required to obtain a position in the newly organized courts.³⁷

On the other hand, some of the liberal and humane acts of the government were abused by the extremists, who tried to overthrow the Provisional Government and later succeeded in doing so. A restrictive law investing the Minister of the Interior with authority to suspend all meetings and conferences was issued.³⁸

Capital punishment was temporarily restored,³⁹ but the Provisional Government could not in fact use measures of force; it was too tolerant and too legalistic for the conditions of a revolutionary struggle for power.

After October 1917, all phases of activity changed radically. During that month the Russian extremists seized power. Only one political force remained then at the helm of the state. Liberalism, like conservatism earlier, had been defeated, and liberal reforms came to a stop.

The first meeting of the Constituent Assembly was forcibly interrupted, and the Assembly was dissolved. The reason for this violence was the fact that the majority of the Assembly consisted of members of the Socialist Revolutionary Party, which was in opposition to the Bolsheviks. One-party control is an essential peculiarity of the Soviet system. Centralism and submission of all administrative organs to the leadership of the dominant party is another peculiarity. Thus, self-government could not develop under the Bolshevik political order. The climate of Bolshevik rule was not at all favorable for this development.

During the pre-revolutionary period a majority of the Russian intelligentsia wanted to reorganize the State Duma to form a parliament representing the whole country, with all its minorities and political parties. Instead, Russia was reorganized as the Soviet Union, with the Supreme Soviet at the top and a network of subordinate Soviets throughout the country.

The prohibition of more than one political party deprives representative organs of the counterplay of independent oppo-

sition. Interpellations—that is, questionings by the delegates—are not practiced in the Supreme Soviet as they could arouse public opinion. In comparison even with the pre-revolutionary Duma, the Supreme Soviet of the U.S.S.R. is an inefficient and purely decorative institution. ⁴⁰

The local Soviets are arranged in an hierarchical structure, with those below strictly subordinated to the ones above, and self-government, in practice, does not exist. There is instead a system of relative decentralization. ⁴¹ All zemstvos and municipal dumas were abolished, but the Soviets did not become more influential in relation to the central organs. The competence of the local Soviet includes communications, education and health, and is approximately the same as that of the pre-revolutionary zemstvos. But zemstvos had been more independent in their field of activity. The Soviets are chiefly executive organs of the central government in the field of commerce, local industry, and the development of art and education. ⁴² Local finances are essentially limited. The police are under the central government (M.V.D.). The whole reorganization was a retreat in comparison with what was achieved or drafted by the Provisional Government.

There is, however, one significant achievement in the Soviet period. The Provisional Government issued laws bearing on the cantonal (*volost*) zemstvo and the zemstvo in Siberia, but it had no time to establish self-government in the remote regions of Asiatic Russia, populated by backward tribes. This required either preliminary education or education simultaneous with the beginnings of self-government for these peoples. Many of the tribes did not have an alphabet, and it was necessary to create one. This was done under the Soviet government. The establishment of Soviets in the most remote parts of the country and in such a manner as to draw the whole population into a system of public life is an important achievement of the Soviet government. It was certainly accomplished, as are all political, social and economic reforms of the Soviets in general, with the aid of violence and by the extermination of the upper classes of every tribe, but nevertheless, it included for the first time all parts of Russia and all her peoples in the same system of public life.

From the point of view of the Soviet leaders, political freedom is not important for the masses. ⁴³ Consequently the laws of the

Provisional Government, (cited above), establishing real freedom of press, religion, assembly, and association, were not only abolished, but replaced by stringent and much more drastic prohibitions than those which existed before the revolution. All limitations on freedom are justified in the Soviet Union by the interests of socialism and by the necessity of obeying the leaders who formulate the established 'general line' of politics. ⁴⁴

5. *Peculiarities of the Soviet Period*

If the number of educated jurists was not sufficient for the needs of the Russian Empire and all its numerous nationalities before the Revolution, it became disastrously inadequate after the revolution, when the new regime rejected the former laws and courts and disavowed former judges as servants of imperialists and exploiters. Lenin did not reckon on 'finding hundreds of trusted Communists with legal training who would be invulnerable to local influences' and he preferred to have 'about ten men who would exercise the central prosecuting power in the person of the Prosecutor General, the Supreme Tribunal, and the Collegium of the People's Commissar of Justice.' ⁴⁵

This lack of personnel with legal training is still the darkest spot in the Soviet legal system. During the first year of the revolution, legal education was not at all encouraged, since law itself was then regarded as an invention of exploiters. The colleges of law (*Yuridicheskie Fakultety*) were reorganized into the *FONs* (*Fakultety Obshchestvennykh Nauk*, Colleges of Social Science). Roman law and comparative jurisprudence, which had served earlier as sources of inspiration, were neglected. The students of law learned Soviet legislation without having sufficient background. This situation changed in the middle thirties when law was again admitted as a necessary element of social order. Still, the Soviet Union did not make any noticeable progress in developing legal science or in providing the necessary staff of jurists for courts and administrative institutions. ⁴⁶

'Our theoretical workers in the field of philosophy, economics, history, and law lag behind the increased demands of life and of practical problems. The Law Institute of the Academy of Sciences has not given the country one single serious work in the field of the Soviet state and law.' ⁴⁷

At a meeting of the Presidium of the Academy on December 24, 1946, the Academician Trainin, announced that the Law Institute while having carried out a series of tasks imposed upon it by the government, had not yet become a leading scientific authority in the field of state or international law.

Acting on the suggestions made by Trainin, the Academy of Sciences found it expedient to reorganize the scientific program of the Law Institute and to increase the cadres of its workers. ⁴⁸

Defects in the education of judicial personnel were openly recognized by the highest authorities. In one of the post-war resolutions adopted by the Central Committee of the All-Union Communist Party, the status of legal education was characterized as very poor. ⁴⁹

In 1948, a new Minister of Justice, K. Gorshenin, published an article on conditions pertaining to the work of the courts and the agencies of justice, with measures suggested to improve them. ⁵⁰ In this article, which at the same time was his official report, he cited many examples of the low standards of the law agencies. ⁵¹

During thirty years of Soviet rule, no legal work of any consequence has appeared in the Soviet Union. There are gifted Soviet jurists whose endeavors to create an original system of law and whose comments on the existing system are certainly of interest to those studying Soviet law; but there is no jurist of creative theoretical power, no work with any new illuminating legal principle, no original textbook which might challenge Western legal science or even parallel the pre-revolutionary achievements of the pleiada of eminent Russian jurists. ⁵²

Most Soviet jurists whose works are worthy of some attention are former students of the pre-revolutionary schools of law or those educated in the traditions and methods of the old Russian jurisprudence. The criticism of existing Soviet literature and science in the articles cited above and in official Soviet documents is well-grounded. This distressing state of affairs, however, can be readily excused, since conditions for the development of legal science are very unfavorable.

The two chief functions of law are to organize the state and to distribute national income. Organization is based on obedience and on various obligations. But those who obey begin sooner or later to understand that their masters also have obligations

and that obedience must be connected with rights. As to distribution of wealth it presupposes from the very beginning the idea of right. Only when people have acquired a consciousness of their rights does a philosophy of law appear and the science of law begins to develop. No science of law can exist where there is unlimited power on the one hand and an obedience not compensated for by certain rights on the other. No science of law is necessary if distribution has no legal basis but depends only on arbitrary discretion; if a person has no right to make demands but receives only what those above him wish to give.

In the pre-revolutionary period, there was a tendency in Russian law toward the limitation of state power and the strengthening of individual rights. Russian peasants, emancipated from the village commune by the reform of Stolypin, received property rights at last and were placed on an equal footing with other citizens. This tendency toward emancipation and democratization reached its apex under the Provisional Government. After October 1917, as was said above, this development stopped. The legal system is now adjusted to a completely new economic and social order which knows no limitations of political power and does not favor individual rights. It is no wonder that legal science decays and fades away.

During the short period of its existence, the Provisional Government followed the line of normal development of the preceding legal system and tried to democratize the empire in accordance with the ideals and trends of the progressive elements of the Russian intelligentsia. The October Revolution, on the other hand, has broken with all traditions. The whole legal system has been reorganized in conformity with the patterns of a new type of totalitarian police state, and the parliamentary system, self-government, all freedoms, and private economic initiative have been abolished.

The Soviets, having violated all legal traditions and principles of the past, also repudiated the pre-revolutionary science of law. As we have seen above, the Russian science of law had made significant progress from the end of the nineteenth century. The juridical literature of that time, however, was closely tied up with those principles of a progressively developing law which were decisively repudiated by the Communist Party. The best

works of the pre-revolutionary Russian jurists are therefore buried in oblivion, if they are not condemned by Vyshinskii and his aides.⁵³ Nevertheless, inasmuch as some improvements in the judicial system, especially in criminal procedure, had already been suggested by former writers, their ideas are sometimes borrowed and put into use. There are some improvements in the details of Soviet legislation, but the significance of these improvements is minimal because of the insignificance of the legal order in general. Where the police state reigns, the law is only a stepchild. If no one is guaranteed protection against prosecution by administrative proceedings, improvements in the juridical system fail to change anything.⁵⁴

Every system of law has an educative influence on the character of a nation. It can awaken consciousness of human dignity, create confidence in the existing system of justice, and generate respect toward the state and its institutions. However, if the law is, above all, a system of submission, then there can be no development of legal psychology or understanding, no appraisal of the principles of strict legality, justice, and individual rights. On the contrary, such a system of law teaches servile obedience to orders in a school where all are deprived of their individuality.

The Soviet attitude toward these problems is predetermined by its materialist philosophy of morals and law.

Chapter II

SOVIET ETHICS

Ethics is a system of values according to which man can determine what is good and just in human relations and in social life. Social life, especially national life, cannot be organized without some stable leading principles and ideas concerning the good and bad in human behavior.

There are different ethical systems. Difference in values corresponds first of all to the differences in final ends and in the idea of happiness. One may consider as a highest value health, pleasures or riches (hedonism, eudemonism); material prosperity can be appraised more than the spiritual values (materialist ethics) or on the contrary, spiritual freedom and independence

upon physical and material conditions can be imagined as an ideal (idealism). A system of values can be also based on a different appraisal of individual and society. Either the individual may be considered as a highest value or, the society as a whole, as a nation or a state (individualism or collectivism).

In spite of the variety of ethical systems some ethical principles and ideas are more or less universally supported. Being product of a durable experience they come down from one generation to another. Some others find expression in the philosophical systems of the great thinkers. In the form of maxims such principles exceed in their authority any other rules of human behavior. If supported by a religion they become the most lasting.

Not all ethical principles have the same significance. There are ethical principles which determine the relations of the people belonging to some special groups, having tribal, professional or national character. Such ethical principles are subject to evolution during a comparatively short period. There are, however, some others which are virtually universal and permanent, which are understandable to people of all nations and all religions.

From early infancy people are educated to follow standards of noble and magnanimous human actions, and are accustomed to believe in their universal significance and inviolability. He who does not know the origin of his moral ideas believes, as Seneca, that *sacer intra nos spiritus sedet, malorum bonorumque nostrorum observator et custos* (there is a holy spirit in our soul, a judge and custodian of our good and bad actions). Thus, one of the fundamental principles of ethics is the acknowledgment of its permanent if not absolute character, surviving generations and epochs and beneficial for people of every rank and status.

Another substantial peculiarity of ethics is its bifurcate composition. An ethical system consists of moral and legal norms. Morality of the modern cultural world appeals to the best feelings and sense of human nature. It formulated the highest principles of humanity, represents ideal behavior and inspires self-sacrifice and altruism. Morality mitigates egoistic moods proper to all living beings and suggests respect toward spiritual values and ideals. It resists and sometimes forces out rude materialism. However, organization of social life without compro-

mises and application of coercive measures is impossible. Legal order admits of some compromises with moral principles and becomes therefore an essential component of the ethical system.

Nevertheless, no radical contradictions between morals and law are admissible. Both are drawn from a scheme of values common to the hearts and minds of the people; morality cannot be the servant of the law.

Law is in fact a part of the ethical system. As long as two thousand years ago Roman jurists defined law as the art of equity and goodness (*jus est ars aequi et boni*). It is really impossible to separate law from religion and morals. A conflict between legal and religious or moral maxim provokes confusion and inner struggle. On the other hand, harmony between moral requirements, supported by the religious authorities, and legal norms, supported by the secular authority, solidifies and strengthens the legal order. The Ten Commandments are at the same time moral and legal principles. Family relations are based on religious, moral and legal grounds. There are other institutions which are also supported by religious authority. Every legal system, for example, uses the oath, which is required of officials and statesmen as well as of rank and file people in some solemn cases. While it may be possible to separate legal norms from morals in logical analysis, it is impossible to separate them in a human soul which does not consist of several drawers, in one of which morality is stored, in a second, law, and in a third, the rule of propriety. Consequently a philosophy of law reflects inevitably the prevailing ethical principles and social trends, and reveals the leading ideas of a given age. At the same time moral principles, backed mainly by religious sanctions, are more general and more impressive than the law; they are free of any constraint and are a better clue to the prevailing ethos.

All this is foreign to the ethical philosophy of Communism in its Soviet interpretation.

1. The Relativity of Moral Principles

Economic materialism does not acknowledge any such ethical system as explained above; it denies the existence of eternal and universal ethical principles and considers all of them to be a "product of society at a certain stage of development." According

to Marx and Engels, all systems of morals which have existed up to the present time, were in the last analysis, a product of certain economic conditions. Soviet writers have adopted this doctrine without reservations.

We ... reject every attempt, grounded on the idea that the moral world has its permanent principles standing above history and national differences, to press on us any moral dogma in the form of eternal, final, immutable moral law. On the contrary, we assert that all existing moral systems are definitely the product of corresponding economic conditions. Inasmuch as class antagonism has existed up to the present time, morals have always had a class character.

The concept of justice is a historical concept, since its content depends on definite historical conditions, or, to put it more precisely, on those moral and political principles prevalent in a certain society, which, because of the influence of the class dominant in this society, became also the leading principles for the overwhelming majority of the population. Because of this influence, such principles acquire a national character and remain such up to the time when the consciousness of some single social class exposes them to critical analysis, removes them to the background, and even replaces them with their own new principles and concepts. ¹

In conformity with this Soviet conception of morals and justice, 'ideas about the moral and immoral, the just and unjust, the good and the bad are not inborn; they cannot be deduced from so-called "eternal principles" of reason or, like tough, immutable "human nature," they cannot be established once and for all.' Moral principles are always relative. ²

The relativity of moral principles is usually illustrated in Marxist literature by references to the different ethical systems in force during the periods of slavery, feudalism and capitalism. There is one attitude toward trade, usury, and speculation under the conditions of domestic economy; another under the conditions of highly developed trade, etc. According to Engels, there are, even in a capitalist world, at least three kinds of morality: the morality of the feudal aristocracy, of the bourgeoisie, and of the proletariat. Every social class has its own moral principles. The state supports the moral principles of the dominant class and tries to inculcate them into all strata of the population. The

oppressed groups have to adopt those principles of justice and morals which are forced on them by the dominant class.³

The morality of capitalist society is certainly depicted in a very dark light. It cultivates egoism and an insatiable greediness, and justifies the exploitation of man by man. Capitalist competition is characterized by Stalin as a typical illustration of the principle *homo homini lupus*: 'One is defeated and annihilated, another wins and dominates ... Those who lag behind have to be liquidated in order to permit others to solidify their domination.'⁴

Imperialism has been a special target of Communist attacks from the moral point of view. Communists do not cease to repeat that rapacious imperialism is a mockery of humanism, and that it creates all the moral evils of the present time. They claim that imperialist wars are a source of huge fortunes for capitalists, and that the latter move inexorably toward instigating wars.

On the other hand, Communism has its own ethics reflecting the moral consciousness of the working class. Representing as it pretends a true morality, it anticipates the universal recognition. Soviet society, based on progressive working class morality, is a new and perfect society able to realize the lofty ideals of humanity. Soviet morality during the period of War Communism was concerned mainly with the justification of violence, but once law became an instrument of education, it became necessary to formulate some positive ethical principles capable of elucidating the general trends of the new legal order and of inspiring people to assist the government in the realisation of Communist ideals. Thus the new ethical principles of Soviet society have been elaborated mainly in recent Soviet literature, in connection with the stabilization of the socialist order.

Familiarity with Soviet moral philosophy cannot but help the understanding of the general trends and evolution of the Soviet legal system.

2. The Source of Moral Consciousness

Morality, whose beautiful nimbus and impressive luster reflects the great strength of virtue; morality which inspires people in their struggle for good and against evil, which supports the spirit of those who are struggling for justice and prompts them to sacrifice their lives in defending divine truth against the

imperfect law of mankind, as did Antigone in the tragedy of Sophocles, this morality is uncrowned and misinterpreted by Lenin and his slavish followers. To elevate irreconcilable hatred to a leading principle of morality, in the struggle of a political party to reorganize the economic and social order, is to deprive morality of its inner might. Such a morality cannot be universal, since it is the property only of the Communists.

No less than any other moral system, Communist morality needs some highest value and highest principle from which it can draw inspiration. For the Communist, this highest value is the final goal of communism, in which they have unlimited faith. Communists believe that anything that helps the realization of Communist ideals is moral. And conversely, anything that hampers the realization of Communism is immoral. This is equivalent to the time-honored amoral principle that 'the ends justify the means.'

Lenin has several times given expression to this Communist creed. He flatly asserted that 'our ethics are an instrument for destroying the old society of exploiters; a struggle for the consolidation and the realization of Communism is the basis of Communist ethics ... Morality is everything that is useful for the destruction of the old world of exploiters and for the unification of all toilers around the proletariat, which is building the new Communist society.'⁵

It was Lenin who developed the idea of the dictatorship of the proletariat as a state of 'armed workers' who have to observe strict discipline and solidarity neglecting freedom and democratic institutions, in order to achieve the final Communist goal.

... The dictatorship of the proletariat imposes a series of restrictions on the freedom of oppressors, exploiters, and capitalists. We must suppress them in order to free humanity from wage slavery; their resistance must be crushed by force. It is clear that where there is suppression, where there is violence, there is no freedom and no democracy.

Until the 'higher' phase of Communism is reached, the socialists demand the *strictest* control ... This control must *start* with the expropriation of the capitalists, with the establishment of workers' control over the capitalists, and must be exercised not by a state of bureaucrats, but by a state of armed workers.⁶

Just as Communist moral philosophy justifies a dictatorial regime and the deprivation of freedom and rights, so the materialist denial of intrinsic moral standards and spiritual values justifies any kind of ruthlessness. In fact, Lenin characterized the dictatorship of the proletariat as

The application of merciless, drastic, prompt and resolute violence for suppression of exploiters, capitalists, landowners and their hangers-on. He who does not understand this is not a revolutionary. He must be ousted from the circle of leaders or advisers of the proletariat ... ⁷

In conformity with these words of the teacher, but in more vulgar form, Vyshinskii writes:

An irreconcilable hatred against enemies of the people, agents of the bourgeoisie, Trotskyist-Bukharinist spies and diversionists, who try to overthrow the existing socialist regime in the U.S.S.R. and restore capitalism—that is one of the most important principles of Communist ethics. ⁸

3. *Morality and Law*

Similar ethical principles, adjusted to the practical needs of the socialist state, are common to morality and law in the Soviet view. The difference between morality and law is a rather formal one. In accordance with the Soviet concept of ethics, any conflict between morality and law is impossible. The roots of both are the same, and the difference consists in the fact only that 'the legal norms are established by state legislation, while moral principles do not need any sanction by the authorities. The extent of moral obligations is broader than the extent of legal obligations. Morality regulates people's relations of all kinds and forms and finds its sanction in public opinion.' ⁹ It is emphasized in the articles and pamphlets devoted to the problem of morals in the Soviet state and to its correlation with the law, that any conflict between law and morality is excluded, that Soviet law and Soviet morality have one and the same function, to build socialism. ¹⁰

Socialist law, while it establishes some provisions, does it always in conformity with such conduct of the people which might be the most expedient for securing the further development towards Communism. Not only the leading

principles but also many concrete requirements and prohibitions established by Soviet law are either quite identical with the norms of Communist morality, or are closely connected, and in their essence, adjusted to, and consonant with, Communist morality ... What is dangerous for a socialist society can be only in contradiction to Communist ethics ... For the first time in history, legal provisions coincide with general moral principles, because Soviet law embodies the people's will, outlook and moral principles. ¹¹

As an illustration of Soviet morality, one can use the notorious story of a boy, Pavlik Morozov. Inspired by his school teachers, he reported to the authorities that his father, a peasant, had hidden a certain quantity of grain instead of delivering it to the government collectors. The boy was praised by the officials, while his father was arrested and banished to Siberia. Then Pavlik's grandfather, a peasant too, killed his grandson. This tragedy, based on a contrast in moral consciousness, was the subject of a poem by the Soviet writer, Stepan Shchibachev. It was not a unique story in the Soviet Union. The case where young children informed on their parents for stealing food to feed the family were reported and praised in *Pravda* and *Izvestiia* several times (pioneer Pronia Kolybina in May 1934; little Katia Ganchenko on January, 1936). As regards Pavlik Morozov's case it is used still for educative purposes as a classical example of the loyalty to the socialist fatherland.

The authorities, ignoring the moral consciousness of the people, teach the new generation that only such behavior is moral which is useful for Communism and does not contradict or oppose Soviet positive law.

Communist morals include the observation of Soviet socialist law, with the idea that this is the most important social duty. On the other hand Soviet law is a strong instrument for educating and consolidating Communist morals in the masses. ¹²

Socialist law formulates the same principles as does socialist morality. There is not, and cannot be, any division between them. ... Socialist law is an instrument adapted to the realization of the same goals as socialist morality. Socialist law does not know any other goals than to aid the destruction of the capitalist world and to build a new Communist society.

Moral principles and legal provisions coincide in socialist society because of their common cause and common nature.¹³

Both moral and legal rules are but a means for carrying out Communist plans, guiding people along lines marked out in advance, and educating them in conformity with Communist dogma. Insofar as both morality and law have their common origin in the Communist program, the real force stimulating social progress consists not in moral principles as such, but in the unimpeachable Communist program, as it is interpreted by infallible Communist leaders.

There is another important point which the preceding quotations illustrate; namely, that the main function of morality is to serve as an incentive for fulfilling legal obligations and to encourage the rank-and-file citizen to do more than the law requires. Morality exerts an additional pressure for achieving the same goals sought by Soviet law, (see below Ch. XIII, note 94).

4. Collectivism and Pragmatism

Soviet ethics are always contrasted with the ethics of bourgeois society, which are characterized as 'individualistic' and 'egoistic.' Unlike bourgeois ethics, Soviet ethics are collectivist.

'The Soviet people,' said Zhdanov, 'are accustomed to put the national and public interests over all others. They are accustomed to consider the common cause their own urgent personal cause.'

'Communism does not presuppose ascetic morals; it does not suppress cheerfulness and the joy of living sometimes produced by love. Our morality censures, however, the bourgeois pursuit of pleasure and the neglect of public duty.'¹⁴

'Socialist society has its own principles and rules. There are, first of all, those which are prescribed for every citizen by the Constitution of the U.S.S.R. (Arts. 12 and 130-133), as well as some others, as, for example, to subordinate personal interests to the interests of the collective, society and state, the principle of observing collective interests in social life. ... The rules of the socialist community determine the character of the citizen's attitudes towards society and state, as well as family, relatives, comrades, etc. Every citizen must strictly follow these rules.'¹⁵

Soviet citizens are educated to be aware of the dependence of individual welfare upon the wealth of the socialist state. Sacrifice for the benefit of building socialism and communism is therefore not only a public duty but even a normal act of a politically alert man.

Another peculiarity of Soviet ethics is its pragmatic character. As has already been explained, its moral standards are based on the principle of revolutionary expediency. Law is dictated by the practical necessities of building socialism and communism, and Soviet legislators are not bound by any general principles or legal guarantees. Morality exerts an additional pressure on man's behavior for supporting the law. Both law and morality are collectivist and require conduct corresponding to the needs of a socialist society.

Since it is dictated by considerations of expediency, Soviet ethics does not occupy an independent position in the rules of conduct. The highest authority belongs to Communist policy and the party line, and ethics gets its principles and criteria from that source.¹⁶

5. The Moral Duties of Soviet Citizens

Soviet patriotism is one of the most important moral obligations of Soviet citizens. 'In the love of the fatherland, in the life-giving Soviet patriotism, there are the sources of Soviet morality, of the new feelings and new mores of the people of our land.'¹⁷ Soviet patriotism differs from nationalism.¹⁸ Soviet patriotism is a combination of national pride and supreme fidelity to Soviet socialism.

Soviet patriotism means a vital unity between the people and the existing social and political order. The fact that our society does not know exploiters, enslavers and class antagonism is to be considered the economic and political foundation of the conduct of the Soviet people and the maker of their patriotic 'miracles.'¹⁹

From the beginning of the postwar anti-western campaign 'Soviet patriotism'—instead of patriotism in general, as it was from the middle of the thirties,—became the subject of special attention in the political literature. Unconditional devotion to Communist ideals and to the 'Soviet fatherland,' which is simul-

taneously the fatherland for the Communists of the whole world, has been especially emphasized as the main characteristic of Soviet patriotism.²⁰

Soviet patriotism, one of the fundamental principles of Soviet ethics, is at the same time the duty to support the Communist movement and the struggle for the Communist revolution in the entire world. This phase of Soviet patriotism has great significance for understanding the Soviet attitude toward such leading problems of international law as intervention, aggression, etc.

The second 'moral principle' of great significance in the Soviet ethical system is the principle of labor discipline. This principle, formulated in Art. 130 of the constitution of the U.S.S.R., is the legal basis of the Labor Code and of legislation concerning collective farms. It is also a motivating power of socialist competition. It is therefore both a legal and a moral principle. The Soviet citizen is supposed to understand that success in the building of socialism depends upon the efficiency and quality of labor. Consequently, every one must work to the full extent of his ability, knowledge, and experience. In capitalist societies, Soviet writers insist, everybody tries to shirk, to get the easiest possible work for the largest possible wages. Capitalism can only produce a labor force of grafters and shirkers. Alert toilers of the socialist state understand that such behavior is a crime against socialism, against the fatherland, against their own interests. Soviet writers acknowledge, however, that survivals of capitalist psychology can still be observed among Soviet workers and peasants, and, therefore, the Soviet penal code has to establish, in the interests of the whole nation and in conformity with the will of the toiling masses, special penalties against violators of labor discipline.²¹

On the same level with labor discipline and no less closely connected to devotion to the Communist ideal is the third principle of Soviet morals, the safeguarding of socialist property and an irreconcilable attitude towards all kinds of misappropriators of state property. In one of the editorials of *Bolshevik* devoted to the education of the Soviet people in the spirit of Communist morals respect toward socialist property and an understanding of the importance of work are given first place.²²

The positive duty to work honestly and industriously and to safeguard socialist property is closely connected with a negative

attitude toward all violations of these precepts. In this negative attitude, hatred of the enemies of the socialist state, finds an even more drastic expression than that applied to labor discipline. This attitude has been bequeathed by Lenin and extensively interpreted and elevated in its significance by Stalin. It is emphasized that every honest Soviet citizen must struggle against that which harms his Soviet fatherland and violates its laws. He must feel a sharp hatred toward enemies and he must avenge all traitors. This is both a legal and moral duty for every Soviet citizen.²³

The law requires obedience to legislation defending collective interests, while morality stimulates people to make sacrifices for the common cause. Morality incites mutual assistance from Soviet citizens also. This is another characteristic of the collectivist psychology. A Soviet writer, Marietta Shaginian, in depicting the new Soviet man ('a hero of our time') emphasized the new collectivist feeling characteristic of the Soviet people.²⁴ Every expert is at the same time a teacher. The exchange of experience and knowledge is a duty.²⁵ Consciousness suggests to every person that he is a member of a working class; he understands that he belongs to the great family of toilers. The narrow frames of his personal and family life become broader and embrace the whole country, the whole world.²⁶

Marxist theory on the withering away of law presupposes that in the end legal norms will be dissolved in purely moral norms.²⁷ Communist ethics are subject to evolution in the same way as any other system of ethics. It is supposed to develop and become more and more progressive. Lenin believed that 'people will gradually become accustomed to observe elementary rules of social intercourse that have been known for centuries and repeated for thousands of years in all copybook maxims.'²⁸ He believed in the socialization of human character and predicted that in the future 'the *necessity* of observing the simple, fundamental rules of human intercourse will very soon become a *habit*.'²⁹

Marxism never completely deserted the utopianism to which it had opposed its scientific approach to social problems. Some utopian elements are certainly expressed in its optimistic predictions about the forthcoming progress of human morality under the influence of the new socialist society. Lenin made an optimistic

appraisal of Soviet perspectives when he predicted that every-day human relations will be based on mutual respect, and the consciousness of moral obligations toward family and society.³⁰ Communists believe that socialism educates the people and prepares them for the era when violence will be unnecessary and a new period of brotherhood and solidarity will have begun.

Chapter III

SOVIET CONCEPT OF LAW AND STATE

In contrast to the foundation of ethics and moral principles, the general ideas of state and law are subject to more easy changes. Our age, in particular, is characterized by a search for new leading ideas of state and law. The individualism and liberalism of the early stage of the democratic state no longer correspond to the conditions and needs of our age. The modern state expands its activity and strengthens its power. The Soviet state can be considered as an extreme expression of such a trend. It represents an obvious contrast with a liberal regime of a democratic state.

It is possible to explain and even justify some extremities of the totalitarian state by referring to the new ideas and goals of the modern democracy. One writer emphasizes that the Soviet state is but a new form of democracy whose great task to stimulate material progress for the benefit of the whole nation demands a strict discipline and effective work for the common cause rather than for individual interest (E. H. Carr). An other characterizes the 'totalitarian democracy' as a form of state corresponding to the messianist ideology. From the point of view of messianism natural law is what has to exist, not what existed and was absorbed. For the realization of an universal happiness it is necessary to be exacting and to demand obedience (J. L. Talmon).

There is no doubt that the development of state and law is inevitable and that there are sufficient reasons for some new trends, but it is not correct to justify any perversion of the legal order by practical expediency. The development of state and law must not violate the achievements of social culture secured by the existing legal order. The democratic state is a result of the enduring process of struggle against the omnipotent state. De-

mocracy secures for an individual the freedoms and rights which open to him a possibility to develop his individuality and to protect himself against arbitrariness and abuse of power. The necessity of coercive measures and even of the strengthening coercion in case of emergency cannot be denied. Sometimes limitations of freedom become inevitable. But there are some principles of the rule of law which ought to be observed without fail.

The rule of law means that might retreats before right, in other words, that political power must be limited by some legal guarantees of the citizens' rights and freedoms. The rule of law means also that besides duties every citizen has some guaranteed rights and the normal legal order must support a certain balance between the duties and rights of citizens.

The concept of law appears only when people begin to distinguish between right and might. Every legal system consists of imperative norms of conduct supported by coercion. However, no matter how significant may be the role of coercion and force supporting the legal order, law cannot be identified with force. Legal theories emphasize that coercion on the part of the state is not a simple force designed to insure obedience to an arbitrary will; it is rather applied under rigidly fixed conditions to insure conformity to the group concept of right. A social order is a legal order only if there is consciousness of the necessity of law, if coercion is applied to secure conformity to commonly accepted patterns of conduct. The coercive character of legal norms is then justified as the will of the nation, a product of its social solidarity.

In connection with two main functions of a legal order, to organize social life (public law) and to establish the principles of distribution of means of production and exchange of goods (private law) every legal system establishes duties and rights. But the correlation between duties and rights may be different. The historic systems of law have at times emphasized duties, at times rights. If a legal system is characterized by its imperative trends, then law comes to be an aggregate of rules established by the authorities and supported by organized coercion. The concept of law is more complex and the legal theory more intricate when the element of right begins to prevail in a legal system over the element of duty.

Western legal theory, reflecting the trends of a period of individualism and democratic institutions, has become primarily a theory of right. The legal order stresses freedom, limited only by the equal rights of other members of society. The concept of individual rights reaches highest expression in the theory of inborn and inalienable rights. This doctrine is at present shattered under the influence of inevitable limitations of freedoms and rights in connection with the existing crisis of modern culture and reorganization of economic and social life. However, some principles of the rule of law may not be violated. The state whose power is unlimited leads to a subservient psychology. It has also some other negative consequences. Those who have more duties than rights, if any, are deprived of their individuality. In the meantime society can develop progressively only if it consists of people who have right to think and act in conformity with their personal incentives and convictions. If all citizens have only to obey and if they have no original ideas or do not dare to explain them freely, then there is no creative social interaction and society ceases to be a motivating force and factor of cultural development.

History of law and social culture lets us assert that the following conditions have at least to be observed in order to protect individuality from the misuse of the power of the state: 1. extraordinary limitations and coercive measures may be established only if they are absolutely necessary for the benefit of both society and its individual members; 2. such extraordinary measures must merely be temporary and 3. the main legal guarantee of the constitutional state must be secured for the elimination of arbitrariness.

The Soviet concept of law and state deviates from the above expounded principles.

1. Coercive Character of Soviet Law

According to the widely-known Marxist interpretation, emphasized by Lenin, the state is an organ for the rule of a certain class whose interests *cannot* be reconciled to those of opposing classes. It is an instrument for the exploitation of oppressed classes. After the socialist revolution, the overwhelming majority of the population, consisting of the formerly oppressed

classes of workers and peasants, ascend to the apex of the social pyramid, and then the law becomes an instrument for the struggle of these classes against the enemies of the working people, the remnants of the bourgeois class and agents of the capitalist countries.

However, both of the above statements are incorrect. The legal system existing at present in democratic countries cannot be characterized as a system of oppression. The existence and influence of different political, national, religious and professional organizations has essentially changed the general aspect of the modern state, and it does not assume the shape of a pyramid. It is also an over-simplification to characterize the modern type of state as an instrument for the exploitation of the working classes, since trade-unions and farm organizations have become so influential, both economically and politically, that the result of elections depends to a great degree, if not completely, upon the support and votes of toilers. The modern state is not similar to a pyramid but rather to a mountain range wherein one ridge elevates itself higher than the others but does not rest upon them.

On the other hand the Soviet state with its domination by the Communist party openly acknowledged is not like an inverted pyramid. On the contrary, the upright pyramid is the most appropriate figure for picturing the legal structure of the Soviet state. All legal provisions are issued in the Soviet Union by the central institutions, which are subject, in turn, to the leadership and control of the party. All its provisions are strict and exacting and are supported by severe penal sanctions. Workers and peasants are subordinated to a strict discipline. Repressions are established not only against non-conformists and intellectuals who are insufficiently loyal, such as writers and scholars, but even against 'unconscious deviations' of potential enemies: suspected 'cosmopolites,' Trotskyists and capitalist spies. In total this is a great majority of the population. Taking the figure of the social pyramid it would represent its foundation. The majority is in fact under submission to the Party, i.e., to the relatively small group at the top of the pyramid, and to a still smaller group of Party leaders at its apex.

Such a social structure predetermines the character of the legal order. The Marxian conception of law ¹ considers law as the ex-

pression of the will of the dominant class and ignores, indeed, the most important element of the modern legal system, the human rights belonging equally to all citizens. The definition of the state as an organized coercion established for the purpose of exploiting other classes brings us back to primitive forms of legal order.

In the Marxist concept of law, duties prevail over rights. Any inborn rights are denied. The law imposes duties upon the majority; it is an instrument of domination.

2. *The State as an Apparatus of Violence*

The Marxist concept of the state is closer to the primitive than to the modern idea of the state. Primitive systems of law consist pre-eminently of prohibitions and orders; it is around them that the social order is organized. The life and activity of the people depend upon the state and tribal organizations. Both establish a coercive order. In its further development, the state acquires a new character.

Like other aspects of social life, the state and law are subject to evolution. Law follows in general the same line of development as education. Primitive law limits freedom of behavior. It prohibits and demands ('you cannot,' 'you must'). Later only, when discipline becomes habitual and is strictly observed, law acknowledges freedom and gives rights ('you may').

Gradually the sovereign power of the state and the authority of tribal organization decrease. The legislative power of the state becomes subject to control and limitations, while private initiative and self-government acquire an increasing significance. A democratic state arises.

The Marxist concept of state ignores the limitations on state power required in the interest of legality and predictability, i.e., the elimination of arbitrariness.³ Marxist theory ignores also the existence in modern society of political parties, freedom of association and of the press, and the possibility of coordinating the interests of the dominant social groups with the interests and needs of the country in general.

Marx's sociological theory is one-sided and does not explain many significant phenomena of social life. Its application to the problems of law manifests all its weak points. The development of law was not determined by the struggle of classes only, but by

many other factors. Every legal system is composed of several layers, reflecting the traditions and influences of national, religious, and ethical principles. It is enough to open any code of laws and to read one article after another to reach the conclusion that the great majority of legal provisions have nothing to do with the narrow interests of any given class. Marx himself acknowledged the positive role of capitalism as a historical stage of economic development and social progress, and, consequently, his followers must acknowledge that private property, that most odious of legal institutions from the point of view of socialists, has fulfilled very significant and positive functions in the history of mankind, and has served the interests of the whole nation as well of particular classes. The concept of law of Marx and Engels, although deprived of scientific significance, has nevertheless a great historical importance. It has strongly influenced revolutionary thought, and together with the sociological and economic doctrines of Marxism, has inspired revolutionary movements.

3. *The New 'Socialist Law'*

The revolutionary and class character of the Marxian doctrine of law found its most extreme expression in the interpretation by Lenin, who characterized the state as the impudence of violence.⁴

There was a period of doubts and vacillation, when some Soviet jurists, especially those who were educated in pre-revolutionary law schools, expressed the opinion that law, even though it reflects the ideology of the ruling class, protects also the interests of the oppressed classes.⁵ Other Soviet jurists consistently defend the Marxist doctrine and believe that law, a product of the class struggle and certain economic conditions, will eventually wither away. But practical needs disclosed that law is an indispensable element of an organized social life, and from the beginning of the last period of the development of the Soviet revolution, the period which can be called the period of stabilization, a new attitude toward law became triumphant.

A. Vyshinskii, whose theory of law became official, offered the following definition: 'Law is an aggregate (a) of the rules of conduct, expressing the will of the dominant class and established by legislation, and (b) of customs and rules of the community sanctioned by state power, the application of which is guaranteed

by the coercive force of the state for the purpose of guarding, strengthening and developing social relations and social order according to the desires of the dominant class and to its advantage''⁶

Vyskinskii's merit, from the point of view of Soviet legal theory, consists in his practical approach to the problems of law. Obviously deviating from the pure Marxist interpretation of law as a weapon necessary only for the class struggle, and conforming to the practical needs of the Soviet state and Stalin's ideas, he asserted the desirability and even necessity of law in a proletarian state. He overcame the impasse created by the Marxian theory of law, and adapted the class legal theory to the needs of the present Soviet state which has no classes in the meaning of Marx's doctrine.

Answering questions addressed to him on the apparent contradiction between Marxist dogma and the new doctrine, Vyshinskii formulated his point of view as follows: 'The will of the class fuses with the will of the people. ... In its essence the policy of the state in a classless society is a continuation of the policy of the proletariat in a class society. ... Therefore the definition of law as the expression of the will of the dominant class does not contradict the fact of the absence of a 'dominant class'' in a classless society.'⁷

In the same article he adapted his general definition of law to the peculiarities of the Soviet system in the following formulation:

Socialist law during the achievement of socialist reconstruction and the gradual transition from socialism to communism is a system of norms established by the regime of toilers in the form of legislation for the purpose of protecting, strengthening and developing socialist relations and of building a communist society. The system of norms expresses the will of the entire Soviet people, which is led by the working class, headed by the Communist Party.

The new Soviet theory of law means the rejection, in the sphere of law, of the revolutionary utopian interpretations of Marxism. The attitude of neglecting the law in the original theory became disadvantageous. Jurists of the preceding period did not pay attention to the various functions of law significant in every type of state. Vyshinskii has emphasized in his definition that law is

necessary for protecting and strengthening the social order and for developing it further in a desirable direction. His arguments in favor of legal foundations of the socialist state are cited in the next chapter.

Soviet law has its peculiarities, distinguishing it from the law of bourgeois countries; it educates a new type of man. In one of his most recent works Vyshinskii gave an even more precise definition of socialist law:

Socialist law expresses the united will of the Soviet nation, and is directed toward the strengthening and further development of a socialist society, the realization of the transition from socialism to communism, and the building up of communism. ⁸

In spite of a flat acknowledgment that morality and law both have their origin in the program of the Communist Party, that the Soviet people is led by the working class and the latter, by the Party, Soviet jurists continue to assert that 'the Socialist law expresses the common will of the Soviet nation.' Characterizing the Soviet legal system established by the Soviet state, as having a definite objective of strengthening socialism and of stimulating its further development toward communism, they take for granted that this is the common will of the whole population. The will of the leading group of the Communist party is considered as the will of the whole party, and the will of the party as a will of the whole nation.

Some Soviet jurists, however, eliminate these fictions and emphasize more distinctly in their definition of law and state the class character of the Soviet socialist law and the active role of the Communist Party in its creation.

For example, the fundamental peculiarities of Soviet socialist law are explained by one of the new Soviet jurists as follows: 1. Soviet law is the will of the working class, established by legislation and preserving its class characters; 2. it determines the essence of the proletarian dictatorship, the socialist economy and socialist property composing the means of production; 3. it finds its expression in statutes and other legal forms established by the socialist state and is protected by its coercive force; 4. its main goal is to guide socialist society in the interests of the toilers, i.e.

all the Soviet people, with the purpose of abolishing all classes, overcoming the survivals of capitalism in the economy, strengthening the consciousness of the people, and building communism; and 5. Soviet law is closely tied with the leading and directing role of the Communist Party. ⁹

According to the same author, law is an essential element in national life; it is an instrument for the realization of the policy of the dominant class and a foundation of social order. Legal provisions regulate the organization and activity of governmental organs, social organizations and the citizens, and establish general principles for the appraisal of human conduct. ¹⁰

Thus, the Marx-Engels doctrine of law as an instrument of class domination, reflecting the will of the ruling class and supported by coercive force, has been adapted by Soviet jurists to the conditions and needs of the classless society. Soviet law is still class law, because it expresses the will of the class of toilers, which is said to be at the same time the will of the entire nation. It is still an instrument of struggle, since survivals of capitalism and enemies of the people continue to exist, but at the same time it performs some important constructive and educative functions. In contrast to bourgeois law which, according to Marxist doctrine supports the exploitation of the toiling masses, Soviet law, during the transitional period of the dictatorship of the proletariat, has served as an instrument for the destruction of the capitalist state and for the establishment in its place of the socialist state. Since socialism has now been realized, Soviet jurists, with Vyshinskii at their head, emphasize the new organizational and educational functions of Soviet law.

The main, internal function of our state is at present an economic-organizational and cultural-educational task. ... It is necessary to eradicate the survivals of capitalism from the life and consciousness of the people. ... In the foreground are problems of education in the ideas and spirit of communism. ¹¹

What then is the difference between bourgeois and Soviet law? According to Soviet jurists, the fact of the establishment of Soviet law by the Soviet socialist state itself creates an essential difference. Law established by the Soviet state expresses the will of the class of toilers and consequently it has another character

and content than law established by a bourgeois state. Both systems of law organize and educate. But Soviet law is organizing a new type of social and economic order and educates a new type of man. It is revolutionary law and disregards the traditions and principles of the past. Its final goal is communism and anything that opposes or contradicts the new trends must be liquidated.

The new and revolutionary tasks of the Soviet state require overwhelming political power. A radical change in the way of life, in the organization of the economy and even in the psychology of the people demands strong leadership, supported by merciless coercion. The coercive element is therefore emphasized in all definitions of law in Soviet legal literature. 'Law cannot exist unless it is supported by the state. ... Law is nothing if there is no apparatus adapted to coerce people into observing its provisions.'¹²

4. *Durability of the Proletarian State*

The Soviet attitude toward the state has changed to the same degree as toward the law. Marxism inspired its followers with the idea that the state as 'an organized power of one class for suppressing another' will be used after the overthrow of the capitalist system only insofar as necessary to hold down adversaries of the dictatorship of the proletariat.

According to Marxist doctrine developed by Lenin in his well-known work *The State and Revolution*, the state is not the realization of a moral idea, as Hegel taught, not an organization standing above all classes, but 'an aggressive force of the minority.' The majority, after its victory, has to use force too, but this time it will be directed against the minority.

The proletariat needs state power, the centralized organization of force and violence, both for the purpose of crushing the resistance of the exploiters and for the purpose of *guiding* the great mass of the population—the peasantry, the petty bourgeoisie, the semi-proletarians—in the work of organizing a socialist economy.¹³

The proletarian victory means the suppression of the bourgeoisie, the destruction of the bourgeois state apparatus, the replacement of bourgeois democracy by proletarian democracy.¹⁴

Since the state is only a transitional institution ... it is pure

nonsense to talk of a 'free people's state;' as long as the proletariat still uses the state, it does not use it in the interests of freedom but in order to hold down its adversaries, and as soon as it becomes possible to speak of freedom, the state, as such, ceases to exist. ¹⁵

Consequently for a certain time, not only bourgeois rights but even the bourgeois state remains under communism, without the bourgeoisie. ¹⁶

In his report to the 16th Congress of the All-Union Communist Party in 1930, Stalin declared that the Soviet state would be strengthened, not weakened, in spite of the successful realization of socialism. In 1938 in his letter to Ivanov, Stalin explained that the possibility of long-range, peaceful co-existence of socialist and capitalist states is doubtful, and that a socialist state, surrounded by enemies, needs to be armed and strong. Finally, in 1939, Stalin declared, even more decisively, that the socialist state is not a short-lived institution, that its existence may be necessary even in the period of Communism :

Will our state remain in the period of Communism also? Yes, it will, unless the capitalist encirclement is liquidated and the danger of foreign military attack has disappeared. Naturally, the forms of our state will again change in conformity with a change in the situation at home and abroad. No, it will not remain, and will atrophy, if the capitalist encirclement is liquidated and a socialist encirclement takes its place. ¹⁷

The Soviet state continues its struggle with the various 'enemies of the people: wreckers, saboteurs and spies,' ¹⁸ among whom there are a number of unwitting peasants and workers. The Soviet penal code is directed against these enemies for whose reeducation forced labor has been organized. The Soviet state continues to reorganize the existing forms of economic and social life and human psychology, regardless of opposition and sacrifices, spurred by the belief of its leaders that they express the will of the whole nation and understand its interests best. ¹⁹

The Soviet reality is characterized by the unlimited power of the leaders of the Communist party who are at the same time policy makers, law-makers and morals-makers. As regards law, Stalin's and Vyshinskii's interpretations made it clear that law becomes an indispensable element of the Soviet state. It does not wither away.

Chapter IV

LAW DOES NOT WITHER AWAY IN THE SOVIET UNION

As we have seen, Lenin characterized the state as an apparatus of constraint serving the dominant class. The state and law are an expression of the will of the dominant class, and therefore are instruments of its domination. Aided by the law, the dominant class controls the people by a systematic application of violence. ¹

Since class structure of society is abolished in the carrying out of Socialism, no dominant class, and consequently, no violence, can exist. Therefore, Lenin predicted the withering away of state and law. In conformity with this doctrine, the first Soviet Constitution, proclaimed in 1918, promised the abolition of state authority. ²

1. *Vyshinskii's Campaign for 'Socialist Law'*

The doctrine of the withering away of state and law after the establishment of Socialism, together with the abolition of the class struggle, dominated Soviet jurisprudence until the thirties. It had been supported by the authoritative jurists, as well as the leading figures in Soviet circles: Goikhbarg, Krylenko, Pashukanis, Stuchka, and by many *dii minores*. The proletarian state was considered as a temporary instrument of oppression, necessary only for the period of organization of a socialist economy and the creation of a classless society. Krylenko, who had been Prosecutor and thereafter People's Commissar of Justice, denied the necessity for a Criminal Code in the future, and offered to leave a free choice of social defense measures to the O.G.P.U. Goikhbarg, author of the Family Code, asserted that there is no need for the state to interfere in marital affairs, and predicted that the family as a juridical entity would disappear. Pashukanis explained the appearance of the Code Civil in the Socialist state as a temporary concession to private trade; likewise, the temporary re-establishment of the commodity exchange and a monetary system. Consequently, he predicted that the Civil Code would be replaced with regulations of a purely technical character as soon as a Socialist economy could be realized.

All of these theories and ideas became a vital problem following

the liquidation of N.E.P. and at the beginning of the five-year plans period. After the First Five-Year Plan, it was proclaimed that Socialism had won 'finally and irrevocably'—the state and law were naturally expected to wither away in the immediate future. A witness states that:

In some places judges began to close their courts. Students of law schools passed resolutions expressing doubt whether their studies could possibly be of use any longer. In some provinces there was a movement in favor of closing down the local soviets, as organs of state authority were no longer needed. Some administrators began to nationalize domestic fowl and other odds and ends, to liquidate remnants of private economy. ³

However, as early as 1929, Stalin began to warn that the withering away of the state was not on the agenda. ⁴ He offered his interpretation of the Marxian theory:

The anarchist theory of 'blowing up' the State must not be confused with the Marxian theory of 'breaking up,' 'smashing' the bourgeois state machine. Lenin ... criticized and demolished anarchist theory, and proposed in its place the theory of a new state of proletarian dictatorship. ⁵

Some years later, Stalin, in his speech on the results of the First Five-Year Plan, expressed his views with more emphasis:

The state will wither away, not through weakening state power, but through the intensification of it to the point necessary to finish off the remnants of the dying classes and to organize defense against capitalist encirclement, which is as yet far from being, and will not soon be destroyed. ⁶

Thereafter attacks against legal nihilism began to appear on the pages of legal publications. ⁷ The campaign became more intensive after the new Constitution of the U.S.S.R. was enforced. This Constitution was proclaimed by Stalin to be established 'for the purpose of consolidating a social order desired by and beneficial to the working people,' and for the 'transformation of the dictatorship into a more flexible, and, consequently, a more powerful system of guidance of society by the state.' ⁸

Vyshinskii assumed the leading role in the campaign for 'socialist law.' He delivered several reports criticising Pashukanis

and his followers, and developed arguments for strengthening further the Soviet state and law. ⁹ 'Why is stability of statutes essential?' asks Vyshinskii. 'Because,' he answers, 'it reinforces the stability of the state order and state discipline, and multiplies tenfold the power of Socialism, mobilizing and directing it against forces hostile to it.' ¹⁰

Vyshinskii echoes Stalin, asserting that the Socialist state is necessary 'in order to defend, ¹¹ to secure, and to develop relationships and arrangements advantageous to the workers, and to annihilate completely capitalism and its remnants.' For this purpose, he explains, the state needs 'such state organs as the court and rules of procedure' just as much as it needs 'administrative repression aided by extraordinary and exceptional measures and methods.' 'The law,' Vyshinskii further comments, 'does not merely give rights, it imposes obligations,' and Soviet criminal law has to protect the fulfillment of duties; it requires 'certain conduct, a certain relationship toward civil obligations.' Soviet civil law is also necessary for the reason of maintaining an inequality of rights; which is indispensable during the transition from socialism to communism. During this period of inequality the socialist state has to correct the condition in some degree by establishing sanatoriums, recreation resorts, dispensaries, free training, pensions, relief measures, and so on. Thus, in addition to penal and civil codes, special branches of law regulating and augmenting the development of social welfare will comprise an essential part of legislation. ¹²

Vyshinskii has also developed a theory about the withering away of state and law in the future:

Law—like the state—will wither away only in the highest phase of Communism, with the annihilation of capitalist encirclement, when all will learn to get along without special rules defining the conduct of people, under threat of punishment and with the aid of constraint, when people are so accustomed to observing the fundamental rules of community life that they will fulfill them without constraint of any sort. Until then, however, there is a necessity for general control, firm discipline in labor and in community life, and complete subordination of all the new society's work to a truly democratic state. ¹³

The process of the state's withering away is, according to Vyshinskii, connected with the highest development of the state, the highest flowering of the new economy and the new productive forces. It presupposes a high level of Communist culture and great labor productivity.¹⁴

Thus, Stalin and his aide did not assert the impossibility of the withering away of the state and law. They maintained only that it was impossible to do away with law before the complete accomplishment of the Communist program. The withering away of state and law is only postponed *ad Calendas Graecas* and thus loses its practical significance. During the past decade it has no longer been discussed in the Soviet Union. However, the problem has not lost its theoretical interest. It is not clear whether Lenin's doctrine regarding state and law proved only to be impracticable or whether it is absolutely wrong. It has not been definitely solved whether a 'truly democratic society' can ever exist without law, as Soviet jurists assert, and whether the existing Soviet system is capable of attaining in the slightest degree such a reorganization of social life that state and law become unnecessary.

2. *Socialism Does Not Abolish Law*

The doctrine of the withering away of state and law is a consistent conclusion from the point of view of the Marxian theory of law. This theory, however, is erroneous. It is no less an extreme simplification of law than the simplification of the sociological problems implied in the Marxian theory of class struggle.

Law is not a simple superstructure above the totality of productive relationships forming society's economic system. Not all legal relationships are rooted in the material conditions of life, and, consequently, law is not necessarily dependent upon the existing social-economic structure. A large society can exist only if it is organized in harmony with the psychological bases upon which its component parts rest. The larger it is, the more complex are the problems of its organization. There are differences of moral principles, religion, and language. There are, besides, some problems of purely organizational character: structure of the government, representation of local interests, elections, even

administrative divisions of territory. Provisions of an organizational character are an essential element of any legal system. Only a few of these organizational problems have a purely technical character which can be solved according to considerations of temporary expediency. A legislator constantly meets problems concerning rights which are based on moral institutions, customs, religious differences, and which are sometimes deeply rooted in people's psychology because of their existence from time immemorial. Even a territorial division is sometimes connected, not so much with geographic and economic, as with historical and ethnographic conditions.

It is hardly possible that all existing differences will disappear completely, but even if a socialist state succeeds in eliminating all differences in morals and religions, and in exterminating all survivals of the past, many regulations of a legal character will none the less be necessary in order to organize the national economy and to establish an expedient and just correlation between different national groups.

It is no wonder, then, that in the Soviet legislation concerning different kinds of economic and administrative institutions, territorial divisions, and boundaries between different republics and autonomous regions there is an important and essential group of constitutional provisions.¹⁵

Some of the regulations relating to national autonomy, religion, and language have nothing in common with economic structure and class domination; there are others necessary for the organization of social life in general and, especially, of economic life. Both groups are necessary in a Communist state, particularly the latter because of its integral planning system.

The organization of social life has always been connected with the observance of different kinds of rituals. Rituals impress people either with their solemnity or with their antiquity—'The older, the more sacred' is a well known Russian saying. Rituals strengthen the significance of legal procedure. They enhance the rights and obligations which are connected with their performance. They consolidate legal relations. They are also important when it is necessary to stress respect toward a certain rank or a certain organization.

England is a typical country of traditions and rituals. In

China rituals, or the so-called *li*, compose an important foundation of the social order.¹⁶ Not every nation adheres to rituals to the same degree, but there is none which could eliminate them completely. Rituals have existed from old times and they touch basic human nature. Many rituals, therefore, have been sanctioned by law and even created by law, and comprise, on the level of organized norms, a special group of legal regulations. The Soviet state makes increasing use of them. Having begun with the abolition of every solemnity in governmental tradition, the Soviets are now turning to the reestablishment of many ceremonies and rituals; for example, officially receiving credentials from newly appointed ambassadors, presenting rewards for meritorious service, the solemnization of marriage,¹⁷ opening a session of the Supreme Soviet, or the sitting of a court,¹⁸ and others.

Rituals usually are not peculiar to a certain social and economic structure. Many of them prove to be obsolete and, therefore, can be replaced or altered, but it would be unreasonable to eliminate them completely as institutions.¹⁹

A third group of juridical norms consists of the so-called declarations. When issued by the state's authorities they express obligations assumed by the state or by the government. To this group belong *preambulae* attached to the constitutions or to international treaties, as well as declarations in the proper sense (manifestos of the pre-revolutionary period) containing a program of future legislation. The Soviets have used this form on a large scale since the very beginning of the Soviet state.²⁰ Solemn and official declarations obligate the governments issuing them although they do not have legal sanction.

The provisions called above 'organizational,' 'ritual,' and 'declarative' are interpreted at times, erroneously of course, as purely technical rules:²¹ but the provisions of the civil and penal codes constitute the essential part of a legal system, and it was this part of law which was the chief object of discussion in the Soviet Union in connection with the problem of the withering away of law.

The necessity of civil law, in spite of 'Socialism,' became indispensable in the Soviet Union after the Constitution of 1936 confirmed the principle of inequality.² If the state distributes bonuses and prizes, introduces a progressive scale of salaries and

piece-work wages, establishes premiums for above quota production, recognizes the right on royalties, on compensation for inventions, property on lottery-loan bonds, etc., it is only consistent to acknowledge and to protect personal property rights and to permit conclusion of contracts and of inheritance. Not less consistent is the protection of existing property rights by the use of penalties.

Thus, it became necessary to adopt civil and penal codes in the Soviet Union in spite of 'Socialism.' Not everything in this field is a simple repetition of old principles and of usual traditional legislation. Transition from a free economy to a planned one is characterized by a radical change of the customary ways of life, of human psychology, and of habitual incentives. There is in the Soviet Union a 'Socialist property'.²³ It is necessary to protect 'Socialist property,' to enforce planned economy, and to create new incentives in order to encourage people to work out and support socialization and the planning system. All this demands the utmost development of complicated economic legislation connected with and supported by different kinds of rewards and penalties. The criminal code adopted in the Soviet Union has a special importance.²⁴

Another peculiarity of the Soviet Union's legal system is its wealth of compulsory regulations. A system of free economy does not require such complicated legislation as a system of planned economy. When economic initiative is private and is taken at one's own risk, regulations can be reduced to a minimum. The civil code sometimes limits freedom of action for the protection of interests of third persons, but it contains mostly optional, non-compulsory (*jus dispositivum*) provisions, which may govern either where no arrangement has been made by the parties in regard to a given legal relation, or where, although an arrangement has been made, such arrangement is incomplete or defective. This is not the same as a planned or socialistic economy. Not only organization of economy in total, but also regulations of all kinds of transactions between enterprises and between enterprises and labor, regimentation of the whole process of production and distribution of raw materials and manufacture, of food and commodities, become in the socialist state objects of a special legislation having a compulsory character.

In the socialist state relations between man and state are much more complicated than in a free state where the latter, like a 'night watchman,' according to F. Lassale's expression, has only to protect but not interfere in the life of citizens. In the Socialist state, instead of the charitable activity of private institutions and of individuals, the state itself has to provide citizens with assistance and security. Everyone has a right to welfare in exchange for his devoted service to the state. For this reason, legislation concerning rights and duties of the state and its citizens which regulates relations between them, is supposed to expand much more in the socialist state than in the so-called bourgeois state. For carrying out broad plans of social welfare, it is necessary to dispose of enormous appropriations, and therefore to have the right of collecting taxes and duties on the widest scale. It is also necessary to define who is entitled to the various kinds of public service and support, and under what conditions, since human need are limitless. All this requires special legislation.

This survey, though brief, is sufficient to show that state and law change essentially under Socialism and in a very serious manner, but do not wither away. Public law has to develop enormously at the expense of private law. The Socialist state, with its varied and complicated functions, requires a vast apparatus of power even if the conscientiousness and devotion of its citizens make repression unnecessary. The state has its own duties and rights. Individual rights require a special protection, inasmuch as inequality is not abolished, but civil law becomes only a secondary branch of legislation in comparison with the highly developed administrative law.

Assuming that the socialist system does not run contrary to social psychology, that the population is devoted to the socialist state, that the level of culture is high and that production satisfies the needs of the people, a legal order is still indispensable. Under such favorable conditions, the law of the socialist state might be more humane and liberal, but it would not wither away. If, on the contrary, socialism does not correspond to the psychology of the nation, or if its economy is not efficient, then the penal system and regimentation of such a socialist state may become exceedingly rigid and even ruthless.

3. *Inadequacy of the Marxist Theory of Law*

During the last thirty years the Soviet state in action has proved the correctness of the general ideas stated above. The Soviet Union comprises sixteen constituent republics, the so-called Union Republics, and has, in addition to the Constitution of the U.S.S.R., sixteen separate constitutions, one for each of the Union Republics. Some of these Union Republics are in turn federative, and the present fifteen Autonomous Republics, members of the Union Republics, have their own constitutions. Seventeen Supreme Soviets are empowered to issue laws, and in order to understand Soviet legislation thoroughly, it is necessary to study official bulletins of the U.S.S.R. and of its sixteen Union Republics.

There are in the Soviet Union all branches of law and all kinds of legal provisions, but the most highly developed of all is public law. No other country has such a gigantic administrative machine nor so many ministries and departments, and nowhere is there so much regulation and regimentation of all phases of life. In the Soviet Union public law has been expanded in all its branches: constitutional, administrative, and financial; but what especially attracts the attention of those studying Soviet law and amazes them most is the exceedingly high development of criminal law in the Soviet Union. It is a perplexing phenomenon that the Soviets progressively increase penalties for each crime. Criminal law is best when it can prevent crime, and thus decrease the necessity for application of penalties. The normal trend in the development of criminal law is its gradual attenuation. If, on the contrary, a government increases the arsenal of penalties and replaces the mild ones with the most severe, it is evident that criminal activity has become more intensive.

Symptoms of this striking fact can be observed on the Soviet Union. Penalties have become more and more severe. In 1921, imprisonment was limited to a five year term. Only one year later this term was increased to ten years.²⁵ The minimal term of imprisonment was also doubled in 1930, from six months to one year. In 1937, penal servitude was established for some kinds of crimes up to twenty-five years.

Not only imprisonment and penal servitude but the application of the death sentence by shooting was increased in 1932, fifteen

years after the Revolution. The ukase of August 7, 1932, directed against counter-Revolutionary actions,²⁶ is known as one of the most severe measures of social defense. In 1947, instead of decreasing penalties established fifteen years earlier, a new ukase of June 4, 1947 expanded application of the previously established penalties.²⁷ It is hardly possible to interpret these measures otherwise than as evidence of the permanent resistance on the part of the population to the policy of the Soviet government and of the inefficacy of the Soviet penal system. As illustration we refer to a special law punishing predatory slaughtering of cattle. Since 1930, when a special law punishing this crime was first issued, not only was there no decrease of penalties for slaughtering of cattle, but the application of this law was even expanded through the aid of judicial interpretation.²⁸

It is obvious that some crimes proceed from the Soviet system itself. Thus, prohibition of unrestricted departure for foreign countries gave birth to a new profession of guides. Thence, a special law punishing 'assistance in illegal crossing of the states boundaries, given by a professional guide or by officials.'²⁹ The offence of not giving information concerning committed crimes or preparations for committing a crime (misprision) entails punishment, and people are taught from their childhood that reporting on one another is praiseworthy. But not infrequently this reporting becomes denunciation, which is often pure slander.³⁰

There are some articles in the Criminal Code of the R.S.F.S.R. which clearly show that prostitution has not become extinct, and that minors and adults are sometimes compelled to practice prostitution. In 1935, it became necessary to issue new penal provisions for prosecuting this crime.³¹ Criminal sociology cannot explain this phenomenon unless it is explained by pauperism, which apparently has not been liquidated by the Soviet system. For the same reason, bribery has not been eliminated; abortions and murder of newly born children is practiced.³

A Soviet textbook also discusses some crimes which were impossible in Russia before the Revolution. For example, an imposter pretending to be a coroner conducts an inquest, at which he steals several objects. This would have been absolutely impossible during the Tsar's regime, when coroners were officials having a special uniform and were well known to the people, and

when procedure of an inquest was accompanied by some formality which guaranteed the population against such abuses. Another example in the same textbook ³³ relates how a person posed as an artist in order to take advantage of the privileges granted to this profession. Before the Revolution there were no artists or any other persons of the liberal professions who enjoyed such privileges as now exist in the Soviet Union.

The foregoing gives us sufficient ground to assert that the Soviet system gives rise to some specific crimes originating in the new conditions of life, and from new circumstances created by the system itself. But what is the most important is that the new legal order begets resistance and counter-action on the part of farmers and other groups of the population dissatisfied by the new system. ³⁴ This resistance, designated as counter-revolutionary action, is severely prosecuted and punished. Not being exterminated, despite persecution, a further increase in the penalties becomes necessary, or existing penalties are extended by the application of analogy. ³⁵

The study of Soviet law makes evident that the Soviet system not only does not create conditions favorable for the withering away of state and law, but that on the contrary, it strengthens the state and extends enormously legal restrictions and criminal law. ³⁶

From a theoretical point of view, as was explained above (Section 2), it is improbable that a socialist state with a centralized planned economy can do away with law. The Soviet state, pretending to be socialist, demonstrates this in the most striking manner. It changes the character of law but does not abolish it. The state becomes more exacting, the legal order more restrictive, and citizens' rights more relative.

4. *Variable and Constant Elements of Law*

The Marxian doctrine of law, which proclaims that law is a superstructure over the social and economic relationships of a society, is incorrect. Marxists do not understand that law, as well as morals, is an essential element of social life, that law does not consist exclusively of duties and coercive regulations, but that it also establishes and guarantees individual and social rights.

Marxist predictions on the withering away of state and law are

inaccurate, but not entirely arbitrary. In fact, there are certain elements in every legal system which are closely connected with the social relationships of a particular time, not especially economic or social conditions, but cultural, political, and, particularly, international. Legal provisions of this kind are transitory and changeable, and this is the part which can be *mutatis mutandis* (with the necessary changes) called a 'superstructure,' but there are, besides, many other elements in law of an amazing longevity. Some of these elements regulate legal transactions in which the content can be endlessly varied, but whose juridical elements are always the same. Established by Roman jurists, these elements (*essentiale, naturale* and *accidentale negotii*) have the same significance in law, as various theorems (propositions) in mathematics, or as some instruments early invented in technique.³⁷ Other elements are just as lasting because they are in harmony with human psychology; they reflect the peculiarities of human psychology in general, or correspond to the constant needs of social life. Provisions regulating relations between parents and children, between husband and wife, depend upon religious and cultural traditions no less than on economic and social. Provisions of Roman law concerning forms of securing and concluding contracts or liabilities and compensation for damage and injuries can be adopted by the Socialist state no less than by a bourgeois state. Murder, rape, and many other crimes against the life, health, and liberty of a person have existed in various epochs under various social and economic structures.

There are, thus, some parts of law which can and must wither away and others which are more stable and even remain immutable during millenniums. There are some parts of law which have class character, and others which are adapted to the needs of social life independently of class. It is, therefore, indisputable that some parts of law may wither away, some have to be replaced or amended, but many legal principles have every chance to survive our turbulent epoch as they have survived the darkest times of the Middle Ages.

The Soviet system of law contains many regulations of a purely class character. From the very beginning of the Bolshevik Revolution, the Soviets gave special privileges to some groups of the population³⁸ and, on the other hand, strengthened the re-

pression against unprivileged groups³⁹. For a long time court decisions rendered in the Soviet Union referred to the social status of the persons concerned. The personnel of the courts (judges and assessors) still consists mostly of Communists, identified often with workers and peasants.⁴⁰

Inequality connected with this kind of class privilege must certainly be abolished. The Soviet state itself originates laws which far exceed pre-revolutionary law in injustice, but it considers this law as transient. This is an example of transient law which has to wither away. But there is another much more important process of withering away of law, depending not on the social structure but on moral progress *par excellence*. Criminal law is especially subject to this process. Its ideal, as explained above, is to make itself unnecessary. Deterring or reeducating, the law inculcates in the people moral discipline and loyal and sociable conduct. Criminal law must prevent rather than punish crimes, and it is most efficient when it becomes unnecessary, and not when it has to be replaced by an ever more severe system of penalties, as is really the case in the Soviet Union.⁴¹

If a criminal code becomes milder, it is a sign that coercion becomes less necessary, if necessary at all. It bears evidence that people have reached a new and higher level of self-discipline and moral culture. The character of the state then changes, relations between man and state can be based on conscientiousness on one side and simple management on the other.

There are, consequently, some processes which give promise of the withering away of law, if not in total, at least in part. In studying these processes, one discovers in what the withering away of law may consist.

Since the early infancy of human society, interrelations between the individual and the social authorities have been one of the most serious problems. Society needs coercion. The individual requires freedom. To these double tendencies corresponds the dichotomy of private and public law. Public law is based on subordination. It recognizes duties rather than rights. Even those who have rights have them for the sake of the common interest, and they have to exercise their rights as a function of their civil duties. He who has the right to prosecute must do it. He who has the right to give orders and to punish is obliged to do so when it

is necessary. Public right is practically a duty. Private law, on the contrary, gives freedom. If public law cultivates consciousness of duty, private law cultivates consciousness of right, determines the meaning of freedom to act or not to act, to demand or to forgive, to dispose of one's fortune, of one's energy and capacities at one's own discretion. Provisions of civil law are mostly optional; it is possible to evade them if such an intention is flatly expressed. There are but few restrictive provisions of civil law which limit freedom in the interest of the third person or of the public welfare, but the parties are free to enter or to refrain from entering into legal relations governed by compulsory provisions.

The foundations of civil law were laid by the Romans, and when the study of Roman law was restored in the eleventh century, it functioned as a school where the European nations were educated in a psychology of individualism and self-determination. The citizens of Western nations, accustomed to having inalienable private rights, carried this conception of innate individual rights into public law. Accustomed to freedom in their family life and economic activity, they believed in the right of organizing their social life independently of the state and without its interference. The development of state and law, which Marxists used to call 'the withering away,' is in fact only a process of limiting the coercive power of the state in favor of the increasing freedom of citizens.

The evolution of law in the West brought the establishment of firm and effective guarantees of freedom, the recognition of subjective public rights,⁴² and the development of self-government. All these achievements of the legal order give the impression that the state, as an organization disposing of coercive force, demanding obedience, and imposing duties upon its subjects, is fading and that law, as a system of regimentation, is withering away. In fact, it is only the evolution of state and law, in conformity with the education of citizens in discipline, which opens up the possibility of widening their freedoms and free choice and promises the replacing of subordination by coordination as a basic tendency of law. In the light of this development it is possible to discern outlines of a new system of law and a new state of the future — the next stage of our civilization.⁴³

The development of the Soviet state and law does not correspond to the tendencies just described. Instead of weakening, Soviet public law is constantly growing stronger; instead of the strengthening of individual rights, the duties of citizens are becoming emphasized. Dependence upon the state is becoming stronger than it ever was, because of the concentration of the whole economy in the hands of the state, and because even cultural activity is subjected to the state's control.

In the meantime, in the United States and in other democratic countries, the state's coercive power is being more and more restrained, and individuals receive more and more freedom, protected not only by the state, but also by their own organizations. One may object to this statement on the ground that the economic legislation of the United States and the United Kingdom since the First World War has increased government control over the economy.

However, if this kind of legislation is not temporary, it nevertheless consists more of limitations than of forcible constraints. Nationalization of some branches of industry limits the sphere of free economy, but it does not constrain or restrict. The democratic freedoms, as well as rights of organized labor, remain untouched, and the tendency toward a further attenuation of the legal system is not blocked. In spite of the new trends of a regulative character and the increasing interference of the state in the sphere of national economy, the people are and will be citizens.

Chapter V

FOUR STAGES IN THE DEVELOPMENT OF SOVIET LAW

The first stage in the development of Soviet law began with a series of decrees designed to destroy completely the pre-revolutionary bourgeois regime and social structure and to outline the principles of the new socialist state. This period, which coincided with the years of bloody Civil War and Intervention, is usually called the period of War Communism. It was replaced by the period of temporary retreat known as the N.E.P. (New Economic Policy). The third period began with the series of Five-year plans in which the Soviet Union carried out large programs

of industrialization and collectivization with the purpose of transforming Russia into a socialist state. In 1936 the Soviet government declared that socialization had been accomplished. Then a new stage began, which coincided with the preparation for the Second World War and later, after the end of the war, for Communist aggression. In the literature devoted to the Soviet Union there are still no special denominations for these periods, but they are only sub-divisions of a lasting period which began after 1936, the period in which the major goal was stabilization of the economy.

1. Period of War Communism

Although the first Soviet legislation has since lost its practical significance, it is nevertheless a characterization of the methods by which the Communist Party destroys the 'old world' and establishes its own 'socialist' order. These methods are especially important because they have become stereotyped for satellite countries.

The Soviet government initiated the social revolution of November, 1917, with a series of decrees abolishing property rights and establishing nationalization of all enterprises, land and resources. A list of the most important measures which were carried out by the All-Russian Central Executive Committee and Council of People's Commissars in the first two months after the November Revolution was included in the Declaration of the Rights of the Laboring and Exploited People. This declaration was prepared for submission to the Constituent Assembly, but, due to its forcible dissolution, was published on behalf of the Central Executive Committee. The most important points of this declaration, as far as the economic program of the Bolshevik Revolution is concerned, are the following:

1. To effect the socialization of the land; private ownership of land is abolished, and the whole land fund is declared common national property and transferred to the laborers without compensation on the basis of equalized use of the soil.

All forests, minerals, and waters of state-wide importance, as well as the whole inventory of animate and inanimate objects, all estates and agricultural enterprises are declared national property.

2. The Soviet Law of Labor Control and the Supreme Board of National Economy are confirmed with a view to securing the authority of the toilers over the exploiters as a first step to the transfer of all factories, mills, mines, railways, and other means of production and transportation to the ownership of the Workmen's and Peasants' Soviet Republic.

3. The transfer of all banks to the ownership of the Workers' and Peasants' state is confirmed; this being one of the conditions of the emancipation of the laboring masses from the yoke of capital.

4. With a view to the destruction of the parasitic classes of society and the organization of the national economy, universal labor service is established. ¹

Beginning with the destruction of the capitalist class, the Soviet government then directed its measures against the village bourgeoisie. In the preamble to the decree of May 14, 1918, it was explained that 'grain is in the hands of the tight-fisted village dealers and profiteers, the village bourgeoisie, who stubbornly remain deaf and indifferent to the wailing of starving workmen and peasant poverty, and do not bring grain to the collecting points ... in the hope of compelling the government to raise the price of grain repeatedly.'

Having chosen 'violence toward the bourgeoisie (farmers)' as an answer to the speculation, the Soviet government decreed a 'merciless struggle with grain speculators.'²

The establishment of grain control was evidently not sufficient and in September, 1918, a new Land Law was enacted which replaced the earlier and briefer Land Act of November 7, 1917. State monopoly of the grain trade and the agricultural machinery industry increased the dependence of the peasantry upon the government. ³

At the same time that the Soviet Government radically reorganized the economic structure, subjugating it to the state, it also destroyed the social and legal structure of the state.

By the decree issued on November 23, 1917, all classes, titles and civil ranks of the pre-revolutionary period were abolished, and the properties belonging to these groups were transferred to zemstvos and municipalities. ⁴

The decree of January 29, 1918, concerning separation of Church and State, deprived churches and religious societies of the

right 'to own property' and to exist as juridical persons. All the properties of the churches and religious societies in Russia were nationalized. ⁵

The decree of November 24, (Dec. 7) 1917 concerning courts, abolished all 'general legal institutions, such as district courts, courts of appeal, and the governing Senate with all its departments, military and naval courts of all grades, commercial courts, and ... all existing institutions of investigating magistrates and the procurator's offices as well as the grades of barristers of law and private attorneys.' The newly elected judges had to try cases applying pre-revolutionary laws '... only in so far as those laws are not annulled by the Revolution, and do not contradict the revolutionary conception of law.' ⁶

The decrees cited shattered the whole legal order. On the ruins of the destroyed social and economic system of pre-revolutionary times the new government had to build a state of workers and peasants. The results of these destructive measures in the period of War Communism proved lamentable, however. Lenin sounded the retreat. He emphasized the necessity of returning to principles of legality. ⁷

2. The New Economic Policy

The second period, or N.E.P. which began in 1921, was characterized as a 'breathing spell.' During the N.E.P. Revolutionary Legality opposed Revolutionary Expediency; statutory law versus 'revolutionary conscience.' ⁸ New codes strengthened the judicial apparatus, reorganized legal defense and delegated to the procurator the supervision of law enforcement together with the right to check the legality of rules issued by the people's commissariat and other central agencies. A special organ of control was also established, the R.K.I. (*Raboche-Krestianskaia Inspektsia*). On August 11, 1927, the central Bureau of Complaints was established which had the right to inspect the activities of government agencies and to review the objections of the 'toiling masses' regarding the activities of central and local R.S.F.S.R. organs.

This change in attitude toward legalized procedure tended to strengthen the people's confidence in the security of their rights. This essential change was bound up with a retreat in the field of

economy; the Soviet economic policy in the period of War-Communism had failed. Under the impact of economic depression and disorganization, Lenin announced at the Tenth Congress of the Communist Party that it was impossible to introduce socialism in Russia without a transition period, a transition period in which mistakes could be rectified which had brought the country to the brink of chaos.

Indeed, the peasantry's answer to the requisitions of the preceding period was a growing resistance. Farmers buried or destroyed their crops and neglected to sow new ones. City populations suffered from dwindling supplies of food. Hungry workers could not work efficiently. In addition, the exceptionally severe drought of 1922 brought on a terrible famine involving about forty million people.⁹

To reassure the peasants and encourage re-planting of crops, it was necessary to guarantee their property rights. Accordingly, a new Land Code was issued in 1922 which recognized different forms of land organization and allowed peasants to choose individual, cooperative or collective land economy.¹⁰ Peasants were encouraged besides to 'enrich themselves.' Instead of the poor peasants, the 'sredniaki' (peasants of moderate wealth) became favorites of the new economic policy. Requisitions and confiscations, as a system, were prohibited and replaced by a fixed taxation in kind. After paying taxes peasants could dispose of surplus agricultural products at their own discretion. Permission to sell and trade freely revived markets.

In the field of industry the 'commanding positions,' i.e., all huge enterprises and all the important branches of industry remained in the hands of the government. Management, however, was reorganized on a cost-accounting basis: the control balance, based on the value of the ruble, reflected any variance in the capital assets of the plant and the efficiency of the work performed.

The leading of small enterprises to private persons was authorized and small domestic industries were freed from state control.¹² Since April 26, 1922 registration is all that has been required to open a private business establishment. Private initiative was thus allowed; cooperatives and business corporations were permitted; foreign capital was attracted by a system of special concessions.¹³ It was also permissible to have small houses

on private property and some houses were de-nationalized.¹⁴ Subsequently inheritance was re-established and private rights were protected by provisions of the Civil Code and the Code of Civil Procedure.

Stimulated by these reforms the economic wealth of the country began to increase. But the period of the N.E.P. did not last very long. The so-called 'nepmen' and wealthy peasants inspired in the orthodox Communists the fear of a regeneration of the bourgeois class. Certainly it was not for this end that the Revolution had been carried out. Also, the N.E.P. period of retreat was introduced only as a temporary 'breathing spell.' All of the concessions to private business were merely to allow the population to survive the crisis and to enable the government to prepare conditions for the full socialization of industry, trade and agriculture. Thus it was consistent that the Soviet government and the Communist Party returned to their former program of nationalization and monopolies.¹⁵ But this time it was done in conformity with well-formulated plans.

3. The Period of Socialist Construction

After 1929, a series of five-year plans replaced the N.E.P. During the realization of the first and second Five-Year Plans private enterprise, private trade, and foreign concessions were liquidated. The so-called private sector of the national economy was merged with the sector of 'state economy.' Agriculture became subject to forcible collectivization and individual farming was almost completely liquidated. The wealthy peasants, who had been encouraged during the preceding period to enrich themselves, were disavowed as petty-capitalists and *kulaks* (usurers and exploiters of poor peasantry). If they opposed collectivization they were put down mercilessly, that is, de-kulakized (*raskulacheny*), deprived of their fortunes and independence by various means.

Consequently, the general trend of legislation during this period acquired a new character. Protection of public property became the main goal. According to a Soviet Jurist, Komarov:

The Revolutionary legality of the first period of N.E.P. had been especially directed at the extermination of War-Communism and illegal confiscations and extortions. It guaranteed to the private investor and capitalist the security of their

property provided they observed Soviet law. ... The revolutionary legality of our time [five-year plans' period G.G.] is directed against the enemies and wreckers, against rowdyism and embezzlement of the public property. The main task of our time consists in making the public property secure and in nothing else. ¹⁶

The Penal Code acquired more importance than the Civil Code. The great sacrifices and lasting deprivations entailed by monopolization of the entire national economy and especially by the collectivization of agriculture provoked resistance, disappointment and opposition. Any opposition is considered by the Soviet government as a survival of capitalism and is ruthlessly prosecuted. The government does not spare violence in trying to destroy the remnants of capitalism in order to complete socialist construction. ¹⁷

4. The Period of Stability

In 1936, socialization was declared to be accomplished and a new Constitution was established according to which the U.S.S.R. was 'a socialist state of workers and peasants.' In conjunction with the work of the two Five-Year Plans, Soviet law entered a new stage. ¹⁸ With this period the main task was to stabilize the existing order and, on the basis of the socialist economy, to prepare the country for the transition to communism, which is the final goal and the perfect society. ¹⁹ Consequently, after 1936 Soviet jurists discerned the following three goals of Soviet law: one, to perfect the organization of the state economy to conform to the planning system; second, to educate people to obey the authorities and the Communist Party; and last, to inspire the people with enthusiasm in their service to the 'socialist fatherland' especially in the acceleration of production.

The period of the 'transition from socialism to communism' requires the re-education of the people, an abundance of goods and guarding against the ever-present threat of socialist encirclement by the capitalist states. The accomplishment of such great tasks requires many years of work. Therefore, the existing legal order characterizing this period of stabilization seems to be a lasting one. Legislation of this period will be discussed in detail as it is of great interest for many reasons. A major reason is that

several other nations have now reorganized their economy and political systems to conform to the Soviet pattern and are guided by the Soviet experiment and by the principles of Soviet law, the Soviet constitution, penal system, organization of economy, etc. Soviet law of the latest stage is not only the operative law of the Soviet Union, it is and will be the typical system for a state having an integrated planned economy arbitrarily introduced from above.

Insomuch as the legislation of the latest stage of Soviet law will be explained and discussed in the subsequent text, it is not necessary to characterize it here. It must be noted, however, that the aim of stabilization does not exhaust all the goals of Soviet law in the period from 1936 to the present time. In the light of the events of this period, it is easy to discern that, in close coordination with Soviet government policy, legislation of this period also reflects preparation and adaptation to the needs of war and, since 1945, preparation for Communist aggression.

Stabilization remains, however, the first and the principal task. In one of the recent papers dedicated to the problems of forthcoming research in the field of law,²⁰ it is emphasized that again, as fifteen years ago, it has become necessary to use penalties to protect socialist property, to fight dangerous crimes against the state, to strengthen labor discipline. Evidently the Soviet government cannot rid itself of enemies and opposition on the part of workers and peasants. In the same paper a program is outlined, which has become standardized: the protection of socialist property; the Communist education of workers; the encouragement of socialist competition and the raising of the efficiency of work. Organization of control over kolkhozes is also indicated as an important problem of legal research work.²¹ It will be shown below how important these problems are in Soviet life and how much attention the Soviet government pays to kolkhozes and labor discipline.

Stabilization of the existing order requires reforms in family law and inheritance. The new social stratification inside the 'classless' society is strengthened and protected by special statutes, as, for example, by the law concerning penalties for violation of personal property. But first and foremost, the stabilization of the existing order is reflected in the Stalin Constitution of 1936,

which formulates the main principles of the legal order of the socialist state.²²

All this characterizes the latest stage in the development of Soviet law and explains how far the Soviet legal system has drifted from the original idea of a 'withering away' of law together with the abolition of classes. Is it not significant also that Soviet jurists find it a problem to codify the law?²³

Chapter VI

SOURCES OF SOVIET LAW

There are three kinds of authority to which people usually refer to prove validity of social regulations. First, there are outstanding persons, (eventually institutions), and then, facts and ideas, (general principles).

The concept of the source of law is closely connected with the idea of an unimpeachable authority. History reveals many personalities, (Solon, Lycurgus, Moses, Solomon, Papinian, etc.) whose orders, decisions, and legal findings have been given recognition as sources of law. Later, collective authority forced out the individual one, and the authority of institutions (houses of representatives, parliaments, and courts), was substituted for the authority of legislators and judges.

Unlike laws, customs and precedents are anonymous; they are the facts to which people refer because they are the result of experience which has proven the expediency of a certain way of behavior.

Finally, ethical maxims, expressing recognized principles of conduct, have authority. Such maxims survive in varied social and economic conditions. Natural law (*jus naturale*) has played the same part as maxims in the history of law. Logical deductions from these maxims and general principles are sufficient for the justification or condemnation of human conduct.

In the modern world statutory law acquires the greatest significance because it is more flexible and progressive than custom, more adaptable to the needs of large and varied groups of population than individual opinion, and more open to knowledge and control than other legal norms.

Law is always subject to evolution. The provisions of the existing law code develop with every decision. The law grows with use. Legal practice, free contracts and opinions of *doctores* (scholars) stimulate further development and improvement of the existing system of law. Newly formed customs and precedents fill in inevitable gaps (*lacunae*) in law. Legislation remains, therefore, only one of the sources of law and does not exclude some others, especially common law (*jurisprudence*).

The problem of the source of Soviet law requires an analysis of how the Soviet official law is formed and how it is developing.

I. Statutory Law

For Communists, Karl Marx is at the same time Moses and Solomon. Lenin and Stalin are sources of wisdom for all aspects of life and all its needs. It is, however, impossible to organize a planned economy and to support a social order with the aid of only vague instructions by the apostles of Communism and, therefore, statutory law takes first place in the Soviet Union as everywhere. The significance of the statutory law in the U.S.S.R. is even greater than in many other countries.

Soviet law is a revolutionary law. The Soviet government repudiates not only the old legal structure, but also the organic development of law, it breaks with the old and builds a new system according to the blueprint of the socialist architects. It does not admit any rivalry between authorities and it is intolerant of differences of opinion. Therefore legislation in the Soviet Union has an overwhelming predominance and excludes completely any other source of law.¹

Lenin was the first to emphasize the significance of legislation for the revolutionary state. 'The will of the people,' he said, 'if it is to acquire state significance, must be expressed in the form of a *zakon* (statute) established by the authorities.'² Referring to 'zakon,' he had in view, not only formal legislation, but any act established by the central government. As a partisan of the strongest centralization of power, Lenin did not leave any place for doubt that the will of the leader might be substituted for the will of the people: 'Every man belonging to the mass of population, every citizen has the right to participate in the discussion connected with the legislative task, as well as in the elections of

the people's representatives, and in the enforcing of laws.' However, he added, this does not at all exclude the necessity of establishing 'the strictest order created by the unifying will of the leader.'³

The leader is the one who is responsible for the correct expression of the will of the people, and Lenin's words about 'the unifying will of the leader' formulate precisely what the role of the authorities is in regard to legislative work in the Soviet Union. Vyshinskii says the same thing in a more hypocritical form: 'Laws of the U.S.S.R. are laws established by the people themselves, who govern their country independently under the leadership of the working class guided by the Communist Party.'⁴ Vyshinskii indicates three levels in the structure of Soviet legislative power: the people, the working class leading the people, and the Communist Party heading the working class. He does not mention, however, that there is still a tower over the building in so much as the party is led by a small group and it is headed by a leader, whose will, according to Lenin, unites all and is supported by the 'strictest order.'

In fact the role of the people, in contrast to the role of the party, is the least significant one as far as legislation is concerned. Soviet practice has had only a few instances when the large mass of the population has been given the opportunity to participate in the preliminary discussion of legislative measures. The Standard Charter of an Agricultural Artel of 1935; the project of the Constitution later approved as the Constitution of 1936; and the law of June 27, 1936, which made abortion a punishable act, are the only known and important laws widely discussed before their formal approval. On the other hand, all important measures, or at least their fundamental principles, have to be discussed and approved or initiated by the highest organ of the party. Insofar as the Party is supposed to express the will of the people, amendments to the projects already approved by the party organs are of minor significance even if discussion is admitted. It is impossible, for example, to imagine that any discussion of the Charter of an Agricultural Artel could transform kolkhozes into really independent co-operatives, or that any amendment to the Soviet Constitution would really limit the state power.

On some occasions the Soviet government consults public

opinion and relies upon the initiative of local organizations. On May 26, 1947, capital punishment was abolished 'in conformity with the will of national and professional organizations'. January 12, 1950, capital punishment was restored for some groups of political criminals, and again the Soviet legislators, the Presidium of the Supreme Soviet explained that they had acted

in conformity with the statements presented by the national republics, trade-unions, peasant organizations as well as representatives of free professions about the necessity of amending the Ukase concerning the abolition of capital punishment and elimination of the exemption from this punishment of traitors, spies, wreckers and diversionists.

Upon noting the recognition of such crimes, one wonders how many traitors and spies there may be in the Soviet Union if two years after the abolition of capital punishment the population asks the government to restore capital punishment for the extermination of traitors, wreckers, etc.

The official legislative bodies of the Soviet Union, the Supreme Soviets of the U.S.S.R. and the Union Republics and their Presidiums which act during the intervals of the regular sessions of the Supreme Soviets, are neither active nor influential organs. The legislatures do not offer the representatives of the population an opportunity for active participation in legislative work. Legislation is considered subordinate to political needs and is dictated by the Party. The legislative bodies have neither rights nor principles of procedure which are guaranteed as inviolable by the State. In other words, the minority dictates to the majority.⁶

As law is used as a weapon of the Communist Party to compel conformity with the Party's changing policy, the law has become arbitrary, extremely flexible in application, and only significant in regard to particular circumstances.

There are no rights which are absolutely guaranteed by Soviet law. 'Capitalist law is based upon the abstract "natural rights" of a person; it places the person in the center of the world and surrounds him with a cult and therefore establishes the limits of the State ... however the proletarian state sets the limits not upon itself but upon its citizens.' Only the state is the source and a creative force of the whole legislation, as it is only the state which creates the so-called objective law, in other words, the aggregate of norms which are ruling the society.

Bourgeois legality is characterized by Soviet jurists as conservative. Revolutionary legality is relative and flexible; it is deprived of legal formalism. It is possible to neglect the letter and text of law if it seems to be obsolete and does not correspond to the requirements of the Revolution.⁷ This relativity is expounded by Vyshinskii: 'Revolutionary legality retreats before revolutionary expediency.' ... 'The formal law is subordinate to the law of revolution ...' ... 'Collisions must be solved only by subordination of the formal commands of law to those of party policy.'⁸

There are many evidences of the relativity of Soviet law. The Soviet Constitution itself is not an exception. Some amendments to the Constitution of 1936 have been included *post facto* as, for example, Article 119 which lengthened the working day from seven to eight hours, and Article 121 abolishing free education after the seventh grade. These amendments were included in 1947, seven years after the corresponding laws were issued (June 26 and October 2, 1940, respectively). Abolition of ministries, the organization of new ones, and the abolition of autonomous republics and regions take place without observing the formalities prescribed in Article 146 of the Constitution for amendments to it.⁹

One of the most recent reforms known as 'the consolidation of kolkhozes' has been carried out in the Soviet Union since the beginning of 1950. It is enforced by administrative regulations (decree of the Council of Ministers and Central Committee of the ACP without any exact date). Meanwhile, Article 8 of the Constitution continues to guarantee that the land occupied by a collective farm is given to it individually 'in perpetuity.' A forcible consolidation of collective farms is inadmissible without a corresponding amendment of the Constitution unless collective farms themselves conclude an agreement about consolidation. Disregard of the elementary principles of legal form is typified by this consolidation of collective farms under administrative orders without any legislative act. According to the existing legal code, decisions and orders of the state administration can be issued only ... 'on the basis of and in pursuance of the laws in operation.' (Article 66 of the Soviet Constitution.) In reality, however, the Council of Ministers of the U.S.S.R. together with the Central Committee of the All-Union Communist Party either abrogate or

limit the existing rights of Soviet citizens, thus amending or supplementing existing law. For example on December 14, 1947, the Soviet government deflated the currency by issuing a new ruble equivalent to ten old rubles. This reform could have been accomplished by administrative order had it been levelled equally at all persons and institutions. Instead, the government established special rates for depositors and persons having current bank accounts, for cooperatives and collective farms, and for those with more than 10,000 rubles on deposit. This reform operated prejudicially against many millions of peasants not accustomed to depositing their savings in banks, and who consequently lost 90 per cent of their money. It was the kind of expropriation which certainly should have required approval of the legislative organs.

Numerous decrees and resolutions of the Soviet government concerning collective farms and the peasantry established different kinds of compulsory deliveries to the state, principles for the distribution of the harvest, limitations on kolkhoz economy, and administrative control over kolkhozes. These measures are sometimes equivalent to taxation, sometimes they are limitations on individual rights of farmers and on the economic initiative of kolkhozes which are officially characterized as co-operative organizations. These administrative acts lie beyond the province of the executive branch of government and require, in proportion to their significance, adequate discussion and approval of the legislative bodies. Decrees and resolutions which radically change conditions of life for many millions of peasants are of immeasurably greater significance for the whole country than some of the *zakony* (laws issued by the Supreme Soviet) and *ukases* (laws issued by the Presidium) published in the *Vedomosti Verkhovnogo Soveta*, official organ of the Supreme Soviet of the U.S.S.R.

In the same administrative order the Soviet government has changed and limited the activity of the trade unions and transformed them into government agencies, published 'model rules of employment for workers and employees' and abolished and later partly restored collective bargaining. These measures touched upon the essential rights and duties of the whole working class. It has limited their rights and increased their obligations, all without the sanction of the legislative organs.

The consolidation of collective farms adds only another example to the collection of administrative acts having the character of formal statutes. The significance of these acts is acknowledged even in the Soviet textbooks.¹⁰ The legality of these acts has never been discussed in the Soviet juridical literature, and it is not subject to the control of the Procurator-General of the U.S.S.R. because acts issued by the Council of Ministers of the U.S.S.R. are not subject to his supervision. (Art. 131 of the Const.).

One would not be greatly mistaken in saying that there are no other sources of law in the Soviet Union besides the statutory law in the wide scale characterized above. Custom is the most inert form of law, and the revolutionary state eliminates it in principle by regarding it as a survival of the old regime and a resurgence of ignorance. Formation of new customs, on the other hand, is scarcely possible under the conditions of omnivorous regimentation.¹¹

Soviet jurists do not regard previous decisions of the courts as a source of law, because courts do not exist for lawmaking but only for interpreting the existing law according to Article 32 of the Constitution and Article 75 of the Judiciary Act of 1938. Andrei Vyshinskii is one of those who supports this point with special emphasis. There have been some dissenters,¹² but Vyshinskii's point of view still prevails.¹³

However, there is ground for an opposing point of view. The Supreme Court of the U.S.S.R. has been issuing instructions in the form of directive guides which are obligatory for all courts in the country. These directive guides can be considered as a form of legal interpretation.¹⁴ In practice, however, those guides extend the existing provisions of the penal code not only by interpretations, but also by analogies and supplements.¹⁵

Thus it can be seen that the broad and all-embracing decrees and resolutions in the Council of Ministers have the significance of law, and that this legislation is the only genuine source of Soviet law, the main object of study, for understanding the peculiarities of Soviet law.¹⁶ For example, economic contracts have ceased to be an expression of the free agreement between parties with the significance of model ones. Law in the Soviet Union has a coercive character and standard types of contracts and model rules of employment have been substituted for free agreements. During

the period of N.E.P. there was more freedom in business transactions, even when they were between State enterprises, than after the socialization of the entire national economy.¹⁷ Collective bargaining is also standardized by these stereotyped rules.¹⁸

The Union Soviet Republics and Autonomous Republics also have their legislative organs. Their own legislation does not originate with them however. The legislative codes of these republics are identical except for some insignificant amendments adapted to local peculiarities. Almost all the laws issued by the R.S.F.S.R. are followed word for word by the constituent republics of the U.S.S.R. It is therefore sufficient for a study of Soviet law to refer to the legislation of the U.S.S.R., which is compulsory for all parts of the Union, and to the R.S.F.S.R., as the leading and model constituent state of the Union.

2. *'General Line' of the Communist Party*

The two main characteristics of the Soviet system, first, its extreme centralization, and second the domination of a single and exclusive ideology, explain the concentration of lawmaking in the hands of the central Soviet authorities and the exclusion of all sources of law except statutory legislation.

Soviet centralization originated in Lenin's thesis that people are unstable, are changing flesh and muscle, and that 'only from outside is it possible to bring a new political consciousness to the workers.' By the 'outside' Lenin meant an organization of professional revolutionists, a minority which directs the majority.

Stalin carried this political theory to its extreme in his Constitution (see below Ch. 16) in which he concentrated all power in the hands of the central government of the U.S.S.R. Not only political life, but the activity of all economic, professional and cultural organizations must be subject to the 'general line' and to the national economic plan established by the central Party and the government organs.

The 'general line' formulates the current political trends in the Communist Party which then become compulsory not only for all administrative bodies but also for the courts. 'Neither court nor criminal procedure is or could be outside politics. This means that the content and form of judicial activity cannot avoid being subordinated to political aims and strivings.'¹⁹

It goes without saying that such a centralization excludes any possibility of the recognition of customs, precedents, or court decisions as the sources of law. A law that originated apart from an imperative directive from above could conceivably deviate from the 'general line,' and conflict with new trends. On the other hand, if bound absolutely by central domination legislation can easily be adapted to the current needs and changing conditions of the revolutionary time.

The political philosophy of Bolshevism and its revolutionary function make it clear why law in the Soviet Union is confined to legislative activity directed by leading units of the Communist Party. Only he who is familiar with the significance of the party apparatus in the Soviet Union and the dependence of the whole political structure on party leadership can get a correct view of the real source of Soviet law. The most important laws in the Soviet Union are always based on the resolutions of the Central Committee of the All-Union Communist Party. No significant reform can take place without the preliminary approval of the central agencies of the party. *Zakony i Ukazy* (Ukases) are only constitutional formalities, necessary since the party works and directs the political apparatus from behind the scenes. When for some reason, the active participation of the Party has to be emphasized, laws are published in the form of joint Resolutions of the Council of Ministers and the Central Committee of the All-Union Communist Party. Such acts are as authoritative as ukases of the Presidium of the Supreme Soviet, and the source of both of them, as we have seen, is the Party.²⁰

Every Soviet citizen understands that the decision of the Politbureau,*) the highest organ of the Communist Party, is more effective than any provision of the Constitution, and he is not surprised therefore if one or another republic is abolished, although its existence is guaranteed by the Constitution. The decision of the Politbureau is the expression of the 'will of the people'. If the name of the Central Committee of the All-Union Communist Party is mentioned alongside the Council of Ministers it means that the mighty apparatus of the Party will support the new measure and any deviation will be considered as disloyalty.

*) The Presidium of the C.C. since Oct. 1952 (see below Ch. XV).

The Presidium of the Supreme Soviet as well as the Council of Ministers and the Plenum of the Supreme Court are composed of members of the Communist Party and all members of the party must obey the directives of the Politbureau. Any discrepancy between these central organs is impossible. The guiding directives of the Supreme Court express the will of the Politbureau as do the Resolutions of the Council of Ministers. There are no reasons of principle to exclude these directives as sources of Soviet law, as they supplement in fact the existing legal regulations.²¹

3. *Legal Publications*

Studying Soviet law seems at first sight easier than studying any other system of law. Provisions of Soviet law are less disputable than the optional norms of private law, as all the provisions of the former are of an imperative nature. They are usually precise and comprehensive as all administrative acts and do not require special analysis. Many a jurist limits himself to a simple description of the new laws.

There are some difficulties, however, which are not easy to surmount. First, new Soviet laws are not always available. Some laws are not published at all. According to the resolution of the Central Executive Committee and the Council of People's Commissars (August 22, 1924)²² some acts can be banned from publication and others may be withheld from publication because they are not considered to be of general significance.²³ Also, many acts issued as resolutions of the Council of People's Ministers (formerly called People's Commissars) and the Central Committee of the All-Union Communist Party (b) are not published because of their technical nature either in the *Vedomosti Verkhovnogo Soveta* or in *Izvestia* and *Pravda*, but only in special periodicals, *Sotsialisticheskoe Zemledelie* or *Trud*, etc. Publication of the *Collection of Laws and Decrees of the U.S.S.R.* has either been discontinued since 1950 or distribution abroad has been prohibited. Finally, all Soviet laws are published after their final draft and approval and neither the discussions nor the minutes of the legislative boards are made available to the public.

In order to determine the real meaning of these laws, not only the discussion and minutes of the various legislative organs are necessary, but also a collection of court rulings is requisite. Again

there are no Soviet 'casebooks' or special publications of Supreme Court Rulings, except the occasional and incomplete collections of the rulings of the Plenum of the Supreme Court of the U.S.S.R. and some of its directive instructions.²⁴ Sometimes one can find reports about a case in the Soviet newspapers, and one may find a few cases reported among the annotated editions of the separate law codes.²⁵

The legal literature of the Soviet Union is badly written and prejudiced. The official newspapers and periodicals comment on every new law using the same expressions. Lenin's and Stalin's dicta are substituted for the general principles of legal and ethical maxims. Appraisal of the legal norms and legal ideas differ only if the 'general line' of the Party changes. Frequently several jurists will repeat the same explanations with only minor variations, customarily eulogizing the new legislative measures. One never finds remarks critically condemning the new measures.²⁶ However, insofar as the articles by Soviet jurists expound the official point of view beyond the official explanatory notes for the newly issued laws, they are undoubtedly of interest and value.

Last but not least, although Soviet law differs essentially from the law of the so-called capitalist states, legal terminology is the same in both systems. Such terms as federalism, national autonomy, sovereignty, democracy, ministries, syndicates, trusts and civil rights can easily mislead western jurists when they are used by Soviet legislators, just as familiar labels can deceive a customer if used by a new producer on new products. A careful examination of Soviet legislation and practice, is, therefore, imperative, particularly because of the parallel nomenclature in both systems.²⁷ Spellbound by the original promises of the Soviet state and ignorant of the perversion by Soviet jurists of such familiar terms as federalism, democracy, etc., one can overlook the reality.

Part II

SOVIET ECONOMIC LAW

Chapter VII

LEGAL FOUNDATIONS OF THE CENTRALIZED ECONOMY

Soviet 'socialism', and especially the Five-Year Plans, undoubtedly impress the outside world not only by their grandiose projects but also by their simulated reasonableness. The idea in itself is indeed seductive. Subjecting the elements of an unorganized economy to a well-regulated plan might appear at first sight to be a fresh conquest by man of no less consequence than his mastery of the physical elements.

Petrażycki very aptly applied the term 'decentralized' to that economic system which is based on property rights, freedom of contract and of inheritance, because of the lack of any central method of administrative management linking them together.

The term 'centralized' was applied by Petrażycki to the system of regulated economy that contrasted with private economic enterprise and which was subjected to a common plan under the supervision and authoritative control of the state. ²

The transition from a decentralized to a centralized form of economy, i.e., from independent private enterprise to a state organized and regulated economy, infers a striking change in the conditions of life, necessitating the reeducation of human psychology on quite different lines. At one time, B. Chicherin, who lived from 1828 to 1904, and was an eminent Russian scholar in the field of political science, foresaw that the undermining of the foundations of private law was fraught with greater and more dangerous consequences than the possible effects of a political revolution.

A decentralized system of economy surrounds us; it is the

atmosphere in which we exist, it conforms to human nature, it is founded upon the right of mankind to look after its own affairs and to administer its own property at its own risk. A decentralized system of economy is founded on property, freedom of contract, and freedom of inheritance; the three supporting principles of private law. This system does not have a plan. The production of economic goods is dependent upon the individual initiative of different persons, who compete against each other to produce more goods of better quality at cheaper prices. Freedom of contract created favorable conditions for competition.

Conversely, centralized economy is characterized not so much by the consciousness of one's rights as by a sense of duty; it is regulated by public law and distinguished by traits of public service, discipline and sacrifice. Subordination is requisite for bringing it into effect—subjection to a single nucleus of authority, a central directing will unconditional and stringent, as in state, criminal and financial law. This law was called *jus cogens* or coercive law by the Romans, as it exacted the fulfillment of certain duties and had distinctive features of state supremacy.

Consequently the psychology of private law and that of public law differs to a considerable extent.

Private law is law of personal freedom. Freedom of employment is one requirement of strengthening the quality of personal freedom. Everyone seeks a livelihood according to his choice. He who works for himself can work where and whenever he wishes. Finally, the idea of freedom of contract is logically derived from the concept of property and the right of an unrestricted choice of occupation. A contract represents one of the forms of the administration of property and of oneself; it binds the parties concerned by obligations of a proprietary or personal character. Freedom is everywhere expressed in the liberty of action in all phases of production, improvement, and concentration of resources.

In the Soviet Union private owners are replaced by the state. The Soviet state became the sole landowner and entrepreneur.³ Exploitation of all national resources is subject to the State-National-Economic plan and is considered to be a public service regulated by the legal provisions of public law.⁴

'It is the duty of every citizen of the U.S.S.R. to safeguard and fortify public, socialist property as the sacred and inviolable foundation of the Soviet System, as the source of the wealth and might of the country and as the source of the prosperity and culture of all the working people.

'Persons committing offenses against public, socialist property are enemies of the people.'" (Art. 131 of the Constitution).

Private law has lost practically all significance in the Soviet Union. It has become absorbed by the public law. Professor S. F. Kochekyan ⁵ rejects unequivocally the traditional classification of law into public and private law (*jus publicum* and *jus privatum*), and quotes Lenin, who said: 'We do not recognize anything private. In the field of economy everything is public and not private, from our point of view.' ⁶ This point of view is clearly indicative of the Marxist legal philosophy. ⁷

As he is subjected to public law, the Soviet citizen has lost his freedom to seek his livelihood. The state defines the conditions of production and trade; it leaves a very narrow margin for private transactions and has introduced the conscription of labor. ⁸

The Soviet organization of economic life can be compared to a military system, where as a rule we find everything centralized, regulated, subordinated to authority. Every unit is assigned a definite position and its duties are strictly circumscribed. Rights too are adapted to the interest of the public service, and they are to be fulfilled in the course of duty. No one is permitted to transfer his rights to a third person, to change his position, or to replace another in holding a right. All these rights may be revoked by orders emanating from a higher source.

It is now clear that a transition to a centralized economy presupposes a radical change of human psychology wherein devotion to social interests, readiness to face privation, and harsh discipline, would replace private interest, self-concern and freedom of choice. Let us admit that this motivation is more altruistic, but the problem remains whether it is sufficiently effective.

Everybody knows that work stimulated by private interests is more efficient. Even specialists, however, cannot picture, and perhaps do not realize, how many-sided and delicate is the mechanism of a decentralized economy motivated by the power of civil law.

The driving wheel of private profit is geared to other wheels that are in motion and cannot stop. If an interest in gain as such weakens, something must keep the wheel of competition in motion. Competition may arouse ambition, stimulate efforts to attain a place of greater vantage, or may even lead to ruin. Competition, essential to private economy, does not allow any one to rest on his laurels. Tomorrow they may be taken away. The next wheel upon which private endeavor rests is the act of providing for one's family. The necessity of taking care of one's self and also of those who are in one's charge, demands unceasing work even when it appears that a sufficient sum has already been amassed for one's own needs. When it is possible to let up the desire to improve the position of dependents, to bequeath more to them, spurs one to further efforts and keeps the wheels of industriousness moving—they cannot stop. One motive reinforces another.

In a regime of centralized economy, under the aegis of public law, matters must be viewed from a different standpoint. The general welfare demands the service of all citizens as the purpose of their existence. Property which brings profit is nonexistent. The possibility of accumulating savings is limited not only by actual conditions but also by the prejudice against 'capitalists' and the impossibility of using money for a profitable business. There is no spirit of competition motivated by fear of the decline of energy or health, but there is a competitive spur of another kind, based on the ambition to acquire tokens of distinction. These marks of distinction, however, do not attract everyone to the same extent as does economic profit. Moreover it is impossible to award marks of distinction to all, and to substitute honors for material interest, one main incentive in the sphere of production. Such distinctions are received mostly by those who are devoted to the rulers and follow their instructions and not by those who act on their own initiative, as it is too much of a risk to endanger the public interest. Thus, in spite of all encouragement, initiative is very limited, work is subject to routine and industriousness often misdirected.

Of course, fanatical loyalty to an ideal may prevail, awakening an intense desire to accomplish great social aims, and to stimulate the self-sacrifice and heroism which have led armies to victory

even at the risk of life itself. Psychological traits of this kind are very ennobling, but they are deficient in that everything depends upon a single motivating power, and if by chance it loses force, then everything comes to a standstill. If for any reason faith in the ultimate power of a chosen course is allowed to wane, the fanatic ardor cools, and the task of reinvigorating dissipated energy is far beyond the powers of human endeavor.

If a centralized system of economy under state control provides for the immediate welfare, its successful work is encouraged and its efforts stimulated. But if decrease in production and increase in commodity prices are noted; if scarcity of goods and lack of choice of goods forces a limited inventory, and deprivations are continuous, by what means can heroism and self-abnegation be enforced? To succeed in maintaining and encouraging the energies of workers under conditions of want is especially difficult because obligations override rights in a centralized economic regime regulated by public law. Everyone is transformed into a state official. An excessively large supervising staff is ever present. The necessity for fulfillment of instructions and orders replaces individual initiative. Due to this, inert and supine formalism begin to prevail and the deadening effect of bureaucracy spreads.⁹

The sole correctives for this condition are to be found in rewards and penalties for work. Some persons are encouraged while others are intimidated. This procedure in the Soviet Union is basic to the economic system, instead of being merely auxiliary as it is elsewhere. Rewards embrace numerous groups and become legalized privileges, which are features that infringe on social equality and tend to revive the stratification of classes. Penalties soon develop into terrorism which shows no signs of abating.¹⁰

Thus, a centralized system of economy is deceptive, despite the prepossessing chain of reasoning upon which its optimistic expectations and influence with the people is founded. Conversely, a decentralized system of economy, despite its apparent defects, is efficient and vital. It is closely allied to the natural traits of personal self-interest and love of family and facilitates the building of a psychological armament that inspires men to labor, lending them additional incentive when a faltering will becomes sapped of its energy. Should a man lose his interest in the accumulation of wealth then, as has already been pointed out, he con-

tinues to work to provide additional support for the benefit of his family. If he has no kin, there are a number of other motives to him on: for example, the desire to bequeath his property to friends or associates, charitable institutions, or to public enterprises. The possibility of having the 'posthumous fame of one's name redound to one's honor,' or of being 'enshrined within the portals of an immortal past,' are sufficient to sustain both energy and enterprise to no less degree than worthier motives.¹¹ Even after adequate wealth has been accumulated there is always the danger of competition, rivalry, and an ever increasing ambition for success in business, to say nothing of the chances of losing a position already acquired. These reasons alone would suffice to prevent energy from becoming dormant.

As was said above, all attempts to destroy the basis of private economy and initiative are pregnant with dangerous consequences.

If the foregoing sketch has furnished good reason for believing that the rumors of the imminent demise of capitalism are more than premature, the present short survey provides us with sufficient proof that the system founded on the rights of property, freedom of contract and inheritance has many significant advantages as compared with the Soviet planned economy.

Later the Soviet system will be contrasted with the free economy. This type of national economy has been practically replaced by new hybrid, and the return to the *laissez faire* economy is scarcely possible and expedient. For the future, it is possible to argue for the gradual submission of the whole economy to the state or for the limitation of free economy only in extreme necessity and for securing private property and individual competition as the necessary foundations of economic order. Only a study and appraisal of the two contrasting systems might help to determine which one of these two courses will lead to progress.

The following will help us to evaluate both systems on the basis of a detailed analysis.

Chapter VIII

THE SPHERE OF ECONOMIC FREEDOM

Economic freedom cannot be unlimited in an organized society. Various limitations are necessary and they exist in all legal systems for the reconciliation of the conflicting interests of particular individuals and of individuals and society as a whole. In spite of these limitations however, the freedom provided by civil law under conditions of a decentralized economy is so broad that the rights based on civil law are considered absolute rights. Property rights, mortgage rights, and rights of inheritance (rights *in rem*) are absolute rights because they empower the possessors of these rights to act according to their own choice and presumably with a freedom that is limited only to the extent that it may conflict with public welfare and ethical principles. These rights are absolute also because they are protected against any kind of infringement. They cannot be appropriated, abolished, or limited without compensation, even by law. ¹

During the first period of the Soviet regime, the so-called War-Communism, private rights were ignored, insomuch as the legislation of this period intended final destruction of the former social structure. ²

This policy, described above (Chapter V), proved to be ruinous. Peasants buried or destroyed their crops and adopted passive resistance by not sowing. Trade ceased to function; it had been replaced by a primitive barter system. ³ It became necessary to protect legality against revolutionary expediency in order to inspire confidence from producers and merchants. At that time it was understood that law is necessary even under proletarian rule. ⁴ Consequently, the Civil Code was issued, at first for the R.S.F.S.R. and later, according to the same pattern, for some of the other Union Republics (several simply apply the code of the R.S.F.S.R.). However, the term 'civil law' was not popular in the legal science of the U.S.S.R. It was replaced by the new term 'economic law' (*Wirtschaftsrecht*) which was used mostly in German judicial literature of the period between the two World Wars. ⁵

The Civil code had then restored in the U.S.S.R. property rights, contracts, including the right of forming partnerships and joint stock companies, and the right of inheritance. But all

private rights were recognized and protected by the Civil Code with some reservations. The most outstanding Soviet jurist of the NEP period, the Academician Pashukanis continued to believe that law and the socialist order are incompatible. He could not divine, however, that his theory and his personal authority would wither away, but the Soviet law would not.

In 1929, when the third period of the development of Soviet law began, private enterprise and private trade were again abolished, concessions granted foreigners were annulled, individual farmers whose land rights had been recently confirmed by the Land Code were forcibly collectivized, and peasants who managed to 'enrich themselves,' according to the official slogan of the NEP, were exterminated even more ruthlessly than the rich nepmen.

The period of the five-year plans required the strictest discipline, unconditional obedience, and in spite of the official realization of socialization of the country, the regime of merciless prosecution of saboteurs, wreckers, thieves, and those who misappropriate State and cooperative (kolkhozes') property, still continues. The Soviet penal law protects Socialism against the survivals of capitalism. It was also necessary, from the Soviet point of view, to prosecute all suspicious and unreliable elements, all real and potential enemies and spies. The capitalist encirclement is constantly mentioned in Soviet literature as a permanent threat, which makes the existence of state and law a measure of self-preservation. It is necessary also for preparation for world revolution, as only a strong State is able to mobilize and consolidate all revolutionary forces inside and outside the country and exterminate opposition.

The law of the present period is not characterized, however, by compulsory measures only. In order to carry out a program of industrialization it is necessary not only to coerce but also to stimulate and encourage. A piece-work system and compensation according to established differentiation of civil service ranks and classification of toilers is therefore a characteristic of the present period. The complex hierarchical system of ranks, orders, salaries and wages, premiums and bonuses now existing in the Soviet Union recalls the pre-revolutionary state with its legal classes and social differentiation. In this respect, the present period essentially differs from the period of War-Communism.

On the basis of the principle that the Soviet Union is 'a state of workers and peasants,'⁶ citizens of this socialist state receive the right to share in the common wealth according to their abilities and labor.⁷ And he who receives his share has the right to the government's protection.

Consequently, the Soviet legal system in the stage of development must preserve the Civil Code and protect private rights, such as personal ownership, copyright, systems of contracts, and the right of inheritance.

Since the time of Stalin's interviews with H. G. Wells and Roy Howard in the 'thirties,'⁸ the contemporary legal theory of the Soviet Union attaches great importance to individual rights and civil law in general.⁹ The terms 'civil law' and 'civil rights' have been rehabilitated. Civil law appeared again as a special subject in the catalogues of the universities. It is no longer necessary to hide it under a fig-leaf, calling it 'economic' law. However, civil law is not completely restored in the Soviet Union; it has a specific character and very limited application. A study of Soviet civil law therefore requires some orientation.¹⁰

First of all the Civil Code subjects private rights to very essential limitations. Secondly, the holders of private rights in the Soviet Union are deprived of opportunities to act jointly in the sphere of economy and to use for this purpose various forms of legal procedure according to their own choice. And, finally, the most important objects of private rights are excluded now from the field of free economic activity and private business. Thus, many articles of the existing Civil Code, as will be illustrated below, have lost their actual significance; they are a dead letter.

I. General Limitations of Economic Freedom

The role of civil law in the Soviet Union under conditions of the centralized economy is of minor importance. This secondary role is well characterized by the Soviet jurists as follows:

'Capitalist law is based upon the abstract "natural rights" of a person; it places the person in the center of the world and surrounds him with a cult and therefore establishes the limits of the State ... however, the proletarian State does not limit itself but its citizens.'¹¹

'It is not correct to distinguish civil law as a sphere of autonomy and the State, Administrative and Criminal law as a foundation of power.'¹²

The Soviet state does not limit itself, it limits citizens; individual autonomy is not a characteristic of the Soviet civil law; such are the theses of Soviet jurists who certainly know better than any one else the real meaning of Soviet legislation. Moreover, their interpretation corresponds exactly to the general principles expressed in the famous Articles 1 and 4 of the Civil Code of the R.S.F.S.R.¹³ The provisions of these articles, which, according to their general character, have to be applied to all civil rights, characterize private rights as relative and conditional. Rights are to be protected if they do not contradict their social and economic purpose; their purpose being to serve as a means for the development of the productive forces of the country in a definite direction—toward Socialism.¹⁴

The tendency toward limitation of civil rights finds its reflection in the law of civil procedure. The court's ruling has to be revised if, in case of its examination by the Attorney General in the exercise of his supervisory powers, a 'plain violation of the interests of the workers' and peasants' state or *of the toiling masses should be disclosed.*'¹⁵

The limitations produced by the above cited provisions of Soviet law exceed similar limitations adopted by the other contemporary legal systems, even those which are established by the most restrictive modern civil codes.

Originally the limitations of civil rights were mostly based on ethical principles. Although absolute rights presuppose a broad field for the arbitrary actions of their holders, formulated by the Romans as a right to use and to abuse (*jus uti et abuti*), maliciousness, nevertheless, was not protected by the law (*neque malitiis indulgendum est*).

The modern codes have strengthened still more the idea of preventing the misuse of rights by extensive interpretation of the law, and the contemporary theory of civil law emphasizes the inadmissibility of acts which do not correspond to the social function of law.

The German civil code of January 1, 1900, (B.G.B.) had in its definition of the abuse of right, 'exercise of right which has as its only purpose the injury of another person.'¹⁶ This produced the moral principle of limitations of civil rights. According to the German code, only an act is considered as an abusive exercise of

right (*dolo malo*) which is committed with a fraudulent intent. However, it is not easy to prove maliciousness, and the Civil code of Switzerland (S.C.G.B.) preferred therefore a more restrictive formulation of the exercise of rights, characterizing them as being against 'truth and faith.' ¹⁷

In the legal science of civil law the German formula corresponds to the so-called *subjective* theory, as it has in view the suppression of maliciousness (law of nuisance, *Schikane, abus de droit*); the Swiss formulation, on the other hand, corresponds rather to the *objective* theory which was later developed and has been proved by many a jurist. ¹⁸ According to the latter, every institution of civil law has its social function and economic purpose and, correspondingly, every exercise of a right must be in conformity with the functions and purpose of the law giving such a right. ¹⁹

The European theory has in mind a contradiction between the exercise of a right with the purpose for which this particular right is given. The Soviet law has added to this principle a vague formula of 'the development of the productive forces of the country' which has been interpreted, as we have already seen, as an interest in the socialization of the country. ²⁰

Thus all private rights are subject to the control of the state at its discretion. Soviet jurisprudence in its application of the discussed principles gives many examples of the drastic restrictions of private rights. ²¹

The practice of the Soviet Supreme Courts has not given grounds for the assertion that Soviet jurisprudence has applied Articles 1 and 4 of the Civil Code very extensively. ²² On the contrary, some rulings of the Supreme Court have instructed the lower courts to make less use of Article 1 and has set aside several erroneous decisions. However, nobody knows for certain what the practice of the lower courts and local authorities has been because not many claimants appeal against decisions of the lower courts and therefore only a few were examined by the Supreme Court.

In any event, there is no doubt that at present Articles 1 and 4 of the Civil Code have lost their formal significance. In connection with the discussion of different proposals on the subject of the drafting of the new Civil Code of the U.S.S.R., Professor Agarkov offered to exclude Article 1 from the future code in favor of a special article prohibiting 'chicanery.' ²³ In acting on his proposal,

he referred to Article 130 of the Constitution of 1936, which enjoins citizens 'honestly to perform public duties, and to respect the rules of socialist intercourse' and thus makes superfluous, according to Agarkov's opinion, any general rules concerning duties.

The apparent change of attitude towards the principles of the Civil Code, to which such great significance had been ascribed when the code was issued, can be explained only in the light of the new conditions established since the liquidation of the NEP. There is no concession or reduction in the interpretation of the general principles of civil law, as may have been immediately seen. To understand the later comparative indifference toward the provisions of the Civil Code cited, it is necessary to recall that the Civil Code was issued at the time when the Soviet legislator was anxious to strengthen individualist trends in the country.

The foundations of the NEP contradicted the trends of socialist economy and therefore the Soviet government tried to confine private enterprise to the framework of the socialist order. For this purpose Articles 1 and 4 of the Civil Code were certainly an adequate weapon. The Soviet jurist Stuchka called them at that time a 'sword of Damocles' over each private right.²⁴

But after New Economic Policy was abolished and the state concentrated the whole economic power in its own hands to become the universal monopolist, the more effective limitations of economic freedom appeared. Private rights, against which the sharp points of Articles 1 and 4 had been directed were eliminated; the objects of civil rights were also essentially limited by the nature of the economic system and, consequently, any discrepancy between civil rights and the socialist order became impossible.

What are the private rights that actually exist under the new 'socialist' regime in the Soviet Union? There are no longer in the Soviet Union any foreign concessions, private enterprises, individual farmers (with a few insignificant exceptions) that can disturb the Soviet government. On the other hand, there are some private rights recognized or even granted by the state itself, which therefore apparently do not contradict the purpose 'of the development of the productive forces of the country'.

Therein lies the secret of Articles 1 and 4 of the Civil Code and

why they became inapplicable, and that is why some Soviet jurists assume that there is even a possibility of their abrogation. As they exist at present, private rights are completely into the socialist order and have become one of its organic parts. The term 'civil law' is no longer odious. Civil law still exists, but its scope is essentially limited. Economic freedom is definitely curbed and there are no longer factors which threaten to revive capitalist trends in the country. Articles 1 and 4 of the Civil Code have become reservists, like veterans of a former campaign.

2. *Limitations of Economic Organizations (Soviet Legal Entities)*

With the same iron will with which it uproots individual freedom in the sphere of economic life, the domination of the integrated and centralized economy eliminates the necessity for the existence of some kinds of legal entities which hold private rights in the economic sphere.

The problem of the juridical nature of legal entities is a favorite subject of discussion in legal theory. Some jurists have considered the existence of legal entities (juridical persons) as a fiction (*fictio juris*). Therefore the latter were called moral or mystic persons (*personnes morales, personnes mystiques*). Other jurists, especially the so-called 'Germanists,' divided the holders of civil rights into two groups, in accordance with the difference between the physical and social realities. Man is a physical; and legal entity—a social organism. The third group of theories denied the reality of legal entities as subjects of law and explained their existence by the protection of interests of beneficiaries, as the famous German jurist R. v. Jhering taught, or by the fact of the existence of trustees (*Amtsvermoegen*, according to Hoelder). Finally, some jurists considered the purpose and not the subject to be the most important element in legal relations since every property serves one or another purpose, and thus they explained legal entities by the need for attaching some rights and duties for social purposes, as well as for benefits of individuals.²⁵

The Austrian jurist Schwarz has represented the existing theories of legal entities wittily.²⁶ He describes a man who fell asleep in the time before electricity was used to propel streetcars, and who awoke after the electrification. He was astonished to see streetcars moving without horses and naturally began to inquire

of passers-by how that could be. He received many very different answers. One told him that there was a fictitious horse. Another, that there was a man who made the streetcar go. Still another said that the car moved because there were passengers inside who had paid for transportation. Only one (this is the choice of Schwarz) explained that there were different kinds of moving forces which could be measured in horse-power. This kind of force in economic life, according to Schwarz, is purpose.

The theories explained above must show first of all why there are other holders of rights and duties besides man, and which are not human beings. But there is another reason why this problem attracts such interest and why it has been a favorite subject of discussion. Significant conclusions of the problem are based on theories of legal entities regarding their formation, scope of legal capacity, responsibility, and dissolution.²⁷ If they are but fictions, everything depends upon the authority, which has the right to permit or reject the formation of a new legal entity, to recognize or deny different rights (*principe de suspicion*), and to dissolve them at its own discretion. If they are organized for some definite purpose, everything depends on the character of a given purpose (*principe de specialité*). If they have, on the other hand, a real existence as social organisms, then the authority does not create them but only recognizes their existence or their liquidation. Legal capacity of these entities is then presumed to be limited by natural conditions only. A legal entity cannot marry and have children, for example.

The organization of legal entities may be considered as a threat to unorganized individuals. The more powerful some companies become, the more they monopolize production and trade, and individuals (physical persons) cannot compete with them. However, at the same time, the institution of legal entities widens the sphere of individual freedom. As a matter of fact, the freedom for an individual to organize an association, a corporation, or a foundation opens new possibilities for either profitable or non-profitable purpose. It opens up to him the means of accumulating resources for executing a plan on a scale too great for one individual, of perpetuating his name through a donation of funds to an institution, for initiating an enterprise on the basis of joint capital without risking entire financial potential. It extends indi-

vidual enterprise and provides the vehicle for realizing initiative.

To permit the free formation of legal entities, to vest them with all rights necessary for the realization of the purposes for which they are organized, and to limit the discretionary power of the authorities to dissolve legal entities is to extend and strengthen the freedom of individuals who are interested in the existence of different kinds of legal entities.

What then is the Soviet theory of legal entities? Which one of the existing theories, if any, best corresponds to the legal conditions of their existence in the Soviet Union?

An outstanding Soviet jurist, A. V. Venediktov, devotes a part of his thick book on State Socialist property to the problem of legal entities. He rejects all the current theories offered by the bourgeois jurists.²⁸ His own doctrine is based on the thesis that legal relations are possible only between social classes, or within the classes, between individuals, and between man and the collective entity. Legal entities are various collective bodies which conclude transactions in their own name and have under their management a certain stock of resources (*obosoblennoe imushchestvo*) designed to achieve a certain purpose.

According to Venediktov, the 'bourgeois' theories do not disclose, or purposely draw the curtain over, the class character of legal entities, and do not emphasize who appropriates the income. In this manner he diverts attention from the legal to the economic problem.²⁹ In turn the 'bourgeois' jurists can only wonder what the theory of legal entities is which Venediktov himself offers, and whether he really has any theory or is simply keeping us in the dark. He describes different kinds of legal entities existing in the Soviet Union and sometimes presents an economic analysis, sometimes a sociological one, but never offers a precise and coherent theory characterizing the legal nature and conditions of legal existence of juridical persons in Soviet law.

The theory of legal entities in Soviet law must be discussed in the light of the vast discrepancy between the individualistic trends of Civil law, as we are used to understand it, and Soviet collectivism. The individualistic spirit of civil law is bequeathed to us by the Romans, who took for granted that all legal norms are established for the sake of man (*hominum causa omne jus*

constitutum est). According to this theory only a natural person can be a real holder of rights and duties.³⁰ This conception became absolutely foreign in the economic structure of the Soviet state when the economic life had been completely centralized in the hands of the state. Here a single entity replaced hundreds of millions of individual holders of private rights and deprived all of them of their ownership of the means of production. To become the owner of all lands, mines, industrial enterprises, and important firms, and to monopolize communication systems, banks, and trade, makes all people dependent upon the state, which then becomes the universal monopolist concentrating an unlimited economic and political power in its own hands.

Under such conditions legal entities as well as individuals are losing their independence. There are several kinds of legal entities in the Soviet Union but they are not granted the opportunities open to a legal entity in the Western world.

As elsewhere, in the Soviet union there are numerous government agencies for which public funds are appropriated. Every government agency or institution is a legal entity strictly limited in its transactions by its appropriation and by tasks assigned to it. There is no difference between these institutions in the Soviet Union and other countries, except that the Soviet institutions have an exceedingly inflated bureaucratic machinery which excels other countries in the number of its agencies. In addition to the ordinary government institutions, scores of thousands of regional, district and village soviets belong to these agencies.

Another group of legal entities in the Soviet Union consists of government agencies operating 'on a business basis.' To this group belong numerous *tresty*, *kombinaty*, *syndicaty*, and *torgi*.³¹ The misleading titles of these Soviet business agencies were introduced during the NEP period, when contrary to its general policy to fight against the democracies with undemocratic weapons the Soviet government decided 'to compete with capitalism using capitalistic methods.' The capitalist method in the Soviet Union consists of giving to individual enterprises a certain portion of government property and working capital on the condition that they fulfill the tasks assigned to them by the State plan.³²

The Soviet business agencies are subject to the 'control of the ruble'; they are responsible for losses and are encouraged to make

a profit. Although operating on a business basis they nevertheless remain government agencies under the control of higher institutions, ministries or *Glavki* (departments or bureaus earlier attached to the All-Union Council of National Economy (the V.S.N.Kh.) from which they receive instructions and orders.³³

With a few insignificant exceptions, the socialist state is the sole owner of all means of production and is a trade monopolist. It is evident that all legal entities in the Soviet Union are government enterprises though organized on a commercial basis. They regulate and exploit the state's property for those activities which correspond to the government's purpose and to the national economic plan.³⁴ The *trests* and *torgs* carry out the plans of the government,³⁵ and have responsibility only within the limits of their working capital and production.³⁶

As an illustration of how narrow the limits of the business 'independence' of a Soviet *trest* are, an example can be cited where the administration of certain mines had to obtain special permission to sell some old bricks, because such a transaction would not be within the purview of mines.³⁷ Venediktov³⁸ refers to a series of rulings of the *Gosarbitrazh* which declare various transactions concluded without permission of higher bodies null and void. For example:

The Leningrad Union of cook-shops sold a factory-kitchen for mass production to the main confectioner of N.K. *Pishcheprom* (Commissariat of Food Industry). As this transaction was concluded without permission of the S.N.K. of the U.S.S.R., the *Gosarbitrazh* decided to prosecute both parties for violation of law. (Ruling of 1935, No. 21.)

ORS (*Otdel Rabocheho Snabzhenia*), Section of Supply of Workers of the Alexeev Sulphur Plant acquired a pig-husbandry, including pigsty, pigs, equipment, stock of pig food, etc., and refused to pay for same on formal grounds. The *Gosarbitrazh* (1937, No. 1) declared the transaction null and void and informed the prosecutor about the illegal procedure.

Among the legal entities in the Soviet Union, cooperatives, especially the most important, the *kolkhozes* (collective farms), are apparently more independent. There are in fact essential differences in the organization and conditions of existence of *kolkhozes* and that of the *trests* and *torgs*, but agricultural produc-

tion is nonetheless regulated by plan, and collective farms are responsible for fulfilling that plan. Their activity is undoubtedly a significant part of the socialist economy and the *kolkhozes* are supposed to reeducate farmer individualists and transform them into members of a socialist society.

Even the so-called voluntary associations, trade-unions, youth organizations, sport and defense clubs, cultural, technical, and scientific societies which, according to our usual conception must be the most independent in their activities, are in fact directed by the Communist Party and are, the same as all other entities, at the service of the state. ³⁹

Trade unions are considered schools of Communism. The *Osoaviakhim* (*Obshchestvo Sodeistviia Aviatsii i Khimicheskomu Stroitelstvu*, Society for assisting aviation and the development of chemistry) is a subsidiary military organization. Associations of writers, composers, artists, etc., are organized for the purpose of controlling and coordinating the activity of their members so as to make the association conform to the general goals of the party and government. Such organizations 'cannot be organized for the purpose of protecting the legal or economic interests of their members, with the exception of cases especially provided for by law.' ⁴⁰ 'They shall participate actively in achieving the current goals of Soviet power.' ⁴¹

In short, all legal entities in the Soviet Union are either purely government agencies existing on appropriations from the fisc, (state treasury), or government agencies organized either in the form of business corporations ('quasi-corporations,' as V. Gsovski appropriately calls them) or as collective farms and cooperatives, or finally, in the form of the so-called voluntary associations. No matter to which group any legal entity belongs, it is always subject to government control and directives and performs special functions inspired by the highest organs of the state. ⁴²

All these entities perform simultaneously both business tasks and administrative functions. They fulfill assignments for the realization of government plans and general policy and they assist the government in re-educating and training the population in accordance with government directives. As all legal entities are either official government agencies or are at the service of the government, their formation and dissolution depend completely

upon it. The organization and reorganization of government agencies takes place in the administrative (some times in the legislative) order; the formation and dissolution of volutary associations—according to charter, or in accordance with special laws. The legal capacity of these entities is strictly limited in accordance with their special tasks (*principe de specialité*). Responsibility for torts has a personal character; that is, leaders and managers are held responsible. ⁴³

Consequently, if any of the existing theories of legal entity corresponds to the provisions of the Soviet law it is the one that considers legal entities a fiction (*persona ficta*). Soviet legislation turns back almost to the medieval period when legal entities were considered as artificially created by legislation and were limited in their capacity to the special purposes of their formation. ⁴⁴

Soviet legislation concerning legal entities is characterized by a definite limitation of freedom and self-determination of individuals in all spheres of their economic, social and cultural activity. Behind all legal entities stands the omnipotent state, which threatens freedom of individual activity far more seriously than the most powerful trusts and holding companies of the capitalist world. At the same time, there are no such entities in the Soviet Union which might augment the opportunities for the individual to develop his creative powers according to his own choice and plan with the cooperation of others.

3. *Objects of Private Rights*

The concept of the subject of private rights contains an idea of freedom for the holders of such rights. On the other hand, the concept of the object of private rights is closely connected with the same idea of economic freedom. Objects of private rights are the means by which the subjects of rights secure their economic activity and existence. Different periods in the development of national economy are characterized by various kinds of objects of private rights which have had at a certain time the predominant significance. The right to own slaves, for instance, characterized one epoch. Private rights on the land which was concentrated in the hands of noble landlords laid the foundations of the feudal regime and serfdom. This was the origin of the division of society into legal classes, which continued to exist in some European

countries up to the most recent times, as a survival of feudalism. Industrial enterprises as objects of private property have become the basis of modern capitalism.

Under conditions of free economy this problem is more economic than legal, and legal science has not paid much attention to it. It is not possible however to ignore it when we are studying legal institutions from the point of view of their connection with economic life and the conditions of centralized economy. The latter has brought many essential changes into the usual customary system of industrial enterprise.

The Soviet system, in regard to the objects of private rights, has first of all withdrawn all means of production from private commerce. That is, land, industrial transport, and other enterprises taken as a whole; industrial establishments, rolling stock of railroads, aircraft, seagoing vessels and river craft, stocks and bonds of nationalized enterprises, gold, silver, and platinum in coins and ingots; foreign currency, documents payable in foreign exchange, and foreign securities are not legitimate objects of private rights. ⁴⁵ The economic significance of this list consists in the enormous enlargement of the sphere of public economy and the corresponding reduction of the sphere of private economy. ⁴⁶

As a general rule, all immovable objects are withdrawn from private commerce. It was originally presumed by the Soviet legislator that property rights would be reduced to movable objects only. ⁴⁷ This principle, however, was not observed during the NEP when concessions were granted for the exploitation of mines and forests. But even after the abolition of NEP some private rights on immovable things, such as the right to buy and build individual homes, ⁴⁸ were established, and thus the existence of private rights on immovable objects cannot be denied in Soviet law, except that it is on a most limited and economically insignificant scale.

The Soviet Constitution in listing objects of private property, recognizes as legal 'the small private business of individual peasants and hand craftsmen based on their own labor' and protects 'the personal property rights of citizens in their incomes and savings from work performed in their dwellings, and from subsidiary home enterprises; also in articles of domestic economy and use, and articles of personal use and convenience.' ⁴⁹

The provisions cited above characterize perfectly the present state of Soviet socialism. The Soviet state protects ownership of such means of production which do not require hired labor and cannot be developed into enterprise on a large scale. They protect also 'personal property' in the strictest sense of the term, that is, property which does not produce anything but only serves personal needs and is used for consumption or comfort. Savings, which are encouraged, may be deposited in banks or invested in government bonds.

In addition to rights mentioned in the Constitution, Soviet law recognizes patents and copyrights, objects of the so-called 'exclusive' rights.⁵⁰

Thus the economic law of the Soviet Union excludes the possibility of individual enterprise unless on an insignificant scale. It does not allow the formation of joint-stock companies except those included in government planning and subject to government control. Correspondingly, in the limited sphere of individual economic activity, the law reduces the kind and number of legitimate objects of private right for petty home industries and for the new privileged groups of Soviet society.

Psychological stimuli to achieve industriousness and initiative are simplified. Human behavior is regulated and subjected to the state's control, and therefore all the evils of bureaucracy become inevitable and incurable. A detailed study of property rights and *kolkhoz* legislation and practice gives a perfect illustration of these phenomena.

PART III

CIVIL LAW

Chapter IX

PROPERTY RIGHTS

Contrary to Marxist doctrine, the system of private law does not belong to a definite economic stage of civilization, namely to the period of the division of society into classes. Property and inheritance have existed from time immemorial. Contracts are only the natural consequence of having private property and free economy, which develop into a complex system, evolving with national trade. The desire for property, not less than for ties of kinship, is inherent in human nature as an instinct. Jurists of the ancient world meeting new tribes were amazed by the universal character of some legal institutions, and they ascribed this phenomenon to the creative forces of nature (*jus naturale*). This is in fact evidence that law is not always created by legislation but originates as a form of adaptation to the conditions of social life. As human nature is similar in all cardinal impulses, it is no wonder that under similar conditions, similar institutions originate.

Property rights form one of these 'natural' rights and is the most important among all private rights. If there is no property, inheritance cannot exist and a contractual system is deprived of its customary variety and complexity. If on the other hand, property rights are recognized and protected as absolute rights of individuals, they become the foundation of economic independence and of social and political systems. According to the cogent remarks made by the XIXth century Russian scholar, Boris Chicherin, whatever restricts the rights of ownership undermines the foundations of civil order. ¹

The significance of property rights in the social structure of a State is enhanced by its motivating and educative influence on individuals. Those who are conscious of the inviolability of ownership and of their rights to secure profits and advantages which property rights can give them, when used in conformity with the general principles of law, gladly work and develop their creative ability (motivating influence), and they gradually acquire the habit of working, saving, and improving their economy (educative influence). On the other hand those who recognize the property right of others as an absolute right refrain from trespass and violations (motivating influence) and acquire the habit of generally respecting the rights of others. They adopt the social discipline which is exceptionally important for the socialization of the human psyche (educative influence). The psychological influence of property rights is most significant because some conditionings of the psychological attitude of workers pass from one generation to another and from one group of people to other groups by imitation and suggestion.

For these reasons abolition of property rights destroys the system of social education, brings on demoralization and the decline of industriousness on the one hand, and concern for the rights of others and obedience to order, on the other.² Abolition of property rights eventually requires some substitute for stimulating idle people to work and the industrious to work more. Such substitutes usually appear in the form of state prescribed penalties and rewards. Although the latter are not less ancient than property rights, they are more primitive and less efficient in educational methods, even becoming harmful if used incorrectly.

It is desirable, in the evolution of a democratic state, that there be a gradual increase in the prosperity of the nation and the well-being of the working masses of the population. The psychological stimuli of property rights assist economic progress. On the other hand, constitutional guarantees of political freedoms and of the possibility of an organized campaign for the betterment of social and economic conditions fosters social progress. Economic independence, which is one of the conditions necessary for an individual to possess self-respect and dignity, becomes more and more effective for the common good.

I. The State Socialist Property

Russian extremists have overlooked the significance of the motivating power and educative influence of legal order and do not believe in the evolution of the legal system. They have abolished private ownership of all means of production and have replaced it by state ownership and state monopolies.³

The state has become a monopolist and the citizens have lost their economic independence. In the last stage of its development and after the socialization of the whole economy, the prevailing form of property in the Soviet Union is 'socialist property.' It exists, according to the Stalin Constitution,⁴ 'in the form of state property (the property of the whole people), or in the form of cooperative and collective property (property of a collective farm or property of a cooperative association)'.

The essence of the state socialist property is well-characterized by A. Venediktov. In his work he particularly emphasized two points: that the U.S.S.R., representing all the people, is the sole proprietor of all state property,⁵ and that its property right consists in appropriating both products and the means of production.⁶

The socialist state is certainly the sole and exclusive owner of all state property. All state property without exception and regardless of the administration in which it is found, constitutes a single fund of the State's socialist property. Consequently the state plans and regulates the activities of all government enterprises (*trests, torgs*, etc.). Conforming to the different forms of socialist property, the Soviet State exercises different methods of regulation but it invariably concentrates the major control in its own hands.

The socialist state is both the holder of sovereign power and of property rights. Both political and economic leadership are united in the same hands. This system can exist only under conditions of exclusive centralism. And the state exercises its sovereign power first of all in regard to its own property.⁷

The Venediktovs' doctrine elucidates the most important characteristics of Soviet socialism. As 'the economic life of the U.S.S.R. is determined and directed by the state national economic plan',⁸ all economic activity of every economic organization and private person must be submitted to one master.

Although Venediktov does not come to this conclusion, he gives sufficient evidence that inasmuch as there is only a single indivisible fund constituting the property of the U.S.S.R., as a single socialist state, the Union Republics and the Autonomous Republics of the Soviet Federation, have no property at all. It is superfluous to repeat that *trests* are not owners of the factories under their administration. This is quite clear to every one who is acquainted with the juridical nature of legal entities of this kind in Soviet Law.

2. *The Socialist Property of Co-operatives (Kolkhozes)*

The term 'socialist property' is misleading. It is applied in the Constitution (Art. 5) to both state property and co-operative and collective farm property ('property of collective farms, property of co-operative societies.') Co-operative societies, according to the Art. 57 of the Civil code, may possess all kinds of property 'equally with private persons.'

However, not all property of the collective farms can be characterized as property possessed by the collective farms 'equally with private persons.' Everything which belongs formally to the kolkhozes, if designed for production (as, for example, cattle, agricultural equipment, barns, etc.) and, therefore, connected with the interests of the national economy, is subject to public law. Thus, only such economically insignificant property, which does not accrue profits (as, for example, furniture of the social hall or musical instruments) may be in fact private property of kolkhozes which they can dispose of as a private person does.

The 'socialist property' of collective farms is in fact not private property but rather the same as state property, at least insofar as houses, machines, cattle, horses, and implements are concerned. To a lesser degree the same should be said about other kinds of cooperative organizations. Kolkhozes are the most typical and permanent group of cooperatives. The only distinctive feature of cooperative property is that the 'state socialist property' is united in a single national fund, while kolkhoz socialist property is distributed among 250,000 collective farms for the fulfilling of certain parts of the national economic plan and is under submission to the 'political and economic leadership of the state.'⁸

Venediktov's definition of the essence of property as the right

of the appropriation of the means of production and of products, corresponds undoubtedly to the real relation between the Soviet state and the kolkhozes and uncovers the real meaning in the provision of the Constitution which states:

'Public enterprises of collective farms and cooperative organizations, with their livestock and implements, the products of the collective farms and cooperative organizations, as well as their common buildings, constitute the common, socialist property of the collective farms and cooperative organizations.' ¹⁰

The Soviet State undoubtedly considers kolkhozes as its agencies, whose function it is to supply the state with agricultural products (See Ch. XII). This is the essence of the actual relations between the state and kolkhozes, and a logical inference from the conception of 'socialist property' as an exclusive rights of appropriation belonging first and foremost to the socialist state.

3. *Juridical Effects of 'Socialist Property.'*

Venediktov's definition of property as a right of appropriation depicts an essential feature of Soviet socialism. The Soviet state as a single owner exploits all the state's property at its own discretion. It does not recognize any limitation of its right to disperse Socialist funds. It eliminates all interference on the part of social organizations against its sovereign rights. ¹¹

In order to complete this analysis of Soviet socialism as a system of the concentration of all resources, enterprises, and trade in the hands of the state, we have only to repeat that the Soviet state has become the sole landowner, industrialist, and banker. Political might joined with unlimited economic power is a phenomenon which disturbed many socialist minds when the structure and legal order of the future socialist world was being discussed. There are no limitations for the Soviet state as far as its economic authority is concerned, and neither man nor social organizations are protected against arbitrary actions of the state. By both legislative and administrative measures the Soviet state may direct the activity of managers, workers, and peasants at its discretion and appropriate the lion's share of production.

The Soviet government declares that it represents the whole nation, that the Soviet state is 'a state of workers and peasants.' ¹²

However, the state is a legal entity having its own needs and plans, and since the right to appropriate all means of production and all products belong to the government whose power is unlimited, it determines independently what share of production is to be granted to the people for their personal needs.

Thus the ownership of all the means of production and the right to appropriate all products of both industry and agriculture gives to the state its limitless power and at the same time makes the whole population dependent upon the government. ¹³

The Soviet government considers the safeguarding of the socialist property as its chief function.

‘The foundation of our system,’ points out Stalin, ¹⁴ ‘is public ownership, just as the foundation of capitalism is private ownership. Whereas the capitalists have proclaimed private property rights to be sacred and inviolable, achieving in their time the strengthening of the capitalist system, we Communists have all the more reason to proclaim public ownership sacred and inviolable, so as to strengthen thereby the new socialist forms of economy in all fields of production and trade. In case of the theft or embezzlement of public property it makes no difference whether we speak of state property or the property of the cooperatives and kolkhozes.’

In conformity with the proclamation of the socialist property as ‘the sacred and inviolable foundation of the Soviet system,’ ¹⁵ a drastic law establishing very severe penalties ‘for misappropriation, embezzlement, or any kind of theft’ was issued on June 4, 1947. It increased the penalties established earlier for these crimes by the Decree of August 7, 1932, which as Venediktov testifies, ¹⁶ was drafted by Stalin himself.

In spite of the very heavy penalties for violations of the ‘sacred and inviolable’ socialist property, an ‘unpatriotic attitude toward public property’ can still be found. *Pravda* periodically appeals to Soviet patriots, Party organizations, Deputies of the Soviets of Workers, trade unions, and the Komsomol to indoctrinate the workers in a spirit of economy and thrift with a correct attitude toward socialist property ‘as the foundation of the economic might of the Soviet state.’ ¹⁷

4. *Personal Property*

However, there exists in the Soviet Union private property as well as socialist property. What then remains for the private owners? The answer is set forth in two articles of the Constitution:

'Along with the socialist system of economy, which is the predominant form of economy in the U.S.S.R., the law permits small private enterprises of individual peasants and handicraftsmen, based on their personal labor and excluding the exploitation of the labor of others.' ¹⁸

The law also protects,

'The rights of citizens to personal ownership of their incomes from work and of their savings, of their dwellings and subsidiary household enterprises, their household furniture and utensils and articles of personal use and convenience.' ¹⁹

There are consequently two kinds of private property in the Soviet Union: the small private business, and the personal property of household goods, including private dwellings. Only the first has any meaning as a source of production and income, as it includes such industries as the breeding of cattle, handicrafts, and the running of a poultry farm. The second is of consumer character primarily, although with some exceptions (dwellings, for instance). ²⁰

The right to own private property has a singular character in Soviet law, based on specific peculiarities within the Soviet economic structure. Soviet pronouncements state that 'there is personal property in the Soviet Union but not private property.' Where private ownership is the basis for the state, private law has always occupied a position more than equivalent to that of public law. Private law was in fact established to protect private property, which has no significance in a socialist economy. As interpreters of the socialist state, the Soviet jurists cannot help but treat this branch of law, which is so important in the legal system of the democratic countries, as secondary to public law, if not subordinate.

Lenin said: 'We do not recognize anything private. In the field of economy everything is public and not private from our point of view.' ²¹ This point of view is clearly indicative of Marxist legal philosophy. ²²

In the structure of the socialist nation statutory law protecting the individual means little. Consequently the personal property rights of individuals have little significance when in conflict with the interests of the state. The characterization of property as 'personal' as distinct from 'private' emphasizes not only the insignificance but also the limited scope of the economic and social functions of private ownership in the Soviet state.²³

Members of the kolkhozes have in their possession some agricultural implements, cattle, and poultry. This property is indispensable for maintaining their private households, and it has been taken for granted that peasants cannot be deprived of it.

However it has become necessary to make similar concessions to the workers. Wages are inadequate. The people want to have some additional income; to have a cow and sell milk; or to raise poultry and sell eggs and chickens; to make various home-made products and sell them on stands, etc. This is not prohibited but is tolerated rather than encouraged.

On the other hand it is to the interest of the socialist state to protect ownership by peasants, especially as it is not only a concession to their deeply rooted individualistic psychology but also provides a stimulus for working in the kolkhozes and for producing dairy products, vegetables, and other special crops at home. Taxation on income from 'private business' is too high, evidently this is to combat any temptation to engage in independent non-socialistic occupations and to force people to work in the State's enterprises and kolkhozes.

The protection of craftsmen's ownership of tools without which they cannot work is as consistent as the protection of the property rights of farmers working on their house-and-garden plots. Furthermore craftsmanship is considered to be a necessary element of the socialist economy. It supplies some necessities, the production and distribution of which on a state-wide scale would greatly complicate the economic planning.

Finally, there are some privileged groups in the Soviet Union, such as the new upper strata including high officials and party members, managers of the government enterprises, high-ranking army and navy officers, scientists, writers, and artists, as well as some skilled workers and peasants, heroes of socialist labor.²⁴ These people have their own personal property which they

acquire from the awards and bonuses which the government generously distributes to encourage their zeal, loyalty, and devotion. Not to protect their ownership or to limit it would be a contradiction in the government's policy.

Certainly every kind of private property is subject, in addition to taxation, to different limitations based on the famous Articles 1 and 4 of the Civil Code,²⁵ and the some others resulting from the general attitude against private ownership.

It goes without saying that none of the private rights may be used by private persons to compete with the socialist production or to be developed into capitalist enterprise. There are no sources for enrichment except those established or encouraged by the government itself.

Therefore, the accumulation of wealth, if any, can only be by individuals. Profitable collective enterprises cannot be organized. The savings of private persons cannot be used for any purpose other than personal and family needs.

Money is universal standard of value, but the usefulness of money under the conditions of the Soviet economy cannot be compared with the same under the conditions of a free economy. A private citizen of the Soviet Union cannot acquire enterprises, estates, stocks other than government bonds, he cannot even purchase necessities and commodities because of their shortage. All sources of large incomes are known and under government control; accounts are opened and deposits withdrawn in state banks; donations and wills are registered by the state notaries. Finally, the state can devalue the money and raise prices, thus directly or indirectly diminishing the savings of individuals.

An exhaustive study of the peculiarities of 'personal ownership' in the Soviet Union has been made by the Soviet jurist, P. Orlovskii.²⁶ Every proprietor, he states, must use his property economically and expediently. The use of it for a purpose contrary to the law or *in fraudem* of the law, or infringing on the principles of socialist society, or causing injury to the socialist state or to other owners is prohibited. An owner has not the right, for example, to slaughter pedigreed cattle, to sell or exploit his property for speculative purposes, or to make profit from the sale, lease or loan of it.²⁷ Property may be confiscated if the owner mismanages it, such as letting a house go without repairs.

Even bequests and donations exceeding one thousand rubles may not be made unless certified by a notary public. Donations not thus legalized are punishable by the court. ²⁸

Submitted as it is to public law, Soviet ownership of personal property is not an absolute right. The limitations to which the owner may be subjected cannot be foreseen. Even savings are not guaranteed from confiscation in legal guise, as was proved by the currency reform of December 14, 1947. ²⁹

If private (or personal) property is not adequately guaranteed from restrictions and claims on the part of the state, it is well protected from attack by criminal elements. Penalties for larceny and robbery of 'property in the individual ownership of citizens' are high. Larceny is punished by confinement in a camp of correctional labor, and if committed for a second time or by a gang, is punishable by sentence up to six and even ten years; robbery is punishable with sentences from ten to fifteen years, or from fifteen to twenty years, if accompanied by violence dangerous to the life and health of the victims. Penalties for robbery exceed those established by the Soviet penal code for murder.

Evidently the Soviet state protects, those new privileged groups which are bred by a system of generous rewards.

Turning now to the appraisal of the Soviet law on property rights, we may conclude that it is devoid of the psychological influence which has made this right so significant in the history of civilization and culture. With private property counting for nothing, owners are left without the necessary opportunities. Public property cannot influence the common man by any motivation to produce, save, or improve the economy. This is due to the fact that he receives no profit as one usually does from his own property, and also because his activity is regulated, and his initiative handicapped, by the restrictions of plans and orders. He also has a fear of being held responsible in case of failure.

Bureaucratism in the sphere of Soviet economy is, therefore, inevitable and incurable. Only patriotic or idealistic motives of persons enthusiastically devoted to their 'socialist fatherland' can replace the motivating power of personal interest and free initiative in economic activity. Such psychology is, however, not a trait of the average man.

Nor has 'socialist property' the same educative influence which private property has. Psychological education is a result of customary behavior. The Soviet economic order educates the vast masses of people in routine but not in initiative, and it educates the bureaucratic leaders to make plans for large-scale projects which are very often impracticable. It is easier and quicker to become a government officer and to have a certain salary, and to fulfill orders, than to organize something on one's initiative, even when one must calculate every minute on how to escape an inevitable violation of the existing regulations or on finding one's self out of step with government orders.

Having no such psychological stimuli as those which make a private-economy based on property so efficient, the centralized economy must make use of ruthless penalties or elaborate awards. In the relatively short time that the Soviet government has increased penalties for different crimes against public property and introduced other penalties against managers, workers, and farmers for neglecting their duties or misusing their rights, the situation has not improved. This is borne out by the fact that just recently even more measures have been added, with constant prosecutions and admonitions.

The centralized economy has motivating powers supported by public law that in the sphere of economic welfare are immeasurably less powerful than the genuine effectiveness of private law.

Chapter X

CONTRACTS

Property right is one of the foundations of economic freedom and entrepreneurial activity. The legal regulations provided by contracts act as instruments by which individuals can realize their freedoms. A history of the development of contracts is at the same time a history of economic initiative and a picture of economic and social relations. At one time economic relations were very primitive and tended to be uniform; in the modern world they have become complex and varied.

Maine, a well-known scholar in the field of the history of human civilization, in describing the development of law, characterized

its modifications in history as a movement *from status to contract*.¹ This is known in social science as 'Maine's Law.' It assumes that in the beginning every human being was bound indissolubly to the group to which he belonged. He could not voluntarily change his status, which determined for him the circumstances of his life and his position. If he was born a slave, he remained a slave; if he was bound to the land, he remained a serf. He could not freely dispose of his property, especially immovable property, which was thought to belong either to the family or to society. He could not leave the group to which he was bound because of collective defense, collective responsibility and collective property (common land). This order of things gradually changed. The individual came to have the right to freedom. He could freely determine the conditions of his own life, including his juridical relations. He became personally responsible for his actions and the independent master of his property. In this phase, the contract, as the expression of individual will, became established as an act of a legal order.

The possibility of free access and separation from the social group changes the relations of the individual to society, giving the social organization the character of a free association. Therefore, this new stage of culture received from Maine the name of 'contract' regime.²

It is important to appraise the role of the contract in economic independence. The long series of different forms of contracts begins with the simple act of gift and exchange. Sale, loan and hiring indicates a stage of further emancipation from social bondage, while mandate, association, and contract work reflect the later stage of a more developed business life. Commercial transactions, with their negotiable instruments, various forms of credit operations and accounts, insurance, and warehousing, are legal inventions of the most recent origin which indicate not only a more complex economic life, but also greater experience in social cooperation.

The development of contracts and of the complexity in their forms is closely connected with the development of individual self-consciousness, business psychology and technique, and finally the ability to organize different forms of partnerships and associations. Consequently freedom of contracts helps to inculcate not

only prudence and responsibility (see above, Chapter VII) but also many other qualities. Every contract is not based exclusively on material interests (e.g. marriage), and many a contract presupposes more than business acumen. A successful partnership, for example, can exist only where there is solidarity, a capacity to reconcile the interests of several people and a readiness for reasonable compromise in case of conflict. Fulfillment by an agent, trustee, or executor of his duties presupposes not only conscientiousness and honesty, but also business experience. Working within the terms of a contract, as well as management of a joint-stock company, requires and brings out entrepreneurial ability. A system of contracts in its totality can be considered as a school of social and business relations. A history of every particular type of contract could reveal what kind of psychological traits and behavior is stimulated and educated.

However, freedom of contract can be abused. It can be transformed into the freedom of exploitation of man by man. Cunning businessmen exploit the ignorant and inexperienced; men of wealth exploit those who are in need. The law cannot ignore this, and it does not permit absolute freedom of contract.

I. Limitations on Freedom of Contract

Roman law bequeathed to subsequent generations some principles which express the general idea that a contract freely concluded cannot be renounced.³ Modern law, in general, has absorbed these principles.⁴ The principles of Roman law have been adjusted, however, to the social trends of our age, and many new special provisions are included in modern civil codes. Twentieth century legislation considers as unlawful and void contracts that violate provisions of statutes protecting workers against employers, tenants against landlords, debtors against usurers, etc.⁵ Provisions of this kind have become more and more effective. But it is impossible to foresee all the varieties of private agreements and to prevent, with the aid of only special legal provisions, everything undesirable which may be included in free contracts. Now and then, freedom of contract is consciously abused and some obligations arise which contradict the morals and sound foundations of the social order.⁶ For this reason the modern codes of western nations reject formalism in favor of good

faith (*bona fides*) and emphasize some general moral principles with the purpose of reminding private persons and judges about the ethical roots of the law. ⁷

These general moral premises are not known in Soviet legislation. The Soviet Civil Code does not even refer to the principle of 'good faith.' The Civil Code has been issued in connection with the introduction of the NEP, and the government had been especially interested in limiting private freedom so as to eliminate any conflict with the interests of the Soviet state. ⁸ A scholar studying Soviet civil law must always remember that private rights were acknowledged by the Civil Code only insofar as they would be necessary 'for the purpose of developing the productive forces of the country,' and they were to be exercised by individuals and private enterprises without 'contradicting their social and economic purpose' (Art. 1). ⁹ Consequently Soviet legislators, while proposing provisions concerning contracts, were anxious first and foremost not to permit the conclusion of contracts 'directed to the obvious prejudice of the state' (Arts. 30 and 147). ¹⁰ Neither moral principles nor individual rights have an absolute character in Soviet philosophy. According to Marxist doctrine, both moral and legal principles are a superstructure above economic relations. In the Soviet ethical system, moral obligations only supplement the legal ones; they require for example, more sacrifices, more concern for the state's interests, and a wider scope, than do the legal obligations. Individual rights, on the other hand, have a relative significance only, as the interest of the state is always above private interest.

There is, however, another point in the Soviet Civil Code regarding freedom of contract. Expressed in Article 33, it protects a person who, 'under the pressure of distress, concludes a transaction clearly unprofitable to him.' The courts, 'on the petition of the damaged party, or on the petition of a proper government agency or social organization, may either declare the transaction invalid or preclude its operation in the future.' Here we have a manifestation of another leading principle of Soviet law, the abolition of exploiters and exploitation. This provision completely corresponds to the Soviet conception of ethics, and was introduced into the Civil Code under conditions of the NEP, when private enterprises were able to take advantage of the distress of certain individuals.

After the abolition of the NEP, conditions in the Soviet Union essentially changed. There are no more private enterprises and no more private rights whose exercise could be prejudicial to the interests of the state. Nor is any exploitation of man by man possible. The provisions of Articles 1 and 30 have, consequently, lost their former significance. On the other hand exploitation is supposed not to exist, since labor is hired by the socialist state exclusively and the cooperator is subject to the government's control. Article 33 has therefore become a dead letter.

Thus the limitations on freedom of contract established by the Civil Code at the time of the NEP, which are still not abrogated, can be effective only as additional means of protecting the supremacy of state interests over all others.

2. *Contracts Between Private Persons*

The Civil Code of the Soviet Union gives individual citizens the right of concluding various kinds of contracts. It mentions specifically lease of property, sale, exchange, donation for use and for consumption, partnership, and suretyship. The original list was later increased to include different forms of agency, carriage, and promissory notes. The list of contracts mentioned in the law is not exhaustive. Other kinds of contracts, not contradicting the law, are theoretically admissible (*contractus innominati* of Roman law). They are not prohibited in the code, and because many provisions of the law of contracts are of an optional character, free agreements are allowed to parties.¹¹ Different forms of sale, mandate, and deposit have appeared in Soviet legal practice without special provisions of law.

Nevertheless, even during the NEP, the climate had not been favorable for the successful development of contractual practice. A threat of cancellation or rescission by the courts hung as a sword of Damocles over every untypical agreement. Some factories, for example, could not get their commissions because their contracts were considered by the courts to be speculative.¹² A plethora of restrictions and a tendency toward state interference in every sphere of private activity restrained legal inventiveness.

There is in the Soviet Civil Code a degree of restrictiveness and formalism virtually unknown to any other code. A written form is necessary for almost every contract. 'Contracts for sums exceeding

500 rubles must be made in writing, except in cases especially provided for by law,' Article 136 states. Donations of over 1,000 rubles; leases of any property for a term longer than one year; sales not made in cash; loans exceeding fifty rubles; all these and other transactions must be made in writing or else they will be declared invalid.¹³ In addition, many contracts, including those involving a gratuitous transfer of property or a gift of over 1,000 rubles, the sales of buildings, including buildings constructed by tenants, and powers of attorney to manage property, must be certified by a notary public.¹⁴

In transactions involving immovable property written forms are undoubtedly expedient, since they secure a more accurate expression of the intentions of the parties and give them time to think over details and conditions. However there is some exaggeration in the requirements of Soviet law which can be best understood in the light of the suspiciousness and caution of the Soviet authorities during the period of the NEP. The possibility of speculation and exploitation on the one hand, and the problem of control on the other, were certainly the reasons which inspired Soviet legislators to increase the formal nature of contracts. It is enough to refer to Article 63 of the Soviet Penal Code, in conformity with which a donation of more than 1,000 rubles, if not certified by a notary public, may be prosecuted as a criminal act. Since the abolition of the NEP, some of the earlier motives have lost their significance, and with the sanction of the Supreme Court, Soviet courts have begun to interpret the formal requirements more liberally in some cases.¹⁵

In general, provisions concerning contracts have not been changed since the abolition of the NEP, and theoretically Soviet citizens may conclude the same contracts on the same terms. In fact, however, everything is completely simplified in the field of commodities exchange between private persons. There are no independent partnerships and joint stock companies, no private enterprises and private trade, and the actual transactions between Soviet citizens are practically confined to everyday bargaining. Transactions and rights (see above, Chapter VIII), are limited, and contracts therefore do not require special control on the part of the government. On the other hand, those business qualities which were described at the beginning of the chapter cannot develop.

The Soviet government is evidently chiefly interested in the transactions of the *nouveaux riches*. It is for these people that formal requirements concerning donations and wills, contracts over building and tenancy still have practical significance. For reasons of control, the state wants to know how they dispose of their savings, and to whom they lend money or transfer the property. Since all notaries are officials in the Soviet Union contracts certified by them insure state control over the disposal of savings.

3. *Contracts of Government Agencies*

It is to the industrial and trade organizations of the Soviet state that the provisions of the Civil Code concerning contracts apply mainly now. In their business transactions, like private persons, they must conform to the general provisions of the Civil Code. Managers, who are supposed to be free in concluding contracts and determining their terms, are to be guided by the principles of cost accounting (*khozraschet*). They are held responsible for losses and are encouraged to seek profit.¹⁶

However one cannot expect that Soviet economic organizations, under conditions of integral planning, are really as free in their business transactions as would be possible under conditions of a free economy and competition. There are three possibilities open in the socialized sector of the economy. The first, and probably the most common, finds both parties to a contract subject to the assignment of the government plan, so that there is no choice, and obligations and terms are indicated in advance (*contrats par adhésion* in the contemporary doctrine of contracts). The second may find both parties relatively independent so that they can decide for themselves what kind of contract must be concluded in order to fulfill the planned assignment. Finally it is possible that contractual freedom is hedged in by regulations concerning prices, amount of production, the quality, assortment, and manner of realization of production, etc., but a choice of details and decision on some terms are not completely excluded.

A textbook of Soviet civil law describes the most common method of making contracts between socialist organizations.¹⁷ On December 9, 1940, *Gosarbitrazh* (State Board of Arbitration) issued an instruction which regulates the forms of contracts. The Council of People's Commissars (Ministers) every year fixes the

period when contracts have to be concluded. If the parties cannot agree, they have to report their differences to the Gosarbitrazh, but in the meantime the contract must be signed without delay in the form offered by the seller and must be carried out up to the moment when the Board of Arbitration rules. After that it is to be carried out in conformity with the ruling.¹⁸

In addition there are the so-called 'basic terms' approved by the Economic Council attached to the Council of Ministers. The provisions of these 'basic terms' are compulsory for all economic agencies, and the contracting parties may not deviate from them. Terms of contracts which deviate from them are not effective.¹⁹ Regulations and orders of the central institutions, which control the whole national economy or its particular branches, have a great significance. Contracts of supply, for example, are regulated in detail by the 'basic conditions of contract of supply,' which are specially provided for each commodity (coal, oil, textiles, etc.).²⁰

Business transactions of socialist organizations come under the provisions of the Civil Code only when the latter do not contradict the instructions or compulsory regulations issued by a central government institution. The general principle 'no contract versus plan or basic terms' limits contractual freedom in the sector of socialist economy just as factual conditions limit the sphere of free contracts between independent individuals.

The provisions of the Civil Code are applied by government agencies in concluding contracts not only between themselves but also with cooperatives, kolkhozes, and individuals. In all these cases, the contracts serve the same purpose and are subject to the same limitations. As a Soviet lawyer has said, 'With the aid of civil law, they consolidate the juridical relations already established by a statute or an administrative act. In concluding a contract, the parties define more accurately the orders they have to carry out in accordance with the plan (an administrative act); in the form of a single document, a contract, they determine precisely the rights and obligations established by these planning acts; and they stimulate the realization of these rights and the performance of these obligations, inasmuch as they can demand for this purpose the application of the coercive measures of civil law.'²¹

If a plant or mill has to produce a certain quantity of goods in

order to fulfill the government plan, it has to determine by contract with its customers when and how it will deliver; it has to specify the quality; it has to fix penalties for violations of terms. A contract is, in effect, one concrete element and a detailed part of the national plan. ²²

In speaking about coercive measures, the above author has in mind the possibility of fixing penalty clauses in contracts, permitting damages and losses, etc., to be claimed, if performance is delayed or improper. Contracts prejudicial to the state may be invalidated through the application of Article 30 of the Civil Code. ²³ The state has other means, of a purely public character, at its disposal for the protection of its interests. The personal responsibility of the managers is one of the most important of them. In addition to criminal and disciplinary penalties, other kinds of pressure may be applied, including public reprimand and the withdrawal of privileges. 'The variety of the methods of pressure and of the organizations which can exercise them against a defaulting party marks the essential difference between the economic contract in the Soviet system and the civil contract in the bourgeois world.' ²⁴ Contrary to the usual practice, the parties to a contract cannot rescind the contract without the approval of higher authorities. ²⁵

To the important distinctions which mark the Soviet contractual system, as it is applied to the legal relations between government economic organizations, also belongs the *Gosarbitrazh*, a special organ established not only for arbitrating disputes but also for assisting in the organization of normal contractual relations between Soviet state enterprises. ²⁶

'The *Gosarbitrazh* tries and rules on hundreds of thousands of disputes involving many billions of rubles; examines complicated disputes preceding the conclusion of contracts, differences arising between ministries and central economic institutions about the basic terms of the provisional sale of production, constituting the conditions of advance sale between a number of the socialist enterprises supplying each other with different goods. The *Gosarbitrazh* wages war against the defects observed in the operations of economic organizations and takes part in the organization of economic and first of all contractual relations.' ²⁷

To the above functions of the *Gosarbitrazh*, it should be added that, according to Article 9 of its statute, it must inform the planning organs about all the shortcomings in organization and the defects in operations which it observes during the trial of disputes between the various enterprises.²⁸ The *Gosarbitrazh* also informs the Procurator General about criminal violations of state laws.²⁹

Finally, the *Gosarbitrazh*, while examining the actual realization of contracts and plan, is able to fulfill by its own special methods, the most important function of control over the carrying out of the planned programs. *Gosarbitrazh* is undoubtedly not so much a kind of judicial organ as one of the administrative organs of the Soviet economic system whose functions are to control the conclusion of contracts, assist in the definition of terms, and check on their fulfillment. It has been correctly stated by a Soviet jurist: 'The *Gosarbitrazh* is a specific organ of economic-administrative character, simultaneously having some characteristics of a court.'³⁰

It cannot be otherwise if all enterprises have a single owner, the state, and all contracts of these enterprises are concluded in the interest and in conformity to the same plan. The *Gosarbitrazh* acts just as an owner, or a representative of an owner of several enterprises does, when he wants to reconcile their business differences in the owner's interests. An approach to these differences from the point of view not of law, but of expediency, naturally predominates in such cases.³¹ Soviet administrative law has absorbed the provisions of the civil law merely as the forms and regulations suitable for the organization of business relations inside the socialist sector of the economy, but not as a foundation of freedom of initiative and competition.

Thus the Soviet law of contracts has lost the character of a specialized school of training in business experience and legal inventiveness. It has greatly simplified the legal relations between individual citizens, and it is in bondage to numerous regulative provisions in the socialist sector of the Soviet economy. Under Soviet conditions, the most flexible and optional part of civil law has become almost completely inoperative.

Chapter XI

INHERITANCE LAW

The development of Soviet law furnishes new evidence that inheritance is a natural and ineradicable institution.

In fact inheritance law, which means the right to designate successors to one's property after death, as well as the right to succeed to property of one's family, is a custom as inherent in human psychology as the right of property itself. It is also indissolubly connected with freedom of contracts and the institution of the family. The right over property loses its effect unless the owner can dispose of it, either in form of contract, or by making a will before death. On the other hand, family ties and the authority of parents are stronger if they are supported by the right of succession to parents' property.

The significant functions of inheritance law are revealed by various theories explaining its origin and essence.

1. The Theory of Inheritance Law

There are many theoretical explanations of inheritance law. It can be considered as a natural right based on the idea that those who can dispose of their property during their lifetime cannot be deprived of the right of choosing and nominating successors in the event of their death. Although this is not quite accurate because inheritance is not only a succession to assets but also to liabilities, this theory emphasizes the indisputable ties between property right and inheritance.

Another theory, whose more authoritative representatives are the famous jurist F. von Savigny and the philosopher Hegel, assumes that inheritance right is based on family relations. In the past family ties were closer; every member of the family contributed to the common family wealth and prosperity, and every family estate was in fact common property. Such a situation is still not rare, especially among farmers. While historically true, this theory does not however explain some of the peculiarities of modern law, according to which property may be willed to a person having no relationship with the family of the deceased. It is not therefore an adequate theory of modern inheritance law.

A third theory, also not precisely correct, emphasises the stability and security which are assured for economic relations between creditor and debtor, employer and employee, when an heir replaces a deceased owner. Unlike the preceding ones, this theory, developed by the German jurist Carl Bruns, fits modern conditions of commodities exchange and industrialization. It does not explain, however, either the ancient inheritance system based on close family relations or the limitation of the responsibility of a successor to the value of the heritage (*nec ultra vires hereditatis*). It also raises doubts concerning relatives without business ability who may inherit enterprises and estates, when it is possible to find more experienced and able persons who could succeed the deceased owner or entrepreneur.

Each of the above theories, trying to find some reasonable explanation and justification of the right of inheritance, contains some particular truth. The same is true of another theory founded on purely psychological grounds by Ferdinand Lassalle, who explained inheritance as a 'continuation of personality.' A deceased person continues to live in the person of his successor or successors. Inheritance is really a universal succession (*successio universalis*). Inheritance means a succession to all assets and liabilities, but it may also be regarded as the continuation of a business, the realization of plans not completed, the execution of the will of the deceased, or even the continuation of a religious cult. Thus, according to Lassalle, inheritance under a will or bequest derives from a mystic belief in reincarnation or life in another world. There is again a partial truth in this theory, and there are again some provisions of the law of inheritance which do not conform to the principal ideas of the theory explaining inheritance as 'continuation of personality.' Why are there co-heirs, and how can several persons become the successor of one personality? Why cannot rights and liabilities, considered by law as purely personal like alimony or pension, be inherited if inheritance is first and foremost a 'continuation of personality?'

This review of some theories of inheritance gives reason to draw the conclusion that any one-sided explanation of the law of inheritance is insufficient and that in the development of civil law, the functions of the right of inheritance are varied. Closely connected with family relations, inheritance is at the same time

inseparable from property rights. Their inter-dependence has already been explained above (Ch. VII). It can be added here that insofar as a man has offspring, personal ambitions, or some business or cultural plans, the right to dispose of his estate in the event of death, and a guarantee that his descendants or other relatives or close friends will become his successors, constitutes a very important stimulus for working and saving. The stimulus to work and save, because the right of inheritance may insure the education of his children and the subsistence of members of his family, is the most important social-economic function of the law of inheritance, and the reason why its abolition is not a simple problem. In a highly developed private economy, the law of inheritance achieves also the uninterrupted operation of business in the event of death, but this is relatively insignificant, inasmuch as the most important enterprises are incorporated as legal entities or usually have trusted managers.

Although it is one of the indispensable supports of the economic order, inheritance law none the less requires some improvements, just as do the laws concerning property rights and contracts. Abuses of the law are inevitable, and there are many reasons for critical comments and a demand for reform. Sometimes the freedom of testament is abused, and, contrary to the interest of family relation, either offspring or surviving spouses may be left without means of support. Sometimes the law of inheritance, contrary to the best interests of its overall economic function, destroys an enterprise by dividing it into small parts among joint heirs. Inheritance can also be criticized from a social point of view, when it supports the parasitic life of a wealthy heir or opens opportunities for the children of the rich which are not available for the children of the poor.

It goes without saying that inheritance has been the target of sharp attacks on the part of radical thinkers. They have regarded it as one of the most unjustifiable institutions of civil law, giving undeserved advantages to certain groups of people similar to the legal and social privileges of the hereditary nobility. Some moderate thinkers and jurists, who do not share the opinion that inheritance should be completely abolished, nevertheless recognize that some limitations on the right of inheritance are just and expedient. Modern law has partly adopted this point of view. By

progressive taxation and limitations on the right of succession, the size of inheritances has been diminished, and distant relatives practically unknown to the deceased have been removed from the list of potential heirs. ¹

2. *Soviet Laws of Inheritance*

Following the most radical tendencies, the Soviet government originally abolished inheritance rights 'with the purpose of exterminating individualistic proprietary instincts.' ² As one of the Soviet law-makers of that period explained 'private property was thus transformed into no more than a lifetime possession; an estate remains attached to a certain person not longer than the term of his life.' ³

However, even the first Soviet anti-inheritance law did not abrogate inheritance completely. Nearest relatives were permitted to receive small estates not exceeding 10,000 rubles in value if they lived with the deceased, or to get for self-support apart of an estate exceeding 10,000 rubles in value. ⁴ This right was interpreted not as a universal succession but rather as a form of support necessary because of the lack of organized social security. It was originally taken for granted that the state would replace individual heirs and take all private estates under control. However, after the nationalization of all the land, industrial enterprises, banks, etc. and the nationalization of trade, there were no longer any estates of large size which could be inherited by private persons. Nor was the state interested in collecting the personal property of the rank and file, the instruments of craftsmen, and the implements, domestic animals and poultry of the peasants. The sum 10,000 rubles had but a minimal significance because of inflation, but the state was unable in practice to appropriate the more valuable estates. Little could be done without specialized personnel. In the absence of relatives, the neighbors usually plundered the estate of a deceased person. In fact, during the period of War Communism, the Soviet state did not include in its budget any revenue from the escheat of estates. ⁵

During the period of the NEP, inheritance was re-established. The Civil Code introduced succession both by the operation of law (*ab intestato*) and by will (*ex testamento*), but with essential restrictions concerning the persons who could succeed and the

size of the estate which could be inherited. ⁶ The circle of heirs was limited to the direct descendants of the decedent, the surviving spouse and disabled and propertyless persons who were his actual dependents for not less than a year before his death. The size of the estate was limited again to 10,000 rubles, an amount which was acknowledged as the average value of an estate which a private person could possess in general.

In the further development of inheritance law in the Soviet Union, the above restrictions were gradually abolished. By the amendment of February 15, 1926, the limitation of the inheritance to 10,000 rubles was abrogated. This reform took place during the NEP and was motivated by the need to encourage investment in industrial and commercial enterprises. ⁷ Later, in order to encourage investment in government bonds and deposits in government banks, freedom of testament was established for bonds and deposits. There were no limitations either on the amount which could be transmitted or the persons to whom they could be transmitted. ⁸

However, the most important reforms concerning inheritance were made during World War II. In 1943, the inheritance tax was abolished. Heirs were required to pay only a special fee for the issuance of inheritance certificates. The scale of the fee became progressive. Its highest rate became 10 per cent, while the progressive inheritance tax abolished in 1943 reached up to 90 per cent of the value of the estate.

The ukase of the Supreme Soviet of March 21, 1945, ⁹ added to the circle of potential heirs the disabled parents of the deceased, regardless of whether or not they had been his dependents. In the absence of heirs of the first class, namely offspring, the spouse, parents and actual dependents, the law established as heirs of the second class able-bodied parents, and as heirs of the third class, brothers and sisters. Thus the circle of potential intestate heirs has been essentially enlarged. At the same time there is more choice for the testator, who may, at his discretion, bequeath his estate in whole or in part to any of the potential intestate heirs. He cannot however 'deprive his minor children or other heirs who are unable to earn of the share which would belong to them under intestate succession.' If there are no surviving intestate heirs of the first three classes, the same law also gave to the testator the right

to leave his estate to any other person.¹⁰ Thus the new law on inheritance protects mostly the interests of the members of the family, but it also establishes greater freedom of testament.

Among the peculiarities of Soviet inheritance law, the following are especially significant. First, neither holographic nor privately made wills have any legal force. A will must be made in written form and certified by a notarial office,¹¹ in the Soviet Union a governmental institution. A second distinction consists of the short term of six months during which heirs absent 'from the place where the estate is located' (or from 'the place of the opening of the succession') must claim their inheritance.¹² There is no provision in the law for notification of the heirs in the opening of an estate. Those who do not know about the death of their relative are not supposed to be 'near relatives,' and the law disregards them. Therefore 'in the event of the non-appearance of heirs within a period of six months' they lose their right to the inheritance.¹³

3. *General Appraisal*

For what groups of people did the Soviet government amend its original inheritance law and abrogate numerous restrictions concerning succession? Farmers, members of collective farms composing about half the population, are not individual owners of their small economies. Soviet legislation has re-established the old pre-revolutionary customary law of the Russian peasantry, the 'family collectivism,' under which the household with all its accessories, buildings, implements, cattle and poultry belong to the whole family as a unit (*krestianskii dvor*). Not only relatives but also those informally adopted members of the household who shared the daily farm work were considered members of the family, while sons who left their families and established independent homes and married daughters, who joined new families, were no longer considered members of their former households. Inasmuch as peasants of the rank-and file have in fact no individual property, the law enlarging the circle of possible heirs and freedom of testament has no practical significance for them. Succession in the household is predetermined by its membership; juridical problems of inheritance arise only in cases of the division of common property between those who leave for another kind of job and those who remain.

Neither are the innovations in the inheritance law important or a considerable part of the urban population. An estate with a value not exceeding 10,000 rubles was officially assumed to be the size which an average Soviet citizen could possess. That meant that the rank and file had practically nothing to leave to their heirs except some furniture and other belongings. The original inheritance limit of 10,000 rubles has long since been abrogated, but the wealth of the average citizen has not risen. ¹⁴ His property in an urban community consists of the usual household effects and furnishings, the inheritance of which (excluding luxury objects) is regulated as in the peasant household. The property is transmitted to those heirs who lived with the deceased. ¹⁵ The principle is the same as the one used in peasant households. Members of a family living together are supposed to cooperate and contribute common pooling of wealth. After the death of the head of the family, everything remains in the possession of the surviving members.

It appears then that it is only the upper strata of Soviet society, with their own dwellings and country houses, luxury objects and deposits, who are in fact interested in the provisions of the inheritance law, and it has been to their advantage to be freed from progressive inheritance taxes, to have a larger circle of heirs, the right of free disposal of bonds and deposits, and some discretion in the disposal of other property. However, as was noted above, Soviet law limits freedom of testament even for them, in order to insure support for their children and disabled members of the family who were their dependents at least a year before death. ¹⁶ In addition, those heirs living apart from the deceased, who do not claim their inheritance within six months, lose their right to the inheritance. Here again one notices a tendency to leave the estate in the hands of people living together and connected by the same economic interests.

Even if inheritance law is largely adapted to the interests of the upper classes, as in bourgeois countries, it does not mean that inheritance in the Soviet Union remains uncontrolled. That is hardly possible in a country where everybody is dependent upon the state; the Soviet government cannot be indifferent as to who is inheriting a fortune and how he is disposing of it. Wills and donations in an amount exceeding 1,000 rubles must be concluded

in written form and certified by a notary. Inasmuch as the Soviet notariate is a governmental institution, the government is always informed as to how an estate is being distributed. The government is similarly informed on the disposal of bonds, and deposits in state banks.

As we have seen, the provisions of the recent Soviet laws on inheritance are adapted mostly to the interests of the upper strata of the population, but the general principle in Soviet inheritance law of encouraging cooperation among the members of a family and strengthening family ties is pertinent to all classes. Not less important is the new system of inheritance for the interests of the state itself.

The Soviet state abolished several restrictions in the original inheritance law in behalf of its own interests, as well as the interests of individual citizens. From the beginning, it became clear that the state itself was unable to organize universal social security. Inheritance is the best substitute for social security, since every one does his best not to leave his family without any means of subsistence. At the same time the working and saving done for this purpose aids the government economically.

'There is nothing private in the Soviet Union; everything is public,' said Lenin. Everything in Soviet law must therefore be interpreted from the point of view of the interests of the socialist state. Even some secondary provisions of Soviet inheritance law are not insignificant from this point of view, as is illustrated by the following example.

According to the principles of private international law, foreign citizens may inherit the property of their relatives in the Soviet Union and vice-versa. There are only a few Russian emigrés whose relatives in the Soviet Union still possess some property, but they cannot realize their inheritance right because of the lack of notification, the irregularity of correspondence, if any, and the very short preclusive term of six months. If they are accidentally informed of the death of one of their parents or relatives, the short term has usually expired. On the other hand, Soviet citizens may inherit the property of their relatives abroad, where the terms are not short and protective measures are applied until the proper heirs are uncovered. The foreign currency thus collected under the supervision of Soviet consulates does not go

directly to the Soviet heirs. Instead the State Bank pays them 'the corresponding equivalent in Soviet currency, after having deducted the established taxes and dues as determined by a competent tax-assessing office.'¹⁷ In other words, they receive depreciated Soviet currency with a minimum of buying power, converted at such artificially established rates as four rubles to the American dollar. The real heir is thus the Soviet state. No wonder an inheritance tax under such conditions is quite superfluous and the Soviet government generously does not assess it upon property situated outside the U.S.S.R.¹⁸

The following conclusions may be drawn from the study of Soviet inheritance law. First, Soviet inheritance law rests as everywhere on the natural human attachment to the family; secondly, it encourages the upper strata of the population to accumulate wealth; and thirdly, as everywhere, it is designed to profit the nation no less than the individual. As has already been pointed out, it also assists in stabilizing the new social stratification. Succession to the estates of peasants and craftsmen, as it is regulated by Soviet inheritance law, insures the state that the members of these social groups will continue to exercise their present social functions. Succession to the estates of the new upper class insures its members the continuance of their dominating position. There are no iron-clad guarantees for the stability of individual members of the upper class, but the class, if any, is likely to continue regardless of the fate of individual members, and the existing inheritance law will contribute to its continuance.

PART IV

LAND LAW AND LABOR LAW

Chapter XII

KOLKHOZES

Soviet legislation concerning collective farms (kolkhozes) reveals in an exceptionally clear manner all the peculiarities of the centralized economy.

As a legal entity, a kolkhoz owns its 'socialist property' but this does not include the most valuable element of agricultural economy, that is, the land. Members of collective farms work on land which belongs to the state. Even the house and garden plots which are placed at the disposal of individual farmers and their families, do not belong to them.¹ Actually, only the surplus production belongs to the kolkhozes and they may dispose of it as they see fit, selling it, for example, in the open market.

Thus, a kolkhoz is an institution of public rather than private law. Similar to the *trests* and *torgs*, kolkhozes are organized for the purpose of carrying out an important part of the state's national plan². They perform the public function of supplying the socialist state with agricultural products. The organization of kolkhozes, with their duties and activities, is determined by the charter of an Agricultural Artel which was approved by the second convention of shock workers of the collective farms and confirmed on February 17, 1935, by the Council of People's Commissars of the U.S.S.R., and by the Central Committee of the All Union Communist Party.³

Theoretically, kolkhozes are voluntarily organized cooperatives (artels), but actually, their organization was required by the government. For evidence of this we need only to refer to Stalin's famous article, 'Dizziness from Success' (March 2, 1930), in which

he reprimanded the local agencies for overdoing the organizing of the kolkhozes, abusing the power of coercion, and rushing on without the necessary contact with the masses. The belated resolution of the XVIth Congress of the Communist Party which declared that 'kolkhozes can be organized on a voluntary basis only' obviously contradicted the preceding practice with its prosecutions of wealthy peasant individualists.

While the formation of kolkhozes may be instigated or even forced by the government, their liquidation is impossible unless by law. The permanent character of collective farms is indirectly expressed in the Constitution which provides kolkhozes with 'land forever.' ⁴

The public character of kolkhozes as economic organizations of the Soviet state is clearly expressed in the provisions of the charter of an Agricultural Artel. ⁵

1. Government and Party Control

As organizations of great public significance, kolkhozes are subject to the control of various government and party organs. ⁶

The Machine Tractor Station (M.T.S.) not only assists the kolkhozes, it also controls their activity and influences members' attitudes. For this purpose the Central Committee of the ACP (b) decided, in 1947, to establish a new post in the Machine Tractor Stations, namely, Assistant Director in charge of Political Activities, whose duties are 'to insure the improvement of the work of the party organizations of the M.T.S.' and to expand political educational work among tractor and combine mechanics, and other workers of the M.T.S.' ⁷ Having a strong Communist nucleus in its organization, the local M.T.S., under the leadership of party organs and in cooperation with the Communists inside the kolkhoz can control the activity of the kolkhoz. ⁸

Besides the Communists of the kolkhoz and M.T.S., secretaries of the district Communist Party Committees, Presidents of the district Executive Committees, and other party and government officers are responsible for the realization of the government and party instructions and orders. ⁹ The administrative personnel of the kolkhozes is treated as though it consisted of government officials.

Andreev, then a member of the Politbureau, in a report to the

Plenum of the Central Committee of the ACP (b) in February, 1947, criticized the existing practice of ousting administrative personnel of the kolkhozes and M.T.S. He said that in the Kostroma, for instance, fifty percent of the chairmen were dismissed in 1946; in the Kuibyshev region 540 chairmen in 1945; in the Penza region, fifty-four directors of the M.T.S. out of 115 were dismissed. Although this practice was then condemned,¹⁰ it illustrates how illusory is the self-government of the kolkhozes.

Village Soviets are the closest governmental organization which controls and directs the kolkhoz. A village soviet has the right to hear kolkhoz reports and to suspend its resolutions if it finds them illegal. In the latter case the village soviet presents the matter to the *raisoviet* (Rayon or District Soviet of the Working People's Deputies) which has the right to abrogate kolkhoz resolutions. The local soviets are also vested with the responsibility of securing control over the kolkhoz to see that it carries out the state plan for agricultural produce and cattle breeding and observes the provisions of its charter.

The fundamental duty of village soviets and raisoviets is to see that the charter is observed. They are also obliged, however, to assist the kolkhozes in all their economic activity for the purpose of strengthening them, protecting their property, and bringing about a successful achievement of their plans and undertakings.¹¹

The direct leadership for the economic activity of the kolkhozes, however, belongs to the District Agricultural Bureaus (*Raiotdel Selskogo Khoziaistva*). They have to assist the kolkhozes in the organization of management, as far as the selection of cadres is concerned, in making and carrying out plans of production and estimates, as well as in increasing the efficiency of labor and adopting advanced methods of agricultural economy.¹²

Besides the above described dependence of kolkhozes on party organizations, local soviets and other government agencies, they are also under the general leadership of the Ministry of Agriculture of the U.S.S.R.¹³ and of the special Council on Collective Farms. The council was composed of men who have a great deal of experience in farm management, and of persons from various sections of the country who are familiar with specific local problems of the Ukraine, Siberia, Armenia, Turkestan, etc.¹⁴ The council must provide incentives to stimulate the inter-

est and efforts of the members of the collective farms, support discipline, and protect the principles of 'self-government,' as well as promote the just distribution of profits. The council had to protect kolkhozes from 'grabbers' and parasites.

The reference to 'grabbers' and 'parasites' has a double significance. In the first place, it points out the widespread abuse of power by the party workers who direct the kolkhozes. Secondly, it indicates a struggle against the excessive growth of the administrative personnel, growth at the expense of the productive and responsible workers.¹⁵

The government's measures against the excessive bureaucracy in the agricultural economy, as well as its efforts to decrease the high overhead of the kolkhozes related to the maintenance of a huge staff of administrative personnel, are futile, as bureaucracy and an augmented management are inherent in centralized economy.

2. *Economic Dependence of Kolkhozes*

Economically the kolkhozes are still more dependent on the government than on their own management. The most important source of their existence, the land, belongs to the state, and the exploitation of this land is determined by the national plan. Every kolkhoz receives orders which are part of the government plan and must carry them out under the supervision of the agencies mentioned above.

The elected administration of a kolkhoz is at the service of the state. As we have seen, chairmen of kolkhozes are ousted without much ado, merely if they do not serve a certain purpose. Elections serve only to indicate to the authorities the people who can do the job. Candidates are mostly approved in advance by the local soviets.

The most important difference between kolkhozes and other economic agencies of the Soviet state, namely, *trests* and *torgs*, consists, as said before, in the right of the kolkhozes to have their own 'socialist property.'¹⁶ One section of this property, livestock, implements, and buildings, has the character of accessories in economy, and is essential to carrying out government assignments. A kolkhoz may not dispose of this property. It cannot sell its 'own' implements, horses, or buildings. This is impossible both

in form and in practice. It is impossible legally, since the sale of implements, livestock or buildings would stop the work and make the completion of planned assignments impossible. Such a transaction, which would obviously be prejudicial to the state and to socialism, cannot be permitted.¹⁷ Should such a transaction be concluded, not only the contracting parties but also the supervising bodies would certainly be prosecuted as 'enemies of the people' with all the drastic consequences of this paramount crime.¹⁸

In practice, a kolkhoz cannot sell its implements, livestock, etc., for without them it could not continue its economy. Neither can it sell its property and liquidate its economy altogether, because it would then deprive itself of its means of existence.¹⁹ Peasants, like all citizens in the Soviet Union, cannot move freely in the country because of the passport problem and are not permitted to choose a job without approval of the authorities.

The products of the collective farms belong to the second category of the 'Kolkhoz Socialist property.' This property is theoretically at the free disposal of the kolkhozes. This freedom is, however, only apparent. Kolkhozes must supply the state with agricultural products, and they are compelled to make deliveries of these products. Therefore they may dispose of surplus produce only, which is the farmer's remuneration for his work for the state.

Thus the 'kolkhoz socialist property,' as a component part of the socialist planned economy, cannot be disposed of at the discretion of collective farms and is in fact a 'fettered property.' It differs essentially from private property of legal entities. It is rather a part of national property allotted to the kolkhozes,²⁰ in addition to the land, for the development of their agricultural economy in the interests of the nation.

The only difference between the 'state socialist property' and the 'kolkhoz socialist property' is found in the system of exploitation and management. In contrast to the workers of state factories and mines, the members of kolkhozes do not receive wages. As compensation, they have some part of the 'socialist' property at their disposal. This means that their existence depend wholly on the result of their work. Not only the managers, as in a factory, but all farmers are responsible for the effectiveness of

their work since their share depends upon what they produce. Their only chance to better their condition in life is to have a rich harvest.

Members of collective farms, in spite of the risk they take, are nevertheless limited in their economic activity by the planning system, by special controls and by their dependence on different institutions supplying them with equipment, seeds, credits, and agronomic assistance.

Because of the difference in the system of remuneration, the administrative and economic power in regard to the kolkhozes is, however, not concentrated indivisibly in the hands of the state, as happens in the case of 'state socialist property.'²¹

The kolkhoz economy is organized on the basis of an interlocking dependence. An individual farmer depends on the kolkhoz, and the kolkhoz on the M.T.S., a purely governmental organization. An individual farmer as a rule does not own a horse or any breeding cattle, and he is not allowed to produce grain on his house and garden plot. A kolkhoz cannot own tractors or combines, but must rent them from the M.T.S., just as an individual farmer must rent from the kolkhoz horses for work and transportation, and stud horses for breeding.

3. Economic Functions of Kolkhozes

The efficiency of the kolkhoz economy depends not so much on the organization of the management as on the economic stimuli for efficient work, which in turn depends first and foremost on the distribution of income and the share farmers have in this distribution.

According to Article 11 of the Standard Charter, every kolkhoz is obliged, above all, to cover its debts to the government. Accordingly, it must deliver a part of its produce to the government as payment for various supplies and a part to the M.T.S. for its work in the kolkhoz. The kolkhoz is further obliged, and this is its heaviest obligation, to deliver to the government a specific quantity of produce. The amount of these deliveries is determined without reference to the actual harvest or the area actually sown but to the harvest which theoretically should have been obtained from all the arable land at the disposal of a given kolkhoz.²²

The reason for this system is to encourage members of kolkhozes to till and sow all the arable land in order to get a larger crop. After discussion by the Plenum of the C.C. of the Communist Party in February, 1947, it was decided to continue this method of computing quotas of deliveries, as being the best incentive to increase acreage. The only amendment approved by the Party Plenum at its conference in February, 1947, consists in permitting the reduction of deliveries of a kolkhoz possessing a large tract of land when it is short of manpower. ²³

Thus all contributions in kind are levied on the kolkhoz according to the area at its disposal regardless of what part of it is actually being tilled. On the basis of these regulations, if a kolkhoz extends its tillage, it has an opportunity to increase its own share, as the assessment remains the same. On the other hand, the share of the government and of the M.T.S. in the produce of a kolkhoz always consists of a high percentage of the crop, and is equivalent to a lion's share in case of drought and poor harvest, while the farmers' share increases only in case of a rich harvest. Climatic conditions may impair the position of the farmers but never of the state.

The deliveries to the state are compulsory. ²⁴ State deliveries and the prices paid to the kolkhozes for them are fixed by the government. The norms for delivery are excessively high while the prices are low. Therefore the obligation to make deliveries is considered as the heaviest kind of taxation.

After all deliveries to the government have been made, the kolkhoz, before disposing of its own share, must set aside a certain quantity for seed and forage reserves, in accordance with the government sowing plans. ²⁵ Only then can the remainder of the produce be partly sold by the kolkhoz and partly distributed among the collective farmers.

Theoretically, deliveries definitely fixed for a kolkhoz exclude other obligations in kind. However, the state has various ways for increasing its share. First of all, local soviets and party organs inspire kolkhozes to take upon themselves a voluntary obligation, solemnly voted by the general assemblies, to increase production and to deliver to the state more than its assignment. Every year since 1947, *Izvestia* and *Pravda* have opened their pages wide to the solemn pledges of kolkhozes, addressed to Stalin, to fulfill

conscientiously their obligation to produce more and to deliver more to the state. This system is characterized in the Soviet Union as a manifestation of 'socialist competition.'

Being an universal monopolist the Soviet state has another means for getting increased agricultural produce from the farmers. There are always various shortages on the market and the state must supply its special organs and cooperatives with the short commodities for the purpose of exchanging them for agricultural products. The organs of the Ministry of Food Reserves of the U.S.S.R. like *Zagotzerno* (Grain procurement administration) which must stockpile produce, and the cooperatives supplied with the products of industry, acquire surpluses of agricultural produce for relatively low prices or by barter. Needless to say, these operations are more profitable to the state than to the kolkhozes or individual farmers, as the conditions of exchange are dictated and there is no choice for the farmers. ²⁶

The system for distributing such agricultural products as meat, wool, dairy produce, technical crops (cotton, flax, hemp, sugar, beets), is the same as that for grain distribution. The norms for the compulsory deliveries of all these products were established in 1940, on the same basis as the deliveries of grain; that is, in accordance with potential and not actual production. For instance, deliveries of meat are determined not by the actual size of the collective herd, but on the basis of the combined acreage of tillable land and pastures held by the farm. The norms remain the same if a kolkhoz increases the number of its animals and thus the more animals a kolkhoz possesses, the more it benefits. The Soviet government and the party take for granted that this is the best stimulus for the development of collective agriculture and husbandry. ²⁷

In addition to the compulsory deliveries, as described above, the Soviet government applies also the so-called *kontraktatsia* system, which is a special kind of contract requiring kolkhozes to deliver meat or certain kinds of crops. These contracts usually require the application of new methods and measures of an agricultural character designed to raise production or improve the quality of produce. The government agencies, as another party of the contract, are obliged to supply kolkhozes with seeds, machines or spare parts, fertilizers, credits, and even with some of the commodities of which the market happens to be short.

4. Remuneration of Individual Farmers

While the state's share in the agricultural production of a kolkhoz is determined in absolute figures, the individual members of a collective farm are remunerated according to the quantity of produce which remains after all compulsory deliveries and required storage reserves are provided for.

Remuneration of individual farmers depends on the number of 'labor days' credited to them. A 'labor day' is a conditional unit. During one calendar day a member of the collective farm may earn several 'labor days' or only a fraction of a 'labor day,' usually from 0.5 up to 2.5 depending upon the type of work done and the results achieved.

For instance, according to the practice of many kolkhozes, manual reaping of one acre is one labor day unit; one calendar day's work of a watchman is .3 labor day, and of a chairman of the kolkhoz, three labor days. For every kind of work there is a special norm, but the final amount of remuneration is indefinite until the moment of distribution, as the share of each member depends as much on the number of his labor days during the year as on the quantity of the surplus which remains at the disposal of a kolkhoz.

Some farmers might not prefer to earn labor days in the kolkhoz, but to work on their own plots of land or somewhere else. It has been stated that while some members earn as many as from two hundred to six hundred labor days, there are others who have no more than twenty or thirty labor days credited to them annually. Therefore an obligatory minimum of from 60 to 100 labor days was established in 1939,²⁸ and increased in 1942 up to from 100 to 150 labor days.²⁹

5. Private Farmers' Economy

A very important provision of the kolkhoz legislation is the right given to farmers to cultivate individual plots of land, the so-called house-and-garden plots. Not being very confident of the results of his work in the kolkhoz, every member of the collective farm is interested in his household enterprise on the small plot of land assigned to him and to his family. The size of this plot varies in conformity with local conditions of the agricultural economy, but is not less than 0.62 and only in a few districts more than 1.24 acres.

The private farming economy is limited not only by the size of the plot at the disposal of the *dvor* (peasant family), but also by its special use, as for instance, as a vegetable garden or orchard.³⁰

The number of animals which may be owned privately by each farm is also limited. It is quite large in nomadic districts, less in seminomadic or non-nomadic districts, where agriculture is of small importance, but in the greater part of European Russia each household may have in its individual possession 'one cow, not more than two calves, one sow with sucklings, not more than ten sheep and goats altogether, an unlimited number of fowl and rabbits, and not more than twenty beehives.'³¹

In spite of all limitations the small household enterprises of the members of the collective farms not only feed the farmers and their families but also serve a general need. They are not only a form of additional remuneration to farmers, but also a means of producing vegetables, fruits, technical crops, eggs, etc., items not usually produced by the kolkhozes, and for which an industry on a large scale is not possible everywhere.

Nevertheless the character of the household enterprise has a tendency to become individualistic. It does not agree with the collectivism of kolkhozes and is not supported by the Socialist state, which taxes at a high rate income from household deliveries of vegetables, meat, milk, etc.³² The government indirectly compels farmers to sell their products to kolkhozes by requiring the kolkhozes to make deliveries (of meat, for instance) which they must purchase from individual farmers. If a kolkhoz buys meat elsewhere or pays too high a price for it, the losses of the kolkhoz are losses of the farmers.

However, the household economy has developed very successfully. Farmers work industriously and willingly on their small plots which, as a matter of fact, support them during the more unsuccessful years. Whenever possible, farmers try to expand their house-and-garden plots at the expense of the collectively held fields. They consider their plots as their own property and dispose of them as such, forgetting that land cannot become private property in the Soviet Union and that their plots are a part of the collective farms' land. One of the resolutions which illustrates these trends says that 'in a number of collective farms, the practice is really to transform the house-

-and-garden plot into the private property of the household, so that not the collective farm but the individual member of the collective farm disposes of it at his own discretion, i.e., rents it or retains the plot for his own use, although he himself does not work in the collective farm.' ³³

Having prohibited for the future any attempt to reduce land used collectively for the benefit of individual husbandry, as well as any increase of privately-held plots in excess of the size provided for by the Standard Charter, the resolution dictated the elimination of all land surpluses from the house-and-garden plots, the withdrawal from personal use of all land apart from house lots, such as vegetable garden, watermelon patches, *levada*, and the like, and the liquidation of house-and-garden plots of the enclosure type (*khutor*) located in the midst of collectively-held fields. ³⁴

Seven years later the Soviet government and the party in their resolution of September 19, 1946, ³⁵ quoted above, had to reiterate that

'squandering of collective fields occurs by enlargement of the house-and-garden plots of collective farmers, by means of unauthorized seizures or illegal additions made by the management and the chairmen of collective farms to advance personal farming to the detriment of collective farming.'

According to Andreev's report in February, 1947, 1,800,000 hectares (about four and a half million acres) were withdrawn from 'illegal use' and returned to 80,000 kolkhozes, according to the resolution of September 19, 1946.

The Soviet government not only protects collective farms from various violations, but it tries to stimulate directly or indirectly their development at the expense of the farmers. For instance, after the issuing of a three-year plan of the development of cattle-breeding, ³⁶ the government has established new norms for the compulsory deliveries of meat ³⁷ and these norms became in practice higher for the individual households than for the kolkhozes. At the same time kolkhozes are required to increase number of their cattle and to acquire young animals for this purpose. They can do this only by buying them from the individual farmers. The government's policy is clear. It desires to

intensify the activity of kolkhozes and strengthen the dependence of individual farmers on the collective farms.

6. *Anti-individualist Trends*

Individualist trends among the collective farmers are held by the government to be a definite survival of private property psychology and are therefore condemned:

'The interests of collective farming, the basis of which is the fields held by the collective farms, are sacrificed to the elements of private ownership and avarice, which abuse the collective farms for the purpose of speculation and personal profit.' ³⁸

'Despite a growing political and social awareness, there are still "background elements" and even now "the idea of private property is strong."' ³⁹

The Soviet government, nevertheless, firmly believes in kolkhozes and consistently strengthens and expands collective farming, which it considers as one of the most important measures leading to the final victory of socialism. ⁴⁰

The collectivization of agriculture is at present an actual problem of the Soviet government in all the countries annexed after World War II: in Bessarabia, the Western regions of Belyorussia, and the Ukraine, in Latvia, Lithuania, and Estonia. ⁴¹

The satellites are also encouraged to undertake and hasten the organization of kolkhozes.

It is still difficult for the Soviet government to overcome the resistance and inertia of farmers and it needs special measures to encourage the loyal elements and suppress opposition.

On March 29, 1947, the Presidium of the Supreme Soviet issued an order in regard to conferring the title 'Hero of Socialist Labor' and the awarding of orders and medals of the U.S.S.R. to kolkhoz, M.T.S., and Sovkhoz workers as a premium for obtaining large crops of wheat, rye, corn, sugar beets, and cotton.' *Pravda* remarked that only in the Soviet Union is such attention paid to the 'Working man.' ⁴²

The system of encouraging industriousness among farmers by individual rewards for record harvests was extended still further by the decree of the Presidium of the Supreme Soviet on April 24,

1948. This decree established various indices for wheat, rye, corn, cotton, sugar beet, sunflower, clover, lucerne, and timothy grass harvests. Indices vary for different regions and the law specifies which of the four possible rewards can be received by farmers if the harvest has reached or surpassed these indices. This system of rewards certainly expands the economic differentiation among peasants and provides incentives which are hardly in line with collectivist philosophy.

The same policy was applied and enlarged in 1949, when indices of cattle-breeding and of large harvests of some technical crops were established.⁴³ The Soviet newspapers are full of stories about the conferring of titles and medals awarded to farmers who proved worthy of them in reaching or surpassing the established indices.

The system of making generous rewards as a means of encouragement is probably more effective at present than application of penalties against the idle or disloyal kolkhoz members. Nevertheless, this latter system must not be ignored.

The mildest method of repression to be applied is a disciplinary order.⁴⁴ This method is applied by the kolkhoz itself. Another measure at the disposal of a kolkhoz is the expulsion of its members from the collective farms. This punitive step was evidently abused and the government prohibited its employment unless a member proved to be 'incorrigible, subversive, and disruptive to the collective farm,' and only after all preventive and educational measures provided for in the charter had been exhausted. Moreover, the decision ordering expulsion cannot be put into effect until the district executive committee has made the final judgment on the decision.

The limitation of the right and practice of expulsion from collective farms was addressed to those leaders of such farms who:

'fail to realize that expulsion from a collective farm means to the one expelled deprivation of his source of subsistence; it means not only exposure to disgrace in public opinion, but also condemnation to starvation.'⁴⁵

Expulsion really creates disastrous conditions for an expelled member since, according to existing regulations, he receives only a very small part of the property contributed by him to the col-

lective farm at the moment of its organization or his becoming a member of it. The initiation fee and the greater part (from one-half to three-quarters) of his property which he transfers to the kolkhoz, such as cattle, agricultural machines, if any, implements, and even buildings, become the 'indivisible capital' of the kolkhoz. Only the remainder, from one-quarter to one-half of a member's contribution is assigned to the 'share capital' as a certain member's share. When a farmer leaves the kolkhoz, a member's share is returned to him in the form of compensation according to the fixed prices, which are always considerably lower than those on the open market. Any increase in the working capital of the kolkhoz belongs to it and is also indivisible. ⁴⁶

As a rule, the departing member of a collective farm also loses his plot of land for household economy. ⁴⁷ No wonder he is deprived of 'his source of subsistence,' as is correctly pointed out in the official document quoted above.

Severe repressions against farmers are established also by criminal law. Some acts committed by collective farmers, such as the malicious slaughter or intentional maiming of livestock or horses, the spoiling or damaging of any tractor, the criminally negligent handling of any horse, are punishable according to the penal codes of the Union Republics. ⁴⁸

The most drastic punishment threatens those members of collective farms who are prosecuted for the pillage of socialist property as for 'a betrayal of the common cause of the collective farm and aid to enemies of the people.' This crime is considered a counter-revolutionary act and is punishable 'by all the severity of the law' ⁴⁹ (the death penalty, replaced by twenty-five year confinement, according to the law of May 26, 1947).

7. Failure of Kolkhoz Economy

Collective farms, from both a technical and ethical point of view, might be a progressive form of agricultural economy. As a cooperative, a kolkhoz is supposed to have at its disposal modern agricultural equipment, to utilize the organized assistance of agronomists, to apply advanced work methods, and to have all the advantages of a rational division of labor. Undoubtedly there are in the Soviet Union some prosperous and advanced kolkhozes

which can be shown to be model collective farms. Some of them are better equipped, some are closer to large cities and consequently to the best markets, and some possess lands of better quality. But in general, as the Soviet papers announce annually and as statistical analysis of the results of collectivization convincingly indicates, the kolkhozes are not as profitable as they were supposed to be.⁵⁰

The reason for the failure of collectivization, from the point of view of its returns, lies in the peculiarities of the centralized system of economy and the disharmony of its legal basis with actual human psychology. Every kolkhoz is first of all a part of the huge economic machinery of the integral planning system. The kolkhoz administration is in turn a very small part of a huge bureaucratic apparatus submitted to the control, supervision and leadership of numerous economic, political and administrative organs and agencies. Besides, a kolkhoz depends economically on M.T.S., and the latter in turn, on various industrial enterprises and shops. Every inefficiency or non-fulfillment of a plan, for instance, in supplying machines or spare parts, or in the repair of machines, causes a repercussion in the whole system.

8. The Legal Nature of Kolkhozes

Kolkhoz economy and the activities of members of collective farms are regulated by public and not by private law. This is of paramount significance. If a kolkhoz were really organized on a voluntary basis and had in its possession the necessary machines, if it were vested with the right to dispose freely of its produce as an independent subject of private law, then it might be a very progressive agricultural organization. But in reality it is not a voluntary organization, it does not own the most important machines and can dispose of but a small part of the produce assigned to the members of a kolkhoz as their remuneration at its own discretion. Soviet literature has established a Russian term—*artel* to designate a kolkhoz. This name is constantly used in Soviet official documents, as well as in special economic works. In Russian pre-revolutionary law a typical form of *artel* was a voluntary organization of several persons who joined together to carry on certain kinds of work and earn money which they divided amongst themselves according to mutual agreement. Members of

an artel usually owned the necessary implements and were organized as a legal entity with a chairman (*starosta*) and sometimes with a board of directors at its head. Usually an artel did not work for itself but for another party from whom it received remuneration.

A kolkhoz is also an artel *sui generis*. As a matter of fact, this definition illustrates its essential characteristics. The so-called property of the collective farm is in reality 'socialist property' which cannot be disposed of freely because of its special designation for the needs of socialist economy. The farmers till, sow, and harvest certain parts of the state land, divided into portions and distributed amongst numerous artels. Members of collective artels (kolkhozes) receive remuneration in the form of a share in produce.⁵² This share, as we know, is generally too small, is insufficient for the existence of a farmer and his family, and therefore, as an additional remuneration, farmers have house-and-garden plots of land for their individual use.⁵²

However, a kolkhoz and an artel of pre-revolutionary times differ essentially as legal institutions. Both are legal entities, but the artel, as a form of cooperative, was an organization of private law. The kolkhoz, on the other hand, is an organization of public character. Like a *trést* it is a government economic organization for fulfilling the agricultural part of the national economic plan. For this reason a kolkhoz must be under submission to the government and party agencies. For the same reason, violation of the rules and obligations binding on the kolkhoz is considered a crime against the state ('a betrayal of the common cause' and 'aid to enemies of the people.').

A kolkhoz, the same as any other organization of public law, cannot be liquidated by the will of a general assembly of its members. It cannot even exclude a member without approval of the district executive committee. In fact, members of kolkhozes are attached to their farms and cannot freely choose their residence or jobs.

There are some misleading expressions and formulations in Soviet law which give a false idea of the real nature of kolkhozes. Thus, Article 8 of the Constitution—'The land occupied by collective farms is secured to them for their use free of charge,' is not precise because the land is given to a kolkhoz first and

foremost for production in the interests of the state. Hence it is the state which has to remunerate the farmers and guarantee their subsistence as its agricultural workers, as the farmers are not land-holders of the state who can be charged for 'the use' of land. Farmers work on the state's lands and with the state's machines and give up to the state a fixed amount of crops and other agricultural products. It is no less misleading when kolkhozes are mentioned on a par with other cooperative organizations which 'may possess all kinds of property equally with private persons.'⁵³ Almost the whole property of kolkhozes is 'socialist property' but not private property which they may possess 'equally with private persons.' Collective farm property on a par with state property, is 'sacred and inviolable,'⁵⁴ protected by the same penal law.⁵⁵ 'Kolkhoz socialist property' is a part of the national fund distributed among 250,000 artels for the fulfilling of some parts of the national plan.⁵⁶

"It is forbidden to use the land bound to the agricultural artels for other than agricultural purposes not authorized by law. For example, for the construction of industrial enterprises not connected directly with the agrarian economy, the building of summer villas for rental, etc. ... It is forbidden to lease pastures and other agricultural appendages of the kolkhoz land for rental payments ... The Sovnarkom of the USSR (Resolution of October 23, 1938) ordered the immediate liquidation of the exploitation of land resources of the kolkhozes ...' (*Zemelnoje Pravo*, Inst. Yurid. Nauk.. Gosizd. Yurid. Lit. M. 1949 pp. 196, 219).

9. *Fluctuations in Kolkhoz Policy*

To summarize, we may define a kolkhoz as an artel of farmers who are compulsorily organized for agricultural work on a certain part of the state land, in accordance with the state economic plan, and who receive remuneration in the form of a share in their produce and the right to independent but limited exploitation of house-and-garden plots.

Every kolkhoz is subject to numerous controlling and guiding organs and regulations, and consequently to the inevitable bureaucratism inherent in the system of centralized economy. Agriculture, a branch of economy which should be the most flexible because of its very nature, becomes less successful, therefore, than it might be.

As an organization fulfilling certain public functions, a kolkhoz presupposes a collective psychology on the part of its members. But this psychology does not exist and cannot be created on order. Hence the farmers remain devoted to their individual plots of land, and they struggle for more economic freedom. On the other hand, there is the effort of the government to have the kolkhozes submit to its sway. Hence the idleness of the farmers and their lack of interest in harvests and machines which do not belong to them; hence the futile efforts of the government to overcome the peasants' individualism and to force them or encourage them to give their solemn pledge to Stalin 'to produce more and deliver more to the state.'

The history of Soviet legislation concerning kolkhozes shows an uninterrupted struggle between the individualist trends of the peasantry and the collectivist tendencies of socialism. Constant fluctuations characterize this legislation. Now the government strengthens penalties, now it distributes generous rewards, transforming additional and subsidiary motives into the principal stimuli. Sometimes it tries to suppress individualistic trends by force, sometimes it yields to the farmer's psychology.

Undoubtedly rewards encourage the farmers to energetic efforts since the medals and honorary titles, as well as the material privileges and donations, meet egoistic interests and motives half-way. Besides rewards, the Soviets in 1948 and 1949, applied one more measure which again made a compromise with the individualistic psychology of the farmers. Some parts of the arable area in the use of a kolkhoz were assigned to certain groups of farmers (*zveno*) for a special kind of crop. In such cases the farmers comprising the squad did not receive their reward on the basis of 'labor days' but by a share of the harvest according to the efficiency of their work. They were thus interested in the quality of the tillage, in timely sowing and harvesting, and in careful storage. This measure was put into effect as an experiment in a few kolkhozes. It transformed some kolkhoz farmers into what we would call tenant farmers, those who give a share of the crop to the landowner.⁵⁷ Here the hidden essence of the kolkhoz as a state enterprise becomes more evident. This was at the same time another partial return to the principles of private interests and a concession to the psychology characterized in the Soviet press as

petty bourgeois psychology. Its success should be another proof that labor on the basis of private interest and individual independence and initiative is more efficient than on the basis of compulsory collectivism. However, the experiment, although approved by Andreev, a member of the Politbureau, was flatly rejected by the party at the beginning of 1950.⁵⁸

Almost simultaneously with the attack against Comrade Andreev's utterances the Soviet papers began to voice the necessity for 'consolidating kolkhozes' (*ukrupnenie kolkhozov*).⁵⁹ Misappropriations, embezzlements, and other kinds of theft of kolkhoz property still have continued in spite of all measures applied by the Communist Party and the government. Many kolkhozes remained considerably in arrears to the state in the delivery of agricultural products. For these reasons, to organize labor more efficiently and to utilize modern machinery to the maximum the Politbureau has decided to tear out any vestiges of peasants' individualism and to convert agricultural labor into a type of industrial labor. This has to be achieved by the consolidation of kolkhozes.

At the end of 1950, Soviet papers discussing problems of consolidation mentioned several times the decree of the Council of Ministers and of the Central Committee of the ACP (b) concerning consolidation of small collective farms, strengthening cadres of collective farm chairmen, and measures for further organizational and economic development of collective farms.⁶⁰ The content of this decree is, however, unknown as it was not published at least in the available papers. Neither are the instructions known which undoubtedly were given to the local authorities in connection with the procedure of consolidation. According to the information published in Soviet papers, the new large farms are to be formed from every three, five, and even more, existing Villages are to be replaced by 'agricultural towns' (*agrorods*). All common buildings, inventories, cattle and other property become the property of one consolidated kolkhoz. Peasants have to be resettled leaving their homes and house-and-garden plots of land, which they so zealously cultivated. 'Cooperative property' of kolkhozes is merged; 'personal property' of farmers' families is ignored. Undertaking these measures 'the party of Lenin-Stalin is confidently leading the Soviet

people toward the victory of communism.'⁶¹ The advantage of the large kolkhoz will be in 'strengthening of socialist discipline, fostering of communism in the soul of the peasant and transformation of his psychology.'⁶² The new reform, the 'second collectivization' was carried out in a blitz manner.⁶³ Every step of planting, harvesting, livestock breeding, etc. was regulated.

A series of articles published in Soviet papers described achievements and prospects of consolidation in a very favorable manner. Simultaneously, however, they uncovered many complications and difficulties which gradually arose; consolidated collective farms required a more experienced and better trained management than the small farms; building of agricultural towns lagged behind because of the lack of building materials; peasants could not be made secure with shelters in their new places of residence; it proved to be impossible to allot to farmers house-and-garden plots within the limits of the projected agricultural towns, and at the same time not to expand unreasonably and impracticably the town area and not to move some farmers too far from the administrative and cultural centers; finally distribution of land for different needs and purposes could not be organized at once. Complications and obstacles proved to be insuperable and after March, 1951, a retreat began. Consolidation has been suspended.⁶⁴

Andreev's plans were rejected because of their discrepancy with the communist ideology and tendencies, and Krushchev's pretentious plan and arrogant approach, because of their impracticability. We can only imagine how many peasants are ruined. In the future millions of peasants will suffer again and again from the new Soviet experiments as fluctuations in the Soviet agrarian policy and changes in legislative measures will undoubtedly continue. Since 1917, the Soviet government has not been able to overcome the resistance which it has met on the part of the peasantry. The doctrine and task of economic centralism and regimentation are in an obvious conflict with farmers' psychology.

In 1953, shortage in meat and vegetables became so acute that the Party was again forced to approve some concessions to a petty-bourgeois psychology of farmers, and in November the reduction of delivery quotas, increase of prices for compulsory deliveries, and encouragement of personal ownership of livestock were proclaimed.

Chapter XIII

SOVIET LABOR LAW

In a state of 'workers and peasants,' it is natural that conditions of labor should be the object of special attention on the part of the government. Parasites and exploiters cannot exist in such a state, and from the first days of its existence, the Soviet government has proclaimed as one of its leading slogans: 'He who does not work, neither shall he eat.'¹

The first Labor Code, issued in October, 1918, established a system of compulsory work, a type of *corvée* for all. This principle of universal service was justified not only by the moral idea of the equality of the people, but also by the socialist idea that everything belongs to the whole nation and everyone must work for the common good.

The provisions of the Code were uniform for all employees, officials and workers. During the early period, called the period of War Communism, 1918-21, the principle of equality was dominant in the Soviet state. Workers were given a vague right of 'self-government' and wages were fixed by the People's Commissariat of Labor with the approval of the trade unions.

The first Labor Code proved, however, to be short-lived. The NEP replaced the unsuccessful War Communism, and some principles of free economy were restored. The Soviet government issued a Civil Code and a new Labor Code reflecting this change. The Labor Code of November 9, 1922, formally still in force, defined the labor contract as an agreement between employer and employee (Art, 27). Labor's right to a voice in management naturally disappeared and it drew closer to its counterpart in bourgeois countries. At the same time that it restored the principle of hiring labor, the new Labor Code established a system of effective legal guarantees designed to eliminate the possibility of exploitation, and further action against exploitation was promised. While 'the Civil Code gives a maximum of individual rights,' it was said, 'the Labor Code gives only a minimum of rights.'² The provisions of the Labor Code were then to be broadly interpreted.

At the time that the Labor Code of 1922 was issued, labor

legislation in all civilized countries had made significant progress. Collective bargaining establishes for a certain period obligations for the worker, but essentially it protects the rights of workers. Collective bargaining is not a simple contract of civil law, but a kind of law-making with the participation of the representatives of the workers. This is true also of the factory regulations, which are internal laws of a factory having obligatory force for both labor and management. Last but not least, in addition to labor contracts, public law protects the interests of the workers and imposes various obligations on the entrepreneurs.³

In the Labor Code of 1922, the Soviet legislators not only incorporated these progressive trends and numerous provisions of the labor law of the western world, but even surpassed them. Even if the principles are the same, their application is more wide and generous. It could not be otherwise! Lenin considered the Labor Code to be a significant achievement of the Soviet state. The Labor Code of 1922 has been characterized by Soviet jurists as having a 'revolutionizing force abroad,'⁴ and as being the 'most perfect, the most progressive in the world.'⁵

Conditions, however, later changed. The Labor Code of 1922 had been adapted to the needs of labor relations between a worker and his private employer at the time of the NEP and protected the worker from the 'notorious greediness of the private entrepreneur.' But at the time of the five-year plans, private entrepreneurs disappeared, and eventually labor relations exist since then between the workers and the workers' state only. Consequently the protection of labor lost its former significance, and it is questionable whether it now has any significance at all. At the same time, because the whole economic life is subject to the regimentation of the planning system, the provisions of the Labor Code enlarging the competence of the trade unions proved to be obsolete and out of harmony with the foundations of the new economic program. Much the same is true of some other trends of the early period.

Some discrepancies between the Labor Code of 1922 and its practical application became manifest from the beginning. In fact, labor relations in the nationalized enterprises differed essentially from labor relations in the enterprises of concessionaires and private owners. These discrepancies became still more

impressive after the complete socialization of industry and trade.

Although earlier Soviet jurists tried to generalize about the foundations of bourgeois and Soviet labor law, this was recognized later as a mistake. On the contrary, Soviet jurisprudence tries at present to emphasize the peculiarities of Soviet labor law and its differences from bourgeois law.⁶ Employment of labor according to Soviet law is characterized by its relation to the realization and strengthening of the socialist principles of the organization of labor; it attempts to increase its efficiency, to raise the level of well-being of the workers, and to secure their health under socialist conditions.⁷ In fact, as a part of the socialist system, Soviet labor law is utilized first and foremost for increasing production, rather than for protecting the employees. The legal nature of labor relations under the new socialist conditions is changed essentially.

A citizen who works for a government enterprise becomes a member of the collective organization⁸ on the basis of 'comradely cooperation.'⁹ This is the main point of the Soviet theory of labor relations. An employed person is included in an enterprise, establishment or economy where he is charged with a certain work and where he 'becomes a member of the labor collective of this enterprise, a member of socialist labor cooperation, characterized by the solidarity of all the participants, i.e. by socialist cooperation.'¹⁰

On the basis of these new principles, it is taken for granted that it is not so necessary nor so important to protect a Soviet worker since he is working for himself in a socialist state where unearned income is prohibited, exploitation does not exist, and labor is considered 'a matter of honor and glory.'¹¹ Every improvement of general conditions improves the conditions of every worker. Every increase of production increases at the same time the well-being of every member of the socialist society. It is most expedient and consistent, from the standpoint of a socialist government, to concentrate all efforts on the problems of the organization of a socialist economy and of socialist discipline.

Consequently the Labor Code of 1922 has lost its significance and it has been essentially amended by a number of special laws. The contemporary Soviet labor law, on which 'comradely cooperation' rests, became much more complicated and unique.

If differs much more from western labor law than did the 'revolutionizing' code of 1922. Whether it can further revolutionize the workers conditions can be decided only after a thorough study.

1. Sources of Soviet Labor Law

The Labor Code of 1922, though formally the code of the R.S.F.S.R., has been enacted by many other Union Republics. Even these Union Republics which have issued their own codes, as, for example, the Ukrainian Republic, have merely repeated the text of the Labor Code of 1922 without any essential change. It is not therefore necessary to refer to any other Labor Code than that of the R.S.F.S.R. of 1922.

A number of important provisions of this code have lost their validity, as was noted above, although not formally revoked. Since 1936, labor legislation has been virtually excluded from the jurisdiction of the Union Republics. Determination of the basic principles of labor legislation is a function of the U.S.S.R. (Art. 14, of the Constitution of 1936). Some of the basic principles are formulated in the constitution itself; for instance, the right to guaranteed employment and payment for work 'in accordance with its quantity and quality,' the right to rest and leisure, the right to maintenance in old age and sickness and disability insurance (Articles 118-120); equal rights for women (Art. 122); the close relationship between trade unions and the Communist Party (Art. 126); and the duty of the workers to maintain labor discipline and to safeguard and strengthen socialist property (Arts. 130 and 131). Later, these general provisions were developed by numerous ukases, decrees, resolutions and instructions of the central organs of the Soviet government, which, in the aggregate, have become a more significant source of labor law than the code.¹²

Among the provisions of the Labor Code, which became inoperative or were replaced by new ones in conformity with the legislation of the U.S.S.R., are some of primary significance. The transfer of a worker without his consent, early prohibited, is at present allowed.¹³ Earlier it was possible to break a labor contract concluded for an indefinite period; at present an arbitrary change of job and leaving a place of employment are generally prohibited.¹⁴ A minimum wage established by the Labor Code of 1922 has been abrogated.¹⁵ Provisions concerning the length of the

working day, rest time and holidays, earlier favorable for employees, have been replaced by new provisions lengthening the working day and shortening the time of rest.¹⁶ Legislation concerning the protection of women and minors in industry has become less effective.¹⁷

Some parts of the Labor Code have automatically lost their validity because of the reorganization of labor administration and the strengthening of the powers of the central institutions and of management. Trade unions have lost some of their former functions and have been assigned new ones. Labor disputes are tried not by arbitration courts, but by people's courts and special commissions. A number of provisions concerning social security have been replaced by new provisions.¹⁸

There is no common law in the Soviet Union, and the decisions of courts are not a source of law. In Soviet textbooks on labor law, it is emphasized that neither jurisprudence nor the decisions of special commissions can be considered a source of labor law.¹⁹ Thus, the still valid part of the Labor Code and the supplementary legislation, especially of the last two decades, are the only sources of Soviet labor law.

One of the Soviet jurists of the NEP period, Varshavsky, characterized the Labor Code of 1922 as an integral whole, all parts of which are logically interdependent and interconnected.²⁰ On the basis of such an appraisal, one could expect that the Soviet system of labor relations had acquired a stable and durable form. Such a conclusion would hardly correspond to the Soviet point of view. Lenin considered law as a transient form, which, insofar as it is necessary, must always be adapted to current needs. During the discussion of the proposed Labor Code at the Fourth Session of the All-Union Central Executive Committee (VTsIK), he said: 'Other countries are not acquainted with such a rapid tempo of legislation as we have . . . We will never bind ourselves in this matter.'²¹

Lawmaking is a monopoly of the Soviet rulers. An instrument of policy, it expresses the will of the rulers who make policy, and it is, therefore, not less dynamic and flexible than the policy itself.²²

A further development of Soviet labor law, as well as labor policy, is quite possible. Soviet labor law in its present form is, however, a

consistent and characteristic part of the whole legal system of Stalinist socialism and is an interesting object of study.

2. *The 'Six-Point' Program and the Trade Unions*

From its initiation the First Five-Year Plan transformed the system of planning. During the XVIth Congress of the ACP (b) which took place in Moscow from June 26 to July 13, 1930, Stalin presented a long report in which he pointed out the significance of the problems of personnel and technical experience, the necessity of increasing cadres of workers, of fostering 'fraternal' labor discipline and responsible management.²³

Since that time, Soviet labor legislation has developed rapidly in the direction of a planned distribution of manpower,²⁴ and of a retreat from the liberal principles of the Labor Code of 1922. On June 23, 1931, Stalin spoke to a conference of industrial administrators in which he emphasized again some of the difficulties handicapping industrialization, especially the shortage of labor, the fluctuation of labor, the lack of personal responsibility, the lack of leading technical cadres, and the need for reserves. To remedy these difficulties, he offered a program known as the 'six points of Comrade Stalin:' 1) the organized recruitment of labor, especially from the kolkhozes, 2) liquidating the fluctuation of labor and *uravnilovka* (levelling of wages), 3) strengthening the personal responsibility of managers (liquidation of *obezlichka*), 4) training new technical cadres from members of the working class capable of mastering new techniques, 5) maximum utilization of prerevolutionary specialists and technicians, 6) the introduction of the business-like principles of management and cost-accounting (*khozraschet*).

On the basis of these six points, labor relations ceased to be regulated by private law, but came to be regulated by public law. Labor is assigned and distributed by the authorities in conformity with the general economic plan. Trade unions which during the NEP had to protect the interests of the workers in their relations with the employers have lost their former functions. Standard efficiency, working day, wages, liabilities, all those questions which are usually within the competence of trade unions and are determined by collective bargaining, now fall within the jurisdiction of the central government and the managers, because all are

closely connected with the economic calculations and cost accounting for which the manager is directly responsible.

During the NEP, labor contracts reached through collective bargaining between trade unions and private enterprise were considered quite normal. Trade unions had been specially used by the government for the purpose of limiting the opportunities of foreign concessionaires. For example, the Japanese in the northern part of Sakhalin were unable to exploit fully their coal mine concessions because of constant conflict with the trade unions.²⁸

Since all private enterprise was liquidated, trade unions proved to be superfluous for protecting the interests of workers. Labor agreements between trade unions and government enterprises ceased to be concluded and relations between the enterprises and the workers were conducted on an individual basis.

The interests of the workers are supposed to coincide with the interests of the socialist state, or they must yield to the latter. The Sixteenth Congress of the Communist Party instructed trade unions to strive for the inculcation of socialist discipline in order to further socialist construction.²⁸ As a popular Soviet textbook explains, the Soviet trade unions 'educate the working masses in the spirit of the Communist attitude toward their work and in socialist discipline; they organize their struggle for fulfilling and over-fulfilling plans of production and have an incessant and manifold concern for improving the material and cultural conditions of life for workers and employees.'²⁹

As a school of Communism, according to Lenin's expression, and as the 'backbone of the proletarian dictatorship,' as L. Kaganovich has characterized the trade unions of the Soviet state,³⁰ they became in fact agencies of the party and of the government. The process of transforming trade unions into governmental agencies was accomplished in 1933, when the People's Commissariat of Labor of the U.S.S.R. with all its local agencies, including the organs of social insurance, were merged with the All-Union Central Soviet of the Trade Unions (the VTsSPS) and its local organizations. The VTsSPS was henceforth charged with the duties of the *Narkomtrud* and its organs.³¹

From 1934 to 1947 collective agreements were not concluded in the Soviet Union. Conditions of labor had been dictated by the government. 'Collective bargaining as a special form of the legal

regulation of labor relations of manual and clerical employees has outlived itself,' says the textbook on labor law published in 1946.³²

This policy, however, was changed in 1947.³³ Collective bargaining was restored and recommended as an important measure, but with reservations which are explained by a Soviet jurist as follows:

'During the period of the socialist industrialization of the country and collectivization of agriculture, a centralized regulation of labor conditions becomes stronger, some provisions of labor legislation become in many cases compulsory instead of being optional, and, consequently, only those points which are not regulated by law have to be settled by the collective agreements and labor contracts.'

'Trade unions participate directly in the legal regulation of labor. ... They supervise and control the observance of the existing labor law, and direct social insurance.'³⁴

It goes without saying that the chief duty of the trade unions remains to assist in the attainment of the fulfillment and overfulfillment of the national economic plan and to encourage and stimulate 'socialist competition.' This function of the trade unions was very precisely formulated in one of the slogans of the Central Committee of the All-Union Communist Party on May 1, 1950:

'Soviet Trade Unions widely develop socialist competition for the fulfillment of the national economic plan of 1950 ahead of schedule! Spread the experience of innovators for more productive work! Show your unceasing care in regards to raising the material and cultural level of workers and employees! Long live Soviet Trade Unions—the School of Communism.'³⁵

3. *Work as a Duty*

According to the Stalin Constitution (Article 118), every citizen has the right to work. This right is absolute, and, consequently, nobody may interfere with the Soviet citizen's realization of it.³⁶

However the Soviet legal system transforms rights into duties. Public law predominates and every public right is at the same time a duty. Soviet labor law gives a new and very striking

illustration of this point. Work in Soviet conditions is a necessity, as 'He who does not work, neither shall he eat.' It is also a duty and the government is empowered to demand of the citizen that he work when and where public interest requires it.³⁷

The Soviet Constitution of 1936 proclaimed a seven-hour working day with the intention of having a revolutionizing effect on the outside bourgeois world; but since 1940, the eight-hour day has been in effect.³⁸ An additional increase in the working day was prohibited,³⁹ but there are at present some exceptions and in all cases of urgency and lack of manpower over-time work is permitted. 'A worker may not refuse to carry out the administration's order concerning over-time work. If he finds such an order illegal, he must inform the factory, plant, or shop committee about it, but not stop work.'⁴⁰

Originally minors less than 18 years old could not be required to work overtime (Article 105 of the Labor Code). This provision has also been changed, so that at present only minors less than 16 years old may not work overtime.⁴¹

Originally workers had the right of a fortnight's vacation after five and a half months of uninterrupted work, but only once per year (Article 114). At present, a vacation is given only after 11 months of uninterrupted work.⁴² Minors less than 18 years old formerly received one month's vacation. Since April 30, 1930, a one-month vacation has been granted only to minors under 16 years of age.⁴³

The general trend of tightening labor conditions can be illustrated also by Article 113 of the Labor Code. This article had shortened working days on the eve of official holidays to six hours without diminishing wages. On June 27, 1940, however, a decree of the Council of People's Commissars of the U.S.S.R. prohibited the shortening of the working day on the eve of Sundays and holidays.⁴⁴ It was ordered besides that if the established days off coincided with official holidays, no substitutions for the lost day could be made. Finally, it was ordered that the single recess during the working day (Arts. 89-100) cannot be longer than 20 minutes.⁴⁵

It is not always possible to choose a job freely in the Soviet Union. Manpower is an essential element of a planned economy and the Ministry of Labor Reserves of the U.S.S.R. has the power

to distribute labor between different branches of industry. For the purpose of rehabilitating the Donbas mines for example, not only war prisoners and repatriated D.P.'s, but also girls from within the country were dispatched.⁴⁷ Able-bodied city dwellers and high school students are periodically drafted for seasonal work in collective farms. Technical personnel, including engineers, foremen and skilled workers, can be compelled to transfer from one enterprise and establishment to another.⁴⁸ Young people of both sexes, if drafted for industrial training, are obliged to work for four years in government factories, plants, mines, etc. as assigned by the government.⁴⁹

The law concerning disabled veterans gives a striking illustration of how the right to work is transformed into a duty. To accept the job offered is not only a right, but a duty for veterans belonging to the group to which the least disabled belong.⁵⁰ In addition to their regular jobs, certain groups of citizens must perform short-term work as a public service.⁵¹ For example, women clean snow from the streets and public places of Moscow, as pictures show in the Soviet illustrated magazine, *Ogonek*.

4. Wages

Like many other conditions of work, wages are excluded from the province of trade unions negotiators because 'it is positively forbidden to include in the collective agreement any rates not approved by the government.'⁵² and because standard contracts promulgated by the respective Ministries have the force of directives which must be followed by all trade unions, as well as government enterprises.

In the development of the Soviet system of remuneration, essential changes have taken place. The Labor Code of 1918 provided that wages were to be replaced by a system of 'labor rations.' 'Equal remuneration for all workers' was then the slogan and there was no difference in the pay of skilled and unskilled workers.⁵³ This system certainly proved to be very unpractical, and in 1922 a piece-work system replaced the pure Communist principle of equal remuneration. All in all the role of the trade union in the Soviet system of remuneration contradicts the theory and practice of labor law in the western world. At the turn of the century, several jurists—Anton Menger in

Austria and P.I. Novgorodtsev and J. A. Pokrovsky in Russia—discussed the problem of a 'right to subsistence.' They approached the subject from different points of view. Menger insisted that people in need must be supplied with their essential wants before the less essential needs of other people are satisfied. ⁵⁴ P.I. Novgorodtsev, then a professor at Moscow University, asserted that the state must guarantee to all a minimum standard of living. ⁵⁵ J. A. Pokrovsky, at that time professor at St. Petersburg University, suggested the more practicable idea of establishing social insurance for the unemployed. ⁵⁶

It was not unique in the past, and it is still not unique in some backward countries, that employers exploit the desperate situation of workers and offer them an extremely low wage rate. This practice became impossible where the trade union movement has developed. There are, however, some aspects of the conditions of labor not sufficiently protected by trade unions where interference on the part of the government is necessary. ⁵⁷ The establishment of a minimum wage rate by law is certainly one of the most radical and efficient measures in this direction. Soviet labor, on the other hand, has moved in the opposite direction.

The liberal principles included in the original text of the Soviet Labor Code, which had protected the interests of the workers, are being more and more abrogated by a series of recent laws. For example, the provision of the Labor Code concerning minimum wage rates (Art. 59) is no longer applied on the ground that there are no low wage rates in the Soviet Union. ⁵⁸

However, wage rates are, in fact, very low, relative to living cost. An exemplary scale cited in the official collection of labor laws published in 1947 indicates that in 1942 an average wage was about 1.30 rubles per hour, or 10 rubles per day. This scale indicates that at least eight different rates were established in accordance with the greater or lesser skill of the workers (from 0.75 to 2.80 rubles per hour) and that a worker whose output exceeds the established norm has an additional earning. ⁵⁹ For example, a laborer working in the building industry receives, in accordance with the established progressive scale of piecework rates, a 15 per cent increase for all production up to 10 per cent over the normal output, a 30 per cent increase if his output exceeds 20 per cent of the norm, a 60 per cent increase if his

output exceeds 50 per cent of the norm, and a 100 per cent increase if his output exceeds 50 per cent of the norm. ⁶⁰ A similar system is applied in practically all industries.

Raises in wages are prohibited beyond the rate established by the government. If additional payments are justified by unexpected and unforeseen complications, managers are instructed to reduce these additional payments to a minimum. Some additional payments are considered as a 'hidden form of the arbitrary raising of wage rates.' Trade unions are ordered by the Central Council of Trade Unions not to allow illegal additional payments, which are considered as embezzlement and plundering of the national property. ⁶¹ It also is prohibited to change the payrolls of the official bureaus. If an increase in wage rates is allowed (as, for instance, 'in the remote northern regions') it cannot surpass 100 per cent of the established scale of wages. ⁶²

Thus, instead of guaranteeing a minimum wage, Soviet legislation has established maximum wage rates and has prohibited increases above them. At the same time differential wage scales and the system of incentive payments create sharp contrasts in remuneration and split the workers into a privileged and wealthy group and a group living on starvation wages, especially since the payment of bonuses for increased output has been widely practiced. The original *uravnilovka* (levelling of wages) has been replaced, in accordance with one of the six Stalin points (see above), with a quite different system. It is necessary to exceed the standard norms of output in order to receive sufficient wages to exist. Since 1950 average wages both nominal and real became higher. Nevertheless the actual system of wages is still inadequate and has restored for an overwhelming majority of workers the notorious 'sweat-shop' system. ⁶³ As a general rule all able-bodied members of a family must work and earn in order to secure even minimum standard of living. Overtime work and the substitution of compensation for a vacation, as provided by Arts. 91 and 161 of the Labor Code, are a necessity for these whose earnings are too low. At the same time there are some skilled workers and some classes of managerial employees who have all kinds of luxuries.

Inasmuch as wage rates are based on the principle of piece work, the real wage of a laborer is closely dependent upon the standard output, i.e., the established minimum output which a

worker is required to produce within a certain time (so many units per hour, per day). Originally the Labor Code (Art. 57) guaranteed to an individual worker two-thirds of his usual wage, if his production did not reach the standard output, both in government and private enterprises. This legal provision was amended on June 10, 1934,⁶⁴ as were many others of the preceding period, in a direction contrary to the interests of the workers. In its new wording, the same article gives the worker in a government or cooperative enterprise the right to a remuneration, in case of underproduction, corresponding to the quantity and quality of his real production, without guaranteeing to him any minimum wage. The guarantee established by Article 57 of the Labor Code is still in force only in private enterprise, which practically does not exist in the Soviet Union (See note 15).

In the meantime standard outputs are periodically revised and increased, in accordance with the instructions of the central government, on the ground that the technical equipment of industry is being improved and that the standard output must always conform to technical potentialities and to the experience provided by the progressive achievements of the Stakhanovites.⁶⁵ Consequently the average worker is always under the threat of lagging behind in his productive efficiency and any Stakhanovite innovation places upon him the burden of an increased standard output which he must maintain or face a cut in his already inadequate wage.

5. *Labor Discipline*

In order to determine precisely and comprehensively the general and special obligations and the responsibility of both employees and the administration, each enterprise in the Soviet Union is subject to special labor regulations. Prior to 1932 the issuance and application of these regulations, according to Article 54 of the Labor Code, were under the jurisdiction of each enterprise's management, which acted in agreement with the local branches of the appropriate trade union. The People's Commissar of Labor had the right to issue model regulations, and these were to be applied if no other regulations were issued by a given enterprise. In individual cases, especially for the most important enterprises and institutions, regulations could be worked out by the central

government, but always with the approval of the Central Council of Trade Unions. (Arts. 53 to 55)

This procedure has been changed in accordance with Stalin's six-point program and since 1932⁶⁶ a series of laws and decrees have constantly strengthened labor discipline and the responsibility of workers and managers. The factory regulations on which labor discipline is based were summarized by the Standard Regulations of 1941.⁶⁷ The Standard Regulations are compulsory not optional, and have the force of law. Consequently Articles 53-55 of the Labor Code have lost their validity. Not only local organizations but the Ministries of the U.S.S.R. have to apply the Standard Regulations, although they may be adjusted to local conditions and to the peculiarities of some special branches of the economy.⁶⁸

The main point of the regulations is formulated in their first section (sec. 1 (e)) as follows: 'To strengthen labor discipline and to realize without exception the principle of unitary responsibility for management.' The principles of labor discipline established since 1932 as summarized in the Regulations include: fulfilling exactly all instructions of the administration; coming to work punctually; producing the standard output on schedule and striving systematically for overfulfillment of production goals; improving the quality of production; taking care of socialist property, etc. Violations of these obligations are punishable by disciplinary action or through criminal proceedings.

As established in the Soviet Union since the beginning of the thirties labor discipline is characterized by the necessity for absolute submission to all orders of management and by the severity of imposed penalties. The following case illustrates the role of management and the nature of labor discipline. The administration of a factory cancelled the regular day off and ordered workers to report for work. The order had been issued contrary to regulations, and for this reason, a worker, Baimatov, did not come to work. The People's Court sentenced him for violation of the order, and Baimatov appealed to the Regional Court. The latter overruled the sentence of the People's Court on the ground that the administration's order had been issued in violation of existing regulations. However, the Criminal Division of the U.S.S.R. Supreme Court overruled the decision of the

Regional court and emphasized in its decision that 'every order of the administration, whether it is right or wrong, must be executed without fail, and no employee has the right to report or not to report to work, based upon his real or supposed right, contrary to the order of the administration. He can appeal, but unless the order is cancelled, it must be executed.'

The same principle was asserted by the Plenary Session of the U.S.S.R. Supreme Court in its ruling of February 10, 1944, regarding the Mussienko case. 'An order of the director of an enterprise which abrogates a day off in a certain workshop or for a certain group of workers cannot be considered as a legal act if there is no indication in the order itself that the cancelled day off will be later replaced by another day off. Nevertheless, even if the substitute day off was not mentioned, this does not give a reason for not fulfilling the order, since every order of a manager must be executed without fail.' Therefore, the failure to come to work when a day off is declared to be a working day is punishable as an act of shirking, even though the administration had violated the required formalities. ⁶⁹

The Standard Regulations are a part of public law and are applicable to both workers and civil service personnel. Every employee must remember that he is hired by the State and for the State. Many violations of labor discipline are punishable as criminal acts, if they are considered to be consciously directed against the labor regulations or simply if they are dangerous to the Soviet economy. Every disciplinary penalty must be cited in a general order, whose receipt must be acknowledged by the person concerned, just as there is a similar practice when regulations of public order are involved.

A simple act of loitering during working hours, regardless of the time involved or the number of times repeated, is considered an infringement of discipline and is subject to one of the disciplinary penalties: admonition, reprimand, severe reprimand, or transfer to a lower-paid job. Coming to work in a state of intoxication is considered an act of shirking and is punishable as a crime. ⁷⁰

The Criminal Division of the U.S.S.R. Supreme Court ruled on January 25, 1943, that sleeping on the job is a violation of discipline, but not a crime, if the job, as for example that of an engineer,

does not require a specially high state of watchfulness.⁷¹ Otherwise it is deemed to be a criminal act, and punishable accordingly.

Acts of rowdiness committed by workers or employees at their place of work are now prosecuted as criminal acts, although previously they were considered disciplinary infringements and disposed of by fine or public censure. They are now punishable by imprisonment in accordance with Article 28 of the Standard Regulations⁷² and Article 2 of the Ukase of August 10, 1940. Absenteeism or tardiness of less than twenty minutes without justification, three times in one month or four times within two consecutive months, is considered a criminal act of shirking and is punishable by compulsory labor without confinement up to six months and reduction of wages up to 25 per cent. Reporting to work more than twenty minutes late is likewise considered a criminal act. Criminal negligence is presumed in these cases.

Under existing regulations, the right to strike does not exist in the Soviet Union, though it is not specifically prohibited unless transportation is disrupted (Art. 59^{3c} of the Penal Code). Every striker could certainly be held responsible and could be punished for the criminal act of shirking or violation of discipline in accordance with the Art. 130 of the Constitution and corresponding provisions of the penal code and labor regulations.

'The use of the strike weapon in a state with a proletarian government can be explained and justified solely by the bureaucratic perversion of the proletarian government, by the prevalence of the vestiges of capitalism in the institutions or by the undeveloped political consciousness, or the cultural backwardness of the working masses.' (Lenin, *Sochineniia*, Ed. 4, v. 33, p. 162).

In general, penal provisions of Soviet labor law are so numerous and criminal prosecution for violations of labor regulations so usual that V. Gsovski has had reason to characterize the present Soviet labor law as being 'to a large extent criminal law.'³⁷

In addition to criminal punishments, Soviet labor law has established financial liability for workers and employees for any damage caused by them in the performance of their duties. Liability is limited and subject to the rules of civil law in case of simple negligence in work, or if it is determined that an infringement of the law, or factory regulations, or the employer's special

instructions and orders had been committed without malice aforethought. It was later established that in the case of malicious action or of the breach of special terms of contract, the person who caused the damage is liable for the full amount of the damage without any limitations on his financial responsibility. But, as in many other cases, original provisions of the Labor Code were supplemented with some special provisions of a punitive character. These provisions established an increased liability which exceed the damage three- to five-fold and have the character of an additional punishment. ⁷⁴

Some employees are liable for the full amount of the damage even when they cause it without intention. ⁷⁵ It is even more characteristic of Soviet law that workers receive a reduced wage in cases of stoppage and spoilage not caused by themselves. In order to understand this odious provision, it is necessary to recall that, under Soviet conditions, all workers are obliged to prevent stoppage or spoilage caused by other workers and for this purpose there are conferences, admonitions, etc. ⁷⁶

The above indicates that socialist discipline rests on penalties rather than on labor enthusiasm. According to the prevailing Soviet doctrine, crimes in general, and in the field of labor particularly, 'are due to the capitalist elements surviving in the psychological make-up of the Soviet people.' ⁷⁷

The history of Soviet labor law has witnessed the gradual strengthening of penalties. For example, tardiness of less than twenty minutes, undue prolongation of lunch time, loitering on the job used to be punished by dismissal (Decree of December 28, 1938). According to the Decree of June 26, 1940, if these offenses are repeated, dismissal, which is one of the disciplinary penalties, is replaced by compulsory labor of up to six months with a reduction of wages of up to 25 per cent. Petty larceny (i.e. larceny of state property under fifty rubles in value), and also acts of rowdiness, earlier punished by fines, were declared by the decree of August 10, 1940 to be crimes punishable by imprisonment for one year or more. ⁷⁸

Soviet jurisprudence has revealed various abuses of the law, abuses characterized by Soviet jurists ⁷⁹ as 'a wish to profit at the expense of the State.' For instance, a pregnant woman takes a job close to the time of accouchement in order to get leave and relief

without any intention of returning to work after child-birth. 'Flitters' used to take leave after $5\frac{1}{2}$ months of work and change their place of employment at the end of their leave so as to obtain leave for a second time in the same year. Some workers deliberately sought to be dismissed and violated shop regulations with the intention of securing an opportunity to change their job. ⁸⁰

Not less characteristic in Soviet law is the progressive increase of rewards to encourage industriousness in the workers. The elaborate system of penalties and rewards indicates that socialist enthusiasm is not inherent in the working masses of the 'State of workers and peasants.' It is conditions under the Soviet system which generate deviations from the socialist order. If there are survivals of capitalism, they are possible only in the older generation, which, to the extent that it still exists, constitutes a very small minority. ⁸¹ The drastic Standard Regulations of 1941 were evidently created for the new generations educated by the 'socialist' state.

6. *Social Insurance*

The labor legislation which was to revolutionize the labor conditions of the whole world should certainly be expected to excel in the planning of social security and insurance. In fact, Soviet law has helped organize social insurance with very generous aims. Social insurance has been extended to all groups of government employees and to those of social, cooperative and private enterprise, and even to those hired by private persons (Art. 175 of the Labor Code). It includes assistance during illness, assistance in case of temporary disability, pregnancy and childbirth, funeral expenses, assistance to dependents who have lost their breadwinner, pensions for disabled persons, and for the aged who have worked a certain number of years. ⁸²

However, the rates of assistance and pensions are so low that they rob the generous aims of the laws of their practical significance. For example, the highest pensions for the aged are equal to 60 per cent of the wage or salary received, but if the wage or salary exceeded 300 rubles per month, the pension is calculated from 300 rubles. Pensions to invalids are established at the rate of from 50 to 100 per cent of their professional earnings, but again if these earnings exceed 300 rubles, the pension cannot nevertheless exceed that amount. ⁸³

A family of more than three persons which has lost its breadwinner cannot receive more than 125 per cent of the pension which the deceased could have had if he were a disabled veteran of the second category. This means that a large family of minors and other persons unable to work can have a pension of not more than 225 rubles per month if the late breadwinner had earned 300 or more rubles per month. ⁸⁴

Pensions given to teachers, scholars, medical workers, agronomists, and other employees of a similar category, who have worked a certain term, cannot exceed 150 rubles per month. ⁸⁵ In 1947 it was not more than a quarter of an average wage, which was not sufficient for covering cost of life.

The low pensions usually awarded are out of line with the high cost of living in the Soviet Union, ⁸⁶ and, therefore, bring to nought the generous promises of the law concerning social insurance.

There is another condition which also limits the practical application of social insurance. In order to get assistance and pensions, it is necessary to work uninterruptedly in the same enterprise or to change jobs only involuntarily. The rate of a pension or assistance depends upon the length of uninterrupted work in the same enterprise or bureau. This provision, the purpose of which is to freeze workers to their jobs, deprives them either of some share of assistance and pension or of freedom of movement and choice of job. Finally, some services are not free; for instance the use of sanatoriums, kindergartens, and nurseries must be paid for. ⁸⁷

The government's income for social security costs is derived partly from the universal trade union fee which is one per cent of wages and payroll deductions, but principally from the extremely high turnover tax.

7. *Collective Bargaining since 1947*

In February 1947, ⁸⁸ the XVII plenum of the VTsSPS decided to renew the practice of collective bargaining and to conclude collective agreements for 1948. As the newspaper, *Trud*, explained it, ⁸⁹ 'the chief aim of the new collective agreements must be the achievement of tempos of production which can secure the completion of the Fourth Five-Year plan in four years.' When collective agreements are concluded, the interests of certain

enterprises as well as of the national economy as a whole inust be taken into consideration first and foremost insomuch as class struggle and conflicting interests of different social groups do not exist in the Soviet Union.⁹⁰ Workers and management in the Soviet Union are considered a single team, members of the same collective, and consequently, in so far as the socialist obligations of managers and other groups of employees are concerned, there is no difference between them from the point of view of principle.

The basic significance of the collective agreements is that it mobilizes the mass of workers for fulfillment and overfulfillment of production plans, it improves the organization of labor, it raises the material and cultural level of the life of the workers and employees in conformity with the legislation of the Soviet state. As the Soviet jurists explain it, the most important point in the collective agreements is to emphasize the duty to strive for the accomplishment of the fundamental purposes of a certain socialist enterprise in accordance with the national economic plan.

To serve this new intention, the collective agreement is no longer a purely juridical document as it used to be.⁹¹

‘The collective agreement contains provisions not only of legal character, but also of socialist morality having no legal sanctions. And besides that, the specific seriousness of moral obligations in the collective agreement is exceedingly important and its real significance is still enormous.’

‘Behind (socialist moral norms G.G.) stands the mighty force of Soviet public opinion, the force of established progressive moral and political views ... the power of social organizations and the mighty authority of the Soviet state. Finally the moral norms are secured by a system of economic regulation and stimulation.’⁹²

Both legal and moral elements of the collective agreements serve to the same goal:

‘For the contemporary Soviet jurist, the collective agreement functions as a system of legal obligations of the enterprise and moral obligations of the workers directed toward the fulfillment of the national economic plan.’⁹³

Every worker must fulfill his obligations to produce in accordance with the prescribed output; that is his legal obligation. At the

same time he has also to strive for the fulfillment of the planned output of the whole enterprise, to participate for this purpose in socialist competition, to share his experience with other workers or managers, and to improve his skilfulness; all these obligations are of a moral character. ⁹⁴

It is not difficult to guess that the Soviet government has taken for granted that the conclusion of collective agreements can be useful for the accomplishment of State's aims. Although comprising some obligations on the part of government enterprises, it emphasizes first of all legal and moral obligations of workers and the joint responsibility of all workers and employees of every factory for the fulfillment of the production program,—the collective agreements are used as an additional stimulus in the common drive for the realization of the large scale Soviet plans.

Thus the function of Soviet trade unions is not changed. They continue to serve the interests of the state, since its interests are supposed to be at the same time the interests of the working masses. Trade unions could be more closely identified with the protection of the rights and interests of workers in the field of labor conflicts. However even there, their activity is confined within very strict bounds.

8. *Labor Conflicts*

Workers of every enterprise, institution and economic unit, in which the number of employees total more than 25, elect a factory committee known in the Soviet Union as a *fabrichno-zavodskoi komitet*, the lowest agency of the trade union. ⁹⁵ These committees represent the interests of workers, control the execution of existing provisions of labor legislation protecting the interests of workers, undertake necessary measures for improving the cultural and material conditions of employees, assist in the normal development of production, and participate, through the medium of trade unions, in the regulation and organization of the national economy. Thus, the functions of these committees, as of the trade unions, are dual: they represent the interests of the working people, but are at the same time at the service of the employer, the Soviet state. The protection of the workers' interests is always subordinated to the more important interests of the national economic plan. Nobody is permitted to forget the leading slogan: 'Attention to industry.'

The Soviet state differs from a private entrepreneur. It has numerous control agencies such as labor inspection, technical inspection, sanitary inspection, special governmental inspection for the surveillance of minors' labor, social inspection for the same purpose, and, in addition, some commissions and special agencies for special tasks. ⁹⁶ All of these organs of inspection and special agencies are, in the aggregate, sufficiently competent to secure for labor the best possible conditions. However, problems concerning the development of the national economy and the achievement of political tasks have an overwhelming significance, while individual and social interests have only a secondary place. If trade unions first and foremost carry out the interests of the state, even more so do all official inspectors. The interests of workers consequently are always of secondary importance, and, besides, they are protected under certain conditions.

This is the essential difference between conditions of labor in private enterprise and in enterprises of a totalitarian state, where there are no independent workers' organizations. Entrepreneurs, generally speaking, first and foremost protect the interests of their business, but they must do what is required by regulations for protecting the interests of laborers, and workers have the right to demand conditions which were previously agreed to. Trade unions in the western world, if they understand economic conditions and do not want to destroy their own interests, are, of course, often compelled to compromise in cases of conflict. But under the conditions of a free economy and free competition, every group and social class protects its own interests in seeking to find an acceptable basis of settlement. Trade unions primarily serve the interests of labor and only indirectly the interests of others. In the Soviet state, on the other hand, labor is only one of the component parts of the tremendous apparatus designed to build and strengthen Communism. The final goal overshadows all others, and trade unions must serve this final goal, rather than anything else.

The development of Soviet labor legislation is very indicative of how the role of workers' organization becomes less and less significant under the conditions of universal planning. We have seen how during the N.E.P., when private enterprises were allowed to exist, the Labor Code consisted of the most progressive

principles of labor law. It protected the interests of the working people. We have seen also how later, after the liquidation of the private sector of the national economy, the Soviet state, when it became the sole employer and entrepreneur, did not require from itself what it had required from private owners.

Conditions of labor in the 'socialist state are very well characterized by Bukharin's statement that under the proletarian dictatorship, a worker has a share in social production instead of a wage.⁹⁷ Workers are deprived of the means of securing self-interest. Labor organizations, representing the interests of the working people, perform an altogether different function: they strive for the over-fulfillment of the five-year plan and educate workers in devotion to Communist tasks.

Some labor conflicts are inevitable, however, and special organizations for examination and settlement of these conflicts are necessary. For this purpose the so-called *Raschetno-Konfliktnye Komissii* (Evaluation-Conflict Commissions or piece-rate and Dispute boards)—abbreviated to 'RKK'—were created.⁹⁸ They consist of representatives in equal numbers from the committee of workers and from the employer (the state's management). Decisions can be reached only by agreement between these two parties. Decisions of the RKK are final and may be revised only by the organs of supervision, i.e. by the trade unions or the RKK of a higher level.⁹⁹

Some questions not of a claim character belong to the jurisdiction of the RKK, as for example, problems concerning conditions of labor, which can be changed or settled by the administration in agreement with the trade unions, and decisions about the necessity of over-time work and the distribution of vacations. In all these cases the activity of the RKK has a law-making character, rather than a judicial one.

The RKK must, in addition, hear claims concerning the transfer of workers to other jobs, payments in case of underproduction or in case of stoppage and spoilage, dismissal because of incapacity for work or non-fulfillment of required duties, and other claims concerning compensation, premiums or deductions. These disputes cannot be tried by the courts unless they are first examined by the respective RKK.

In some other instances a grievance may be addressed to the

respective RKK or to the People's Court by the choice of the claimant. But if a dispute concerns acts or orders of the administration which are its sole responsibility, especially if the acts of the manager concern disciplinary penalties, the complaint may not be examined by the RKK, but is tried by the People's Court.

Arbitration courts which existed earlier in the Soviet Union, in accordance with Article 168 of the Labor Code, have been abolished.¹⁰⁰ Their abolition, the limitation of the jurisdiction of the RKK, and especially the exclusion from their competence of administrative and disciplinary acts of the management emphasize the public character of Soviet labor law and labor relations.

The labor provisions of Soviet legislation completely correspond to the spirit of the Soviet regime; they reflect its bureaucratic centralism and the unlimited subordination of all private interests to the final goals. No less than other individuals in the Soviet Union, laborers must sacrifice their interests to the interests of Communism and World Revolution. If they are not sacrificed through their own initiative, they are sacrificed by the government. The end justifies the means.¹⁰¹

Everybody is required to work in the Soviet Union. Workers are supposed to be satisfied by socialist advances and by the fact that 'parasites and exploiters' of the pre-revolutionary era are exterminated. The question may be raised however whether the Soviet regime really satisfies the workers and whether it does not create a new type of parasite and a new psychology of exploitation. If industrialists and tradesmen of the past were considered parasites because of their 'easy' work and relatively high profit, why cannot a clerk of the numerous Soviet bureaucracy, secluded within his office and writing instructions, be considered a parasite? But problems of this type are beyond the field of legal discussion.

Chapter XIV

PENALTIES AND REWARDS AS INCENTIVES FOR WORK

Long before Revolutions of 1917, the eminent Russian scholar L. J. Petrażycki pointed out that with transition to socialism there would be greater emphasis on the system of compulsion and

rewards in work. ¹ When the government becomes the supreme monopolist and arbitrator of all earnings and prices, when the livelihood of all its citizens is placed in direct dependence on the state, the stimuli of acquisition, gain, and risk lose their power. The incentive to work is derived either from disinterested devotion to national and humanitarian causes, or from anticipation of favors from the powers that be. However, lofty ideals and altruistic psychological motives are not common among the masses. Therefore, in order to stimulate people to work various rewards are widely used. On the other hand, any impairment of personal interests produces indignation, retaliation, and sabotage. Then the authorities, on their side, have recourse to harsh measures for dealing with the 'enemies of the people.' Thus a lavish distribution of rewards as encouragement to devoted and zealous workers, and ruthless reaction against sabotage and even laziness or neglect become ordinary phenomena.

A system of penalties and rewards is being practiced on a wide scale in the Soviet Union not only to stimulate economic activity, since profits as stimuli have completely uprooted, but also to discourage acts inimical to the interests of the state, such acts being treated as crimes. This is one of the peculiarities of Soviet 'socialism' in its present form. Concentration of all economic and political power in the hands of the central government deprives every one of the possibility of existing without serving the state. An engineer, worker, peasant, or even scholar, writer or artist, is in the service of the state, and for every violation of his duties, non-fulfillment of plans, or failure in performing contracts he can be charged with negligence, sabotage, and even conspiracy against the state. In spite of comparatively mild penalties established in some sections of the Soviet Penal Code, the Soviet system of penalties is known as excessively cruel. This is counterbalanced by the lavishness of rewards. These peculiarities are inherent in the system of Soviet socialism and deserve special study.

I. Crimes against Public Interests

In a country where the national economy is based on property rights and on a system of private enterprise and competition, those who do not work efficiently harm themselves. It is not necessary to prosecute them for their negligence unless there is some

element of offense against a third person or against society. This is not the case in the Soviet Union. Directors, chief engineers, managers of factories and plants, their assistants, and chief supervisors, are held responsible for producing goods of inferior quality, for any failure to conform to the established standards, or for the release of unfinished products or products which are not entirely fit for use. This defective production is considered equivalent to sabotage and entails sentence to ordinary prisons for a period of from five to eight years. ² But if fraudulent intent is ascertained, then the accused are indicted as 'wreckers' (saboteurs), ³ punishable by twenty-five years imprisonment in a correctional labor camp, ⁴ and only in extenuating circumstances, by deprivation of liberty for a shorter period with confiscation of property in whole or in part.

Directors of industrial establishments are also responsible for 'non-fulfillment of any contractual agreement with the state, or a public institution or enterprise' and if bad faith is established in the course of civil proceedings, they are imprisoned for a period of not less than six months with confiscation of property in whole or in part. ⁵

Rank and file workers and employees are also under the threat of prosecution. For absence from work without an acceptable reason they are liable to be sentenced to correctional labor at their regular place of employment for a term not to exceed six months with a reduction of wages not to exceed twenty-five percent. Violations of labor discipline without a valid excuse, such as tardiness, leaving work before the scheduled time, undue prolonging of the lunch recess, and loitering on the job, are considered criminally punishable shirking. If the period of tardiness is less than twenty minutes or if the quitting of work occurred less than twenty minutes before the end of the work shift, then the accused is subject to disciplinary action. However, if a similar violation occurs three times in a single month, or four times in two months, it is considered shirking, for which corrective labor is prescribed for a period of up to six months. ⁶

Arrival at work more than twenty minutes late without a legitimate reason means a fine of twenty-five percent of a half year's wages. The court sends a demand for payment to the institution or plant where the sentenced person is employed, and

for the six months period the enterprise is obliged to withhold a portion of the wages of the sentenced person and turn it over to the state treasury. Repeated lateness for work involves a prison sentence of not less than one year. Absence from work without a justifiable excuse involves imprisonment for a period of from one to two years. Arbitrary quitting or changing one's place of employment can also incur a sentence at correctional labor for a period of up to three years.

In the cases just cited the following are considered justifiable reasons: 1. Serious illness of the employee, if the fact is confirmed by a doctor of a state medical institution. 2. An accident to a member of the family, with the fact confirmed by the *militia* (Police), the house administration, or some other responsible authority. 3. An official court summons. 4. A breakdown in the transportation system which prevents the employee from appearing at work on time. ⁷

Any person, from watchman to chief engineer, of any enterprise can be indicted for any breach of labor discipline. The excusing of any such violation is absolutely prohibited. On the contrary, it is the administration's duty to prosecute those at fault immediately and without fail. Otherwise the administration itself is subject to trial, not only for neglect, but also for concealing the crime, and is punishable as an accomplice. ⁸

Graduates of universities and institutions of higher learning are indicted for loafing if they refuse to accept appointment to a designated position. Under threat of punishment, after graduation they must serve for five years in their respective fields at the order of the commissars (ministers) 'for having been taught at the expense of the state.' ⁹

Serious penalties also threaten negligent 'kolkhoz' farmers. Every able-bodied farmer is obliged to work for a fixed number of labor days. Any person who fails to work the obligatory minimum during the course of the year without a justifiable reason 'is to be expelled from the kolkhoz, and forfeits his rights as a member of the kolkhoz, and also the rights to his household plot.' ¹⁰

In the Soviet Union the simple non-fulfillment of obligations of a material nature may be considered a crime. This will be shown in the following example. On November 2, 1940, the N.K.K.Kh. ¹¹ of the R.S.F.S.R. issued an order, No. 845, 'to impose on house

administrators disciplinary penalties for not taking the necessary steps, or for not taking such steps in good time, to collect apartment rents, and in indictable cases, to be criminally prosecuted.' It is clear that when the house management does not collect the rent on time this is an indication that the tenant is unable to pay and asks for an extension of time. A humane administrator knowing the home conditions of the tenant may find it difficult to refuse this request. But the law demands a heartless attitude on the part of the communal administration, and the courts are instructed to issue orders for the immediate eviction of delinquent tenants, since both the non-payment and the non-receipt of payment are classed as crimes. ¹²

The examples cited are sufficient to illustrate the consequences to private individuals in the clutches of a monopolist state. Then all economic life and all social relationships come under the realm of public law supported by criminal penalties. There is an old Russian saying which probably originated in the Muscovite period: 'From prison and beggary one cannot disavow himself.' The Soviet Union, as its penal system proves, has revived this saying.

Criminal prosecution includes even minors. An ukase was issued on December 28, 1940, 'Regarding the responsibility of students of industrial schools, railroad schools and schools of F.Z.O. (Factory-Plant Training) for violation of discipline and for arbitrary departure from school, as well as for systematic and gross violation of school discipline involving expulsion from the school.' Students found guilty of these violations are subject by court to imprisonment in labor colonies for a period not exceeding one year. ¹³

2. *Encouragement of Socialist Zeal*

In Soviet practice various kinds of rewards are as extensively applied as penalties. Both penalties and rewards serve as an incentive for arousing the interest of military and civil employees and of working people. 'Rewards have made the people of the U.S.S.R. the greatest title-bearing and medal-wearing nation in the world,' remarks J. Towster justly, referring to the Soviet statistics on this subject. ¹⁴

Soviet law has not only re-established various kinds of rewards

which had existed before the Revolution—decorations, ranks, titles of honor, gold braid, epaulets, dress insignia, changing only their form or name—but it has also authorized many new emblems and symbols of distinction, and many more are constantly being added as time goes on.¹⁵ Most of the rewards in the Soviet Union not only promote those rewarded to the rank of 'persons of distinction,' but also bring them concrete benefits and privileges, such as tax exemptions, the right to extra housing space, pensions, free travel on streetcars and railroads, etc.¹⁶

Military and civil employees are encouraged in the following ways: by a testimonial of gratitude for services rendered, bestowal of a personal gift of value, a certificate of honor, special badges, placing on the Board of Honor, awards of orders and medals of the U.S.S.R., honorary titles of 'Hero of the Soviet Union' or 'Hero of Labor.'

The title 'Hero of the Soviet Union' is considered the highest possible distinction. It was established in 1934, and was granted for personal or collective services. The Heroes of the Soviet Union are simultaneously decorated with the Order of Lenin (the highest reward in the Soviet Union), the Gold Medal, and receive a special citation. In case the same award is received for a second time, a bronze bust of the hero is erected in his native village or town; and in case of a third award, a bronze bust is erected in the Palace of the Soviets, in Moscow.¹⁷

The title 'Hero of Labor' is awarded for excellent performance in industrial development, for work in the field of culture, for cooperation in building up the national economy, for development of culture and science, and for merit in the development of the might and glory of the U.S.S.R. The Hero of labor is also granted an Order of Lenin with all the pertinent rights and privileges.¹⁸

In addition to the Order of Lenin, which is awarded for exceptional services in the field of socialist advancement and defense, there are several other high orders in the Soviet Union.¹⁹ The Order of 'Labor's Red Banner' is granted for exceptional merit in the field of production, scientific activity and government or social work.²⁰ The Mark of Honor is awarded for high productivity, special achievements, inventions and improvements as, for instance, in the field of social construction, and strengthening the defensive capacity of the U.S.S.R.²¹ The title 'Hero of

Socialist Labor' is the highest award—the medals 'For Labor Prowess' and 'For Labor Distinction'—the lowest for similar distinctions.

Those awarded high orders and titles compose a privileged group in the Soviet Union. They win rapid promotions and reach the highest positions.²² However, if they enjoy special benefits and privileges, they also have special duties:

'Those awarded one of the Orders of the U.S.S.R. must give an example of having properly fulfilled the duties imposed upon citizens by law.' (Art. 17 of the Statute of Decorations.)

'A person awarded the Order of Lenin is obliged (a) to assist socialist development by active participation in socialist competition, shock brigades, detachments etc., (b) to carry on social work in Soviet social organizations, in connection with his permanent job, etc. (Art. 12 of the Statute of Order of Lenin.)

'Similar obligations are imposed upon those awarded the Orders of Red Star and Red Banner; who have to meet not only certain demands concerning valor in their professional fields and military discipline, but must take part in socialist competition and in social work of organizations attached to the army units.' (Art. 11 and 14 of the Statutes concerned.)

Those persons receiving awards must carry on a two-fold work addition to the permanent obligations of the rank and file Soviet citizen, which are far from being light, they have to maintain the honor of their high title or of the special distinction which promoted them to the upper ranks of the social ladder. Failure to perform these obligations or the committing of some reprehensible act entail deprivation of title or decoration.²³

Since 1947, many farmers of collective farms have also been awarded the title of Hero of Socialist Labor.²⁴ However, the usual method of stimulating the efficiency of workers is a system of progressive wages on the basis of piece work.²⁵ Work done over and above the standard output is paid according to a differentiated progressive scale of piece work rates, with bonuses for extra efficiency. This same method is applied to kolkhozes.

'Payment of additional recompense to collective farmers for obtaining greater harvest yields, rearing young cattle, and increasing their productivity shall be widely practiced.' (The Law on the Five-Year Plan for 1946–1950, section 30.)

A special system of bonuses is established for chiefs, managers, and engineers. They receive bonuses for the fulfillment of the production schedule, provided it is done at a reduced cost. Premiums are also granted to certain groups of workers, who receive, in addition to their time or piece-work rates, bonuses for improvement of quality indices, such as adjustment of machinery, reduction of repair expense, economical use of raw material, fuel, etc. ²⁶

With a view to stimulating activity in the scientific field, in military technique, inventions, art, and literature, inventors, writers, artists, composers, and painters may be awarded the so-called Stalin prize, which consists of a special badge and a considerable amount of money up to 200,000 rubles—originally up to 300,000—paid in a lump sum. Honorary badges of Stalin Laureates have acquired the character of medals. ²⁷

3. Psychological and Social Effects of New Incentives.

Such an extensive range of penalties and rewards, peculiar to the Soviet system, may be explained by the fact that the Soviet system of 'universal monopoly' eliminates the traditional incentives for industry and economy.

Rewards, as well as penalties, are effective only as supplementary measures for stimulating human behavior. Man is not wholly a social being. He has his ego, personality and individuality; he demands his personal freedom, the finest expression of which is creativeness. If creative power is joined to devotion to a high social task, it becomes heroism. But genuine heroism cannot be bred either by force or for pay. Rewards take the place of disinterested and noble incentives. The men of the rank and file become obsequious servants rather than heroes. They are either waiting for a favor or trembling with fear of disgrace. Instead of generating a higher type of psychology, the system of penalties and rewards described above may well be regarded as a source of moral decay.

Moreover reward as well as punishment ceases to be effective if used too often. Medals and awards no longer inspire; imprisonment ceases to frighten. It becomes necessary to increase rewards in order to make them more attractive, ²⁸ and to strengthen penalties in order to make them more intimidating. Then both

penalties and rewards have to be applied more extensively. The number of those who are empowered to distribute awards and punishments grows immeasurably. The system which aimed at liberating the people from economic exploitation tends to create another form of dependence—dependence upon an arbitrary and unlimited power.

There is also another aspect of the problem. The system of forced labor and confiscations so widely practiced in the Soviet Union (See below Ch. 23) and simultaneously the generous distribution of gratuities and privileges of material character has produced social cleavage. The Soviet system transforms great numbers of people, usually whole families, into completely ruined ciphers, a multitude of pariahs, so often and on such just grounds called 'Soviet slaves,' while another group, less numerous but nevertheless consisting of millions of persons, are wealthy and 'rewarded.' The deserted abode of the nobility or of the capitalists is now occupied by the new stratum of 'persons of distinction' in the Soviet Union. This latter group is also dependent upon the government. They are a weapon in the government's hands against the disloyal and the neglected. The gulf between these two groups is the result of sharp contrast, and the gulf has become difficult to bridge. Thus envy arises on the side of the unfortunate against the favorites and sometimes brings about violent retaliation against Stakhanovites, heroes of labor and party men, the facts of which are proved by the severe penalties established for such crimes. Some acts of retribution or mobbing are explained by the fact that a rise in the standard of production results in a subsequent rise in the minimum output norm, thus diminishing the average wages of the workers. The reward given to one person is often another's loss.

PART V

STATE LAW

Chapter XV

FOUNDATIONS OF POLITICAL POWER IN THE U.S.S.R.

On November 7 (October 25), 1917, the All-Russian Congress of Workers' and Soldiers' Deputies elected the All-Russian Central Executive Committee (VTsIK) and the Soviet of People's Commissars. The former Russian Empire became the first Soviet state.

After this notable date, a new form of state organization was added to the different types of national organization. The Soviet state is a 'socialist state of workers and peasants,' according to the official characterization (Art. 1 of the Constitution), and a state of 'proletarian dictatorship' brought into practice by the Communist party, as it is described in Soviet literature. The Soviet form of political power, the essence of which is the concentration of all resources and means of production in the hands of the government and the liquidation of any opposition to the domination of the Communist Party, became a standard form for every state which adopted a similar program of social revolution.

1. Development of the Soviet State

The first Soviet Constitution was issued on July 10, 1918, as a Constitution of the Russian Socialist Federative Soviet Republic (R.S.F.S.R.). Lenin outlined its main principles: 'All power belongs to the Soviets'; 'the Russian Soviet Republic is organized on the basis of free union of free nations'; 'the Soviet state is a socialist state in which no exploitation exists'; 'work is the duty of every citizen'; 'carry out all orders of the respective higher organs of the 'Soviet power;'' etc.

Originally some nationalities, as, for example, Ukrainians, Georgians, Armenians, and some others after the October Revolution organized independent national republics in which Communist parties were not predominant. However, under pressure, and with the aid of the R.S.F.S.R., the anti-Communist governments were overthrown and all these republics became Soviet Socialist states. They established their political and social structure in accordance with the Constitution of the R.S.F.S.R. and even repeated word for word some parts of its Constitution of 1918. Some of these republics were not at once incorporated into the Russian Socialist Federative Soviet Republic and continued to exist officially as independent states; but, having the same social and political structure, and being governed by the Communist parties, they were drawn more and more closely to the R.S.F.S.R.

Because of the undesirability of the isolation of the socialist republics from each other, for the reasons of military as well as economic interests, Moscow re-united all parts of the former Russian empire, by appealing to the solidarity of party organizations comprised of members of the same socialist family. Revolutionary Committees (*Revkoms*) established by the Communists in all Soviet Republics uprooted the opposition; while the Red Army watched their boundaries and liquidated 'disorders.' The problem of unification of all republics into one large state, a new socialist empire, was soon solved. ¹

According to Stalin, who was at that time the People's Commissar on Nationalities (*Narkonats*) of the R.S.F.S.R., the federative structure was only a transitory form on the path toward formation of one large state. He has clearly explained the method by which he realized the policy of unification. ²

At first military agreements were concluded between the Soviet Republics for the purpose of protection against intervention. All national military units became part of a single Red Army. Later the Republics agreed to unite diplomatic policy and service. Finally they accepted the same economic program and united foreign trade. They acknowledged the leadership of the Supreme Board of National Economy organized in Moscow. Then after military, diplomatic and economic leadership had been centralized, it remained only to acknowledge officially the fact that all Soviet Republics had merged into one federative state.

In 1923 the representatives of all the national republics agreed to organize a united state with common legislative and executive organs. Simultaneously (See details in Ch. XVI) a draft of the Constitution of the Union of Soviet Republics was issued; it was finally approved on January 31, 1924, together with the treaty which was concluded by six Soviet Republics regarding the organization of a united state.

The Constitution of 1924 established the Congress of Soviets as the highest organ of the U.S.S.R. It was to have one session every two years. During the interval between sessions it was to be replaced by the All-Union Central Executive Committee (the TsIK of the U.S.S.R.), consisting of two chambers: the Soviet of the Union and the Soviet of Nationalities. Ordinary sessions of the TsIK of the U.S.S.R. had to be called three times during every interval between sessions of the Congress of Soviets. The TsIK, in turn, elected its Presidium, and this Presidium of the TsIK of the U.S.S.R. was the supreme legislative, executive and administrative organ of authority during the interval between sessions of the TsIK, (Art. 29 of the Constitution of 1924). The TsIK elected the Soviet of People's Commissars ((*Sovmarkom*) supposed to be responsible to the TsIK and its Presidium.

The constituent republics adopted the same organization of state organs; they organized the Congresses of Soviets for the republics, the TsIKs, the Presidiums of the TsIKs, and the Sovnarkoms of the republics. All these republic institutions were limited in their jurisdiction to conform to the Constitution of the U.S.S.R.

This structure remained unchanged to December 5, 1936, when the new Stalin Constitution was approved by the Congress of Soviets of the U.S.S.R. The new Constitution introduced some essential innovations. The Congress of Soviets and the TsIK of the Congress were abolished and the Supreme Soviet of the U.S.S.R. and its Presidium were substituted respectively. The Supreme Soviet is a legislative body of the parliament type. It has two regular sessions every year; it is elected by universal, equal, direct and secret vote. A special chapter of the Constitution determined the fundamental rights and duties of citizens. The Constitution adopted the principle of the independence of judges. All this gave the new Constitution a democratic appearance. At

the same time the new Constitution strengthened the central institutions of the U.S.S.R. at the expense of Union Republics and openly acknowledged the leadership of the Communist party. The Soviet Union became a more strongly centralized state than it was before 1936.³

The Soviet Union is a special type of state. It essentially differs from other types of states. It has an original economic organization vesting tremendous economic power in the central government; it is a one-party state, a peculiarity which essentially influences the procedure of elections and the inter-actions between the government and the elected bodies; it is a multi-national state composed of nominally free nations and, at the same time, a centralized state with a tendency to destroy autonomy. It pretends to be a democratic state but its principles are anti-democratic, compared with the principles of Western democracies. The Soviet Constitution requires a special study.

2. The Role of the Communist Party

It is not enough to know the text of the constitution in order to understand its structure. From the day of Ferdinand Lassalle, the eminent German lawyer, philosopher, economist, and politician (1825-64), students of state law have not limited themselves to the acceptance of constitutional formulae, but have been inclined to examine the relations of different political forces within the countries of their study.

The Soviet Union is a 'socialist' state, and only one who understands the structure of 'Soviet Socialism' and the role of the Communist party is able to explain why the Union of Soviet Socialist Republics represents a far more centralized state than the United States and an incomparably more centralized one than the British Commonwealth. The peculiarities of Soviet socialism disclose the true value of the freedoms proclaimed by the so-called Stalin Constitution of 1936 and the reasons why the Soviet state is based on the domination of a single political party.

In order to understand the Soviet structure, it is imperative to study her economics, rather than her Constitution, and to keep in mind, above all, that according to Article 6 of the Constitution, all land, natural resources, industry, communications, etc., belong to the state. Being the single owner of all the resources of

the great empire, the Soviet Union subjects the entire economic life to centralized state control and to a state plan.

'The economic life of the U.S.S.R. is determined and directed by the state national economic plan with the aim of increasing the public wealth, of steadily improving the material conditions of the working people and raising their cultural level, of consolidating the independence of the U.S.S.R. and strengthening its defensive capacity.' (Article 11 of the Constitution.)

The peculiarities of the economic structure of the U.S.S.R. pre-determine its centralization of both legislative and executive power. A huge apparatus is necessary to control the economy of an immense country. An iron hand is necessary to govern and direct the monstrous control machine. A one-party regime consolidates power in the hands of the most influential leaders of the governing party. Consequently, the significance of elections and of representative institutions becomes minimized.

The omnipotent central apparatus of the Communist Party reigns everywhere in the Soviet Union, and one strong will dominates all institutions and organizations of the country.

The Communist Party in Soviet Russia does not represent a party in the usual sense. It is not an organization of public interests, desiring to put into effect a program that they agree upon, but a civilian army called upon to manage politics, economy, and culture for the purposes of realizing the ideas of Marx, Lenin, and Stalin. This specific army bound by iron discipline has a commander-in-chief and general staff which promotes and inspires the Party members.

The Soviet Constitution legalizes this guidance by the Party. It contains but a few about the Party, in Article 126, but these lines are the most important in the entire Constitution:

'...the most active and politically most conscious citizens in the ranks of the working class and other sections of the working people unite in the Communist Party of the Soviet Union (bolsheviks) which is the vanguard of the working people in their struggle to strengthen and develop the socialist system and is the leading core of all organizations of the working people, both public and state.'

The public organizations are 'trade-unions, co-operative as-

sociations, youth organizations, sport and defense organizations, cultural, technical and scientific societies;’ state organizations—all kinds of ‘Soviets’ (councils) and their ‘ispolkoms’ (executive committees). Thus according to Article 126 of the Constitution, the Communist Party is the ‘leading core’ of all trade-unions, cooperatives, etc., as well as all state institutions.

The Communist Party elects the ‘Politbureau,’ which is, essentially, a super-governmental body, settling the most vital political issues and formulating imperative orders for the administration, party members, and organizations. The Communist Party is much more influential than any of the highest organs of the state authorities established by the Constitution.

To understand the character of the Communist Party leadership it is necessary to be familiar with its history. The teacher and leader of the Party at the time of its formation, Lenin, did not believe in the masses. He considered the common people to be unstable, easily changing their mood. ⁴ The masses borrow their political consciousness from others. A political party must give consciousness to them. The masses need a centralized and active leadership and discipline. The Party leads, the people follow. The Party is a minority directing the majority. Lenin adopted these principles for the Party itself; he required the organization of a select group inside the Party, a Central Committee which should lead the Party. He was a partisan of monolithic unity rather than majority rule, and he considered himself as a leader of the whole Party including its Central Committee. ⁵

Lenin’s plan of organization, in spite of strong opposition, ⁶ was approved by the majority at the conference of the members of the Russian Social-Democratic Party which took place abroad in 1903. The Party was split, and Lenin’s followers were called after that, *bolsheviki* (from *bolshinstvo*, majority). Lenin’s principles of organization survived him. Stalin is even *plus royaliste que le roi même*. He brought the principle of centralization of leadership to a climax. He replaced Lenin. The Politbureau became the general staff of the Party. Decisions of higher Party organs gave an absolutely binding character for all lower bodies. Even the Central Committee of the Party has lost its original influence. There have been no Congresses of the Party from 1939 to 1952.

The Politbureau formulates the ‘general line’ of policy for a

certain period and no deviations from this line are permissible. What is approved by the central organs of the Party has to be adopted by every other Party organization and any member of the Party without reservation. During two decades of the existence of the Soviet Union, after numerous purges and executions of non-conformists, ⁷ the Party became disciplined, and in 1939, the 18th Party Congress voted a resolution which reflected this: it resolved to 'adopt for execution, as Party law, all the postulates and conclusions of Comrade Stalin's report.' ⁸

All Party organizations are autonomous in the decision of local questions provided that their decisions do not conflict with the decisions of the Party. Problems already solved by the highest organs are non-controversial. Not all Party members are expected to participate in formulation of the directives, but all must support them. It is no wonder if party members prefer not to express their convictions and not to make statements until a policy has been determined by the Politbureau or another competent organ, or expounded in some leading periodicals or newspapers, like *Pravda* or *Izvestia*. ⁹

The system of recruitment and initiation of the Party members guarantees the observance of Party discipline. Members of the Party are prepared for their future role and trained in discipline from childhood. ¹⁰ They are selected mostly among the cadres of the *Komsomol* (Communist Youth League). *Komsomol*, in turn, accepts in its organization only the most reliable minors after a probation period. Every local organization is under the supervision and control of the next higher organization, and everyone is subject to the corresponding Party organization (village, district, region, etc.). No one can get an responsible position in the *Komsomol* organization as its secretary, or a member of a committee without approval of the corresponding Party organ. The leader of the whole organization is actually appointed by the central organs of the Communist Party. Promotions from *Komsomol* to Party membership are possible only with recommendations and after a probationary period. They are also preceded by a period from six months to two years as a candidate for membership in the Party.

In a speech given on March 5, 1937, at the Party Conference, Stalin delineated the Party organization as if he were talking about a general staff' ¹¹

The Party promotes candidates for any openings in Party organizations and has the power to recall its members from any position. The 'Orgbureau' (Organizational bureau), abolished by the XIXth Congress of the Communist Party, was responsible for any advance and discharge of the members of the Party. This powerful Party organization merged at present with the Secretariat dealt with the entire personnel of the Party and especially with the selection of the working governmental apparatus from the ranks of the Party members.

Direct and secret vote is not adopted in the Party elections. The Party continues to choose its higher officers by indirect election and each nomination has to be made and discussed in accordance with the appraisal of the merits of a candidate.

Insofar as official positions are concerned, Stalin has clearly stated that the Communist Party tries to nominate its candidates to all responsible positions in the government, and one can be sure that in 95 out of 100 cases those candidates are elected. Naturally, elected candidates will follow the theories of Communism in which they believe, and the directives of the Party. Therefore a direct Communist leadership results, 'The Party cadres constitute the commanding staff of the Party; and since our Party is in power, they also constitute the commanding staff of the leading organs of the State.' ¹²

The significance of the Communist Party in the Soviet Union is constantly and officially stressed. Decrees and instructions of paramount significance when promulgated refer to the decisions not only of the Council of Ministers, but first of all, to the Central Committee of the All-Union Communist Party. All the important administrative and legislative measures require, as a general rule, a preliminary approval at least of the Central Committee to support the authority of the Party organs.

A Soviet jurist characterizes the significance of the Party, ACP (b), in the following manner:

'The question about the guiding role of the ACP (b) is the initial point having general significance for understanding the essence of all social and public organizations of the U.S.S.R.... The ACP (b) is the leader of all social and public organizations of the toilers, including all organs of the Soviet administrative system, as it is established by Art. 126 of the Stalin Constitution.' ¹³

Some other authors give a more exact indication, listing the successes of the Party in certain fields of activity. Industry is its first consideration as the Communist Party stimulates the utmost industrialization of the country and appoints managers mostly from the Party members.¹⁴ The same situation applies to agricultural economy.¹⁵

Party leadership and control exist not only in the sphere of political and economic activity, but also in the cultural sphere. Its controlling power in the state is universal. The overlapping of administrative and Party activity sometimes hampers the work of the ministries. Therefore, when a decisive moment arrived in the spring of 1941 with the German invasion, the leader of the Party, Stalin, assumed direct management of the government. Later he also became commander-in-chief of all armed forces of the country and actually concentrated the entire power of the Soviet government in his hands. It was a unification of power and at the same time a final amalgamation of the state with the Party.

However, during the war it became necessary to reduce Party influence and to give more freedom for the initiative and feeling of responsible agents. At the end of the war, consolidation of power in the Soviet Union followed the usual channel and the influence and authority of the Communist Party became more and more strengthened. The Party was eulogized in every manner in articles and slogans:

'Long live our famous, our own Communist Party! Long live our socialist Fatherland! Long live our heroic people! Long live our Leninist-Stalinist Central Committee of the ACP (b)! Long live our wise leader, teacher, and friend, our own father, comrade Stalin!' ¹⁶

The government of the U.S.S.R. and the Communist Party have completely integrated their power. The commanding staffs of the Ministry of Interior Affairs (M.V.D.) and of the Ministry of State Security (M.G.B.) have been awarded the ranks, titles, and insignia of generals, admirals, and officers of the Red Army and Navy.¹⁷ Both these ministries recruit their troops only from Communists. Having the same rank and uniforms as the army and navy, the officials of the secret police share with them their war glory and their merits. They impress foreigners outside the country with their uniforms and medals, and, what is more important, over-

shadow the army and navy officers, thus increasing the Party's prestige at the expense of the military forces.

Thus it is clear that it is impossible to comprehend the real value and significance of the Soviet Constitution if the leading and uniting role of the Communist Party is ignored. The Party dominates all departments of the government and dictates directives to all its agents. The actual role of the higher organs of the state is considerably less than one might suppose by reading the text of the Stalin Constitution.

The preamble to the Party's Charter of 1939 flatly acknowledged that the Party controlled the life and activity 'of the entire people.' The Charter confirmed and developed Art. 126 of the Constitution:

'The Central Committee of the Communist Party directs the work of the central Soviet and public organizations through the Party groups within them' (Section 36).

The highest organs of the State are headed by the communists and the personnel of some of the state institutions consists of communists only. If it is not so, then party groups fulfill the controlling function. Special sections of the Charter, as amended and reworded in 1952 and adopted by the XIXth Congress of the Party, determine the Party control in the Soviet Army, Navy and Transportation (Sections 64, 66); Party organizations of Ministries 'signalize,' according to the regulations of the Charter (Section 58) to the Central Committee the defects they observe. The same has to be applied in the Academies, Universities, all numerous Soviets, enterprises, kolkhozes, etc., where party members must organize a party caucus to intensify party influence (Section 61).

Besides, the Central Committee of the C.P. has its special representatives in the republics, territories and provinces 'independent of local Party bodies' (Section 35,c).

Thus, the Party Charter must be considered as a component part of the Soviet Constitution.

3. *The Supreme Soviet*

'The highest organ of state authority in the U.S.S.R. is the Supreme Soviet of the U.S.S.R.' (Art. 30).

Like the United States Congress, the Supreme Soviet of the U.S.S.R. consists of two chambers, but they are of a quite different structure. One chamber is the *Soviet of the Union*, which represents the political unity of the nation. The other, the *Soviet of Nationalities*, represents the cultural and local interests of the different nationalities of the U.S.S.R.

Composition of the Supreme Soviet

	Council of Union	Council of Nationalities	Total
1946	682	657	1339 members
1950	678	638	1316 members

The joint meetings of both chambers elect the Presidium of the Supreme Soviet and appoint the executive government of the U.S.S.R. Having more than 1300 members altogether, these two chambers cannot organize the ruling bodies. The deputies arrive from different parts of the country; they do not know each other and have no time to become acquainted and to discuss different motions and candidates. The large, narrow hall in the Kremlin, where the Supreme Soviet holds its sessions, is not adapted for a legislative body, it is rather a convention hall. The deputies listen with the aid of earphones. They have no briefcases and do not write any notes. It is no wonder that their vote is always unanimous. It is very probable that many of the deputies, especially members of the Asiatic tribes, are unable to understand what is happening.

There are three permanent commissions in the Supreme Soviet: the legislative, the budget, and the foreign affairs. They are, of course, composed of specialists and do not represent the body as a whole, with its motley composition. The Supreme Soviet, indeed, consists of a varied group of people, among whom there is a certain number 'from the plough and the workbench.'

The Supreme Soviet of the U.S.S.R. convenes for only a few days, usually for four or five days. The two chambers meet alternately according to identical agenda. During their short sessions both chambers have to approve a budget amounting to about five hundred billions rubles in 1953, ratify international treaties, if any, approve decrees (*ukases*) issued between sessions by the

Presidium of the Supreme Soviet, and some times discuss and approve drafts of new legislative acts.¹⁸ Even a highly complicated law, involving a tremendous amount of work, where the reading alone demands several hours, as the fourth Five-Year plan, was approved by the Supreme Soviet in its five-day session in March, 1946. The same session also approved the budget, elected the executive government of the U.S.S.R., numbering at that time about 60 persons, and the Presidium of the Supreme Soviet, comprising 33 persons, and appointed several commissions. All this work was accomplished, as usual, without any preliminary preparation, by men absolutely inexperienced in the fine points of legislative technique and unacquainted with each other. There were several speeches which were no doubt prepared and censored in advance and which were declarations aimed at the popularization of Soviet policies and local accomplishments. The same picture is repeated every year. After its short session the Supreme Soviet is dissolved and its functions executes the Presidium, which is vested, according to Article 49 of the Constitution, with the highest power:

(The Presidium) 'Interprets laws of the U.S.S.R. in operation, issues decrees; in the intervals between sessions of the Supreme Soviet of the U.S.S.R. relieves of their posts and appoints Ministers of the U.S.S.R. on the recommendation of the President of the Council of Ministers of the U.S.S.R.; in the intervals between sessions of the Supreme Soviet of the U.S.S.R. proclaims a state of war in the event of armed attack on the U.S.S.R., or whenever necessary to fulfill international treaty obligations concerning mutual defense against aggression; proclaims martial law in separate localities or throughout the U.S.S.R. in the interests of the defense of the U.S.S.R., or for purpose of ensuring public order and state security, etc.'

Thus, the legislative power is delegated in practice by the Supreme Soviets to its Presidium. As a result of the extraordinary shortness of the sessions of the Supreme Soviet, its Presidium plays the most active role. The government does not try to time the presentation of important bills to coincide with the Supreme Soviet's sessions. Just a day after the adjournment of the Supreme Soviet *Izvestia* publishes new laws and appointments changing or complementing those approved the night before by the Supreme

Soviet. For example, during the session from March 15 to 20, 1946, the Supreme Soviet passed a bill concerning the organization of the government and approved the new list of ministries and appointments of members to the Council of Ministers. The next day *Izvestia* published decrees of the Presidium concerning the establishment of new ministries and new appointments.

The same thing took place in 1951. On March 12, the Supreme Soviet approved a series of ukases, including several concerning reorganization of the ministries and organization of new ones. On March 14, 1951, the Presidium issued two ukases which reorganized the Ministry of Urban House Building and replaced it with a new committee for planning house building in general. In 1950, it was the same, when a new Cotton Ministry was established by the ukase of April 5, 1950. After Stalin's death the leaders of the Party and government together with the Presidium of the Supreme Soviet reorganized the Council of Ministers, appointed G. M. Malenkov as a Chairman of the Council and all members of the Council of Ministers, and 'the highest organ of the State', the Supreme Soviet had only to approve the significant administrative reform (see below, 'Reorganization of the Government'), which was already accomplished. There was no vote, even no proposal to vote. The stenographic report mentions only loud applause. In August, 1953, there was a session of the Supreme Soviet. It approved the budget and some changes in the taxation of collective farms. One month later the Presidium of the Supreme Soviet issued ukases about the establishment of eight new ministries.

Only a few laws have been issued by the Supreme Soviet directly. Even various amendments to the Constitution have been approved by the Supreme Soviet *post factum*.

The thirty-three members of the Presidium have replaced the Supreme Soviet consisting of more than 1300 members. The Presidium of the Supreme Soviet of the U.S.S.R. is empowered to annul decisions and orders of the Council of Ministers in case they do not conform to law, but there is no institution in the Soviet Union which can annul decrees of the Presidium in case they violate the Constitution. The Supreme Court of the U.S.S.R. does not have the Constitutional significance of the Supreme Court of the United States.

Information concerning the activity of the Presidium is very

scarce. Reports about meetings of the Presidium are not published. Its activity, the procedure of discussion, the coordination with the government are hidden from the outside world. The fact that the Presidium consists of members of the Communist Party only is an added assurance that all legislation in the Soviet Union will be dictated by the Party, and since every organ of power represents the same political party and political trends, there is no need for a veto power, nor any other limitation of the legislative power. Any amendments to the Constitution can be adopted by a majority of two-thirds of the vote cast in each of the two chambers of the Supreme Soviet (Article 146). Any limitations of individual rights are permissible if the Supreme Soviet, or its Presidium deems them necessary 'for the purpose of ensuring public order and state security' (Article 49). The Soviet Constitution does not protect *habeas corpus* and does not prohibit either *ex post facto* laws or bills of attainder. Theoretically, the Supreme Soviet of the U.S.S.R., more than the English Parliament, may do anything except transform a man into a woman. In fact, it is a yes-organ, whose function is to be a medium between the Central government and the people, to listen, to be informed about the policy of the government and to explain it to the population.

4. *The Council of Ministers*

The procedure of appointment to the Council of Ministers is unique. In 1946, the Supreme Soviet, at its joint session, changed the name of the Council of People's Commissars for Council of Ministers, appointed Joseph Stalin as the chairman of the Council of Ministers and delegated to him the right to choose candidates for the posts of vice-chairmen and ministers. The next day he presented a list of ministers and the Supreme Soviet approved it unanimously, just as it does a budget, a five-year plan, or any kind of law. In 1950, the Supreme Soviet approved the activity of the Council of Ministers and offered to continue it.

There are two groups of ministries of the U.S.S.R.: the *All-Union Ministries*, which direct the branches of State administration entrusted to them throughout the territory of the U.S.S.R. either directly or through bodies appointed by them (Article 75), and the *Union-Republic Ministries*, which, as a rule, direct the branches of state administration entrusted to them, but do it

through the corresponding Republic Ministries (of the individual Union Republics) (Article 76). The main branches of national economy; the aviation industry, the automobile and tractor industry, coal and oil industries, the electrical equipment manufacturing industry, electric power stations, all branches of heavy industry and machine construction, the chemical, cellulose, and paper industries, ways of communications, construction of transportation machinery, foreign trade, and many others are subject to the exclusive administration of the All-Union Ministries of the U.S.S.R.

The Union-Republic Ministries of the U.S.S.R. are as influential as the All-Union Ministries. On the list of the former are the Ministry of Foreign Affairs, the Ministry of the Armed Forces, the M.V.D., or Ministry of Interior Affairs, the Ministry of National Security, the Ministries of Finance, Rural Economy, and Trade. Several of the Union-Republic Ministries in Moscow administer a number of enterprises directly, while only the less important are directly administered by the ministries of the separate Union Republics. Thus, the chief reason for classifying the central organs of the Soviet government into groups of ministries is the need for some administrative decentralization and distribution of responsibility. However, there is another purely political reason; namely, to further the impression that the Union Republics are independent. For example, in order to get the Ukrainian and Byelorussian Republics membership in the United Nations and different international conferences as if they were independent states, it was necessary to veil their actual dependence on the All-Union organs of authority as concerns foreign affairs and armed forces.

Only by reading the text of the Soviet Constitution superficially could one have any misconception about the situation. In fact, the Union Republics have so few really independent ministries, the so-called Republican Ministries, that it was acknowledged to be expedient to delete from Art. 83 of the Constitution any enumeration of the Ministries of the Union Republics, in order, probably, to hide the actual centralization and to disguise from the outside world the insignificance of the jurisdiction of the Union Republics which are called 'sovereign' in the Constitution. A corresponding amendment to the Constitution was approved

by the Supreme Soviet at its session on February 25, 1947, and since then new limitations of the jurisdiction on the Union Republics took place.¹⁹

Consequently, the Council of Ministers of the U.S.S.R. is the highest executive and administrative organ of state authority not only of the Union of Soviet Socialist Republics, but of all sixteen Union Republics as well. This body is not a policy-making cabinet. After the end of World War II it consisted for several years of 65 to 70 persons. Even after the reorganization in March and September, 1953, it consists of about of 40 persons. There was another organ in the Soviet Union responsible for political leadership: the Politbureau of the Communist party. The Politbureau reigned over all institutions of the Soviet Union, even the highest ones, and thus ensured Communist control of all branches of the government. It began, however, to lose its significance since Stalin became chairman of the Council of Ministers and was abolished in 1952 (see below 'Decisions of the XIXth Congress').

There is no separation of powers in the Soviet Union. It is considered unnecessary in a country which is supposed to have no classes and where all organs of the government serve the same purpose. The Constitution of 1936 has invested the Supreme Soviet with the highest power and all other organs are accountable to the Supreme Soviet. All three departments, including the legislative organ, are subject in fact to one party, or, rather, to the leaders of one party; their independence, therefore, is quite illusory. Actually, instead of separation of powers, there exists in the Soviet Union only a differentiation of functions.

5. *The Pyramids of Ispolkoms*

From the beginning of the Bolshevik revolution, district, county, and rural Soviets were organized as local organs of state power. They have replaced all administrative organs of the pre-revolutionary period as well as organizations of self-government (*zemstvos* and municipalities).

The Stalin Constitution has sanctioned this system (Articles 94 to 101). Each rural settlement—village, *stanitsa*, hamlet, *kishlak*, or aul has its Soviet of Working People's Deputies, composed of chairman, secretary, and members. The executive and administrative organ in a small locality consists of three persons: chair-

man, vice-chairman and secretary. In other settlements, cities, etc., the Soviets elect Executive Committees, called correspondingly village, *stanitsas*, city, etc. *Ispolkoms*. Executive organs of villages or other corresponding settlements, *stanitsas*, *auls*, *kishlaks*, are accountable not only to their electors (horizontal subordination), but also to the executive organ of the superior Soviet of Working People's deputies, namely of the district to which the rural settlement belong (vertical subordination).

Every district has its District Soviet of the Working People's Deputies, which elects the Executive Committee (*Ispolkom*) of the district. This is accountable in turn to the district Soviet which elected it and to the Soviet of the next superior Soviet of the area or region, which again has its Soviet and its Executive Committee (*Oblispolkom* or *Krayispolkom*). The district or area Soviets and *Ispolkoms* are accountable to the Republic or Autonomous Regions' Soviets and Executive Committees, and the latter to the Supreme Soviet of the Union Republic and to its executive body. The same holds true for cities, which also have their Soviets and Executive Committees (*Gorsoviets* and *Gorispolkoms*), subject to the Superior Soviets.

Thus, the administrative system of the Soviet Union represents a pyramid of Soviets. For this reason the Union of the Socialist Republics is called usually the Soviet Union, and each member Republic of the union is called a Soviet Republic.

All Soviets are elected by the working people for a term of two years and have several sessions every year. The regional Soviets are convened not less than four times a year; sessions of district Soviets, not less than six times a year; and city and village Soviets not less than once per month, except some regions with the nomadic population, where sessions of village Soviets are convened usually only six times per year. ²⁰

The Executive Committees (*Ispolkoms*) of the Soviets and not the Soviets exercise guidance in the political, economic and cultural affairs within their respective territory (region, district, city, settlement or village). According to the general principle of Soviet organization, Executive Committees are real operative organs during the interval between the sessions replacing the Soviets which elect them in the same manner as Presidiums of the Supreme Soviets replace the latter. ²¹

The Constitution does not mention directly that every Ispolkom as well as every Soviet is subject not only to the superior Soviet institutions, in conformity with the established order of vertical subordination,²² but also to Party control. In all republics, regions, districts, and cities organizations of the Communist Party exist; and in every village there are primary Party organizations consisting of several Party members. In accordance with Art. 126 of the Constitution, these Party organs control the activity not only of their members having positions in the elected bodies, but also of the Soviets themselves and their *Ispolkoms*. And, in so far as Party organizations are always predominant, their control in practice becomes leadership, because the Ispolkoms, the only active organs of local administration, consist mostly of Communists or non-Party men supported by Communists.

Before the Revolution the Russian Empire had numerous provincial departments whose chiefs were independent from each other and the governor of the province had only a general supervision over their activity without the right of interference. At the present time every provincial (regional) or district Soviet and respectively Ispolkom, unites the activity of all departments attached to the corresponding Executive Committee: finance, trade, public health, education, local industry, road building, social welfare, cultural life, etc. Higher-ranking Soviets have the right to annul decisions and orders of inferior ones and of their Executive Committees. Lenin's ideal of a monolithic state has thus become a reality. The net-work of Soviets, or their working organs, Ispolkoms, consists of links firmly tied to each other from top to bottom. The Soviet administrative apparatus is a pyramid of Ispolkoms. The policy worked out by the central government is obediently put into practice by the subordinate Ispolkoms. Deviation is impossible since the higher organs can give orders to the lower and can cancel their decisions.²³

There is theoretically an advantage to this organization in the unity of the whole administrative apparatus compared with disunity. This distinctive Soviet structure, however, overloads local administrative organs. Economic functions are merged with purely administrative and cultural ones. Every part of the economy is a part of the national plan. Every activity must agree

with the plan and be directed in conformity with the plan. It requires an adequate preparation and more than understanding of merely local needs. In the meantime all administrative organs are elected. It is hardly possible to secure the election of proper administrative membership sufficiently prepared to undertake the responsible functions, which rest on the local Soviets. It is clear that either the elections are fictitious or the results are very often unsuccessful and other organs have to control and direct the activity.

There are about 83 thousand local Soviets in the Soviet Union, comprising about one and a half million deputies. The Soviet authors refer to the devotion and confidence of all those organizations and their members to the Lenin-Stalin Party.²⁴ On the other hand, this system does not encourage large masses of population to participate in creative public work according to their own initiative and does not involve other organizations in cooperative participation unless they have a special order. Everything is subject to regimentation and to plan; initiative is fettered because of control and responsibility to the hierarchy.

The All-Union Ministries and the Ministries of Interior Affairs, State Security and Justice set up their administrations side by side with regional and district Soviets and these administrations are the eyes and ears of the central organs, under whose watchful observation the fear of risk kills initiative.

6. General Characterization of the Soviet Structure

The preceding text explains why the Soviet Constitution cannot be considered as creating an effective constitutional order.

1. 'The highest organ of state authority,' the Supreme Soviet is organized in such a manner that it is incapable of being a working legislative organ. 'The highest executive organ and administrative organ of state authority,' the Council of Ministers, is in practice, an organization of high officials not responsible for the over-all policy of the state. Finally, the Supreme Court, has no significant influence on Constitutional life.

The active political forces are behind the 'constitutional curtain' and they govern the foreign and domestic policy of the state, initiate the most important bills, dictate instructions, nominate and dismiss the high and the subordinate officials. The Central

Committee of the All-Union Communist Party and its subservient Party organizations throughout the country are this political force.²⁵

There are, in fact, two Constitutions in the Soviet Union; the Constitution of the Communist Party and the Constitution of the Soviet state; two parallel organizations: the Party organization and the net work of the Soviet State organs. The leading role belongs always to the Party. The constitution of the Party is above the constitution of the state.

2. Administration in the Soviet Union is excessively centralized. There are two reasons for this centralization. Lenin and Stalin's ideology requires strong leadership and unreserved obedience. Even if Stalin's followers would like to weaken the central power, it would not be possible. Centralization is indispensable in a country where all national economy is subject to central planning. On the other hand centralization of economic administration presupposes dependence of citizens upon the state organs and dependence of local state organs upon the central government. Both individual freedom and the autonomy of provinces and nationalities are jeopardized by the system itself.

3. The Soviet state is not a constitutional state but a police state. A constitutional state gives the population the opportunity of controlling the government and guarantees this right. The Soviet state on the contrary controls the life and activity of the population and of all social organizations. This character of the Soviet state owes its existence to several causes; each successive cause is organically bound to the one preceding it.

First, the unity of the economic plan demands, naturally, as stated above, the strict control over the manner of its execution and the subordination of local to state-wide interests. As a result, the apparatus of the central government has become not only increasingly enlarged, but invested with exceptional prerogatives.

Secondly, the new 'socialist' order carried out, first of all, a grandiose plan of extermination of many millions of bourgeois and petty-bourgeois elements: capitalists, merchants, commissioned officers, democratic intelligentsia, including moderate socialists, and lastly, wealthy peasants. The course of life changed radically even for survivors from these classes. All values were changed. New people governed, the older generation was suspicious of new

events and of the new administration. In the absence of understanding and sympathy the government resorted to forec.

Lenin, in his book *State and Revolution*, written in the days of the struggle for power between the Bolsheviks and the Provisional Government, foresaw that after the Revolution increased coercion would be necessary under the dictatorship of the proletariat in order to compel the population to act in accordance with the pattern of communist society. ²⁶

Lenin's prediction was justified. As the population was reluctant to submit to demands involving incessant sacrifice and deprivation, the central Soviet government consciously had recourse to harsh methods of compulsion through the agency of the dreaded secret police, under different names: the Cheka, the G.P.U., and last, the N.K.V.D. or M.V.D.

Finally, the entire organization of administration in the Soviet Union, built as a 'pyramid' of Soviets with the Supreme Soviet at the top, creates a demand for a directing bureaucratic apparatus, instead of furthering the development of self-administration. Soviets, including the Supreme Soviet, are not active organs. They are composed, for the most part, of men not trained for administrative or legislative work, and of members or persons standing in direct connection to the administration of the Communist Party, subject to an iron discipline. The Soviets have short meetings, and these are devoted to hearing reports and electing the Ispolkoms.

It is only natural that men elected to the Ispolkoms are almost exclusively Party members. The Party members are also the secretaries of the Ispolkoms, who concentrate all executive functions in their hands and who are obedient functionaries of the central administration. Being Party members, they can be more confident, but not always better prepared, for the administrative work than other rank-and-file members.

Several years ago Soviet papers gave many illustrations of the incompetence and bureaucratic character of the local Soviet proceedings. ²⁷

It is improbable that serious improvement could have been achieved in Soviet 'self-government' apparatus during the last few years. The materials published in connection with the XIXth Congress of the C.P. confirm it.

7. *Decisions of the XIXth Congress of the Communist Party.*

The Congress of the All-Union Communist Party, which met in October 1952, reorganized the higher party organs. The notorious Politburo, the authority of which transcended that of all other bodies, yielding in significance only to the personal authority of the leader, ceased to exist. This reform cannot be looked upon as a simple organizational measure. It completes a process which began long since, of combining the Party with the government of the Soviet Union.

Khrushchev, a member of the Politburo, explaining the projected reforms in the Party statutes in his theses published in the Soviet newspapers of 26 August, 1952, declared that the Politburo had for some time fulfilled the functions of the Presidium of the Central Committee and it has therefore been replaced by the present Presidium, which only consolidates a situation actually existing. This explanation does not indicate what body has been the recipient of higher Party and state authority. Will the successor of the Politburo be the newly organized Presidium of the Party Central Committee, or, will the power be concentrated in the hands of the Secretariat, which in the new statute combines the functions of the former Orgburo, also abolished by the decision of the Congress? In place of the three organs of the Party—the Politburo, Orgburo and Secretariat—there are now two: the Presidium of the Party Central Committee, and the Secretariat. But duality of authority in the Communist Party is ruled out, for it would contradict the fundamental principles of the organization, bequeathed to the Party by its founder Lenin, and all the past history of the Party, whose main idea in all organizational plans was centralization. Therefore in attempts to define the meaning of the reforms the attention of commentators is concentrated primarily on the comparative evaluation of the chances of the Presidium and Secretariat to be the leading Party organ and the successor of the Politburo.

In order to understand the meaning of the recent changes and the roles of the two high organs of the Party, one must trace that evolution of the Party which characterized the period of stabilization of the Stalin regime from the time of the establishment of the first five-year plan and the proclamation of the Stalin Constitution of 1936. Only from this perspective can one begin to

understand Khrushchev's thesis regarding the change in the role of the Politburo and its transformation from an all-powerful organ of authority into the purely Party Presidium of the Central Committee.

During the October Revolution the Party did not possess a sufficiently large contingent of persons prepared for administration. It was necessary for it to use as officials former officials and former officers, to invite into service former entrepreneurs and to put at the head of plants engineers who had worked in corresponding fields before the Revolution. The so-called 'spetsy' (specialists) did the work, but their chiefs and controllers were Party men. At the same time an accelerated preparation of new, more trustworthy cadres occurred, with continual replacement of persons of bourgeois spirit by the new generation of proletarian intelligentsia. The change took place partly through promotion of new people, partly through the purging and annihilation of old workers. Whereas originally the Party could only direct and control work, now it subordinated it to its immediate leadership. As responsible workers in all sectors, Communists appeared as engineers, administrators, kolkhoz presidents, chiefs of machine-tractor stations, leaders of cooperatives, commanders of military units, diplomats and scholars.

Moreover, along with the complication of administration through industrial development and the collectivization of agriculture, as well as by the broadening of political tasks within and without the State, the government of the Soviet Union began to develop rapidly in grandiose complexity a mechanism with a very large Council of Ministers. For coordination of the activity of the government it was necessary to have it headed by the most authoritative and prominent Party leaders. The appearance, in May 1941, of Stalin, the General Secretary of the Party, as Chairman of the Council of Ministers marked the beginning of a decisive merging of the Party with the Government. This was on the eve of the war, when it became necessary for the Council of Ministers to act positively and not to depend on Politburo leadership. The heading of the Council of Ministers by Stalin, who was at the same time head of the Politburo, avoided potential conflicts and delays.

The activity of the Council of Ministers (at that time still the

Council of People's Commissars) grew continually and the number of ministers became so great that Stalin had to increase the number of his representatives or assistants in the leadership of the Council of Ministers. Gradually it came to be ten men, and then went beyond ten. Among the assistants of the President of the Council of Ministers the majority were members of the Politburo. Thus the Politburo was actually transferred into the Council of Ministers. The numerous ministers do not take part, it must be assumed, in deciding the most important political questions. They are decided by the Chairman and his assistants who lead the activity of the most important ministries or groups of them. Otherwise, it is impossible to imagine action by a government consisting of sixty persons. The existence of the Politburo therefore became superfluous. Khrushchev evidently had this in view, saying that the Politburo in effect had begun to fulfill the functions of the Presidium of the Party Central Committee.

Thus the question of to whom the power now belongs as successor of the Politburo is decided neither in the behalf of the Presidium nor of the Secretariat. The higher administration of the State is concentrated in the Council of Ministers, or, more exactly, in its Chairman and his assistants (eight in December, 1953).

What sort of role will the Presidium of the Central Committee and the Secretariat play? An analysis of the composition of the administration of the Party can give the answer to this question. By no means all of the millions in the bureaucratic apparatus of the Soviet Union are Communists. On the other hand, by no means all of the Communists are suited to become officials or administrators. The Communists are needed among the workers and peasants, in the Army and Navy among soldiers and sailors, in trade unions and cooperatives, among writers, and among people in scientific work. Therefore, one cannot speak of the complete merging of the state apparatus with the Party: it would be impossible and undesirable. In the government apparatus there will be non-Party people under all conditions; in the Party apparatus there will be purely political workers of the Communists, and 'snoopers.'

The coalescence of the Communist party with the government apparatus proceeds faster on the upper levels and more slowly in provincial institutions, faster in the RSFSR and slower in the

national republics. Until recently the village soviets and the kolkhoz administration had the fewest Communists of all. The merging of the small kolkhozes into the stronger united kolkhozes also led to the strengthening of the Communist element in the kolkhoz administration, as was reported by Khrushchev in his report in 1951 on the results of the consolidation of the kolkhozes.

In the national republics the number of Communists is insignificant. In Kazakhstan, for example, on Sept. 1, 1952, there were 231,610 Party members and 29,923 candidates; the population of Kazakhstan is more than 6 million people. In Georgia in the same period there were 160,045 members and 13,253 candidates in a population of over 3½ million persons. In the Ukraine there were 676,190 party members and 101,642 candidates out of a population of over 40 million people. Besides this, only 35½ percent of Party members in the Ukrainian Communist party had received higher or intermediate education; about 65 percent had therefore had only elementary education. ²⁹

Thus, the Communist Party could not fill the institutions of the State with its members even if it wished to do so. It must utilize the services of non-Party members. But the Party does not even desire complete merging, as it would shift on to the Party responsibility for all administrative shortcomings, all abuses, mistakes, inaccurate reports, hidden deficiencies and non-fulfillment of the plans. Full merging would hamper supervision and investigation.

Under the existing situation, the Party must be divided in two parts. Some of the Party members directly govern policy and administration, others head the activity of the Party organs, selection of Party workers and general supervision over fulfillment of Party plans. Managerial posts in all government institutions, state enterprises and the Army are occupied by responsible Party workers, therefore the existence in the Party of special bureaus and divisions, with functions identical to those fulfilled by the Government and its organs becomes harmful. This creates a parallelism in work. The Party strives to eliminate this parallelism by the abolition of the Politburo and simultaneously by curtailment of various bureaus in the central Party organs whose competence corresponds to that of several administrative institutions. The abolition of such bureaus already began some time ago. In 1939, after a revision of the Party statutes only two of the

bureaus of the Party Central Committee connected with administrative activity remained: those concerned with agriculture and with education. The interference of Party organs, interrupting normal administration, can be observed even at present, however. In the consideration of materials at the 1952 Congress in Georgia, one of the delegates declared that the Section of Literature and Art in the Central Committee of the Communist Party of Georgia carried on its work as if it intended to supplant the Ministry of Cinematography of the Georgian republic, and that it was interfering in petty details of the Ministry's work instead of cooperating in the development of cinematography in Georgia.

The new statute does not indicate which divisions and institutions will remain in the Central Committee of the Communist Party of the Soviet Union and local Party organizations. In Khrushchev's tenth thesis he notes that this question will be decided in each separate case, in accordance with local conditions.

The tasks of the Party organs are formulated in the report presented to the 19th Congress by Malenkov.³⁰ In it he stressed control functions, organizational work, selection of personnel and ideological leadership. 'It is a most important task of the Party,' he said, 'to take every measure to increase checking and follow-up in the work of all organizations and institutions from top to bottom.'

Malenkov sketched for the Party a far from comforting picture of contemporary sentiments among Communists:

'Successes have generated in the Party ranks a mood of self-satisfaction, a pretense of well-being and smug complacency, and a desire to rest on one's laurels and to rely on past merits.' 'Among some of our workers in the soviets, in the economy and elsewhere, Party and State discipline is still weak,' 'There are also cases in which industrial executive with the connivance of Party organizations, submit deliberately inflated applications for raw material and supplies and pad output reports when they do not fulfill production plans.' 'Nor are we guaranteed against the infiltration of alien views and ideas from without, from the capitalist countries, and from within from the remnants of groups hostile to the Soviet power and not yet completely eliminated by the Party.'

Still other symptoms of dissolution with the Party can be

found in the materials and reports from outlying regions. In them there is mention of the development of so-called 'patronage,' that is, the protection of relatives and friends and covering up their errors, of admission to the Party of people with doubtful reputations, and sometimes with a criminal past, of bureaucracy, and of participation in unscrupulous attempts to exploit the collective economy. The devil takes care of his own. Since Communists head various establishments, Party workers working in the Party organizations try to protect them. Malenkov calls for integrity and the subordination of personal interests to those of the State. But to correct a situation by high-sounding phrases alone is difficult. Therefore the local Party organizations are enjoined to be particularly careful about admitting new members to the Party, and in the Central Committee a new statute gives the power, as earlier, to create special 'political sections.'

In order to strengthen administrative leadership and political work,

'The Party Central Committee has the right to set up political sections and to assign Party organizers of the Central Committee to individual sections of socialist construction which may assume a special importance for the national economy as a whole... The political sections work on the basis of special instructions handed down by the Central Committee.' ³¹

These extraordinary plenipotentiary organs call to mind the Senatorial inspections of pre-revolutionary times. But this is not all, for the new statute even creates the duty of extraordinary Party investigators. The Party Control Committee in the Central Committee of the Communist Party of the Soviet Union 'has representatives independent of the local party bodies in the republics, territories and provinces...' ³² These agents, the eyes and ears of Moscow, will observe Party and non-Party officials. But such organs already exist in the person of the procurators and the branches of the MVD, which are also not subordinated to any sort of local authority. Thus, still another supervisory body is set up. Parallelism in Party and Government work is lessened or eliminated, but at the same time parallelism in supervision is created, with controllers over controllers.

The general impression gained by reading the new statute and

all materials relating to it is that the merging of the Party with the Government leads to degeneration of the Party into an ordinary ruling group of privileged units of Party workers and the inescapable moral dissolution of these groups, demanding increased control, even control over controllers. Political power will now be concentrated in the Council of Ministers; the Party leadership and supervision over Party workers will be concentrated in the Party Presidium; and the Party Secretariat will manage Party personnel and the selection of better or, in actuality, more trustworthy people. But the course of dissolution is hard to stop. It is inescapable, when one Party administers a country and when a privileged stratum has already been set up in the Party itself.

8. *Reorganization of the Government*

According to the proposals submitted by G.M. Malenkov for the consideration of the U.S.S.R. Supreme Soviet, the latter adopted on March 15, 1953, the following text of Articles 70, 77 and 78 of the Constitution:

'Art. 70. The U.S.S.R. Council of Ministers is appointed by the U.S.S.R. Supreme Soviet and consists of:

- 'The Chairman of the U.S.S.R. Council of Ministers;
- 'The Vice-chairmen of the U.S.S.R. Council of Ministers;
- 'The U.S.S.R. Ministers;
- 'The Chairman of the U.S.S.R. Council of Ministers' State Planning Committee;
- 'The Chairman of the U.S.S.R. Council of Ministers' State Committee on Constructions Affairs.'

Art. 77. The following ministries are All-Union ministries:

- 'Coal Industry;
- 'Oil Industry;
- 'Metallurgical Industry;
- 'Chemical Industry;
- 'Machine Building;
- 'Transport Machinery and Heavy Machine Building;
- 'Power Plants and Electrical Industry;
- 'Defense Industry;
- 'Construction;
- 'Transportation;
- 'Communications;
- 'Merchant Marine and Inland Shipping.'

'Art. 78. The following ministries are Union-Republic ministries.

'Internal Affairs;
'Foreign Affairs;
'Defense;
'Domestic and Foreign Trade;
'Agriculture and Procurements;
'Culture;
'Light and Food Industry;
'Building Materials Industry;
'Lumber and Paper Industry;
'Finance;
'Public Health;
'Justice;
'State Control.'

The text of the above cited proposal of G.M. Malenkov was the following:

To merge the U.S.S.R. Ministry of State Security and U.S.S. R. Ministry of Internal Affairs in a single Ministry of Internal Affairs.

To merge the Ministry of War and Ministry of Navy in one Ministry of Defense.

To merge the Ministry of Foreign Trade and the Ministry of Trade in one Ministry of Domestic and Foreign Trade.

To merge the Ministry of Agriculture, the Ministry of Cotton Growing, the Ministry of State Farms, the Ministry of Procurement and the Ministry of Forestry in one Ministry of Agriculture and Procurements.

To merge the Ministry of higher Education, the Ministry of Cinematography, the Committee on Affairs of Arts, the Radio Broadcasting Committee, the Chief Administration of Printing, Publishing and Bookselling and the Ministry of Labor Reserves in one Ministry of Culture;

To merge the Ministry of Light Industry, the Ministry of the Food Industry, the Ministry of the Meat and Dairy Industry and the Ministry of the Fishing Industry in one Ministry of Light and Food Industry.

To merge the Ministry of Ferrous Metallurgy and the Ministry of Nonferrous Metallurgy in one Ministry of the Metallurgical Industry.

To merge the Ministry of the Automobile and Tractor Industry, the Ministry of the Machine and Instrument Construction Industry, the Ministry of Agricultural Machine Building and the Ministry of the Machine Tool Industry in one Ministry of Machine Building.

To merge the Ministry of Transport Machine Building, the Ministry of the Shipbuilding Industry, the Ministry of the

Heavy Machine Building Industry and the Ministry of the Construction and Road-Building Machinery Industry in one Ministry of Transport Machinery and Heavy Machine Building.

To merge the Ministry of Power Plants, the Ministry of Electrical Equipment Industry and the Ministry of Communications Equipment Industry in one Ministry of Power Plants and the Electrical Industry.

To merge the Ministry of Armaments and the Ministry of the Aircraft Industry in one Ministry of Defense Industry.

To merge the Ministry of the Lumber Industry and the Ministry of the Paper and Wood Processing Industries in one Ministry of the Lumber and Paper Industry.

To merge the Ministry of Heavy Industry Enterprise Construction and the Ministry of Machine-Building Enterprise Construction in one Ministry of Construction.

To merge the Ministry of the Merchant Marine, the Ministry of Inland Shipping and the Chief Administration of the Northern Sea Route in one Ministry of Merchant and Inland Shipping.

To dissolve the Ministry of Geology, turning over its functions to the respective Ministries of the Metallurgical Coal Industry, Oil Industry, Chemical Industry, Building Materials Industry and other Ministries which have jurisdiction over extracting industry.

To dissolve the Ministry of Highway Transport, turning over its functions to the Ministry of Transportation.

To merge the U.S.S.R. Council of Ministers' State Committee on Material and Technical Supply of the National Economy (*Gossnab*) and the U.S.S.R. Council of Ministers' State Committee on Supply of food and Industrial Goods (*Gosproduktsnab*) with the U.S.S.R. State Planning Committee.

Six months after this essential reduction of the number of ministries the Presidium of the Supreme Soviet of the U.S.S.R. issued the ukases about the establishment of eight new ministries—four All-Union Ministries: of Foreign Trade; Auto-transport and Highways; Geology and Preservation of Resources; and Aircraft Industry; and—four Union-Republican Ministries: of Food Products industry; Consumers' Goods; Trade; and State Farms. Some of these Ministries were abolished in March. (*Izvestia and Pravda* of September 15 and 16, 1953)

COMMUNIST PARTY AND GOVERNMENT

COMMUNIST PARTY SOVIET GOVERNMENT

	<i>Organizations</i>	<i>Executive Organs</i>	<i>Organizations</i>	<i>Executive Organs</i>
<i>Villages</i>	Primary organizations (cells)	Secretary	Village Soviets (in large villages only)	Chairman, Vice-Chairman, Secretary
<i>Productive enterprises</i> (Kolkhozes, MTS, Factories, etc.)	" Party Groups	Partorg (chairmen usually Communists)		Managers, Chairmen
<i>Districts, Cities</i>	Party conferences	District (City) Party Committee, consisting of members & Secretaries	District (City) Soviet	Executive Committee (Ispolkom)
<i>Regions, Territories, Areas</i>	Party conferences or congresses	Regional (Territory, Area) Party Committee (bureaus & secretariat)	Regional (Territory, Area) Soviet	Executive Com. of the Region (Oblispolkom), etc.
<i>Autonomous Republics</i>	Party conferences or congresses	Republican Committee	Supreme Soviet of the Republic	Council of Ministers of the Republic (Republican Ministries)
<i>Union Republics</i>	Congress of the Party	Central Committee of the Union Soviet Republic's Com. Party	Supreme Soviet of the Union Republic Presidium of the Supreme Soviet	Council of Ministers of the Union S.S. Republic (Union Republican & Republican Ministries)
<i>U.S.S.R.</i>	Congress of the Com. Party of Soviet Union	Central Com. of the C.P.S.U. (Presidium and Secretariat of the C.C. of the C.P.S.U.) Note: Before Oct. 1952 Politbureau, Orgbureau, Secretariat	Supreme Soviet of the U.S.S.R. (bicameral) Presidium of the Supreme Soviet	Council of Ministers of the U.S.S.R. (All-Union & Union Republican Ministries)

Chapter XVI

SOVIET CENTRALISM AND NATIONAL PROBLEMS

The Declaration of Rights of Laboring and Exploited People, of 1917, proclaimed that 'The Russian Soviet Republic is formed on the basis of a free union of free nations, as a federation of national Soviet Republics.' It is, however, seriously questionable whether the Soviet Union is actually a federation of 'sovereign states' and 'autonomous republics.'

A short period existed after the October Revolution when a triumphant separatism dismembered the former Russian Empire. The Soviet government did not oppose it. However, the further development of the Soviet state has been marked by the gradual submission of all the newly formed national republics to the central Soviet government. The Soviet state has become more and more a unitary state. This evolution is paralleled in the matter of self-government, where the Soviet state has become inordinately centralized and bureaucratic.

The problem is whether centralism, as it now exists in the Soviet Union, is only a temporary expedient, or whether it is, as stated above, a consistent and lasting phenomenon inherent in the Soviet system and conforming to its planned economy and aggressive ideology.

1. The Federative Structure of the U.S.S.R.

The U.S.S.R. is a federal state formed on a basis of the voluntary association of the sixteen Union Republics (Article 13 of the Constitution of 1936). Although the first Soviet Constitution of 1918 was already based on principles of administrative centralization rather than of self-government, this characteristic was strengthened considerably during the period of the Five Year Plans, and found definite expression in the Stalin Constitution of 1936. The Constitution of 1924 established ten People's Commissariats as the central government of the U.S.S.R. Several administrative branches, such as agriculture, remained under the authority of the Union Republics. At the end of 1929 the Unified People's Commissariat of Agriculture was established. Since then the number of federal institutions has consistently increased

until, in January of 1949, it reached the prodigious figure of fifty-seven ministries (fifty one in 1952).

None of the sixteen Soviet Union Republics has independence similar to the status of a Dominion of the British Commonwealth, Each one of the 48 states of the United States has more independence than a Soviet Union Republic, as the jurisdiction of the U.S.S.R. is almost unlimited compared with that of the United States government.

The highest organs of the U.S.S.R. control the foreign policy, organize the defense and security of the state, direct the monetary system, administer postoffices, regulate labor relations, and issue laws on citizenship and on the rights of foreigners. Besides these common functions of a federative government, similar to the jurisdiction of the United States Congress, they also possess the right to organize foreign trade on the basis of state monopoly, to establish economic plans on a national scale, to approve the single budget of the U.S.S.R., as well as to levy taxes and fix revenues not only for the needs of the Soviet Union as a whole but also the Republican and all other local budgets. They administer banks, industrial and agricultural establishments and enterprises, trading enterprises of All-Union importance, transport and communications. The U.S.S.R. ministries organize state insurance, raise and grant loans; establish the basic principles for the use of land as well as for the use of natural deposits, forests and waters; and lay down the basic principles of legislation on marriage and family and of legislation on the judicial procedure and criminal and civil codes. The right to safeguard the security of the state—the organization and control of the whole police system—also belongs to the central government of the U.S.S.R. (Art. 14 of the Constitution of 1936).

What is left then to the separate Soviet Republics, the so-called Union Republics? Their jurisdiction is limited to those branches of local industry which are of no importance from the point of view of the All-Union interests, to municipal economy, social welfare, and motor transport. The Ukrainian Union Republic has a Ministry of the Furniture and Woodworking Industry, independent of control organs. Several Union Republics have formed ministries of local fuel industry, etc. With the exception of these independent ministries dealing with purely local industries, all others,

such as finance, trade, education, justice, etc., are subject to the instructions and control of the corresponding Ministries of the U.S.S.R. ¹

Since the central government controls all police forces and all branches of economic life, has a monopoly on foreign trade, regulates budget, levies taxes, determines the revenues of each Union Republic, administers the banking system and credits, communications and insurance, establishes the principles of legislation concerning labor, the judicial system, family life, criminal and civil matters, the Union Republics must of necessity submit to its higher authority.

Each one of the existing sixteen Union Republics has its own constitution and its own highest organs: a Supreme Soviet, a Council of Ministers, and a Supreme Court. Nevertheless, the jurisdiction of all these institutions is very limited. The Constitution of a Union Republic must fully conform to the Constitution of the U.S.S.R. (Article 16); only inconsiderable deviations are allowed, and these only if justified by geographic conditions or by some peculiarities of life and culture of the dominant local tribes. Correspondingly, all Union Republics in 1937 issued their new Union Republic Constitutions, all similar, all of the same pattern. They all have Supreme Soviets and Presidiums of the Supreme Soviet, similar electoral systems and similar regulations concerning rights and duties of citizens. The constitutions of all Union Republics (The R.S.F.S.R., the Ukrainian, etc.) differ from the Constitution of the U.S.S.R. only in that the jurisdiction of their higher organs is limited, compared to the jurisdiction of the U.S.S.R., and that they comprise, besides central organs, special provincial, district, and other local Soviets and their executive organs (ispolkoms). There are also some differences in the organization of election districts to conform with the variety of established numerical correlations between the number of deputies and the population. All these differences are purely technical corresponding to the structure of a federal and constituent republic.

There are some more significant differences between the Constitutions of the particular Union Republics. ²

The Constitutions of the Estonian and Latvian S.S.R. reflect some peculiarities of their past as well as their economic conditions. They mention the overthrow of the power of 'big landlords.'

but not landlords in general. The Ukrainian Constitution, having in view the post-revolutionary ventures of the Ukrainian nationalists, Skoropadsky and Petlura, mentions the defeat of the 'nationalist counter-revolution.' Correspondingly, the Constitutions of the Central Asia Republics mention the overthrown 'feudal' system and the power of the 'bai, emirs or khans.'

The Constitutions of Baltic and Moldavian Soviet Republics, where economics at the time of the foundation of the Soviet regime was regarded as being in a transition stage from capitalism to socialism, mention the abolition of 'large' industrial enterprises belonging to private owners, instead of unequivocal 'abolition of private ownership of the means and instruments of production,' as it appears in the Constitution of the R.S.F.S.R. The Constitution of the Baltic and Moldavian S.S.R. permit (Art. 8 and 9 alternately) the operation of 'small private industrial and trading enterprises.' Furthermore, the Constitutions of these Soviet Republics secure lands occupied by 'peasant holding' for peasant use for an unlimited time free of charge. This provision differs from similar ones in Constitutions of other Republics, which secure the land free of charge only to the collective farms.

There are also some differences in regard to the use of the native language. Armenia and Georgia establish their own state language. The other Republics, in conformity with Art. 40 of the Constitution of the U.S.S.R., provide that all official documents be published in the national language and also in Russian, and in the national language of any constituent units within the Republic. The Turkmen Constitution (Art. 39) provides for the publication of laws as well as resolutions and orders of the Council of Ministers in the Turkmen, Russian, Uzbek, and Kazakh languages. Similar provisions are made to allow court proceedings in the language of the persons involved.

All the Constitutions of the Union Soviet Republics emphasize the full equality of men and women. However, the Constitutions of the Central Asiatic republics provide additionally that 'resistance to the actual emancipation of women is punishable by law.' This provision refers to those resisting the entrance of women into study, into agricultural and industrial production, into the governing of the state, or into social or political activities. It has in view the prohibition of such institutions as bride

purchase and the giving of minors in marriage. It is significant that such Constitutional provisions appear only in Republics that have a large Moslem population. ³

The similarity of social and political structure between the federal state and its constituent republics does not exclude the possibility of the independence of the constituent republics, if they can amend their Constitutions, but the Soviet Union Republics cannot do so. Inasmuch as each one of the sixteen Union Republics unites one of the most important nationalities composing the population of the U.S.S.R., it should be a potentially independent state. But the Soviet Union Republics are limited in their jurisdiction so that their independence is under question. The present submission of the Union Republics to the U.S.S.R. is interpreted by the Soviet commentators as a 'voluntary delegation of their "sovereign" rights to the Union of the Soviet Socialist Republics.' This 'voluntary' delegation is, however, the result of a consistent and definite policy of the Soviet government.

2. *The National Policy of the Soviets*

The left-wing Socialist groups in Russia did not support the nationalist aims and programs of separatism which attracted many nationalistic politicians. ⁴ Lenin, in his *State and Revolution*, decisively opposed the partisans of federalism. ⁵ He wrote further that 'A conscientious proletarian will always fight for a large-scale state. He will always fight against the medieval particularism and always hail the closest economic consolidation of vast territories.' ⁶

Stalin, on the other hand, stated openly in 1913 in his first essay on the national question that 'National particularism is not adjustable to the program of social democracy.' ⁷ He opposed even national cultural autonomy and advocated regional autonomy. ⁸ In 1917-1919, he changed his opinion.

Independence and national self-determination were originally promised and set forth in the proclamation of Lenin and Stalin addressed 'To all the working people, Mohammedans of Russia and the Orient:

'Mohammedans of Russia, Tatars of the Volga and Crimea, Kirghizs and Sarts of Siberia and Turkestan, Turks and Tatars of Transcaucasia, your beliefs and customs, your

national institutions and culture are hereafter free and inviolable. You have the right to them. Know your rights, as well as those of all peoples of Russia, are under the powerful protection of the Revolution and of the organs of the Soviets of workers, soldiers and peasants. Lend your support to this revolution and to its government.' ⁹

Later, during the Twelfth Party Conference in 1923, Stalin opposed the supporters of federalism. He argued that federalist organization of the Russian Soviet Socialist Republic was a temporary retreat from the principle of centralism and a forced concession to the nationalist movements. ¹⁰ Stalin explained that this initial policy of the Communist Party was a purely tactical maneuver. In a note to his article '*Against Federalism*' he stressed that it was expedient to start with concessions in order to overcome the extremes of the nationalist and separatist movements. ¹¹

Stalin's line of national policy is known in detail. ¹² His purpose was to organize the various nationalities according to the Soviet standard, to attract the leading representatives of the new national groups into Soviet political structure, and then to reunite Russia in the new Soviet system. ¹³ Sovietization of all national groups was an indispensable part of his plan. 'That autonomy only can exist which is supported by the Soviets of Workers Deputies,' said Stalin. ¹⁴ Consequently, the national Ukrainian Republic governed by the Rada was not recognized by Moscow. It achieved recognition only when it became the Ukrainian Soviet Republic.

The entire history of Soviet legislation regulating the status of the member republics of the Soviet Union illustrates the policy described above, as does the history of the Soviet satellites after World War II. All nationalities are organized according to a consistent Soviet standard, and subsequently united with the ultimate aim of consolidating and strengthening the Soviet Union as a single state. ¹⁵

As has already been stated, the first Soviet Constitution of July, 1918, of the Russian Soviet Federated Socialist Republics did not include the Ukraine. The peace treaty with Germany was concluded by the representatives of both the Russian and Ukrainian Republics. Following the defeat of the 'White armies,' a series of treaties with the previously established nationalist

republics was negotiated, gradually uniting all parts of pre-revolutionary Russia, first for mutual defense, and later for purposes of economic co-operation. ¹⁶

The establishment of the first United People's Commissariats was a further step towards unification. In 1922, under the pressure of the Red troops and Soviet secret police forces (G.P.U.), all national formations in the Ukraine, Transcaucasia and Turkestan were sovietized and subjected to the local Communist organizations. On December 30, 1922, the treaty to establish the Union of Soviet Socialist Republics was concluded and ratified. ¹⁷

With the formation of the Soviet Union the uninterrupted process of fusion of all national republics into a single, centralized state began. Relics of the original autonomy were preserved in some measure by the first Constitution of the U.S.S.R. approved by the Congress of the representatives of the Soviet Republics on January 31, 1924. This Constitution established the supreme instruments of state authority of the U.S.S.R., whose power was later extended and definitely consolidated by the Constitution of 1936. The process of this consolidation can be illustrated by several examples. Originally, only the establishment of the basic principles of the judicial system and judicial procedure, and principles of civil and criminal legislation came within the powers of the supreme political organs of the Soviet Union (Constitution of 1924, Art. 1, o). With the formulation of the Stalin Constitution (Art. 14, u), not only basic principles but legislation in general in regard to judicial system and procedure and also criminal and civil codes, came within the jurisdiction of the U.S.S.R. Consequently, all characteristics of the organization of the courts and of civil legislation peculiar to particular national structures had to be eliminated. Even the 'Determination of the Principles of Legislation Concerning Marriage and the Family' (Art. 14, w) was now within the sphere of the U.S.S.R. Anyone even superficially familiar with the customs and manners of the different peoples comprising Asiatic Russia can well understand what standardizing of family and civic life means for them.

Control and supervision over basic political activities of the Union Republics were also strengthened considerably after 1936. The Constitution of 1924 empowered the supreme authoritative bodies of the U.S.S.R. to 'repeal decrees of the Congresses of

Soviets and of Central Executive Committees of the Union Republics infringing the Treaty of Union,' (Art. 1, w). Stalin's Constitution went even further. It required as was mentioned above, that the Constitutions of the Union Republics conform with the Constitution of the U.S.S.R., and gives the latter the right to insure this conformity. In consequence, Constitutions of all sixteen Union Republics became, as we have seen it above, completely standardized. Before 1937 they differed more in words than in content. Yet the Constitutions of certain of the member Republics, in particular that of the Ukrainian Republic, included some important provisions pertaining to their individual governments.¹⁸ After 1937, all these differences were wiped out. Some differences which still survived have been indicated.

A state whose economic life 'is determined and directed by the state national economic plan '(Art. 11 of the Constitution of 1936) has a predilection toward centralization and unification. It is no wonder, therefore, that expressing Stalin's concept of state and his desire for unlimited power,¹⁹ the Constitution of 1936 issued at the time of the Five Year Plans erased all trace of autonomy that may have existed under the Constitution of 1924.²⁰ Soviet centralism, therefore, proves itself to be not a temporary phenomenon. It is the final stage of an unyielding evolution, consistent with Marxist ideology and its aim to create a mighty, centralized state.²¹

3. *Apparent Sovereignty*

According to the Stalin Constitution (Art. 15) the Union Republics are 'sovereign states.'

The primary right which a Union Republic may claim to assert its sovereignty is the power 'freely to secede from the U.S.S.R.' (Art. 17). Within the exercising of this major right lies the possibility of restoring the lost autonomy, even the independence, of Union Republics. Theoretically, according to Articles 14 and 15 of the Constitution of 1936, the Supreme Soviets of the member republics have the power to vote secession. They can do nothing, however, to make it materialize. The right of secession is a *nudum jus*, according to the terminology of Roman Law.²² Only if the Soviet Constitution had established a method of realizing secession could it be anything but theory. A method is absolutely

indispensable because of specific interrelations between the member Republics and the U.S.S.R. determined by the socialist economic structure. The land, its natural resources, mills, factories, rails, etc. belong to the whole people or to the entire family of nations, (*vsenarodnoe dostoianie*—Art. 6 of the Constitution of the U.S.S.R.).

Within each of the individual republics tremendous investments are made by the nation as a whole. Secession of one or another of the Union Republics pre-supposes a division of the common property of the nation and could not be executed without definite regulations. This could be accomplished through either a special law or an interpretation of Article 17 of the Constitution. The power, in both cases, lies in the hands of the U.S.S.R. (Art. 14, d, 1, q and Art. 49, b).

Each of the sixteen Union Republics, as 'ornamental' states, has its own legislative bodies, Supreme Soviets. The jurisdiction of the U.S.S.R. is so comprehensive, however, that the possibility of independent legislation by the Union Republics is virtually excluded. Ordinarily, the Supreme Soviets of the Union Republics do little more than duplicate laws enacted by the Supreme Soviet of the U.S.S.R. When, for example, the U.S.S.R. changed Commissariats into Ministries, the Union Republics also did so. When the number of members of the Presidium of the Supreme Soviet of the U.S.S.R. was reduced, the Union Republics followed suit. In case of a discrepancy between a law of a Union Republic and an All-Union law, the All-Union law prevails (Article 20).

The executive power of the Union Republics is limited no less than the legislative. The Council of Ministers of a Union Republic is subject to the decisions and orders of the Council of Ministers of the U.S.S.R. (Article 81). The Republics have no independent financial resources, and their budgets are included in that of the U.S.S.R. (Art. 14, k, of the Constitution of the U.S.S.R.; Art. 19, j, of the R.S.F.S.R., etc.)²³ Transformation of the All-Union People's Commissariats (new Ministries) for Defense and Foreign Affairs into Union-Republican Commissariats changed the titles only. The Ministry of the Armed Forces of the Union Republics is empowered only to carry out orders and instructions of the Minister of the Armed Forces of the U.S.S.R. Only the latter has the right 'to fix the annual contingent of citizens to be called up for

military service,' 'to direct the general organization of the Armed Forces of the country' (Art. 68, e, of the Constitution of the U.S.S.R.), 'to organize the defense of the U.S.S.R.', to 'direct all the armed forces of the U.S.S.R.', and to 'determine directing principles governing the organization of the military formations of the Union Republics.' (Art. 14, g). On the other hand, only the prerogative of determining the manner of organizing the Republic's military formation lies with the republic itself (Art. 60, f).

The jurisdiction of the Ministry of Foreign Affairs embraces 'establishment of general procedure covering the relations of Union Republics with foreign states.' (Art. 14, a). Both the Ministers of Armed Forces²⁴ and the Ministers of Foreign Affairs of the Union Republics are subordinated respectively to the Minister of Armed Forces and Foreign Affairs of the U.S.S.R., in accordance with the Constitution (Art. 87). The Ministers of the Armed Forces and of Foreign Affairs of the U.S.S.R. (called Union-Republic Ministers since the reform of February 1, 1944) still execute the U.S.S.R.'s plans and policy, and utilize the subordinated Ministries of the Union Republics as their agencies.

Territorial boundaries of the Union Republics are supposedly stringently controlled by Article 18 of the Constitution, and may not be altered without the consent of the republic involved. As each of the Union Republics, however, shares a common boundary with at least one other of the republics, boundary alterations are impossible without confirmation by the U.S.S.R. (Art. 14, e). This is, of course, particularly apparent because almost all Union Republics, have a common boundary with the R.S.F.S.R., the 'alter-ego' of the U.S.S.R.²⁵

The Union Republics may not maintain much longer whatever independent rights they still have. No article of the Stalin Constitution is exempt from amendment. The Constitution of 1936 (Art. 146) contains no limitations on the number or character of possible amendments. The Union Republics do not even have guarantees of their present structure.²⁶

It is necessary, therefore, to draw certain undeniable conclusions concerning the sovereignty of the republics which comprise the Soviet Union. According to the most recent definition by Soviet jurists, the term 'sovereign' denotes 'the state which is absolutely independent and is not subordinate to any

other state.' ²⁷ This definition coincides with that offered by legal theory at the beginning of the twentieth century. ²⁸ According to this interpretation, however, the Union Republics cannot be designated sovereign states. They have neither police nor army apart from those of the greater U.S.S.R. They may establish no tax or duty without approval from the U.S.S.R. Their executive and judicial institutions are subordinate to those of the U.S.S.R. (Articles 81 and 104 of the Constitution). Their right of secession is essentially unrealizable. Compared with the states of the United States of America, the Republics of the U.S.S.R. have no independence whatsoever. Their rights and powers are, in fact, not essentially different from those of the pre-revolutionary Russian zemstvos (provincial self-governments).

Any sovereign state retains the prerogative of accepting limitations upon its sovereign rights, subjecting itself to the provisions of treaties, or particularly International Law. Once a state accepts these limitations, however, it may lose its independence and no longer claim sovereignty.

Do the Union Republics, although not sovereign, still maintain their statehood? A state may lose its sovereignty because of its incorporation into a unified state. It may, nevertheless, maintain certain spheres of action in which it retains independence, is not subjected to the control of the All-Union authorities, and, consequently, may have legislative powers and its own organs of authority, which identify it as a state. ²⁹ The Soviet Republics, however, cannot claim independence even to that extent.

Soviet development has replaced autonomy with centralization. From the beginning, federalism has been recognized to be a transition stage, preceding inevitable fusion. Correspondingly the Union Republics gradually found themselves transformed into provinces of the unified state. ³⁰ Since 1937, the Union Republics have not been states. They are territories in which the native language is used in government institutions, courts, and schools. They are territories administered on principles of self-government only partially, and on the U.S.S.R.'s plans of decentralization for the remainder.

The Soviet Union uses a perverted terminology in its word 'sovereignty,' and in its designation of certain government agencies as ministries. To be sure, Soviet legislators use the terms

'federative,' 'autonomous republics,' 'ministers of autonomous republics,' just as arbitrarily and without warrant.³¹ Local officials, completely subordinate to the ministers of the U.S.S.R.³² are not ministers in the accepted connotation of the term. The R.S.F.S.R. is not a federative state because the so-called 'autonomous republics' incorporated within the R.S.F.S.R. are not states.³³

4. *Self-government or Decentralization?*

The Soviet apparatus, originally created by Lenin in 1917 as a system which attracted masses of workers, peasants, and soldiers into administration, has been transformed into a stable, consolidated system of very centralized institutions. In principle, local authority has been under central domination from the beginning. The system of the substitution of the Soviets by their *Ispolkoms* decreased the significance of the Soviets as organs of self-government.³⁴ *Ispolkoms* and also *Presidium*s are composed of reliable communists and secure subjugation of local organs to the central Soviet government through the Communist Party and its leadership. Finally concentration of the administrative power into the hands of the central institutions subject all local organs to the central apparatus.³⁵

This system is an unmitigated contradiction of the declared principle that 'all power in the seat of government and in the provinces belongs to the Soviets' and that 'the Russian Soviet Republic is organized on the basis of free nations.'³⁶

In fact, certain administrative procedures within the Soviet Union are organized on principles of decentralization, and only to a lesser extent on self-government. Administration is decentralized when local agencies, subject to the central institutions, are responsible for specific areas of national activity. Self-government exists to the extent that local Soviets, to which the state has transferred a part of its functions, represent both the U.S.S.R. and the local populations which elect them.

As we have seen above, the Ministries of the Union Republics have been transformed into agencies of the Ministries of the U.S.S.R. Only a few branches of administration remained within the jurisdiction of the Republican Ministries of the Union Republics. An enumeration of independent Republican Ministries of

the Union Republics would hardly make an impressive list, and has been excluded from the text of the Constitution. ³⁷

The principle of centralization, as realized in the Soviet structure, firmly unifies legislative activity of all Union Republics, submits to central control the enforcement of law, and forces all local executive organs to follow all directives from the center. Final consolidation of the purely bureaucratic apparatus of Soviet administrations has been reaching completion since World War II. Each new ministry created by the U.S.S.R. expands the economic and administrative control of the central government. ³⁸ Local government has been reduced to little more than a gesture. ³⁹

Thus, all local autonomy and self-government has been brought to naught.

Chapter XVII

ELECTIONS

The Soviet electoral system is based on two conflicting principles. As a state pretending to be the 'perfect democracy,' it has to introduce the 'highest form of electoral system.' ¹ At the same time the general principle of the Soviet state is authoritarian leadership. Elections, if they are really free and express the will of the population, force governments to adapt and sometimes to change policy according to the expressed will of the people. The principle of leadership, on the other hand, requires an unreserved obedience to government policy.

During the first two decades of its existence, the Soviet government utilized the second principle, rather than the first. Some categories of citizens were disenfranchised. ² These disenfranchised persons were a minority, but there was another more important limitation of electoral rights according to which peasants, i.e., the majority of the population, had one deputy in the Congress of Soviets for each 125,000 of all inhabitants while workers had one deputy for each 25,000 electors. ³ In order to control the elections the voting was not secret and there were not direct elections.

The Constitution of 1936 abrogated the former limitations of electoral rights (except for insane persons and convicted persons,

deprived of electoral rights by court sentence) and established the democratic principles of universal, equal, and direct suffrage by secret ballot. ⁴ The principle of free expression of the will of people apparently became predominant. Such a conclusion, however, does not correspond to the Soviet reality.

The Soviet of the Union (one of the two chambers of the Supreme Soviet) is elected on the basis of one deputy for every 300,000 members of the population (Art. 34 of the Constitution). The Soviet of Nationalities (another chamber of the Supreme Soviet) is elected on the basis of twenty-five deputies from each Union Republic, eleven from each Autonomous Republic, five deputies from each Autonomous Region and one from each National Area. (Art. 35). In order to elect deputies the population must be organized for voting. It is not easy to elect one deputy from 300,000 people if there are no organizations which can offer and support a candidate. It is still more difficult to organize elections of twenty-five deputies from the whole Union Republic especially from one so large as the R.S.F.S.R. or the Ukraine. Population is usually organized for this purpose either by subscribing to a known political platform or according to professional and economic interests. In the Soviet Union the first possibility is excluded because of the one-party system. As there are no political parties in the Soviet Union, except the Communist Party, 'the right to nominate candidates for deputy to the Supreme Soviet of the U.S.S.R. is granted to public organizations and societies of working people: Communist Party organizations, trade unions, co-operatives, youth organizations and cultural societies' (Art. 141 of the Constitution and Art. 57 of the U.S.S.R. Election Regulations). As the leading role in all state, public, professional, and cultural organizations belongs to the Communist Party, the nomination of candidates depends in practice upon the Party's approval. Elections are officially based on a bloc of Communists and non-party men. An area commission for election can refuse to register a candidate nominated for the electoral area (Art. 66 of the Regulations). This refusal can be appealed to the Central Election Commission, whose decision is final. Thus, any 'undesirable' eventualities may be prevented.

There are, however, some problems which require more detailed study. According to the law, several organizations have right to

nominate candidates. The electoral campaign would be simplified, if there were only one candidate and no competitors, but it would lose any similarity to the independent expression of the people's will and needs. In his oft-quoted interview with Roy Howard, Stalin characterized the Soviet electoral system as a competition between the candidates of different groups and explained the significance of the elections by the fact that the people can check upon their leaders during the electoral campaign and encourage improvement in the work of the Soviets.⁵ Stalin did not say, but it goes without saying that every electoral campaign is also used for propaganda concerning the achievements and plans of the Soviet government and for building up the energy and confidence of the population. All this is possible only if there are several candidates representing different state and public organizations. Therefore the electoral procedure is long and complicated enough to permit this.⁶

For the period of the elections to the Supreme Soviet of the U.S.S.R. a Central Election Commission is formed, along with a number of election commissions of Union and Autonomous Republics, areas and precincts.⁷ Commissions consist of representatives of trade-union organizations, of workers and other employees, cooperative organizations, Communist Party organizations, youth organizations, cultural, technical and scientific societies and other public organizations and societies of the working people registered in accordance with the procedure established by law, as well as of meetings of workers and other employees in enterprises, servicemen in army units, meetings of peasants in collective farms, villages and volosts, and of workers and other employees of state farms.⁸

In spite of the complex composition of the Central Election Commission its formation takes place with lightning speed. For example, the regulations were published on January 11, 1950, nomination of candidates did not require more than a week; nine days later, on January 19, the Presidium of the Supreme Soviet had already approved the personal composition of the Central Commission, among the members of which were representatives not only of some central organizations, as for example, of the All-Union Central Committee of the Trade Unions, the Komsomol, the Central Union of Soviet writers, and certain others, but also of workers and employees of certain factories, peasants of

certain collective farms, and cultural organizations of certain national republics. ⁹

Approximately one month after the end of January, 1950, the Soviet papers informed the public about nominations of candidates to the Supreme Soviet in different electoral precincts. Stalin and other members of the Politbureau were nominated everywhere. Besides these high personages, many other candidates were nominated, as usual, from the list of well-known scholars, writers, army and navy officers, local officials and members of the Party, and finally, of stakhanovites, and distinguished farmers. Naturally the total number of candidates surpassed the established number of members of the Supreme Soviet. During the electoral campaign all candidates compete in eloquence, and Party propagandists and agitators support them in their task to inspire people with enthusiasm for the forthcoming elections. Finally the moment comes when only one candidate must remain. Each electoral area elects one deputy. According to the regulations, 'ballots in which more than one candidate have been left... are considered invalid.' ¹⁰ Electors must choose one. In every democratic country it could not be a difficult problem. Electors usually strike out all candidates except one whom they prefer. It is not the same in the Soviet Union. Electors find on the ballots only one candidate.

How can it actually occur that only one of several candidates gets on the ballot? There are different ways of achieving this. First, the area commission has right to refuse the registration of some candidates ¹¹ as not deserving nomination. This is certainly the most undesirable method, and it is evidently very rarely used, if used at all, because all candidates are supposed to be approved by reliable organs. Another method of the removal of undesirable or superfluous candidates is indicated in Art. 61 of the regulations. For the registration of candidates it is necessary to present 'a statement by the candidate for the office giving his consent to run.' A hint from above about desirability of his refusal to run is certainly taken seriously by a candidate. There is, however, a third and evidently the most used method of sifting candidates. This method is described in *Izvestia*. ¹² Different organizations having the right to nominate candidates organize an electoral meeting of their representatives and agree on their common candidate from the electoral area.

If Soviet electors were given ballots with several candidates and allowed to choose one of them, then every elector would use the little curtained booth which is provided at every polling place. This might create a temptation for voters to strike out all candidates, since all electors would disappear into the booth, and it would be impossible to discover counter-revolutionaries. Elections could fail or reveal a lack of unanimity.

The existing system eliminates any possibility of conflict or discrepancy. The electoral procedure is definitely simplified. Since there is only one candidate on the ballot, electors can only drop the ballot into the urn in full view of the election officials. Voters have the right to use the booths but, if undue time is taken for that purpose, it is interpreted that that person does not want to vote for the official candidate and wants to strike his name out. On the other hand it is useless to replace the name of the candidate with another, as an unregistered candidate cannot be elected.

According to the Soviet press, the results of every electoral campaign present evidence of the solidarity of the Soviet people. The electoral reports published after elections to the Supreme Soviet of the U.S.S.R. and to the sixteen Supreme Soviets of the Union Republics, indicate that only 1 to 2 per cent of the ballots are considered invalid and about 98 to 99 per cent of the voters take part in the voting. During the electoral campaign of 1950, 99.98 per cent of the electors came to cast votes and 99.72 per cent voted for the proposed candidates. Such a high percentage of voters may be explained by the practice of listing all non-voters as persons who are neglectful of their civic duty, whose loyalty to the Soviet State must therefore be under suspicion. The slight percentage of invalid ballots may be explained by the impossibility of changing the results of the pre-determined elections and by the futility of manifesting any disagreement.

Stalin was always elected unanimously. Other members of the Politbureau received a little less than Stalin, some 99.80, some 99.00 per cent and so on, according to their importance. There is no doubt that the results of the elections are pre-determined in regard to at least a great part of the Supreme Soviet. The example of the formation of the Central Election Commission mentioned above, makes it clear how simple this practice is. Several days are

sufficient for organizing the Commission, consisting of representatives of a great number of central and local organizations. The Party can indicate nominees to all organizations. As another illustration of the Communist Party's actual role during the electoral procedure, there is the open letter addressed to the electoral commissions, and published in Soviet papers on February 18, 1950, in which members of the Politbureau, referring to their nomination as candidates to the Supreme Soviet in several electoral areas, declared that since no one had the right to run in more than one electoral area,¹³ they had asked the Central Committee of the ACP (b) for instructions and the Central Committee indicated to them where each one was to run. Undoubtedly this letter had instructive significance for other communists, giving them an example of inner-Party discipline. The results of the elections are usually characterized in Soviet papers as a triumph of the Communist Party.¹⁴

It is very probable that some candidates to the Supreme Soviet are offered by the local Party organizations. They have an opportunity to discuss and present a list of candidates to the central Party organizations in advance. Certainly some changes can take place during the campaign itself, perhaps even in connection with the success of one candidate or another. But the final result can be predicted.

As the elections take place under the banner of the bloc of Communists and non-party workers, peasants, and intelligentsia,¹⁵ not all candidates to the Supreme Soviet are members of the Party. After the war there were many distinguished military men among the non-party men nominated. During the period of industrialization, mostly engineers, members of collective farms, and workers were nominated. Also nominated are representatives of the progressive and loyal intelligentsia of different nationalities, especially Asiatic tribes, who assist in making contact with national circles.

However, the majority of deputies belongs to the members of the Communist Party.

'It is not accidental that the majority of the deputies of the Supreme Soviet consists of members of the ACP (b) as the Party is the vanguard of the working people in its struggle for strengthening and development of the Soviet socialist

structure. It represents also the leading core of all organizations both public and state. The ACP is a well-trying fighter for the happiness of the people.' ¹⁶

Among the members of the Supreme Soviet elected in 1950 there were two hundred and nineteen members belonging to the new Soviet aristocracy: sixty heroes of the Soviet Union, eighty-three heroes of socialist labor, and seventy-six Stalin prize winners.

Out of 1316 members of the Supreme Soviet 823, about two thirds, are not ordinary communists but members of the highest organs of the Communist Party, members of the Politbureau, Orgbureau, Presidents of the Supreme Soviets and Councils of Ministers of different Soviet Republics, Ministers of State Security and Interior Affairs, Procurators, Secretaries of Party organizations, Chairmen of Executive Committees, and Managers of trests, railways, etc: More than a hundred million workers and peasants are represented by 145 chairmen of kolkhozes, 17 ordinary members of kolkhozes and 111 workers. ¹⁷

A competent reviewer of the composition of the Supreme Soviet elected in 1950 emphasizes ¹⁸ that in the Supreme Soviet every large area of the Soviet Union has its highest Party representatives, highest State officials including Minister or another high official of the Ministry of State Security (MGB) or of the Ministry of Interior Affairs (MVD), Commander of the Military Region, Chief of the Railway, responsible representatives of the Trade Union and a manager of a trest or of a particularly large state enterprise. Such a group of deputies representing each large region is a potential emergency apparatus since it includes those competent persons who in case of war might organize mobilization of the economy and transport and adapt the country to the needs of war, according to the instructions of the center of government. In conformity with such a plan, it is not important to have many workers and peasants in the Supreme Soviets. Democratic decorations are sacrificed in this instance, to more serious interests.

Scarcely anyone can believe that the selection of representatives described was accidental and inspired only by the intuition of electors. ¹⁹

Elections to the Supreme Soviets of Union and Autonomous Republics and to the numerous Soviets do not differ essentially from the system described. The role of the central Party and

state institutions is evidently less the more a certain elected body is limited in its jurisdiction. The number of elected Communists in local Soviets, especially in village Soviets, is usually less than that of non-Party men. ²⁰

In a case of lack of loyalty every deputy can be replaced by virtue of the right of recall:

'It is the duty of every deputy to report to his electors on the work of the Soviet of Working People's Deputies, and he is liable to be recalled at any time in the manner established by law upon decision of a majority of the electors.' (Art. 142 of the Constitution.)

If the deputy is a member of the Communist Party he can be recalled by the order of the Party no matter what guarantees to his office he has.

If on the other hand an elected deputy succeeds in his political career, it assists him in rising up the social ladder. One award facilitates getting another one. To become a deputy of the Supreme Soviet is a very considerable achievement. Deputies of the Supreme Soviet of the U.S.S.R. receive 1,000 rubles per month and 150 rubles per day allowance while it is session. They have also a right to free railway and river transportation. ²¹ In addition to an excessively large number of officials some groups of deputies form an upper social stratum in the Soviet Union. They have better opportunities for advancement and sometimes many privileges.

Chapter XVIII

THE INDIVIDUAL AND THE STATE

One of the greatest achievements of social culture is the creation of a type of state organization in which an individual does not feel his utter helplessness before an all-powerful state, one in which he realizes that he possesses certain inalienable rights of which no one may deprive him. To be a citizen means to realize that together with one's duties toward society a man also has rights. That is why the Bill of Rights is justly considered one of the basic parts of the constitution of a democracy.

The state has at its command certain means of coercion. The

simplest is the use of physical force, the strength of bayonets, as it is customarily termed. The state supports the army and the police for coercive purposes. In addition, the state has other means of imposing its policies upon society. It possesses political power. By controlling the regulation of public life, it may deprive whole groups of people of privileges or influence. It may cause them to become second-class citizens. It may even deprive them of civil rights altogether. In ancient Greece this was done by means of ostracism. In the Soviet state it is done by classifying certain people as *Lishentsy* (disfranchised people), or by confining them in concentration camps.

Finally, the state has at its command tremendous economic forces. By controlling the public economy it may favor some and reduce others to penury.

Social culture has created conditions which prevent the state from abusing its power. There are many ways of guaranteeing the protection of human rights and civil liberties, as well as various limitations of state authority and the means of enforcing the will of the state upon the citizenry.

I. Legal Guarantees of Individual Rights

In a constitutional democratic state every citizen has the opportunity to assert his rights. A constitution guarantees him legal protection; it grants him the right to *habeas corpus* and establishes the responsibility of officials for violations of law. In the United States a Supreme Court guards the inviolability of the Constitution. Thus the principle of law rules. In addition to the constitutional guarantees, independent social organizations protect their members. Political parties, professional unions, national and religious organizations enjoy a prestige by which their members are protected not only against powerful individuals but against the state itself.

However, it is not by means of political and social guarantees that human freedom is best protected. No less weighty is the existence of private property and private enterprise. It has been explained how private property guarantees one's independence. For those who do not have their own property, the existence of private concerns permits them to find a means of livelihood outside government service and to preserve their independence

from the state in material matters. Dependence on a private entrepreneur and boss, especially under protection of modern labor law and well-organized unions, has become less oppressive and, at any rate, as Soviet practice has demonstrated, less dangerous than complete dependence on the state. As for the exploitation of labor by private individuals, this practice becomes more and more relegated to the realm of legend, with except in some culturally backward localities.

Despite all the virtues of the legal order of a modern democratic state, however, it is far from being perfect. Like everything else in the world, it displays shortcomings so that the efforts of mankind toward further improvements go on constantly. Constitutional rights and the rule of law guarantee to the citizens formal equality only. Liberties cease to appear sacred when they are not accompanied by material well-being. The purely formal equality offered by the majority of present-day constitutions also begins to seem insufficient. Formal equality is equality at the starting point. It means an absence of special privilege and a strengthening of the principle of free competition. However, in competition victory falls to the strongest, which in practice often means the one most securely situated, and not the most capable. Formal equality does not exclude material advantage which secures success in the battle for survival. Formal equality furnishes a background which outlines more sharply the contrast of wealth with poverty; this contrast becomes more acutely felt with the realization that, while legal right exists, there is no means of achieving the desired end because of a lack of material opportunity.

Like competitors who are at the starting line together, but who differ in strength, ability, and training, some forge ahead and others lag behind. Thus, people who are formally equal, differ in education, ability, wealth, and connections, have different chances when competing in social life. Hence, people who have achieved formal equality, begin to strive for material equality, or at least for a levelling of material and social differences. These new trends find expression in current social ideas. Some thinkers believe in the possibility of further evolution of the existing democratic state and its transformation into a welfare state, or of essential improvements alleviating social differences and equal-

izing the chances of ordinary people in their struggle for existence. Others do not believe in palliatives and prophesy the necessity of radical reorganization of the existing social and economic structure.

Correspondingly, two basic ideas appear in regard to social progress in our time. One is a plan of gradual social reforms. It is based on the belief that it is possible to guarantee to every individual his right to existence, to keep people secure from unemployment, and in case of loss of earning power, to give medical aid and material support, and to guarantee them a minimal earning sufficient to provide a livelihood. The maximum program of these social reformers includes raising the living standard, achieving a higher level of prosperity, removing radical social differentiation. Another approach to the same problem may be found in the social philosophy of radicals who want to abolish every social injustice immediately and to radically reorganize the existing social order for this purpose.

These are the basic ideas upon which the success of socialist teachings has grown and become strengthened, and which direct modern revolutions. Their essence is in the fight for the removal of material inequality and the eradication of political domination by the holders of wealth. These motives inspired the Bolshevik revolution, and they still serve Soviet leaders in their efforts to kindle the flame of revolt in other countries.

2. Freedoms in the Soviet Union

The Soviet Union is the first 'socialist' state and naturally one wonders what the attitude of the Soviet state toward the problem of man and citizen is? What does the Soviet state offer its citizens?

The Soviet Constitution recognizes political liberties in principle, and Article 125 gives the following formula:

'In conformity with the interests of the working people, and in order to strengthen the social system, the citizens of the U.S.S.R. are guaranteed by law:

- a. Freedom of speech;
- b. Freedom of press;
- c. Freedom of assembly including holding mass meetings;
- d. Freedom of street processions and demonstrations;

These civil rights are insured by placing at the disposal of

the working people and their organizations printing presses, paper stocks, public buildings, the streets, communication facilities, and other material requisites for exercising these rights.'

The enumerated freedoms are granted in order 'to strengthen the existing social system' and it follows that any criticism of the regime and, even more so, any attempt to change it, are excluded beforehand. According to the direct meaning of the article the population is merely granted the right to uphold the established system. The freedoms are granted 'in conformity with the interest of the working people,' but just what does conform is decided not by the holder of the freedoms, but by those who grant them.

The Soviet commentators on Stalin's Constitution consider its most striking feature to be not the formulation of the rights of the citizens nor their enumeration, but the 'real guarantee' of these rights. The problem is whether the manner of providing the working masses with printing presses and paper really insures freedom of the press, or if it is possible to consider as a real guaranty of freedom of assembly the fact that citizens may use streets and the means of communication.

In the Soviet Union no organization may use either paper or printing presses at its own discretion for the purpose of publishing what is deemed necessary. Both printing offices and paper stocks are the property of the state and are in no way open for the use of each and every one in the manner of streets, public baths, or seats in parks. The press is not in the hands of the people, but at the disposal of the Party.

The press in the Soviet Union is subject to the censorship of the so-called *Glavlit* (Chief Administration of Literature and Publications). This institution is empowered to prohibit the publication and distribution of published works. Organization of publishing houses and publication of periodicals require special permission. The local organs of the Glavlit have the right of both prior and post-publication control of all printed matter from the political, ideological, military, and economic points of view. They have the right to confiscate publications, to suspend periodicals, and to dissolve publishing houses. Broadcasting, lectures, and exhibitions are also subject to censorship. For the purpose of preliminary censorship, the Glavlit has its authorized agents

attached to the editorial staffs, typographical plants, broadcasting stations, telegraph and postoffices, etc. Only publications of the Communist International, the Central Committee of the ACP (b), and some principal Party committees are exempted from pre-publication censorship.¹

Theaters, movie houses, and other organizations for public entertainment are subject to the control of the Art Committee, one of the central institutions of the U.S.S.R.² Local organs of the Art Committee are subject to the chiefs of the arts administration in every Union Republic and control the repertoire, give permission for staging plays, producing films, and also have the right to supervise the public performance of the approved plays and films. Under the control of these organs are production of records, programs of circuses, and appearances of music-hall actors, except appearances of distinguished People's Artists. Prohibition of stagings and productions may be on political and also ideological ground.

The provisions of the Soviet legislation cited illustrate how illusory the freedom of press and art in the Soviet Union is, in spite of the 'real guarantees' proclaimed by the Stalin Constitution. The fact that the paper stocks and all the printing presses belong to the state, does not guarantee the freedom of the press. On the contrary, it would be far easier to publish freely, if private individuals and public organizations had the means of acquiring necessary paper and printing facilities, instead of having to use those the state sees fit to bestow upon them. Likewise, freedom of assembly does not necessarily follow just because there are streets or public places. They have always been there, while the right to hold mass meetings upon them has been absent. The essential point is not in having streets or public squares, but in having a government which does not possess the power to close any newspaper or confiscate any book, or disperse any public gathering of which it happens to disapprove.

Freedom requires legal guarantees, which are best expressed in the separation of powers in government, in independent courts, independent public organizations. The problem is whether there are such guarantees in the Soviet Union. If citizens truly have rights, they do not need special permission. In the Soviet Union everything requires permission. Conventions and conferences

cannot take place without special permission,³ as books and other publications cannot be printed without previous censorship.

The worst limitation of freedom in the Soviet Union results from its economic system, which deprives a man of the possibility of existing independently of the government.

Modern capitalism, or, as it is termed in the Soviet Union, the bourgeois economy, subjects private enterprise to such control limitations, and obligations as to make exploitation of one man by another almost entirely impossible. At the same time the danger of entirely subjugating an individual to the state does not exist. Those unwilling to serve the state may find employment in private enterprise, live by earnings of the liberal professions, leave the country, emigrate to another, or live upon their income, if they possess one. In one way or another an individual may preserve and safeguard his independence.

As for the Soviet government, it places all its citizens in complete dependence upon it. No citizen may provide for his own existence in any other way than by means of unquestioning loyalty to the government and cooperation with it. By depriving a person of a job and income, the state deprives him of his means of existence. Even savings or private income provide neither shelter, nor clothing, nor food if the state chooses to withhold them, since the purchasing power of money depends entirely upon the discretion of the state, as does the rationing of foodstuffs and the objects of basic necessity. This is the reason that a Soviet citizen prefers 'real guaranties' of existence to rights. This is the reason that the Soviet government is so anxious to persuade its citizens that in bourgeois countries there are no such 'real guaranties' and that it alone offers them.

3. Rights of Citizens

A particularly serious discrepancy exists between the many regulations of the Soviet Constitution and Soviet reality with respect to the 'Fundamental Rights and Duties of Citizens.'

Article 118 declares that the right to work is 'insured by the socialist organization of the national economy, the steady growth of the productive forces of Soviet society, the elimination of the possibility of economic crises, and the abolition of unemployment.' In reality, the right to work, instead of being a right, is

a duty in the Soviet Union, and a drastic one as that. The system of piecework practiced in the Soviet factories and the constant intensification of farming methods have made labor conditions in the Soviet Union very bad. Conscription for industrial work, in addition to military conscription, strikingly illustrates that the 'right to work' in the U.S.S.R. is, in effect, a public duty, and often does not provide the right to choose the kind of work.

Article 119 gives the citizens of the U.S.S.R. the right to rest and leisure and introduces the eight hour workday for workers and employees (instead of the seven-hour workday which was originally proclaimed in the Constitution). The eight-hour working day does not astonish workers in capitalist countries; ⁴ but the Soviet Constitution promises, in addition, a 'vast network of sanatoriums, rest homes, and clubs to serve the working people. A vast network of sanatoriums, resorts, etc., signifies, however, little more than good intentions. The realization depends upon the level of the nation's wealth.

A score of alluring promises may be included in any constitution without incurring risk. Such promises lend enchantment to the fundamental law, as ornaments decorate the facade of a building. They do not, however, change anything in the life of the population. For example, Article 120 of the Soviet Constitution gives the citizens the right to maintenance in old age in case of sickness or loss of working capacity. This right is 'insured by the extensive development of social insurance of workers and employees at state expense, free medical service, and the use of health resorts for the working people.' Article 121 offers 'seven years of free education.'

The cited articles 119, 120, and 121 of the Soviet Constitution, are very reasonable. However, their practical significance is more than doubtful. Not everybody can get, especially in the country, an aspirin, not to mention other medicine. Free medical service without medicine, and health resorts which are practically inaccessible to the average citizen are as uncertain as lottery tickets. A great majority of the schools lack the most essential equipment. In many places there are no buildings for the schools. The regulations of law do not guarantee the population the advantages which they promise.

From a legal point of view, the individual has a right only if

he has a claim in the case of its violation. Soviet citizens are not given such a right. Every civilized state strives to develop a number of sanatoriums, resort houses, hospitals, and schools, without mentioning it in its Constitution, as the Soviet Union does. All these things depend upon the state budget. The Soviet Union certainly has not surpassed the Western countries in services for the cultural and practical needs of the population. Nevertheless, Stalin said during the Extraordinary Eighth All-Union Convention of the Soviet: 'Some people speak about the freedom of speech, meetings, and the press. They forget, however, that all these freedoms are but an empty sound for the workers if they have no premises suitable for the meetings, no printing presses, paper stocks, etc.' Does this not also apply to those rights which, according to the Soviet Constitution, belong to Soviet citizens? Where are those 'real guaranties' which should secure their constitutional rights in order to keep them from being an but 'empty sound'?

No more realistic is Article 122 of the Soviet Constitution, which proclaims that in the U.S.S.R. women are accorded equal rights with men in all spheres of economic, state, cultural, and political life. What does this mean in practice in a country where everybody is harnessed to hard work and has to earn his bread by the sweat of his brow? Does it not mean new duties rather than rights?

The best constitution cannot secure all rights to its citizens, because many rights depend more on the welfare of the country than on legal rules. The Soviet Constitution is not an exception, and the majority of the rights mentioned in Chapter X, 'Rights and Duties of Citizens,' are but a delusion. In fact, their duties are more real.

4. Citizens' Duties

In a country where public law prevails, citizens' rights are conditional, as we have seen. On the other hand, duties established by the state are supported by coercive force and no one can avoid them.

Even regulations established by a particular organ of the state are usually enforced and sanctioned by coercive measures. Prof. Denisov refers, for example, to the regulations concerning students of the Soviet schools. ⁵ Every student is obliged to work

hard and industriously, to obey all orders of the head of the school and teachers unreservedly, to be at school punctually, to be polite, to observe discipline, and to respect the honor of his school and class. 'These regulations,' says Denisov, 'have the force of law for every student, and in case of not observing them, students have to be punished and may be expelled from the school.' ⁶

The socialist state is more exacting than any other. Coercion applied in the Soviet Union has, as the same author explains, a particular character. It is applied by 'our own Soviet government,' 'the government of the working people.' ⁷ It is directed against an obvious minority and corresponds to the vital interests of the overwhelming majority, and finally, it rests on the conviction of the majority in regard to the necessity of coercion.

It is taken for granted by the Soviet leaders that only enemies of the people can violate regulations established for the benefit of the whole nation. The government must prosecute every one who does not observe his duty toward the state and socialist society like a commander who supports discipline in his army, and it must not let any disorder appear which can do harm. For instance the state must prosecute and punish those workers who abuse the advantages which have been created for them by the socialist state. There is no unemployment in the Soviet Union. Every work is confident that he can find a job, and some workers abuse this advantage, Denisov asserts. They shirk their duty, flit from place to place, break the established order and injure the interests of the national economy and national defense; they disorganize the work of the overwhelming majority of the disciplined workers and farmers. The state has established severe punishments for these criminals.

The examples and arguments cited are indicative of the peculiarities of a regime where the individual is a small part of a complex mechanism, and where every deviation from one's duty is considered to be a crime against the state and the national welfare.

'It is the duty of every citizen of the USSR to abide by the Constitution of the Union of Soviet Socialist Republics, to observe the laws, to maintain labor discipline, honestly to perform public duties, and to respect the rules of socialist intercourse.' (Art. 130 of the Constitution).

Every citizen of every state must observe the laws. There is

nothing unusual in such a duty. However, the Soviet legal order has made an almost unlimited extension of duty. In addition to being officially interpreted as an expression of the will of the overwhelming majority and as a foundation of the national welfare, the interpretation is more exacting and more severe than anywhere else. Labor discipline, for example, includes not only observation of factory regulation, but also questions of standard output and assignment as they are established by the government. Prosecution of all kinds of violations of labor discipline and in particular prosecution of those who 'try to produce less and to obtain as much graft as possible' must be merciless, according to Lenin.⁸

The provision of the Constitution quoted above demands 'honest performance of public duties and respect toward the rules of socialist intercourse,' from every citizen. This vague formulation allows expansion of the demands on citizens without limitation. Elementary principles of law require exact formulation and a strict interpretation of duties. Rights, if they are formulated vaguely, are not guaranteed sufficiently; duties, if not distinctly formulated, may deprive people of freedom. 'The honest performance of public duties' is interpreted for example by Prof. Denisov, not only as a duty to fulfill every task that is useful for the state, including making sacrifices, but also includes the necessity of struggle against everything that is harmful to the state.⁹ Even a duty to spy and report against parents and relatives finds thus its support in the vague provision of the Art. 130 of the Constitution concerning 'performance of public duties.'

No less vague is the last part of Art. 130 demanding that Soviet citizens 'respect the rules of socialist intercourse.' It is interpreted by Denisov as the duty 'to submit personal interests to the collective interests.' It goes without saying that such a duty corresponds completely to the basic principles of the Soviet system and explains at the same time how easy it is in the Soviet Union to neglect the private rights and interests of individuals.

A special article of the Constitution (Art. 131) formulates citizens' duties concerning the safeguarding and fortifying of socialist property. Those who misappropriate state property are considered to be enemies of the people.¹⁰ Crimes against socialist

property include not only plundering and embezzlement, but also lack of thrift, mismanagement and negligence. Everyone has to take care of every penny belonging to the people, Molotov exhorted his listeners when he presented the third Five-Year Plan to the Eighteenth Congress of the ACP (b).¹¹

The last two provisions of the Constitution concerning citizens' duties fix their military service as 'an honorable duty.'

'To defend the fatherland is the sacred duty of every citizen of the USSR. Treason to the country,—violation of the oath of allegiance, desertion to the enemy, impairing the military power of the state, espionage,—is punishable by all the severity of the law as the most heinous of crimes.' (Art. 133.)

In the Soviet Union universal training of the population is established for anti-aircraft and anti-chemical warfare defense, in which all persons from 16 to 60 years of age must participate.¹²

Patriotism is interpreted in the Soviet Union not only as a readiness to sacrifice one's life for the fatherland, but also as a severe hatred toward its enemies.¹³ Desertion to the enemy is interpreted so broadly that every soldier who became prisoner was considered as a traitor. The same attitude toward prisoners existed in militarist Japan.

5. *Soviet Citizenship*

The Soviet press ascribes to the Soviet citizen a proud statement: 'I am a citizen of the Soviet Union,' re-wording the renowned Roman slogan, '*Civis Romanus sum.*' By this, the Soviet citizen is supposed to express his consciousness of the importance of his work for the state and his faith in the final victory of communism.¹⁴

However, if a Soviet citizen were to actually pronounce the proud words: 'I am a Soviet citizen,' these words would not have the same meaning that they did in ancient Rome. Roman citizens were truly proud of the privileges and well-protected rights which they possessed, since they were citizens of a mighty empire. In the Soviet Union the citizens are supposed to be proud of their master, the 'socialist' state. This recalls the days of serfdom, when peasants of a rich and noble prince boasted: 'We are princely!' comparing themselves with the serfs of some impoverished country gentlemen owning a small estate.

A Soviet citizen, with his conditional rights and limitless duties, is bound even in his choice of residence. Every citizen over 16 years must have a passport as his official form of identification, and he must present it to get a job or at a request on the part of the militia or other administrative organs. Every citizen who changes his residence must present his passport at the new place of residence within twenty-four hours after his arrival. Violation of the provisions of law concerning the use of passports, as well as loss of passport, are punished by fines, and in case of more serious violation, by other penalties established by the penal code. The rural population, except in some special regions, is not obliged to have passports, but if a member of the kolkhoz leaves the place of his permanent residence, he receives a passport for one year. The hiring of farmers who have left the kolkhoz without its consent is restricted. ¹⁵

In the United Nations Andrei Vyshinskii has insisted that each country should be allowed to force its own refugees to return home. Mrs. Eleanor Roosevelt led the opposition to this proposal. She urged the U.N. to aid those who refused to go back to their countries. Mr. Vyshinskii retorted: 'We refuse to accept such toleration.' ¹⁶

It has been proclaimed since 1868 in the United States that 'the right of voluntary expatriation is a natural and inherent right of all people.' On the other hand, the Soviet Union considers its citizens as the property of the state. Not only are they not allowed to go abroad, but they are forcibly repatriated when they succeed in escaping. forcible repatriation was practiced by the Soviet Union in Western Europe after World War II. Hundreds of thousands of Soviet citizens were captured in Western European states, where they hoped to find refuge. They were transported back like cattle, in boarded freight cars and behind iron bars. Even former Soviet citizens and Russian citizens of pre-revolutionary times who became naturalized citizens of the countries where they found refuge were not safe. In ancient Rome, slaves had a special inscription on their backs: '*Fugite, tene me*' ('I run away, stop me'). Soviet citizens were treated by their government as if they bore that humiliating inscription.

There is another striking fact. The Soviet government did not allow Russian women who married Englishmen during the war to

leave Soviet Russia and join their husbands. After that time, the Soviet government forbade Russian women to marry foreigners at all.¹⁷ Mr. Vyshinskii, when asked the reasons for such restraints, replied cynically: 'Women are too talkative and, besides, they have to bear children for the Soviet Union.' There is more evidence of how citizens' rights have been forgotten compared to their duties toward the 'socialist state.' The Soviet citizen is not completely free from the duties toward the state even in his family life. His house is not his castle; even there he continues to serve and to be under control of his state.

Chapter XIX

DEMOCRACY OF 'THE HIGHEST TYPE'

Soviet writers assert that the Soviet state is a democratic state. They even claim that the Soviet state is a 'perfect democracy,' compared to the Western bourgeois type of democratic state. We face here a most debatable problem, one which can only be solved when the meaning of the word democracy is exactly determined.

I. General Principles and Trends of Democracy

There are different forms of democracy, but it is possible to point out some characteristics common to every historic form of democratic state. When the sovereign's power rests not on 'the grace of Almighty God,' but on the 'will of people,' when people become sovereign and consequently acquire the right to organize and reorganize the state to conform to their interests, the state becomes democratic. However, a simple change of the state formula means nothing. The sovereign right of the people must be legally guaranteed. Democracy recognizes the right of every citizen to participate actively in political life, to participate in the creation of the government or administrative machinery by the means of elections. This right really exists only if certain freedoms are secured: freedom of speech, of the press, and of assembly, including the opportunity of organizing different political parties, a legal order protecting and guaranteeing citizens against the arbitrary will of the state, and a widely developed self-government. Those are the genuine foundations of a democratic nation.

Sovereignty of the people is considered highly perfected if it offers an opportunity to every minority to express its interests and political tasks. And, under certain circumstances, the democratic system offers an opportunity to the people to make its national will felt through the vote of all the people in the form of plebiscite.

In the democratic state the government is subject to the control of the people. Confidence in the government is checked by periodical elections. The government must be limited in its power by the system of separation of powers, by the submission of the budget to the legislative body, and the strengthening of the authority and independence of the judicial institutions.

In a few words democratic foundations are in the legal guarantees of free expression of the popular will and in legal guarantees of popular control over the government. A democratic state is based on principles of legal order, which protect rights of citizens and require responsibility on the part of the government. Monarchy can be democratic, if democratic principles are observed, and republics can be anti-democratic if their legal order protects the arbitrariness of the government.

Democracy represents one of the most valuable achievements of social culture. It is one of the great miracles of the human progress that a state uniting scores of millions and even hundreds of millions of people can be governed without violating individual freedom and yet can support an orderly system accumulating enormous power in the hands of the government and depriving it of the chance of abusing its power, promoting some groups of people or political parties to the position of leaders and legislators and yet preventing government arbitrariness because of ever-present control, organized public opinion, and independent opposition.

Democracy is not an entirely finished and stabilized system. Democratic principles are inspiring and leading ideas, which as a *spiritus movens* suggest a vast program of potential development. Democratic principles can be applied to industrial organizations (democratic industrialism), to the organization of churches and to education. Democracy, if of the people, by the people and for the people, is a progressive democracy with a tendency toward constant improvement of conditions of life for large masses of population and an evolution from formal democracy in the direction of material equality (see above Ch. XVIII).

Scarcely any of the existing forms and procedures of governmental systems are irreproachable. The democratic nations, as they are organized at present, certainly have defects. There are still inequalities of rights, because of discrimination based on irrational or confessional prejudices and inequality among men and women in political and social life; sometimes there is inadequate protection of minorities' rights.

These shortcomings do not lessen the importance of the great strides that have been taken toward the realisation of such goals as protection of individual rights, freedom of speech and assembly, independence of social organizations, a progressively developed protection of minorities. All these principles and constitutional guarantees are rightly considered to be important gains of human culture and must be protected at all costs.

Respect for law and inviolability of the legal order are the fundamental bases of a democratic regime. Reorganization of national economy in the direction of socialism does not justify violations of the great principles of social culture. We can rightly consider a state to be a perfect democracy only when it is characterized first and foremost by the rule of law, when civil rights are duly guaranteed, when citizens, individually and jointly, organized in political and professional groups, are able to defend themselves and their interests, and when arbitrary administration and abuse of power can be terminated. If such principles are observed the working masses have the opportunity to protect their interests and improve their conditions.

2. *Soviet Comments on 'Bourgeois Democracy'*

From an historical point of view the Marxists consider the bourgeois democracy as a progressive form. Just as the Marxists admit that capitalism represents a progressive form of economy judged from an historical point of view, since it introduces a high degree of technology, concentrates the means of industrial production, creates an apparatus of large-scale business, and encourages inventions,—so they admit that the democratic regime in the western meaning, is historically progressive. Lenin always emphasized that any sort of nihilism about questions regarding democracy was foreign to proletarian revolutionaries. He wrote: 'Socialism is impossible without democracy.'¹

The Marxists cannot deny that the individual freedoms and the parliamentary system of the democratic countries give the working masses a chance to organize themselves and assist in their political development.

During the war, when the U.S.S.R. sought to cooperate with the democracies, Soviet writers ceased to speak of England and America as sharks of capitalism, but contrasted them with Fascists and acknowledged some essential advantages of the democratic system:

'In England and in the United States,' said Stalin, 'there exist elementary democratic liberties. There are trade-unions of workers and employees, and workers' parties in parliament, while in Germany under Hitler all these institutions have been destroyed. It is only necessary to compare these two sets of regime in order to understand the reactionary nature of the Hitler regime and the falsehood of the bubbling German fascists about the Anglo-American plutocratic regime.'²

But after the war, Soviet writers again turned to sharp criticism of the Western democratic states, and again with reference to Lenin:

'The bourgeois democracy, while representing a step forward in the history of the development of society, as compared with the Middle Ages, yet remains narrow, truncated, formalistic, hypocritical, a paradise for the rich, a trap and a sham for the exploited and the poor.'³

The apparent contradiction is based on the general principle of dialectical materialism which teaches that neither capitalism nor democracy are eternal and are bound to make way for more perfect forms: namely, as Lenin and his followers believe, for the Soviet regime and socialism. Having acknowledged that bourgeois democracy opened the way for progressive development of the social life, Lenin did not spare words for criticizing its bourgeois forms.

'The most democratic bourgeois republic is but a machine for oppressing the proletariat.'⁴

'Freedom of press in the bourgeois society does not mean anything other than freedom established in the interests of

capitalists, giving them the opportunity to hold the press in their hands and to mould public opinion in conformity with their interests.' ⁵

'Soviet democracy is the transformation of a false democracy into a true form of democracy.' ⁶

'The Soviet Democracy is raising, educating, instructing the whole huge mass of the working classes, which were still completely outside political life and outside of history.' ⁷

This negative attitude, as formulated by Lenin, is even more sharply defined by Andrei Vyshinskii:

'The bourgeois official democracy, the bourgeois police, the bourgeois courts, prisons, army—all parts of this machinery work, with mechanical smoothness, to one end—the subjugation of the entire life to the interests of the exploiters; toward one goal—the strengthening and solidification of the reign of the exploiters.' ⁸

In contrast with bourgeois democracy,

'The proletarian state draws the masses to the government of the country, it is based upon them. It produces a widening of democracy hitherto unwitnessed in the world—a democracy for the overwhelming majority of the people.' ⁹

'The essence of the Soviet regime,' wrote Lenin, 'is the fact that the masses organized of precisely those classes which had been oppressed by capitalism is placed as a permanent and sole foundation of the entire government...' ¹⁰

Thus, the Soviet government considers its form of government 'a democracy of the highest type,' because it vests the power in those classes which had been oppressed by capitalism. With their help it abolished capitalism, creating instead a form of economy which, as the Soviet leaders firmly believe, serves most effectively the interests of the working class.

'The Soviets are the most democratic form of government,' said Lenin, 'presenting the opportunity of developing the tremendous creative abilities of the people. This new type of democracy is at the same time the only means of leading the masses of the people toward the ultimate victory of socialism.' ¹¹

3. *Soviet Democracy*

Being socialists, Lenin and his followers believed that genuine democracy consists of abolishing capitalism and the class division between workers and employers; consequently, they neglected the legal aspects of the democratic state.

Therefore until December, 1936, the date of the approval of a new Constitution, the so-called Stalin Constitution, the Soviets formally stigmatized democratic principles and eliminated them from the constitutions of 1918 and 1924. Suffrage was not equal—the workers had more votes than the peasants—and the voting was neither direct, nor secret. Separation of powers was rejected as a bourgeois institution, unnecessary in a proletarian state. Political freedom and individual rights were not protected because of their insignificance compared with the social and economic reforms of the state.

On the other hand, the Constitution of 1936 contains, from the formal point of view at least, some elements of democracy: it recognized and considerably extended the rights of citizens in comparison with former Soviet Constitutions. It established universal, equal, direct, and secret elections. Thus, the chief attributes of formal democracy are readily apparent. Soviet Russia is a republic and not a monarchy, and she has neither a privileged and hereditary nobility nor a House of Lords. She has a Supreme Soviet elected by the people and a kind of *habeas corpus* act in Art. 127 of the Constitution.

The sacramental word 'democracy' is never mentioned in the text of the Soviet fundamental law. Nevertheless, Stalin's Constitution of 1936 was officially interpreted by the Soviets as a new development of democratic principles and as a foundation of "Soviet Democracy;" "The U.S.S.R. is the most progressive and the most democratic nation in the world." ¹²

"The power of our nation is based on the Soviet regime, the most solid in the world. We have socialist ownership the most democratic structure, and absolute equality of races and tribes," (*Izvestia*, December 1, 1944); Andrei Vyshinskii, speaking on the peculiarities of the Soviet system, characterized it as a 'new, perfect type of sovereignty of the people.' ¹³

However, the authors of the Soviet Constitution of 1936, as their predecessors before them, consider the Soviet State to be a

'dictatorship of the proletariat.' The proletarian democracy, explained Stalin, is identical with the dictatorship of the proletariat, which does not share its power with other classes: 'the leading role under the proletarian dictatorship belongs to one party exclusively, it does not share and cannot share this leadership with any other party.' ¹⁴

While in the eyes of the western hemisphere, dictatorship and a totalitarian regime are incompatible with democratic principles, in Soviet Russia the 'dictatorship of the proletariat' is considered the highest form of democracy: 'A proletarian dictatorship is not only compatible with true, i.e., proletarian democracy, it is unthinkable without it...' ¹⁵

Dictatorship and personal freedoms are incompatible, but the Soviet government does not care about that. The Soviet leaders' attitude is well expressed in these words:

'What "personal freedom" may an unemployed worker enjoy tramping the streets, hungry and unable to find work? True freedom exists only where exploitation has been abolished, where one man can not oppress another, where man does not daily dread the loss of work, shelter and bread.' (Stalin's interview with Roy Howard.) ¹⁶

Placing itself on the side of the masses of workers, the Soviet regime, as the Soviet writers see it, protects the interests of the working majority:

'A proletarian, revolutionary regime of force is democratic in the truest sense of the word... it is directed toward the protection of the interests of the majority of the workers against the minority of the exploiters...' ¹⁷

A Soviet writer asserts that Soviet democracy placed all means of production under collective ownership of the nation, it established material guarantees of the rights of citizens, instead of the purely formal guarantees of the bourgeois constitutions, it established new forms of self-government, the Soviets, which are a thousand times closer to the people than the most democratic parliament. And finally in the Soviet Union all people are equal, there are no differences between nationalities, between men and women, nor any other social difference. ¹⁸

Every other Soviet writer discussing problems of democracy

repeats these statements. I.P. Trainin, for example, characterizes the Soviet democracy as a really popular democracy in which sovereignty of the people is unlimited. He emphasizes also that there are no exploiters in the Soviet Union, that the state protects the interests of the overwhelming majority with the participation of the widest range of the population, that the rights of citizens are really guaranteed by the existing system of planned economy, that there are no limitations of electoral rights and that a genuine friendship is established between all nationalities of the country.¹⁹

In addition to these characteristics of the Soviet regime, it is also indicated that the Soviet system has raised the level of political consciousness of the large masses of population.

‘In so far as the masses of the population are drawn into the active life and the historically creative work, the size of the mass population which becomes a conscious and active promoter of history is inevitably growing.’²⁰

The arguments cited have a double character. Some of them refer to the usual legal foundations of democratic structure: popular sovereignty, freedom, elections, lack of national or other limitations, and they assert in addition that all these qualities of the democratic state are represented in the Soviet Union in a higher degree and with a greater consistency. The others stress the qualities of the Soviet regime: as such a new economic structure which guarantees interests of the working masses and essentially better their conditions, as compared with the bourgeois democracy with its system of exploitation.

However, there is no popular sovereignty in the Soviet Union because the people cannot either freely form opinion or express it by free elections. The government cannot be replaced, the one-party regime excludes the possibility of opposition, there is no control over the government. Participation of masses in the administrative activity is not guaranteed by the system of rule by Soviets, as the Soviets are institutions in practice replaced by the Ispolkoms, subordinated and dependent agencies, having a bureaucratic character. The Soviet ‘democratic centralism’ and national autonomy, freedoms, and other constitutional rights are described in the preceding chapters.

Before 1936, the Soviets did not conceal their indifference toward

the formal guarantees of a democratic regime, and they emphasized that the lack of legal guarantees, was compensated for by the advantages which the working masses have in a socialist state. It is probable that the Stalin Constitution adopted some democratic forms for tactical reasons only. Thus, the arguments concerning the economic peculiarities of the Soviet state and their significance for the working masses seem to be impressive. A system which has abolished exploitation, nationalized all means of production and transformed them into the property of the whole people certainly seems to be a democratic system. It is the highest expression of democracy 'for the people,' though not a democracy 'of and by the people.' Therefore some authors characterize the Soviet state as an 'economic democracy,' a new form of democracy as compared with political democracy.

The Soviet state is undoubtedly a new form of state. However it is hardly possible to characterize it as a new type of democratic state. Fascism and nazism also boasted that they reorganized the capitalist and liberal state in conformity with the interests of working people. The program and methods of Communists and Fascists are different but they have some common points; they both deny free organizations of the people, opposition, and criticism. The people cannot express their true will. What is done 'for the people' is the will of the people, as the government interprets it. Even if the system and the program of such a state really corresponds to the needs and will of the people, it still cannot be called democratic, as it radically contradicts the principles of democracy. Such a system must have another name.

Speaking in particular about the Soviet system, one has the right to express doubt that this system really corresponds to the will of the overwhelming majority of the population. The system of coercion against peasants applied during the collectivization, the coercive measures against workers for the support of labor discipline, prosecutions of intellectuals, non-conformists, or deviationists: all these facts and the existence of a number of concentration camps are sufficient evidence that the supposed majority supporting the Soviet system, if there is one, is not an overwhelming one and that limitations of freedoms, prosecution of opposition, and the one—party system cannot be abolished for the fear of an imminent failure of the whole system because it has

no roots in the popular psychology and therefore requires support by means of coercion.

Such a system is not democratic system even if it had improved conditions of life for large masses of people.

4. *'Proletarian Dictatorship'—A New Type of State*

The most significant distinctions of the Soviet state, as interpreted by Soviet authors, are the proletarian dictatorship, which means an unbounded compulsory power of the government; the policy of force, based on the ethics of hatred and intolerance toward any opposition; and the predominance of the Soviets, as political organizations consolidating the exclusive leadership of the Communist Party.

These three principles of the so-called proletarian democracy radically contradict the basic ideas of democracy based on the reign of law and individual freedom. A democracy, as it is understood in theory and as it is embodied in historical reality, is a state in which not only freedom and equality, but also submission of the government to the control of an organized people are guaranteed by law. As long as the state itself organizes its population and no opportunity exists to organize opposition, the government is beyond any control and the people are deprived of their sovereign rights. The principles and methods of democracy in its historical and theoretical forms and the principles and methods of the Soviet Union are so different that they cannot properly be called by the same term. One cannot use the term 'democracy' in speaking of a state which practices a system of forced labor for its opponents; submits literature and press to severe censorship; forbids its citizens to defend their interests and ideas or to express criticism. When the Soviet leaders apply this word to their system they are certainly corrupting its meaning.

The term 'proletarian dictatorship' is much more exact concerning a state such as the Soviet Union; it characterizes its real legal and social peculiarities, while appropriation of the term 'democracy' especially with such distinctive additions, like 'the highest type' or 'the most perfect,' creates confusion.

Essentially differing from the democratic tradition in its legal structure, the 'proletarian dictatorship' has some common points with democracy as far as its final goals are concerned. Both have

to improve the economic conditions of the working people and to increase their political education. ²¹

It is, however, not correct to apply the term 'economic democracy' to characterize the state of the 'proletarian dictatorship.' It is not correct for two reasons. First, there is no democracy where the program of industrialization, collectivization, etc. is carried out by coercion. Democracy flatly rejects methods of violence. This method is sometimes inevitable, but if it is applied, democracy is suspended. Second, the Soviet economic system is anti-democratic not only in its methods but also in its essence. If it is really socialism, it is not a democratic socialism, since it creates an absolute dependence of all groups of citizens upon the self-confident leaders and their executive machinery. The results of the enduring Soviet experiment did not justify economically the methods applied by the Soviet government. The population lives in poverty. Social stratification is not abolished. Some people are living in palaces, and others in huts, as the late French writer André Gide observed. The psychological premises of the ultra-centralized system of economy do not give one hope in regard to the possibility of improvement in the future.

Political education of the population, as it is applied in the Soviet Union also contradicts democratic principles. Political education is, certainly, not a monopoly of Soviet or proletarian dictatorship. It exists in better form in democratic countries in connection with the existence of political parties, public discussions, self-government, and elections. An essential difference is that in the western democracies the people are acquainted with different points of view, different platforms and candidates, and make a decision according to their own belief and political sympathies, while in the Soviet Union the population is acquainted with only one platform, that of the government, hears no criticism, and, consequently, has practically no choice. Such a situation is natural in a country where, according to the authoritative explanation, the leading party 'does not share and cannot share its leading role with any other party.'

The Soviet state is thus pseudo-democratic as it is pseudo-constitutional (*Schein-Konstitutionalismus*). It is a new type of state, very similar in its political structure to the fascist state. One-party regime and submission of the economic, social, and

cultural life to the official ideology and control of the government have already the appropriate denomination of 'totalitarian state.' Our age is characterized by the competition of methods of the reorganization of the existing social and economic system. Totalitarianism is opposed to democracy in this task: its goals are revolutionary and its methods are anti-democratic.

It is questionable whether proletarian dictatorship is liable to evolution and regeneration in a spirit of democratic freedom. There are some writers who appraise the present regime of the Soviet Union with great cautiousness, but who are nevertheless optimistic as far as its future is concerned.

'It may... be the expression of a hope, which is probably not devoid of foundation, that the economic and social system of Soviet Russia... may not be irreconcilable with a full recognition of human rights.'

The same author says later that the fundamental rights of man 'would still be precarious in so far as they would be dependent upon the uncontrollable will of a mere agency of force, however enlightened.' But he admits that: 'There is no reason why with the passing of the revolutionary period of transition in Russia and with the normalization of industrial revolutions the use of extraordinary powers inimical to individual freedom should not tend to diminish.'²²

There are, however, many pessimists and among them orthodox socialists, who do not believe in the possibility of an evolution of the Soviet regime and radically dissent from an optimistic appraisal. They find that the Soviet system deprives people of political criticism, inoculates them with one-sided views and with a habit of unconditional submission. Consciousness of human dignity and self-respect are incompatible with a system of persecution of any dissidents, forced labor, and concentration camps, for which every Soviet citizen is a potential candidate.

As long as the Soviet Union is on the offensive against the bourgeois world, there is no foundation for any exaggerated optimism. Moreover, reorganization of a totalitarian state into a democratic one would destroy the one-party regime and require radical changes in the whole state structure. It would be a revolution rather than an evolution. No government is ready to overthrow itself, certainly.

PART VI

SOVIET SOCIETY

Chapter XX

SOCIAL STRATIFICATION

In the Russian Empire at the beginning of the twentieth century, there were legal classes (estates) based on historical divisions of society. Membership in these classes was determined by law. There were not only hereditary nobles, but also hereditary peasants, merchants, and burghers; and their children remained in the classes to which they belonged until such time as they acquired another status. There were also social classes whose existence is especially emphasized by Marxist doctrine, classes directly concerned with private property as the means of production, classes of capitalists, landowners, workers and peasants.

1. Destruction of the Old Society

The October Revolution abolished the existing class divisions. A decree issued on November 10, 1917 stated:

'All classes and class divisions of citizens, class privileges and disabilities, class organizations and institutions which until now have existed in Russia, as well as all civil ranks, are abolished... All designations (such as merchant, nobleman, burgher, peasant, etc.), titles (such as Prince, Count, etc.) and distinctions of civil rank (Privy, State, and other Councillors), are abolished, and one common designation is established for the entire population of Russia—citizen of the Russian Republic.' ¹

As an expression of universal equality, it became the custom of revolutionary society to call each other 'comrade' (*tóvarishch*).

A complete abolition of classes was formulated also in 'The

Declaration of the Rights of the Laboring and Exploited People.' This historic set of the Soviet government was prepared for submission to the Constituent Assembly. Before it could discuss it, it was dissolved by the Soviets however. The Declaration, published as a series of basic principles approved by the Central Executive Committee, proclaimed 'the complete elimination of the division of society into classes, the ruthless suppression of exploiters' and, with a view to the destruction of 'the parasitic classes of society,' universal labor service. ² Simultaneously private ownership of land was abolished and workers were promised that 'there will be established the control of the workers over mills and factories.' ³

Russia became a Republic of the Soviets of Workers', Soldiers' and Peasants' Deputies under the dictatorship of 'the urban and rural proletariat and the poorest peasantry.' ⁴ A new class came to power. The new order inspired hatred against all people who belonged to the privileged or wealthy classes of pre-revolutionary time. Such people were disenfranchised. For about eighteen years, Soviet legislation and jurisprudence emphasized the domination of the new class. The social pyramid was turned upside down.

The Law enacting the R.S.F.S.R. Civil Code of 1922 permits an extensive interpretation of its provisions 'only in case it is required for the protection of the interests of the Workers' and Peasants' State and the working masses.' ⁵ Some articles of the Civil Code concerning the lease of homes and flats established, in their original wording, ⁶ special privileges for the working people. The contract of lease could not be dissolved without the consent of the tenant; the rent of a leased dwelling could not be raised for workers, invalids and students over the rates established by the local executive committees; eviction could take place only after a delay of three months.

Two different scales were established for taxation of estates evaluated from 1,000 to 40,000 rubles, and for persons classed as kulaks, private businessmen, etc. A higher scale was applied for estates of the same value if inherited by different groups of people. ⁷

All these provisions had a class character; they did not protect the interests of all citizens, but only of toilers.

In conformity with the trends revealed in some of the provisions

of the Civil Code, the jurisprudence of the period of the NEP presents some illustrations of social prejudice. The verdict in one case, for example, was reversed by a ruling of the Supreme Court because the claimant was the widow of a Cossack executed by the 'Whites,' while the defendant was a wealthy Cossack who had bought her property. The case was originally decided in favor of the latter. Another case was reversed because the verdict was in favor of a woman who was the wife of an *uriadnik* (village policeman of the pre-revolutionary period).⁸

The principle of discrimination was also emphasized in criminal law. The courts were instructed to investigate the class background of the indicted person.⁹ Government attorneys (*prokurory*) were given the right to initiate or to enter any case at any stage of the civil procedure if, in their opinion, the protection of the interests of the state, or of 'the toiling masses' was served.¹⁰ The doctrine of 'class justice' was adopted in the courts. 'No court was ever above class interests, and if there were such a court, we would not care for it...' wrote Krylenko, once the People's Commissar of Justice.¹¹

The Revolution did away with more than just the upper classes. From the beginning of collectivization, numerous wealthy peasants proved to be unyielding enemies of the Soviet government. One can say that it was the result of Soviet policy. Soviet laws issued against *kulaks* were permeated with class discrimination.¹²

Only after the realization of the Second Five-Year Plan, when collectivization was almost completed and class opposition was theoretically liquidated, did Soviet law become uniform for all. The wealthy peasantry was considered the last inimical class to survive the Revolution, and the description of Soviet society as 'classless' was largely based on the fact that all the hostile classes bequeathed by the pre-revolutionary order were liquidated. If there are still some acts qualified as acts of class enemies, they are either survivals of class psychology or the work of the 'de-classed elements as well as unstable elements from among the toilers.' Anti-Soviet crimes are said to have been inspired by the spies of capitalist countries, and by the traitors and enemies of the people. The Soviet order is merciless as regards the enemies of the Soviet state, who are regarded as 'class-dangerous elements.'¹³

There is no doubt that the old upper classes are non-existent at present! There is, however, the problem of whether the new legal order has not created a new stratified society consisting of new social classes and new 'class enemies.' This problem has been discussed by several authors.

2. Formation of New Social Strata

Since the liquidation of 'lower middle-class equalitarianism,' as Stalin expressed it, a group of people with high incomes have appeared in the Soviet Union. High officials, unique specialists, some scholars, managers of large trusts and sovkhozes, writers and artists, etc. receive high salaries, bonuses, honorariums, prizes and royalties.¹⁴ They have, besides, comfortable places of residence, country houses, and cars. For their benefit, there are in Moscow luxurious restaurants and cafes (Metropole and Red Poppy, for instance). A Soviet general has the right to a comparatively large housing space and a car. If he marries a ballet dancer who also has a right to a large housing space and a car, they have together twice as large an apartment, two cars, and are served by an orderly and a domestic worker. They can buy suits and dresses made to order by artels or by private tailor; they can invite doctors to visit them at their home, have a nurse and a private teacher for their children.

There are even some millionaires in the Soviet Union.¹⁵ If Lenin were to rise from his tomb and take a trip through the present-day Soviet Union, he would be astonished at what he could see. Everywhere there are pictures of Stalin in a marshal's uniform. He might see a general, resplendent in his uniform, with red trouser stripes, epaulettes, and decorations, arrive in a luxurious automobile, *Zis*, at the smart Metropole bar. The general gives orders to an orderly, who snaps to attention. The lady accompanying him looks as though she had just stepped out of a dressmaker's salon. Elegant waitresses serve the customers.

Lenin would discover a new kind of life, would see a new kind of people. He would meet the 'distinguished people' of the Soviet Union, would learn of the secure, even well-to-do life of some of the Soviet statesmen; of their private villas near Moscow, of their substantial bank accounts. Could this be the 'socialist fatherland?' Could it be the same Russia that Lenin had sought?

Lenin could also observe, especially in the remote parts of the city, thousands of people dressed in rags, in worn-out shoes, standing in long lines at the doors of cooperatives; hundreds of women with emaciated features, their feet in puttees instead of shoes, removing heaps of snow from the sidewalks.

The social stratification is obvious and drastic.

The existing system of penalties and rewards sharpens the differentiations, transforming some people into real pariahs, and others into 'proletarian millionaires.' Under these conditions it is natural to raise a question about the new 'class division' in the Soviet Union.

Many of those who accept the Marxist doctrine of social classes as groups of exploiters and exploited, the former having property rights to the means of production, the latter not having property rights to the means of production, will flatly deny any possibility of class division in the Soviet Union. They deny the existence of classes and of a ruling class because of the lack of corresponding psychological, economic and social premises. They deny also any rigidity in the social strata of Soviet society. A. Yugov, for example, asserts that the new upper group in the U.S.S.R. cannot be considered as a class, since its members have no class psychology, and no definite status in production.¹⁶ There is no ruling class in the Soviet Union, explains another socialist, R. Schlesinger. He finds that neither managers, nor Communist Party members, nor the bureaucracy form such a ruling group.¹⁷ Managers, says Schlesinger, do not form a compact social group administering the enterprises without interference by other people; their ranks are open for new-comers. The leading political role of the Communist Party is an indisputable fact, but

'The influence and especially the permanence of the political position of its individual members is precarious. "Bureaucracy" is unpopular. The bureaucratic, as distinct from the practical approach to things, and the bureaucrat as distinct from the technical, scientific, or military specialist, is furthest from the springs of official Soviet favor.'

Schlesinger points out and emphasizes especially the social mobility which gives to everybody in the Soviet Union an opportunity to rise in the social ladder. *Znatnye liudi* (distinguished people¹⁸) are among all groups of citizens. 'At the moment, in the

present period of transition, no description of the elite in the U.S.S.R. can be very accurate,' he writes, 'but it can be clearly stated that it forms no closed social group and that access to its ranks is open to all strata of population.'¹⁹

Another point of view is represented by D. Dallin, N.S. Timasheff, V. Gsovski, Peter Meyer, Barrington Moore, and Alex Inkeles. The existing social structure in the Soviet Union, according to Dallin, consists of several classes composing a pyramid, with the top officials and state employees (bureaucracy and intelligentsia) at the top, workers and peasants in the middle (peasants lower than workers) and those involved in forced labor at the bottom.²⁰ Dallin considers this stratification stabilized, with each group constituting a social class.

N.S. Timasheff asserts that on the eve of World War II Soviet Society consisted of the following 'social strata: (a) the ruling elite, plus a few fellow-travellers; (b) the non-party Bolsheviks; (c) the "toilers," consisting of workers and employees, the peasants and artisans; and (d) the paupers, or the formerly disfranchised.' As a sociologist, Timasheff does not ignore social mobility and changes in the structure of Soviet society; yet he states that 'the velocity of change has substantially decreased, and for the individual the chance of gaining higher social status is no greater than in bourgeois society.' Rigidity, in other words, is increasing, in his opinion. 'Membership in the peasant group is hereditary, and membership in the two upper groups displays the tendency to become hereditary. Definite social functions are assigned to these groups.'²¹

Analyzing one of the definitions of a social class offered by Lenin, V. Gsovski finds that 'a number of classes can be found in Soviet Russia, as in any other country. Communists, technical specialists, the managing staff of governmental factories, high-paid workers, collectivists and independent farmers, professionals—all these differ in their place in the national economy, in their relation to the means of production, in their role in the organization of labor, and, especially, in the size of their share in the national income, if not in their method of obtaining it.'²²

Peter Meyer, on his part, approached the problem from the point of view of the well-known Marxist definition of social classes as determined by the position of one or another social

group in regard to the means of production and organization of work. Departing from this definition, he asserts that

'There are two main classes in Soviet society. The "place in production" and "the relation to the means of the production" of one class consists in its absolute lack of individual or collective power over the means of production. It has no voice as to what is to be produced, and how and where; how production is to be organized, its products distributed, and their prices fixed. Its members cannot participate in the determination of their conditions of work and their pay. They must work, obey, and live in poverty.'

'There is another class of people, who control the means of production. They decide what is to be produced, and how and where; what prices, wages, bonuses, and rewards are to be paid, and how social products are to be distributed. Their power of command over the means and processes of production and their power to dispose of its products is unlimited from below, but subordinated to every higher authority in their own class.' ²³

It is, nevertheless, disputable whether the existing social strata of the Soviet Union can be called 'classes.' They differ from the legal classes (estates) of pre-revolutionary Russia as well as from bourgeois and proletarian classes according to the Marxist scheme. However, this point is not important. ²⁴ The fact of social stratification and of the essential differences in the conditions of life of the upper and lower groups in the Soviet Union is indisputable. Uniforms and ranks; decorations, medals and service badges, dresses and suits; housing conditions and facilities; means of communication; nutrition and medical aid—all serve to distinguish different groups. ²⁵

The word *tovarishch* is used at present mostly by members of the Communist Party. There are several million members of the Party; but the Soviet aristocracy is not numerous. Stalin himself has characterized the structure of the Party as a pyramidal hierarchy.

'The highest leaders—who might be called "the generals"—number from three to four thousand. Under these are the "officers' staff" of from thirty to forty thousand, resting on the "lower party commanding staff" of from a hundred to a hundred and fifty thousand. These latter select each two alternates and train them. Party schools add theoretical training to the practical experience in leadership.' ²⁶

The limited staff of the leading Party not only makes higher positions inaccessible to those in the rank and file having no special support, but also elevates the higher officials over tens of millions of people and thus separates them from the masses. Stalin, in a marshal's tunic, with epaulettes and the Order of Suvorov, personified the new Soviet ruling group. The other marshals, as well as the young Soviet diplomats, are now quite used to their gilded uniforms or dinner jackets and tails.

However, even if the existing stratification is conspicuous, it may be short-lived, as Schlesinger is inclined to think. Perhaps it does not indicate a trend in the development of social relations in the Soviet Union, and perhaps there are no conditions which can create class differences, as A. Yugov asserts.²⁷ In order to decide this problem, it is necessary to clarify the probable direction of the future Soviet social order. Will there be a further sharpening of social differentiation and the stabilizing of the existing structure, or a return to the equalization of citizens of the 'socialist state?'

3. *Social Inequality in the 'Classless' Society*

Social stratification and class division is a legal as well as an economic problem. Law is not only a mirror of the actual life, it is also an instrument or a weapon in the hands of the government. In the Soviet Union it has been from the beginning an instrument of policy, at first for the destruction of the old regime, later for the realization of socialism. Soviet legislation can both legalize the existing stratification, thus fixing class differences, or refuse to recognize social stratification, thus encouraging equalization.

In conformity with the general tendency to create a classless society, Soviet legislation has had to eliminate the legal differences between citizens. Some privileges, for example, established during the NEP in favor of the workers, were abrogated.²⁸ These changes were, however, of a purely formal character. Soviet law does not counteract the formation of upper and lower strata. As a matter of fact, the existing social differences and stratifications cannot be eliminated while the Soviet state is an entrepreneur and universal monopolist and, at the same time, a bureaucratic organization with unlimited political power.

1. The Soviet national economy with its universal state monopoly demands a planned distribution of manpower in the

same manner as it demands a planned distribution of raw materials, equipment and credits. A certain part of population has to be involved in the agricultural economy, another one in the industrial economy, and certain cadres must be prepared for managerial work and public service. Farmers have no right to leave kolkhozes without permission or consent from the kolkhoz administration, and those who move arbitrarily have to be expelled by administrative order. ²⁹

Correspondingly, employees of governmental, co-operative, and public establishments and offices have no right to leave places of employment without authorization under the threat of prosecution and imprisonment for a period of from two to four months. ³⁰

By limiting the choice of the place of employment and by fixing workers in factories and kolkhozes the government can distribute manpower easily. From time to time the Soviet government betters the conditions of some social group in order to encourage those whose work is most important at the moment. The money reform of December 14, 1947, ³¹ and the prices established for necessities were more profitable for workers than for peasants. The state evidently wanted to attract workers to the cities. Special privileges have been offered to attract people to certain territories, e.g. the Island of Sakhalin and the newly irrigated land of Central Asia. If such measures are insufficient, then recourse is made to the transplanting of population and forced labor.

But this is not enough. The government, as an entrepreneur, is interested in raising qualifications of its farmers and workers. For this purpose it is necessary to secure cadres of professional farmers and professional workers. Hereditary farmers and workers transfer their experience and habits from generation to generation. The state as an entrepreneur is therefore interested in keeping the best workers frozen on their jobs. It is better to reward them and to secure their well-being, than to promote them to white-collar positions and to lose them as skilled farmers and workers. ³²

Thus, a tendency arises to distribute population into several groups, each one fulfilling a definite social and economic function. Such a tendency seems to be quite consistent in the development

of the planned economy. It is not accidental that the rate of pensions or assistance to the aged workers depends upon the length of uninterrupted work in the same enterprise or bureau. More evidence of how the Soviet government tries to freeze workers on their jobs.

The socialist state needs all kinds of skilled and unskilled labor, farmers, and specialists of various qualifications. The children of peasants unless conscripted for technical education are supposed to remain members of kolkhozes. White collar workers are to produce their successors in office work, etc. Every group has its social function and has to remain on its own level. The best any group can hope for is a gradual improvement in its condition.

2. A state with a national economy organized on the basis of complete centralization and with political tasks of a world scale, must have, besides manpower, both a ruling group and a powerful and absolutely reliable bureaucracy. If several million independent producers and tradesmen are replaced by a net of central and local organs of the state, millions of officials in these state organs are indispensable for just paper work. Of course neither the ruling group nor the bureaucracy are absolutely closed groups. But their functions are no less specialized than those of any other group of the population, and for the better accomplishment of these functions, special experience and qualifications, as well as a special psychological adaptation, are necessary. Therefore some permanent cadres of those groups are indispensable. The pre-revolutionary regime in Russia has been justly characterized as a bureaucratic one, especially in the nineteenth century. The ruling group then consisted largely of the nobility, though access to it was open to elements from all strata of the population. While the ruling group was not a closed caste, there was at the apex of the bureaucratic pyramid the offspring of some of the renowned families of the old and new nobility, who always had better chances for promotion. The Soviet Union has neither self-government, nor political parties, nor representation from the various economic interests. Its government is even more bureaucratic in character than that of Tsarist Russia,³³ and in spite of constant changes in the leading personnel, Communists, non-party Bolsheviks, and various officials of the highest ranks compose its ruling class.³⁴

3. In the Soviet Union, as in every other country, the social composition of the ruling class is more or less constant, notwithstanding the changes brought about by the inevitable purges. Democratic governments open more opportunities to ambitious men, independent of their origin, than any other kind of government. The tempo of movement on the social ladder is rapid in the democratic countries. Nevertheless even there, social connections, advantages of education, as well as the laws of inheritance, slacken the pace to the upper hierarchy and very often hamper it. The same phenomenon exists in the Soviet Union.

4. In accordance with the structure of the national economy, in the Soviet state, every social group has a definite status in the distribution of the national income, rather than a status in production. There are no social groups which appropriate the labor of others, no landowners and no peasants. But there are in the Soviet Union social groups which are wealthy and others which are living in constant need. The existing legislation concerning remuneration, rewards and penalties not only creates incentives for work but also establishes different shares in the national wealth conforming to the significance of the work performed. There is no reason to regard the existing system of distribution as temporary. The Soviet economic situation holds little promise that those having a small share in the national income will be able to raise it. The Soviet government consoles the population with the prospect that the five-year plans develop the state and will bring about the transition from socialism to communism, the final stage of progress, but nobody knows when this will be possible. Without the differentiation in material advantages offered, incentives for work would be inadequate. On the other hand, it is economically impossible essentially to improve the conditions of life for large masses of toilers. Therefore the existing system of low wages and salaries for the great majority of people and extensive privileges for the upper strata seem to be inherent in the Soviet system and will exist as long as the Soviet state itself.

It is clear from the above remarks that the existing Soviet system creates social stratification based on both professional and economic differences.³⁵ We have seen already that the Soviet state is interested in fixing every professional group in its social function and in transforming it into an hereditary group. It is no

less interested in strengthening the wealth of upper social groups on whose devotion and support it should rely and on whose reliance depends the future of the mighty Party and government apparatus.

4. Stabilization of Social Inequalities

The Soviet legal system is completely adjusted to supporting and fixing the processes of social stratification. Personal property is protected against larceny and robbery as effectively as 'socialist property.' Large salaries, high fees, bonuses, prizes and royalties open up the possibility of living in comfort, of having country-houses, medical assistance and, what is the most important from the social point of view, of guaranteeing children the best opportunities in preparing for their future public service.

Those who on the death of their families inherit their wealth have an obvious advantage in social competition. The Soviet law of inheritance guarantees such an advantage to the children of the upper classes, thus strengthening even more the rigidity of the existing stratification. Vertical mobility in the Soviet Union undoubtedly is slowed down by the system of inheritance which has actual significance only for the upper strata of the population.

But the most indicative and effective among all legal measures supporting the new social stratification are the provisions of Soviet law concerning education.

Education in the Soviet Union is the key which opens all doors for an able and loyal citizen. But those who have higher salaries can naturally give a better education to their children. It would be difficult to prove that the children of noted Soviet generals, writers, composers, statesmen, engineers and 'distinguished' Stakhanovites have no advantages in education, just as the children of wealthy social groups have them in other countries.

In the meantime education in the Soviet Union, originally free of charge in accordance with Article 121 of the Constitution, is no longer so. A decree of the Presidium of the Supreme Soviet of the U.S.S.R., on October 2, 1940, abolished free education partly in the high schools, in the eighth, ninth and tenth grades of the public schools, and completely in the higher educational institutions.³⁶ Simultaneously a fee was introduced amounting to from 150

to 200 rubles a year in the high school (beginning with the eighth grade) and from 300 to 500 rubles in the colleges. The Committee on Higher Education on October 12, 1940, ordered to the directors of the institutions of higher learning to observe strictly regulations about payment fee and to eject students who are in arrears. Under these conditions, an above average education becomes a privilege of the children of high-salaried parents, and only the most capable children of poor workers and peasants have a chance to enroll and to be graduated from a school of higher learning, as fellowships are given only to outstanding students.³⁷ On the other hand, all the children of wealthy parents can get advanced education, even if they have only an average capacity to learn. Thus, the composition of the ruling strata in the Soviet Union has definite support from the government in the direction of stability.³⁸

Elementary and secondary education are available for all. However, in addition to the artificial divisions and brakes, economic conditions prevent the advancement of young people from a lower to a higher level. The children of poor peasants and workers must help their parents in their hard struggle for existence, and do not attend schools periodically, especially during harvest and also in the winter if they have no shoes.

The conscription of labor must be mentioned as one of the measures which predetermines the destiny of about a million children of peasant and working-class origin, who are prepared after conscription for ordinary technical work.

It follows from the above that the existing stratification, contrary to the assertions of Yugov and Schlesinger, shows a tendency to become stabilized. Vertical social mobility is not fluid enough to change the composition of the various social strata and the tendency towards formation of a ruling group in the Soviet Union really exists. The Soviet government is using law to slow down the process of levelling of citizens and to stabilize the existing class differences.

The Soviet Union's government needs devoted personnel, suitable for leadership and for fulfilling the functions of party-whips, and Soviet legislation serves the interests of this personnel. A group of privileged people, composing the upper stratum of Soviet society, exercises political power and is endowed with the

advantages of a ruling class. Origin and the ranks of one's parents open many opportunities to the citizen. Economic conditions, large shares in national wealth and inheritance strengthen the advantages of those who belong to the upper strata. Preparedness for fulfilling functions of leadership and technical management secure the stabilization of the existing advantages for the privileged groups. ³⁹

The upper group, the Soviet aristocracy, will remain at the apex of the social pyramid and will not permit itself to be deprived of its economic privileges. In case of revolution, the people's wrath will be directed against just this privileged group. Not in vain had Stalin been guarded with more precaution than any monarch of the past. The Soviet regime rests on the loyalty of the upper strata, the inertia of the middle classes, and the subjection of the lower classes.

Chapter XXI

ORGANIZATION OF SOCIAL LIFE

The social life of a country is characterized by the number and kinds of its organizations and by the degree of their independence. The more developed the social life, the easier the formation of social organizations and less the interference of the state with the initiative and activity of the existing associations.

In the modern state society is mostly divided on a horizontal plan; it consists of religious, national, political, professional and cultural associations, which exist independently of the state, and in which all members have equal rights. It is possible, for some organizations which are particularly favored by the state's structure to have special privileges. Some groups of individuals have a higher social status, and, therefore, have privileges within certain organizations.

The Soviet state as a socialist state has no exploiting classes; all citizens work and have the same opportunities officially, according to the first chapter of the Stalin Constitution, entitled 'The Social Structure.' This chapter is devoted to a characterization of Soviet socialism. This approach to the problem of the social structure corresponds to Marxist dogma, according to which

the economic foundation determines the social structure, the class division of the society, and the character of the state power. However, the first chapter of the Constitution does not indicate in detail the organization of social life and the relations between the state and society. Social life in the Soviet Union is characterized by the dependence of all social organizations upon the state and by a new form of social stratification.

The peculiarities of the social life in the Soviet Union become more clear if we compare them with similar ones in pre-revolutionary Russia.

I. Social Organizations before 1917

Up to 1905, political parties did not exist in Russia legally. There were, however, several underground revolutionary organizations, such as *Zemlia i Volia*, *Narodnaia Volia*, *Soiuz bor'by za Osvobozhdenie Truda*, whose existence was ephemeral. However, certain political ideologies had been developed and were supported by the periodicals (the 'thick journals'), which systematically spread political and economic ideas and principles. Thus, at the beginning of the twentieth century there were not just leaders but a well-prepared membership for the organization of political parties.

The Tsarist bureaucratic regime did not encourage social organizations. Self-government was limited. However, zemstvos not only existed but were often in open conflict with the government and found support in public opinion. Various social organizations had a significant influence on social and political life. The Orthodox Church, in spite of its dependence on the state, had been a strong organization, and the state could not ignore it. Religious organizations of non-conformists and the heterodox, Roman-Catholic, Moslem, and Jewish had great influence on social life of their members, uniting them and supporting their cultural and national traditions.

The nobility was organized and the administration heeded its desires. Businessmen also had their organizations which the government had to reckon with. There were also some important professional organizations. Corporations of barristers of law (*prisiazhnye poverennnye*) existed according to the law and controlled the activity of their members, especially in the ethical sphere.

Numerous clubs served cultural life of their members. Cooperatives, associations of mutual assistance, and unions of salesmen served the economic interests of their members and were simultaneously schools of social activity and political education.

Besides the organizations described there were some which assisted the government in different branches of its activity, as for example, the Red Cross, the Geographic Society, the Free Economic Society.

After 1905, in connection with the first revolution and the establishment of the State Duma, several large political parties mobilized public opinion, although not all of the parties were officially recognized. They had representatives in the State Duma and could freely criticize government policy. Tradesmen and industrialists organized the All-Russian Union and elaborated a detailed program of political and economic reforms in line with the interests of the successful progress of the country. Several professional unions united on a national scale; All-Russian Peasants' Union, Union of Trade-Unions (*Soiuz Soiuzov*), All-Russian Academic Union, and All-Russian Union of Barristers. ¹

The new organized unions of workers, peasants, employees, engineers, physicians and surgeons, scholars, teachers, writers, artists, barristers, and some others organized many millions of people for protecting their economic and civic interests. Because it was the revolution which gave them birth and because the rank-and-file members had no experience in public work, some of these organizations proved to be weapons of political struggle, led by left-wing politicians, more than really professional unions. Therefore, after the revolutionary movement was suppressed many of those organizations, which were organized in 1905 and 1906, were dissolved. Some others of more practical character, survived and, besides their political functions, trained their members for professional and public service. One especially useful was the cooperative movement, which arose and developed on a fabulous scale. Cooperatives appeared like mushrooms, organized large unions, and unions of unions, had their own People's banks and commercial agencies in foreign countries and assisted in the development of the peasant economy.

However, in spite of the progress described in the development of social activity during the period between 1905 and 1917, the

pre-revolutionary period was dominated by bureaucracy. Self-government was limited, not only in its jurisdiction, but also in its composition. Many intellectuals were deprived of the opportunity to participate in the practical work of the zemstvos and municipalities because of the high property qualifications required. They could not acquire the experience necessary for efficient public service. Many politicians, because of this lack of practical experience, were absorbed by abstract political and social schemes, hardly realizable in Russian conditions.

The provisional government offered unlimited freedom for social organizations of all kinds. However the period of its existence was short, and after October, 1917, a new period of social life in Russia began.

2. Peculiarities of Soviet Social Life

In a country where only one ideology is acknowledged and no deviations are allowed, and where everything is controlled by one political party and is centralized in connection with an all-embracing national planning system, conditions for the organization of different associations and their free independent activity are not favorable.

Ideologists who believe that their program is infallible and who permit no competing ideologies do not expect or need anything besides obedience. Society is for them an army of executives of different ranks and specialties. Their contact with society has only one goal, which is to check the degree of loyalty and to uncover opposition in order to quell or suppress it. A state organization resting on pre-determined plans, compels the population to follow its program.

Although the Party and the state apparatus are formally two parallel organizations, it is impossible in practice to separate them, and their interrelations are, as we have seen, so close, that the leaders of the Party are at the same time either factual or potential heads of the administrative apparatus. The main cadres of the Party are merged with the government.

The existing combination of ideologists operating simultaneously as administrators is quite favorable for the development of bureaucracy. Centralism and the one-party regime foster bureaucracy. Bureaucracy is usually connected with centralism.

Centralization alienates the highest organs of the state from the population, especially in as large a state as the Soviet Union. Centralism deprives social organizations of independence. The Communist slogan, 'The Party leads, the people follow,' can be reworded, in Soviet practice, to 'The state leads, the people march.' We have seen how the local and central Soviets, including the Supreme Soviet of the U.S.S.R., have lost their significance, The Politbureau, the government, the numerous Ispolkoms give orders; Soviets approve them; the population carries them out.

Social stratification corresponds to this hierarchical character of the Soviet state. The upper strata consist of those who govern, formulate ideology, make goals and programs of actions. These top groups claim to understand better than the people themselves, what their interests and needs are, and they demand obedience because they do not believe that the mass of people can achieve final goals without their leadership. The lower strata, i.e. ordinary citizen and rank-and-file Party member, must assist and follow instructions.

Under such conditions social life cannot develop successfully. Although the Soviet Constitution has acknowledged the principle of freedom of association (Art. 126), at the same time it emphasizes that all social organizations are under control and leadership of the Communist party.

Besides the Constitution, there are special regulations of 1932 according to which:

'Associations and their federations, as organizations of the public activity of the working masses of cities and villages, must pursue participation in the socialist construction of the U.S.S.R. as well as strengthening of its defense as their goal.'

'Voluntary organizations and their federations have to accomplish their plans in conformity with the national plan for development of economic and social culture and participate in carrying out the coming problems of Soviet power in corresponding branches of socialist construction.'²

The regulations quoted do not leave any doubt that Soviet legislation transforms the so-called 'voluntary' associations into subsidiary agencies of the government. Every association must have a charter (by-laws) duly approved and registered. For the formation of an association, special permission is indispensable. After

examination of the projected by-laws from the point of view of the expediency of its existence, the corresponding state organ may authorize or reject its formation and incorporation. ³ By-laws if approved must indicate the government agency under whose supervision and control the association is placed. ⁴ If there are several identical or similar associations then a union of those associations is prescribed for the purpose of unifying their activities. ⁵ The government agency which authorizes the formation of the association carries out the supervision and has the right to dissolve it.

The character of the voluntary associations and their activity in the Soviet Union can be illustrated by certain resolutions of the Soviet government and the Party. For example, in the Soviet Union there were voluntary associations for assisting the Militia in criminal investigations. Organization of these 'voluntary' associations was prescribed by the resolution of the Council of People's Commissars of May 25, 1930. In 1932, it ordered reorganization of these associations. ⁶ On May 7, 1932, the Council of People's Commissars of the R.S.F.S.R. issued a resolution concerning organizations of 'voluntary' associations for planting trees under direction of the People's Commissar of Economy (*Narkomkhoz*) of the R.S.F.S.R. ⁷

In 1934 the TsIK of the U.S.S.R. issued a decree in the form of a circular, in which it reprimanded the 'voluntary' associations for their unsatisfactory organizational activity and inadequate collection of membership dues. ⁸

A typical voluntary association on an all-Union scale is *Osoaviakhim*, the society for assisting the defense and the development of aviation and chemical industry. This association prepares cadres of future privates for the army and navy and organizes detachments for anti-aircraft and chemical defense. *Osoaviakhim* organizes shooting, cavalry and aviation sports on a large scale. Its aeroclubs train young men not yet drafted to be pilots. ⁹

Thus, voluntary organizations in the Soviet Union accommodate different government agencies with constant free services of a military, police, or medical (Red Cross), etc. character. Moreover, they levy contributions from their members for covering all organizational and operative expenses. There are no organizations in the Soviet Union having an independent

existence for the protection of the interests of their members or for the purpose of charity or cultural activity according to the members' wishes.

Professional organizations, in the Soviet Union like the trade unions (Chap. XIII), must assist the government in fulfilling and over-shooting goals of the Five-Year plans; the collective farms are government agencies for fulfilling agricultural work in accordance with the state economic plan. The Komsomol organizes young Communist teams for the political education of youth and for election of candidates for the Party cadres.

In the Soviet Union there are associations of scholars, writers, artists, and musicians. These organizations are not free from specific obligations of an ideological and political character. Scientific associations must carry out their research work 'on the base of the Marxist-Leninist method.'¹⁰ The activity of cultural associations is closely bound up with general policy.

'Economic, political and cultural problems present, in socialist construction, an indissoluble unity and the leading part is played by the policy of the Bolshevik Party. Neither economy nor culture can be considered a-political or existing outside politics...'

'A separation of culture, literature, and art from politics is contrary to the interests of the people. "A-political" literature or art tends to breed the spirit of the petty-bourgeoisie, to extinguish the spark which makes a man's existence worthy of his destiny as builder of a communist society.'¹¹

Every union composed of writers, artists, musicians, and so on is responsible for the works of its members. The All-Union organizations control the work of the local groups and their local branches. From time to time a Plenum, consisting of representatives of all the unions established in the sixteen Union Soviet Republics, convenes in Moscow. At these meetings instruction are given to prevent any deviations from the Party line.

Special measures are adapted for training of new groups of Soviet writers and other cultural workers. *Izvestia* of July 5, 1947, informs us that everywhere in the Soviet Union special commissions are organized by the Union of Writers for the guidance of beginners. 'It is necessary to turn literature toward contemporary topics still more resolutely,' adds this newspaper.¹²

The notorious decrees of the Central Committee of the ACP (b) perfectly characterize the dependence of cultural activity upon the government's instructions and control: ¹³ August 14, 1946, concerning literature; August 26, 1946, concerning the theatre and playwriting; September 4, 1946, concerning films; October 5, 1946, improvement of legal education; and February 10, 1948, concerning music.

There are no private publishing houses, no private galleries in the Soviet Union, and writers or artists who are not members of the unions of writers or artists have no chance at all for publishing their works or marketing their canvases. The same thing can be said *mutatis mutandis* about composers and musicians. On the other hand, a union having some support and privilege on the part of the government conducts its own policy. It must exclude a member who does not follow the Party line or who violates the union discipline. Thus, voluntary associations of this purely cultural type also become government agencies in their special field.

3. *Dissolution of Society in the State*

The fettered social life of the Soviet Union has its specific character and differs essentially from both the Tsarist period before the First Revolution and the transition period between 1905 and October 1917. Before 1905, the people were not politically organized: political parties did not exist but there was local self-government and a number of various social and cultural organizations. After 1905 the development of the social life of the Russian empire was on the principle of free initiative and with a tendency toward independence from bureaucratic regimentation. Under the Provisional Government there was full freedom of organization. The Soviet system organizes the people differently. It deprives social organizations of freedom and transforms them into government agencies.

The Soviet system thwarts the natural development of social life. In cooperation with other people having similar needs and a similar understanding of conditions and opportunities, an individual finds a more successful way to protect his interests and enlarge his potentialities, just as he finds it in the sphere of economic undertaking through the existence of various legal entities (see above Chap. VIII, section 2).

The individual looks for protection and assistance, and social organization gives him a better chance to achieve it. It strengthens him in his struggle for existence. Voluntary membership in a social organization educates people in discipline and solidarity, and develops their interest in cooperation.

The state in which there are well-organized societies with numerous members cannot be despotic. In social organization, individual finds protection and support for resisting arbitrariness.

To what type of organizations does the Soviet Union belong? A Soviet writer claims that the domination of the proletariat rests not only on violence, but also on the sympathy and the voluntary support of workers and peasants, craftsmen, and other laborers, who consider the working class organization to be their natural leader and guide.¹⁴ The Soviet state has organized the masses, but as an army is organized, with strong discipline, a hierarchy, and with centralized leadership. The Soviet state and society is a single unit. The dictatorship of proletariat, or more exactly, the dictatorship of the Communist Party, has a tendency to absorb society in the state. In this fusion, society almost disappears. The individual stands face to face with the onnipotent state and is deprived of organized support in case of conflict between his interests and the interests of the state.

Individual freedom, however, loses out to the state. Never before has the state been so strongly organized. Never have all social forces been mobilized so efficiently to serve the state.

4. The Church

The State controls and directs the activity of all social organizations. As we have seen the so-called 'voluntary associations' are also controlled, like everything else. But there are two organizations, one voluntary, the other fully official, which occupy a special position in the Soviet state. These are the Church and the Army. The Church is controlled, but it carries out functions the major part of which contradict the ideology of the State. The Church works on the basis of compromise, but this compromise gives it the possibility to accomplish its purely spiritual communion with believers. The Army serves the State and its policy, but it represents the people and therefore, although also controlled, it is, like the people, not subject to the influence of the State

in all things. The position of the Church and the Army in the Soviet State therefore merits special attention.¹⁵

After a series of persecutions, interspersed with periods of comparative tolerance, the Orthodox Church (for simplification we will speak only of it) received official recognition and freedom to conduct services. From the beginning of the second world war and especially since 1943, when the Orthodox hierarchy displayed its patriotism, the church organization has been legalized under the control of a representative of the state., carrying on its activities on the basis determined by the State, Church officials have to show their loyalty to the State and sustain the loyalty of parishioners by their instruction and public declarations; they cannot go beyond the bounds of ceremonies and offices; they cannot occupy themselves with the religious education of the rising generation before the youth reach the age of eighteen; and they cannot organize charitable activity. The Church is thus limited in its work of religious education, but the State is also limited in its anti-religious propaganda by the very fact of the existence of the church. There can be little doubt that believers find comfort and support in the church, and that the very existence of the church creates more favorable conditions for the struggle with unbelievers than if it only existed underground.

But the church and state occupy unequal positions and the church is more limited than the state in the fulfillment of its tasks. Soon after the agreements the higher church officials were compelled to come out with greetings, of a sacrilegious character, addressed to the leader. Stalin was termed 'the God given' and 'blessed' leader. 'The Orthodox Church,' wrote the Patriarch Aleksei in an address to Stalin, 'with one voice and one heart ... sends up heart-felt prayers for your prosperity and long life, dear Joseph Vissarionovich.'¹⁶

In the same magazine, in connection with the 1946 elections to the Supreme Soviet, the priest Zernov exhorts the orthodox to take part in the elections with the following words:

'On this day the solicitous priests will go forth to the pulpits and exhort their sons to hasten from the churches to the polling places. They will exhort them to cast their vote for the candidate of the bloc of Communists and non-party candidates... Why?—because nowhere in the whole world

are there more favorable conditions for the development of the activities of the Holy Church of Christ than in the Soviet land... Where, in any land, are churches so free from state and political intrigues? Where is there such a state, demanding nothing from the church, (a state) which surrounds it with such attention? There is no better Christian relationship, more suitable to the spirit, on the earth, and there cannot be.' ¹⁷

Such glorifications and dishonest declarations in support of Soviet political deceptions continue to the present time. The high church officials support slanderous accusations against the American Army concerning the use of bacteriological warfare; they depict Soviet policy as actually a peace-loving policy; and the opponents of Soviet policy as war-mongers. All this is payment for the rights of the church to exist without being subjected to open persecution and outrage.

At the same time antireligious progaganda has not ceased in the Soviet Union. As before, the general population and particularly the youth is taught that religion is a consequence of prejudice and ignorance and that 'religious ethics play a reactionary role in a socialist society.' ¹⁸

The insincere compromise is not, however, a permanent compromise. The church is temporarily needed by the Soviet regime as a weapon of its policy. The Orthodox patriarchate helps the Soviets to unite the people under the leadership of Moscow people professing the Orthodox religion; for example; Rumania and Bulgaria. The existence of the Orthodox church has also helped the Soviet government to subject to its influence the Uniates in Carpatho-Russia. The Patriarch Aleksei invited the Uniate church to rejoin the Orthodox church, but with no result. The Soviet government then arrested all four Uniate bishops, and sent about twenty percent of the Uniate priests to Siberia. After this a congress of Uniate priests and laymen turned to Stalin on March 8, 1946 with a declaration that after three hundred years of oppression the Ukrainian population of Cis-Carpathia had turned anew to moral freedom and wished now to return to the bosom of the Orthodox faith of its forefathers. Over two million Uniates thus joined the Orthodox church, headed and controlled by the Soviet state through the church administration in Moscow. Had this step not been taken persecution would have

begun not only of the opposition among the priests of the Uniates, but the parishioners, forcing them to turn to atheism.

The existence of the Moscow patriarchate also does not lack political significance in the internal life of the Soviet Union. The Soviet government supports now a central church authority in the person of the patriarch and high ecclesiastical administration in Moscow, instead of supporting the division of the Orthodox church into the Ukrainian and Russian and into the Living or restored church and the traditional, as in the period prior to the second world war. With the exception of Georgia and Armenia, the same church language is used in all parts of the country, and bishops and priests are appointed from the same controlled institution. The centralizing tendency of Soviet regime fully favors this situation. It is advantageous in that the preparation of the priesthood in the ecclesiastical schools and academies is also centralized and therefore easy to control from the point of view of possible nationalistic inclinations. As regards preparation for any change in the existing hierarchy affairs are far from satisfactory. In 1951 there were only 151 students in the church academies of Moscow and Leningrad.¹⁹ Both bishops previously receiving theological training as well as qualified instructors disappear from the scene, and it can be feared that new students will be prepared in larger measure for fulfillment of political than religious tasks. Therefore the admission by foreign governments of Orthodox bishops and priests from the Soviet Union should doubtless be made with great care. Here too the Moscow patriarchate will be used for political aims to propagandize the Orthodox emigration.

There can thus be no doubt of the positive significance for the Soviet regime of the agreement with the Orthodox church. What can the Moscow patriarchate accomplish as an organization for anti-Soviet activity?

The peculiarity of the organization of the Orthodox church as it now exists in the Soviet Union is that the church organizes the clergy but not the parishioners. The believers support their churches, but organizational connections between them, supplementing bonds of a purely moral character, do not exist.²⁰ On the other hand the organization of the clergy is centralized and controlled to such a degree that no independent steps can be

taken by the Orthodox church for any purpose whatsoever. The head of the church, the Moscow patriarch, cannot play a role in the Soviet Union such as is played by the heads of Islam, or, particularly, by the head of the Roman-Catholic Church. The Moslems of the Soviet Union can receive instructions from without just as the Catholics in the Western European states, Hungary, Poland and Czechoslovakia, can lend an ear to and maintain their connection with the Vatican. Therefore the Soviet state and the governments of the satellites, at the insistence of Moscow, carry on an active campaign against the clergy of these religions. The Moslems in Turkestan were subjected to limitations which the Orthodox church does not experience at present. The Soviet regime has no great sympathy for the Jewish religion, probably in view of possible connections with Israel. As far as the Orthodox church is concerned, it does not have a higher authority outside of the Soviet Union and on the other hand, thanks to the support of the Soviet government, it can exert an influence on orthodox patriarchs of less important and economically dependent patriarchates.

Thus, the churches in the Soviet Union cannot oppose the existing regime and be dangerous for it as an organization. Not the same as regards the moral significance of the Church and religion undermining the Soviet materialist philosophy and ideology.

5. *The Army*

The army, as distinct from the churches, comprises not only administrative personnel, but the whole complement of officers and men. The bond in the army is not only moral but professional. Joint life in the barracks unites soldiers, whereas joint presence in the church is of a casual nature, not joining the worshippers by personal bonds. In the overcrowded churches of Moscow, where only a few of the previously existing 350 churches are open, and likewise in the provinces, there is a unity of religious feeling but not of mutual action, just as in any temporary meeting. It is not that way in the army, where the officers and, separately, the soldiers, are inevitably joined and understand each other, knowing who is friend and who is foe. The Soviet regime attempts to insulate the officers from soldiers, but in the active army there is a unity of mood from the very fact of common fate and common interests.

The army is connected in the closest degree with all the life of the country. In the Soviet Union almost every worker understands that a major part of his effort and sacrifice is intended for the creation and strengthening of the country's military forces. The production of arms and military supplies of all kinds; the preparation of reserves of food and munitions; the construction of strategic roads; the allocation of plants and the transfer of workers in connection with the building of new plants; the organization of stud farms on the sovkhozes—all this occupies such a prominent place in Soviet economic plans that each citizen feels that he lives in an armed camp. Along with this there is the atmosphere of secrecy and strict responsibility for the revelation of military secrets and even for suspicion of possible connections with foreigners. In such an atmosphere each person feels himself part of an armed nation.

The Soviet military system counts on an increase in its armies of from two or three million men in peacetime to fifteen million in wartime.²¹ For this large cadres and reserves must be prepared. Military instruction enters into the program of preparing the population for the critical moment. Sport is regarded as similar preparation. Parachute jumping, swimming fully clothed and with burdens, cross-country running, and skiing are all organized not as physical recreation but as military preparation. Athletes are considered as future soldiers and officers of military reserves in time of general mobilization. Girls and women in their turn train in various auxiliary operations. Fire-fighting and disposal of incendiary bombs, first aid for the wounded, anti-aircraft measures, defense against chemical warfare, and finally the preparation of the population for partisan warfare and the training of both men, women and girls as snipers are designed to unite the whole population in a spirit of devotion to the country and the regime. In wartime the front and the rear must be as one, for under conditions of modern war, which seizes not only armies but whole peoples, they are inseparable.

The Soviet government fully comprehends the importance of strengthening the psychological bonds between all possible participants in military operations. Even such an ingenious police apparatus as the Soviet power possesses cannot guarantee military discipline in a multi-million man army by compulsion and supervision alone.

There are several means of psychological influence and education of the population at the disposal of the Soviet regime. The first is the propaganda of 'socialist patriotism.' From the time of the inception of the first five-year plan the population has had instilled in it the idea of the incomparable superiority of the Soviet system of economy, guaranteeing the fulfillment of grandiose plans. Later was approved the 'plan for the transformation of nature'—the transformation of deserts into flowering fields and gardens, the afforestation of the steppes for the struggle with the winds and sands of the Asiatic expanses, the creation of great reservoirs and of hydroelectric stations for the irrigation of arid regions, further development of industry, and joining water routes by canals. Similar plans can create or warm up enthusiasm from time to time. They in any case played their role during the period of the first five-year plan and they can still attract part of the people, poorly discriminating or misinformed concerning the practical significance of all these measures and the possibility of similar economic progress without all the immeasurable human and material sacrifices which accompany the realization of Soviet plans. In any case 'Soviet patriotism' including pride in the socialist fatherland and its 'incomparable' successes continues to play a certain role in the propaganda and psychological influence on the people in the matter of promoting its devotion to the fatherland.

A more effective means of psychological influence is manifested by education in purely national patriotism. The Soviet government continues to utilize this means up to the present time. The historic examples of patriotic achievements, military traditions and glorious names are revived and maintained in the memory of the population to arouse feelings of national pride and patriotism. To this end the development of a consciousness of Great Russian nationalism plays a particular role. The principal cadres of officers consist of Great Russians. Military traditions are founded on the history of the Great Russian branch of the Slavs, and it is considered to be most hopeful in regard to pure patriotism and a counterweight to the Ukrainians and other national minorities. The latter are instilled with a consciousness of their inseparable connection with Russia and their debt of thanks to the Russian people for aid in their cultural development and progress. Local

nationalism among such minorities is condemned as a manifestation of unhealthy chauvinism and improper evaluation of the great role of the Russian people in their history. Such propaganda is connected with the general lines of Soviet policy aiming at preservation of leadership in the world socialist revolution for the Russian nation as "the most talented, most cultured and most decisive and active in the revolutionary plans for the transformation of the world."

The spirit of the army is also strengthened by professional competition in strategic and tactical preparation of military forces and pride in military excellence. The army has its own specific psychology. In wartime military pride in success and military self-esteem play an important role.

Finally, there are material considerations and motives. Concern for the soldier's equipment, dress and provisions, for the security of his family and for his own security after leaving military service strengthens zeal in the service and the aspiration for promotion. Pilots in the Soviet Union receive higher pay and their wives can live without having to work like other women. Likewise the families of officers in the higher ranks are fully guaranteed materially. Marshals and generals are included in the Communist Party and receive high appointments; election to the Supreme Soviet or to the Party Central Committee guarantees various privileges and honors. While in service soldiers receive supplementary education which guarantees their entry into various technical positions and posts of leadership after discharge. Thus, for example, many former soldier heroes are elected as presidents of kolkhozes, and the majority of tractor drivers in the Machine-Tractor Stations are former soldiers of the motorized cavalry. Officers and soldiers also feel their bond with the people and their responsibility for their fate because of the attraction of the entire population into affairs of 'volunteer' aid of the army. Among the so-called volunteer societies, besides Osoaviakhim (Society for the Defence of the Soviet Union and for the Development of its Aviation and Chemical Industries), the most important are the societies for cooperation with aviation (DOSAV), cooperation with the army (DOSARM), with the fleet (DOSFLOT) and the society of the Red Cross and the Red Crescent (ROKK).

Notwithstanding all these psychological measures for influencing the spirit of the army and strengthening its patriotic devotion to the government and people, the Soviet regime feels a continual fear regarding the force which it has created. The army reflects the mood of the people. The soldiers come from among the workers and peasants; they are in continual connection with their families and know how the country lives and how it bears itself toward the present regime. Socialism is implanted by forcible means, the population is insufficiently rewarded for its endless sacrifices and its hidden resentment also finds reflection in the army. That is why the government is forced to give special attention to political control in the army. Among the marshals there are several Communist leaders of the type of Bulganin; and among the generals, such as the late Zhdanov, there are important Communist officials, ardent Communists, whose task includes the strengthening of the ties between the army and the state. In each military unit, beginning with the battalion, there are 'zampolity,' assistants of the commanders in political work, who carry on education and propaganda work in the army.²² Special divisions of the MVD are included in the army not only for supervision but for taking measures to suppress all manifestations of disloyalty. From time to time even the highest military officials are purged or replaced in order to prevent their developing too close ties with officers and too great popularity among them.

Nevertheless, the army remains a united organized force in the Soviet Union which cannot be fully subordinated to control and suppression. In time of war, when it is swelled by a great number of reservists, it becomes a dangerous force. In case of victories, especially on foreign territory, it will be more reliable. The possibility of living like foreign nations and improving personal and national welfare in case of final victory can inspire its members. But, in case of defeat or the carrying of the war to home territory the situation can at once sharply change.

There is not a close connection and full mutual trust among officers and men at the present time. To this end the officers are kept apart in special clubs and are separated from the men by special discipline, and by the reinstatement of batmen. But in wartime this separation disappears. They become soldier-comrades not only in the Soviet sense of the word but in spirit, genuine

comrades through common tasks and solidarity of interests. During military operations privates are comrades of their officers in trial and success.

The organized army is a great political force. If there is a spirit of protest and defeatism in the people no sort of control and no sort of propaganda can keep it on the field of battle. It will turn its blade against the hated government.

In a country where there is no organized social thought, as also in a country of 'stateless society', the fate of the political organization will be decided by the armed forces.

Chapter XXII

FAMILY LAW

The family is an elementary social organization of wide and varied significance. Confucius considered the family the foundation of the whole social and political order. The experience of ancient Rome, and later of Japan, proved that the state is strong insofar as the family is a solid unit. Napoleon suggested to his jurists when the *Code Civil* was in preparation, that they ought to strengthen family ties. 'If members of the family,' he said, 'are responsible to the head of the family, and the head of the family is responsible to me, I shall be able to maintain order in France.' The Socialist Anton Menger opposed any artificial reorganization of the family, especially the abolition of marriage, and he predicted resistance on the part of a great majority of the population to such reforms. ¹

The family is, in fact, one of the most vital social organizations. Its existence is inherent in human psychology and is effectively supported by the whole social order. Religious rituals give it divine protection; moral principles support legal provisions in restraining violation of family duties; and public opinion, as well as conventional standards of behavior, discourage promiscuity, groundless divorce, and the neglect of parental responsibilities. The family is an economic and moral union, a nursery for primary education and preparation for social life. In different cultures the family has varied significance and is formed in different ways. Under conditions of agricultural life, especially in villages, the

economic significance of the family as a system of cooperation prevails; on the other hand, in modern urban life the family becomes primarily a social unit. In the primitive world of the nomads, the wife is a servant; in the civilized world, she has equal rights, if not a pre-eminence. She not only participates in the social life, but very often organizes the social life of her family. It is inevitable therefore that because of changes in economic and social conditions, in the level of civilisation and in moral principles, some institutions of family life should become obsolete.

It is not an exaggeration to say that the modern world can survive family crises. This is demonstrated by the increasing number of divorces.² Individualistic tendencies, the economic independence of married couples, lack of mutual understanding and moral ties between couples and between parents and children threaten the disintegration of family life. Legal reforms are especially necessary for the social groups of a modern industrial civilization. The legislators of almost all countries therefore have introduced innovations and amendments in the existing system of family law. Their general tendencies have been to protect the dignity of the wives, to enlarge the sphere of self-determination for all members of the family and to facilitate divorces when married life becomes insupportable. In spite of all changes and some negative symptoms, the institution of family remains, however, so well adjusted to human needs and so deeply rooted in human psychology that the great majority of the population continues to live in accord with the traditional patterns.

As for the Soviet Union, all economic and social conditions were to be radically changed from those of the rest of the world, so that one might expect even more drastic changes in family law. The Soviet experiment in this field is, in fact, very instructive.

1. Pre-revolutionary Law

For at least ten years after the October Revolution, Soviet family law was as radical as other branches of Soviet law. There were many reasons for that.

On the eve of the revolution, the family law of the Russian Empire consisted of a motley collection of statutes and customs, some of very ancient origin. Some of the provisions of the statutory law were adopted from the old canon law and incorporated in

the codification of 1826–1832 from the statutes of the eighteenth century and even from the code of 1649, which had been based on even more ancient sources. A part of these provisions consisted merely of moral admonitions, as for example the provisions defining the mutual obligations of married couples.³ Other provisions became pure anachronisms, as for example, one in which parental authority ceased only at the time of the parents' death and was limited but not ended after the marriage of a daughter;⁴ or one authorizing parents to confine their vicious children in prison.⁵ Since they were optional norms, they were not used for a long time and were not familiar even to jurists.

On the other hand, in the same code there were some modern provisions dividing the property of husband and wife, of parents and children, and investing parental authority in both the father and the mother, with a preponderance to the father in case of disagreement. In addition, some obsolete provisions of very ancient origin had been replaced by more progressive law in 1902 and 1914.⁶

The conservative nature of some provisions of pre-revolutionary family law was due to religious influence. The religious ritual of marriage was obligatory for all legal marriages. Consequently many provisions placing obstacles in the way of marriage and divorce were founded on religious prejudice, as for example the prohibition of marriage between people of different faiths.⁷ The Orthodox Church granted divorce more readily than the Roman Catholic Church, but the grounds for divorce provided by law were, nevertheless, insufficient and obstinacy on the part of one spouse caused many family tragedies.⁸ Because of the insufficient grounds granted for divorce, connivance was sometimes practiced and was overlooked by the clergy.

In general those provisions of pre-revolutionary family law which had practical significance did not basically contradict the legal psychology of a great part of the population. It was mainly the family life of the upper classes and the intelligentsia which came into conflict with the formal provisions of the statutory law, but even there, the effect of obsolete provisions had usually been extenuated in practice under the pressure of public opinion and the growing respect for human dignity. Unfortunately, customary law often replaced provisions of the Civil Code, no

matter how obsolete the custom was. The Russian peasantry lived by customary law. Customs varied in different places, they were sometimes not only obsolete, but barbaric. The customs of some native tribes were even worse; the dignity of women was completely ignored. Marriage could be concluded without the consent of the parties, especially of the brides. It was possible to buy a girl for the purpose of marriage by paying her parents a ransom, the so-called *kalym*. After such a bargain, the purchased wife was considered the property of her husband, and, according to a custom of the nomadic Kazakhs (Kirghizes), could be inherited by the oldest brother of her deceased husband. Parental authority belonged to the father, and after his death, to the oldest son. The conditions of family life were even worse for women where polygamy was legalized by Moslem law. ⁹

The pre-revolutionary Russian government, like the European powers in their colonies, did not interfere with the marital affairs and the tribal customs of non-Christian peoples. Because the backward tribes lived in Russia alongside the more civilized people, the general picture of family law in Russia seemed motley and reactionary. The government revised many parts of statutory family law in its newly projected Civil Code, which had to be adopted on the eve of the revolution.

Among the first acts which followed the October Revolution were two decrees which established civil instead of religious marriages as the only legal marriage, granted complete freedom of divorce, and gave full equality to children born in and out of wedlock. ¹⁰

2. *The Code of 1918*

On October 17, 1918, the government of the R.S.F.S.R. issued its first code on the registration of deaths, births, and marriages. In this code, anti-religious trends were expressed even more strongly than in the decrees mentioned above. ¹¹ The decrees of 1917 on civil marriage and absolute freedom of divorce were confirmed: 'Only a civil (Soviet) marriage, registered in the Civil Status Record, shall initiate the rights and duties of the spouse' '... the mutual consent of husband and wife, as well as the desire of one of them to obtain a divorce, may be considered grounds for divorce.' ¹² The personal relations of married persons were based

on the principle of full equality. In order to be more consistent, an original provision was introduced which allowed newlyweds, on the registration of their marriage, to 'adopt the husband's (bridegroom's) or wife's (bride's) surname or their joint surnames. Neither the obligation to live together nor the duty to be faithful were called for. The obligation of support was mutual, and in case of need, the husband had the right to require support from his wife as well as the wife from her husband.¹³

The principle of equality and individual independence for all members of the family was emphasized in all provisions of this first Soviet Code. As before the revolution, husband and wife had separate property. Parental authority was jointly exercised by the parents, and the father had no predominance as before the revolution. In case of a disagreement in parental authority, the question in dispute was to be decided by the local court. The authority vested in the parents was more of a duty than right.

'Parental rights are exercised exclusively for the benefit of the children. In case of abuse, the court is entitled to deprive the parents of their rights... Suits for depriving parents of their parental rights are subject to the jurisdiction of the local court, and may be initiated by the authorities as well as by private persons.'¹⁴

As we have seen, many provisions of this first Soviet code reproduced the individualist principles of pre-revolutionary law or continued trends towards the emancipation of wives and children. Some provisions were even borrowed from the projected civil code which had been under discussion in the State Duma. However, the Soviet code as a whole had first and foremost a revolutionary character. If it did not essentially contradict the convictions of the intelligentsia and other educated groups of Russian society, it nevertheless produced a real revolution in the villages and among the backward tribes. The patriarchal way of life and the morals of the old customary order were mercilessly broken. It was a revolutionary undertaking. Everything happened too fast.

The introduction of civil marriage instead of religious marriage was part of the attack against religion in general.¹⁵ On the other hand, the individualistic trends of the law did not have emancipation of the individual as their only purpose. Under conditions of

social revolution, they were directed against the family as a stronghold of tradition and conservatism. A vague provision about the elimination of parental authority created the possibility of depriving parents of their rights if they gave a religious education or anti-Communist ideas to their children. The absolute freedom of divorce undermined the moral principles of married life. Under these conditions, the authority of parents was shattered, marital ties were weakened, and the disintegration of family became a fact everywhere. ¹⁶

The disintegration of the family was in accord with two leading ideas of this early period of the Soviet order: the withering away of law and the possibility of 'free love' in a socialist society.

It was natural that under the influence of the idea that law, as an instrument of class domination, would wither away, Soviet authorities in the early period took it for granted that family life could and must be emancipated from state interference. And they believed that this could take place earlier than with any other branch of social life. ¹⁷ A. G. Goikhbarg, who initiated a great many of the provisions of the Soviet Code on marriage and divorce asserted that there was no reason for the state to interfere in marital relations, except to secure freedom for both husband and wife. Consequently, he supported freedom of divorce and the struggle against religious marriage, which created, in principle at least, a union for life.

On the other hand, partisans of 'free love' also supported abolition of the legal regulation of family life and did it even more decisively. Madam Kollontai, the well-known propagator of these ideas, pointed out that the family under socialism becomes extinct and that care of the children passes completely into the hands of the state. The state, according to Madame Kollontai, 'takes over all the functions formerly exercised by the parents.' In a socialist state, household work ceases to be a necessity. Communal feeding separates the 'kitchen from marriage;' communal nurseries (*crèches*) transfer the burden of marital worries from individual mothers to society, since the rearing of children transcends family limits and is 'a social, a state institution.' ¹⁸

Besides these general ideas about the prospects of socialism for women, securing them full independence and equality, Madame Kollontai also prophesized that love would become a purely

physiological act, as natural and simple as drinking 'a glass of water.' In addition to the legislation which undermined the foundations of marriage and the family, this theory influenced the younger generation of the Soviet state.¹⁹

Kollontai's theory did not correspond to Marxist views. Marx criticized those who 'think only in terms of two individuals and forget the family.' 'They forget,' he said, 'that almost every broken marriage is a family broken up.'²⁰ Nor did Lenin support 'free love' ideas; in his correspondence with Clara Zetkin he condemned the 'glass of water' theory. 'It has made,' he wrote, 'our young people mad, quite mad ... Drinking water is of course an individual affair, however, in love, two lives are concerned, and a third, a new life, arises. That is what gives it its social interest and what gives rise to a duty towards the community.'²¹ Members of the Communist Party were the first ones called upon to set a good example and to respect family ties in opposition to the so-called 'glass of water theory.'

3. *The Code of 1926*

The U.S.S.R. Constitution of 1924 did not deprive the Union Republics of the right to issue their own family codes. The R.S.F.S.R. revised its former code of 1918 and issued a new one in 1926.²² The other Union Republics have adopted its basic principles. Their family codes have, indeed, some significant distinctions, but during the recent period, family law has become more and more unified, and therefore the temporarily existing differences are omitted in the following text.²³

The family code of 1926 recognized *de facto* marriage as having the same legal consequences as a registered marriage.²⁴ This meant that the registration of marriages had a purely declarative character. Lenin's attitude toward 'free love' did not influence Soviet legislation either before or after his death in 1924. Marriage did not produce either the obligation to live together or the obligation to be faithful. In *de facto* marriage, it is difficult to prove bigamy and the Soviet penal code (Art. 199) up to 1928 did not mention bigamy as a crime. It was prosecuted earlier as deceiving the official agent when the existence of marriage had been concealed during the registration.

An illustration of the indifference of the law in regard to conju-

gal faithfulness is furnished by a provision of the code of 1926, according to which the mother had the right 'to institute a paternity suit in court after the birth of the child' if her husband was not father of the child. ²⁵

The dissolution of marriage was subject to the same regulations as were provided by the laws of 1917 and 1918. Divorce was possible on the petition of one party without the summoning of the other. No limitation concerning the number of divorces was established.

The extreme measures concerning early Soviet family life did not meet unanimous support as has been mentioned. During the discussions of the draft of a new code in the VTsIK, the Central Executive Committee, in 1925 and 1926, some sound objections were raised, especially on the part of peasants or their representatives. 'The existence of homeless children (*besprizornnye deti*) must be attributed to the disintegration of the family,' said one speaker. 'The number of divorces is going up and up.' 'When a peasant woman and her children are abandoned, she is capable of anything; she might kill herself and her children,' said another. Objections, however, had no effect. 'The absolute right of divorce is one of the achievements of the October Revolution,' asserted partisans of the basic principles of the code, and this principle survived for many more years. ²⁶

In connection with the family code a special law on abortions should be mentioned. The law which legalized abortions was issued as early as 1920. ²⁷ It was motivated by medical reasons and by difficult economic conditions. Prosecutions of acts of abortion drove the operation underground and made women victims of mercenary and ignorant quacks who made a profession of the illegal practice. As a result, a high percentage of women using their services became ill in the course of the operation, and a number of them died. For these reasons, the Soviet government decided to permit abortions to be performed free in Soviet hospitals, where conditions were assured which would minimize the possible harm of the operation.

In fact, economic conditions at the time when the decree was issued had been disastrous, and for a number of families it had become impossible to have children. The state, on its part, was still unable to take care of children and to assist in their education.

In addition to the pragmatic reasons, the ideological principle of a 'woman's right to her own body' was significant when the problem of abortions was discussed. Here again the individualistic principle, characteristic of the early period of Soviet family law, was set off against trends of a more socially favorable character.

It seems very probable also that abortions could not be prohibited because moral discipline and parental authority were shattered, the family had disintegrated, and the 'glass of water theory' made young men 'mad, quite mad,' as Lenin characterized the situation. It was time when, according to Article 141 of the Code of 1918, a collective paternity had been established in cases when the mother herself did not know who was the father of her child, and, consequently, all men who had had intercourse with her at the time of conception were obliged to cover expenses of birth and of maintaining mother and child. No essential changes were made at the time of the revision of the code of 1918. During the discussion of the draft code, later issued as the code of 1926, some speakers asked: 'What steps are we taking against polygamy?' "Material responsibility", answered the People's Commissar of Justice. ²⁸

In cases of unknown fathers, the code of 1926 replaced the original provision of the code of 1918 with the specific Article 32, empowering the court, at its discretion, to impose the expenses on one of those who had had intercourse with the mother at the time of conception. In the interests of the child, the court was not prohibited from choosing the most wealthy of the possibly responsible persons. This was frankly acknowledged by the People's Commissar of Justice, Kursky, during the discussion of family law. ²⁹

In 1926 many socialist dreams had already vanished. The state was still unable to undertake the care of children without fathers, or of homeless children without any parents, and it changed some provisions of the former code predicated on this possibility. In 1918, for example, adoption had been prohibited. ³⁰ It had been assumed then that the state would be able to organize public education and nurseries for all orphans and homeless children, and the Soviet authorities did not want to permit an artificial increase in the family system, in order to evade escheat or for the use of adopted children as workers. The new code now

authorized adoption, with the proviso however that it should be done 'for the childrens' interests only.'³¹ Guardianship was originally intended as a state function through which children could be educated in the revolutionary spirit, and nursery upbringing would be an advantage.³² In 1926 guardianship was organized in the customary pattern. Guardians were to be appointed for bringing up the children, protecting their rights and interests, and safeguarding their property.³³

In general the family code of 1926 remained as revolutionary as its predecessor, the code of 1918. Both codes in regard to family relations had been individualistic in their trend toward full freedom and independence for all members of the family. The family as the nucleus of society and as the primitive social organization, was not yet restored. As an organization, its primary function was to maintain the children. Essential changes in family law took place only after 1936.

4. *The New Trends*

Soviet family law was essentially changed after 1936. The new Constitution vested the right of 'determination of the principles of legislation concerning marriage and the family' in the central government of the U.S.S.R.³⁴ This was a right which it did not possess earlier. Subsequently, almost all of the foundations of family law were altered by the legislation of the U.S.S.R.

The legal reforms were preceded by a discussion in the press. The doctrines of Brandenburgskii, Kollontai, and Krylenko, which had inspired the legislation of the preceding period, were revised and flatly rejected. Kollontai's theory that the family would become extinct under socialism and that the care of children would pass completely into the hands of the state was characterized as 'erroneous' and 'undoubtedly harmful, unwittingly vindicating those parents who do not wish to trouble about their children.'³⁵

The concept of *de facto* marriage was censured because 'marriage is a serious and responsible act and must not be undertaken frivolously,' and 'a definite regularizing influence over it on the part of the state is naturally to be expected.'³⁶

In accordance with the new trends all the important slogans of the preceding period, 'free love,' 'free divorce,' 'children to the

nurseries,' 'legalized abortions,' were consigned to oblivion along with *de facto* marriage. The disintegration of the family was condemned, the family was characterized as the basic cell of the social organism, and marital relations were considered to have serious social significance, requiring a serious attitude toward marriage.³⁷

Reforms concerning family relations were not realized immediately. A decree of May, 1935, increased the responsibility of parent for the misdemeanors of their children. A very important decree followed on June 27, 1936, prohibiting abortion and introducing alterations in divorce proceedings. The family law of July 8, 1944 deprived *de facto* marriage of legal significance and established a complicated divorce procedure. After all these reforms and under the new conditions of economic and social life of the period of Stalinist socialism, the Soviet family, as an institution of social importance, became more stable and better protected.

A. Lack of certain formalities for marriage had often led to abuse. *De facto* marriage could be dissolved in a *de facto* manner, and it was difficult to establish whether marital relations and duties existed or not.³⁸ The case of one Gromoglasov, who was accused of bigamy because he registered a marriage without having registered a divorce from a previous wife with whom he had *de facto* marital relations, was ruled in his favor. This occurred when he succeeded in proving that his *de facto* marriage was already *de facto* dissolved. This decision was fully consistent with the text of Article 20 of the family code of the R.S.F.S.R.: 'The fact of the termination of a marriage in the absence of divorce may be established by the court in another manner.'

Since 1944, complications of this kind have become impossible. Soviet law adopted the principle that 'the legal form in which marriage is established plays an important part in fostering a serious Communist attitude towards marriage and family,'³⁹ and that 'only a registered marriage creates the rights and obligations of husband and wife provided for in the code.'⁴⁰

Thus in 1944, Soviet legislators returned to the principle of the original law of 1917. (See note 10), The solemnization of marriage has become more customary than earlier, and the religious ritual, which had no legal significance, was neither encouraged nor prosecuted. 'Conscientious citizens' of course refrain from per-

forming religious rituals, but the consecration of marriage in a church does not contradict the new family policy of the Soviet government insofar as it strives to strengthen family ties.

B. Legislation concerning divorce is only the reverse side of legislation concerning marriage. If the government wants to educate people in a serious attitude toward marriage, it cannot support a system of unlimited freedom of divorce like that established by the codes of 1918 and 1926. Then it was possible to dissolve a marriage on the petition of one party only, and it was not even necessary to summon the other party. 'If a petition to dissolve marriage is presented by one of the spouses, a copy of the record of divorce has to be sent to the other spouse at the address indicated by the petitioner.'⁴¹ This abnormal divorce procedure was amended by the decree of Juni 27, 1936, which required 'the personal attendance at the Z.A.G.S. (Civil Registrar's Bureau) of both divorcees and the entry of the fact of divorce on the passports of the divorcees.' The same law increased the fees for the registration of divorce to '50 rubles for the first divorce, 150 rubles for the second and subsequent divorces.' High alimony, from one fourth up to one half of the wages of the defendant, for the maintenance of children, became an additional weapon against frivolous divorce.⁴²

The law of July 8, 1944 increased the formalities of the divorce proceeding.⁴³ A party wanting to dissolve a marriage had to present to the People's Court a petition of divorce and simultaneously pay a fee of 100 rubles. Then notice concerning the institution of judicial proceedings for divorce had to be published in the local newspapers at the expense of the plaintiff. The personal attendance of both parties was required. The People's Court was required to determine the reasons for the petition of divorce and take measures to reconcile the parties. If reconciliation in the People's Court failed, the claimant was to file a petition for the dissolution of the marriage in the next higher court. If finally the court recognized the necessity for dissolving the marriage, the Z.A.G.S. was to write out a certificate of the dissolution of marriage, register the dissolution in the passports of the divorced spouses, and exact from one or both parties a charge of from 500 to 2,000 rubles, as indicated by the decision of the court.

The ukase of July 8, 1944, did not contain any list of causes for

the dissolution of marriage and granted to the court the discretion to recognize or not recognize the reasons of the claimant for divorce as well-founded, in accord with the circumstances of the case. Thus freedom of divorce was not abolished in principle. The court has usually dissolved a marriage when it discovered that marital relations no longer exist, that the marriage is childless, and especially, when the husband or wife or both already have had another family or another liaison. 'But if the family has not disintegrated, then the court may grant the petition for divorce only if it has evidence that the marriage is dead. The principle of freedom of divorce is still in force, a ruling of the plenum of the Supreme Court of the U.S.S.R. has asserted. It recognized that the law does not prohibit repeated petitions for the dissolution of marriage.' ⁴⁴

Although not abolished, freedom of divorce was, however, essentially limited by the law of 1944. Everyone could not cover the high expenses of the proceedings and pay the fee of up to 2,000 rubles. The divorce proceedings in at least two courts have involved a loss of time and earnings which few can bear. Finally, the fact that the court may, at its discretion, recognize or reject the reasons given for the dissolution of a marriage certainly has a restraining influence.

C. Propaganda against abortion began as early as the twenties. In 1927, the Ukrainian Congress of Physicians and Surgeons characterized abortion as a heritage of Tsarism, an evil which was only temporarily legalized in the Soviet Union. ⁴⁵ Once the economic conditions of War Communism were ended and the state was able to organize a sufficient number of nurseries, crèches, and kindergartens, and to support large families, the reason for legalization of abortions lost its foundation. These conditions were realized at the end of two Five-Year plans, and by the decree of June 27, 1936, abortions were prohibited. The new decree was published with a preamble in which the motives for the prohibition of abortions were explained, and which stressed the social significance of maternity and the possibility of organizing an effective struggle against abortion under conditions of socialism and the growth of the political and cultural level of the toilers. ⁴⁶

The prohibition of abortion was accompanied by various

economic measures, e.g. the improvement of aid to women in childbirth, the financial support of large families, the extension of the network of lying-in-homes, crèches and kindergartens, and the tightening-up of criminal punishment for the non-payment of alimony. The new policy of the Soviet government, especially the system of rewarding mothers with large families, encourages maternity as an important social function, 'bestowing not only social prestige but also a standard of life comparable to that obtainable by any other kind of unskilled labor.' As Schlesinger correctly formulates it, there is a new concept in the Soviet Union, 'that motherhood is a profession like any other, a social function whose fulfillment should be remunerated not by partnership in the reproductive act, but by the society in whose interest that function is performed.'⁴⁷

D. A mother who has given birth to ten children and has reared them is granted the title of 'Mother Heroine' and is given a medal with that inscription. A mother of seven to nine children is awarded the medal of 'Mother's Glory'; of five to six children, the medal of 'Motherhood.' All mothers awarded medals receive government assistance, and since the Ukase of July 8, 1944, mothers having two children receive such assistance for the third and fourth children.⁴⁸ According to the law of 1944, mothers receive awards for children born out of wedlock as well as for children born in wedlock. In contrast to the provisions of the codes of 1918 and 1926, the ukase of July 8, 1944, abolished the right of a mother 'to appeal to the court with a demand for the determination of paternity and for alimony for the support of a child born of a person with whom she is not living in registered marriage.'⁴⁹ This reflects the peculiar conditions of war time, when it was issued, and when occasional intercourse between soldiers and girls was difficult to prevent. Finding the father was still more difficult, because he could have been killed or imprisoned. However, the law is not a temporary one. In connection with the numerical discrepancy between the sexes, it contains several articles dedicated to single (unmarried) mothers in general and establishes state assistance to all unmarried mothers having three or more children. It remained in force after the end of the war. It is clear that these provisions were prompted by the necessity of encouraging maternity and childbirth after a disastrous war.

At first sight the law, which established awards to unmarried mothers equal to the awards of married mothers having large families, seemed to undermine the Soviet policy of strengthening family ties. Living at state expense without a particular husband, with children who do not know their father, and the chance for unmarried fathers to escape the responsibility of supporting their children can create new customs and habits and a new social psychology if continued. Giving awards to unmarried mothers appears to contradict the policy of strengthening family ties and to run counter to the propaganda in favor of serious and lasting family life. It is probable, however, that a negative effect is not imminent.

It is very difficult to eradicate from human psychology some inherent predilections. A mother needs the support of her husband, children need their father, and state and society need the family. Although theoretically possible, it is hardly probable that unmarried women will raise large families with a series of fathers. Nor does the existing Soviet legislation as a whole assume that they will. It may, on the contrary, serve as evidence that the Soviet government reckons on normal family life as a reliable support of the social order.

E. Parent-child relations are also based on new principles. A decree of May 31, 1935, for example, put Soviet youth under stricter parental supervision and increased the responsibility of parents for the misdemeanors of their children.⁵⁰

In connection with all these reforms, it should be mentioned that the Soviet penal code makes the whole family responsible in cases of treason and permits charges on common family property in cases of embezzlement and breach of trust. Members of the family can also be prosecuted for misprision.⁵¹

The above provisions indicate that Soviet legislation takes it for granted that family ties are so strong that every member of the family will refrain from an illegal act in order not to harm the other members. There are special grounds for this confidence in family ties. Every social organization in the Soviet Union is infiltrated or controlled by Communist Party members, and the formation and activity of all organizations have been made subject to close regulation. The family is the only organization constituted by the free consent and independent initiative of private

persons, and it has therefore been especially favored by private persons. Freedom of consent as a prerequisite of marriage is consistently supported by Soviet law. ⁵² Perhaps only Communist Party members are limited in their choice of a consort, under the pressure of party opinion. Any open constraint in regard to marriage is not only prohibited, but is even punishable. Under these circumstances, people cannot afford to neglect the interests and safety of their dearest relatives, perhaps the only intimates they have.

5. *The Family and the State*

The history of Soviet family law and its present stage of development cannot be understood if interpreted purely as a superstructure upon economic relations, as according to Marxist doctrine. The family is an organization having various important functions, sometimes purely or primarily economic, sometimes primarily moral. Always it is a social nucleus similar to the nucleus of protoplasmic cells in a physical organism.

The Soviet government eliminated the religious influence which had basic significance in pre-revolutionary Russian family law and thus cleared the way for the boldest experimentation. ⁵³ Experience showed that the Soviet state needed a strong family pattern no less than any other state. Consequently recent Soviet law re-established marriage as an authorized civil contract designed to organize a lasting common life, common property, and common care of children.

Once a marriage is concluded and registered, it creates legal duties not only between husband and wife and eventually parents and children, but also between family and state. The latter requires of parents that they give their children a primary education and be responsible for their behavior. It encourages procreation. It exploits the moral ties of members of a family as a guarantee of loyalty toward the state.

Among the reasons for the revision of family law, demographic interests had probably the greatest significance. The abuse of freedom of divorce and abortion under the conditions of a difficult struggle for existence showed a considerable decrease in the birth rate as one result. ⁵⁴ In order to carry out the large-scale program of industrialization and to be ready for the immi-

ment war with the capitalist world which Soviet leaders consider inevitable, it was necessary to increase the birth rate. The prohibition of abortion and the rewards to mothers of large families were natural remedies, but they were not sufficient. Without a normal family life through which mothers can enjoy nursing their babies, children can be educated to respect their parents, and the mutual attachment between parents and children can be strengthened, the incentive to have children is not strong enough. It was not enough, therefore, to prohibit abortions and to give awards to mothers of large families, it was necessary also to restore the normal family and to make family life moral.⁵⁵

Because the demographic reason for the change in family law was primary, some deviations from the moral foundations of family life have not been completely eliminated. The awards to unmarried mothers and the prohibition of court petitions for establishing paternity are among these deviations.

There were certainly reasons other than demographic ones for the revision of family law. Juvenile delinquency and rowdiness grew to calamitous proportions. It was necessary to strengthen discipline and to use parental authority for that purpose. Increasing the parents' responsibility for their children's behavior was a logical step in that direction. Here again we see how the Soviet government adapts the family to the state's needs.⁵⁶

Children from 14 to 16 years of age are at the eventual disposal of the state. According to the ukase of the Presidium of the Supreme Soviet of the U.S.S.R. of October 2, 1940, 'On the State's Labor Reserves,'⁵⁷ several thousand boys and girls from the ages 14 to 17 are annually drafted for training in vocational schools. As members of the labor reserves, they are treated as workers subject to strict discipline. During the training period, as also later during the four years of obligatory work after graduation usually in remote parts of the country, they are separated from their parents and relatives. Parents have to educate their children to be ready for such conscription, again demonstrating how the family serves the state. Individual wishes and vocational predilections of the children have little significance if they are in conflict with the government's plans and needs.⁵⁸

Having restored the family as an institution of social significance, the Soviet government does not interfere in the domestic

life and personal relations between husband and wife, but it undoubtedly subjects the family as a whole to its policy. Soviet family law is an organic part of Soviet public law.⁵⁹ Various problems of family life have been regulated in accordance with the purposes and goals of the Soviet state rather than with the wishes and needs of the family. Thus the code of 1918 prohibited the adoption of children simply because the government did not wish to create the opportunity for anyone to obtain workers under the guise of adopted children. This prohibition was abrogated with some reservations in 1926.⁶⁰ The problem of alimony in case of *plurimum constupratorum* was solved quite arbitrarily; it depended on who could best pay, to free the state from the care of fatherless children.⁶¹ Problems of joint property were also regulated in conformity with the interests of the state treasury. In case of liability or taxation, it is easier to collect the state assessment from common property.⁶² A more drastic example of the state's domination in the field of marriage and family relations was undoubtedly the law of February 25, 1947, which prohibited marriages between Soviet citizens and aliens.⁶³ It has been reversed by the Ukase of November 26, 1953 (*Vedemosti Verkhovnogo Soveta*, Dec. 1. 1953).

The most important factor in family relations, however, is the dependence of all Soviet citizens on the government and the lack of real guarantees against administrative repression⁶⁴ which in practice subjects family life to government pressure to the same degree as other facets of social life. Where the individual has no freedom, neither does the family. There is no education outside the pattern established by the state. There is no interpretation of 'children's interests,' for the sake of which parental authority was restored, other than the government interpretation which states that they must be prepared for loyal service to the Party and state. The activity of all members of the family in both the economic and social field must be dedicated first and foremost to the interests of socialism. The restoration of the family is a positive fact corresponding to the interests of the people, but it is at the same time an additional instrument for putting into practice the Soviet government's plans.⁶⁵

The family, though a small and primitive form of social organization, is nevertheless the only one which is not subject to the

direct control of the Soviet government. The intimate relations of the members of a family permit one to suppose that they can be sincere and unreserved in the expression of their feelings and thoughts. Are there any means at the disposal of the Soviet government to control the inner life or at least to neutralize the influence of parents if it contradicts the trends of the state? It is hardly possible to overcome completely that which is based on family relations and strengthened with blood ties and a real affection. However, the influence of the school and pioneer organizations can undoubtedly counteract if not paralyze the influence of parents. The latter understand, besides, the kind of complications which they and their children can expect in case of a clash between family and school influences, and they endeavor certainly to avoid these complications, which can sometimes be tragic.

PART VII

SOVIET JUSTICE

Chapter XXIII

CRIME AND PUNISHMENT

According to the contemporary understanding of criminal law in the Soviet science of law, it is society's means of self-defense against attacks on its existence. Every class-organized society needs criminal law as a tool of self-protection,¹ and correspondingly the Soviet state has its own socialist criminal law for the protecting of socialist order against class enemies and survivals of capitalist and bourgeois regime.²

The 'socialist' penal code protects 'socialist property,' 'socialist discipline,' and the Soviet regime.³ It has proved to be more rigid than the penal codes of the capitalist world. The Soviet penal system contrasts peculiarly with systems in democratic countries, not only in the use of criminal punishment where countries of a free economy apply civil law liability or a disciplinary penalty, but also in a marked difference in penalties.⁴

I. Cruelty of the Soviet Penal System

The most severe punishments are established by the Soviet penal system for the crimes against the socialist order. The ukase of June 4, 1947, 'Protection of Government and Public Property,' established the following penalties:⁵

For larceny, misappropriation, and embezzlement or other plundering of state property—confinement of from seven to ten years in a corrective labor camp with or without confiscation of property. For repeated plundering committed by a gang or on a large scale—confinement of from ten to twenty-five years with confiscation of property.

The same crime against collective farm property entails in the first instance a five to eight year confinement with or without confiscation, and in the second instance, or if committed by a band or on an especially large scale, confinement for a period of from eight to twenty years with confiscation of the property of the criminals. The law strictly punishes not only direct participation in the crime, but also failure to inform the authorities of a committed or intended plundering of government property.

On the same date another ukase was issued which increased protection of personal property of citizens. According to this ukase, theft is punishable by confinement in a corrective labor camp for a period of five to six years; theft committed by a gang entails confinement to a corrective labor camp for a period of from six to ten years. Robbery, if accomplished with violence or committed by a gang, entails imprisonment for a period of from fifteen to twenty years with confiscation of the property of the criminals. Failure to report, as in the instances of plundering of state or public property, is also subject to severe penalties.

In comparing penalties established by Soviet law a striking fact stands out: Premeditated murder, if committed without aggravating circumstances, involves a prison sentence for a period not exceeding eight years (Article 137 of the Penal Code) while the crime of theft is liable to up to ten years imprisonment. Robbery committed with aggravating circumstances entails a prison sentence of up to twenty years, while manslaughter with aggravating circumstances involves up to ten years imprisonment. Material well-being is more highly valued in the Soviet Union than is human life. ⁶

'Socialist property—the basis of the Soviet structure—is the source of wealth and power of the U.S.S.R., the source of a prosperous and cultural life for all the toilers of our country,'

states *Izvestia* in explaining the cited ukases. ⁷

All crimes directed against Soviet rule or against the Soviet political and economic structure are subject to extremely severe punishment. At various times supplementary statutes were added to the Penal Code (to Articles 58 and 59, especially) in which punishment was declared to be death by shooting with confiscation of property. Such punishment was designated not only

for treason to the motherland, armed rebellion and for communication, with counter-revolutionary intent, with foreign governments or with their individual representatives—a crime for which so many outstanding political figures in the Soviet satellite countries have been sentenced to death—but also for a whole series of other crimes against the state. According to the directive of the Plenum of the Supreme Court of the R.S.F.S.R. of November 1, 1942, the murder of 'rabkors' (worker-correspondents) 'selkors' (village-correspondents), 'voenkors' (military-correspondents), and others, in connection with their activity as correspondents, is classified as an act of terrorism and is punishable by death by shooting. According to the directive of August 6, 1931, of the Plenum of the Supreme Court of the R.S.F.S.R., murder of a shock worker ('*udarnik*') in connection with his activity on the job is classified in the same way. ⁸

According to the instruction of the Commissariat of Justice of the R.S.F.S.R., ⁹ murder, beating, and other violence, on the basis of a class struggle, against teachers engaged in social work, are also to be considered as terroristic acts. ¹⁰ These severe penalties are designed to protect Party members as well as persons promoted by the government for exceptional merit in advancing socialism. In addition to the severity of the penalties, the procedure of trying those accused of terroristic acts is peculiar to the Soviet system.

Death by shooting has also been applied as a punishment of the court for wrecking (so-called economic counter-revolution), diversionist acts (destruction or damage of railroad bridges, telephones, warehouses, etc.), as well as sabotage (willful neglect or careless fulfillment of duties), and active participation in the counter-revolutionary struggle during the tsarist period or during the period of the Civil War.

By the ukase of May 26, 1947, the death penalty was replaced by twenty-five years confinement in correctional camps. Actually this is nothing but a slow death, according to much fully reliable testimony, since no one can endure twenty-five years in camps where people die like flies from exhaustion, epidemics, and cold. Capital punishment has been again restored, however, by the ukase of January 12, 1950, concerning traitors, spies, and wrecker-diversionists.

The cruelty of the contemporary Soviet penal system strikingly contradicts the original trends of Soviet criminology. 'Punishment' declared the Commissariat of Justice in December, 1919, in a document of the Civil War period, 'must be devoid of any semblance of torture and must not subject the prisoner to useless and unnecessary suffering.' These humane trends were reflected in the first Soviet Penal Code of 1922, but subsequent legislation, especially since the introduction of the Five-Year Plans, has transformed the Soviet penal system into one of the most ruthless in human history. ¹²

2. Differences in the Common Principles

Soviet criminal law differs from the criminal law of modern cultured nations not only by the severity of its penalties, but also by a number of other qualities. For example, it permits children over twelve years of age to be put to death by shooting. According to the law of April 7, 1935, minors twelve years old and over are subject to criminal responsibility for the following types of crimes: theft, rape, bodily injury, mutilation, murder and attempt to commit murder, as well as destruction or damage with counter-revolutionary intent, by fire or other means, of any of the national systems of communication (telegraph, telephone, etc.), and the commission of acts liable to cause train wrecks. According to the ukase of December 10, 1940 of the Presidium of the Supreme Soviet of the U.S.S.R., minors from twelve years of age on, convicted of actions capable of causing train wrecks (the unbolting of rails, placing of various objects on the rails, etc.) are liable to *all measures* of social defense. Among the crimes listed in the ukase there are some entailing punishment according to Articles 58, 59 of the Penal Code. Thus, this last provision of the cited ukase cannot be understood otherwise than as authority to apply capital punishment even to minors. ¹³ A no less odious distinction of the Soviet penal system is the responsibility borne by the members of a convict's family. In this connection the ukase in force since June 8, 1934, against traitors of the socialist motherland deserves special attention. ¹⁴ According to this unique law the members of the family of a Red Army officer or soldier who is sentenced as a traitor—providing that they knew of the intended act—may be deprived of liberty for periods of from five to ten

years though they did not aid in the carrying out of the act. The remaining adult members of the family, as well as dependents living with the criminal at the time of the act of treason, are to be deprived of their electoral rights, and exiled to remote regions for five years, even though they had no knowledge of the plans.

Such a serious digression from the principles of criminal law as the punishment of persons whose only guilt is that they are relatives or dependents of convicts can be explained, but certainly cannot be justified. Exile to concentration camps, which are called corrective-labor camps, and are usually in very remote parts of the country, is, incidentally, very widely applied in the Soviet Union to all those who are suspected of disloyalty. This type of exile is carried out by administration without court trial. Sentences of exile for periods of up to five years by a committee of the M.V.D. and a chief of *militia* can be passed on the ground that the person is deemed to be socially dangerous. ¹⁵

The Penal Code (Article 35) allows for the possibility of banishing persons who are merely suspected of being socially dangerous:

'Banishment... may be inflicted if it seems to the court to constitute a social danger if the person convicted should remain where he is.'

Referring to the possibility of banishment at the request of the procurator, the courts applied Article 35 without trial. Waifs, prostitutes and persons of criminal activity were banished in this way. The Supreme Court of the U.S.S.R. (the ruling of July 12, 1946, No. 8/5) instructed courts not to apply this measure unless defendants were sentenced. Afterwards it became the exclusive privilege of the administrative organs to banish socially dangerous persons without a trial (see below Ch, XXIV, 3).

One of the most destructive qualities of the Soviet penal system is a very vague formulation of some provisions of the penal code. Articles 58 and 59 define the most significant political crimes entailing capital punishment or twenty-five years of forced labor thus:

'Any action is considered counter-revolutionary which is directed towards the overthrow, undermining, or weakening of the authority of the Workers' and Peasants' Soviets, or of the Workers' and Peasants' Government...' (Art. 58);

'Any act shall be considered a crime against the administration if, while not directly aiming at the overthrow of the Soviet authority... it nevertheless leads to a disturbance of the regular activities of the organs of administration or of the national economy and is accompanied by opposition to the organs of authority and obstruction of their activities, disobedience to the laws, or other activities causing a weakening of the power and authority of the government.' (Art. 59).

Because of the vague formulation of the most serious crimes some less significant crimes can be sentenced as counter-revolutionary acts and punished by death or twenty-five years of forced labor. For example, if a driver has been absent from work for several hours during the harvest time he can be punished either for 'non-fulfillment of his obligation under a contract with a public institution,' (deprivation of liberty for a period of not less than six months, Article 131 of the Penal Code) or for a counter-revolutionary sabotage (deprivation of liberty for a period not exceeding ten years, Article 59, 3 c).

If a worker or peasant after having lost his patience and self-control, attacks his boss he can be punished for insulting a representative of authority in the course of execution of his official duties (deprivation of liberty or forced labor for a period not exceeding six months, Article 76) or for an act of terrorism (the supreme measure of social defense: death by shooting, Article 58, 8).

If a hungry Soviet citizen should express his disappointment in an empty store and say that there are some people who are supplied with everything, he can be sentenced for an act of hooliganism (deprivation of liberty for a period not exceeding three months, Article 74) or for an act of anti-Soviet propaganda which must be punished as one of the major crimes against the Soviet state (Art. 5, 10).¹⁶

While the existing legal formulations of the crimes for which the most ruthless penalties are established are so vague that even minor criminal acts can be qualified and punished as the most grave political crimes, other less flexible provisions of the Soviet Penal Code can be applied very extensively by use of analogy in rulings (Article 16 of the Penal Code).

The application of analogy in the field of criminal law contra-

dicts one of the oldest principles of law according to which no punishment can take place for an act not specifically defined as a crime in the law (*nullum crimen, nulla poena sine lege*). There are many examples of the deviation from this reasonable and humane principle in the Soviet judicial practice.

According to Art. 78 of the Penal code: 'Stealing, destruction or concealment of, or injury to any official or private document from any state department, with the object of obstructing the due course of business or departmental activities in general, entails—deprivation of liberty for a period not exceeding one year.'

It is quite clear that anyone stealing an official letterhead or a paper bearing an official seal does not violate state secret by this act, nor does he obstruct. Nevertheless this article is applied, in conformity with the ruling of the Supreme Court of the R.S.F.S.R. of May 14,15, 1935 No. 32, to cases of appropriation of letterheads or sealed forms used by certain government institutions.

According to Article 99 (1) 'The unauthorized purchase of raw fish, either for resale or for preparation for the purpose of sale... in quantities exceeding those fixed as the allowance for each fishing area, entails—deprivation of liberty for a period not exceeding two years and the confiscation of the fish unlawfully bought or prepared.' Although the content of this article is quite definite (transactions with fish) the Supreme Court of the U.S.S.R. has ruled that the same provision must be applied in case of sale of home-distilled spirit (*samogon*) if it was sold in a considerable quantity.

Article 166 has established that 'The secret or open theft of a horse or any other large domestic animal from an agricultural or animal-breeding population, entails— deprivation of liberty for a period not exceeding five years.' The Supreme Court of the U.S.S.R. instructed the courts to apply the same provision first, when foals, calves or other kinds of immature animals are stolen and, second, if horses, cattle, or immature animals are stolen not from an agricultural or animal-breeding population but from any working people, as for example, teachers, medical personnel, etc.¹⁷

Article 107 of the Penal Code had been especially widely applied in the Soviet Union during the period of collectivization when wealthy peasants were treated as speculators. Among those punished for speculation were peasants who failed to deliver to

the state the required quantity of grain; those who produced flour secretly even by hand power; those who bought from the collective farmers their future share of the harvest in the form of labor days.¹⁸ From the more recent annotated editions of the Penal Code many of the instructions of 1933-34 have been removed; nevertheless in the collection of actual rulings of the plenum and circular instructions of the Supreme Court of the U.S.S.R. there is a series of rulings concerning speculation, requiring a strict prosecution of speculators.¹⁹

To conclude the present review of the distinctive qualities of Soviet criminal law, it is necessary to indicate that according to Article 19 of the Penal Code an attempt to commit a crime and an act preparatory to a crime may be prosecuted as though a crime had been committed. The court is free in the choice of measures of social defense against such potential criminals, but this right opens one more possibility of transforming justice into an arm of politics.

3. Exploitation in the Form of Punishment

Strange as it may seem at first glance, the system of exile to corrective-labor camps, as well as some other penalties applied in the Soviet Union are measures of commercial rather than correctional character. The Soviet state is merely interested in carrying out various economic plans and industrial enterprises by the use of free or cheap labor.

One of the most commonly applied penalties in the Soviet Union for comparatively insignificant crimes or offenses is the use of so-called compulsory labor without loss of liberty. The Corrective-Labor Code²⁰ differentiates between two ways of serving this labor sentence: at the regular place of employment or permanent work of the sentenced person, or at enterprises organized by the corrective-labor organization.²¹ The court determines the portion of the wages to be deducted from the wages of a person sentenced to compulsory labor. This portion is not to exceed twenty-five per cent. While he is serving a sentence at corrective-labor, the accused is deprived of the right of a wage increase, of his regular vacation and of other privileges. Time spent at this work is not applicable for social security benefits, for qualification and priority rights in his occupational classification. In addition, the accused person can be transferred to a less responsible job or inferior position.

It is easily seen that by means of a wide application of this type of punishment, the state, as an entrepreneur, achieves great savings. The state pays less wages, cuts down social security and vacation time, and is in a position by means of pressure 'to wring out the sweat' of a condemned person, who must strive to get back to normal conditions of work. ²²

Even more profitable for the state are the correctional-labor enterprises that are established by the corrective-labor agencies. In regard to remuneration, as well as to feeding and rationing, these enterprises are treated in an identical manner with those established for persons in places of imprisonment. In this way these enterprises cost even less to operate.

Finally, still another form of exploitation of labor as a means of punishment is either exile combined with corrective labor, ²³ or loss of liberty for a period of up to twenty-five years, connected also with work in special corrective-labor institutions, the so-called concentration camps, with 'isolators' for the worst enemies of the regime. No one knows exactly the numbers of prisoners in these camps, but these prisoners have completed work of tremendous scope: the construction of the Belomor-Baltic Canal; the construction of towns and railroads in the extreme Northeast region of the Far East (the city of Magadan, for example), various works in the Arctic zone of Siberia, gold mines, etc. One may judge from the scale of these enterprises how widely penal servitude is applied in carrying out various phases of socialist construction. ²⁴

Another type of punishment, which at the same time, serves as a source of income for the government, is confiscation. The property of a condemned can be confiscated only for the benefit of the state. ²⁵

The application of confiscation as a measure of punishment is limited in the criminal code of cultured nations since such measure removes the means of subsistence of not only the criminal, but also of his family. However, in Soviet criminal law this motive is ignored and confiscation is a supplementary punishment not only to a sentence of death by shooting, (and since the law of May 26, 1947, to confinement to a camp of correctional labor for twenty-five years) but also to other penalties for a number of various counter-revolutionary crimes and crimes against the government, or public property.

The fact that penalties in the Soviet Union are increasing not only for crimes against the socialist state, but especially for crimes against public and private property and against those belonging to leading and privileged groups seems to be indicative of a weakening of the system within its own sphere.

Chapter XXIV

THE JUDICIAL ADMINISTRATION

The October Revolution did not spare the pre-revolutionary judicial system, in spite of all its widely recognized qualities. It was wiped out and replaced by the People's courts and Revolutionary Tribunals.¹

The new judicial system was organized on the basis of class justice directed against all social and political groups and individuals who were real or potential enemies of the new regime. It was a transitory period during which principles of legality were sacrificed to revolutionary goals. Lenin believed that it was better to sacrifice a number of innocent people than to harm the interests of the revolution.

Later, when the new socialist order became stabilized, it proved to be necessary to establish a new judicial system, to guarantee socialist legality, and to protect the new social and political system.² The Constitution of 1936 (Art. 102-112) established the principles of the new judicial system, and the Judiciary Act of 1938³ developed them into a single, completed judicial system.

There is, however, the same double nature in Soviet justice that there is in the Soviet legal system in general. 'There are two types of law in the Soviet Union,' said one author, 'there is what is called the "law of war" and there is "comradely justice".'⁴ There are ordinary courts and special courts, principles of legality and of political and class retaliation.

1. Comradely Justice.

The courts organized in conformity with the Judiciary Act of 1938 are not outside politics.

'The courts will not cease to be organs of the proletarian dictatorship because they will be elected.' '... Court is an

organ of the state power and therefore it cannot be outside of politics.' ⁵

'Neither court nor criminal procedure is or could ever be outside politics. This means that the content and form of judicial activity are inevitably subject to certain political class aims and strivings.' ⁶

Civil cases arising in the private sector of the Soviet economy are uniform and simple: divorces, alimony, inheritance do not create complex controversies and do not require a sophisticated legal analysis. Civil cases arising between governmental and public institutions, enterprises and organizations are rare; finally conflicts between the state enterprises are subject to the Gosarbitrazh, an organ which is empowered to regulate these relations according to economic expediency.

The people's courts which are the most numerous and closest to the population shall try:

(a) Criminal cases involving crimes against the life, health, liberty, and dignity of citizens, viz., homicide, infliction of bodily injury, performance of illegal abortions, unlawful deprivation of liberty, rape, malicious evasion of payment of alimony, insult, hooliganism, (rowdyism), slander, and libel;

Involving crimes against property, viz., robbery, overtheft without use of force, larceny, fraud in weighing and measuring, overcharging;

Involving crimes against public administration, viz., violation of electoral laws, malicious evasion of payment of taxes and fees established by law, refusal to make deliveries to the state, failure to appear and evasion from performance of military service, violation of lawful regulations of public authorities;

(b) Civil cases involving property claims, claims connected with the violation of labor laws, claims for payment of alimony, claims involving succession rights, and other criminal and civil cases placed by law within the jurisdiction of the court.'

People's courts are elected by the citizens of the district on the basis of universal, direct, and equal suffrage by secret ballot for a term of three years (Art. 109 of the Constitution). Special qualifications for judges are not established and in practice there are many judges unprepared for their functions. ⁷ The bench of

the people's court consists, beside the judge, of two assessors. The procedure is not formal. The judge and assessors have to make all circumstances of the case clear. The parties can be assisted by lawyers.

Lawyers (*pravozastupniki*) are organized in collectives having presidiums. Admission to the collective may be revoked by the highest organ. There are eight hundred members of the Moscow collegium of lawyers. The members of the collegium practice in groups. Fees are paid not to the individual lawyer but to the group as in the case of any foreign law firm. Red Army men and trade union members are provided with lawyers without charge.⁸

Some innovations in Soviet justice are undoubtedly progressive and correspond to the interests of the rank-and-file. The procedure by which the judge is a passive witness without the right of intervening in the contest of parties, as in strictly contentious procedure, was criticized in the juridical literature. It is reasonable for the judge to assist the inexperienced party in explaining his arguments and to explain to him the juridical significance of the legal formalities.⁹ It is important for the workers and peasants to have uninterested assistance on the part of a lawyer.

It is very probable that people's courts are, or at least try to be, accessible, understandable, and just, in a 'comradely' fashion. However, contrary to the law, judges are not independent. First of all, they can be recalled by their constituents (Art. 17 of the Judiciary Act). The procedure of nomination of candidates and, consequently, of recall, is the same as in case of elections of representatives (see above Chapter XVII), which means that actually the Communist Party decides on both the election and the recall. Judges are subject to the control of the administrative organs of the Ministry of Justice and, if they are members of the party, to the directives and supervision of the Party organs.

The general principles concerning judicial procedure and status of judges are the same in regard to all courts. But courts of the higher level are further from the population. Judges and assessors of regional, provincial, and circuit courts or the courts of autonomous regions are elected by the corresponding Soviets of the region, province, etc. Judges are mostly party members. The more significant cases closely connected with the interests of the state are within the jurisdiction of the courts of the higher level.

'Regional, provincial, and circuit courts, or the courts of autonomous regions (as courts of original jurisdiction) shall try such criminal cases involving counter-revolutionary crimes, especially serious crimes against public administration, misappropriation of socialist property, especially serious crimes committed by officials in violation of their administrative duties... and such civil cases as arise between governmental and public institutions, enterprises, or organizations as are placed by statute under their jurisdiction.' (Art. 32 of the Judiciary Act).

When a court collegium for criminal cases or a court collegium for civil cases try cases as courts of original jurisdiction, they sit as a body consisting of a judge and two assessors, but if they examine protests and appeals from the judgments of the people's courts, then instead of assessors two more judges participate in examination and thus the court is sitting as a body of three judges. From this the denomination of some courts as 'troika,' meaning 'three' in Russian, came, which acquired a bad reputation because they tried so many political cases in a specific manner.

Every autonomous republic has its Supreme Court. In the jurisdiction of Supreme Courts of the autonomous republic are (Art. 40)

'...criminal cases involving counter-revolutionary crimes, especially serious crimes against public administration...' etc.

The law as concerns the regional courts allows the administrative organs of justice or the courts themselves to select the most serious cases. The competency and the organization of Supreme Courts of Union Republics is determined the same way. They try the most serious criminal and civil cases and examine appeals and protests against judgments and orders of the regional, provincial, and other courts of the Union Republic; while Supreme Courts of autonomous republics examine appeals and protests against judgments and orders of the people's courts.

All courts of the Union Republic, including its Supreme Court, are limited in their freedom of decision. Andrei Vyshinskii, in his book on evidence, characterized the judges' status as follows:

'The Soviet court does not create a new law. Soviet judges are not legislators. They are subject to the law. Functions of court are also subject to the law, as the court is not and can-

not be either a source of law, or a department of the government, independent of the law.' ¹⁰

However, as Vyshinskii asserts, Soviet judges are not completely deprived of freedom, they are guided by their 'inner conviction.'

'It is a worst perversion,' he says, 'on the part of some "scholars" to exclude the principle of inner conviction of a judge from the Soviet procedural system and the system of evidence.' ¹¹

'Soviet system of evidence rests on the principle of inner conviction, namely socialist conviction of the judge, armed with his socialist legal consciousness and a really scientific Marxist-Leninist methodology.' ¹²

Vyshinskii objects to a theory which he characterizes as a fascist theory, according to which a judge, while he renders his decision or sentence, is acting as a soldier, whose duty it is to punish everyone 'if one's act contradicts the dominating interests.' ¹³ The Soviet judge is 'free in his appraisal of facts and evidence; he acts according to his inner convictions,' Vyshinskii asserts.

Vyshinskii's argument is misleading. On the one hand, he emphasizes that the legal consciousness of the Soviet judge cannot contradict socialist ideology and that Soviet justice is closely connected with politics; and on the other hand, he tries at the same time to assert the significance of inner conviction. In fact, he repeats the 'fascist' theory only rewording it. Vyshinskii's interpretation means that the Soviet judge will condemn a violator of the socialist order not as a soldier but as a conscious socialist. As concerns the problem of weighing evidence, it is difficult to imagine a modern court which cannot appraise the facts and evidence. Such a court existed many centuries ago when the formal theory of evidence deprived the judge of the possibility of appraising evidence. He had to rate according to established values rather than weigh evidence, in accordance with his own understanding of their significance. No modern legislation, not even fascist legislation, recommends the restoration of such a system.

Vyshinskii wants evidently to suggest to his readers that Soviet justice is progressive and the Soviet judge is independent in his judgments and sentences, that he is free in rendering judgment.

It is difficult to judge from outside Russia what Soviet justice is like in practice, because of the lack of information and the absence of Soviet 'case books.' Let us admit, as some foreign jurists do, ¹⁴ that 'comradely courts' are just and that judges try cases according to their convictions. This can be correct in regard to cases of divorce, alimony, and succession of rights, but what about such cases as counter-revolutionary acts and crimes against the state? ¹⁵

It is quite probable, that there is really a spirit of 'comradely' justice in the Soviet Union which corresponds to the Western idea of justice. However, there is also in the Soviet Union special courts and unsparing prosecution against enemies of the socialist regime.

The law of December 1, 1934, prescribed that investigation of terroristic acts must be completed in a period not to exceed ten days, that this indictment be returned one day before the trial, that the case be tried without the participation of the parties involved, that no appeal or requests for clemency be accepted, and that the sentence be carried out immediately after it has been announced. ¹⁶ That is the basis for what is characterized as the 'law of war' or "law of revolution."

2. Special Courts and the 'Law of Revolution.'

By virtue of Article 102 of the Constitution which foresaw the organization of special federal courts, military tribunals, railway courts and water transport line courts are established in the Soviet Union. In localities under martial law not only purely military crimes but also crimes against the state in general, as well as against public order, robbery, and premeditated murder are placed within the jurisdiction of military tribunals. Railway and water transport special courts try cases involving violation of labor discipline and the normal functioning of transportation which can embrace a number of varied illegal acts. ¹⁷

Military tribunals have the right to try cases within twenty four hours after the charge is served on the indicted person. No appeal (cassation appeal) may be taken from the sentences of military tribunals. In the cases of terrorist acts and counter-revolution the accused person cannot have even the benefit of counsel. The sentence pronouncing death penalty, unless suspend-

ed by the Supreme Court, Attorney General of the army or the navy within seventy-two hours after the delivery of the telegraphic information to them about the sentenced to death, must be executed at once.

The justice described does not offer legal guarantees. Moreover, it can function, according to the Soviet legislation, even in peacetime in case of disorder. The other special courts also apply simplified procedure and their jurisdiction has also been expanded.

There are, however, some other elements in the organization of Soviet justice which, besides the special courts, overbalance 'comradely justice.'

First of all, the whole Soviet apparatus of justice is subject to the supervision of the government officials, the Procurator General of the U.S.S.R., and procurators of Republics, territories, regions, etc. (Art. 114 and 115 of the Constitution). Procurators of Union Republics, territories, regions, etc. are appointed by the Procurator-General of the U.S.S.R. The organs of the procurator's office perform their functions independently of any local organs whatsoever, being subordinated solely to the Procurator-General of the U.S.S.R.

The procurator is the watch-dog of the state both in civil and criminal law and may appear in any civil case on behalf of either party at any stage of the trial.¹⁸ In criminal cases he functions as a prosecutor. Besides, he may appeal and initiate the reopening of a closed case by the aid of the so-called 'protest.' Even in cases in which he does not appear in court as prosecutor, the local procurator can review the judgment of the court, whether it is one of conviction or acquittal. If he considers it incorrect, he can send it for review to a higher court. Because of this peculiarity of the Soviet judicial system (re-opening is possible also upon a motion of any superior court which has jurisdiction over the court which rendered the judgment in question or it may be reopened by the Supreme Court of the U.S.S.R.) a man who has been acquitted and released, or convicted and sentenced can be brought up for re-trial. A man once tried is, thus, in daily terror of apprehension and re-trial.¹⁹

As an eye of the central government, independent of any local power, the procurator can sign an order of arrest (Art. 127 of the

Constitution) and is, therefore, one of the most important officials in the country.

The following case related in *Izvestia*²⁰ illustrates how procurators even of the lower ranks may be omnipotent.

A certain Silachev, director of the Agricultural Technikum of the Gorkii region, Gordeev, deputy director, and Malyshev instructor of the same Technikum, sent a letter to *Izvestia* in which they accused the procurator of the region, Petrov, of abusing his power. The procurator demanded various services from the personnel of the Technikum, including repairs to his apartment. He also appropriated products of the kolkhozes.

This letter was forewarded to the Procurator-General of the U.S.S.R. From his office it was in turn sent for investigation to the Procurator of the R.S.F.S.R. The latter sent it to the procurator of the Gorkii region, i.e., to the accused himself. An investigator was duly charged to inquire into the case.

As a result the authors of the letter were arrested and accused of squandering socialist property. However, under pretext of an uncompleted inquiry, the formal indictment had not been handed down and trial of the case was delayed. Those arrested persons wrote several scores of complaints to the Procurator-General of the U.S.S.R. and various other institutions. From the office of the Procurator-General complaints were, as a rule, forwarded to the Procurator of the R.S.F.S.R., from there again to the procurator of the Gorkii region. The arrested people remained under arrest, the case could not get out of its vicious circle.

At last the investigation was assigned to the Procurator of another region. He did not find grounds for arrest and discharged the director of the Technikum and his deputy.

The procurator of the Gorkii region appealed to the Procurator-General, who appointed his own investigator to look into the case. As a result, director and deputy-director were again arrested. There was never, however, any investigation concerning the activity of the procurator.

Izvestia collected the evidences on its initiative. The collected data proved that administration of the Technikum was right and that the facts were against the procurator. *Izvestia* proved that the procurator and his assistant in the meantime had been promoted.

There is no doubt that many procurators support the law, but a

system which creates irresponsibility and encourages arbitrariness is destructive.

'If the procurators could be chosen from among angels, perfection might possibly be achieved, but if the procurators are ordinary human beings, liable to all the prejudices and psychological urges of the times, that of self-advantage included, the system may well fall short of the legal paradise it seeks to establish.' ²¹

In addition to procurators, the Supreme Court of the U.S.S.R. functions also as a federal organ of supervision.

'The Supreme Court of the U.S.S.R. is the highest judicial organ. It is charged with the supervision of the judicial activities of all the judicial organs of the U.S.S.R. and of the Union Republics.' (Art. 104 of the Constitution).

'The Supreme Court of the U.S.S.R. and the Special Courts of the U.S.S.R. are elected by the Supreme Soviet of the U.S.S.R. for a term of five years.' (Article 105).

The Supreme Court, as well as the Procurator-General, is an instrument of the Party policy. Because elections by the Supreme Soviet are, as we know, merely rubber-stamp approvals of nomination by the leaders, the Supreme Court, although elected, has as little independence as any other Soviet institution. Unlike the Supreme Court of the United States, the Supreme Court of the U.S.S.R. does not have the right to nullify unconstitutional laws. ²² As a purely judicial department, the Supreme Court instructs more than it interprets for the other courts of the Soviet Union. ²³

3. *The Justice of the Secret Police*

The worst aspect of the Soviet organization of justice is however the discretionary power left to the secret police.

According to the statutes of the ministries of Interior Affairs (MVD previously NKVD) and State Security (MGB), and special decrees concerning their jurisdiction, ²⁴ the agencies of these two ministries are empowered to investigate the activity of socially dangerous elements and, depending on the investigation, to turn the matter over to a regular or military court or to apply preventive measures on its own initiative. In the latter case, the ministry is

empowered to banish persons considered to be socially dangerous either for settlement in certain localities for a term not exceeding five years or to confine them in a correctional labor camp for a similar term. Prolongation of this term is not prohibited, and consequently, depends on the M.V.D.

Using this extraordinary power of non-judicial punishment the Soviet police has exiled to the remote parts of the country a great number of wealthy peasants (*kulaks*). The exiled persons can never return to the place of their former residence. The Central Executive Committee, Tsik of the U.S.S.R. decreed on January 23, 1935, the following: 'Restoration of legal rights of the exiled kulaks does not give them the right of leaving their new settlements.' ²⁵

This decree is an evidence that exile and banishment have disguised a planned policy of the coercive resettlement. The text of some decrees concerning the exiled kulaks discloses that a number of kulaks have been exiled according to resolutions of meetings of their co-villagers and decisions of the local authorities. ²⁶ The exiled kulaks were simultaneously disenfranchised. They had been promised that their rights would be restored to them after five years if they proved their loyalty. The 1935 decree quoted above ordered, however, that peasants whose rights were restored were to be left forever in the place of exile. By this system the Soviet government colonized various remote parts of the country, the Arctic zone in Siberia, deserts of the Central Asia and the Far-eastern borderlands, rich with gold mines. Probably the same method has been applied since the end of World War II for colonization of the annexed Kurile Islands and Sakhalin.

Still worse are the conditions of those Soviet citizens who are banished and confined in the correctional labor camps. As was explained above, the population of these camps consists not only of convicts but also of 'socially dangerous elements' (class enemies, de-classed elements and unstable elements from among the toilers). Those who are banished by order of the administrative organs are subject to the provisions of the Correctional-Labor Code. ²⁷ They are supposed to be re-educated there and become 'adapted to an environment of industrious communal life.'

The Correctional-Labor Code mentions 'the colonies for mass work situated in distant territories,' 'the regime ... carried out on

the basis of strict isolation,' 'the piece-work wage based on standardized out-put,' the separation of mothers and children: 'Females sentenced to deprivation of liberty may be allowed to have children with them up to the age of four years.' ²⁸

Especially drastic are the isolation-wards and penal colonies (Art. 50). Some disciplinary measures shall be imposed by the superior officer of the place of deprivation of liberty. Some measures shall be applied by decision of the 'Comrade Courts.' Art. 79 mentions among the disciplinary measures 'transfer to the penal colonies for a period of up to one month,' and 'transfer to places of deprivation of liberty where a severer regime is prevailing or to localities further removed from the domicile of the sentenced persons.'

In the same way that exile of the kulaks has been used for planned colonization, confinement to the correctional-labor camps furthers a policy of carrying out parts of the Soviet economic plans. The construction of the White Sea-Baltic canal ²⁹ is only one of numerous enterprises carried out by convicts and by those confined by orders of the agencies of the M.V.D. Correctional-labor camps, designed officially for re-education, are in fact transformed into means of mobilization of very cheap and defenseless manpower for execution of the hardest work. The system of isolation of slave workers offers the possibility of uncontrolled exploitation. ³⁰

A study of the Soviet justice and Soviet power cannot overlook non-judicial punishments and the forced labor organization. Guided by enthusiasm and devotion to socialist construction, the Soviet government has established a legal system submitting individuals to the unlimited discretion of the state. Having based its new ethics on the principle 'the end justifies the means,' the government has introduced a system sacrificing millions of people to the final ends of its coercive reorganization of the world.

PART VIII

PRINCIPLES AND PRACTICE OF INTERNATIONAL LAW

CHAPTER XXV

TWO SYSTEMS OF INTERNATIONAL LAW

Marxist doctrine faces some basic and conflicting inconsistencies when applied to International Law. If law expresses the will of the dominating class, then the Soviet Union and the capitalist countries express two opposing and irreconcilable laws. If, nevertheless, international relations between these two antagonistic worlds are necessary and some international law is devised which is acceptable to both, then law, or at least some provisions of law have no class character,—a conclusion contrary to the Marxist theory of the class character of law. This breach in the Marxist doctrine of law is not easy to eliminate. In fact, Soviet jurists have gone astray looking for a correct answer to this puzzling problem. ¹

1. Development of the Soviet Concept of International Law

An authoritative Soviet jurist, Eugene Korovin has stated repeatedly that the antagonism existing between the proletarian state of the Soviets and the bourgeois world makes it impossible to establish a legal system acceptable to both parties. The international law of the Soviets during the transitional period preceding the World Revolution he referred to as an expedient compromise necessary for the temporary co-existence of two different social systems. The transitional period would last until the Great Socialist Revolution transformed the entire system of International Law in conformity with the principles of the proletarian state. ²

Like Korovin, Pashukanis, the uncrowned leader of Soviet legal thought during the NEP Period, also recognized the possibility if not the necessity of compromise between the antagonistic systems during a transitional period. His optimistic statement was based on the fact that during the NEP period both systems used the traditional principles of commodity exchange.³

This expression of the Soviet concept of International Law seemed logical and consistent and foreign jurists accepted it as the official point of view.⁴ Taracouzio, for example, has defined the Communist conception of international law as 'provisional inter-class law which aims to further the interests of organized national laboring classes in their common struggle for proletarian world supremacy.'⁵

However, the idea of compromise did not appeal to the revolutionary consciousness. It did not contradict the Soviet international policy of the period of NEP, but it was and is adverse to the spirit and tasks of the Soviet state and its striving for world revolution. In his later work, Pashukanis deserted the idea of 'international law of the transitional period,' as a 'reformist' idea and stated that international law is one of the forms of the struggle for supremacy between the capitalist states and between socialist and bourgeois systems.⁶

However, the new alarming theory offered by Pashukanis also proved to be unacceptable. At the time when he emphasized his new conception of international law as a means of struggle between the conflicting and competing systems, two Five Year Plans were being realized. The communists began to build socialism within their country and neither the idea of compromise, nor the idea of irreconcilability corresponded to the new political trends. The first socialist state did not wish to undermine its authority by the acknowledgment that its relations with the bourgeois states are based on a compromise, neither did it want to challenge the capitalist world until more favorable conditions arose.⁷ Pashukanis's new statement was rejected. Korovin and Pashukanis were both accused of 'reformism,' of the 'Menshevist belief' that a great change in the class character of international law can take place without the 'proletarian revolution' in the capitalist states. They were accused of saying that international law established by capitalist and socialist countries can be

cleansed of its class character and that the two antagonistic systems of international law, one established by capitalist countries for capitalist aims, the other propagated and protected by the Soviet Union for Communist aims, could be considered as a single system.⁸

Korovin proved flexible and recognized his mistakes at once. He acknowledged that he had admitted several serious mistakes in his earlier published works, that the idea of a transitional period of the development of international law was wrong and that he had not succeeded in overcoming the influence of bourgeois doctrines of international law and was not sufficiently familiar with the Lenin-Stalin methodology.⁹ One year later he published a review of Taracouzio's book in which he emphasized that it was his erroneous ideas to which the foreign authors referred. He also objected to the idea defended by Pashukanis that the complete severance of international relations between the socialist and capitalist states was imminent as a result of the struggle between the two conflicting systems.¹⁰

Pashukanis, who was more persevering in his convictions, was declared to be 'an enemy of the people.' A new doctrine replaced the rejected theories of Korovin and Pashukanis.

One of the main points of the Soviet international policy of the period of the Five Year plans was formulated, in 1934, by Stalin, who characterized the international law of the period as consisting of two opposing systems, but also emphasized the increasing cooperation between the opposing groups of states. This new doctrine was later formulated by Molotov as 'cooperation and competition.' Vyshinskii repeated it in 1938 in his report to the congress of legal workers.¹¹

After that time Soviet jurists began to discuss the problems of international law more carefully and tried to avoid a description of its trends. Antonov, for example, stayed safely within a purely formal definition of international law, calling it an instrument for adjusting various economic and political relations among states in the form of custom and treaty.¹² Conciliatory voices were not heard until the eve of World War II when the Soviet Union was anxious to have allies against the aggressive advances of Germany and Japan. The periods before and during World War II were not favorable for aggressive doctrines, but at the end of

the war, the Soviet international policy changed, the idea of the possibility of peaceful co-existence of the antagonistic social and economic systems was rejected.

In 1946 Korovin published an article in which he said that in the light of the post-war events and policies, international law was in 'the arena of struggle between two opposite tendencies; the progressive democratic versus the reactionary-imperialistic.'¹³ His article, which was published in this country, expressed this attitude. It must be admitted, he said, that 'there is not and cannot be a code of international law which would be equally acceptable to the cannibal and to his victim; to the aggressor and the lover of freedom, etc.' International law of the post-war period he characterized as 'the sum total of legal norms guaranteeing the *democratic minimum* of international protection. The process of overcoming anti-democratic trends is the immediate objective which unites the progressive elements of contemporary mankind.'¹⁴

Korovin has emphasized the discrepancies in the Soviet and capitalist principles of international law, illustrating their different understanding of sovereignty and democracy. This difference of principle is the reason why the Soviet Union has ignored free elections in the Balkan countries, protested against the presence of foreign troops in Greece, Syria, Lybia, and Indonesia, and supported a new and broader democracy rather than a parliamentary form of democratic state. Korovin has expressed the Soviet point of view concerning the right of 'replacing the old governments, refusal to protect reactionary social forms and political institutions' and the duty of supporting a nation which has become the victim of aggression. In Korovin's article the principal differences between the Soviets and the West were expounded; the tendencies of Soviet policy, and the imminent conflict between the Soviet Union and the rest of the world were clear. Korovin's original idea concerning a transitional period of compromise was restored during the War, but after the War, the Pashukanis doctrine which stated that international law was a means of struggle between the socialist state and capitalist nations was reinstated, as it more exactly suited the new trend of Soviet policy.

However, the positive side of Soviet international law is still in a state of formulation. In practice, it does not exist, as the

Soviet textbook of international law acknowledged it in 1947, and only a few Soviet concepts concerning particular problems of international law are reflected in the international policy of the Soviet Union and its disputes in the international arena.¹⁵ The same textbook discloses that the socialist world considers the present international situation as an abnormal symbiosis, which has to be tolerated for a certain time only. Lenin is supposed to have said in one of his articles in *Pravda*¹⁶, that 'International law is only continuation of domestic policy, but by other means.' This must be understood to mean that the capitalist world establishes international law in accordance with its imperialist policy based on the exploitation of the backward nations; while the socialist world, in accordance with its main goal of the reorganization of the whole world, strives for the liquidation of capitalism with its colonial empires and inequality, and for building of the World Union of Socialist Republics with Communist party at the head of each republic and with one unifying center at the head of the world system. Two different programs presuppose two different systems of international law as instruments at the disposal of the diplomats. These ideas and plans which were only theoretically apparent before the war, became quite obvious in the post-war period. This period is characterized in Soviet literature as a period of struggle between the 'imperialist, anti-democratic camp and the anti-imperialist, democratic camp,' the one under the leadership of the American imperialist circles, the other under the leadership of the Soviet Union. Each one has its own policy and, correspondingly, its own line of diplomacy. *Tertium non datur.* 'The third course is a myth.'¹⁷

The official Soviet formulation of its international policy as 'competition and cooperation' nevertheless is still in force; only, since the end of the War, competition has been more emphasized than cooperation. 'Contemporary international law is not a single system as far as its content is concerned, rather it represents a struggle between two trends of international policy, differing in their principles; one is imperialist and the other Soviet.'¹⁸ Vyshinskii has offered his definition of international law correlating it to the international policy of the Soviet Union: he said, 'We define international law as an aggregate of norms regulating relations between the nations in the process of their struggle and

cooperation, expressing the will of the dominating classes of these nations and guaranteed by the coercive measures applied by the states individually or collectively.' ¹⁹

In his definition, Vyshinskii eliminates the most important theoretical difficulties. He is speaking about two systems of international law expressing two different class ideologies as if a common international law did not exist. If each of the two different groups of nations has its own international law expressing the will of different classes, then how could it be possible to have general principles of international law and common sources of international law?

2. Sources of International Law

The Communist Party of the U.S.S.R. cannot dictate its will to the group of capitalist states. At the same time the struggle and competition between the two antagonistic camps does not exclude the necessity of their symbiosis and cooperation until the socialist world, as the Soviet theoreticians believe in it, will reorganize the whole world according to the Soviet pattern.

Consequently, some order of international relations must be recognized by both parties and some norms of international law must be common for both capitalist and socialist states.

As a matter of fact there are some commonly used general principles of international law in addition to international treaties, ²⁰ some customs which are adopted by the civilized world resolutions of international conventions (Berlin Congress, Hague Conventions, etc.) applied as commonly accepted rules and the opinions of some great thinkers (like Hugo Grotius) having also a great significance in the history and practice of international law. Article 38 of the statute of the International Court of Justice indicates conventions, customs, and general principles of law as the main sources of international law to which the International Court can refer, and it cites as an additional source, resolutions of the international institutions. Insofar as the Soviet Union participates in the international organizations it cannot ignore the sources cited above as international law, and this problem is very often discussed by Soviet jurists.

The Soviet jurists do not reject the 'general principles' as a source of international law, although this source is most disputa-

ble. Vyshinski defines such principles as 'elementary principles of international law, which are acknowledged up to this time by various nations and prove to be the foundation and main content of international law.'²¹ The Soviet science of international law, for its part, does not consider general principles as an important source of legal provisions. According to the Soviet doctrine, the main sources of international law are the treaties having law-making force (*traité-loi*); secondly, customs originated from precedents; and in the third place, resolutions of international organizations.²² As subsidiary sources, there is also legislation and jurisprudence of individual states, if they are recognized internationally, the laws and rulings concerning, for example, rights of foreigners; and finally, general principles of international law taken from international practice.²³

Therefore international treaties are a main source. 'The sacred formula, that of the "common principles of international law", is only rarely met with in the Soviet treaties,' wrote E. Korovin in 1928.²⁴ Conventional law on the other hand is put forward in the Soviet doctrine of international law in the same manner as the principle of sovereignty. 'Emphasis on the sanctity and immutability of treaties has become a marked feature of Soviet doctrine,' because, as L. B. Shapiro explains,²⁵ the Soviet Union does not recognize, and does not wish to recognize the *ordre public*, as having absolute principles for the international community. The Soviet Union claims to be bound by portions of international law of her own selection,²⁶ and therefore, considers treaties as the main source of international law.

'A solid legal order in international relations can be secured on the foundation only of mutual agreements of the sovereign nations concerning points in question and their recognition of mutual rights, needs and interests. This is the reason why the Soviet theory of international law considers treaty, based on the principle of equality of sovereign nations and respect of their mutual interests and rights, to be the main source of international law. If only international law and its institutions are based on the agreement of the parties and voluntarily accepted obligations they can be secured with both moral and legal support. Under these conditions only international treaties acquire formal as well as factual force and their legal significance and validity must be unconditionally observed.'²⁷

Consequently the Soviet Union recognizes only the treaties which it has itself concluded. 'In so far as they reflect the pre-existent order of things destroyed by the Revolution, the agreements become null and void.' ²⁸

The Soviet Union does not wish also to submit itself to the rulings of the International court, which is composed of judges with non-proletarian consciousness. Soviet representatives did not accept the recommendation of the American Bar Association with respect to the conferring of compulsory jurisdiction *ipso facto* and without special agreement between parties. ²⁹

However, when it corresponds to the interests and principles of Soviet legal consciousness, as for example, the decision of the Nuremberg court, the Soviet jurists refer to the rulings of an international court. ³⁰

The principal Soviet idea of International law is the idea of coordinated coexistence (cooperation and competition). It has to be founded on a free agreement based on full and unreserved recognition of the equality of parties 'acting in a peaceful and democratic platform.' Every norm of international law has a compulsory character only insofar as it is based on agreement. ³¹

The proletarian and socialist state recognizes only such principles of international law which express or correspond to the 'will of workers and peasants.' It rejects consequently any submission to the principles whose origins have nothing in common with the ideology and tasks of the socialist revolution. It concludes treaties and conventions which establish rights and obligations acceptable to the socialist state. It applies only such provisions of the international law which are established with its participation and accepts only such portions of the existing system of international law which correspond to its interests. As a member of the United Nations, it uses the right of veto which guarantees it from submission to the resolutions not supported by its representatives, and it does not acknowledge and ratify resolutions contradicting its interests and principles.

Soviet cooperation with other nations and the recognition of international institutions are conditional. They are connected with an open and avowed objection to submission of issues to any international authority. For the same purpose the Soviet theory of international law consistently supports the principle of sovereignty.

3. *Principle of Sovereignty*

In public speeches of Soviet diplomats as well as in publications concerning international law the principle of sovereignty is put forward as a battle slogan of the proletarian state in its struggle against imperialism.

The political significance of this important concept cannot be disregarded. Its first goal is to revolutionize the societies of 'oppressed' peoples. Sovereignty for the Soviets must be viewed, according to T. A. Taracouzio, as 'a paramount proletarian right for international social reconstruction manifested temporarily in national self-determination and class struggle.'³² In the hands of Soviet diplomats the idea of sovereignty is a weapon with which they arm the rebellious masses in their first stage of struggle for national freedom.³³

The Soviet position concerning the defense of Abyssinian independence was explained as based 'on the principle of full equality of semi-colonial states, on their independence and sovereignty, and a flat rejection of any interference in the sphere of their sovereign competence, and on recognition of their right to self-determination.'³⁴

The principle of sovereignty is used by the Soviets not only for their revolutionary tasks, but also for competition in the international arena and the protection of its own half-isolation. This is emphasized by E. Korovin as follows: 'Sovereignty as conceived by Soviets is a weapon in the struggle of the progressive-democratic forces against the reactionary-imperialist ones ...'³⁵

The political significance of the slogan discussed is correctly elucidated by J. Florin:

'The situation of half-isolation quite naturally engenders a complex of legal conceptions in which contractual law is preferred to customary law, bilateral agreements to multi-lateral pacts, the sovereignty of the single state to its limitation by political international organization, arbitration and the like.' 'The states preserving their "sovereignty" protect in particular their right to decide issues in the last instance—by the use of force and not by invoking any pre-established rule'.³⁶

Thus, the principle of sovereignty is adapted by the Soviets for a double political function: 'The Soviet Union supports the

principle of sovereignty as a means for isolating itself from the interference of the non-Communist encirclement,' and for protecting the other states, 'the most advanced social and state forms from imperialist encroachment,' as well as for 'defending the poor and liberating the oppressed peoples in colonies and dependent territories from the imperialist yoke.' ³⁷

The principle of sovereignty, if discussed from the legal point of view, means a reaction of the Soviet Union against the modern trends in the development of international law. The organization of the League of Nations after World War I and of the United Nations after World War II corresponds to the tendency to establish a new international body having an indisputable authority and, if possible, a law-making competency supported by the international coercive force. This tendency is leading nations toward recognition of commonly used principle of international law and, may be in the long view, to world government. This idea is not foreign in principle to Communist ideology with its notorious *Comintern*, but it is unacceptable for Communists as they want to organize the world into uniform republics having the same social and economic structure as the Soviet Union. By no means do they want a world consisting of both capitalist and socialist countries. Therefore the idea of the priority of international law, presupposing submission of disputes to principles of 'World-Law', does not appeal to Soviet jurists at present.

'The development of international law consists in the collaboration of the sovereign nations, but not in establishment of super-national "world-law" ³⁸'.

The Soviet Union pretends to be the only real protector of the sovereignty of small and weak nations.

On the other hand the Soviet Union pretends that it not only protects the small nations effectively and disinterestedly but also supports them in their striving for independence.

'Sovereignty in the Soviet understanding is not only formally declared recognition of the independence but also material assistance for the actual guarantee of this independence.' ³⁹
'The principle of sovereignty means a formal equality of a state in its international relations, non-interference in its domestic affairs, etc.' ⁴⁰

Sovereignty presumes independence and, therefore, if sovereignty of a certain people is not recognized it is the same as if this people were disarmed in the struggle for independence.⁴¹ It is probably for this reason that I. D. Levin emphasized that a declaration of political independence is not sufficient for a state. The small nations cannot secure their real independence if they depend economically upon other nations. Sovereignty and economic and military power of a state are inter-dependent; economic and military power are the real guarantees of sovereignty. Economic independence in turn can be achieved if only a state separates itself from the capitalist bloc and is oriented toward the socialist world.⁴²

However, Levin's emphasis on the economic and military power of the state and its ability to defend itself became the pretext for criticism in the Soviet press. Vyshinski noted: 'to consider sovereignty to be connected with the true ability to exercise power on one's own territory or outside it, means to subject a state to the arbitrariness of another who might be stronger.'⁴³ Korovin in turn attacked Levin still more precisely. He characterized the emphasis on the real power of a state in the definition of sovereignty as the inherent denial of sovereignty to the weak and powerless state or to the state whose territory is temporarily occupied by an aggressor.⁴⁴

In his further discussion of the problem, Levin expressed the opinion that the Soviet Union has realized for the first time in history a new form of a sovereign state, which differs essentially from the other forms known to history. In non-Communist states sovereignty is synonymous with class dictatorship; in the Soviet Union the people are free from any exploitation.

In the light of these ideas it is understandable why the Soviet Union recognized North Korea as a sovereign state and rejects recognition of South Korea, where the domination of exploiters, as the Soviets assert it, is not liquidated yet. Trans-Jordan is not a sovereign state, according to Levin's opinion, because it has only 'illusory' independence being in fact a base of British imperialism in the Near East, but Poland remains a sovereign state even with a Soviet marshal at the head of its military forces, because Soviet support is presumed to be disinterested. The European countries are losing their sovereignty because they have

been subjected to the Marshall Plan and joined the Atlantic Pact; they have practically abrogated their independence, and transformed themselves into the lands-knechts of American imperialism, according to the Soviet interpretation. On the other hand, the military alliance between the Soviet Union and its satellites and their common economic plan (see next chapter) do not transform the latter into the lands-knechts of the Soviets, because the Soviet Union is a protector of peoples' sovereignty. India, Pakistan, and Indonesia are not sovereign nations, while Ukraina, Lithuania, etc. are. ⁴⁵

The interpretation of sovereignty by Soviet jurists is thus suitable for propaganda purposes, for the struggle against 'imperialism', and for 'socialism,' as are many other legal conceptions. Starting from completely incorrect premises, Soviet diplomacy is consistent in its subsequent application.

The discussion of the problem of sovereignty from the point of view of international law is a good illustration of how the Soviet approach to the problems of international law differs from that of other nations. It is an additional illustration of how the world is split into two irreconcilable parts. Depending on the circumstances, the Soviet Union can be friendly with non-Communist nations to a degree, ⁴⁶ but in spite of all declarations about the possibility of the coexistence of two different political, social and economic systems, ⁴⁷ the Soviet Union cannot reconcile itself to such a symbiosis 'seriously and for a lasting period.' Its final goal is to liberate the world from 'capitalist exploitation' and to establish everywhere the 'proletarian dictatorship,' as the only form of government which can guarantee to the people a 'real independence and real sovereignty,' in the Soviet sense. ⁴⁸

4. Soviet Contributions to International Law

Formulating the general trends and peculiarities of Soviet international practice, Korovin said at the time of the thirtieth anniversary of the Soviet state in 1947:

'In the hands of the U.S.S.R. and the democratic states supporting the latter, international law has emerged as a weapon in the struggle for peace and universal security, as a means of protecting the achievements of democracy, national sovereignty, liberty, and the independence of

peoples, and as a legal barrier against imperialist expansion and aggression.”⁴⁹

As the first socialist state, representing ‘the highest forms of democracy and the most perfect social and economic system’, the Soviet Union claims to be the only competent interpreter of the high principles of peace, equality, justice and independence and, therefore, the only state having the right to reject or to modify the existing rules of international law.

The negative attitude toward the principles of the international practice of the non-Communist states is emphasized with precision by Korovin.⁵⁰ The Soviet state is opposing, he said, the principle of freedom of seas, as Americans interpret it, the ‘open door’ policy, protection of ‘universal’ human rights, international control and world government, because all these plans disguise the tendency of capitalist states to secure their hegemony.⁵¹

In regard to the positive characteristics of the legal foundations of the Soviet international practice, Korovin quotes Molotov:

‘... the Soviet Union is using the principle of sovereignty as a legal bulwark for the protection of peoples from imperialist encroachment and from military and economic aggression and as a guarantee of the liberation of the peoples of colonial and dependent countries from imperialist enslavement, as well as a means of guaranteeing the establishment of the most progressive social and political system.

Thus, sovereignty in Soviet international practice has been elevated to a new historical level and has taken on a new sociopolitical meaning.’⁵²

From this new socio-political approach to the problem of sovereignty derives a negative attitude toward intervention, ‘secret diplomacy,’ international lease of territories and mandates, and any kind of international control over other countries. The Soviets pretend to strictly observe the principle of equality of nations and of respect for the freely expressed desires of other nations. The Soviet Union rejects the idea of application of pressure and abuse of power. As we have seen, it emphasizes ‘the conventional’ character of international law based on voluntary agreements between parties. Originally Korovin supported the idea that a ‘revolutionary intervention’ does not contradict the tendency as well as the duty of the Soviet state to assist sovereign nations

in 'the establishment of the most progressive social and political system.'⁵³ Intervention may become 'the mightiest instrument of progress, a surgical measure to ease the birth of a new world.'⁵⁴ But later Korovin was forced to reject this idea as one of his mistakes, 'the Soviet Union ... is not a supporter of revolutionary intervention but opponent of any intervention,' he said.⁵⁵

Secret diplomacy presumes either a kind of pressure for getting special privileges or a conspiracy against other nations. Secret diplomacy had been disavowed and rejected by the party of Lenin⁵⁶ and yet practiced by the Soviets.

The Soviet government also objects to any annexation or seizure of foreign soil and incorporation of a small or weak nation, without 'the specific, clear and voluntarily expression of the consent and desire of this nation.' According to the official declarations of the Soviet representatives in the United Nations, even the lasting presence of armed forces on the foreign territory is a serious violation of the sovereign rights of the state. As Korovin asserts, the leasing of territory as well as *condominium* has been a disguised form of the acquisition of foreign territory or camouflaged seizure of territory on the part of the stronger state.

The Soviet Union also tried to prevent the establishment of international control over other countries. It objected even to the establishment of international health organizations. It did not allow an international commission to investigate conditions in North Korea. Soviet satellites also followed this practice. The international commission organized by the United Nations for investigating the pro-guerilla campaign during the civil war in Greece after World War II was not allowed to cross the Greek boundaries or those of her northern neighbors.

Korovin's statement about the Soviet principles of international law drastically contradicts well-known facts. For example, contrary to its objections against intervention, the Soviet Union intervened in the internal affairs of Rumania and forced King Michael to appoint a Communist as a premier; intervened in Czechoslovakia and prohibited it from signing the Marshall plan; intervened in the Chinese civil war, supplying Chinese Communist with the armaments of the surrendered Japanese troops and not letting Chinese nationalists use Dairen and Port Arthur as they had the right to do as a legitimate government of China and by

preliminary agreement between them and the Soviet Union.

But from the point of view of the Soviets, all these acts were not interventions, but rather an assistance to the sovereign peoples to liberate themselves from the illegal oppression established by the counter-revolutionary minority. And, besides, the Soviet Union does not use open military intervention. Soviet officers and soldiers are in the uniform of the country to which they are assigned, Soviet troops are replaced by a fifth column. Finally, the main force which assists the Soviet Union to realize Soviet policy in every foreign country is the local Communist party subordinated to Moscow leadership.

Secret diplomacy had been disavowed, but the Soviet Union applied it from its beginning. There was a secret agreement of May 7, 1920, concluded between the R.S.F.S.R. and Georgia. There are secret agreements between the U.S.S.R. and its satellites concluded through the medium of the Cominform.

The outside world could not help but guess that there had been negotiations between Stalin and Mao Tse-tung, in 1949, and that there had been other contents to their agreement of February, 1950. Nor does the world know on what conditions the Chinese Communists undertook their intervention in the Korean war in 1950. But, if there are such secret treaties, they are secret for the enemy only. The Communist leaders of all countries might be informed, if not about details, at least about the main points of such agreements. On the other hand, since the 'capitalist encirclement' consists of imperialists and war-mongers, and enemies of the 'freedom-loving' socialist state and 'people's democracies,' how can the socialist world open its military secrets to its mortal enemies?

The Soviet Union is against annexation. However, it has annexed Baltic provinces, some parts of Finland, and some parts of Germany. Carpatho-Ukraine has been incorporated without a plebiscite; the autonomous republic of Tannu-tuva has been transformed into an autonomous region of the RSFSR. These acts could be explained perhaps by the desire of the Baltic peoples themselves, who asked to be incorporated; or by interest of Finland, which sought to be protected against the possibility of becoming a base for operations against the U.S.S.R. with the disastrous consequences that such an operation would bring to

the Finnish people⁵⁷; perhaps the annexation of former German and Rumanian territories is explained as preventive measures against the rebirth of Fascism.

Objections to different forms of international control find justification in the political caution of the socialist state, which suspects its ideological enemies of disguising espionage in the form of international control. The Soviets believe that such slogans as 'free trade,' 'open door,' and 'equal opportunity' serve as weapons for the political and economic aggression of imperialism in the conditions arising today from the co-existence of imperialist states, the socialist state, and the countries of the new democracy.⁵⁸

In short, every part of the divided world has its own law and its own principles. Insofar as co-existence is inevitable there are some norms of international law which are suitable for all groups, but international law consists of some imperialist principles which are flatly rejected by the Soviets, and some profound principles of the socialist order unacceptable to the rest of the world.

No wonder that the Soviet principles of international law are in fact formulations of Soviet international policy and that Soviet policy may diverge from these 'principles.' Soviet specialists in international law must be very cautious in their assertions. We know already that Korovin was reprimanded for his original ideas concerning intervention, which in fact do not contradict the Soviet practice; Pashukanis's doctrine about the irreconcilability of two systems of international law, although disavowed, does not contradict the post-War Soviet international policy; I. D. Levin was criticized for his teaching that economic and military strength are the essential elements of sovereignty though this teaching corresponds completely to the Soviet attitude toward small nations. As a matter of fact, the Soviet Union constantly emphasizes its own significance as a Great Power, the necessity of coordination of the policy of the Big Four and Vyshinskii with haughty irony speaks about his 'small' opponents in the United Nations' Organization:

A surgeon, head of the Argentine delegation, objected to the right of 'veto.' He was seconded by a small Philippine general, Romulo, having an ill-becoming aplomb, Australian Minister of Foreign Affairs, Evatt, delegates of Cuba, Costa Rica, Uruguay, Paraguay, and *tutti quanti*."⁵⁹

A lack of consistency and even direct contradiction between the Soviet principles and practice of international policy are not rare. The Soviet statesmen speak constantly about peaceful intentions of the Soviet Union and its hatred of aggressive actions of the imperialists. In the meantime Stalin characterized some wars as 'just wars',⁶⁰ and supported, if not inspired, the Chinese aggression in Korea. In the United Nations the Soviet Union proposed to withdraw troops from foreign territories, to limit armaments, to outlaw atomic weapons and to establish criminal responsibility for war propaganda. At the same time, it has created obstacles for withdrawing troops from Austria, it has armed satellites, supplied them with military specialists, hastened its own preparation for war, and has rejected all proposals for effective control over production of atomic bombs. All this because of the belief in the inevitability of a final and decisive conflict with the capitalist world with its disintegration and imminent destruction.

'Each additional year of peaceful coexistence of the two systems, the socialist and capitalist, strengthens the former and undermines the latter.'⁶¹

'At the present time the basic task of the foreign policy of the U.S.S.R. is the struggle for democracy, national sovereignty, freedom and independence, and a democratic world.'⁶²

The Soviet Union is in a struggle against 'imperialist war,' but not against war for realization of its ideal of the new 'democratic world' in which a socialist system is understood. Such war will be a 'just war.'⁶³ The Soviet Union is against aggression, but it does not consider aggressive a war supporting Communist forces fighting against anti-Communists.

The Soviet Union is consistent in its fundamental aggressive trends and flexible in its tactics.

5. The Soviet Union and International Organizations

Since Soviet leaders came to power with their own plan for world organization, they did not in the beginning express any sympathy for the League of Nations. On the contrary, Lenin characterized it as 'an alliance of world bandits against the proletariat.' Chicherin, then People's Commissar of Foreign Affairs, called the League of Nations 'The League of Capitalists against the Nations.'⁶⁴

In 1934 the Soviet Union entered the League of Nations and immediately Litvinov, then People's Commissar of Foreign Affairs, began the so-called 'peace-offensive' repeating his earlier formulated unacceptable proposals for disarmament and offering a new definition of aggression.

The negative Soviet attitude toward the League of Nations hardly changed, but in the thirties the Soviet Union was interested in its security. It was the time of industrialization, the beginning of the second Five Year Plan, and the Soviet Union was naturally interested in postponing, if not preventing, an imminent conflict between the Soviet Union and Germany.⁶⁵ At the same time participation in the League of Nations opened up an opportunity for the Soviet delegation to address the oppressed nations from the international rostrum and to propagate new principles of international policy.

During World War II, in conformity with a policy of friendly cooperation with the Great Democracies, the Soviet Union actively supported the idea of a permanent international body.

'The Soviet-Polish Declaration of December 4, 1941, was the first international agreement to formulate the principles of the future United Nations Organization. Two speeches by Comrade Stalin—a report devoted to the 27th anniversary of the October Revolution and his reply to the questions of Eddy Gilmore—express the high-minded attitude of the Soviet state toward the United Nations Organization. The activities of this international organization, as J. V. Stalin pointed out, "will be effective if the great powers that bore on their shoulders the chief burden of the war against Hitlerite Germany will continue to act in a spirit of unanimity and agreement. They will not be effective if this indispensable condition will be violated."'⁶⁶

In 1946, Korovin, referring again to Stalin, expressed his belief in the future of the United Nations:

'The U.N. resolved not only to wipe off the face of the earth Nazism and Fascism together with their brigand theory and practice, but also to establish a "world family of democratic countries" (Teheran declaration) based on democratic principles of foreign policy, and to build up a genuinely new international order as a "great banner of freedom for the peoples and of peace among the peoples" (Stalin).'⁶⁷

However, two years later, in 1948, Vyshinskii characterized the United Nations as an organization which was under the domination of the Anglo-American bloc and which reflected the trends of the most reactionary groups of the United States. The main goal of the United Nations, according to Vyshinskii, is to submit the United Nations organization to the influence of the Anglo-American bloc and to isolate the Soviet Union and the Slavic delegations rallied around the Soviet delegation.⁶⁸ The United Nations, an organization in which the majority of members represent the capitalist world, is considered by the Soviet leaders to be at the service of the Anglo-American bloc, disguising its imperialist tasks by referring to principles of formal equality and independence of small nations and trying at the same time to place them under submission and to divide the small nations into spheres of influence.⁶⁹

Simultaneously with the change in the Soviet attitude toward the United Nations, the Soviet Union consolidated its satellites and began the offensive against the capitalist world and 'American imperialism' specifically. Disagreements are growing more numerous in proportion to the accumulation of political influence by the Soviet Union in Asia and its accelerated preparedness for an armed conflict. In its present composition the United Nations organization will not support Soviet policy. On the contrary, the United Nations' suggestion of establishing international control over armaments and of protecting individual rights, contradicts the interests and policy of the Soviet Union. Control is unacceptable because of the conspiratorial character of the Soviet policy. Protection of human rights is considered by the Soviets to be insignificant compared with the radical reconstruction of economic and social relations on the basis of socialism, which as Soviet leaders believe, will give a *real* guarantee to all individual rights and freedoms.⁷⁰

The irreconcilable conflict between the Soviet Union and the United Nations became obvious after the war in Korea began. The Soviet Union and Communist China considered the United Nations' action in Korea as intervention in a civil war.⁷¹ The United Nations considered it as support of the South-Korean Republic against the aggression on the part of the North-Korean and a repression of aggressors.

The difference arose because of a different attitude toward the United Nations. Those countries which acknowledge the authority of the United Nations as of a *supra*-national organization cannot consider its action in Korea as intervention but as an act of international law, the application of a measure of an international police system. Supporting the legal principles on which international relations are based, the United Nations organization has a right to institute sanctions against those nations which violate the existing legal order. The North-Korean government violated the established frontiers and invaded South Korea without appealing to the United Nations. Since the existence of the South-Korean government was recognized by the United Nations organization, its actions against North Korea must be recognized as a legitimate police action.⁷²

The fact that North Korea is recognized by the U.S.S.R. and its satellites,⁷³ but is not admitted as a member of the United Nations, does not change the situation from the point of view of the United Nations organization. The latter is established principally for collective defense against the militarist nations which do not belong to the international community of the democratic peoples rather than against the members of the United Nations which are supposed to acknowledge its authority and participate in its decisions and actions. However, the international situation is complicated by the fact that there is another potential world organization besides the United Nations. North Korea belongs to the camp of the antagonistic organization. It is supported by Communist China, which is also a member of the Soviet group. The worst and most abnormal feature of this opposing group is that the leader of it, the Soviet Union, is at the same time one of the most conspicuous members of the United Nations and a permanent member of its Security Council.

The U.S.S.R. will never agree to support the United Nations in its actions against the Soviet satellites or any revolutionary government.⁷⁴ On the contrary it will inspire and encourage, if not actually support, every revolutionary movement and aggressive act directed against the 'imperialist' members of the United Nations. Although a member of the United Nations, the U.S.S.R. is thus at the same time the leader of the armed opposition to its policy and decisions.

The events in Korea illustrate the irreconcilable conflict between the two worlds: the world of democratic reforms and legal order and the world of revolution and revolutionary actions against the existing order. The solution of this conflict does not belong to the realm of international law but rather to international policy, and depends first of all upon the correlation of forces of the two antagonistic groups.

It is a tendency and a need of our age to seek to unify the world. There are two different ways advocated to attain this goal. The United Nations organization represents a democratic method for the solution of the problem. The U.S.S.R. prefers a revolutionary one. According to its plan, all nations have to destroy the existing social and economic structures, to establish identical proletarian dictatorships under the leadership of the Communist party and to unite themselves into a world union of the socialist republics. On a lesser scale, this plan has already found its realization in the unification of the so-called satellites in Eastern Europe under the leadership of the Cominform.

Chapter XXVI

SOVIET SATELLITES

The political and social organization of the so-called Soviet Satellites illustrates the methods and means by which the Soviet State organizes the new socialist world as well as the new legal principles of international relations in that new world.

The Soviet Union has a rich experience concerning the methods of incorporating small nations. This consists in establishing a particular political and social system, abolition of all political parties and other organizations which could oppose the domination of Communists, and finally, in the adoption of an economic program to conform to that of Moscow. This method has been successfully applied inside the Soviet Union, where all sovereign republics have voluntarily delegated their sovereign rights to the central government of the U.S.S.R., and it is carried out at present in the 'people's democracies' of Central and South-Eastern Europe.

The treaties which were concluded between the Soviet Union

and the people's democracies ¹ have established the mutual obligation of the parties 'to participate in the most sincere manner in all international actions for guaranteeing peace and security,' and for this purpose 'to undertake jointly all possible measures for eliminating any threat of aggression on the part of Germany or any other nation which could unite directly or otherwise with Germany.' The treaties concluded with China and Korea differ only in that, instead of Germany, they mention Japan.

Although the treaties between the U.S.S.R. and its satellites mention Germany or Japan as their common potential enemies, the Soviet press flatly recognizes that the new coalition has created an 'anti-imperialist camp.' ² 'Imperialist America' is called the worst enemy of the new coalition. ³

Besides its political tasks, the people's democracies have unified their economic plans. According to the comments of the Soviet writer, Generalov, ⁴ the chief aim of this economic cooperation is mutual assistance for securing the economic development of the cooperating nations and the improvement of the standard of living of the working masses as well as 'for providing the conditions indispensable for realization of socialism in the countries of People's Democracy and for communism in the U.S.S.R.'

But if the East-European states are really independent, what is the guarantee that they will remain in the orbit of the U.S.S.R. and not change their orientation and purposes? In other words, are they really Soviet satellites? The answer to this question is in the uniformity and specific peculiarities of the political and social structure of all these countries.

'The Soviet state and the People's Republics are but different forms of the socialist type of state. The Soviet state is carrying out the transition from socialism to communism; the People's democracies—from capitalism to socialism.' ⁵

The first experiment in forging a social structure for the transition to socialism took place in Spain in 1936 to 1938. The Spanish National Front led by Communists proclaimed an anti-fascist, anti-imperialist, pro-socialistic program. Fascism is usually defined by Communists as capitalism in its last stage. Therefore an anti-fascist movement is at the same time an anti-capitalist one. Communists expect all friends of the Soviet

Union belonging to the camp of anti-imperialists to stand ready to apply Lenin-Stalin revolutionary methods or to accept the leadership of the Soviets. As for a 'social' democracy, it signifies a government which concentrates all power in the hands of the 'workers and peasants.' Thus, the difference between this 'Democracy of a Special Type' and the Socialist Democracy of the Soviet Union proved but quantitative from the beginning. To prevent 'fascism' (capitalism) from reviving is the chief goal of his program. To prepare a nation for further socialization is its next aim.

For the transition from 'bourgeois democracy' toward the 'highest' or 'perfect' type of democracy of the Soviet pattern, and 'from capitalism to socialism,' the so-called 'People's Republics' have absorbed the same basic principles of the political and social structure. They are controlled by the Communist parties and are on the way to complete identification with the Soviet standard. A regime is established which makes any opposition to the Soviet influence almost impossible.

1. Constitutions of the Soviet Satellites

There are some differences between the constitutions of particular satellites. The construction of the multi-national Yugoslavia for instance, repeats almost literally the text of the so-called Stalin Constitution of 1936, and, correspondingly, some of the provisions of the constitution of the R.S.F.S.R. as far as local organs are concerned. The constitutions of Bulgaria, Hungary, and the original constitution of Rumania are almost identical. Their text is more simple than that of the original Yugoslav Constitution, but they are basically similar to the latter as far as the political and social structures are concerned. Before 1952 when a new constitution of Poland was issued, the shortest among the fundamental laws of the satellites had been the text of the Polish Constitutional Act of February 19, 1947. It did not contain regulations concerning organizations of the national economy or provisions determining rights of citizens. The economic structure of the new Poland was originally formulated in a series of special laws, and rights of citizens were proclaimed in a Declaration issued on February 22, 1947, by the Constituent Diet. Among the constitutions of the satellites

the most original in its wording is still the text of the Czechoslovak Constitution, which does not slavishly repeat the Soviet standard, and contains some articles more familiar with the 'bourgeois' constitutions. The most 'democratic' is, however, the Constitution of Albania as amended in 1950.

The differences which still separate the satellites from the 'highest' and 'perfect' form of democracy are rather of social-economic than of political character.

The Soviets organization of the state, having numerous local soviets subject to the control of higher soviet organs reminds us of a pyramid. Village and small-town soviets are under supervision of district soviets, which are in turn subject to soviets of regions, and so on up to the Supreme Soviet of the U.S.S.R., which, as a legislative organ for the whole nation, is the top of the pyramid and represents the sovereignty of the people. The local soviets elect their executive committees (*ispolkoms*); the Supreme Soviet elects the government of the country.

The satellites have absorbed this scheme. As a general rule, their supreme organs, corresponding to the Supreme Soviet of the U.S.S.R., are National Assemblies. Yugoslavia retained its traditional denomination *Skupshchina*; Poland—*Sejm*. These supreme organs have two sessions per year, whose duration is not determined by the constitutions. Only the constitution of Czechoslovakia considers her legislative organ as permanent institution, in contradistinction to the pattern of the Soviet Union, where the combined sessions of the Supreme Soviet do not exceed several days per year. For the period between the sessions, the National Assemblies of the satellites elect Presidiums (State Council in Poland) to which they, in the same manner as the Supreme Soviet of the U.S.S.R., delegate their legislative power and some other prerogatives, including the right to proclaim a state of war. As a matter of fact, the Presidiums replace National Assemblies. This is not so, however, in Czechoslovakia, where the main function of the Presidium is constitutional control (Sec. 63 of the Constitution of June 9, 1948).

In Yugoslavia, since the reorganization of 1953, the bicameral *Skupshchina* consists of the Federal Council and the Council of Producers. The latter is being elected by the Workers' Councils of the top economic organizations in production, transport and

commerce. The Council of Producers has the right to veto the decisions of the Federal Council in economic problems. Another essential amendment in the constitutional structure of Yugoslavia is the reorganization of her sovereign organs. Instead of a cabinet under the direction of a minister-president a new supreme executive organ is established, the Presidium of the People's Republic of Yugoslavia composed of from 30 to 45 members to be chosen from the members of the Skupshtina. President of the Presidium is at the same time President of the Republic.

The local soviets, under different names, have been patterned after the central organs. ⁷ For this purpose some measures were necessary which could guarantee the loyalty of the future local soviets to the new regime. In Poland, for example, where the resistance of the population to the 'transition to socialism' and 'perfect democracy' proved to be especially stubborn, the local soviets were established only in 1950, 'when the reaction had been entirely unmasked and oppressed.'

'But even then it was still necessary to carry out some special measures for purging the local organs and eliminating inimical elements which happened to penetrate there.' ⁸

According to the Constitution of 1952, local organs of the government in Poland are People's Radas.

The late Czechoslovakia's president Gottwald in his report at the ninth conference of the Communist party of Czechoslovakia did not spare time to characterize the significance of the new organization of the local organs of the government and emphasized that

'Local regional and area national committees still have many defects. It is necessary to improve their work. The work of all national committees must be controlled from the top to the bottom. Those who do not uphold our hopes must be eliminated while commendable workers must be promoted and rewarded' ⁹

Democratic centralism is adopted by the people's democracies according to the Soviet standard. ¹⁰ In Bulgaria local soviets elect their executive organs, '*upravy*,' and the *upravy* of the lower rank are subject to the *upravy* of a higher rank. In Rumania the same subordination is established and its central organs, the National Assembly, the Presidium of the National Assembly and the

People's soviets of the highest rank, direct in a general way the activity of all people's soviets of the lower ranks, while the Council of Ministers and other central organs of the government, and alternate executive committees of higher ranks, direct the activity of the committees subject to them. In Poland the local organizations (*rada narodowaiia*) elect the presidiums, which act in accordance with both resolutions of the radas which elect them and with instructions of the presidiums of radas of the higher rank, which have also the right to cancel or suspend the resolutions of the lower radas (art. 44 of the Constitutions of 1952). The highest control belongs to the state's council which has the right to give instructions to all radas and to determine the general line of their activity. ¹¹

Everywhere, as Soviet jurist emphasizes

'One of the most important principles of the new form of the socialist democracy in the people's republics is a consistent carrying out of democratic centralism.' ¹²

The right and duties of citizens are formulated in the recent constitutions in conformity with the Soviet pattern (see Ch. XVIII).

To the number of the Soviet satellites may be added the so-called German Democratic Republic, i.e. Eastern Germany occupied since the end of W.W. II by Soviet troops. It does not belong to the number of the People's Democracies. Its constitution of October 7, 1949, contains several provisions protecting individual rights. It does not limit private initiative and economic freedom in such a degree as it takes place in other satellites. Instead of the Communist Party, the leading political role is fulfilled by the Socialist Unity Party (*S.E.D.-Sozialistische Einheitspartei*) consisting of the Communist Party and the Christian Democratic Union and Liberal Democratic Party, which in reality are not independent. Every opposition from non-communist parties is interpreted as 'undemocratic' action. Elections of 1950 were organized on the 'unity list' basis supported by the 'National Front', and the Parliament elected in such a way supports the police regime since it is controlled by the dominating Communist Party. Numerous reservations in the text of the Constitution make it possible for the government to pervert any of the principles contained therein. Constitutionality

of the newly issued laws may not be examined by the Court. Ordinary courts are subject to the control of the leading groups. Only 'reliable' people can be appointed as judges. Judges of the newly created 'people's courts' are mostly laymen. As a result injustice became a system in the German Democratic Republic. The international Congress of Jurists assembled in West Berlin in July, 1952, unanimously conferred this in its resolutions adopted after the fiveday discussions and study of numerous evidences of the injustice. (See Complete Report on the Congress published by the International Commission of Jurists with Headquarters in the Hague-Netherlands).

2. *The Communist Leadership*

In the satellites the active force which creates the interdependence of all local organs and which secures control over their activity, amalgamating them into a single monolithic unity, is not the law. This powerful force is behind the 'constitutional curtain.' This force governs the foreign and domestic policy of the state, initiates the most important bills, dictates instructions, and nominates and dismisses the highest officials. The force belongs to the Communist Party.¹³ The Constitutions of the satellites apparently differ in this point from the Soviet Constitution, which openly asserts the leading role of the Communist Party.¹⁴ On the other hand, the Constitutions mention the struggle against 'monarcho-fascist dictatorship' (Bulgaria, Art. 1) or against 'fascism, reaction and imperialism' (Czechoslovakia, Secs. 36, 37; originally Rumania, Art. 1).¹⁵ In addition, all constitutions of the satellites contain provisions directed against the abuse of freedoms, and these provisions are formulated in very vague terms. This makes it possible to suppress and liquidate, with the aid of the secret police, all anti-Communist parties and liberal movements, under pretext of a struggle with counter-revolution, fascism, and intrigues of imperialists.¹⁶ It is possible also to refuse certain candidates permission to run, or to arrest and prosecute them before the elections.

'Thus, after the decisive defeat of reaction in the countries of Central and South-Eastern Europe, the new regime of the People's Democracy has been consolidated and the leading and directing role of the Communist parties has been un-

reservedly solidified; only then was a new stage begun in the development of these nations as states of the socialist type.'¹⁷ 'The people's soviets in Rumania are the local organs of the state of workers whose leading force is the working class having at its head the Rumania working party. This determines the position as well as the structure of people's soviets.'¹⁸

In Poland where, as we have seen already, the Communist government has but slight confidence in the loyalty of the population, the law of 1950 submitted the local soviets (*radys*) to the special committees. These committees have to carry out supervision of the activity of all organs of the radas, work out the projects resulting from the most significant resolutions, and support a constant and close connection with the masses of the population. These committees also have to mobilize the initiative of the people and encourage them to cooperate with the soviets and their organs.¹⁹ It is obvious that the committees, if they still exist, have to be composed of members of the Communist Party and to be the controlling and guiding organs of the local administrations. The Communist Parties of the Soviet satellites are not sufficiently numerous and, probably, not sufficiently disciplined for the formation of a reliable leadership in both the central and local organs of the government and administration. The 'defeat of reaction,' characterized above, means, however, that the predominance of the party in the central organs is already secured, and that there are some cadres of the party members for controlling the activity of local organs. The special committees are supposed to be the cells of the Communist Party which are watchdogs of the party policy in all parts of the country.

The story of the Communist regime in Albania may be used as an example of how such a regime can be established in a country with a primitive economy and a lagging civilization. Albania is predominantly an agricultural country. Its working class is inconsiderable. The only political party representing interests of the laboring masses of the country is, however, the Labor party which is in fact the former Communist party. In 1948, for political reasons, the Albanian Communist Party changed its name to Labor party. Among the members of this party, there were 23 per cent workers, 54 per cent poor peasants, 13 per cent middle-class

peasants and 10 per cent intellectuals and others. This party with its 29,139 members (in 1948) has headed and directed the work of the Democratic Front, which nominally unites all classes of the population, and is predominant in all its sections and territorial branches. Due to the energetic leadership of the Labor party the population of this agricultural country is represented in the National Assembly by 26 workers, 15 peasants, 79 officials and 1 priest.²⁰ The Labor party tries to re-educate the Albanian peasantry in the spirit of collectivization and to prepare peasants for the modernization of agricultural economy and for the transition from small-scale to large-scale economy.

'The socialist construction in Albania is developing in the form of a fierce class struggle. The People's government is struggling decisively and actively with the enemies of the people—the remnants of Italian-German fascism and agents of Anglo-American imperialism.'²¹

Another amazing example is the Mongolian People's Republic. This country of nomads and Lamaist monasteries with a population of a half-million people, only one per cent literate in 1924, is also on the way to socialism. The National-Revolutionary party, the only political party in Mongolia, is led by partisans of the Soviet program with no competitors and no opposition. To this small group belongs unlimited power. As in the Soviet Union, the elected organs of state authority (the *Khurals*, corresponding to the Soviets) are replaced by their presidiums, the executive committees of the local and central khurals. The constitution of the Mongol People's Republic of 1940 has copied the constitution of the Soviet Union of 1924. It was amended in 1949 and 1952 in conformity with the constitutions of the Union Soviet Republics and the other People's Republics. The Great Khural has one short session per year and elects the Presidium and the Council of Ministers. During interval between the sessions the Great Khural is replaced by the Presidium. Both the Presidium and the government are organs of the National-Revolutionary party.

The purpose of the party is to guide the transition from feudalism to socialism. The national economy is planned. The land and all resources are nationalized. The means of communication and the key industries belong to the state. Property of the rich is confiscated and distributed among the poor *arats* (cattle breeders).

Counter-revolutionary elements and exploiters are liquidated. The foreign policy is coordinated with that of the Soviets and is directed against imperialists.²²

This system and a one-party regime exclude the possibility of inner discord of either a class or national character.

The burning national questions in Yugoslavia, Czechoslovakia, and Rumania are solved in full conformity with the Soviet pattern. Yugoslavia is organized as a federation consisting of six People's Republics: Serbia, Croatia, Slovenia, Bosnia, and Hercegovina, Macedonia, and Montenegro. The People's Republic of Serbia includes the Autonomous Province of Voivodina and the autonomous Kosovo-Metohijan region. Like the Supreme Soviet in Moscow, the federative legislative organ *Narodnaia Skupsh-tina* in Belgrade consisted up to 1953 of two chambers: the Federal Council and the Council of Nationalities, the second of which is replaced at present by the Council of Producers. Like the republics of the Soviet Union, the six People's Republics of Yugoslavia have the right to secede from the Federation (Art. 1). They have their own constitutions, and, correspondingly, their own legislative organs (*vieche*). The *vieches'* jurisdiction is, however, limited to problems of purely cultural significance, as is the case in the Soviet Union republics, and the administrative and economic controls are centralized not less than in the Soviet Union.²³ In order to safeguard the rights of the constituent republics a sort of constitutional court composed of representatives of the *vieches'* is established by the new constitution.

The significance of the national problem in Czechoslovakia has been emphasized in the preamble to its constitution of June 9, 1948. The solution is achieved by establishing national state organs of Slovakia. Although the jurisdiction of the Slovak National Council is broader than that of the Soviet Union republics, the principle of centralism is dominating none the less. The Slovak National Council is controlled by the National Assembly of Czechoslovakia; the Executive Council of Slovakia is appointed by the Government of Czechoslovakia; judges of the superior courts and some higher officials cannot be appointed unless candidates are approved by the government of Czechoslovakia; the secret police (the Corps of National Security) is completely in the hands of the Prague government.²⁴

Finally Rumania has solved its hard problem of dissensions between Rumanian and Hungarians in Transylvania by emphasizing in the Constitution of 1948 (Art. 24), the equality of all national minorities and their right to cultural autonomy efficiently protected by the state.

Domestic peace and the elimination of national antagonism are dependent upon submission of all economic forces to a single national plan, and the impossibility under the present conditions of any political movement against the existing order.

3. On the Way to Socialism

There are many provisions in the constitutions of the satellites which are similar to the generally recognized characteristics of democracy especially in the Polish Declaration of Rights and Liberties and in the Fundamental Principles of the Constitution of Czechoslovakia. Compared to the Soviet Union the satellites have emphasized individual rights and liberties. Some of the satellites give more freedom to the church and place greater stress on freedom of conscience, immunity of deputies, and freedom of creative activity. On the other hand, the existing constitutions empower their governments to eliminate private enterprise, to monopolize trade and collectivize agriculture, and to exterminate any opposition to the Communist Party in order to be in greater accord with the Soviets.²⁵

'The democracy of this special type is to correspond to the newly established economic conditions which are not capitalist as in the countries of old democracy, but neither are they socialist.'²⁶ This is the essential difference between the satellites and the Soviet Union. But the satellites are trying to reach 'the highest form of democracy.' The preamble to Czechoslovakia's Constitution states: 'We want to achieve a social organization under which any exploitation of man by man would be abolished – socialism.' In the new constitution of the Rumanian People's Republic it is repeated literally: 'The policy is directed towards the liquidation of exploitation of man by man and towards the construction of socialism.'

Similarly, the preamble to the Hungarian Constitution of August 20, 1949 states: 'Now our country is advancing towards socialism along the road of a people's democracy.'

There was no such declaration in the Constitutional Act of new Poland, but her legislation left no doubt that she follows in the same path. The Decree of July 14, 1946 established a commission to deal with abuses and economic wreckage. This commission was empowered to apply certain penalties, as, for instance, confinement in forced labor camps and confiscation. Persons involved in speculation may be ejected from their apartments. The most significant branches of national industry were nationalized (Law of January 3, 1946).²⁷ The Constitution of 1952 has not abolished property rights, but in conformity with the Soviet pattern has acknowledged them only as 'personal property.'

All satellites have acknowledged the superiority of state national economy over private enterprise and have introduced the planning system in accordance with the tendency to centralize economic control in the hands of the state,²⁸ not excluding completely private initiative. Private property, especially small landholdings of individual farmers, and small individual enterprises still exist and are protected.²⁹ Domestic trade is still not monopolized. But expropriation and nationalization, 'if the common interest requires it,' are within the governmental powers, and the way to complete socialization is thus open.

The development of the satellites is especially typified by their economic legislation. They are on the way to socialism and the domination of Communist Parties is guaranteed in these countries not only by their constitutions but also by the increasing dependence of the population upon the state in connection with the planned economy.³⁰

In describing the economic legislation of the countries of the people's democracy during the period of 1946 to 1948, one of the Soviet authors, who has specialized on the problems of the Soviet satellites, concludes that:

'the countries of people's democracy have entered in the new stage of their development, the stage of direct socialist construction, the stage of the laying of the foundation of socialism.'

'The development of the people's democracy, even in this new stage, proceeds in the atmosphere of a fierce class struggle, which, in accordance with further development toward socialism will not become weaker, but on the contrary will grow more acute.'³¹

Poland, for example, began in January, 1950, to realize a six-year plan of economic development with the purpose of laying a foundation for the socialist economy. In connection with this plan, it has issued a series of laws concerning organization of the cadres of the new people's intelligentsia, coercive service of the technical personnel, and penalties for negligence in work or violation of economic regulations. ³²

As a consequence of the economic reforms in the Soviet pattern, citizens of the satellites become more and more dependent upon the government. The impossibility of existing without salary or wage from the state, dependence of farmers and small private enterprise upon the supply of raw materials, whose stocks are at the disposal of the state and are distributed according to its plans, and upon the prices which are dictated by it; taxation which can deprive entrepreneurs of profit; and, finally, monopolization of trade and rationing of the essentials and as a result the impossibility of getting commodities and foodstuff at the available prices anywhere but at state stores;—all that, as well as the constant threat of prosecution by the secret police and the impossibility of leaving the country, force people to obey unreservedly. The Communist Party dominates and manipulates the whole machinery of government and justice, controls social organizations, the most important branches of economy, education and press. ³³

4. Apparent Sovereignty

When a Communist Party becomes the virtual master of 'the lives, liberties, and properties of all citizens' ³⁴ after the liquidation of opposition, Moscow becomes master of the situation in the country of this single party. Every Communist Party, as a matter of fact, professes the same political creed, the same faith in the infallibility of Lenin-Stalin methods of World Revolution. Besides its ideological ties, however, every Communist Party, being in minority in its country, comes to power due to the support of Moscow and is protected by Soviet military and diplomatic influence against any outside pressure.

The history of the satellites since the time when they were 'liberated' by the Soviet army is characterized by the progressive increase of their political, military, and economic dependence

upon the Soviet Union. The so-called *Cominform*, the organization of the Communist Information Bureau, coordinates the activity of Communist Parties. *Bolshevik*, in its editorial dedicated to the organization of Cominform, ³⁵ emphasized the existence of two antagonistic groups of nations and the task of the camp of Communist and people's democracies to undermine imperialism, strengthen democracy and liquidate the remnants of Fascism. ³⁶ The fighting spirit of the organization, and even its idea, recall its forerunner, the pact between Germany and Italy, which Japan also joined, concluded for the similar purpose of exchange of information and for coordination of activity against the democracies and the Soviet Union. Now there is a reverse action.

As a next step in unification, a Council of Mutual Economic Aid was set up in Moscow in January, 1949. The original members of this organization, known as the *Comecon*, were Bulgaria, Czechoslovakia, Hungary, Poland, Rumania, and the Soviet Union. Later Albania joined this group. The Comecon has also been known as the Molotov plan, a counterpart of the Marshall Plan for the West. The permanent secretariat has its residence in Moscow. Thus the council is controlled by the Soviet Union. It is authorized to send both observers and advisers to member states, and these states are 'obliged to accept and follow their advice.' Any tendency to weaken cooperation with the Soviet Union is considered as directed the very foundation of the people's democracy and even as treason punished by execution, as the Kostov case in Bulgaria. ³⁷

The economic dependence of the satellites upon the Soviet Union also rests on reciprocal trade agreements, financial loans, allocations of raw materials, control over banks of issue, and invasion of satellites by a number of financial advisers and scientific experts. ³⁸

Parallel with the politic and economic unification, very close military relations are created between the Soviet Union and the satellites. War weapons are standardized, military leadership provided by Soviet military advisers, military plans coordinated, and in Poland, the least reliable of the satellites, even the commander-in-chief of Polish armed forces and Minister of National Defense is the Soviet Marshal Rokossovskii.

The foreign policy of the satellites is well under the control of

Moscow. Eduard Taborsky relates a story of the first Soviet veto, which precluded a Polish-Czechoslovak Confederation.³⁹ Andrei Vyshinskii's intervention in the domestic affairs of Rumania and Stalin's veto against the Czechoslovak decision to join the Marshall Plan is well-known. In the United Nations, the representatives of the satellites do not show any trace of independence and the delegates of Poland or Rumania are docile assistants of the Soviet representative as are the delegates of the sovereign Ukraine and Bielorussia.

The Soviet Republics, as we have seen, are not sovereign states, as they are characterized officially in the Constitution of the Soviet Union. The development of the satellites recalls the story of the constituent Soviet republics. Their story has been characterized by Soviet authors in the following emphatic form:

'... they have carried out the most important program of the reorganization of the political and social structure. They have built their state power on the basis of support of organizations of the toiling masses, and therefore they can become members of the union of the friendly people's republics under the leadership of the Soviet Union, whose final goal is to unite and to merge the uniformly-organized nations into the potentially largest, single state.'⁴⁰

There is no doubt that the Soviet authors have correctly expressed the real political goal of the Soviet Union. Maybe the satellites will repeat the history of the independent republics, which are 'sovereign' states without independence. No one knows the future but at present the Central and East-European nations, although they depend upon the Soviet Union, have their own legislative and administrative organs and have not lost their independence completely. The history of Yugoslavia offers evidence that under favorable conditions the political and economic independence of satellite countries can be restored. However, if future development follows past tendencies the dependence of the satellites will undoubtedly increase.

The Soviet experiment in Central and South Eastern Europe has presented an example of how international relations in a unified world of Communist republics can be organized. International law will evidently wither away. It will be replaced by the submission of all nations to one central organization on a world-

scale, whose orders will be enforced by a system of penalties. Disagreements and disobedience will be considered grave treason to the common cause. Emissaries of world organization will control and direct the activity of component parts of the Comintern. The world plan will be worked out with the idea of a close interdependence of all parts guided by a single organizational center.

According to the system described, the full freedom of nations will be secured paradoxically by their absorption into a world union; just as the freedom of an individual consists, in the realm of communism, in his absorption into the social whole.

CONCLUSION

'Is there really any law in the Soviet Union?' Such a question is often addressed to jurists writing or speaking about Soviet law. This question does not surprise those who believe that the idea of law is at the same time a concept of justice and as such belongs to the world of ethics. This question does not seem strange to those who understand law as a cultural value of the civilized world, as a foundation of the social order protecting individual rights as well as the social order itself.

I

A modern Soviet jurist, P. Yudin emphasizes that

'The form of Soviet law—as law differing in principle from bourgeois law—is expressed not in terminology but in its political character... Terms of bourgeois legislation are found in separate articles of Soviet statutes and in statutes in their entirety. That, however, is not the point. The essence of the matter is that the soviet character of the soviet form of the law is expressed ... in its political character (as ... stated): in its socialist content.' ¹

The legal systems of the Soviet Union and other countries are in fact so different that only a superficial attitude to Soviet law can evoke the idea that they are similar. Soviet law is an expression of might rather than of right. It is not bound by any general principles of morals. It is dictated by Soviet policy and adjusted to the exigencies of the times without any limitations or constraint.

According to the Marxist doctrine law is a superstructure and cannot be determined arbitrarily. This doctrine is, however, turned out by the Soviet practice and interpretations. Recently

Stalin presented a new theory concerning the correlation between basis and superstructure: 'once the superstructure has arisen it acquires an independent existence and exerts a reflex influence upon the foundation ... to the end of further development and change thereof.' ² This doctrine, if applied to law, opens a possibility to organize and reorganize the social life *ad libitum*. Law, as an instrument of policy, is subordinate to political needs only:

'It is policy alone that decides the essence, the character, the direction, and the form of the law formulated by the state ...' ³

Morality is in turn a superstructure on the same foundation as law and its main principles are formulated by the communist leaders in the same way as the principles of law, namely as 'an irreconcilable hatred against enemies of the people, agents of the bourgeoisie ...' ⁴ Conflicts between morality and law cannot, consequently, take place. The only difference between morality and law is that 'the extent of moral obligations is broader than the extent of legal obligations.'

The Soviet system of law is based on the might of the state which constrains the people to follow the will of their communist leaders. Morality supports law by encouraging the people to make sacrifices and not to spare their personal welfare for the benefit of the socialist fatherland.

2

What does this Soviet ethical philosophy mean in practice? It establishes duties rather than rights. It concentrates an unlimited power in the hands of the government:

'Capitalist law' as Soviet jurists characterize it, 'is based upon the abstract "natural rights" of a person; it places the person in the center of the world and surrounds him with a cult and therefore establishes the limits of the state ... however the proletarian state sets the limits not upon itself but upon its citizens.' ⁵

Public law, which is characterized by subordination of the individual, dominates the Soviet legal system. Human rights are not considered inalienable, they are distributed as rewards and are

revocable. The individual is completely dependent upon the state. The individual is transformed into a small cog of the enormous mechanism of the centralized economy.

This legal transfiguration had some essential consequences. In a country where the national economy is based on property rights and on a system of private enterprise and competition those who do not work efficiently harm themselves. It is not necessary to prosecute them for their negligence unless there is some element of offense against a third person or against society. This is not the case in a country where economic life is regulated by public law.

For example, labor law in the Soviet Union is, as V. Gsovsky characterized it, 'to a large extent criminal law.' Labor discipline (see Ch. XIII) is based in the Soviet Union on the Standard Regulations of 1941. The Standard Regulations are compulsory, not optional, and have the force of law. Violations of such obligations as — to fulfill without exceptions all instructions of the administration; to come to work on time; to produce the standard output on schedule and strive systematically for overfulfillment of production goals, etc. — are punishable by disciplinary actions or through criminal proceedings. The excusing of any violation of discipline is absolutely prohibited. It is the administration's duty to prosecute those at fault immediately and without fail. Otherwise the administration itself is subject to trial, not only for neglect, but also for concealing the crime, and is punishable as an accomplice.

It is no less characteristic that workers receive a reduced wage in cases of work-stoppage and spoilage not caused by themselves and are responsible for damage occasioned not by their own dereliction but due to defective machines, the incompetence of foremen or inferiority of raw materials.

Trade Unions are deprived of the right to protect the most essential interests of their members; wages, the work day, and the standard output are regulated by the standard contracts promulgated by the responsible ministries and have the force of directives which must be followed by all Trade Unions, as well as by government agencies.

Farmers are not subject to labor legislation (see Ch. XII). However, in conformity with Art. 18 of the Charter of Collective

Farms, a collective farmer may be prosecuted in accordance with the Penal Code for a 'betrayal of the common cause and aid to enemies of the people.' Serious penalties threaten also negligent farmers. Every ablebodied farmer is obliged to work for a fixed number of labor days. Any person who fails to work the obligatory minimum during the course of the year without justifiable reason 'is to be expelled from the kolkhoz, and forfeits his rights as a member of the kolkhoz, and also the rights to his household plot.'⁶

There is only one employer, the state, and it has the power and authority to dispose of manpower according to its discretion. 'Voluntary withdrawal of a worker or clerk as well as voluntary transfer from one enterprise to another is forbidden (law of June 26, 1940); on the other hand the compulsory transfer of engineers, technicians, office employees and skilled workers to any enterprise in any district of the Soviet Union is prescribed (law of October 19, 1940). Young people of both sexes, if drafted for industrial training, are obliged to work for four years in government factories, plants, mines etc. as assigned by the government. A member of a kolkhoz who leaves it may get a passport for one year only. The hiring of farmers who have left the kolkhoz without the consent of the latter is restricted.

In the capitalist world the existence of private concerns permits those who do not have own property to find a means of livelihood outside of government service and to preserve their independence from the state in material matters. Dependence on a private entrepreneur and boss, especially under the protection of modern labor law and well-organized unions, has become less oppressive and, at any rate, as Soviet practice has demonstrated, less dangerous than complete dependence on the state. But there are no private concerns in the Soviet Union. All means of production and all resources belong to the state; all enterprises are public. Even those few people who have their small private economies depend in fact on the state, which can deprive them of raw materials and establish taxation which can deprive them of any profit.

We can thus assert that there is no citizen in the Soviet Union who may provide for his own existence in any other way than by means of unquestionable loyalty to the government and cooper-

ation with it. By depriving a person of a job and income, the state deprives him of his means of existence. If there is no economic dependence, political dependence is of such a nature that it can transform every one into a slave.

People of liberal professions are no less dependent upon the state than are others. There are no private publishing houses, no private art galleries in the Soviet Union, and writers and artists who are not members of the unions of writers and artists have no chance at all for publishing their works or marketing their canvases. If on the other hand they are members of the unions they are not free from specific obligations of an ideological and political character. A union must exclude a member who does not follow the Party line and discipline. Hence the famous Resolutions of the CC of the ACP (b) of 1946 and 1947 concerning literature, theatre, music, etc., which have subjected all cultural activity to the Party's control.

3

Economic dependence is the worst limitation on freedom. In the Soviet Union, however, it is connected with the lack of legal guarantees of individual rights. Individual rights are not protected as they are in the democratic countries—because of the predominance of the socialist state's interests over individual rights. Consequently Soviet citizens have to perform heavy duties and have only precarious rights.

Up to 1936, Soviet legislation completely disregarded the so-called constitutional freedoms and individual rights. According to Communist dogma, workers and peasants are more interested in the realization of socialism than in freedoms. In 1936, however, when socialism, as the Soviet leaders understand it, was already realized in the Soviet Union, the Stalin Constitution established the 'Fundamental Rights and Duties of Citizens.' According to the text of the Constitution and official comments on it, freedoms and citizens' rights in the Soviet Union are ensured by real guarantees, which do not exist in the bourgeois countries.

In fact, the regulations of the Soviet Constitution, with respect to the freedoms and rights of the citizens, do not correspond to the Soviet reality. According to the text of the Constitution

itself, constitutional freedoms in the Soviet Union are all conditional. They are given 'in conformity with the interests of the working people, and in order to strengthen the social system.' Books and other publications cannot be printed without previous censorship; conventions and conferences cannot take place without special permission; etc. There is certainly no chance to get permission if there is any discrepancy with the Communist party policy (see Ch. XVIII).

It is hardly possible to deprive everybody of every freedom, but it is possible to establish legal conditions under which even the relative and conditional freedom which an individual is given would not be guaranteed.

The legal order of a modern civilized state protects the freedom of the organization of various associations and parties which in turn assist their members in protecting their political, professional, cultural and other interests. In the Soviet Union there is only one political party, the Communist party, and all social organizations are controlled by the same Communist party.

Voluntary organizations in the Soviet Union supply various government agencies with regular or continual free services of a military, police, or medical (Red Cross), character (see Ch. XXI). Collective farms (kolkhozes) fulfill agricultural work in accordance with the state economic plan. Trade-Unions support labor discipline and encourage overfulfillment of industrial production. Co-operatives produce some commodities which are not included in the state plan and supply usually villagers with manufactured articles in exchange for agricultural products thus increasing the stock of products at the disposal of the government. The Komsomol organizes young Communist teams for the political education of youth, for the election of candidates of Communist party cadres and similar duties.

Never before has a state been so strongly organized. Never have all social forces been mobilized so efficiently to serve the state. The government forces people to serve the state in such a manner as the Communist party sees fit. No opposition or criticism of the resolutions of the leading state and party organs are tolerated.

To sum up the Soviet public order subjects social life to such a regimentation that all societies and organizations are trans-

formed into governmental agencies and the development of the Soviet legal order is characterized by the increasing system of penalties and the possibility of arbitrary application of force instead of law.

4

The Soviet system is supported by severe penalties. (see Ch. XXIII) There are many essential differences between the common principles of the criminal law of the western world and those of the Soviet Union besides the cruelty of the penal system. For example, according to the law of April 7, 1935, minors twelve years old and over are subject to criminal responsibility for various types of crimes (theft, rape, murder) and, according to the ukase of December 10, 1940, minors of twelve years and above, convicted of actions capable of causing train wrecks, are liable to all measures of social defense. A no less odious distinction of the Soviet penal system is the responsibility borne by the members of a convict's family, especially the family of a traitor; the members of the family of a Red Army officer or soldier who is sentenced as a traitor may be exiled to remote regions, even though they had no knowledge of the plans. Soviet judicial practice deviates also from the reasonable and humane principle, *nullum crimen, nulla poena sine lege*. Application of the provisions of the Soviet penal Code by analogy widens essentially the list of punishable actions. The vague formulation of the norms of the penal code opens up the possibility for an unlimited arbitrariness.

Soviet justice—as Soviet law in general—serves politics first and foremost (see Ch. XXIV).

'... the court is an organ of the state power and therefore it cannot be outside of politics.' (N. Polianskii).

'Neither court nor criminal procedure is or could ever be outside politics.' (Vyshinskii).

There is certainly a difference between the cases in which the state is not interested and the cases of a political character when the state's interests are violated. One can believe that such cases as divorce, alimony, and succession of rights are tried justly, without prejudice, but not the cases considered as counter-revolutionary acts and crimes against the state. Some inno-

vations in Soviet justice are undoubtedly progressive and correspond to the interests of the rank-and-file. However, the predominance of the Public law and the peculiarities of Soviet penal legislation make possible the application of criminal punishment in such cases which have never a criminal character in other countries and of unsparing prosecution against the 'enemies of the socialist regime.' There are, besides, the special courts (military and other tribunals) using a simplified procedure which does not offer legal guarantees. And finally the whole Soviet apparatus of justice is subject to the supervision of the Procurator General of the U.S.S.R. As an eye of the central government, independent of any local power, the procurator can sign an order of arrest (Art. 127 of the Constitution) and is, therefore, one of the most important officials in the country.

The worst aspect of the Soviet organization of justice is, however, the discretionary power, left to the secret police. The Ministry of Interior Affairs (MVD, previously NKVD) has the power to banish persons considered to be socially dangerous either for settlement in certain localities for a term not exceeding five years or to confine them in a corrective labor camp for a similar term. Prolongation of this term is not prohibited, and, consequently, depends on the MVD.

Using this extraordinary power of non-judicial punishment the Soviet government filled the notorious concentration camps with exiled people, among whom were millions of wealthy peasants. The exiled persons do not return usually to the place of their former residence. They fulfill various difficult tasks and colonize remote parts of the country having no right to leave their new resettlements.

All these horrible phenomena of the Soviet legal order are the best evidence that Soviet socialism contradicts the psychology of the ordinary man. The forcible socialization and the discrepancy between Soviet ideology and the will of the people (the resistance of farmers is an illustration) explain the drastic system of penalties. The integral planning system requires in turn an excessive centralization of power and unconditional subordination. Having no confidence in the voluntary support of the population, the Soviet government deprives people of any independence and establishes unlimited political control over economic, social and

even cultural life. For that purpose it excessively expands the system of secret police and resorts to intimidation as a method of administration.

5

What are the results of this system? Do they compensate for the sacrifices of the population, and do they reward the people with advantages of an economic and cultural character in exchange for the lack of freedom? Does the Soviet system improve in fact the conditions of the toiling masses?

An unprejudiced scholar cannot deny the great constructive achievements brought by the Soviet Five-Year plans, but he must also admit the numerous defects of integral planning and the difficulties of putting plans into practice. Enormous losses, poor production, contradictions between one part of the plan and other parts, a shortage of commodities and necessities, and other defects of planning have not been overcome. Soviet papers and official documents confirm this.

To justify their system the Soviet leaders refer to the great achievements of the Soviet economic order, the elimination of the three calamities of the capitalist world: economic crises, unemployment and exploitation. The Soviet press also emphasizes as a great achievement the re-education of people in the spirit of an advanced collectivist psychology. However, all these achievements are more apparent than real.

Certainly, due to the universal state monopoly there are no economic crises, in the capitalist sense of the word, in the Soviet Union. There is, nevertheless, another kind of crisis: lack of commodities, high prices, low wages, and low purchasing power of money, due to the lack of goods. If the essence of depression, as an economic calamity, is the pauperization of the masses, then there is something in the nature of a permanent depression in the Soviet Union. Each new zigzag or retreat toward the principles of a free economy gives evidence of periodic aggravation of this situation and of the consequent necessity of seeking ways to alleviate it. The crisis of the kolkhoz economy after World War II is a striking illustration of the type of troubles and complications to which the Soviet system is subject.

It is not an economic only but also a legal problem as to whether the Soviet system can raise the efficiency of work, because the legal system founded on the principles of private law, which the Soviet government has rejected, is able, as has been explained, to stimulate human energy, initiative, and thrift. As for the Soviet system, it has not yet proved that it can overcome its specific depressions and chronic poverty. Its methods are always the same—demands for renewed sacrifices and intensified efforts from the population. Its weapons are the same obsolete penalties and rewards, which have been used from time immemorial. Its practices are radical and ruthless; it compels hundreds of thousands of people to move into icy wilderness; it strictly limits imports, depriving the population of foreign goods, and in practice separating the nation from the outside world. The result is a strengthening of arbitrary rule within the country and instability in the rest of the world.

The Soviet Union prides itself on its lack of unemployment. But what does 'unemployment' mean? It does not necessarily mean that people cannot find any work at all; it means, rather, that people cannot find work corresponding to their qualifications which furnish them sufficient remuneration. If unions, at the first sign of a depression, allowed their members to accept work of any kind and at any wages, unemployment in the capitalist countries would be essentially mitigated.

There is no unemployment in the Soviet Union because the state has complete control of labor, and there are no strong, independent unions to protect the workers. Another reason for the absence of unemployment in the Soviet Union is the shortage of manpower for carrying out the plans of compulsory work. The Soviet government did not repatriate hundreds of thousands of war-prisoners and in addition drew out of Western Europe hundreds of thousands of displaced persons and emigrés. These actions can be explained to a certain degree by a desperate need in manpower. A considerable burden of the hard work, in agriculture especially, rests in the Soviet Union on the shoulders of women. More than fifty per cent of the workers in the factories are women and youth.

Turning to the problem of 'exploitation,' which Marxist theory defines as the appropriation of 'surplus value' by the entrepreneur

or, in other words, as inadequate compensation, we believe that for the average worker or peasant it makes no difference who is the one responsible for failing to pay him his full wages, an entrepreneur or the state, or who lives at his expense, a capitalist, or a landlord, or an official. The Soviet Union has bred millions of 'paper workers' and all kinds of police agents who are better fed and dressed than the overwhelming majority of people working in the factories and in the fields. A Soviet economist justifies this by the needs of the future, but for a worker or a peasant, it is exploitation nevertheless.

The usual way of turning aside reproaches for exploitation of labor in the Soviet Union is to assert that in that country everything belongs to everybody and that he who works for the state works, in fact, for his own profit. However, this assertion does not correspond to the real relation between the state and labor in the Soviet Union. It is more correct to compare the citizens of the Soviet state, as concerns their share in the national income, to the shareholders of an old-fashioned joint-stock company than to call them co-owners of state property. As is well-known, there were such companies in which the role of the ordinary stockholders was very insignificant, and still less significant were his profits. The lion's share of profit was usually distributed among the directors, higher officials, and large stockholders of a company. The board of directors controlled the business without paying much attention to ordinary shareholders. The general meeting, open to all the shareholders, was largely a matter of formalities. The shareholders were informed about the condition and activities of the company only to the extent deemed necessary by the board of directors, and all resolutions were prepared beforehand and were put through with lightning speed. This practice of the early stage of capitalism, at present essentially modified in the democratic countries, proved to be the most suitable for the needs and morals of the Soviet socialism. In fact, the practice of the Supreme Soviet of the U.S.S.R. when it approves the budget and laws is similar to the general assemblies of the old-fashioned joint-stock companies, and workers and peasant remind the neglected shareholders having neither influence nor profits.

There are no people in the Soviet Union independent of the government. According to the official testimony the independent

people are liquidated: 'We have liquidated the (former type) peasant, the industrialist, the merchant.'⁸ Since 'the complete consolidation of Soviet power within the nation,' proclaimed in the *History of the Communist Party*, the whole population of the Soviet Union consists exclusively of people who are earning their living from the state and are therefore completely dependent on its leaders.

6

The economic and social results of the Soviet system are not alluring. However, perhaps the Soviet Union has been successful in re-education of the people? The Soviet press refers, as though it were one of the great advantages of the Soviet system, to the sublimation of human psychology. 'Bourgeois culture is characterized,' we can read in the Soviet papers, 'by avidity, individualism, the chase for profits, the struggle of all against all.'⁹ Such an assertion exaggerates both the evils of the individualist culture and the Soviet achievements.

Who can question that work for the common cause is apt to create a higher type of psychology and culture? However a selfish, egoistical man cannot be forcibly turned into a lover of humanity—a citizen ready for self-sacrifice. He could change outwardly, but he would remain as self-seeking as ever. To work for oneself and one's family is no less inherent in man than the instinct for selfpreservation. Work for the good of society, cultural and philanthropic work, may be done with special enthusiasm when it is undertaken voluntarily. A civilized world is proud of the people who willingly sacrifice their life to common cause, and consider the chief purpose of their life to assist in the achievements of their native country. However, they are not only ones worthy of respect and imitation. There are people of lofty spirit, pontiffs and preachers, whose memory is sacred and whose names are unforgettable. In every country there are the great philanthropists, people of an extraordinary feeling for humanity, who are interested mostly in supporting and saving individual human beings. Examples of their generosity and goodness inspire and ennoble others.

Russia, in particular, knew and venerated her 'elders' who

foresook the mundane world and devoted their life to religion and high moral aspirations. The Russian people showed striking examples of unselfish work for the good of the whole people during the period of the 'to the People' movement, which carried away young people of wealthy and noble houses, who often sacrificed their personal happiness and well-being for their ideals. Members of the *Zemstvos* (provincial and district selfgovernment organizations before the Revolution) doctors and teachers particularly, served as examples of self-denial and sacrifice. Such heights of enthusiastic generosity cannot be attained artificially, just as human nature cannot be changed overnight.

The Soviet leaders sought immediate mass re-education. Did they succeed in their task? Originally they wanted to encourage people toward an ideal far surpassing purely national interests:

'We are not for the state, we defend neither sovereignty ... nor national interests, we maintain that the interests of socialism are above the interests of the state.' (Lenin) ¹⁰

'What is our country but a base for the World Revolution?' (Stalin) ¹¹

Such a remote and abstract final goal is not important in the consciousness of the ordinary man. The Soviet government began, therefore, to encourage people to work and sacrifice by reason of purely nationalistic and practical goals. This proved to be more effective. The successes of the Five-Year Plans cannot be explained if one disregards the tempting aspect of achieving plans of grandiose construction. However, even such stimuli proved to be not sufficient, and the Soviet government applies coercion, penalties, and rewards on a large scale (see Ch. XIV). The recent methods of encouragement are the most distant from the sublime motives of collectivist psychology.

It is evident from the laws punishing plundering of 'socialist property' that the theoretical responsibility to the community has been overshadowed by the traditional individualism, particularly among the peasants. In vain the Soviet legislator tries to re-educate the farmer and to transform him into a devoted member of the *kolkhoz*. The peasant individualist incessantly and stubbornly resists socialist methods of agricultural economy and the Soviet government, as the legislation concerning collective farms shows, has made desperate retreats from time to time.

Individualistic psychology is evidently strong even among workers and intelligentsia. Mass re-education is not yet achieved. Even the communists need encouragement by some very primitive methods. The commanding staffs of the troops of the Ministry of Interior Affairs (M.V.D). and of the Ministry of State Security (M.G.B.) have been awarded the ranks, titles, and insignia of generals, admirals, and officers of the Red Army and Navy. ¹² Both these ministries recruit their troops from communists only. Having the same ranks and uniforms as the army and navy, the officials of the secret police share with them their glory and their merits; they even overshadow the army and navy officers, thus increasing the Party's prestige at the expense of the military forces.

Another method used is intimidation. The Soviet state is like a military camp even during the peacetime. Military uniforms which were allotted during hostilities to many workers are still being worn and their use has even been extended by some of the new decrees. This is not without significance as an illustration of the continuing militarization of the administrative apparatus. ¹³ Citizens live as if they were mobilized for an indefinite time for the defense of the country. If this is an advantage from the point of view of readiness for armed conflict, it is not an advantage from the point of view of the improvement of the conditions of life and the progress of cultural life. And in no case is it an evidence of the sublimation of the psychology of 'Soviet people' under the inspiring influence of the Soviet socialism.

7

Soviet leaders believe nevertheless that their state is really perfect and they want to reorganize the whole world in conformity with the Soviet pattern. This task creates an extreme tension in the world and does not permit the establishment of normal international relations.

The Soviets cannot and will not accept unconditionally all norms of existing international law. It is impossible for them to submit to the regulations produced by agreements or by the judicial practice of the anti-communist world. Consequently, they must definitely oppose the establishment of a permanent

court of international justice with compulsory jurisdiction *ipso facto*, eliminating private agreements between the parties involved. They now insist, and will continue to insist, for the same reasons, on the right of *veto*, which protects them from submission to any decisions of the inimical majority. They oppose freedom of the air over Soviet territory because they are sure that this freedom is wanted mostly for espionage. Their withdrawal from participation in the International Civil Aviation Conference in 1944 did not come as a surprise to those familiar with Soviet foreign policy. For the same reasons, they will continue to oppose the formation of an international army, which, in their view, would always be a potential threat to the Soviet Union. ¹⁵

Soviet delegates to the United Nations have voiced the attitude of their government by opposing approval of the 'Universal Charter of human rights' and, consequently, oppose the recognition of individual freedoms as an institution protected by the Charter of the United Nations. They refer to the necessity of improving a draft of the proposed Charter, including the protection of colonial peoples and national minorities, but the real basis for their opposition is elsewhere. Individual rights and freedoms are not protected in the Soviet Union as they are in the democratic countries because of the predominance in the Soviet Union of the socialist state's interests over individual rights. Furthermore, control by the United Nations of Soviet activity, as exemplified in the matter of atomic control, or any discussion of the Soviet regime and of possible complaints against violation of human rights by the Soviets, is unacceptable to the Soviet state. ¹⁶

Expediency is of greater importance to the Soviets than principles of law. Duplicity and inconsistency in their philosophy of international law are therefore inevitable. They object to the acceptability of the principle *rebus sic stantibus*, and defend the inviolability of international treaties, but they themselves do not avoid violation of treaties when this is to their advantage. ¹⁷ They oppose economic imperialism and at the same time organize in Rumania, Hungary and other satellites binational stock companies controlling raw materials and transportation, and thus subject these countries to Soviet economic pressure in the manner of old-time economic imperialism. ¹⁸ The Soviet Union

defends the principles of unanimity in the Security Council of the United Nations but at the same time will not allow Yugoslavia to oppose decisions of the Cominform. The Soviets oppose the imperialist division of the world into spheres of influence and then transform Mongolia, Northern Korea, and all their European satellites into typical spheres of influence. They ardently oppose any infringement of national sovereignty and in practice abolish sovereignty not only of their own national republics but even of the satellites. ¹⁹

8

Perhaps the existing Soviet system is only a product of a transitional period, and perhaps it will be mitigated and transformed into a new type of really democratic nation? Judging from history one cannot deny the possibility of change. There is nothing immutable on earth. But what kinds of changes are necessary?

The Soviet system has deprived people of freedom and has realized large scale plans of industrialization and colonization at the expense of the well-being of the average man. It sacrifices him in the interests of the final goals. The Soviet system requires an omnipotent state and the unconditional obedience of the population. Such a state is not able to evolve. It must be replaced by another form of state having another legal structure.

The new pattern corresponding to the needs of the toiling masses will, undoubtedly, require the secured existence of political, professional, and labor organizations and their participation in the management of the economic life of the country. Soviet 'socialism' has revealed that 'universal monopoly' of the state and uncontrolled government lead to despotism. It does not lead to the state of the future about which the toiling masses have reputedly dreamed.

The legal order established in the U.S.S.R. has become a pattern in conformity with which all Soviet satellites reorganize their economic, social and political systems. The Soviet experience helps them to accelerate the procedure of the development from capitalism to socialism and to eliminate some of the blunders and deviations of the Soviet experiment. However, the general line is the same. The first stage is the destruction of the old system,

the second—a period of a relative compromise and the third—of a decisive socialization, with all its imminent consequences for individual and social freedoms and drastic repressions.

The ethical philosophy of the Soviets neglects all principles which contradict the policy of the Communist party and justifies all means which can assist in accomplishing the realization of its program. On the basis of such a philosophy any type of violence can be justified, and permanent world turmoil is inevitable.

REFERENCES AND BIBLIOGRAPHY

INTRODUCTION

¹ G. C. Guins, *Obshchajaia teoriia prava na osnovakh sravnitelnoi psichologii i sravnitel'nogo pravovedeniia*. Harbin, 1937.

² 'Communist morality,' according to Lenin, 'is an instrument for destroying the old society of exploiters;' 'a struggle for the strengthening and consummation of communism as the basis of Communist ethics.' Lenin, *Sobranie Sochinenii* (Collection of Works), Vol. XXX, 1932 ed., pp. 411-13.

³ The educative character of law was acknowledged by Vyshinskii in his article 'Zakonnost Revoliutsionnaia' in *Bolshaia Sovetskaia Entsiklopediia*, Moscow, 1933, Vol. XXVI, p. 90.

⁴ Chapter X, Articles 118-133 of the Constitution.

⁵ Stalin's interview with H. G. Wells, July 23, 1934, and with Roy Howard in 1936.

⁶ A. Vyshinskii, 'International Law and International Organization', *Sovetskoe Gosudarstvo i Pravo*, 1948, Vol. I, p. 19.

⁷ *Time*, August 30, 1948.

⁸ N.N. Poliansky, 'The Soviet Criminal Court as a conductor of the policy of the Party and the Soviet regime,' *Vestnik Moskovskogo Universiteta* (Moscow University Herald) No. 11, November, 1950, pp. 125-39. Translated in the *Current Digest of the Soviet Press*, March, 22, 1952, pp. 8-11.

⁹ Pashukanis, a former academician and recognized authority in the field of Socialist legal theory; author of several works, was later denounced, declared a wrecker, and disappeared into obscurity.

¹⁰ 'We are encircled,' said Lenin in a speech on November 26, 1920, at a meeting of Communist Party secretaries, 'by imperialist states which hate us Bolsheviks to the depths of their souls.' The same idea was expressed by Stalin in his famous letter to a member of the Comsomol, Ivanov, and repeated again, after the War, in his pre-election speech of February 9, 1946 (see *The Annals, Amer. Acad. of Polit. Science*, May, 1949, pp. 125, 192. Hereafter called *the Annals*). The most positive statement of this trend is found, however, in Zhdanov's speech, and in the Declaration of the Cominform in September, 1947 (*Bolshevik*, October 15, 1947).

¹¹ Lenin's Machiavellian recipe was formulated in 1920 in connection with the Second Congress of the Comintern (See Lenin's *Sochineniia*, Ed. 4, Vol. 31, pp. 194, 202, 419-20, 444 and 484): '...we must use the antagonism between the two existing systems of capitalism ...between the two groups of capitalist states—in such way as to set one against the other.' Since the imperialists were vastly more powerful militarily and economically, Lenin recommended the protection of the Soviet Republic 'by other means.'

PART I, CHAPTER I

¹ Cf. critical survey by N. S. Timasheff, 'Is Soviet Law a Challenge to American Law?' *Fordham Law Review*, Vol. XIX (June 1950), pp. 182-189.

² Harold J. Berman, *Justice in Russia: An Interpretation of Soviet Law* (Cambridge: Harvard University Press, 1950), pp. 191, 200-203.

³ 'Soviet Russia has ... not inherited the legal conception of the state which has had so strong an influence in the West, and which was beginning to develop so rapidly in Russia itself in the late nineteenth and early twentieth centuries.' Berman, *op. cit.*, p. 161.

⁴ It is not accidental that all great philosophers of the modern world, both English

and German, discussed problems of law and state in connection with their ethical systems.

⁵ Rudolph von Jhering, *The Struggle for Law* (Chicago, 1879), a translation from the German.

⁶ G. C. Guins, *Ethical Problems of Contemporary China* (in Russian, Harbin, 1927).

⁷ Published in English under the title *The Grand Instructions to the Commissioners appointed to frame a new Code of Laws for the Russian Empire*. Composed by Her Majesty Catherine II. Translated by M. Tatishchev, London, 1768.

⁸ A. N. Radishchev, *Puteshestvie iz Peterburga v Moskvu, 1790* (edited in Paris, France, 1921).

⁹ Nicolas Berdyaeff, *The Russian Idea* (London, 1947), pp. 51 ff.

¹⁰ Prof. Ivan Iljin, *Wesen und Eigenart der russischen Kultur* (2 Aufl., Affoltern a. H.: Aehren Verlag, 1944).

¹¹ N. Berdyaev, *C. Leontiev* (London, 1940), especially pp. 186-188, 227.

¹² This peculiarity of the Russian national psychology has been characterized by the present author in his article 'Peculiarities of the World Outlook of Leo Tolstoy,' in *Russkoe Obosrenie* (Harbin, Manchuria), December 1920.

¹³ Nobody has succeeded better in depicting the various difficulties in establishing the foundations of a legal order in Russia than V. A. Maklakov, in his books *The First State Duma* and *The Second State Duma*, published in 1939 and 1945 in Paris, France (Editions 'La Renaissance,' in Russian).

¹⁴ Despite all the limitations, several provincial zemstvos succeeded in developing their activity on a broad scale, especially in the field of education, sanitation and agronomic assistance to the population. See T. Polner and V. Obolensky, *Russian Local Government during the War* (New Haven, 1930); N. J. Astrov, 'The Municipal Government and the All-Russian Union of Towns' in P. P. Gronskey, *The War and the Russian Government* (New Haven, 1929); P. Vinogradov, *Self-Government in Russia* (London, 1915); also his *The Russian Problem* (London, 1914).

¹⁵ Since the establishment of the State Duma, the staff of the central institutions included many excellent specialists.

¹⁶ In Russia, a country of extreme contrasts, it was possible to observe side by side with a high civilization an extreme backwardness in the villages and in the regions populated by the primitive non-Russian tribes.

¹⁷ See G. C. Guins, '*Administrativnoe i sudebnoe stroitvo Aziatskoi Rossii*,' in *Asiatskaia Rossiia*, Vol. II, Izd. Pereselencheskogo Upravleniia (Petrograd, 1915).

¹⁸ The Code of Laws (*Svod zakonov*) should be distinguished from the voluminous Complete Collection of Laws (*Polnoe sobranie zakonov*), which included all the statutes, orders and regulations in chronological order. Every year one new volume was added to the Complete Collection, comprising all the essential statutes, ukases, and decrees which during the year were published in a special periodically issued bulletin (*Sobranie usakonenii*) and in official papers. The difference between the *Svod zakonov* and the *Polnoe sobranie zakonov* is often ignored even by acknowledged experts on Russian law. (See, for example, *The U.S.S.R.*, edited by Ernest J. Simmons, Ithaca: Cornell University Press, 1947, p. 172). The *Svod zakonov* consisted at first of fifteen volumes; in 1892 a sixteenth volume was added, containing the Judicial Statutes of 1864. The structure of the Code of Laws always remained the same and even the enumeration of articles was preserved; but the text was constantly revised in accordance with current legislation, and, therefore, some parts of the Code of Law were re-edited several times.

As regards the Complete Collection of Laws (*Polnoe sobranie zakonov*), it was published continuously and there are three separate collections. The First Collection, published in 1830, included all laws from 1649 to 1825, in 45 volumes; the Second Collection, in 55 volumes, ends after the death of Alexander II; the Third Collection was begun in 1881 and included the laws promulgated during the reigns of Alexander III and Nicholas II.

An author asserts that the Russian *Svod zakonov* 'took over European law wholesale, often with little reference to Russian conditions.' (Harold J. Berman, 'The Challenge of Soviet Law,' *Harvard Law Review*, Vol. 62, No. 2, 1948, p. 252, note 45). In fact, every article of the *Svod zakonov* was taken from statutes which can easily be found in

the *Polnoe sobranie zakonov*. Only the first part of volume X, the civil code (*Svod zakonov grazhdanskikh*), contained some provisions borrowed from Europe, especially from the French Napoleonic Code.

¹⁹ Some important parts of the *Svod zakonov*, namely, *Zakony grazhdanskie* (Civil Law) and *Ugolovnoe ulozhenie* (The Penal Code), had to be replaced by newly drafted codes. Both drafts were published with voluminous and detailed commentaries. Although only part of the draft of the penal code was put into effect, the whole work had both scientific and practical significance. John N. Hazard erroneously asserts that the new criminal code 'was never published, except for the chapter on state crimes' (treason). It was promulgated on March 22, 1902, and all of its general provisions, which Prof. Hazard characterizes as 'the most advanced and liberal,' (*The U.S.S.R.*, E. J. Simmons, ed., p. 172) went into effect. Only the enforcement of a special part was postponed, until re-adjustment of the penal system.

²⁰ Almost the same conditions, if not worse, existed in many colonies of the European nations. However, these colonies were distant and did not attract as much attention as Russia's Asiatic possessions, which comprised a part of the state.

²¹ 'The Russian movement in Central Asia has been marked by discipline and humanity ... Russia has forbidden slave trade in her own Asiatic possessions, as well as in the countries under her protection.' (W. E. Baxter, *England and Russia in Asia* (London, 1855), Ch. III, pp. 20-30.

²² Prof. A. Kunitsin inspired Pushkin with ideas of the innate rights of man, the equality of human beings and freedom as an ideal of the legal order; and the great Russian poet dedicated some heart-felt lines to this teacher. Later on, however, and up to the time of the Great Reforms, only the historical study of law flourished in Russia. See G. C. Guins, 'The Old Russian Civilists,' *Monitor of Civil Law (Vestnik grazhdanskogo prava)*, November, 1916, pp. 3-29.

²³ M. Kovalevsky, B. Chicherin, Korkunov, Pobedonostsev, Tagantsev, Foinitsky, Martens, Baron B. Nolde, Sergeevich and Diakonov are probably the best known. A short survey of law and jurisprudence in Russia is available in the *Slavonic Encyclopaedia*, edited by J. S. Roucek (New York: Philosophical Library, 1947), pp. 637-639.

²⁴ One of these jurists was Leo Petrazycki, who proved to be one of the most eminent theorists of law, and who became the head of a new school on the psychological theory of law. His most important work, *A Theory of Law and State*, published in Russia in 1909-10 in two volumes, is a forthcoming publication of the Law School Association. See Hugh W. Babb, 'Petrazhitskii,' in the *Boston University Law Review*, Vol. XVII, No. 4; Vol. XVIII, No. 3, 1938; also 'Leo Petrazicki,' by A. Meyendorff in the symposium *Modern Theories of Law* (London, 1933); N. S. Timasheff, 'Petrazhitskii's Philosophy of Law' in *Interpretations of Modern Legal Philosophies*, 1947; Max M. Laserson, 'The Work of Leon Petrazhitskii: Inquiry into the Psychological Aspects of the Nature of Law,' *Columbia Law Review*, v. 51, January, 1951, pp. 59-82.

²⁵ *Pravo; Vestnik Prava; Vestnik Grazhdanskogo Prava; Iuridicheskii Vestnik; Zhurnal Ministerstva Iustitsii; Izvestia Demidovskogo Litseia; Iuridicheskaiia Bibliographia.*

²⁶ One has only to become acquainted with the eight volumes of commentaries to the draft of the new Russian Penal Code promulgated March 22, 1903, and with the voluminous commentaries to the draft of the new Civil Code which was submitted for the consideration of the State Duma, in order to get an idea of just how high the level of the Russian science of law really was.

²⁷ Decree on the organization of *militsia*, April 17, 1917. Collection of Laws, No. 97, text 537.

²⁸ Decree of May 21, 1917, Collection of Laws, No. 112, text 655. Municipalities re-elected officers on the basis of universal suffrage (Decree of April 15, 1917, Collection of Laws, No. 95, text 529).

²⁹ Decree of June 13, 1917, Collection of Laws, No. 127, text 692.

³⁰ Decree of May 4, 1917, Collection of Laws, No. 104, text 577.

³¹ Decree of May 30, 1917, Collection of Laws, No. 127, text 692.

³² Decree of April 11, 1917, Collection of Laws, No. 86, text 492.

³³ Decree on Right of Meetings and Unions of April 12, 1917, Collection of Laws, No. 98, text 540; Decree on the Press of April 27, 1917, Collection of Laws, No. 109, text 597; Decree on Freedom of Religion of July 14, 1917, Collection of Laws, No. 188, text 1099.

³⁴ See electoral laws of April 15, 1917, Collection of Laws, No. 95, text 529, and of May 21, 1917, Collection of Laws, No. 112, text 655. Law on public service, decree of August 5, Collection of Laws, No. 216, text 1413; Decree on admission of women to the bar of June 1, Collection of Laws, No. 132, text 706.

³⁵ Decree on joint-stock companies of March 10, 1917, Collection of Laws, No. 69, text 388.

³⁶ Decree of March 20, 1917, Collection of Laws, No. 72, text 414.

³⁷ Decrees of May 4, Collection of Laws, No. 104, text 577; of June 16, Collection of Laws, No. 159, text 875; of July 18, Collection of Laws, No. 206, text 1299, and many others.

³⁸ Decree of July 28, Collection of Laws, No. 201, text 1246.

³⁹ Decree of July 12 and 29, 1917, Collection of Laws, No. 201, text 1247.

⁴⁰ The evaluation of the significance of the Supreme Soviet offered in the text is based on analyses of the minutes of the sessions of that body as they are published in the Soviet press. Soviet leaders transmit their wishes to the people in the Supreme Soviet, but they do not use it for becoming acquainted with the people's wishes. At least, the minutes of the sessions do not give any grounds for concluding that they do. However, Harold Berman offers a contrary opinion, *Harvard Law Review*, v. 62, No. 3, p. 463, note 35.

⁴¹ Arts. 89-91, Constitution of the R.S.F.S.R.; Arts. 84-86, Ukrainian Constitution, etc.

⁴² Arts. 72, 83, 92, 96, 99, Constitution of the R.S.F.S.R.; Arts. 74, 78, 87, 91, 94, Ukrainian Constitution, etc.

⁴³ Stalin's famous interview with Roy Howard. See Lenin and Stalin, *Collected Works* (Partizdat, 1937), Vol. III.

⁴⁴ The scheme of Russian social and political development offered in the text does not support the conclusions arrived at by Harold Berman in his article, 'The Challenge of Soviet Law,' *Harvard Law Review*, Vol. 62, Nos. 2 and 3, 1948.

Prof. Berman finds that Bolshevism is rooted in the Russian national psychology and is based in part on the sense of community (*sobornost*) of all men as comprising a single congregation, bound by common ritual and liturgy, and ultimately by a common sense of brotherhood originating in Kievan Russia.

As a characteristic of Russian national psychology, *sobornost* had been 'discovered' by the Slavophiles and was a product of mere imagination, a premeditated idealization of the past on the part of the Slavophiles for the formulation of their social philosophy. Recently Berdyaev restored the same doctrine as an element of his religious philosophy and Professor H. Berman, as earlier J. Maynard, follows this doctrine. In its too simplified formulation that doctrine characterizes communism as a Russian national phenomenon, which is undoubtedly wrong. The so-called Germanists, Gierke and others, asserted that German national law had been developed in the spirit of the *Genossenschaft* (community) and contrasted with the individualism of Roman law. Would it not be wrong to ascribe communism on that ground to German psychology? Not less amazing is Berman's assertion that 'the energy released by the Russian revolution is being channeled into the creation of law—the building for the first time in Russian history of a Russian legal system comparable to that of the West.' It has been the understanding of the writer that Soviet collectivism, based on the constraint and persecution of the opposition, is in contrast to the principles of Western individualism and to the democratic organization of social and political life.

In his book cited above (note 2), Berman has elaborated upon the assertions of his articles.

⁴⁵ Cited by Julian Towster, *Political Power in the U.S.S.R.*, (New York: Oxford University Press, 1948), p. 306 (note).

See also Resolution of the CC of the ACP (b) of October 5, 1946, which acknowledged shortcomings in legal education in the Soviet Union and insufficient development of

legal literature. These phenomena are still actual according to I. K. Stalgevich, 'O krupnykh nedostatках v sovetskoj juridicheskoj literature,' *Sov. Gos. i Pravo*, 1949, No. 1, pp. 26-39; N. V. Kozhevnikov i I. D. Martjevich, 'Nekotorye voprosy universitetskogo juridicheskogo obrazovaniia,' *Sov. Gos. i Pravo*, 1951, No. 1, pp. 46-49; and Prof. V. N. Chkhikvadze, 'Stalinskaia programma stroitelstva kommunizma,' *ibidem*, N 2, pp. 14-16.

⁴⁶ 'Figures referring to 1935 and 1936 show that only 5.8 per cent of the Soviet judges were graduates of regular law schools, 1.8 per cent had had a one-year course in law, and 41.7 per cent had had only a six-month course in law; so that 51.1 per cent had no legal training at all. Moreover, 62.2 per cent of all the judges of the higher courts had had barely elementary educations, while in the lower courts this percentage was as high as 84.6 per cent.' V. Gsovski, *Soviet Civil Law* (Ann Arbor, 1948), I, pp. 242-243. The figures were drawn from Berman, 'Concerning Legal Education,' (1936) *Soviet State* No. 5, 115; (1935) *Soviet Justice* No. 35, 4-5.

The situation did not change essentially until the post-war period. 'Lower courts have been sharply criticized by a new Minister of Justice of the U.S.S.R., appointed in 1948 to revitalize the work of agencies of the law.' John N. Hazard, 'Political, Administrative, and Judicial Structure in the U.S.S.R. since the War,' *The Annals of the American Academy of Political and Social Science*, May 1949, p. 17.

Examples of the lack of preparation of Soviet judges, having at times the character of comic anecdotes, are cited by Gsovski, *Ibid.*, I, p. 246 (note 47).

⁴⁷ *Bolshevik*, No. 15, 1946. Editorial.

⁴⁸ In the spring of 1946, the work of the session of the Law Institute was carried out in record time. It had been completed before the official opening of the session. (*Octabr.* No. 3-4. 1946). The work of the Soviet jurists continues to be 'unsatisfactory' and from time to time is severely criticized in the Soviet press. On February 4, 1953, several conspicuous jurists of the Law Institute were reprimanded for their inactivity. See also *Izvestiia* January 20-24, 1953, and *Sov. Gos. i Pravo*, 1953, No. 1.

⁴⁹ The resolution states: 'In the intermediate legal institutes of the Ministry of Justice, persons are being accepted without having had any secondary education; the jurists graduating from these schools are in many respects poorly prepared for work in their own field, the courts, as well as for work in the offices of the prosecuting magistrates.'

'The U.S.S.R. Ministry of Justice has not taken the necessary measures for augmenting and improving higher legal education.'

⁵⁰ *Sotsialisticheskaia zakonnost*, No. 7, July 1948, pp. 6-22. See also *Izvestia*, December 26, 1946, and April 24, 1947.

⁵¹ J. N. Hazard, *The Annals.*, p. 18. (See note 46).

⁵² Prof. Berman asserts however that the Soviet legal system is 'highly developed' because 'for the first time in Russian history Western elements of Reason, Conscience, and Precedents, Western belief in Completeness, and Supremacy, equality and the growth of law' characterize the existing legal system. 'The Challenge of Soviet Law,' p. 259. If he named those who had accepted *Western elements*, Prof. Berman would render a very bad service to Soviet jurists at a time when Western culture is excoriated and Soviet cultural workers are urged to rid themselves of adulation of the West and subservience to foreign thought and foreign literary schools and forms. For example, the Minister of Higher Education reprimanded Soviet jurists, saying 'those teaching juridical subjects are not always sufficiently critical of contemporary jurisprudence and do not always denounce its anti-social exploiting substance.' *Pravda*, March 10, 1947. Prof. Berman also asserts: 'With the restoration of legal orthodoxy in the middle 1930's, Soviet criminal law returned to its source in Roman law, and has therefore rejoined the stream of legal history from which Anglo-American law flows.' 'Principles of Soviet Criminal Law,' *Yale Law Journal*, Vol. 56, 1947, p. 836. But Roman criminal law, unlike civil law, was never the source of the modern penal system and has nothing in common with Anglo-American law, except some maxims, like *nullum crimen, nulla poena sine lege*, which are not adopted by Soviet law.

The official Soviet declarations about regeneration of law must be examined in connection with existing Soviet legislation and the Soviet legal order as a whole. It is

impossible to give an adequate characterization of Soviet law or to determine its 'spirit' and 'challenge' on the basis of mere declarations or particular provisions of law.

⁵³ Cf. Vyshinskii, *The Law of the Soviet State*, pp. 28-30, 35-36.

⁵⁴ Quite the opposite is the appraisal of Soviet law offered by Prof. Berman: 'Law plays the role of father and educator' in the Soviet Union. See his article, 'The Spirit of Soviet Law,' *Washington Law Review*, Vol. 23, p. 163. The same is repeated in his book, *Justice in Russia* (see note 2 above). In the recent book by Prof. H. Berman, *The Russians in Focus*, Boston, 1953, similar statements did not occur.

PART I, CHAPTER II

¹ A. Vyshinskii, *Teoria sudebnykh dokazatelstv v Sovetskom prave* (Moscow, 1946), pp. 125-127.

² A. I. Denisov, *Sovetskoe gosudarstvennoe pravo* (Moscow: Iurid. Izd-vo Minist. Iust. S.S.S.R., 1947), pp. 27-28; A. J. Zis', *O Kommunisticheskoi morali* (Moscow: Izdat, Pravda, 1948), p. 8. Ethical relativism and the pragmatic approach to the problems of law are characteristic not only of the Marxist philosophy. Soviet writers avoid, however, the reference to Bentham and Mill as well as modern philosophers supporting similar ideas. Some extremes of the Soviet interpretation of ethical principles are anyhow original and make it possible to emphasize the contrasts between them and the ethical traditions of the western world and to present a background for a better understanding of the essential peculiarities of Soviet law.

³ Based on incorrect premises about the dependence of all moral principles on economic conditions, Marxism generalizes what may be the characteristics of morality of certain social groups in certain historical conditions. Marxists never have succeeded in proving that there are no moral principles which could be universally adopted, and especially that all moral principles have a class character. See below, note 28.

⁴ J. Stalin, 'On Socialist Competition and the Stakhanovist Movement,' *Problems of Leninism*, pp. 548-549.

⁵ Lenin, See above Introduction, note 2.

⁶ Lenin, *The State and Revolution*, Ch. V, 2 and Ch. V, 4. See the edition of the Foreign Languages Publishing House, Moscow 1949, p. 124 and p. 138. In the same work, Lenin quotes Engels' letter to Bebel: '... The proletariat uses the state not in the interests of freedom but in order to hold down its adversaries...'

⁷ Lenin, *Sochinenia*, Vol. XXIX (1950 ed.), p. 358. Cf. V. M. Chkhikvadze, 'Voprosy prava i gosudarstva v 29-m tome sochinenii Lenina,' *Sovetskoe gosudarstvo i pravo*, No. 11, 1950, p. 26.

The class enemy does not sleep. Therefore the 'dictatorship of the proletariat is a class struggle of the victorious proletarians, holding political power, against the bourgeoisie, defeated but still not exterminated, still on the scene, resisting and even strengthening its resistance.' (Lenin, *Ibid.*, pp. 350, 351).

⁸ A. Vyshinskii, *Sovetskoe gosudarstvennoe pravo* (Moscow: U.S.S.R. Academy of Sciences, Law Institute, 1938), p. 582. English edition, p. 645.

⁹ M. Kareva, 'Rol sovetskogo prava v vospitanii kommunisticheskogo soznaniia,' *Bolshevik*, 1947, No. 4, p. 50.

¹⁰ Kareva, *op. cit.*, pp. 47-58; S. Kovalev, 'Kommunisticheskoe vospitanie trudiaschikhhsia i preodolenie perezhitkov kapitalizma v soznanii luidei,' *Bolshevik*, 1947, No. 5, pp. 9-22; G. Vasetsky, 'Razvitie i ukreplenie moralno-politicheskogo edinstva sovetskogo obshchestva,' *Bolshevik*, 1947, No. 9, pp. 11-26.

¹¹ Kareva, *op. cit.*, pp. 48-49.

¹² Zis', *op. cit.*, p. 17.

¹³ A. Vyshinskii, 'The XVIIIth Congress of the Communist Party of the U.S.S.R. and the Tasks of the Theory of Socialist Law,' *Sovetskoe gosudarstvo i pravo*, 1939, No. 3, pp. 8-9.

¹⁴ Zis', *op. cit.*, pp. 33, 38.

¹⁵ Denisov, *op. cit.*, p. 357.

¹⁶ 'Soviet morals are formed under the leadership and influence of Bolshevik

policy.' 'Bolshevist policy has a decisive significance for raising the morals of the Soviet people.' 'Soviet morality is not neutral, insofar as policy is concerned. In the Soviet state, morals are openly subordinated to policy.' Zis', *op. cit.*, pp. 18, 20, 22.

¹⁷ *Ibid.*, p. 23.

¹⁸ J. Stalin, *Ō velikoi otechestvennoi voine Sovetskogo Soiuza* (Moscow: Gospolitizdat, 1946), pp. 160-161.

¹⁹ Zis', *op. cit.*, pp. 25-26.

²⁰ 'Unconditional devotion to the Communist ideal, deep love of the Soviet fatherland, which is a genuine mother for all builders of Communism—these great moral forces of the Soviet people have brightly flourished in the process of building a new socialist society under the leadership of the Bolshevik Party.' A. Vyshinskii, 'Sovetskii patriotizm i ego velikaia sila,' *Bolshevik*, No. 14, 1947, p. 26. See also the editorial in the same issue, 'Vospitanie sovetskogo patriotizma vazhneishiaia zadacha ideologicheskogo fronta.'

²¹ M. Kareva, *op. cit.*, p. 52; S. Kovalev, *op. cit.*, p. 13; Zis', *op. cit.*, pp. 33-36; Denisov, *op. cit.*, p. 356.

²² *Bolshevik*, No. 12, 1947. Cf. M. Kareva, *op. cit.*, pp. 52-54; S. Kovalev, pp. 19-22; Denisov, p. 357.

²³ Denisov, *op. cit.*, pp. 356, 360.

²⁴ M. Shaginian, *Po dorogam piatiletok* (Izd. V.Ts.S.P.S., 1947), pp. 305-446.

²⁵ Correspondingly the Soviets organize and encourage scientific team work. Cf. 'The Triumph of Organized Research,' by T. Swann Harding, *The American Journal of Economics and Sociology*, April 1948. Examples of successful team work by Russian academicians are given by William M. Mandel in *A Guide to the Soviet Union*, (New York: The Dial Press, 1946), pp. 295-296.

²⁶ Shaginian, *op. cit.*, p. 445.

²⁷ Cf. Zis', *op. cit.*, pp. 17-18.

²⁸ V. I. Lenin, *The State and Revolution*, Ch. V, 2, p. 124. There is an obvious contradiction between the Marxist dogma on the class character of morals and its place as a superstructure of a given economic order, and the quotation from Lenin's work, which speaks about 'elementary rules ... repeated for thousands of years,' and about 'simple, fundamental rules of human intercourse,' evidently common to all of mankind, independent of any economic structure and reflecting moral principles equally acknowledged by feudalists, capitalists, slaveowners and, finally, the classless society of toilers.

²⁹ *Ibid.*, pp. 144-145 (Ch. V, 4, at the end).

³⁰ Exceptions are not excluded, but they will be rare and, according to Lenin, 'will probably be accompanied by ... swift and severe punishments (for the armed workers are practical men and not sentimental intellectuals, and they will scarcely allow any one to trifle with them).' *Ibid.*, p. 144.

PART I, CHAPTER III

¹ Friedrich Engels, *Der Ursprung der Familie, des Privateigentums und des Staates* (Stuttgart, 1904), Ch. IX, pp. 177, 181, 185.

² 'The social will, like the will of anyone of us, from day to day is formed not *in vacuo*, but as the focus of all the influences which penetrate our being.' Bernard Bosanquet, *The Philosophical Theory of the State* (5th ed., London 1925), p. 34.

Cf. also Roscoe Pound, *Interpretations of Legal History*, N. Y. 1923, pp. 88-90, 100-115, etc; M. M. Bober, *Karl Marx's Interpretation of History*, Cambridge, 1948, 2-nd Ed. pp. 128-156; 341-362.

³ The more absolute is the law, the greater its predictability and the more effectively has law fulfilled its primary function. Roscoe Pound, *Introduction to the Philosophy of Law* (New Haven, 1930), pp. 128-140.

⁴ Lenin, *Sochineniia*, Vol. XXI (1931 ed.), pp. 373 and 426; Vol. XXV (1949 ed.), pp. 360, 428; Vol. XXIV (1931 ed.), p. 369; see also Lenin's lecture, 'O Gosudarstve' (On the State), Vol. XXIX (1950 ed.), pp. 449-451.

⁵ Reisner, *Law: Our Law, Foreign Law, Common Law* (in Russian, 1925); quoted

by V. Gsovski, 'The Soviet Concept of Law,' *Fordham Law Review*, Vol. VII (January 1938), pp. 1-44.

⁶ A. J. Vyshinskii, *The Law of the Soviet State*, p. 50 (translation changed in conformity with that offered by Julian Towster, *Political Power in the U.S.S.R.*, N. Y. Oxford University Press, 1948).

⁷ Vyshinskii, 'XVIII S'ezd VKP (b) i zadachi nauki sotsialisticheskogo prava.' *Sov. Gos. i Pravo*, 1939, No. 3, p. 10.

⁸ Vyshinskii, *Teoriia sudebnykh dokazatelstv*, p. 142.

⁹ A. K. Stalgevich, 'K voprosu o poniatii prava,' *Sovetskoe Gosudarstvo i Pravo*, No. 7, 1948, pp. 59-61.

¹⁰ Reproducing the general principle of legality, the equality of all people before the law, Lenin emphasized that 'the legal order means application of the same scale to different people.'

Sochineniia, Vol. XXI, (1931 ed.), p. 434; Vol. XXV (1949 ed.), p. 437.

¹¹ M. A. Arzhanov, 'Ob ocherednykh zadachakh v oblasti teorii gosudarstva i prava,' *Sovetskoe Gosudarstvo i Pravo*, No. 8, 1948, pp. 3-4. See also I. T. Goliakov, *The Role of the Soviet Court* (Public Affairs Press, Washington, 1948), p. 16. 'The most important function of the socialist state is the fundamental remaking of the conscience of the people.'

¹² Lenin, *Sochineniia* (1931 ed.), Vol. XXI, p. 438; Vol. XXV (1949 ed.), p. 442.

¹³ *Ibid.*, Vol. XXI, p. 386; Vol. XXV, p. 396.

¹⁴ Stalin, *Problemy Leninizma* (Problems of Leninism) (11th ed.), p. 32.

¹⁵ Lenin, Vol. XXI (1931 ed.), p. 414; Vol. XXV (1949 ed.), p. 412 (quotation from Marx's letter to Bebel).

¹⁶ *Ibid.*, Vol. XXI, p. 438; Vol. XXV, p. 443.

¹⁷ Stalin, 'Some Questions of Theory,' Report on the Work of the C.C. to the 18th Congress of the A.C.P. (b), March 10, 1939, *Voprosy Leninizma* (11th ed.), p. 606.

¹⁸ Soviet enemies inside the country are also called *peregibshchiki, zagibshchiki, diversanty, secessionisty*.

¹⁹ 'The Soviet state ... has the power to use the entire apparatus of coercion that the state is usually entitled to use only in a very narrow field of activities, and only in criminal cases. Any action within the U.S.S.R. is subject to governmental pressure, to coercion and, eventually, to the severest forms of punishment.' Andrew Efron, *The New Russian Empire* (New Haven, 1941), p. 103.

PART I, CHAPTER IV

¹ Lenin, *State and Revolution* (in Russian) (*Collected Works*, vol. XXIV, 1931 ed., p. 365). In conformity with the teacher, Krylenko—once a Commissar of Justice—characterized the court as 'a weapon for the safeguarding of the interests of the ruling class... A club is a primitive weapon, a rifle is a more efficient one, the most efficient is the court.' (Krylenko, *The Judiciary of the R.S.F.S.R.* (in Russian) 1923. Cited from Gsovski, v. I, p. 241.

² 'The principal object of the Constitution of the R.S.F.S.R., which is adapted to the present transition period, consists in the establishment of a dictatorship over the urban and rural proletariat and the poorest peasantry, in the form of strong all-Russian Soviet power; the object of which is to secure complete suppression of the bourgeoisie, the abolition of exploitation of man by man, and the establishment of Socialism, under which there shall be neither class division nor state authority.' (Art. 9, ch. V of the Constitution of the R.S.F.S.R., July 10, 1918.)

³ S. Dobrin, 'Soviet Jurisprudence and Socialism,' *Law Quarterly Review*, v. 52, pp. 420-21. A. Vyshinskii asserts the same thing: 'To the students, the growing cadres, a nihilistic attitude toward Soviet law was suggested.' ('On the Situation on the Front of Legal Theory,' *Sotsialisticheskaya zakonnost*, 1937, 5, p. 31.)

See also N. S. Timasheff, 'The Crisis in the Marxian Theory ou Law,' (*N. Y. University Law Quarterly Review*, May 1939, No. 4, pp. 519-531); also John N. Hazard, 'Housecleaning in Soviet Law,' *The American Quarterly on the Soviet Union*, v. 1, April 1938, pp. 5-16. For further details concerning the withering away doctrine

(Lenin, Stuchka, Reisner, Pashukanis, Vyshinskii, etc.) see the symposium *Soviet Legal Philosophy*, J. Hazard, Cambridge, 1951.

⁴ Stalin's address delivered at a session of the Central Committee of the Communist Party of the Soviet Union, April, 1929.

⁵ Joseph Stalin, *Leninism, Selected Writings*, International Publishers, N. Y., 1942, p. 113.

⁶ Quotation from the Report delivered by Stalin at the plenary session of the Central Committee and the Central Control Commission of the Communist Party of the Soviet Union, January 7, 1933. See *Leninism* (*supra*, note 5), p. 288. Quotation in the text is taken from the English translation of Vyshinskii's *The Law of the Soviet State*, N. Y., 1948, p. 62.

⁷ See Komarov, 'Osnovnye voprosy teorii sovetskogo prava,' *Sovetskoe gosudarstvo*, 1934, No. 1, pp. 55-56.

⁸ *Leninism*, pp. 338 and 394.

⁹ Vyshinskii, 'Voprosy prava i gosudarstva u K. Marksa,' *Sov. Gos.*, 1938, No. 3; 'Stalinskoe uchenie o sotsialisticheskom gosudarstve,' *ibidem*, 1939, No. 2; 'XVIII S'ezd V.K.P. (b) i zadachi nauki sotsialisticheskogo prava,' *ibidem*, 1939, No. 3.

¹⁰ Vyshinskii, *The Law of the Soviet State*, p. 51. Cf. Leon L. Fuller, 'Pashukanis and Vyshinskii. A Study in the Development of Marxian Legal Theory,' *Michigan Law Review*, XLVII (1949), p. 1157 ff.

¹¹ A circumstance especially emphasized by Stalin. He set forth many times the fact of 'capitalist encirclement' and that bourgeois countries are awaiting an opportunity 'to fall upon the Soviet Union and shatter it—or at least to undermine its power and weaken it.' (*Leninism*, p. 83, 309 ff., 438 ff.).

The same had been repeated also by Molotov: 'Under conditions of capitalist encirclement the problem is not the withering away of the communist state, but its capacity to repulse victoriously attacks of its class enemies... Under present conditions the question which stands before us is not that of the withering away of the Soviet state, but that of strengthening its power in order to have a firm, powerful, socialist state, organized according to Bolshevik principles.' ('The Twenty-First Anniversary of the October Revolution,' *Bolshevik*, 1938, No. 21-22, pp. 34-35.)

¹² Vyshinskii, *ibidem*, pp. 50-52.

¹³ *Ibidem*, p. 52.

¹⁴ *Ibidem*, p. 60. Also in a special article: 'A general formula foretells the inevitability of the state's withering away 'under certain economic and cultural premises,' explains Vyshinskii; 'namely abolition of classes, liquidation of opposing differences between city and village, between intellectual and physical labor, an extensive development of culture, disappearance of the remnants of capitalism in men's consciousness, the custom of getting along without constraint (compulsory measures), and such a level of development of the productive forces that the abundance of material values will allow transition to the realization of the principle: "'From each according to his ability, to each according to his needs.'"

(Vyshinskii, 'Stalinskoe uchenie,' [see *supra*, note 9], pp. 105-106).

¹⁵ The legal character of some territorial problems is distinctly expressed in Art. 18 of the Soviet Constitution: 'The territory of a Union Republic may not be altered without its consent.' Cf. also Art. 8 of the same Constitution: 'The land occupied by collective farms is secured to them ... for an unlimited time—that is, in perpetuity.'

¹⁶ See G. C. Guins, *Ethical Problems of Contemporary China* (in Russian) Kharbin, 1927, p. 12.

¹⁷ Originally a very simple form of registration, marriage later became a more solemn procedure in the Soviet Union, the performance thereof being necessary for juridical significance. (*Ukase* of July 8, 1947, Art. 40). 'Marriage ceremony has to be as attractive as possible, not a simple stamping of marriage documents.' (*Komsomolskaya Pravda*, April, 1948).

¹⁸ The one-judge court in labor cases under the law of June 26, 1940, is criticized as being lacking in solemnity. (See Perlov, 'K proektu ugolovno-processualnogo kodeksa,' *Sov. Gos. i Pravo*, No. 9, 1947).

¹⁹ See G. C. Guins, *Law and Culture* (in Russian) Kharbin, 1938, pp. 70-74.

²⁰ Declaration of the Rights of the Laboring and Exploited Peoples of July 10, 1918; Declaration of the Rights of the Peoples of Russia. Declaration on the Constitution of the Soviet Union dated July 13, 1923—to mention but a few. *The Law of the Five-Year Plan for Restoration and Development of the National Economy of the U.S.S.R. for 1946-50, has also a declarative character.*

²¹ Organizational provisions establish, to be sure, many important duties as far as citizens are concerned, and invest authorities with great power; rituals have a constitutive force and some rights cannot exist unless rituals are performed; declarations having no legal character are merely promises. Thus, all three groups cannot be classified as technical rules.

²² 'To each according to his work.' (Art. 12 of the Constitution.)

²³ 'The basis of our system is public property, just as private property is the basis of capitalism.' (Stalin, *Leninism*, p. 267).

²⁴ 'The prophesy of the withering away of penal repressive organs was an attempt to leave us with fettered hands and to abandon our country to the mercy of saboteurs, terrorists, and diversionists.'

(Vyshinskii, 'Osnovnye zadachi nauki sovetskogo sotsialisticheskogo prava,' *Sovetskoe gosudarstvo*, No. 4, 1938.)

²⁵ This term was confirmed by the Fundamental Principles of the Criminal Legislation of the U.S.S.R. and Constituent republics, enforced by the Resolution of the 11th Conference of the Tsik of the U.S.S.R., October 31, 1924 (*Coll. Laws USSR*, 1924, No. 24). This act is still formally in force.

²⁶ *Ukase* on the Protection of the Property of State Enterprises, Collective Farms, and Cooperatives, and the Strengthening of Public (Socialist) Ownership. (*USSR Laws*, 1932, text 360.) Capital punishment was recently replaced in peacetime by confinement in a camp of correctional labor for a period of 25 years. (*Ukase* of May 26, 1947). On January 12, 1950, capital punishment was restored for treason, espionage, and diversionist acts. (*Izvestia*, January 3, 1950).

²⁷ *Ukase* of June 4, 1947, concerning the Increased Protection of Government and Public Property. '...Although the death penalty is at present excluded, there are now even broader possibilities of applying severe penalties for any mishandling of property of the collective farms.' (See Gsovski, Vol. I, p. 731).

²⁸ In 1942 a ruling of the Supreme Court instructed the courts to apply by analogy the law of January 20, 1930, incorporated in the Criminal Code as Art. 79, even in the case of fraudulent slaughter of offspring in contradiction to the government's plans for breeding of cattle. A new law was also issued and incorporated as Art. 79³⁻⁴ of the Criminal Code establishing penalties for 'illegal slaughter of horses without the authorization of the supervising veterinary authorities, the intentional maiming of horses or any malicious act which results in the loss of a horse or renders it unfit for use.'

²⁹ Art. 59 of the Crim. Code.

³⁰ Reporting for profit was also practiced; the person making the report was often able to obtain the housing of the person about whom he had made the report. A certain P—, for a purely personal motive, falsely accused a girl of the same village of having made anti-Soviet statements, and induced two other girls, one still a minor and the other illiterate, to sign his statement. (Both examples from Goliakov, *Ugolovnoe pravo*, Textbook, Moscow, 1947, p. 222.)

³¹ Law of Nov. 25, 1935. See Art. 73² (amend. of 1936) and Art. 155 of the Criminal Code.

³² John Hazard, 'Drafting New Soviet Codes of Law,' *American Slavic and East-European Review*, February, 1948, tells of a Soviet project of increasing penalties for the punishment of mothers who murder their newly born children. Unfortunately, the author limits himself to the simple information and does not explain why the described crime took place and why it is necessary to increase the penalty.

³³ Goliakov, *op. cit.*, pp. 208-209.

³⁴ 'The origin of crime—the struggle of the isolated individual against dominant relationships—like the origin of law is not purely arbitrary. On the contrary, crime is rooted in the same conditions as is the governing power existing at the time.' (Marx

and Engels (Russ. Edition), vol. IV, p. 312. Quoted by Vyshinskii, *The Law of the Soviet State*, p. 14).

³⁵ Application of criminal law by analogy (Art. 16, Crim. Code) is one of the peculiarities of the Soviet system, violating one of the oldest principles *nullum crimen, nulla poena sine lege*. Analogy is permitted if there is similarity in kind and in importance of an act. Authors accepting this violation of fundamental principle of law indulgently (cf. H. Berman, 'Principles of Soviet Criminal Law,' *Yale Law Journal*, v. 56, 1947, pp. 804, 810) ignore the fact that the 'importance' of an act is always defined according to the government's views. (See *supra*, note 28 and comments to Art. 78, 166, etc. of the Penal Code, ed. 1947, in Russian.)

³⁶ Soviet jurists assert that 'in the social order of the U.S.S.R. there are no conditions which could give birth to criminality. The latter is the result of capitalist encirclement and survivals of capitalism in the consciousness of backward people.' (Cf. V. M. Chkhikvadze, 'Sovetskii sud—borba za preodolenie perezhitkov kapitalizma,' *Sov. gos. i pravo*, No. 2, 1949). Such an explanation is not in agreement with the content of Soviet laws which give sufficient evidence that many crimes have their origin in conditions created by the Soviet system.

³⁷ The idea of 'superstructure' of law had been extremely abused in the Soviet Union, and it handicapped the development of science even in such purely special branches as the linguistic. Stalin published a survey in which he asserted that language embraces all spheres of human activities and is much more wide than the sphere of influence of a mere 'superstructure' ... development of language consisted in the evolution and improvement of its fundamental elements but not in the abolition of one and construction of the other.' (Stalin, *Otnositelno Marxizma v iazykoznanii*, Izd. Pravda, 1950, pp. 9, 25.)

The same, however, can be said about the development of law, which Soviet jurists try to deny (see Denisov, 'Tsenneishii vklad v sokrovishchnitsu Marxizma-Leninizma,' *Sov. Gos. i Pravo*, 1950, No 9, pp. 1-16). At the same time they borrow a great number of legal provisions from the foreign codes and norms of International Law (cf. Antonov, *Sov. Gos. i Pravo*, 1938, No. 4, p. 72).

³⁸ Art. 156, 166, 171 of the Civ. Code established privileges such as housing and legal force of contracts. Art. 5 of the Introductory Regulations to the Civil Code provided special privileges in application of legal provisions in regard to working people.

³⁹ 'Slaughter of one's own animals under a certain age entailed a fine for a non-kulak, but for a kulak it entailed confiscation of all his animals and implements, withdrawal of the land he used, and two years imprisonment, with or without exile.' (*USSR Laws*, 1930, text 66, Sec. 1; 1931, Text 474). The same for failure to pay taxes on the date due. (See Gsovski, *op. cit.*, p. 712.)

⁴⁰ 'The court of the State of proletarian dictatorship is the court of the working class...' (See Gsovski, *op. cit.*, p. 249ff).

'The judiciary is an organ of state power and therefore cannot be outside of politics.' (J. Towster, *Political Power in the USSR*, New York, 1948, p. 304).

⁴¹ The continually increasing penalties of Soviet legislation contradict decisively the statement of H. Berman that 'Socialist Law which protect and educates morality ... helps the Soviet state to inculcate in the peoples of the USSR discipline and self-discipline.' (Harold J. Berman, 'The Challenge of Soviet Law,' *Harvard Law Review*, v. 62, no. 2 and 3, 1948, p. 238). Soviet legislation demonstrates on the contrary that discipline in the Soviet Union is based on compulsion and terror rather than on 'educational morality.'

⁴² G. J. Jellinek, *System der subjectiven oeffentlichen Rechte*, 1892.—The right to demand cancelling of all orders of the state if they violate freedoms; the right to judiciary and administrative assistance; and the right of participating in political activity. For a while this doctrine was not only accepted by the Soviet administrative law, but even completed with a right of using State's property. (See Kobalevsky, *Sov. Admin. Law*, Kharkov, 1928, p. 12).

⁴³ Cf. G. C. Guins, *On the Way to the State of the Future* (From Liberalism to Solidarism), in Russian, Kharbin, 1930. Also his *New Ideas in Law* (in Russian), Vol. I, Kharbin, 1931, § 24; Vol. II, 1932, § 50.

PART I, CHAPTER V

¹ See *Decrees and Constitution of Soviet Russia*, Reprinted from *The Nation*, N. Y., 1919, p. 18. The measures mentioned in the quoted Declaration were realized in a series of decrees: Land Decree of Nov. 8, 1917; Decree of Dec. 27, 1917, and Jan. 26, 1918, concerning nationalization of banks and annulment of bank stocks; Decree of Nov. 14, 1917, concerning labor control and of Dec. 5, concerning organization of the Supreme Economic Council which was vested with the right of confiscation, requisition, sequestration, compulsory syndication of various branches of industry, etc.; and the Decree of Jan. 28, 1918, concerning annulment of stocks, bonds and foreign loans, to mention only the most important items.

² The first three points of the Decree of May, 1918, are:

To confirm the fixity of the grain monopoly and fixed prices, and the necessity of a merciless struggle with grain speculators in order to compel each grain owner to declare the surplus over for sowing the fields and for personal use, according to established quantities until the new harvest, and to surrender the same within a week after the publication of this decision in each village. The order of these declarations is to be determined by the People's Food Commissar through the local food organizations.' (Art. 1). 'To call upon workmen and poor peasants to unite at once for a merciless struggle with grain hoarders.' (Art. 2).

'To declare all those who have a surplus of grain and who do not bring it to the collecting points and likewise those who waste grain reserves on illicit distillation of alcohol and do not bring them to the collecting points, enemies of the people, to turn them over to the Revolutionary Tribunal, imprison them for not less than ten years, confiscate their entire property, and drive them out forever from the communes; while the distillers are, besides, to be condemned to compulsory communal work.' (Art. 3).

Quoted from the *Collection of Decrees*, (reprinted from *The Nation*, N. Y. 1919, pp. 85-86).

³ Art. 18 of the Land Law of September 1918; 'The trade in agricultural machinery and in seeds is monopolized by the organs of the Soviet Power,' Art. 19 — 'The grain trade, internal as well as export, is to be a state monopoly.'

⁴ Art. 3 of the decree of November 23, 1917 on abolition of classes: 'The properties of the noblemen's class institutions are hereby transferred to corresponding zemstvo self-governing bodies.'; Art. 4: 'The properties of merchants' and burgers' associations are hereby placed at the disposal of corresponding municipal bodies.'

⁵ Art. 12 of the decree of January 29, 1918: 'No church or religious society has the right to own property. They have no rights of a juridical person.' Art. 13: 'All properties of the existing churches and religious societies are declared national property.'

⁶ Art. 1, 3, and 5 of the decree of November 24, Dec. 7, 1917.

⁷ In his letter addressed to Stalin, Lenin wrote: '...legality must be uniform. The fundamental evil in our uncultured condition is our tolerance of the real Russian point of view and at the same time, the habits of semi-savages, trying to keep the law of Kaluga and the law of Kazan.' Lenin, *Sochineniia*, Vol. XXVII, 1930, p. 298.

⁸ About violations of law see *Siezdy Sovetov*, SSSR Akademia Nauk Inst. Prava. Mar. 1939, p. 72.

⁹ It was then that 'imperialist' America organized A.R.A. (American Relief Administration), which, under the leadership of Herbert Hoover, saved millions of people in Soviet Russia from inevitable death.

¹⁰ Art. 10 and 90 of the Land Code of 1922. However a law of March 16, 1927, established various privileges for collective farms.

¹¹ Law of June 29, 1927 on governmental industrial trusts.

¹² Laws of May 17, Oct. 27, and Dec. 19, 1921.

¹³ Law of April 4, 1922 concerning organization of the Main Committee on Concessions.

¹⁴ Law of Aug. 8, 1921.

¹⁵ '...a complete abolition of the capitalist elements and the classes in general' was proclaimed to be the aim of the policy of the Five-Year-Plan period. (Resolution of the XVI Congress of the Communist Party.)

¹⁶ V. Komarov, 'Osnovnye voprosy teorii Sovetskogo prava,' *Sovetskoe Gosudarstvo*, 1934, No. 1, p. 43.

¹⁷ Referring to the law of August 7, 1932, concerning protection of socialist property; law of February 7, 1930 (*Sobranie Zakonov S.S.S.R.*, 1932, No. 9, text 105) concerning liquidation of kulaks as a class; and the decree on revolutionary law of June 25, 1932, John N. Hazard concludes: 'While there is still fear of counterrevolution and attacks from the ranks of the old ousted class, law must retain its revolutionary character.' John N. Hazard, 'Soviet Law: An Introduction.' (*Columbia Law Review*, Vol. XXXVI, Dec. 1936, No. 8, p. 1234).

¹⁸ 'Now there is an opportunity to build socialism and not merely to struggle with the old guard.' 'Revolutionary law must defend the proletariat, but it has a new duty which appeared for the first time after the proletarian revolution; it must also build socialism which in turn will lead to communism.' (*Ibidem*, p. 1245).

¹⁹ 'During the Five-Year Plan period, law has become an instrument used by the Soviet state with the objective of transforming the existing economic relations.' 'The Soviet state in its present structure has entered the stage of stabilization...' Charles Prince, 'The Evolution and Crisis in Soviet Jurisprudence.' *A.B.A. Journal*, Vol. XXXI, Nov. 1945, pp. 553-57.

²⁰ N. D. Kazantsev, 'Zadachi Nauchno-Izledovatel'skoi Raboty v Oblasti Prava,' *Isvestia Akademii Nauk S.S.S.R., Otdelenie Ekonomiki i Prava*, No. 1, 1950, pp. 36-44.

²¹ Almost the same goals and needs are listed in the article of P. Tanochka; 'Sochetanie lichnykh i obshchestvennykh interesov pri sotsializme,' *Bolshevik*, No. 6, 1948., and are constantly repeated in numerous papers, articles and speeches.

²² 'The stability of our legal system has become a fact, and this stability is connected with the consolidation and development of the legal forms corresponding to the content of the actual system of the Soviet Socialist law.' M. A. Arzhanov, 'Ob ocherednykh zadachakh v oblasti teorii gosudarstva i prava,' *Sovetskoe Gosudarstvo i Pravo*, No. 8, 1948, p. 10.

Stalin's theory of Law is expounded in a series of articles included in *Uchenye Zapiski, Akademia Obshchestvennykh Nauk pri Tsk VKP (b)*, v. 8, M. 1951.

²³ 'It would be to the merit of Soviet jurists to prepare a code of laws of the socialist state as soon as possible in order to facilitate the work of becoming familiar with the law for the great mass of workers.' A. N. Iodkovskii, 'O Kodifikatsii zakonodatel'stva SSSR,' *Sov. Gos. i Pravo*, 1949, N. Y., p. 18-25. Also John Hazard, 'Drafting New Soviet Codes of Law,' *American Slavic and East European Review*, Feb., 1948.

PART I, CHAPTER VI

¹ 'Among all legal norms statutes (*zakony*) have a particular significance. Statute is the highest and fundamental form of Law; it is the law in its highest expression.' (A. K. Stalgevich, 'K voprosu o poniatii prava,' *Sov. Gos. i Pravo*, 1948, No. 7, p. 56).

² Lenin, Vol. XX, p. 532; vol. XXV, 4th ed., p. 72. Cf. Trainin, 'State and Law' (*Soviet Legal Philosophy*, p. 445) and Stalgevich, 'K voprosu o poniatii prava' (*Sov. Gos. i Pravo*, 1948, No. 7, pp. 49-63).

³ *Ibid.*, Vol. XXII, p. 420, 421; Cf. Vol. 36, 4th Ed., p. 92.

⁴ A. Vyshinskii, *Teoriia sudebnykh dokazatelstv*, p. 133.

⁵ The role of the Communist Party in the Soviet political structure and its correlation with the official organs of the Soviet state are described in more detail below (Chapter 15).

⁶ The official point of view in the Soviet Union is reversed. 'The efficiency of our politics as expressed in law is based on the violence applied by the majority against the minority.' V. Komarov, 'Osnovnye voprosy teorii Sovietskogo prava,' *Sov. Gos. i Pravo*, 1934, No. 1, p. 46. Komarov repeats Stalin who in turn repeats Lenin's characterization of Bolshevik revolution directed against the bourgeois minority and in interests of the working masses. However, since 1917 circumstances have essentially changed. Since 1929, Soviet legislation is directed sometimes against the peasantry, sometimes against the workers, etc. Revolution requires sacrifices from

all parts of population, each part is subject to 'the violence,' in one or another relation, and thus 'the minority' dominates the 'majority.'

The forcible character of the Soviet legislation is reflected especially in the penal system. 'The source of Soviet criminal law is being re-emphasized as lying in the need for the protection of class society, having no relationship to the equivalents of bourgeois exchange.' (J. Hazard, *J. of the Amer. Inst. of Criminal Law*, Vol. XXIX, 1938, p. 169). The new Code of Soviet Criminal Procedure must have as its central theme the preservation of the Soviet way of life (the socialist state of workers and peasants). Strogovich, *Ugolovnyi Process*, Ed. 1938, note 6 on p. 10.

⁷ Malitsky, *Sovetskoe Gosudarstvennoe Pravo*, Kharkov, 1926, p. 14. Cf. M. M. Agarkov, 'Osnovnye printsipy Sovetskogo grazhdanskogo prava,' *Sov. Gos. i Pravo*, 1947, p. 35.

⁸ A. Vyshinskii, 'Zakonnost' revoliutsionnaia,' *Bolshaiia Sovetskaia Entsiklopedia*, Vol. XXVI, ed. 1933, pp. 86-91; also Judiciary of the USSR (Russian, 2nd, ed. 1935), p. 32, quoted by V. V. Gsovski, 'Soviet concept of Law,' *Fordham Law Review*, Vol. VII, 1938, p. 31.

⁹ These reforms are being issued by Ukases of the Presidium of the Supreme Soviet while amendments of the Constitution require a vote of the majority of two-thirds in the Supreme Soviet.

¹⁰ 'The legal norms established by the decrees and orders of the Council of Ministers regulate a very wide circle of political, economic and cultural problems of the life of the Soviet society.' (*Osnovy Sov. Gos. i Prava*, M. 1947, p. 48).

¹¹ There are only two examples of the application of customs for the derivation of law: Articles 89 and 90 of the Code of Commercial Navigation of the U.S.S.R. permit the law to sanction the custom of a given port concerning time for loading and unloading and demurrage; Article 77 of the Land Code of the R.S.F.S.R. authorized the local custom applied to division of a peasants' household. *Osnovy Sov. Gos. i Prava*, 1947, p. 49.

¹² See J. N. Hazard, 'The Soviet Court as a Source of Law,' *Washington Law Review*, Vol. XXIV, No. 1, Feb. 1949, pp. 80-90. Prof. Hazard relates the discussion which took place in the Vsesoiuznyi Institute Iurid. Nauk and arguments of both sides. He does not find that the point is disproved, that 'court practice cannot and must not create new norms of law,' and that 'it must correspond with precision to existing norms.'

¹³ N. P. Sagatovsky and A. A. Reiner, 'Protiv izvrashchenii sotsialisticheskoi zakonnosti,' *Sov. Gos. i Pravo*, 1949, No. 2, pp. 36-39.

¹⁴ 'The Plenum of the Supreme Court establishes the most essential and often repeated misinterpretations of law by the courts, points them out to the courts and explains how they have to act in order to evade such mistakes in the future.' Prof. M. Strogovich, *Ugolovnyi Process*, M. 1946, p. 90.

¹⁵ See Chapter XXIV.

¹⁶ The problem of the sources of International law will be discussed separately.

¹⁷ Cf. I. Baranov, *Planovoe Khoziaistvo*, 1949, No. 5, p. 63. Also Chapter X.

¹⁸ Collective agreements had a normative character, but 'as long as the planning system proved to become predominant in the whole national economy collective agreements were losing more and more their normative character.' Prof. V. M. Dogadov, 'Etapy razvitiia Sovetskogo kolektivnogo dogovora,' *Izvestiia Akademii Nauk, Otdel ekonomiki i prava*, No. 1, 1948, p. 87.

¹⁹ A. Vyshinskii, *Teoria sudebnykh dokazatelstv*, p. 53. *Uchenye Zapiski. Akademia Obshchestvennykh Nauk*, pri TsK VKP (b) Vypusk 8, M 1951, p. 83.

²⁰ S. F. Kochevskii, 'Sotsialisticheskoe pravo i ego istochniki' *Trudy Yubileinoi Sessii Akademii Nauk posviashchennoi tridtsatiletiiu Oktiabrskoi Revoliutsii*, Moscow. 1948.

²¹ Vyshinskii's point of view would be supported if the Supreme Court had been forced to limit its guiding directives to interpretations of existing law, but this is not its present practice.

²² *Collection of Laws and Decrees of the USSR*, 1924, No. 7, text 71; also C. Askarkhanov i C. Brodovich, *Administrativnoe Zakonodatelstvo*, OGIZ, 1936, pp. 20-23.

²³ Cf. V. Gsovski, Vol. I, pp. 224-229.

²⁴ *Sborniki deistvuiushchikh postanovlenii plenuma i direktivnykh pisem verkhovnogo suda S.S.S.R.* Iuridicheskoe Izdatelstvo Ministerstva Iustitsii.

²⁵ Especially valuable are the annotated editions of the Penal Code and the Collections of laws on Labor Law, *Zakonodatelstvo o Trude*.

²⁶ Soviet jurists can criticize each other, in speaking of their newly published books and articles, only from the point of view of their theoretical approach toward legal problems and their consistency as Marxists. Cf. A. K. Stalgevich, 'O krupnykh nedostatkakh v sovetskoj iuridicheskoi literature,' *Sov. Gos. i Pravo* 1949, 1, pp. 26-39; V. M. Chkhikvadze, 'Razvivat' i kultivirovat' Sovetskii patriotizm,' *Sov. Gos. i Pravo*, 1949, No. 4, pp. 8-17.

²⁷ For the needs of a more detailed study of Soviet law there are several valuable collections of Soviet legal sources translated in English: 1. V. Gsovski, *Soviet Civil Law*, Vol. II, Ann Arbor, 1949 (Civil Code, Code of Laws on Marriage, family, and Guardianship, Soviet Nationality Law, Statute on Governmental Trusts, Civil Status of Churches, Patent and Copyright, Agrarian Legislation, Judiciary Act, Code of Civil Procedure, and some others). 2. *Materials for the Study of the Soviet System* by James H. Meisel and Edward S. Kozera. Ann Arbor, 1950 (State and Party Constitutions, Laws, Decrees, Decisions and Official Statements of the Leaders from 1917 to 1950). 3. *Cases and Readings on Soviet Law* by J. Hazard and M. Weisberg. Parker School. N. Y., 1950 (This variegated collection contains, besides many excerpts from the Soviet statutes, decrees, instructions, orders, model charters, cases, and excerpts from Soviet juridical literature). 4. *Soviet Law in Action*. The Recollected Cases of a Soviet Lawyer. Boris A. Konstantinovskiy. Ed. by H. Berman, Harvard Univ. Press, 1953.

PART II, CHAPTER VII

¹ Leo v. Petrazicki. *Die Lehre vom Einkommen*, B. II, Anhang. Berlin, 1895. p. 708.

² The term 'planned' is likewise applied to this system. A planned economy, however, may be one that is not embodied in a centralized system. A plan may also extend to separate branches of economy without bringing them under State control. The Soviet economy is discussed in the text as an economy wholly subjected to central authority, i.e., integral planning.

³ Art. 6, Constitution of the U.S.S.R. of 1936.

⁴ Art. 11, *ibidem*.

⁵ S. F. Kochekyan, 'The System of Soviet Socialist Law,' *Sovetskoe Gosudarstvo i Pravo*, 1946. No. 2.

⁶ Lenin's note to Kurskii. *Sochineniia*, Vol. XXIX, p. 419; Vol. 33 Ed. 4., 1950, p. 176-9.

⁷ '...under Soviet conditions, any clear distinction between Civil and Public Law is bound to be artificial.' 'Even Pashukanis and his school, when accepting the possibility of socialist Law, were bound to explain it as essentially Public Law.' (Schlesinger, *Soviet Legal Theory*, pp. 206-7. See *ibidem*, pp. 252-54.

⁸ 'Work in the U.S.S.R. is a duty and a matter of honor for every able-bodied citizen, in accordance with the principle, "He who does not work, neither shall he eat"' (Art. 12, Const.).

Although work in the Soviet Union is a necessity as the only source of existence, present Soviet legislation provides for an element of conscript labor. The Ukase of October 2, 1940, authorized the Council of People's Commissars to draft annually up to one million youths for training in trade schools and railway schools as skilled laborers. (See Ch. XIII).

⁹ The increase in the payrolls of lower officials and the over-abundance of officials is observed from top to bottom in industry and even in kolkhozes. For concrete examples one has only to turn to a file of Soviet newspapers or magazines. *Pravda*, Nov. 18, 1946, describes how during the War, administrative offices of the Kuzbas coal mines increased unduly. 'The number of engineers and technicians increased 35% to 40%. 53% of the entire engineer personnel is concentrated in the adminis-

tration... Only 199 engineers out of 430 are working in the mines.' *Izvestia*, Oct. 20, 1946, describes conditions in the 'Red Banner' kolkhoz in the Kurgan region as follows: 'It is surprising to see so many people whose business is 'general management' as compared with those who organize the work and are fully responsible for the carrying out of plans.'

A member of the Politbureau, Andreyev, reported to the Plenum of the Communist Party that 'more than half of the agronomists were working in the administration, less than half directly in production.'

(*Izvestia*, March 7, 1947). About the subsequent reforms, see Ch. XII.

¹⁰ See G. C. Guins. 'Penalties and Rewards in Soviet Law,' *Washington Law Review*, Vol. XXV, pp. 206-222, May 7, 1950, and below Ch. XIV.

¹¹ In spite of the reestablishment of the institution of inheritance in Soviet law (especially after the reform of March 14, 1945), the possibility of realization of this concept does not exist in the Soviet Union (see Ch. XI).

PART II, CHAPTER VIII

¹ Cf. Art. V of the Bill of Rights: 'Nor shall private property be taken for public use, without just compensation.' The vested rights are usually protected by the prohibition of law with a retroactive force (*ex post-facto* law), Art. 1, Section IX of the Constitution of the United States; *Priobretennye prava*, Art. 89 of the Fundamental Laws of the Russian Empire; *Die Erworbene Rechte* in Germany.

² 'It is absurd to suppose,' said Bukharin, 'that you can secure a common sheep-wolves' will. In like manner, there cannot be a common capitalist-labor will' that means law satisfying the both antagonistic classes.

³ See above Ch. V.

⁴ It was the time of reconciliation, a transitory period only. Lenin, *Collected Works* (in Russian) Vol. IX, p. 419.

⁵ A. Nussbaum, *Das neue Deutsche Wirtschaftsrecht*, 2 A. 1922; M. Rumpf, *Wirtschaftswissenschaft u. Wirtschaftsschule*, 1920; H. Goldschmidt, *Reichswirtschaftsrecht*, 1923. Under 'new economic law' some regulations of the war period and innovations of administrative character were understood. They reorganized and regulated national economy in conformity with the public interests and consequently limited private rights.

⁶ Art. 1 of the Constitution.

⁷ 'From each according to his ability; to each according to his work.' (Const. Art. 12).

⁸ See above introduction, note 8.

⁹ A. Vyshinskii emphasized the significance of individual rights in the legal system of the Soviet Union at the first conference of juridical scholars in Moscow in July, 1938. See his report published in the *Sovetskoe Gosudarstvo*, No. 4, 1938.

¹⁰ Prof. John N. Hazard has pointed out that, 'beginning with 1937, civil law was reintroduced as an independent course instead of being a small part of the general subject called economic law.' ('Legal Education in the Soviet Union,' *Wisconsin Law Review*, 1938, p. 572). In his recent work *Soviet Law and Social Change*, London, 1953, Prof. J. Hazard gives many examples which make it clear how limited is the sphere of civil law in the U.S.S.R.

¹¹ Quoted from Malitskii, an authoritative Soviet jurist, by B. Eliashevitch, *Traité de Droit Civil et Commercial des Soviets*, Paris, 1930, Vol. I, p. 60; and by V. Gsovski, Vol. I, pp. 319-20.

¹² Prof. M. M. Agarkov 'Osnovnye printsipy sovetskogo grazhdanskogo prava' (Fundamental Principles of the Soviet Civil Law) *Sovetskoe Gosudarstvo i Pravo*, 1947. No. 11, p. 35. Also in the outlines of his paper in the *Collection* published by the *Akademia Nauk*, Otdelenie Ekonomiki i Prava. M. 1947.

¹³ Art. 1: 'The law protects private rights except as they are exercised in contradiction to their social and economic purpose.' Art. 4: 'The R.S.F.S.R. has granted

legal capacity (the capacity of having private rights and obligations) to all citizens who are not restricted in their rights by sentence of the court, for the purpose of the development of the productive forces of the country.'

¹⁴ 'The purpose of Soviet law is not the development of the productive forces in general but their development in a definite direction, namely, toward Socialism.' (Gintsburg i Pashukanis, *Kurs Sovetskogo Khoziastvennogo Prava*, 1935, Vol. I, p. 110. Quoted by V. Gsovski, Vol. I, p. 320.

¹⁵ Art. 254 and Art. 254 (a-e) of the Code of Civil Procedure as amended in 1929, 1930, 1931, and 1938. See the text with all amendments in Gsovski, Vol. II, pp. 632-636.

¹⁶ § 226 B.G.B.; 'The exercise of a right which can only have the purpose of causing injury to another is inadmissible.'

Under the obvious influence of the German law the Chinese Civil Code of 1928, in Art. 148, provides that 'Exercise of right cannot have as its chief purpose the causing of injury to another.'

¹⁷ Art. 2, S.C.G.B.: 'Everybody must, in the exercise of his right and the performance of his duties, act with truth and faith. An obvious misuse of right is inadmissible.'

¹⁸ Cf. L. Josserand, *De L'Esprit des Droits et de leur Relativité* (Theorie de l'Abus des Droits).

¹⁹ Some recent codes have accepted this theory. The Polish Code of Obligations of 1933; the Rumanian Civil Code of 1939. See references and quotations in Gsovski, Vol. I, p. 337.

²⁰ In Soviet law social and economic considerations are elevated to the rank of law-creating factors. Requirements of the Soviet Civil Code lie outside the statutory law; they refer to the 'extra-legal principles,' as has been correctly pointed out by Prof. Kelman, 'Zu Art. 1 der Zivilgesetzbuecher der Sowietrepubliken,' *Zeitschrift fuer Ostrecht*, 1928, 2 (note 20, p. 315).

The Italian Code of 1942, has the same character, thus demonstrating once more the kinship between the Soviet socialist state and the Fascist state.

²¹ 'A mill was taken from the lawful proprietor because he did not operate it, being unwilling to pay the operating tax; lithographic machinery was taken from the owners who did not use it. A legally acquired ownership of a tractor was declared null and void because the owner 'used it for the exploitation of the populace,' that is, employed hired labor for its operation. It was held that 'the owner of a de-nationalized cattle breeding ranch must use it in accordance with its designation; otherwise it would be withdrawn from his use.' (See Gsovski, Vol. I, p. 333; also Eliashevitch, *op. cit.*, p. 66).

²² See references and citations in Gsovski, Vol. I, pp. 327-334.

²³ Prof. M. Agarkov, 'Problema zloupotreblenia pravom.' *Izvestia Akademii Nauk*, S.S.S.R. Otdel Ekonomiki i Prava. No. 6, 1946. pp. 424-436.

²⁴ *Pravo Sovetskoi Rossii* (Law of Soviet Russia), a symposium published in Prague, 1925. Vol. II, pp. 15-16; Eliashevitch, *op. cit.* I, pp. 59-60. Gsovski, Vol. I, p. 316.

²⁵ The main types of theories only are described in the text.

²⁶ *Archiw fuer Buergerliches Recht*, Bd. 32 u. 34. Schwarz's theory was reviewed by the present writer in *Pravo*, 1910.

²⁷ The practical significance of the theories of legal entities was analyzed by R. Saleilles in his book *De la Personnalité Juridique*. 2nd ed. Paris, 1922.

²⁸ A. V. Venediktov, *Gosudarstvennaia Sotsialisticheskaiia Sobstvennost* (State Socialist Property), Moscow, 1948. This book was awarded the Stalin prize in March, 1949; following Venediktov another Soviet scholar, Prof. S. N. Bratus devoted to the critical comments on the same theories a chapter of his book, *Sub'iekty grazhdanskogo prava*. Gosizdat. iurid. Liter. M. 1950. Ch. VIII.

²⁹ *Op. cit.* pp. 615, 657, 685. The problem of appropriation is certainly more simple in the Soviet Union than in the 'bourgeois' countries where millions of shareholders invest their savings in the shares of huge enterprises. Whether the Soviet system of appropriations is more profitable for the working classes than it is in the capitalist countries is an economic and not a legal problem, and we eliminate it from our discussion.

³⁰ Impressed by the modern development of capitalism and the increasing significance of legal entities, some jurists, like Schwarz, have come to believe that there already exists in the capitalist world a discrepancy between the individualistic conception of civil rights and the reality. Hence there are theories which substitute either material elements or purposes for Man as the subject of right. Theories of this kind do not correspond, however, even to the most modern systems of private law. As far as the principle of freedom of initiative and competition is not abolished, Man remains the subject of right in spite of various limitations to his freedom.

³¹ A *trést*, a term derived from 'trusts' in English, is a group of enterprises, or a single enterprise, having an independent budget; enterprises of both extractive (*mining*) and manufacturing type, or enterprises of different kinds united in a single business group are usually called *kombinaty* (combines). They consist of a group of related plants and other enterprises producing one or a group of related products. *Syndicaty* were organized earlier for supplying the *trésts* and *kombinates* with raw materials, assisting them in marketing their products, and obtaining credit. A syndicate was not self-operating; it was only a subsidiary organ of a business administrative body. The *torgs* are the commercial agencies of the Soviet state. (Cf. Ch. Bettélheim, *L'Economie Soviétique*, Rec. Sirey, 1950).

³² Art. 19 of the Civil code (as translated by Gsovski, Vol. II) states that: 'Such government enterprises and combinations thereof as are assigned to operate on a commercial basis and are not financed by incorporation of their income and expenditures into the budget of the government, proceed in trade as separate legal entities not connected with the fisc. Only property at their free disposal, i.e., exempt from commerce under sections 21 and 22, shall be liable for their debts. Exceptions to this rule must be expressly indicated by law.'

³³ Two-level organizations of the State's industry is not a general rule. In spite of the government's efforts (XVIIth Party Congress Resolution and Decree of March 15, 1934), there are still three-level and even four-level organizations of Soviet industry (Venediktov, *op. cit.* pp. 718-720.)

³⁴ A. V. Venediktov in his earlier work, *The Legal Nature of Government Enterprises* (in Russian), 1928, arrived at the conclusion that the ownership of a *trést* is 'a special form of state ownership in the sphere of circulation of goods,' 'a mask over the government agency.' He has at present withdrawn his former opinion, but it was correct. This has become even more obvious since 'with the general tendency toward central regulation and planning, the control of the central government departments increases, and thereby the status of legal entities comes closer to that of government agencies "on government budget".' 'The status of legal entity does not mean actual economic independence of an enterprise but merely a special method of finance, accountancy, and business operation.' (Gsovski, Vol. I, p. 405).

³⁵ 'Their rights are only part of a total process of production and distribution carried on under plan.' (H. Berman, *Soviet Property in Law and in Plan*, 96, *University of Pennsylvania Law Review*, pp. 330-331).

³⁶ Art. 21 and 22 of the Civil Code.

³⁷ Eliashevitch, *op. cit.* p. 212.

³⁸ A. V. Venediktov, *State Socialist Property*, pp. 408-409.

³⁹ Art. 126 of the Constitution.

⁴⁰ Art. 8 of the Decree of the All-Union Central Executive Committee (VTsIK) of July 10, 1932. See S. Askarkhanov and S. Brodovich, *Administrativnoe Zakonodatel'stvo*, Ogiz, 1936. pp. 82-85.

⁴¹ Art. 3 of the Decree of July 10, 1932.

⁴² Since the abolition of NEP, partnerships and joint-stock companies no longer operate, although the corresponding provisions of the Civil Code are not abrogated.

⁴³ A. Venediktov in his article, 'Dogovornye sanktsii v sovetskom prave' (Sanctions of contracts in Soviet Law), *Sov. Gosud.*, No. 5, 1934, emphasizes the principle of personal responsibility. A series of criminal laws regulate the responsibility of managers of government enterprises, workers and farmers. See Ch. XIV.

⁴⁴ A. Venediktov in his article 'Gosudarstvennoe juridicheskoe litso v SSSR' (*Sovet. Gosud.*, No. 10, 1940), asserts that the Marxist theory of law supports the realistic

theory of legal entity; in fact, he substitutes sociological analysis of collective organization for the legal theory of subject of law.

⁴⁵ Art. 20-24 of the Civil code as amended in 1929, 1930, 1932, and 1937, and Art. 6 of the Constitution.

⁴⁶ The withdrawing of the most important objects from private commerce means limitation not only of private ownership, as Gsovski comments (vol. II, p. 42-43), but the whole sphere of economic activity must be confined within the framework of the most simple transactions and thus many provisions of the Civil code on contracts and inheritance become inactive or useless.

⁴⁷ 'In consequence of the abolition of private ownership of land, the division of property into movable and immovable is abolished.' (Note to Art. 21, Civ. code). This provision corresponded to the tendencies of the first stage of Soviet legislation and later could not be preserved intact.

⁴⁸ Ukase of August 28, 1948.

⁴⁹ Art. 9 and 10 of the Constitution. Details in chapter IX.

⁵⁰ In fact, inventors, writers, artists, etc., are completely dependent on the government. 'In the Soviet Union the only feasible method of deriving benefit from an invention, the certificate of authorship automatically deprives the inventor of the right to his invention and leaves the remuneration for it to the determination of government officials, managers of the government plants, factories, etc. (V. Gsovski, Vol. I, p. 603).

PART III, CHAPTER IX

¹ 'Political revolutions by no means have as far-reaching significance as social revolutions. The former affect only the apex of society, leaving untouched the numerous threads interwoven in the private relations of the people. But as soon as ownership is infringed upon, everything totters. Man cannot be sure of himself. He feels that his personal world is assailed, his freedom is in jeopardy and his activity circumscribed. His family, everything that is dear to him, and his past and present life are in turmoil. The primary elements of social existence are upset and many of the relationships binding people together are rent. Whenever a question of this kind is brought up for decision, society trembles for its very existence ...' (B. Chicherin, *Sobstvennost i Gosudarstvo—Ownership and the State*. Vol. I, p. 14).

² Especially if slogans such as 'expropriate the expropriators,' 'plunder stolen goods,' and the practice of requisitions and confiscations are widely spread by the leaders of the Revolution.

³ 'The trade in agricultural machines and in seeds is monopolized by the organs of the Soviet power.' 'The grain trade, internal as well as export, is to be a state monopoly.' (Land Law, Sept., 1918, Art. 19). 'The banking business is declared a state monopoly.' (Decree of Dec. 14, 1917). These are examples of the gradual monopolization of economic power by the Soviet state.

⁴ Art. 5 of the Constitution of 1936.

⁵ *Op. cit.*, p. 313.

⁶ *Ibidem*, p. 353.

⁷ Constit. Art. 11.

⁸ p. 319.

⁹ Venediktov, *op. cit.* p. 321. The same idea is still more clearly expressed in the textbook published by the Institute of Law of the Academy of Sciences of the U.S.S.R. *Osnovy Sovetskogo Gosudarstva i Prava*: 'Inasmuch as kolkhozes are only a part of the socialist system of national economy of the U.S.S.R., they must dispose of their property in accordance with the plans determined for them in conformity with the general national plan, as well as with their especially planned tasks.' (p. 315). Obligations of kolkhozes to deliver produce to the state arise 'on the basis of the economic plan, in other words of the system of regulated economy.' (Agarkov and others, *Civil Law* (in Russian), 1944, p. 298).

¹⁰ Art. 7 of the Constitution.

¹¹ Roman law recognizes two categories of objects which are under the State's administration for the public use and are not negotiable: *res publicae publico usui*

destinatae and *res publicae in publico usu*. This problem acquired more significance in the Soviet Union after the nationalization of all land, factories, etc. One would naturally expect that the list of *res publicae* would be greatly increased in the Soviet Union, but the legal conditions of *res publicae* exclude the possibility of their commercial exploitation by the state, and this is not the task of the Soviet government, which is interested in appropriations first and foremost. (Compare Venediktov's note on the distinction by the 'bourgeois' law between 'Finanzvermoegen' and 'Fiscalgut,' *ibidem*, 41, note 33).

¹² Constit. Art. 1.

¹³ In contrast with the officially proclaimed identification of the Soviet state and its population, the authors of the Decree of Dec. 14, 1947, declared the following: 'The carrying out of the currency reform demands certain sacrifices. The state is taking upon itself the greater part of these sacrifices but it is necessary for the population to bear a part of them; all the more so since it will be the last sacrifice.' J. A. Kronrod, 'K ekonomicheskoi kharakteristike sovetskoi denezhnoi reformy, 1947.' *Izvestia Akademii Nauk S.S.S.R., Otdelenie Ekonomiki i Prava*, N. 4, 1948.

Thus, the State's sacrifices are opposed to those of the population; phraseology which correctly reflects the actual correlation between the Soviet state and the people.

¹⁴ Stalin, *Leninism*, Selected Writings, International Publishers, N. Y., 1942. page 267.

¹⁵ Constit. Art. 131.

¹⁶ *Op. cit.* p. 524.

¹⁷ In the same article of *Pravda* it was explained that 'the protection of state property must be tightened all along the line; the strictest state discipline must be established in the expenditure of goods, products, raw materials, finished products, and funds; and in the expenditure of equipment and all property.'

'Every enterprise,' the article continues, 'kolkhoz, store, dining hall, and every segment of the economy must make and exemplary inventory of all equipment, all valuable materials and goods, all funds and properties, and must establish a strict check of their use and daily supervision of their expenditure and maintenance.' (*Pravda*, Sept. 5, 1949. Translated in *Soviet Press Translations*, Jan. 1, 1950).

¹⁸ Constit. Art. 9.

¹⁹ *Ibid.* Art. 10.

²⁰ Distinction between production and consumers' goods is not consistently carried out in the Soviet law of property, as V. Gsovski correctly comments, objecting to J. N. Hazard (*op. cit.* p. 567, note 30).

²¹ Lenin's note to Kurskii. See Vol. XXIX, p. 419.

²² See Schlesinger, *Soviet Legal Theory*. London, 1946. pp. 252-254.

²³ '...any attempt to see in personal ownership in the U.S.S.R. anything equal to private ownership is tantamount to a misrepresentation of the real nature of the former. The Soviet legislator does not allow distortion of the contents of personal ownership by making use of it for the purposes of exploitation of the labor of another, directly or indirectly.' 'It would be a mistake to characterize the right of personal ownership as the right of the owner to make use of his property at his own discretion. It has been stated ... that personal ownership may not be used as an instrument for the exploitation of the labor of another. The owner may not dispose or make use of personal ownership in a manner opposed to the interests of the socialist economy ...'

(*Textbook of Civil Law* of 1944, pp. 276 and 278. Translated by V. Gsovski, *op. cit.* p. 570).

²⁴ The stratification of the Soviet population is described below in Ch. XX.

²⁵ See above, Ch. VIII.

²⁶ P. Orlovskii, 'The right of Personal Ownership of Citizens,' (in Russian), *Sovetskoe Gosudarstvo*, 1938. No. 6, pp. 68-84.

²⁷ The purchase or resale by private persons for gain (i.e. for speculation) of any agricultural produce or of any article for mass consumption may result in ... 'deprivation of liberty for a period of not less than five years and confiscation of goods in whole or in part.' (Article 107, Penal Code). See court practice in J. Hazard's *Soviet Law and Social Change*, pp. 15-18.

²⁸ Art. 63, Criminal Code.

²⁹ The reform of 1947 was not a simple devaluation of currency, as the exchange was not equal for all those in possession of money and for all amounts of money. See B. Alexandrov, 'The Soviet Currency Reform,' *The Russian Review*, January, 1949.

PART III, CHAPTER X

¹ Henry J. Maine, *Ancient Law*, Ch. V; cf. also Ch. IX.

² 'Social Contract' had been considered for a long time to be the foundation of state and law, but certainly not as an historical fact, it has only been considered as a theoretical formulation of the principle governing the interrelations of the state and the individual. In the course of two hundred years this formula remained a customary part of juridical literature. We meet with it in Locke, Rousseau and Fichte.

³ Ancient Roman law was very formalistic: '*Si nexum faciet mancipiumque, uti lingua nuncupassit, ita jus esto.*' (Every word of a party binds it in the strictest manner). '*Volenti non fit injuria.*' (He who has expressed his consent cannot claim to be wronged.) '*Coactus tamen voluit.*' (Do not appeal against constraint if you have expressed your consent.) '*Vigilantibus jura sunt scripta.*' (The law presumes vigilance.) The same maxims have been incorporated into the Civil Code of California: 'He who consents to an act is not wronged by it.' (Art. 3516); 'The law helps the vigilant before those who sleep on their rights' (Art. 3527).

⁴ Cf. Art. 1134 Code Napoleon: '*Les conventions legalement formées tiennent lieu de loi a ceux qui les ont faites*'; Art. 1536 and especially Art. 1537 *Zakonov Grazhdanskikh* (vol. X, p. 1, *Svoda zakonov rossiiskoi imperii*): 'Contracts concluded with private persons by official institutions or officials cannot be violated in any manner, but must be executed with such exactness as if they were signed by His Majesty himself;' etc.

⁵ Contracts in contradiction to the statutes are not valid (*Publicum jus privatorum pactis mutari not potest*). Cf. Art. 1596 of the California Civil Code.

⁶ '*Vertraege deren rechtliche Anerkennung mit einem gesunden, in diesem Sinne guten, socialen Zustande unvereinbar ist.*' Dernburg, *Das Buergerliche Recht*, B. I. 1902, p. 375; '*Widersprueche zwischen dem positiven Recht und dem Rechtsideal (der Gerechtigkeit) sind denkbar.*' L. Enneccerus, *Lehrbuch des Buergerlichen Rechts*, Marburg, 1931, p. 93.

⁷ Even Roman law softened the original rigidity of its formalistic maxims by proclaiming: '*neque malitii indulgendum est*' (Malice cannot be allowed).

German law which started with the same rigidity as the Roman (*Ein Man ein Wort*) included in its civil code, *Buergerliches Gesetzbuch*, secs. 138, 157, 242, and 317, principles of *Gutte Sitten, Treu und Glaube* and *Verkehrssitten* as the criteria of legality of a contract. According to these principles all contracts incompatible with good morals, faithfulness, and fair business may be rescinded. The same may be found in Swiss law (Art. 2 of the S.C.G.B.).

Civil codes of various nations, issued after the German and Swiss codes, have included similar provisions:

Panama, *Código Civil*, 1926, Art. 1106: '*... los pactos que non sean contrarios a la ley, a la moral ni al orden publico ...*';

Chile, *Código Civil*, 1937, Art. 1467, part 2: *causa 'contraria a las buenas costumbres o al orden publico.'*

Código Civil Brasileiro, 1942, Art. 145, II, as interpreted:

'*... é uon ato ilícito e ofensivo da sã moral.*' (Ed. anotado por Ach. Bevilacqua, 1944).

Codice Civile d'Italia, 1942, Art. 1343: '*La Causa e illecita quando e contraria a norme imperative, all' ordine publico o al buon costume.*' Art. 1374: '*Il contratto obbliga le parti non solo a quanto e nel medesimo espresso, ma anche a tutte le conseguenze che ne derivano secondo la legge, o, in mancanza, secondo gli usi e l'equita.* Code Civil de la Republique de Chine, 1929, Art. 72: '*L'acte juridique contraire a l'ordre public ou aux bonnes moeurs est nul.*' (Cf. Art. 1133, *Code Napoleon*).

⁸ During the period of the NEP, for example, Soviet judges had been considered as standing 'above the law,' and subject to the policy of the government rather than

to the text of the law. (Cf. Circular Letter of Instruction of the Supreme Court, 1927, No. 1, cited by B. Eliashevitch, ed., *Traité de Droit Civil et Commercial des Soviets*, Vol. I, 'Introduction,' p. 63. There has since been a change, since private rights were reduced to a minimum and a conflict between private and state interests proved to be impossible.

⁹ Some jurists, deceived by the apparent similarity of legal wording (Cf. H. Freund, *Das Zivilrecht Sowjetrusslands*, Mannheim, 1924, pp. 29, 34-45; also S. V. Zavadsky in *Pravo Sovetskoi Rossii*, Prague, 1925, Vol. II, pp. 43-97), treated Soviet legislation on contracts as if it were of the same pattern as the legislation of the western world. This error was happily eliminated by A. Halpern in his survey 'Theorie generale des obligations' in Eliashevitch, *op. cit.*, Vol. II, pp. 1-63; but was not eliminated by Boris Nolde in the same work, pp. 71-128.

¹⁰ If, for example, a nationalized or a municipal enterprise is leased on terms which do not guarantee production corresponding to its real value and potential efficiency, then the contract can be annulled by the courts as prejudicial to the state. (See *Grashdanskii kodeks R.S.F.S.R., kommentarii pod redaktsiei Goikhbarga, Pereterskogo i Tettenborn*, Vol. I, p. 73.)

¹¹ Cf. *Pravo Sovetskoi Rossii*, II, pp. 65-66; Eliashevitch, *op. cit.*, II, pp. 51-56.

¹² *Exhenedelnik sovetskoi iustitsii*, 1927, No. 4.

¹³ Arts. 136, 153, 184, 211, 218, 238, 266, 275 (b) of the Civil Code.

¹⁴ Arts. 138, 185, and 266 of the Civil Code.

¹⁵ Cf. R.S.F.S.R. Supreme Court, Letter of Instruction, 1927, No. 1, cited by Gsovski in his comments to Article 29 of the Civil Code, *op. cit.*, II, pp. 54-56. Gsovski also cites (II, p. 146) the following ruling of the Supreme Court of the R.S.F.S.R. of August 13, 1928: 'Under Section 211 of the Civil Code, contract of loan for a sum exceeding fifty rubles not made in writing shall be invalid *in toto* and not merely in the sum exceeding fifty rubles. But in cases where the court arrives at the conclusion that in the given concrete case the violation of form should not result in the invalidity of contract, the court may declare the contract valid also for the sum exceeding fifty rubles.'

¹⁶ Molotov, in his report concerning the national economic plan for 1932, emphasized that the contract is the best means of combining economic planning with the principles of cost accounting. Obligations arising from contracts secure the achievement of the goals for the sake of which *khozrashchet* was established. *Izvestia*, No. 354, 1931.

¹⁷ Agarkov and others, *Grashdanskoe pravo*, 1944, Vol. I, p. 310.

¹⁸ See the Soviet periodical *Arbitrazh*, Nos. 11-12, 1940. Many interesting details concerning the organization and functions of *Gosarbitrazh* may be found in Harold Berman's 'Commercial Contracts in Soviet Law,' *California Law Review*, Vol. 35, pp. 191-234. See also his *Justice in Russia: An Interpretation of Soviet Law*. Cambridge: Harvard University Press. 1950. p. 66 ff.

¹⁹ 'Government plans and regulations concerning the national economy are administrative acts in conformity with which obligations arise as they arise from contracts.' 'These acts can establish an obligation to transfer certain goods, to render certain services, to deliver a certain commodity, and to carry out a certain job.' Agarkov, *op. cit.*, pp. 296, 298.

²⁰ *Ibid.*, p. 304.

²¹ S. Asknasi, '*Nekotorye voprosy metodologii sovetskogo grazhdanskogo prava*,' *Sovetskoe gosudarstvo i pravo*, 1940, Nos. 8-9, pp. 83-84.

²² 'Contracts become a means of formulating the detailed relationships called for in the plan's general terms.' J. N. Hazard, 'Soviet Government Corporations,' *Michigan Law Review*. Vol. 41, 1943, p. 860. On April 21, 1949, the Council of Ministers of the U.S.S.R. issued a new decree concerning contracts. The central economic organizations conclude, in conformity with the national economic plan, 'general' contracts. These contracts must regulate distribution of the production between various enterprises and, consequently, indicate contractors for each kind of production. The basic terms of the contracts between the economic organizations controlling the most important branches of industry have to be approved by the

government. Then, on the basis of the general contracts, 'local,' contracts have to be concluded between the particular enterprises in regard to quantity, quality, dates of delivery, and terms of payment. 'Direct' contracts between parties may be concluded only if there are not responsible central institutions or if the object of a contract has special specifications, as, for example, special equipment. The decree of 1949 is explained by I. Baranov, '*Khoziastvennyi dogovor—orudie vypolneniia gosudarstvennykh planov.*' (*Planovoe Khoziastvo*, 1949, No. 5., pp. 63-72).

²² See Gsovski, Vol. I, Ch. 12, Sec. 6.

²⁴ A. Venediktov, '*Dogovornye sanktsii v sovetskom prave,*' *Sovetskoe gosudarstvo*, 1934, No. 5, p. 21.

²⁵ Decree of the Council of People's Commissars of the U.S.S.R. of January 15, 1936, 'On the conclusion of contracts,' Collection of Laws of the USSR, 1936, No. 3, text 27; and the decree of the Council of People's Commissars of the R.S.F.S.R. of January 17, 1936, Coll. of Laws of the RSFSR, 1936, No. 3, February 29.

²⁶ Statute of the State Arbitrage of May 3, 1931, Collection of Laws of the U.S.S.R., 1931, No. 26, section 303.

²⁷ V. N. Mozhaiko, '*O pravovoi prirode sovetskogo gosudarstvennogo arbitrazha,*' *Sovetskoe gosudarstvo i pravo*, 1947, No. 6.

²⁸ A. Venediktov characterizes this as 'signalization.'

²⁹ There are a series of illustrations in A. V. Venediktov's *Gosudarstvennaia sotsialisticheskaia sobstvennost*, pp. 408-427. See above Ch. VIII, note 38.

³⁰ Mozhaiko, *op. cit.*, p. 23. Schlesinger writes: 'This organ (State Arbitrage) when giving its decisions is bound to pay attention not only to the letter of the law, but also to the economic interests of the State in the name of which one of its agents sues another.'

Soviet Legal Theory (New York, 1945), p. 14. Harold Berman emphasizes that *Gosarbitrazh*, although it is 'closely linked with the administrative branch of the government' maintains 'judicial standards and is subordinate to civil law ... The various organs of *Gosarbitrazh* have little in common with arbitration boards. They are rather "economic courts," where jurisdiction is independent of the will of the parties, whose procedure, though informal by American standards, is similar to that of regular courts and whose decisions are governed by the Civil Code and by relevant statutes.' 'Commercial Contracts,' p. 205, also his *Soviet Justice*, pp. 247-249. This characterization omits the most essential point, namely that *Gosarbitrazh* is an agency of the owner which reconciles and regulates the interrelations between the owner's various enterprises. 'Pre-contract disputes,' which H. Berman considers as an evidence of 'parental law' of the Soviet legal system, is nothing else but a coordination of business relations between several enterprises of the same master, the Soviet Union. In the practice of the capitalist countries this coordination takes place in the central office with the aid of legal advisers.

³¹ The purely administrative functions of the *Gosarbitrazh*, as, for example, reconciliation of the interests of various enterprises concerning quantity, assortments and dates of delivery, are indicated by I. Baranov in his article cited above (See note 22).

PART III, CHAPTER XI

¹ In German juridical literature, the name '*Die lachende Erben*' (laughing or happy heirs) was given to heirs who inherited the estates of distant relatives.

² Decree of April 27, 1918 (Collection of Laws, 1918, No. 34). See also A. Goikhbar, *Brachnoe, semeinoe i opekunskoe pravo* (Moscow 1920), pp. 94-95.

³ A. Goikhbar, *Khoziastvennoe pravo R.S.F.S.R.*, vol. I (Moscow 1923), p. 177.

⁴ Art. 9 of the Decree of April 27, 1918.

⁵ See A. Goikhbar, *op. cit.*, I, P. 176; also Freund, *Ostrecht* (1926), IV, p. 433.

⁶ Arts. 416-418 of the Civil Code.

⁷ Correspondingly Art. 417 of the Civil Code was repealed. This reform followed the decision of the Soviet government 'to aid the continued existence of commercial and industrial enterprises after the decease of their owners.' Quoted by Gsovski, I, p. 628. The motivation of the law lost its significance with the abolition of the NEP, but the former limit was never reestablished.

⁸ Article 436, added to the Civil Code in 1935. The full text has been translated by Gsovski, II, pp. 234-235.

⁹ *Vedomosti Verkhovnogo Soveta*, No. 15, March 21, 1945.

¹⁰ Article 422 of the Civil Code, as amended on June 12, 1945. Children born out of wedlock have no right of inheritance (Ukase of July 8, 1944).

¹¹ Article 425 of the Civil Code.

¹² There is a discrepancy in the legal terminology of Arts. 429 and 430 of the Civil Code. See Gsovski's comment, I, pp. 642-643.

¹³ Arts. 431, 433 of the Civil Code.

¹⁴ Low wages and high commodity prices furnish the best evidence of the income level available to the average man. See *Izvestia*, March 1, 1950.

¹⁵ Art. 421 of the Civil Code: '... those who have lived together with the decedent shall inherit property belonging to the usual household effects and furnishings (except objects of luxury) over and above the shares in the estate due them ...'

¹⁶ This provision (Article 418) corresponds to similar provisions in other countries protecting the interests of children and limiting disinheritance.

¹⁷ See the full text in Gsovski, I, p. 630.

¹⁸ U.S.S.R. Laws, 1933, text 349; cited by Gsovski, I, p. 628, note 26.

PART IV, CHAPTER XII

¹ 'The land, its natural deposits, waters, forests ... belong to the whole people.' (Art. 6 of the Constitution of 1936).

² 'The artel binds itself to conduct its collective farming according to plan, observing exactly the plans of agricultural production drawn up by the agencies of the workers "and peasants" government, and the duties of the artel toward the government.'

'The artel shall accept for precise execution the programs of sowing, fallow ploughing, weeding, harvesting, threshing, and autumn ploughing prescribed in consideration of the condition and peculiarities of collective farms, and also the government plan for the development of stock breeding.' (Art. 6 of the Standard Charter of an Agricultural Artel of February 17, 1935).

'It is forbidden to use the land bound to the collective farms for other than agricultural purposes not authorized by law, as, for example, for the constructions of industrial enterprises not connected with agricultural economy, the building of summer houses for rental, etc ... It is forbidden to lease pastures and other agricultural allotments to other juridical or physical persons.' (*Zemelnoe Pravo*, Gos. Izd. Iurid. Literaturny. Moscow, 1949, pp. 196, 219). The decree of Oct. 23, 1938 ordered to kolkhoses to liquidate enterprises not connected with agriculture and to stop exploitation of land resources (*Pravda*, Oct. 23, 1938).

³ The Charter is translated by V. Gsovski and is included in his *Soviet Civil Law*, Vol. II, pp. 441-462.

⁴ 'The land occupied by collective farms is secured to them for their use free of charge and for an unlimited time, that is, for ever.' (Art. 8 of the Constitution of 1936).

⁵ 'The toiling peasants of the village (settlement, hamlet, *khutor*, *kishlak*, *aul*) of ... in the district of ... voluntarily band together into an agricultural artel in order to establish, with common means of production and with organized common labor, a collective, i.e., a joint farm, to insure complete victory over the *kulak*, over all the exploiters and enemies of the toilers, over want and ignorance, over the backwardness of small individual farms, to create high productivity of labor, and, by this means, to insure the well-being of the members.'

'The path of collective farming, the path of socialism, is the only right path for the toiling peasants. The members of the artel take upon themselves the obligation to strengthen their artel, to work honestly, to distribute the collective farm income according to the amount of work done, to guard the common property, to take care of the collective farm property, to keep the tractors and machinery in good order, to tend the horses carefully, to execute the tasks imposed by the workers' and peasants' government in order to make theirs a bolshevist collective farm and all its members prosperous.' (Art. 1 of the Charter).

⁶ The organization of control over the kolkhozes is described by A. Vucinich in 'The Kolkhoz: its Social Structure and Development,' *The American Slavic and East-European Review*. Vol. VIII, No. 1, February, 1949, pp. 10-24. See also Barrington Moore, Jr., *Soviet Politics—The Dilemma of Power*, Harvard University Press, 1950, Ch. 15, pp. 334 ff.

⁷ Resolution X of the Central Committee of the ACP (b), *Izvestia*, Feb. 28, 1947.

⁸ A kolkhoz as a cooperative organization (artel) must have 'the leading core' in the person of the Communist organization as have 'all organizations of the working people, both public and state.' (Art. 126 of the Constitution).

⁹ Point 4 of the Resolution of the CC of the ACP (b) of May 27, 1939, concerning Measures to Protect the Collective Farm from Diversion. (See Gsovski, Vol. II, p. 478).

By the Decree of Sept. 19, 1946, it was confirmed that 'It shall be the duty of the leaders of the Party and Soviet organizations, as well as of the leaders of the regional and provincial organizations to restore the full effect of the Resolution of May 27, 1939. (See Gsovski, op. cit., pp. 494-495).

Khrushchev, a secretary of the Central Committee of the ACP (b) and for a while a leader of the reorganization of kolkhozes, pointed out in his speech at the plenary session of Moscow Province Party Committee that 'the collective farm primary organization bears responsibility for collective farm conditions. The by-laws of the party give it the right of control over the operation of the collective farm management. This makes it a duty of the party organization to take an active part in the whole life of the collective farm ...' (*Sotsialisticheskoe Zemledelie*, Feb. 8, 1951).

¹⁰ 'The regional and district committees often resort to mass replacement of workers. Great fluidity has been observed in a number of districts. In other places penalties are abused. It is easy to relieve the president of a backward kolkhoz of his duties; it is harder to teach him the art of managing the complex economy of an agricultural artel. If the use of penalties is abused they cease to be a medium of education, a means of spurring on the lagging workers.' (*Pravda*, Editorial, May 18, 1947).

¹¹ 'The local soviets, including the village soviets, have every opportunity to becoming leaders of kolkhozes.' (*Osnovy Sovetskogo Gosudarstva i Prava*, Izdanie Ministvstva Iustitsii, Moscow, 1947, p. 481).

¹² *Ibidem*, p. 482.

¹³ In 1940, the Commissariat of Agriculture of the U.S.S.R. issued 1,113,000 letters, orders, decisions, regulations, and instructions. (*Izvestia*, March 11, 1941).

¹⁴ *Moscow News*, October 12, 1946.

¹⁵ The Council of Ministers of the U.S.S.R. emphasized in its decree of September 19, 1946, the undesirability of 'unfounded and extravagant increase of administrative and managerial jobs,' 'artificially invented jobs avoiding productive work' and 'kept at the expense of the collective farms,' and ordered to have cut 'artificially boosted appropriations' and 'the expenses for business management.' (The full text of the decree is in Gsovski, Vol. II, No. 35, pp. 487-497). In total, Soviet farmers maintain not less than five million people composing the administrative and technical personnel which is closely connected with the kolkhoz economy. After the decree of Sept. 1946, in one year 535,000 top-heavy personnel of the kolkhozes, and 213,000 persons having no relation to actual kolkhoz work, (a total of 748,000 people) were removed from the payrolls. (*Pravda*, Editorial, September 19, 1947).

¹⁶ 'The common enterprises of collective farms and cooperative organizations, with their livestock and implements, the products of the collective farms and cooperative organizations, as well as their common buildings, constitute the common socialist property of the collective farms and cooperative organizations.' (Art. 7 of the Civil Code).

¹⁷ 'A legal transaction made for a purpose contrary to law, or in fraud of law, as well as a transaction directed to the obvious prejudice of the State, shall be invalid.' (Art. 30 of the Civil Code).

¹⁸ Art. 18 of the Charter of Collective Farms and Art. 58 of the Penal Code.

¹⁹ There are in practice, transactions concluded by the kolkhozes for the sale of some parts of their property, especially of the young of livestock. Andreev in his

report cited above remarks that 'cattle breeding is negligently conducted,' 'pigs are wasted like small change'.

²⁰ The government has generously transferred to the kolkhozes the confiscated property of the *kulaks*, valued at more than 400,000 rubles. (*Osnovy Sovetskogo Gosudarstva i Prava*, pp. 486-487).

In the Soviet Union, *kulaks* are those farmers, mostly wealthy peasants, the most industrious, thrifty, and skillful, who opposed the collectivization and were *de-kulakized*, i.e., deprived of their property and banished to remote parts of the country to work at forced labor.

²¹ A. Venediktov, *op. cit.*, p. 321.

²² The decree of the Council of Ministers and the Central Committee of the ACP (b) of April 6, 1940. About this and analogous decrees see *Zemelnoe Pravo*, Vsesoiuznyi Institut Iuridicheskikh Nauk Ministerstva Iustitsii S.S.S.R., Moscow, 1949, p. 208-209.

'The collective farms were obliged to contribute to the state a certain percentage, not of their crop, but of the harvest which they theoretically should have received from their sown area. In this way the collective farms were forced to struggle for a good yield per acre, or they might not have enough bread to last them through the winter. Since the Spring of 1940, however, the process has gone one step further. The collective farms were required to contribute a certain percentage of the theoretical harvest from all arable land at their disposal. It thus became the duty of the chairman of the collective farm to see that all his arable land was sown if he wanted to have enough bread for the winter. Decrees of this nature had been published applying to grain, meats, dairy products, hemp, flax, wool, fruits, and truckgarden products. The entire Soviet agricultural system was speeded up.' 'This I explained in detail to the newly arrived (Yugoslav Ambassador) Gabrilovich. He would not believe me. "It is impossible," he said. "No peasants would stand such regulations".' (John Scott, *Duel for Europe*. Houghton Mifflin Co., Boston. 1942. p. 128).

²³ Resolution IX of the Plenum of the Central Committee of the ACP (b). Feb. 1947. (See above note 7).

²⁴ 'The legal norms concerning compulsory deliveries of the agricultural products do not regulate the relations of material character only, but also the relations based on power and submission.' Prof. M. M. Agarkov, 'Fundamental problems of the soviet civil law,' *Sovetskoe gosudarstvo i pravo*, No. 3, 1947, p. 36. See also Prof. Karass, 'Ob obiazatelstvakh po postavke gosudarstvu selskokhoziastvennoi produktsii,' *ibidem*, No. 3, 1947. p. 51 (Note 29).

The norms of compulsory deliveries were established at first in 1932 for grain, and later, for meat, dairy products and industrial crops. Meat deliveries are computed on the basis of the number of hectares of land bound to kolkhozes—Decree of the Council of People's Commissars and the CC of the ACP (b) of July 8, 1939 (Collection of Laws, 1939, No. 42, text 316); the same principle is applied for wool deliveries (Decree of January 30, 1940, Collection of Laws, No. 3, text 82); and later also for deliveries of eggs, milk, goat's milk cheese, hides, etc. (See references in *Zemelnoe Pravo*, pp. 208-210).

²⁵ Decree of the Council of Ministries and of the Central Committee of the ACP (b) July 28, 1947.

²⁶ The circle of trading enterprises and especially the operations of the producers' and consumers' cooperatives was widened by the decree of Nov. 9, 1946, and as *Prauda* explained (Nov. 11, 1946), the Soviet government expected the producers' cooperatives to be able to supply the village with various kinds of household utensils and articles which the State industries do not produce at all or produce in insufficient quantity, and the village to give its surplus produce in exchange.

For illustration of this system of exchange see Mertsalov, *Tragediia rossiiskogo krestianstva*, (Analiz kolkhoznoi sistemy) Ed. Posev. Limburg.

²⁷ Before 1939-1940, when deliveries of grain were established in proportion with the sown area (see above notes 22 and 24) the quantity of meat and dairy products to be delivered to the State by kolkhozes was determined according to the number of head of livestock. In spite of the subsequent changes of the conditions for the delivery

of these products, calculations and reckonings of the government proved, evidently, to be wrong and the results of the deliveries did not meet with anticipations. Consequently, in April, 1950, a new three-year plan for the development of the cattle-breeding industry was approved (*Sotsialisticheskoe Zemledelie*, April 19, 1949) and the new norms and regulations about deliveries of meat and dairy products were established (*Vedomosti Verkhovnogo Soveta*, April 30, 1949. No. 19; May 28, 1949, No. 25; July 3, 1949. No. 31).

²⁸ Joint Resolution of the Central Committee of the ACP (b) and the U.S.S.R. Council of People's Commissars of May 27, 1939. See Gsovski, Vol. II, No. 33, Section 14.

²⁹ Joint Resolution ordering an increase in the obligatory Minimum of Labor Days for Collective Farmers, of April 13, 1942, (Gsovski, Vol. II, No. 34). This law, although issued for the period of the war, has not been abrogated, according to the Resolution of the Plenum of the Central Committee of the ACP (b) in February, 1947.

³⁰ Standard Charter, Sec. 2, par. 4: 'Farmers should abstain from raising field crops such as rye or wheat on their private plots.' (See Gsovski, Vol. I, p. 769 and references *ibidem*, note 5).

³¹ *Ibidem*. Section 5. Some changes were promised in 1953.

³² A new very and high tax was established by the ukase of July 13, 1948. This applied especially to incomes from the household economy of members of kolkhozes.

³³ Resolution of the Central Committee of the ACP (b) and the U.S.S.R. Council of People's Commissars of May 27, 1939, concerning 'Measures to Protect the Collectively Held Fields of the Collective Farms from Diversion.' U.S.S.R. Laws, 1939, text 235. (Gsovski, Vol. II, No. 33).

³⁴ The same resolution, Sections 3 and 7.

³⁵ 'Resolution Concerning Measures to be taken for the Liquidation of violations of the Charter of an Agricultural Artel in the Collective Farms,' (Gsovski, Vol. II, No. 35).

³⁶ The 'Three Years Plan of the Development of the Kolkhoz and Sovkhoz Cattle-Breeding. 1949-51.' Resolution of the Soviet of Ministers of the U.S.S.R. and the Central Committee of the ACP (b). *Sotsialisticheskoe Zemledelie*, April 19, 1949. No. 91.

³⁷ Decree of May 25, 1949 (*Sotsialisticheskoe Zemledelie*, May 26, 1949).

³⁸ This quotation from the resolution of May 27, 1939, was included into the text of the resolution of Sept. 19, 1946 (See Gsovski, Vol. II, p. 490).

³⁹ *Bolshevik*, August, 1946. Cf. 'In the Bashkir Autonomous Republic the state production quotas have not been met. The explanation given is shortage of fuel, which is untrue. It is not because of lack of fuel but of the anti-government attitudes which exist in the region.' (*Pravda*, Oct. 26, 1946).

⁴⁰ 'The elimination of the kulaks, the most numerous of the exploiting classes, and the adoption of collective farming by the bulk of the peasants led to the destruction of the last roots of capitalism in the country, to the final victory of socialism in agriculture, and to the complete consolidation of the Soviet power in the countryside.' (*History of the Communist Party of the Soviet Union*. International Publishers. New York, 1939. p. 329).

⁴¹ N. D. Kazantsev, 'Zakonodatelnye Osnovy Zemelnykh Otnoshenii v S.S.S.R.'. *Izvestia Akademii Nauk SSSR. Otdel Ekonomiki i Prava*. Moscow, 1948. No. 5.

⁴² *Pravda*, March 31, 1947. Also the article 'Stalinskii premii' (Stalin Prizes for Achievement and Work in the Field of Agricultural Economy) *Sotsialisticheskoe Zemledelie*, April 9 and 10, 1949.

⁴³ Ukase of April 20, 1949, on indices in cattle-breeding (*Vedomosti Verkhovnogo Soveta*, April 30, 1949. No. 19); Ukase of May 20, 1949, on high harvest of cotton (*Vedomosti*, May 28, 1949. No. 25); Ukase on indices of jute produce (*Vedomosti*, July 3, 1949. No. 31).

⁴⁴ 'Members who fail to take good care of, or who neglect, the collective property, who fail to report for work without a justifiable reason, who work badly, or who violate labor discipline or the charter, shall be punished by the management in accordance with the rules of internal organization. For example, such member may be

ordered to do the poor work over again without any credit in labor days. He may be warned, reprimanded, or reprovved at the general meeting, or his name may be put on the blackboard. He may be fined up to five labor days; he may be demoted to a lower paid job, or suspended from work.' (Art. 17. par. 2 of the charter).

⁴⁵ Resolution of April 19, 1938. The full text in Gsovski's Vol. II. No. 32.

⁴⁶ Art. 10 of the charter.

⁴⁷ 'The departing member may obtain a land allotment only outside the land enclosure belonging to the artel.' (*Ibidem*). This regulation deprives even the member of a collective farm who leaves voluntarily of the possibility to get a plot of land, since it is practically impossible to get land outside the kolkhoz.

⁴⁸ Art. 79 (1-4) of the Penal Code of the R.S.F.S.R.

⁴⁹ Art. 18 of the 'Charter and Laws of Aug. 7, 1932,' and of June 4, 1947.

'Judicial reprisals for the absence of kolkhoz members or their refusal to work are to be taken, either against persons who, while being absent, conduct propaganda against the kolkhoz labor discipline and thus disintegrate the kolkhoz, or against kolkhoz officials who do not combat the violators of labor discipline in the kolkhoz. In the first case Art. 58-1 of the Penal Code is to be applied.' (Ruling of the Supreme Court of the R.S.F.S.R. of Nov. 24, 1933).

'Hidden grain, even ground manually, in farms belonging to non-toilers and also by toilers, if affected as a trade for profit entails punishment according to Art. 107 of the Penal Code,' i.e. by deprivation of liberty for a period of not less than five years with the confiscation of the entire property. (Ruling of the Supreme Court of the R.S.F.S.R. of Sept. 13, 1934).

⁵⁰ The net agricultural production in the U.S.A. before the Second World War was approximately fifty percent higher than in the U.S.S.R., although the agricultural population of the U.S.A. was only one-third of that of the U.S.S.R. The increase in profit does not correspond to the increase in expenses. (N. M. Jasny, 'Akhillesova Piata Kolkhoznoi sistemy.' *Novy Zhurnal*. Vol. XIV. New York. 1943), also his *The Socialized Agriculture of the U.S.S.R.; Plans and Performance*. Stanford University Press, 1949. Some serious arguments against Jasny's pessimistic appraisal are given by R. Schlesinger (See polemics in *Soviet Studies*, v. II No. 2 and 3, and especially the concluding article by R. Schlesinger published in the January issue, 1952, pp. 288-315).

⁵¹ The pre-revolutionary practice was acquainted with the share-cropping, the so-called *ispolnaia arenda*, land leased from squires in return for half of its produce ('ispolnaia' means 'half-half'). The squire's share was too great; nevertheless, both squire and peasant divided profit and loss. The Soviet state, having a fixed amount of the crops, runs no risk at all.

⁵² 'For the satisfaction of consumer needs of a member of the kolkhoz until these needs can be satisfied by the kolkhoz.' (D. Shepelev. *Sotsialisticheskaja Kolkhoznaia Sobstvennost*. 1940. p. 33.

⁵³ Art. 57 of the Civil Code.

⁵⁴ Art. 5 and 131 of the Constitution. 'State property and Kolkhoz cooperative property are of the same type.' A. Koshelev. *Sotsialisticheskaja Sobstvennost*. Ogiz. 1946. p. 46.

⁵⁵ Law of August 7, 1932.

⁵⁶ Law of March 18, 1946 'On the Five-Year Plan for 1946-50.' 'The obligation to deliver produce to the state arises from the basis of the economic plan, in other words, from the system of regulated economy.' Agarkov and others. *Civil Law Textbook*. 1944. p. 298.

⁵⁷ The experiment is described in the *Sotsialisticheskoe Zemledelie*, No. 18. January 22, 1948. The author of the article states that the experiment proved to be successful.

⁵⁸ *Pravda*, Editorial, February 19, 1950. See *Soviet Press Translations*, No. 8, April 15, 1950.

⁵⁹ *Ivestia*, March 31, April 27; *Pravda*, June 15, *Sotsialisticheskoe Zemledelie*, July 15, 1950; etc. The campaign in favor of consolidation reached its apex during the second half of 1950.

⁶⁰ Cf. *Pravda*, December 25, 1950.

⁶¹ *Pravda*, February 19, 1950, Editorial.

⁶² Cf. *Izvestia*, November 22, 1950, p. 1. '... In the Ukrainian Republic the percentage of kolkhozes having party organizations has increased considerably. Whereas on January 1, 1950, 65 percent of the collective farm chairmen were party candidates, 83 percent are party candidates at present'. *Pravda*, Dec. 14, 1950, 'Organizational and economic consolidation of kolkhozes.'

⁶³ According to the report of Benediktov, Minister of Agriculture of the USSR, 'As a result of consolidation, the number of collective farms was reduced in one year from 252,000 to 123,000.' (*Sotsialisticheskoe Zemledelie*, March 3, 1951).

Prof. G. A. Aksenenok in his report on consolidation delivered at the Academy of Science stated that: 'The consolidation is carried out on a strictly voluntary basis.' *Sovetskoe Gosudarstvo i Pravo*, 1950, No. 10. The same principle was emphasized in the Editorial of *Sotsialisticheskoe Zemledelie*, June 27, 1950, and in *Iuridicheskaiia Konsultatsiia* in the same paper of September 15, 1950. See, however, *Pravda*, Nov. 20, 1950, about deviations from this principle. There is a discrepancy between theory and practice.

⁶⁴ History of consolidation and its final stage are described by Boris Nicolaevsky, 'The New Campaign against the Peasantry,' *The Russian Review*, vol. 10, No. 2, April, 1951, pp. 81-98; and 'Split on Soviet Farmer Policy,' *The New Leader*, May 21, 1951.

PART IV, CHAPTER XIII

¹ Article 18 of the Constitution of the R.S.F.S.R. of July 10, 1918 and Article 12 of the Constitution of the U.S.S.R. of 1936.

² J. S. Voitinsky, *Sovetskoe Trudovoe Pravo*, Moscow 1925, p. 45; Semenova, *Ocherki Sovetskogo Trudovogo Prava*, Kharkov, 1923.

³ Labor law is separated from private law in a special branch of legal science. See Walter Kaskel, *Arbeitsrecht*, Berlin, 1925; Paul Pic, *Traité Elementaire de Legislation Industrielle*, 6th ed. 1930; L. S. Thal, *Trudovoe Pravo*, 2 volumes, St. Petersburg, 1913-4, and *Promyshlennoe Pravo*, Moscow 1916.

⁴ Zin. Grishin, *Sotsialisticheskaiia organizatsiia i distsiplina truda i voprosy sovetskogo trudovogo prava*, Moscow 1934, pp. 106, 118.

⁵ A. E. Pasherstnik, 'K Tridtsatiletiu Sovetskogo Trudovogo Prava,' *Sovetskoe Gosudarstvo i Pravo*, No. 10, 1947, p. 97.

⁶ 'Socialist labor regulations,' says Prof. Piontkovsky (*Literaturnaia Gazeta*, January 11, 1950), 'are radically different from the organization of coerced labor in bourgeois society.' Therefore he repudiates the idea of Prof. N. G. Alexandrov who asserted a possibility of some generalization saying, 'A scientific abstraction making it possible to note those features of capitalist and socialist labor regulations which are conditioned by the general nature of any hired labor, subject to law ...'

⁷ N. G. Alexandrov and D. M. Genkin, *Sovetskoe Trudovoe Pravo*, Juridich. Izdatelstvo N. K. J., 1946, p. 15; *Osnovy Sovetskogo Prava*, Moscow 1947, p. 387.

⁸ Alexandrov and Genkin, *Sovetskoe Trudovoe Pravo*, p. 16.

⁹ 'Labor relations in the Soviet Union are the relations of comradely cooperation, based on the principle of socialization of the means of production and the lack of exploitation.' Pasherstnik, *op. cit.*, p. 81. 'Socialist labor regulations reflect the comradely collaboration of a free people, with the interests of the individual coinciding with the interests of the whole state,' while 'the essence of labor relations in a capitalist society is exploitation.'

Piontkovsky, *op. cit.* See also *Osnovy Sov. Prava*, p. 397.

¹⁰ V. M. Dogadov, 'Trudovoi Dogovor v Sovetskom Prave,' *Sovetskoe Gosudarstvo i Pravo*, No. 8, 1947, pp. 61-62.

¹¹ J. Stalin, *Voprosy Leninizma*, 10th ed., p. 393.

¹² The Juridical Publishing Agency of the Soviet Ministry of Justice published in 1947 an annotated labor code, *Zakomodatelstvo o Trude* (Labor Legislation), under the general editorship of I. T. Goliakov. Only the provisions of the numerous legal acts in force are given; those articles of the Labor Code which are inoperative are omitted. This publication is hereafter referred to as *Labor Legislation*.

¹³ Article 37 has been amended in accordance with the law of 1932.

¹⁴ Article 46 has lost its validity, since the voluntary abandonment of a job is considered an act of shirking. Dismissal in case of absence for more than three days has been replaced by punishment. See below.

¹⁵ A guaranteed minimum wage as established by the Labor Code of 1922 is still in force for private enterprises and concessions, which of course do not exist. Several new laws inserted in the Code, such as Art. 67 (1-4) and Art. 68 (1-2) have changed unfavorably for workers the system of compensation in cases of stoppage and spoilage.

¹⁶ Articles 94-95 are amended by the ukase of June 26, 1940; Art. 109 concerning time of rest by the ukase of June 26, 1940; Arts. 111 and 112 by the Resolution of the Council of People's Commissars of June 27, 1940 and the ukase of May 8, 1945.

¹⁷ Articles 131-132 have been amended by the decrees of May 27, 1929 and the ukase of July 8, 1944.

¹⁸ See below, note 31.

¹⁹ Alexandrov and Genkin, *op. cit.*, p. 42. Rulings of the Supreme Court are not a source of law; they only interpret existing laws.

²⁰ K. M. Varshavsky, *Trudovoe Pravo SSSR*, Leningrad, p. 7.

²¹ Lenin, *Sochineniia*, Vol. XXVII, p. 319.

²² At the time of the N.E.P., a collection of labor legislation comprised five volumes, Danilova, *Deistvuiushchee Zakonodatelstvo o Trude*, 5 vols., Moscow 1925. A second abridged edition of the same collection was published in two volumes in 1927.

²³ J. Stalin, *Political Report to the Sixteenth Party Congress*, Modern Books Ltd., London 1930, pp. 115-123.

²⁴ Resolution of the Central Committee of the ACP (b) of October 20, 1930 concerning the planned distribution of labor and the stopping of its fluctuation.

²⁵ J. Stalin, *Problems of Leninism*, 1942, p.

²⁶ The methods of sabotage used by the trade unions against foreign concessionaries are described by the Soviet writer, Fedin, in his novel, *The Rape of Europe*, Vol. II. A lumber concession of a Dutch trader is depicted.

²⁷ Alexandrov and Genkin, *op. cit.*, p. 60.

²⁸ *RKP v Resolutsiakh*, Vol. I, 1932, p. 439. See also Grishin, *op. cit.* (note 4), pp. 160-162.

²⁹ *Osnovy Sovetskogo gosudarstva i prava*, p. 390.

³⁰ L. M. Kaganovich, *O Zadachakh Profsoiuzov SSSR*, Partizdat, 1932, p. 64. See also quotations by Gsovski, Vol. I, pp. 407-408, and Solomon M. Schwarz: 'Trade Unions in Soviet Russia,' in *Verdict of Three Decades*, ed. by Julien Steinberg. Duell, Sloan and Pearce, N. Y. 1950, pp. 454-467.

³¹ Resolution of the VtsIK of the U.S.S.R. Council of People's Commissars and the VTsSPS of June 23, 1933, U.S.S.R. Laws, 1933, No. 40, text 238 and No. 57, text 333. It goes without saying that the authority of the latter (VTsSPS) is not equal to the authority of the Commissariats (Ministries), and in case of conflict, it is the VTsSPS which has to yield.

³² Alexandrov and Genkin, *op. cit.*, p. 106.

³³ Resolution of the Presidium of the Central Council of Trade Unions concerning collective bargaining and the Decree of the U.S.S.R. Council of Ministers of February 4, 1947 (*Izvestia*, No. 42, 1947). More details in *Labor Legislation*, p. 15. See below notes 88-94.

³⁴ Pasherstnik, *op. cit.*, pp. 79, 82. Isaac Deutscher (*Soviet Trade Unions*, London & N.Y., 1950, p. 136) explains 'the peculiar role' of the Soviet Trade Unions not so much by the needs of planned economy as 'by the application of planning to an extremely low level of economic and cultural development, the level at which Russia stood until recently.' This statement has nothing in common with the facts of the development of trade-unionism during the period of NEP and gives the impression that the economic and cultural level in the Soviet Union became lower after the industrialization of the country and socialist education of the new generations of industrial workers. It is hardly I. Deutscher's point.

³⁵ *Pravda*, April 28, 1950, Slogan No. 47. The same functions are described in the

editorial of *Izvestia*, April 7, 1950. In conformity with the Soviet pattern the Seventh Conference of the Representatives of the Trade Unions of the Chinese People's Republic passed on May, 1952, the following Regulations: Trade-Union 'unites the workers around the Chinese Communist Party,' 'Trade Union is a school of communism, an organ stimulating workers to fulfill the established norms of production and to increase production, as well as an agency for social insurance.' 'Overfulfillment of the plan and promoting nationalizations is the most important mission of the Chinese Trade-unions.'

Special Committees within the Unions have to administer dormitories and other living quarters of the workers and supervise their life as well, supervise their family life for helping their wives and relatives and let the workers 'to fulfill and overfulfill the production.'

³⁶ Alexandrov and Genkin, *op. cit.*, p. 28.

³⁷ Article 11 of the Labor Code empowers the government to assign some work as a public service in case of an emergency. In practice, this right is used also for building and repairing roads. Members of kolkhozes have to fulfill this duty without charge for six days per year. *Labor Legislation*, p. 14, par. 5.

³⁸ Ukase of June 26, 1940 (*Vedomosti Verkhovnogo Soveta*, No. 20, 1940).

³⁹ Article 94 of the Labor Code.

⁴⁰ Labor Legislation, pp. 167-168, pars. 2-5 and 11 (See the text to notes 78-80).

⁴¹ Ukase of June 26, 1940.

⁴² Resolution of the Council of People's Commissars and the Central Council of Trade Unions, *Collection of Laws*, U.S.S.R., 1939, No. 1, text 1. This Resolution was motivated by the fact that some fitters' were getting vacations after five and a half months work and then changing their jobs and getting a second vacation. (*Labor Legislation*, p. 173, section 1; also *Sov. Gosudarstvo*, 1939, No. 1, p. 80).

⁴³ *Labor Legislation*, pp. 176-177.

⁴⁴ U.S.S.R. Laws, 1940, No. 16, text 385.

⁴⁵ *Labor Legislation*, p. 170, section 2.

⁴⁶ *Ibid.*, p. 166, notes to Art. 100.

⁴⁷ The working conditions of these girls were shown in the picture, 'A Great Life,' a film which was ruthlessly criticized by the late Zhdanov and the Resolution of the CC of the ACP (b) of September 4, 1946.

⁴⁸ R.S.F.S.R. Laws, 1932, No. 59, text 262. To reject a transfer is considered a violation of labor discipline. (Art. 37 (1) of the Labor Code).

⁴⁹ The Ukases of October 2, 1940 and June 19, 1947 authorized the U.S.S.R. Council of Ministers to draft annually 800,000 to 1,000,000 boys 14 to 17 years of age and girls 15 to 16 for compulsory technical training.

⁵⁰ Decree of the Council of People's Commissars of January 20, 1943.

⁵¹ Alexandrov and Genkin, *op. cit.*, pp. 435-445.

⁵² *Labor Legislation*, p. 65. See also Gsovski, Vol. I, p. 798, note 22; p. 806, note 52; and p. 813.

⁵³ Paul Haensel, 'A Survey of Soviet Labor Legislation, 1917-1941,' *Illinois Law Review*, Vol. 36 (1942), pp. 529-544.

⁵⁴ Anton Menger, *The Right to the Whole Produce of Labor*, MacMillan Co., 1899; also his *Neue Staatslehre*, 2-te Aufl., Jena, 1904.

⁵⁵ P. I. Novgorodtsev and J. A. Pokrovsky, *O Prave na Sushchestvovanie*, St. Petersburg, 1911.

⁵⁶ *Ibid.* Also J. A. Pokrovsky, *Osnovnyia Problemy Grazhdanskogo Prava*, Petrograd, 1917, pp. 317-323.

⁵⁷ Before minimum wages had been established by special laws, it was possible to protect the interests of workers by referring to the general principles of modern civil codes; e.g. prohibitions against transactions *contra bonos mores* (*contrainte morale*) and against usury in the wider meaning. (Cf. sec. 138 of the German B.G.G. and Art. 21 of the Swiss Code, S.C.G.B.)

⁵⁸ 'The establishment of minimum wage rates is no longer practiced. It was on December 5, 1927 that they were established for the last time.' (*Labor Legislation*, p.

66, notes to Art. 59). There is, however, one exception. A minimum wage rate had been established in 1937 for industrial and transport workers, namely 115 rubles per month for those paid by the hour and 110 rubles for those paid by piece work. Such a minimum is undoubtedly insufficient as an *existens-minimum*.

⁵⁹ *Labor Legislation*, p. 69, notes to Art. 60.

⁶⁰ *Labor Legislation*, p. 67. The system of remuneration for Soviet store personnel, based on the same principles of piece work rates, is described by Henry H. Ware in the *American Slavic and East European Review*, Vol. IX (February 1950), pp. 20-32.

⁶¹ *Labor Legislation*, p. 70, Nos. 21-23.

⁶² *Ibid.*, p. 71, No. 28; and p. 77, No. 58.

⁶³ A comparative study of wages in various capital towns published by the I.L.O. (International Labor Office) disclosed that wages in Moscow were below those of workers of other capitals. This publication was very badly received in the Soviet Union. Cf. Ch. Prince, 'The U.S.S.R. and International Organizations,' *The A.J.I.L.*, July 1942, 425-445. About the purchasing power of hourly earnings in the Soviet Union as compared with other countries see Irving B. Kravis, 'Work Time Required to Buy Food, 1937-50,' in the *Monthly Labor Review*, February 1951. See also Harry Schwartz, *Russia's Soviet Economy* Prentice-Hall, N. Y. 1950, p. 457-68, and *Materials of the Conference of the Emigre Scholars*, issue V, Muenchen, 1951.

⁶⁴ Law of June 10, 1934, R.S.F.S.R. Collection of Laws, 1934, No. 26, text 146.

⁶⁵ Resolution of the Plenum of the CC of the ACP (b) carried on December 25, 1935, and the Decrees of the Council of People's Commissars of June 4, 1938 and January 14, 1939 (Laws, U.S.S.R., 1938, No. 27, sec. 178, and 1939, No. 7, text 38). Stakhanov was a miner who, by introducing teamwork in the mines, was able to increase output substantially. Accordingly, any innovation in methods or organization of work which raises efficiency is called 'Stakhanovite.'

⁶⁶ Law of November 16, 1932 (R.S.F.S.R. Laws, 1932, No. 85, text 371).

⁶⁷ Standard Labor-Regulations of January 18, 1941, U.S.S.R. Laws, 1941, No. 4, text 63.

⁶⁸ *Labor Legislation*, p. 50, sec. 5, A detailed exposition of the Regulations may be found in the comments to Art. 51 of the Labor Code.

⁶⁹ Rulings of the U.S.S.R. Supreme Court, 1943, Sixth Issue; and 1944, Third Issue. *Yurisdai*, 1944, pp. 3 and 5. Quoted in *Labor Legislation*, p. 60.

In conformity with the Soviet pattern the satellites introduce the same strict measures concerning labor discipline. See, for example, the Polish law of April 19, 1950, Art. 1, 4 (Cf. *Sociologie et droit Slaves, Revue Trimestrielle*, 1950, 1-4.). Factory Regulations in China established a deduction of 50,000 J.M.P. for one day absence and dismissal for unfulfillment of the production rate.

⁷⁰ *Labor Legislation*, Comments to Art. 51, p. 58, No. 34.

⁷¹ *Ibid.*, pp. 58-59, No. 37.

⁷² Partly translated by Gsovski, *op. cit.*, Vol. II, No. 40.

⁷³ Gsovski, *op. cit.*, I, p. 805.

⁷⁴ Art. 83 and 83 (1-6) of the Labor Code. Translated by Gsovski, *op. cit.*, II, pp. 543-547.

⁷⁵ N. Alexandrov, *Voprosy Truda v Sovetskom Zakonodatelstve*, Profizdat, 1936, p. 65.

⁷⁶ *Ibid.*, p. 48.

⁷⁷ This is the main thesis of the dissertation of Z. A. Vyshinskaia, *Crimes in the Field of Labor Relations*, reviewed by Korshunova, *Sovetskaia Kniga*, No. 1, January 1950.

⁷⁸ The tendency to increase the severity of penalties is characteristic of Soviet legislation in general. See Ch. XIV.

⁷⁹ Grishin, *op. cit.*, p. 169.

⁸⁰ The Plenum of the U.S.S.R. Supreme Court ruled on December 25, 1941 that an intentional violation of the labor regulations for the purpose of dismissal will be considered an arbitrary quitting of the job punishable as a crime. See *Labor Legislation*, p. 52, sec. 32.

⁸¹ David Dallin, *The Real Soviet Russia*, N. Y. 1944, asserts that workers of the

pre-revolutionary period and members of former workers' families constituted but a small minority, not exceeding 10 per cent, of the contemporary working class, at the time of the publication of his book in 1944.

⁸¹ Art. 176, Labor Code, and the Decree of February 13, 1930 (U.S.S.R. Laws, 1930, No. 11, text 132). A general characterization of the Soviet system of social insurance is given by A. S. Krasnopolskii, 'O prirode sovetskogo gosudarstvennogo sotsialnogo strakhovaniia,' *Sov. Gos. i Pravo*, June 1951, pp. 62-69.

⁸² Articles 7 and 20 of the Decree of February 29, 1932.

⁸³ A veteran of the second category receives 34, 48 or 68 per cent of his earning depending on the kind of his disability, but every pension is estimated from an amount not exceeding 300 rubles per month. (*Labor Legislation*, p. 285, sec. 122, 125, and p. 290, sec. 148).

⁸⁴ *Ibid.*, p. 288, sec. 140 (b).

⁸⁵ Since 1949, prices for some food and other necessities have been reduced every year. Such a measure can improve conditions of life if wages (piece-price) are not reduced simultaneously because of the increasing of norms of production.

⁸⁶ Many Stakhanovites, disabled veterans, and disabled workers, as well as workers at shops where working conditions are hard and detrimental to health, are boarded and treated in sanatoriums free of charge. Rank and file workers pay 30 per cent of the cost of a sanatorium. E. Kiktenko, 'Social Insurance in 1950,' *Trud*, April 8, 1950.

⁸⁷ *Trud*, February 19, 1947.

⁸⁸ *Trud*, January 28, 1948.

⁸⁹ 'Interests of workers and of the socialist economy are indetical ... When collective agreements are concluded between the trade-unions and administration, the economic plans and conditions of particular enterprises as well as interests of the national economy in whole have to be taken into account.' (A. E. Pasherstnik, 'Voprosy kollektivnogo dogovora v S.S.S.R.' *Sov. Gos. i Pravo*, 1948, No. 4, pp. 40, 41). See also Isaak Deutscher, *Soviet Trade Unions*, London & N. Y. 1950.

⁹⁰ See Art. 15 of the Labor Code.

⁹¹ Pasherstnik, o.c. pp. 43-44. See also notes on 'Collective Bargaining in the Soviet Union,' *Harvard Law Review*, Vol. 62, 1949, pp. 1191-1206.

⁹² M. Weisberg, 'The Transformation of the Collective Agreement in the Soviet Law,' (XVI, *Univ. of Chicago Law Rev.* 1948-9, p. 481; Cf. V. M. Dogadov, 'Etapy razvitiia Sovetskogo Kollektivnogo Dogovora,' *Izvestia Akademii Nauk, Otdel Ekonomiki i Prava*, 1948, No. 2, pp. 83-92; also V. Gsovski, 'Elements of Soviet Labor Law,' *Monthly Labor Review*, 1951, March, pp. 257-262; April, pp. 385-390.

⁹³ Prof. Dogadov characterizes as the moral obligations of workers, if indicated in the collective agreements: 'to prolong the working day, to eliminate flaws in manufacture, to carry out conscientiously and on time the programme of production, to safeguard, as sacred socialist property, equipment, instruments, materials and other property of the enterprise.'

⁹⁴ Article 156 of the Labor Code.

⁹⁵ *Labor Legislation*, pp. 223-226. Comments to Art. 146 of the Labor Code.

⁹⁶ Lenin welcomed this statement. See Grishin, *op. cit.*, p. 103. 'Exactly, exactly,' he wrote on the margin. 'The worker's share in the social product depends on the quantity and quality of his work,' Dr A. E. Pasherstnik, *Pravovye voprosy vozna-grazhdeniia za trud rabochikh i sluzhashchikh*. Moscow, 1949, p. 110.

⁹⁷ Arts. 168-174 of the Labor Code.

⁹⁸ Regulations concerning RKK of December 12, 1928, approved by the U.S.S.R. People's Commissar of Labor. (*Labor Legislation*, pp. 253-254).

⁹⁹ *Labor Legislation*, Comments to Art. 168, p. 243, No. 5.

¹⁰⁰ Cf. Mariga Gordon, *Workers before and after Lenin*. N. Y. 1941.

PART IV, CHAPTER XIV

¹ Prof. L. J. Petrazicki, *Teoria prava* (Theory of Law), (St. Petersburg, 1910), vol. II, pp. 709-10.

² Ukase of the Presidium of the Supreme Soviet of the USSR of July 10, 1940.

This Ukase is incorporated into the Criminal Code of the R.S.F.S.R. in the form of an amendment to paragraph I of Art. 128 (a). Although several Union Republics have their own criminal codes, they do not differ essentially and it is usually sufficient to refer to the Penal Code of the R.S.F.S.R. of 1926 (referred to hereafter as Crim. C.). See English edition, *The Penal Code of the R.S.F.S.R., Text of 1926* (with amendments up to December I, 1932) with three appendices. London, H. Majesty's Stationery Office, 1934.

² Art. 58, Crim. C.

⁴ Even capital punishment is not excluded in especially severe cases. The death penalty was abolished by the Ukase of May 26, 1947 (*Izvestia*, May 27, 1947), but was once again restored by the Ukase of January 12, 1950 (*Izvestia*, January 13, 1950).

⁵ Crim. C., Art. 131. Early in 1948 (*Izvestia*, No. 89) there began a series of prosecutions against engineers, and factory and plant managers for the production of poor quality goods. Engineer Vykhota of the Grodno factory was sentenced to five years imprisonment for the production over a long period of bicycles of poor quality; in Leningrad, Malinovsky, a chief engineer, was sentenced to two years imprisonment for producing felt boots of poor quality (*valenki*); the manager of the Totsk Bakery in the Chkalov region was sentenced to five years imprisonment for baking poor grade bread, etc. At the same time the Prosecutor General's office instructed all its local organs to prosecute mercilessly all those responsible for manufacturing inferior goods.

⁶ Ukase of June 26, 1940, part 2, Art. 5. (See *Izvestia* and *Pravda*, June 27, 1940; *Vedomosti Verkhovnogo Soveta*, July 5, 1940, No. 20 and August 22, 1940, No. 28. Liability for leaving military enterprises during the war was determined by the special ukase of December 26, 1941 (*Vedomosti*, 1942, No. 2). Cf. Gsovski, *Soviet Civil Law*, Ann Arbor, 1948, pp. 816-820. Since 1953, violators are usually fined.

⁷ The failure to get on a street car or train because of its being accidentally detained, or the cars being overcrowded, the illness of one's children or wife, or the necessity of standing in line for articles of primary necessity, are not considered justifiable reasons for being late or for non-appearance at work. *Osnovy sovetskogo gosudarstva i prava*, (referred to hereafter as *Osnovy*), pp. 428-431.

⁸ U.S.S.R. Ukase, June 26, 1940, Art. 6. Resolution of the Supreme Court of August 15, 1940, No. 29/15/u (See *Sbornik deistvuiushchikh postanovlenii i direktivnykh pisem verkhovnogo suda S.S.S.R.*, 1924-1944, Moscow, 1946, pp. 29, 30).

Prof. P. Haensel in his article 'A Survey of Soviet Labor Legislation: 1917-1941' (*Illinois Law Review*, vol. 36, 1942, pp. 529-544) cited the following facts: 'For instance, a chief of transport in a factory was sentenced to a two-year prison term for having sent home several times a worker who came to work intoxicated, instead of prosecuting him.

Izvestia, August 16, 1940. An apprentice was found loafing during working hours. In revenge he attacked his master in the street and beat him. *Izvestia*, August 17, 1940. Several judges were deprived of their positions for rendering too mild sentences or for delaying in passing sentences. *Izvestia*, August 9, and 13, 1940.' (Haensel, op.c, pp. 539-540 note 46).

⁹ *Sobranie zakonov S.S.S.R.*, 1933, No. 59, Text 356; cf. *Sbornik* (referred to in note 8), Resolution of the Plenum, March 17, 1934 (pp. 37-38).

¹⁰ A farmer excluded from the kolkhoz is completely dependent on the state, which gives him work when it is profitable to the state, and when not, exiles him to a correctional labor camp. (*Osnovy*, p. 504).

The collective farmer is not a hired worker and is not subject to the Labor Law of 1940. However, in conformity with Article 18 of the Charter of Collective Farms, a collective farmer may be prosecuted in accordance with the Crim. C. for a 'betrayal of the common cause and aid to enemies of the people.' (See above, Ch. XII).

¹¹ People's Commissariat of Communal Economy (Ministry of Communal Economy later).

¹² The decree of the S.N.K. of the R.S.F.S.R., on October 10, 1940, established that for late payment of rent and for payment of fines, the members of the tenant's family having independent incomes, as well as the tenant himself, are jointly and severally liable. (See *Zhilishchnye zakony* (Dwelling-House Laws), published by the Ministry

of Communal Economy, Moscow, 1947. Collections of decrees about securing timely payments of apartment rents).

¹³ Prof. S. T. Goliakov, *Ugolovnoe pravo* (Criminal Law), Moscow, 1947, pp. 278-279.

¹⁴ Almost entire space of a four-page *Vedomosti Verkhovnego Soveta* is usually filled with citations of various awards.

¹⁵ Descriptions of uniforms and epaulets occupy a prominent place in Soviet papers and collections of laws. (See *Sbornik Zakonov S.S.S.R. i Ukazov Presidiuma Verh. Soveta*, 1945-1946; Moskva, 1947, pp. 142-144).

¹⁶ General Statute on Decorations of the U.S.S.R. of May 7, 1936, Articles 10-16, U.S.S.R. Laws, 1936, text 220 (b). See also *Administrativnoe zakonodatelstvo* (Administrative Legislation), *sbornik vazhneishikh postanovlenii*, Ogiz, 1936, pp. 90-106.

Some benefits, however, were repeated in the Ukase of September 10, 1947. *Vedomosti Verkhovnego Soveta*, No. 41.

¹⁷ Statute on the title Hero of the Soviet Union of the U.S.S.R., Collection of Laws, 1934, text 168, and of 1936, text 357 (b).

¹⁸ Statute on the title of Hero of Labor of July 27, 1927, U.S.S.R. Laws, 1927, text 456 (amended in 1930, text 1, and in 1931, text 118). Statute of Order of Lenin, May 5, 1930, U.S.S.R. Laws, 1930, text 269.

¹⁹ The Order of the Red Banner is granted for outstanding heroism, unselfishness and valor displayed on the field of battle. The Order of the Red Star is awarded for outstanding service for defense in time of peace or war. Statute of The Order of Red Star, U.S.S.R. Laws, 1932, text 74.

²⁰ Decree of the TsIK of the U.S.S.R., Sept. 7, 1928, Laws, 1928, text 524.

²¹ Decree of the TsIK of November 25, 1935, U.S.S.R. Laws, 1936, text 223.

²² 68 per cent of the deputies in the Council of Nationalities and 78 per cent in the Council of Union are holders of government awards; among these are 102 Heroes of the Soviet Union, 52 Heroes of Socialist Labor, and 35 Stalin Laureates. See *Izvestia*, March 15, 1946; in 1950, in the Council of Nationalities there were 93 and, in the Council of the Union - 91 per cent deputies bearing decorations (Th. Rigby, *Political Quarterly*, July-September, 1953, p. 314) Cf. Ch. XVII, note 18.

²³ General Statute on Decorations, Art. 18, and special statutes of particular Orders provide regulations on the right of TsIK (at present of the Supreme Soviet) to remove rights to decorations and titles.

²⁴ The Ukase of March 29, 1947 (*Vedomosti*, 1947, No. 12) 'concerning the conferring of the title "Hero of Socialist Labor" and the awarding of orders and medals of the U.S.S.R. to kolkhoz, M.T.S., and sovkhos laborers for obtaining large crops of wheat, rye, corn, sugar beets and cotton.'

This system of encouraging diligence among farmers by individual rewards for record harvests was extended still further by the Ukase of the presidium of the Supreme Soviet on April 24, 1948. A similar system of awards is established for the outstanding achievements in live-stock breeding. Ukase of Sept. 17, 1947 *Vedomosti*, No. 35. Recently extended by the Ukase of Oct. 23, 1953.

²⁵ 'A laborer making bricks had to produce 16,000 bricks a day; if he produced up to 10 per cent more, his wage was raised by 50 per cent; up to 20 per cent, the wage was increased 100 per cent; above 20 per cent, the wage was increased 150 per cent, i.e. progressively.' P. Haensel, 'A Survey of Soviet Labor Legislation: 1917-1941,' *Illinois Law Review*, vol. 36, 1942. Cf. also Gsovski, vol. I, Ch. 22, note 63, and pp. 810-811. See also above, Chapter XVII, Section 4 (Wages).

²⁶ *Osnovy*, pp. 426-427.

²⁷ Ukase of September 1, 1945 (*Vedomosti*, 1945, No. 65). There are three classes of badges for Stalin Laureates. Description is given in the ukase of the Supreme Soviet of December 10, 1946. The amount of prizes was limited later to 100,000 rubles. Prizes were made free of tax.

²⁸ 'There is a shortage of everything in the Soviet Union,' remarks one of its citizens, 'except works of Lenin and Stalin, decorations and medals, and fantastic promises.'

PART V, CHAPTER XV

¹ See S. I. Iakubovskaia, *Ob'edinitelnoe dvizhenie za obrasovanie S.S.S.R.* Moscow. Ogiz., 1947; and the well-documented book by Walter R. Batsell, *Soviet Rule in Russia*. Macmillan Co. 1929. Ch. III-V, and X.

² Stalin's interview in *Pravda*. November 18, 1922. See also *Stalin, Sochineniia*. vol. 5, p. 128-144.

³ See next chapter.

⁴ There is a great similarity between Lenin and Sorel, who in his *Reflexions sur la violence* (6-me edition, 1925) expounded his disdain toward the 'democratic swamp' and lack of confidence in the masses' ability to organize and inclination to follow those who are strong.

⁵ V. I. Lenin, *One Step Forward. Two Steps Back*. London, 1941, pp. 77-78; 253-55. Also Lenin's *Sochineniia*, 4th ed. Vol. 7, p. 187 ff; vol. 8, pp. 382, 509 ff. See also Stalin, *Foundations of Leninism*, N. Y., 1923, pp. 110-15. The Lenin-Stalin attitude toward the masses is thoroughly discussed by Barrington Moore Jr., *Soviet Politics—The Dilemma of Power*, Cambridge, 1950, Ch. 3, pp. 59-82; and Alex Inkeles, *Public Opinion in Soviet Russia*, Cambridge, 1950, Ch. 2, pp. 14-20.

⁶ L. Trotskii, who was Lenin's opponent at that time, observed that 'In Lenin's scheme the Party takes place of the working class. The Party organization displaces the Party, and finally the dictator replaces the Central Committee.' (Nashi Politicheskie Zadachi, p. 54). Quoted by D. Dallin, *op. cit.* p. 217 (note).

⁷ The most terrible purge was launched in 1935. In the summer of 1936 the greatest of all Party purges began. This continued until 1938, and in the army and navy until 1939. Many hundreds of thousands of Party members were expelled; thousands were arrested and executed.

⁸ See *Pravda*, March 15, 1939, and reports published separately concerning the XVIIIth Party Conference.

⁹ Cf. J. Towster, *op. cit.* pp. 127-129, on the limits of criticism and discussions.

¹⁰ Children between the ages of eight and eleven are organized in the groups of *Oktiabriats*; from ten to 16 they can enter the organizations of Pioneers and from 15 to 23, some times up to 26, they can be accepted into the Komsomol. Cf. John N. Hazard, 'The One-Party System,' in *Foreign Governments. The Dynamics of Politics Abroad*. Edited by Fritz M. Marx, N. Y. Prentice-Hall, Inc. 1949. pp. 431-434; J. Towster, *o.c.* pp. 139-142.

¹¹ S. Harper, (see note 26, Ch. XX)

¹² Joseph Stalin, *Leninism*, London. George Allen and Unwin Ltd. 1940, p. 651. Also Stalin's interview with American Labor Delegation (Stalin, *Interviews with Foreign Workers' Delegations*. Int. Publ. 1927, p. 11).

¹³ G. I. Petrov, 'Voprosy teorii Sovetskogo administrativnogo prava,' *Sovetskoe Gosudarstvo i Pravo*, 1950, No. 12, pp. 57-65.

¹⁴ 'All the links in the chain of management of socialist production in their concrete activities originate in these goals set for them by the Bolshevik Party.' Ernest C. Ropes, 'Industrial Management in the U.S.S.R.,' *The American Review of the Soviet Union*, March, 1948, p. 23.

¹⁵ 'Under the leadership of the Bolshevik Party the local Soviets have won great successes in the field of agricultural economy.' (A. I. Lepeshkin, 'Mestnye organy gosudarstvennoi vlasti SSSR.' *Sovetskoe Gosudarstvo i Pravo*, 1950, No. 12, p. 42). One of the reasons for the consolidation of kolkhozes was a possibility of increasing Party control, having Communists as chairmen in all collective farms (See above Ch. XII).

¹⁶ *Izvestia*, August 8 and 9, 1947. The same slogans are periodically repeated almost word for word in connection with May First parades. Compare slogans 54 and 55 of May 1, 1950, with slogans 58, 59 of May 1, 1951, etc.

After Stalin's death the vacant place of the deceased dictator occupied on the pages of the Soviet newspapers and in radio-propaganda the 'beloved and paternal' communist party.

¹⁷ Ukase of July 6, 1945 (*Vedomosti Verkhovnogo Soveta SSSR*. 1945. No. 39).

¹⁶ A list of the problems resolved by the Supreme Soviet since its first session in January, 1938, and up to the twelfth in June, 1945, is added in an appendix by A. Denisov in his *Les Organes Centraux et locaux en U.R.S.S.*, Editions Sociales. Paris. 1947.

Procedure of the Supreme Soviet is described according to the stenographic report of the first post-war session (1946), by J. N. Hazard, *op. cit.* (See note 10), p. 453-4.

¹⁹ For example, the Asiatic republics have been deprived of independence in such a vital branch of economy as irrigation. It is at present under the jurisdiction of the central government in connection with the establishment of the Ministry of Cotton Industry (Ukase of April 5, 1950) and the resolution of the Council of Ministers to reorganize the system of irrigation (see, *Sotsialisticheskoe Zemel'delie*, August 18, 1950). Cf. J. Meisel and E. Kozera, *Materials for the Study of the Soviet System*. Ann Arbor, 1950, pp. 468-75. A Chief Administration of Water Economy is organized in the Ministry of Agriculture of the USSR, subject to one of the Deputies of the Minister (G. A. Aksenenok-*Pravo gosudarstvennoi sobstvennosti na zemlju v SSSR*. Gosizd. Yur. Lit. M. 1950, p. 69 ff.).

²⁰ In fact, as Soviet papers indicate the regular sessions are not always convened in accordance with the rules: 'The regulations concerning the convocation of sessions of the local Soviets are systematically violated by the Stavropol Krayispolkom. Last year it convoked but three sessions of the Kraysoviet, and none this year yet.'

'Sessions of the regional Soviet are, as a general rule, badly organized. One does not hear a criticism; if there is one, it is usually when the local subordinate organizations are criticized.' Peasants and workers are worried about wasting their working time. In an article dedicated to the activity of the local Soviets, *Izvestia*, June 15, 1947, suggests that the local organs convoked sessions of the Soviets on 'non-working days' so as not to interrupt the principal production work or public service of their members.

'According to the existing practice of the Smolensk Oblispolkom all questions have to be decided at the Ispolkom's meetings, without being prepared beforehand. In six months in 1947 about 2,000 problems have been solved. There are dozens of problems on the agendas of the Ispolkom. How can one be prepared to discuss them? Even the leaders, themselves, are often not acquainted with these problems in advance,' (*Izvestia*, July 5, 1947). If Ispolkom is not prepared what can one expect from the Soviet itself whose members are removed from the current work?

²¹ In Uzbekistan many of the Ispolkoms decided to abolish elections. 'Why elect? We will nominate.' (*Izvestia*, July 3, 1947).

²² Prof. A. I. Denisov, *Sovetskoe gosudarstvennoe pravo*. Moscow, 1947. pp. 292-93.

²³ 'Many of the Oblispolkoms cancel decisions of the Soviets of the lower rank, although according to the Constitution of the R.S.F.S.R., they are empowered only to suspend them.' (*Izvestia*, July 3, 1947).

²⁴ A. I. Lepeshkin, 'Mestnye organy gosudarstvennoi vlasti SSSR,' *Sov. Gos. i Pravo*, 1950, No. 12, p. 41 Cf. V. Borisov's article with the same subject in the *Sov. Gos. i Pravo*, 1947, No. 12, p. 12.

²⁵ 'It is the Communist Party which not only governs Russia, but claims to lead the Communists of the world, through the Third International. It may be added that with a frankness which did not work the preceding period, laws are now generally issued from the government and the Party or even from the Party and the government. This also throws a light on the constant representations of Litvinov that the Soviet government does not control the Third International. As a matter of fact, the Communist Party controls both.' (Bernard Pares, *Moscow Admits a Critic*. London, 1936), pp. 54-55.

'Resolutions of the Central Committee of the Party are executed in different forms, including the form of Law, which only emphasizes flatly the vital connection between the legal norms and Party and State policy. The policy of the Bolshevik party based on the theory of scientific communism is a real foundation of the Soviet structure.' (*Uchenye Zapiski. Akademia Obshchestvennykh Nauk*, v. 8, Moskva, 1951, p. 85).

²⁶ Lenin, *State and Revolution*, Ch. V (2).

²⁷ 'Last year about one half of the chairmen of the District Ispolkoms and more than one third of the chairmen of the village soviets were replaced.' 'It often happens

that incompetent persons are promoted to responsible offices.' (*Izvestia*, May 20, 1947). 'It is time for the Minister of Higher Education to consider seriously how to provide officials with a legal education for the Soviets.' *Izvestia*, July 3, 1947.

'An anomalous attitude toward the "cadres" (personnel), a typically bureaucratic one, without self-criticism, with negligence as regards collaboration with the masses of the population—that is the style of the Velikoluksky Oblispolkom's work.' (*Izvestia*, July 13, 1947).

'We have to insist that all the Soviet establishments have a cultured appearance, but not just at times.' (*Izvestia*, July 13, 1947).

'In the Estonian Republic new, inexperienced people obtained the leading roles in the Soviet organizations. And the leadership is on a very low level.' (*Izvestia*, August 2, 1947).

²⁸ This chapter contains only a brief analysis of the Soviet Constitution and the Charter of the Communist party. A more thorough study requires too much place and is superfluous since there are more extended works on the same subject. Cf. bibliography given by Julian Towster in the annex to his survey 'Union of Soviet Socialist Republics' in the symposium *European Political Systems*, Ed. by Taylor Cole (Alfred Knopf, N. Y. 1953), and by John N. Hazard in his *Law and Social Change in the USSR*.

The discussion offered in the text presents, however, some points which are not only necessary in connection with the further text but also because this writer wants to emphasize that the Stalin constitution in its larger part is a sham constitution and its political significance may be understood, therefore, if only characterized in connection with the political realities, especially the role of the Communist Party. Cf. Merle Fainsod, *How Russia is Ruled*, Harvard Univ. Press, 1953.

²⁹ The figures given for the number of Party members in the Ukraine and their educational qualifications are taken from materials of the 19th Party Congress, printed in corresponding publications of the national republics: *Kazakhstanskaiia Pravda*, Sept. 21; *Zaria Vostoka*, Sept. 16; and *Pravda Ukrainy*, Sept. 25, 1952. Population figures are mainly for 1939.

Cf. Leo Gruliov, Ed. *Current Soviet Policies*. (The Documents, Proceedings and Related Materials of the Nineteenth Congress of the Communist Party of the Soviet Union). Fr. Praeger, N. Y. 1953.

³⁰ *Pravda*, Oct. 6; *Literaturnaia Gazeta*, 122, Oct. 7, 1952.

³¹ Sec. 40, *Ustav* 1939; Sec. 37, *Ustav* 1952.

³² Sec. 35c., *Ustav* 1952.

PART V, CHAPTER XVI

¹ Even the R.S.F.S.R., the largest of the Union Republics, has only seven independent ministries. See Trainin, 'Gosudarstvo stroiushchegosia Kommunizma,' *Izvestiia Akademii Nauk S.S.S.R. Otd. Ekonomiki i Prava*, 1944, No. 5, p. 311.

Until 1935 the U.S.S.R. Supreme Court was principally an advisory body. In its competence was examination and protest against the TsIK (Central Executive Committee) of the U.S.S.R., at the instance of the federal Attorney General (Procurator General of the U.S.S.R.) resolutions, decisions and verdicts of the supreme Courts of Union Republics. (U.S.S.R. Const. of 1924, Art. 43, b.) But the 1936 Constitution and the Judiciary Act of 1938 (Art. 64) vested in the supreme court of the U.S.S.R. 'the supervision of the judicial activities of all the judicial organs of the U.S.S.R., and of Union Republics.' (Art. 104). Still more centralized is the activity of Procurators of Republics who are under submission to the Procurator-General of the U.S.S.R. who appoints them (Art. 115).

² Peculiarities of the constitutions of different Soviet Union Republics are described by Henry H. Collins, Jr in his article 'The Constitutions of the Soviet Republics,' *Science and Society*, Winter, 1951, Vol XV, 1, pp. 17-30. See also I, Trainin, 'Constitutsii novykh Soiuzykh respublik,' *Sovetskoe gosudarstvo*, 1940 No. 11, pp. 11-27.

³ Constitutions of the Turkmen Union Republic, Art. 103; of the Uzbek, Art. 121; of the Tadjik, Art. 107; of the Kazakh, Art. 100; and of the Kirghiz, Art. 93.

⁴ Paul Miliukov, *Russia Today and Tomorrow*, New York, Macmillan Co. 1922.

Separatist and federalist movements existed among Ukrainians, Poles, Lithuanians, White Russians (Byelorussians), Georgians and Armenians (Dashnaktsiutun). See also Halina Zashtowt-Sukiennicka, *Fédéralisme en Europe Orientale*. Paris, 1926. pp. 78-89. Gui Ladreit de Lacharriere, *L'Idée Fédérale en Russie de Riourik à Staline*, Paris, 1945. pp. 27, 93-99.

⁵ 'Federalism arises, as a principle, from the petty-bourgeois views of Anarchism,' *State and Revolution*, Ch. III, 4 —'The Origin of National Unity.' Cf. Gui Ladreit de Lacharriere, o.c. I, III, *Marxo-Leninisme et Fédéralisme*.

⁶ Lenin, 'Critical Notes on National Problems,' *Sobranie Sochinenii*, 1925, Vol. XIX, p. 58. See also notes 21 and 30 below.

⁷ Stalin, *Marxism i Natsionalno-Kolonialnyi Vopros*, 1937. p. 39-40. Cf. W. R. Batsell, *Soviet Rule in Russia*, Macmillan Co. 1929, p. 272.

⁸ Stalin, *ibid*, p. 42.

⁹ Batsell, *op. cit.*, p. 109.

¹⁰ Rakovskii insisted at the XIIth Conference that the Soviet political structure was on the wrong road, that 'it is necessary to deprive the Union Commissariats of nine-tenths of their jurisdiction in favor of National Republics.' (See *Stenographic Reports of the XIIth Party Conference*, p. 534, and Stalin's *Collected Works* (in Russian), Vol. III. pp. 30-31. On the other hand, Prof. Reisner opposed Federalism unless it was a geographic federalism.

¹¹ 'Federation is a transitional form.' Stalin, Vol. III, p. 25, pp. 29-31.

¹² Cf. Stalin, *Marxism i Natsionalno-Kolonialnyi Vopros*.

¹³ S. J. Iakubovskaia, *op. cit.*, (See above Ch. XV, note 1).

¹⁴ Stalin, Vol. IV, pp. 87-88, 229. In his report to the Xth Congress of Soviets Stalin declared that only socialist states having a uniform political and social structure could be incorporated in the Soviet Union and that it is necessary to struggle 'not only against imperialist shovinists' (sic) but also 'against local nationalism.' (Stalin, *Marxism i Natsionalno Kolonialnyi Vopros*, pp. 93, 112-123). This principle remains a leading motto of the Soviet national policy (Cf. G. Alexandrov, '*Velikoderzhavnyi Shovinism*,' *Politicheskii Slovar*, Gosizdat. 1940).

¹⁵ This policy was formulated by the VIIIth Congress of the Communist Party: 'The Party accepts a federation of states organized in conformity with the Soviet type, as a transitional form of Union on the way to their complete consolidation.' (*V.K.P. (b) v Resolutsiakh*, pp. 1, 287).

¹⁶ Treaties of alliance with the Ukrainian S.S.R., December 20, 1920; with Georgia, May 12, 1920; with Azerbaijan on Unified Economic Policy, September 30, 1920; with Armenia, December 2, 1920; and September 30, 1921; and others.

¹⁷ 'The very nature of the workers' 'and peasants' state, in gradual development and strengthening of the new structure of society in the Soviet Republics, is driving them towards union and towards the fusion of their forces for the realization of their common aim.' Declaration of July 13, 1923, on the Constitution of the Soviet Union (see Batsell, *op. cit.*, p. 301).

¹⁸ For example, according to the Ukrainian Constitution (Art. 35), the Presidium of the Ukrainian TsIK was deprived of the right to issue laws of basic significance only. This same Constitution was the only one of the Union Republic Constitutions which had reproduced in its text (Art. 36) the regulations concerning the right of protest against decrees and resolutions of the Sovnarkom of the U.S.S.R., and of suspending ordinances of the people's commissariats of the U.S.S.R. Although these regulations were included in the Constitution of the U.S.S.R. of 1924 (Art. 3, 59) their repetition in the Ukrainian Constitution certainly stressed the significance and authority of local administrators. Certain of the Constitutions (Byelorussian, Art. 12; Azerbaijan, Art. 6; Georgian, Art. 11; Armenian, Art. 5) had acknowledged freedom of both religious and anti-religious propaganda. This was also an essential difference compared with the other constitutions, and no longer exists.

¹⁹ Cf. Mark Vishniak, 'Sovereignty in Soviet Law,' *The Russian Review*, January, 1949.

²⁰ Collating, for example, the Constitutions of the R.S.F.S.R. of 1927 and 1937 it is found that the enumeration of the objects of jurisdiction of the Union Republic

authorities (which was only approximate in 1927—Art. 17, 18) is exhaustive in the Constitution of 1937 (Art. 19). Formation of new republics and regions was within the scope of the R.S.F.S.R. It now requires approval of the Supreme Soviet of the U.S.S.R. (Art. 19, c. of the Constitution of 1936). The list of Republican Ministries (formerly Commissariats) is significantly abridged. This same picture is paralleled in the other constitutions of the Union Republics.

²¹ '... in the interests of the successful struggle against the nationalism of all nations, in all forms ... the task of preserving the unity of the proletarian struggle and of proletarian organizations, of amalgamating these organizations into an international community, in spite of the bourgeois strivings for national segregation.' (V. I. Lenin, 'On the Right of Nations to Self-Determination,' Conclusion. See Lenin's *Selected Works*, Vol. IV, New York. International Publishers. p. 293).

'They (Soviet national republics) have carried out the most important program of reorganization of the political and social structure. They have built their state power on the basis of the support on the part of organizations of toiling masses and, therefore, they can be members of the Union of the friendly people's republics under the leadership of the Soviet Union whose final goal is to unite and merge the uniformly organized nations into the potentially largest single state.' (A. Alymov i S. Studenkin — 'Sovetskii federalizm i demokraticeskii centralizm.' *Sovetskoe Gosudarstvo*, 1933, No. 1-2, p. 13).

²² 'The more closely the democratic system of state approximates complete freedom of secession, the rarer and weaker will the striving for secession be in practice; for the advantages of large states, both from the point of view of economic progress and from the point of view of the interests of the masses, are beyond doubt ... The recognition of self-determination is not the same as making federation a principle.' (Lenin, *Collected Works*. International Publishers, Vol. XIX, p. 50).

²³ Local taxes and other revenues of the Union Republics are relatively inconsiderable.

²⁴ Ministry of Armed Forces was later divided into Ministry of Defence and Naval Forces, which merged again, in 1953, in one Ministry of Defense.

²⁵ N. P. Farberov ('S.S.S.R.—obrazets mnogonatsionalnogo gosudarstva') refers to the three cases only when the boundaries of the Union Republics were changed in accordance with their mutual consent. Once the Byelorussian S.S.R. enlarged its territory at the expense of the R.S.F.S.R.; another time, on the contrary, it conceded a part of its territory to the Lithuanian Republic. In both cases, in conformity with the ethnographic principles. The third case took place when the Uzbek S.S.R. received a strip of land in the neighboring republics for the construction of a large canal. (*Sovetskoe Gosudarstvo i Pravo*, 1951, No. 2, pp. 24-26).

²⁶ Article 6 of the Constitution of 1924 gave more guarantees of rights and interests of the Union Republics: 'The territory of the Union Republics cannot be altered without their consent,' and 'for modification, limitation of the right of secession the agreement of all republics forming the U.S.S.R. is required.'

²⁷ I. D. Levin—*Prinsip suvereniteta v sovetskom mezhdunarodnom prave*. M. 1947. p. 8; Alexandrov, *Politicheski slovar* (see *supra* note 10) 1940. Almost literally the same in *Entsiklopedia Gosudarstva i Prava*, III, pp. 1074-5. M. 1929-30; I. Trainin, 'K vorprosu o suverenitete,' *Sovetskoe Gosudarstvo*, 2, 1938, p. 75. See also Ch. XXV.

²⁸ 'Il n'y a pas sur la terre de volonté supérieure à la souveraineté' (Leon Duguit, *Traité de Droit Constitutionnel*, III^{me} édition. 1927. Vol. I, p. 545); 'La souveraineté est inalienable.' 'En s'alienant elle disparaît (*ibid.* Vol. II, p. 125). 'Die oberste hoechste Rechtsmacht, welche keine andere ueber sich hat, nennen wir souveräen.' 'Die Souveräenetaet Unbeschraenkar und folglich auch unteilbar ist.' (Dr. Paul Laband, *Deutsches Reichsstaatsrecht*. D. Oeffentliches Recht der Gegenwart B. I., 1907, s. 16, 17). 'Die geschichtliche Entwicklung der Souveräenetaet lehrt dass sie die Negation jeder Unterordnung oder Beschraenkung des Staates durch eine andere Gewalt bedeutet. Souveräene Staatsgewalt ist daher eine Gewalt, die keine hoehere ueber sich kennt.' (Georg Jellinek, *Allgemeine Staatslehre*, 2 A. 1905, s. 461).

²⁹ P. Laband, *op. cit.*, s. 17; G. Jellinek, *op. cit.*, s. 751.

³⁰ 'The Proletarian Party aims to create as large a state as possible. It tries to accomplish a further rapprochement and fusion of nations.' (A. Alymov and S. Studenkin, *op. cit.*, p. 13.) The U.S.S.R. has become what was described by I. D. Levin in his article 'Printsip suvereniteta v burzhuasnoi nauke prava': a disappearance of the old form of federalism and appearance of a new one, which guarantees a complete predominance of the federative center, only screened behind 'co-operation.' (*Izvestia Akademii Nauk*, Otdelenie Ekonomiki i Prava 3, 1947).

³¹ Soviet jurists themselves are skeptical concerning the application of any descriptive labels of non-Soviet jurisprudence in Soviet legal science (Cf. J. Towster, *op. cit.*, p. 109, note 50).

³² Cf., for instance, Art. 67 and 71 of the Constitution of the R.S.F.S.R. which submit activity of the Ministers of Autonomous Republics to the instructions and orders of the Council of Ministers and of Ministers of the U.S.S.R. and of the R.S.F.S.R.

³³ 'Autonomous republics are in a sense sub-Republics enjoying a species of local self-government. They are certainly not autonomous in the fullest sense of that term.' (Scrutator, 'The Soviet Legal System,' *The Law Journal*, (London, January, 1944). Cf also John Hazard, 'Soviet Public Administration and Federalism,' *The Political Quarterly*, Jan.-March, 1952, pp. 4-14.

³⁴ The nature of the administrative 'substitution' was pre-established by Article 56 of the Constitution of 1918: '... during the intervals between the sessions of the Soviets the Executive Committee is the supreme power.' Another provision of the same constitution set up the following provisions: 'The Congresses of Soviets and their Executive Committees have the right to control the activity of the local Soviets (i. e. The Regional Congress controls all Soviets of the respective province, with the exception of the urban Soviets, etc.); and the regional and provincial Congresses and their Executive Committees have, in addition, the right to over-rule the decisions of the Soviets of their districts, giving notice in important cases to central authority (Art. 62 of the Constitution of 1918).

Cf. also Article 29 of the Constitution of 1924: 'The Presidium of the TsIK of the U.S.S.R., during the interval between the sessions of the TsIK of the U.S.S.R. is the supreme legislative and administrative organ of authority of the U.S.S.R.' The All-Russian Congress of Soviets consisted of some thousand representatives. It was replaced by the TsIK which, during the last years of its existence, had over five hundred members. The TsIK became a kind of Parliament. However, as we have just cited, this Parliament was replaced by the Presidium of the TsIK consisting of only twenty-seven members (Art. 26 of the Constitution of 1924).

³⁵ 'The carrying out of Socialist construction under conditions of sharpening class struggle requires inevitably more and more strengthening of planning leadership from the center ...' A. Alymov i Studenkin, *op. cit.*, p. 18. (see *supra* note 25).

³⁶ Articles 1 and 2 of the *Declaration of Rights of the Laboring and Exploited People* included in the Constitution of 1918. 'The local organs of the Soviet state differ from all corresponding organs of local administration and self-government in the capitalist countries not only as far as their class structure is concerned, but also in that they are the *only* local organs of the government.' Acad. Trainin, 'Local Organs of the State Power in the U.S.S.R. and the "self-government" in the capitalist countries' (*Sovetskoe Gosudarstvo*, No. 1, 1940).

'All Soviets—from the Supreme Soviets to the village Soviet—are organs of state authority.' (A. Vyshinsky, *The Law of the Soviet State*, New York, 1948, p. 425).

³⁷ See the report by Vyshinsky presented to the Supreme Soviet on February 25, 1947, (*Moscow News*, March 1, 1947).

³⁸ The number of members of the Council of Ministers of the U.S.S.R. remains, in spite of amalgamations, about 45-50 members, including vice-chairmen, and chairmen of several committees. The number of Ministries, however, increases and decreases. In addition to the illustrations given in Ch. XV, 8 a new ukase (*Ved. Verkh. Sov. Dec. 1, 1953*) established the Ministry of Agricultural Procurement and renamed correspondingly the Ministry of Agriculture and Procurement in Ministry of Agriculture.

³⁹ The *Ispolkoms* have different departments or Commissariats (of Finance, Econo-

mics, Land, Labor, Education, Commerce, etc.) which were organized since 1918 to replace 'the old, antiquated government institutions.' Later, in the Union and in the Autonomous Republics these departments and Commissariats were developed and re-named Ministries.

PART V, CHAPTER XVII

¹ Cf. I. D. Levin—'Sovetskaia izbiratelnaia sistema—izbiratelnaia sistema vysshego tipa,' *Sov Gos. i Pravo*, 1950, No. 2.

² 'The following persons enjoy neither the right to vote nor the right to be elected if they belong to one of the categories enumerated above, namely: (a) Persons who employ hired labor in order to obtain from an increase in profits; (b) Persons who have an income without doing any work, such as interest from capital, receipts from property, etc.; (c) Private merchants, trade and commercial brokers; (d) Monks and clergy of all denominations; (e) Employees and agents of the former police, the gendarme corps, and the *Okhrana* (Czar's secret service), also members of the former reigning dynasty; (f) Persons who have by legal procedure been declared demented; (g) Persons who have been deprived by a Soviet of their rights of citizenship. (Art. 65 of the Constitution of 1918).

Almost the same thing was repeated in Art. 69 of the Constitution of R.S.F.S.R. of 1925, Art. 21 of the Ukrainian Constitution of 1925 and in the Constitutions of other Union Republics.

³ Art. 9 of the Constitution of the U.S.S.R. of 1924; Art. 20 of the Constitution of the R.S.F.S.R. of 1925; Art. 24 of the Constitution of the Ukrainian Republic of 1925; etc.

⁴ Art. 135-140 of the Constitution of the U.S.S.R. of 1936.

⁵ Stalin's interview of March 1, 1936. See also Lenin and Stalin, *Sbornik* izd. 2, Vol III, p. 661.

⁶ The description of the Soviet electoral system in the Soviet and foreign literature does not reveal the most important points of the electoral mechanism. Cf. Prof. A. Denisov, *Sovetskoe gosudarstvennoe pravo*, pp. 261-272 and his *Les Organes Centraux et Locaux en U.R.S.S.*, Paris, 1947, pp. 9-40; Rose Somerville, 'The new Soviet Elections,' in the *American Quarterly on the Soviet Union*, October 1938, No. 3, pp. 59-79.

⁷ Regulations governing elections to the Supreme Soviet are issued before electoral campaign in the form of the ukase of the Presidium of Supreme Soviet. Regulations of October 11, 1945, and of January 9, 1950, (see *Vedomosti Verkhovnogo Soveta*, January 15, 1950, No. 2) are identical.

⁸ Art. 36 of the regulations.

⁹ *Izvestia*, January 20, 1950, No. 17.

¹⁰ Regulations, Art. 88.

¹¹ *Ibidem*, Art. 66.

¹² Editorial article in *Izvestia*, February 8, 1950, No. 33.

¹³ Regulations, Art. 59.

¹⁴ See Editorial in the *Sov. Gos. i Pravo*, March, 1950.

¹⁵ Cf. Address of the Central Committee of the ACP (b) to all electors, workers, peasants, army and navy soldiers and officers and Soviet intelligentsia. *Izvestia*, February 18, 1950.

¹⁶ 'About the results of the First Session of the Supreme Soviet of the Third Convocation,' Editorial of the *Sov. Gos. i Pravo*, 1950, No. 8.

¹⁷ Among the elected deputies 69.9 per cent have been graduated from institutions of higher learning or middle schools, while in the Supreme Soviet of 1937 there were only 50 per cent of deputies with such education. But contrary to the comments in the article quoted above that does not indicate the cultural progress of the country, as so far as the composition of the Supreme Soviet reflects first of all a certain policy and depends upon the government.

¹⁸ N. Gradoboev, 'Verkhovnyi Sovet SSSR 1950 goda,' *Possev*, Limburg-Lahn, Germany, 1950, No. 52, pp. 8-9; and N. Gradoboev, 'Sostav Verkhovnogo Soveta,' *Novyi Zhurnal*, Vol. XXX, N. Y. pp. 243-269; Thomas H. Rigby, 'Changing Compo-

sition of the Supreme Soviet.' *The Political Quarterly*, Vol. XXIV, No. 3, pp. 307-316.

¹⁹ In the article quoted from *Possev* several violations of the established regulations of elections are indicated during the electoral procedure of 1950. The list of candidates, for example, was published later than usual and, in spite of this fact, there were among the elected deputies 25 not registered and not included in the list of those who had right to be elected. Everything during this electoral campaign characterized a special interest of the government in regard to composition of the Supreme Soviet.

²⁰ According to the data cited by William M. Mandel, *A Guide to the Soviet Union*, N. Y. 1946, p. 456, non-Communists formed an absolute majority in rural government on Dec. 24, 1939, comprising 76.9 per cent in village councils and 53.2 per cent in township Soviets, while in country Soviets, there were 37.4 per cent non-Party members. Since then the correlation between the number of Party and non-Party members has certainly changed. On January 1, 1950, there were 65 per cent Party members among chairmen of collective farms; on January 1, 1950, there were 83 per cent, according to Khrushchev's report.

²¹ *Vedomosti Verkhovnogo Soveta*, 1938, No. 1.

PART V, CHAPTER XVIII

¹ Art. 1-5 of the statute of June 6, 1931, concerning the Glavlit. Collection of Laws of the R.S.F.S.R., No. 31, text 273.

² Collection of Laws of the U.S.S.R., 1936, No. 5, text 40. The Committee of Arts, originally independent, is a part of the Ministry of Culture established in March, 1953.

³ Decree of the Council of People's Commissars of the U.S.S.R., May 15, 1935, (Collection of Laws, No. 26, text 209).

⁴ Some local institutions increased the working day even more. For example, a nine hour working day was established in Tomsk. (*Izvestia*, June 13, 1947, in the article on the legal side of the local Soviets' practice).

⁵ Regulations approved by the Council of People's Commissars of the R.S.F.S.R. on August 2, 1943. Denisov, *op. cit.* p. 353.

⁶ *Ibidem*, p. 354.

⁷ Lenin, Vol. XXII, p. 486.

⁸ Lenin, *Sochineniia*, Vol. XXII, p. 460; Vol. XXV, p. 139.

⁹ Denisov, *op. cit.*, p. 356-57.

¹⁰ Denisov, *op. cit.*, p. 357. The same principle is adopted by the Constitutions of the Soviet satellites. Cf. Art. 35 of the Constitution of Albania of July 4, 1950.

¹¹ About legislation concerning violations of the 'sacred and inviolable' socialist property, see above, Ch. IX, 2. Some cases of violations are discussed by A. N. Vasiliev, 'O poniatii khishcheniia sotsialisticheskoi sobstvennosti,' *Sovietskoe Gosudarstvo i Pravo*. 1951, No. 2, p. 33-41.

¹² Decree of the Council of People's Commissars of the USSR of July 2, 1941.

¹³ Denisov, *op. cit.*, p. 360.

¹⁴ *Izvestia*, May 25, 1947, Editorial.

¹⁵ Decrees of the Council of People's Commissars of the U.S.S.R. of April 28, 1933 (Collection of Laws, 1933, No. 28, text 168); and September 19, 1934 (Collection of Laws, 1934, No. 49, text 389).

¹⁶ *Time*, February 28, 1946.

¹⁷ Ukase of February 15, 1947, *Vedomosti Verkhovnogo Soveta*, 1947, No. 10.

PART V, CHAPTER XIX

¹ See below note 15 and the editorial article in the Soviet magazine *Pod Znamenem Marksizma*, 'Nekotorye voprosy prepodavaniia politicheskoi ekonomii,' August, 1943, p. 63.

² Stalin's speech, November 6, 1941.

- ³ Lenin, Vol. XXIII, Ed. 1930. pp. 346, 361.
- ⁴ *Ibidem*, p. 220.
- ⁵ *Ibidem*, Vol. XXIV, Ed. 2. p. 423.
- ⁶ *Ibidem*, Vol. XXIII, p. 443.
- ⁷ *Ibidem*, Vol. XXI, Ed. 2. p. 258.
- ⁸ Vyshinskii, *The Law of the Soviet State*, p. 63.
- ⁹ *Ibidem*, p. 45. Also Academician M. B. Mitin, *Sovetskaia demokratiia i demokratiia burzhuasnaia*, Moscow, 1947, p. 4.
- ¹⁰ Lenin, Vol. XXIV, Ed. 2. p. 13.
- ¹¹ Lenin, Vol. XXII, p. 131.
- ¹² *Pravda*, Nov. 4, 1946; Sotsialisticheskaia Zakonnost, No. 11, 12, 1945; Academician M. B. Mitin, *Sovetskaia demokratiia* (see note 9); G. F. Alexandrov, 'On Soviet Democracy' in *Voprosy Istorii (The Problems of History)*, No. 1, 1947.
- ¹³ Vyshinskii's address in the *Collected Volume of Reports* presented during the formal session of the Academy of Sciences in November, 1942, on occasion of the 25th Anniversary of the October Revolution. Published in Russian in 1943.
- ¹⁴ Stalin, *Voprosy Leninizma*. Ed. 11, p. 115.
- ¹⁵ Lenin, *Complete Works* in Russian, Vol. XXIV, p. 13.
- ¹⁶ Lenin and Stalin, *Sbornik. Partizdat*, Vol. III, 1937, p. 666; see also *The Stalin-Howard Interview*, International Publishers, 1936, p. 13.
- ¹⁷ Vyshinskii, *op. cit.*, p. 156.
- ¹⁸ Academician M. B. Mitin, o.c. and also his article in *Bolshevik*, 1947, No. 6.
- ¹⁹ Academician I. P. Trainin, 'O demokratii,' *Sovetskoe Gosudarstvo i Pravo*, 1946, No. 1.
- ²⁰ Academician Alexandrov, *Pravda*, January 22, 1946; also his article cited above (note 12).
- ²¹ Referring to these tendencies relative to democratic trends, Dr. F. L. Schuman, for example, asserts that: 'Only those observers who are invincibly ignorant, or blinded by irrational fear and hatred will deny that the Soviet system of business and power has, for all its abuses and crudities, promoted the liberation of men from impoverishment, exploitation, illiteracy, and prejudice and served the cause of human dignity and self-respect on an immense scale. These purposes are of the essence of the democratic dream. In this sense the U.S.S.R. is a democracy in its ends and its achievements, if not always in its means.' (Prof. F. L. Schuman, *Soviet Politics*, N. Y. A. Knopf, 1946, pp. 585-86).
- ²² H. Lauterpacht, *An International Bill of the Rights of Man*. Columbia University Press, N. Y., 1945, pp. 15, 135.
- ²³ Cf. R. Strauss, *Soviet Russia*, London, 1941, p. 318; Anton Ciliga, *The Russian Enigma*. London, 1940, p. 92. (The same in French under the title *Au Pays du Grand Mensonge*, 1938). Russian socialists, D. Dallin, B. Nicolaevsky, and others.

PART VI, CHAPTER XX

- ¹ Arts. 1, 2, 6 of the Decree of November 10, 1917 on the Abolition of Classes and Civil Ranks.
- ² Section II of the Declaration. Quotation taken from the collection of the early Soviet legislation issued under the title *Decrees and Constitution of Soviet Russia*, reprinted in *The Nation*, 1918-1919. pp. 32-33.
- ³ Declaration of the Rights of the People of Russia. *Ibid.*, p. 31.
- ⁴ Constitution of the R.S.F.S.R. of July 10, 1918, section 9.
- ⁵ Art. 5 of the Law Enacting the R.S.F.S.R. Civil Code. As a general rule, provisions of the Civil Code were to be applied restrictively.
- ⁶ Arts. 156, 166 and 171 of the Civil Code. Article 156 was repealed in 1938; Articles 166 and 171 were amended (R.S.F.S.R. Laws, 1938, text 163).
- ⁷ Decree of February 6, 1929. U.S.S.R. Laws, text 78.
- ⁸ *Eshenedelnik sovetsoi justitsii*, 1927, No. 4, p. 111.
- ⁹ Article 12 of the *Leading Principles* of 1919.
- ¹⁰ Article 2 of the Code of Civil Procedure. Cf. John Hazard, 'Soviet Law—An Introduction,' *Columbia Law Review*, Vol. XXXVI (December 1936), p. 1263.

¹¹ Krylenko, *The Judiciary of the R.S.F.S.R.* (1923, in Russian), p. 27; quoted by Gsovski, I, pp. 241-242. 'In accordance with these concepts, all efforts were made to recruit men for the bench from among Communists. They constituted 86.4 per cent of the judges of the higher courts in 1928, 89.7 per cent in 1930, and 99.6 per cent in 1935; the percentage of Communists among the judges of the lower courts constituted 69.8 per cent in 1928, 74.8 per cent in 1930, and 95.5 per cent in 1935.' *Ibid.*, p. 242.

Professor J. Towster characterizes the Soviet system of justice 'for about half of that period' (i. e. up to the mid-thirties) as 'consciously and deliberately built on class foundations, to the disadvantage of certain categories of citizens. Subsequently, however, the class principle was eliminated from the operation of the judicial system, which,' he asserts, 'became uniform for all groups of citizens.' *Political Power in the USSR*, p. 402. This assertion is only formally correct, as we shall try to prove below (see notes 12 and 13).

¹² 'The slaughter of one's own animals under a certain age entailed a fine for a non-kulak but for a kulak it entailed confiscation of all his animals and implements, withdrawal of the land he used, and two years' imprisonment, with or without exile' (USSR Laws 1930, text 66, Section 1; *id.* 1931, text 474), Gsovski, I, p. 712, note 76.

'Nonpayment of a tax on the date due, "if committed by a group of people belonging to households classed as kulaki" entailed a term of forced labor *twice* as long and a fine *five times* as high as was established for other classes of people (R.S.F.S.R. Penal Code, ed. 1950, Section 60, par. 2). Refusal to pay a tax, which ordinarily entailed a fine, might have resulted, for "a peasant belonging to the upper well-to-do stratum of peasantry," in confinement for up to two years followed by exile and confiscation of all properties (*id.*, Section 61, par. 2).' The courts were instructed to raise penalties also for peasants evading compulsory delivery of grain to the government, if the offenders could be classified as kulaks. Gsovski, I, p. 712, note 77.

¹³ See the Correctional Labor Code of the R.S.F.S.R. adopted by the All-Russian Central Executive Committee on October 16, 1924 and revised in August 1933 (R.S. F.S.R. Laws, 1933, No. 48, text 208). This terrible law, establishing the notorious forced-labor system and directed against 'class-dangerous elements' (Art. 1), is still in force, giving evidence that the class problem has in fact not been entirely eliminated in the Soviet Union and that the full uniformity of the law has not been finally established. Cf. Buligin's case and attitude of the court to his assistant, the son of a priest. (Berman, *op. cit.*, p. 85).

¹⁴ 'There are some people in the U.S.S.R. with relatively large fortunes, some even with more than they can reasonably spend.' R. Schlesinger, *The Spirit of Post-War Russia* (Soviet Ideology, 1917-1946) (London: Dennis, Dobson, Ltd., 1947), p. 25.

¹⁵ In 1943 the Soviet press welcomed with enthusiasm the first Soviet millionaire, Comrade Berdybekov, director of one of the Sovkhozes in Kazakhstan. *Izvestia*, No. 107, on May 6, 1944, stated that the chairman of the Taldybulash Kolkhoz, Tlemisov, paid 500,200 rubles in cash, his family savings, for the bonds of the third State loan.

¹⁶ A. Yugov, *Russia's Economic Front for War and Peace* (New York, 1942), pp. 228-229. The same in his article, 'More about the Ruling Groups,' *Novyi Put*, Febr. 14, 1943, N. 2-3 (26-27).

¹⁷ Schlesinger, *op. cit.*, pp. 44-47. Schlesinger's assertions contradict constant complaints of the Soviet press concerning bureaucracy. See, for example, *Sovietskoe Gosudarstvo i Pravo*, No. 8, 1950, pp. 62-70. The process of the formation of the Soviet bureaucracy with striking illustrations are given by Barrington Moore, *op. cit.*, pp. 277-297.

¹⁸ Schlesinger translates inaccurately 'well-known men.'

¹⁹ *Ibid.*, p. 47.

²⁰ David J. Dallin, *The Real Soviet Russia* (New Haven: Yale University Press, 1947), Chapters VII-X, pp. 137-226.

²¹ N. S. Timasheff, *The Great Retreat*, pp. 310-311.

²² Gsovski, Vol. I, pp. 181-182.

²³ Peter Meyer, 'The Soviet Union: a new class society,' *Verdict of three Decades*. Julien Steinberg, Editor. Duel, Sloan & Pearce. N. Y. 1950, pp. 495.

'We know now,' says the same author, 'why the marshals, the party secretaries,

and the "Red executives" "live better and more happily": they belong to the class that controls the means of production. The servants and workers live in poverty because they belong to a class that has absolutely no power over the means of production.' (*Ibid.* p. 496). 'The independent peasants and craftsmen belong pre-eminently to the remnants of pre-Soviet classes ... but their control of their means of production and of their products is much more limited.' (p. 497).

²⁴ The concept of class in sociology is not necessarily based on economic differences. A more common definition adopted by several sociologists is as follows: 'A social class is a horizontal stratum of an all-inclusive society, the members of which meet one another on equal terms and look on outsiders as being persons of "higher" or "lower" status.' (See N. S. Timasheff, 'Vertical Social Mobility in Communist Society,' *American Journal of Sociology*, Vol. 50, July, 1944-May, 1945).

²⁵ 'Il n'y a plus de classes, en U.R.S.S., c'est entendu. Mais il y a des pauvres- il y en a trop; beaucoup trop.' 'Comment n'être pas choqué par le mépris, au tout au moins l'indifférence que ceux, qui sont, et qui sentent "du bon côté" manquent à l'égard des inférieurs,' André Gide, *Retour de l'URSS*, Gallimont, Paris, 1936.

Joseph Newman published in the *New York Herald Tribune*, Nov. 4, 1949, the data about high prices on all the essentials. Remunerations are different: regimental commander from 6 to 8,000 rubles per month; opera singer, 6,000; responsible engineer, 2,500; average technician, 1,000; bookkeeper, 850; railway station master, 780; unskilled worker, 350.

This tremendous difference in salaries reflects not only in nutrition, education, efficiency of work, but also in customs and manners. 'One met important officials powdered and perfumed like *demi-mondaine*. The men of G.P.U. kissed the hands of their womenfolk,' wrote a revolted member of the Comintern, Anton Ciliga in *The Russian Enigma* (London: George Routledge & Sons, Ltd., 1940), p. 48.

²⁶ Stalin's speech on the Communist Party, March 5, 1937. Quoted by Samuel Harper, *The Government of the Soviet Union* (New York, 1946), p. 53.

²⁷ *Novyi Put*, Dec. 1942 and Febr. 1943.

²⁸ See above, note 6. Since all persons work for the state, the privileges of the workers provided for by Articles 166 and 171 of the Civil Code have been extended to all tenants; on the other hand Article 156 has been repealed and the workers have thus lost their special right to the renewal of a lease without the consent of the house-owner. All persons are workers at present; besides Article 156 was a limitation not on private houseowners, but on the state and the municipalities which replaced them.

²⁹ Decree of the Council of People's Commissars of September 19, 1934 (USSR Laws No. 49, text 389).

³⁰ Ukase of the Presidium of the Supreme Soviet of the USSR of June 26, 1940 (*Vedomosti*, July 5, 1940, No. 20). See also *Labor Legislation* (1947), pp. 36, 37.

³¹ See *World Report*, Dec. 23, 1947.

³² A resolution of the Central Committee of the ACP (b) of Oct. 20, 1930 decided 'to keep skillful workers at their benches,' for two years. Later they did not need such forcible measures.

³³ 'Our state is a workers' state with a bureaucratic perversion,' Lenin's speech 'About Trade-Unions,' (*Sochineniia*, vol. XXVI, 1930, p. 67). About the campaign against bureaucratism in 1943-4, see M. Lóvell, *The Soviet Way of Life*, London, 1948, p. 90-91.

Bureaucratism is not rarely a target of the attacks in the Soviet papers and official speeches. See, for example, Malenkov's report to the XIXth Congress (*Pravda*, Oct. 6-7, 1952) and a September issue of *Krokodil* devoted to the Soviet bureaucratism in connection with the subsequent session of the Congress.

³⁴ 'Engineers in the Soviet Union constitute today almost a third of the government, a phenomenon not to be observed anywhere else. The Communist Party is no longer a workers' party; to an increasing extent it has become the party of the officers of the various branches of economy and administration.' Solomon M. Schwarz, 'Heads of Russian Factories,' A Sociological Study. *Social Research*. September, 1942. pp. 328, 331. S. Schwarz's characterization may be confirmed by the data about the composition of the Supreme Soviet of the U.S.S.R. elected in 1950. Among its 1316 members there

are only 111 workers and 17 rank-and-file farmers, all other members belong to the administration (823) and Soviet intelligentsia (about 250) of the higher ranks, engineers, academicians, professors, writers, artists, etc.

³⁵ The economic differentiation is not denied even by Yugov (see above note 16). Moreover, he repeated in 1943, as in 1936, (*Sotsialisticheskii Vestnik*, 1936, No. 12), that 'this economic differentiation can lead to the formation of a dominant class unless some counter-acting factors stop it.' There are, however, no such counteracting factors in sight.

As Alex Inkeles states ('Social Stratification and Mobility in the Soviet Union: 1940-1950,' *American Sociological Review*, Vol. XV, No. 4, Aug. 1950), '... it still seems justified to conclude that the fee system and the labor draft act to a significant degree to restrict the mobility of some and to facilitate maintenance of the status of others.' '... movement from the status of worker to high managerial position within the same generation ... is now becoming less usual whereas it was commonplace, if not standard practice, in the earlier period.' (pp. 474, 477). 'The social classes which are currently most highly rewarded in income, status and power are precisely those social groups on which the present regime relies most heavily as its basis of social support.' (479).

See also Barr. Moore, *op. cit.*: '... different habits of speech, manners, and dress are built up and transmitted from one generation to the next. In addition, the tendency for families of similar social station to live near each other in the same community leads to the choice of marriage partners from families with approximately the same background. All of these forces are at work in the Soviet Union, and it is a safe prediction that they will eventually result in the emergence of a class system resembling in many ways that in the United States excluding the South.' (p. 245-46).

³⁶ Art. 121 of the Constitution was correspondingly amended in 1947.

³⁷ There is no accurate data about the percentage of students having fellowships. These data are not significant anyway. Distribution of fellowships depends upon the needs of the state, and not on the rights of individuals. The administration can increase and decrease the number of fellowships in proportion to the practical needs in technical personnel.

³⁸ S. M. Schwarz was probably the first who has elucidated the social significance of the reforms in the field of education; see his articles in the *Social Research* (above note 29) and in the *Sotsialisticheskii Vestnik*, January 5, 1943. Yugov opposed him in the *Novyi Put*, Dec. 1942, and February, 1943. E. Koutaissoff, 'Soviet education and the new man' (*Soviet Studies*, Oct. 1953) is not very optimistic as regards the next future.

³⁹ '... class frontiers in Soviet society, which were at first relatively open and elastic, have closed themselves with bewildering speed.' '... there are three ways in which privileges are handed down: by inheritance, by the monopoly of education, and by patronage.' '... the bureaucrats of tomorrow will be preponderantly the children of bureaucrats, and the whole policy of ruling class is slanted in this direction. It is becoming the rule more and more that the son of a worker becomes a worker, while the son of a bureaucrat, or at most, of some one belonging to the middle stratum, becomes a bureaucrat.' Peter Meyer, *op. cit.*, pp. 498, 499.

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¹ Almost all political and professional organizations arose by virtue of the Manifesto of October 17, 1905, as a result of the first revolution. A collection of by-laws and programs of the numerous organizations, established during this period in Russia, was published by S. Ivanovich, *Rossiiskie partii, soiuzy i ligi*, St. Petersburg, 1906.

² Art. 1 of the regulations of July 10, 1932, concerning voluntary associations and their unions. U.S.S.R. Collection of Laws, 1932, No. 74, text 331.

³ Art. 13 and 14 of the Civil Code; Art. 12 of the Regulations (see note 2). Cf. V. Gsovski, Vol. I, Ch. 11, 4.

⁴ Regulations Art. 13.

⁵ Art. 2.

⁶ S. Askarkhanovi S. Brodovich, *Administrativnoe zakonodatelstvo*, Ogiz, 1936. p. 88.

- ⁷ *Ibidem*, p. 88.
- ⁸ U.S.S.R. Collection of Laws, 1934. No. 13, text 89.
- ⁹ *Političeskii Slovar*, 1940. 'Osoaviakhim'. Also 'Mopr'—international organization for assistance revolutionaries; 'Dos'—voluntary organization for sport's development, etc.
- ¹⁰ Art. 3, Regulations of 1932 (see above note 2).
- ¹¹ *Pravda*, December 9, 1946.
- ¹² This was repeated many times in different papers. See, for example, editorial in *Pravda*, March 28, 1951, concerning the training of young writers.
- ¹³ See George S. Counts and Nucia Lodge, *The Country of the Blind*, 1949.
- ¹⁴ Denisov, *Sovetskoe gosudarstvennoe Pravo*, p. 16.
- ¹⁵ The persecutions against the Church are described by Miliukov, *Outlines of Russian Culture*, Philadelphia, 1943, Part 1, pp. 151–207, and Cyril Zaitsev *Pravoslavnaiia tserkov v sovetskoi Rossii*, Shanghai, 1947. For the general development of Soviet policy in religious matters see Prof. N. S. Timasheff, *Religion in Soviet Russia*, 1942, and his article 'Religion in Russia,' in *The Soviet Union*, ed. W. Gurian, University of Notre Dame, 1951.
- ¹⁶ *Zhurnal Moskovskoi Patriarkhii*, 1945, No. 9.
- ¹⁷ *Ibid.*, 1946, No. 1.
- ¹⁸ Lektisia P. F. Kolmitskogo, 'Kommunisticheskaia etika i religioznaia etika,' 1952.
- ¹⁹ *Osteuropa*, February 1952, pp. 55–57.
- ²⁰ 'Religious associations may not: (a) Create mutual credit societies, cooperative or commercial undertakings, or in general use the property at their disposal for other than religious purposes; (b) give material assistance to their members; (c) organize for children, young people, and women special prayer or other meetings, or generally meetings, circles, groups, or departments for biblical or literary study, sewing, working or teaching of religion, et cetera, or organize excursions, children's playgrounds, public libraries, or reading rooms, or organize sanatoria and medical assistance.' (Art. 17, R.S.F.S.F. Law of April 8, 1929) See V. Gsovski, Vol. II, p. 330–332.
- 'The Orthodox Parish Community ... shall receive the church building and the church furniture placed at their disposal by the local civil authority, for the gratuitous use, under a special contract and shall confer the care and custody of the ecclesiastical property thus received, upon an Executive Board consisting of the parish priest and three members elected from among the parishioners by the parish...' (Art. 39 of the Statute on Administration of Russian Orthodox Church) *Ibidem*, p.p. 333–335.
- '... there is still possibility that the Russian Orthodox Church may be right in the conditions in which it must live' (Herbert Waddams, 'The Church in Soviet Russia,' *Soviet Studies*, July, 1953, p. 17).
- ²¹ Fedotoff-White, *The Growth of the Red Army*, Princeton Univ. Press, 1944; M. Lovell, *The Soviet Way of Life*, Methuen & Co., London, 1948, pp. 58–76.
- ²² The new Charter of the Communist Party of the Soviet Union approved by the XIXth Congress of 1952 includes the following provisions concerning Party Organizations in the Soviet Army, Navy and Transportation:
64. Party work in the Soviet Army and Navy is directed by the Chief Political Administrations of the Soviet Army and Navy of the USSR and in transportation by the political administrations of the USSR Ministries of Railroads, Merchant Marine and Inland Shipping, functioning with the powers of departments of the Central Committee of the Communist Party of the Soviet Union.
- Party organizations in the Soviet Army, Navy and in transportation function on the basis of special instructions handed down by the Central Committee.
65. Party membership of (not less than) five years is compulsory for heads of the political administrations of regions, fleets and armies, and heads of political sections of railroads; Party membership of (not less than) three years is compulsory for heads of political administrations of divisions and brigades.
66. (These) political bodies must maintain close contact with local Party committees through constant participation in the local Party committees by the heads of the political bodies, as well as through regular hearing by Party committees of reports

by heads of the political bodies on political work in military units and in political sections in transportation. (*The Current Digest of the Soviet Press*, Sept. 6, 1952. No. 30).

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¹ Anton Menger, *Neue Staatslehre*, 2 Aufl. Jena. Q. Fischer 1904, Chapter XII.

² Even in a country of such solid traditions as Great Britain, the number of divorces has increased during the last thirty years from 4,549 in 1919 to 7,800 in 1939, and 42,200 in 1949. See 'Family Life in Britain since the First World War,' by David R. Mace. (*The Annals of the American Academy of Political and Social Sciences*, Nov. 1950, p. 179, 182).

American sociologists have for a long time been anxious about the constant increase in the number of divorces in the United States. Professor Willcox has estimated that by 1950 one-fourth of all marriages in the United States will be terminated by divorce. See Ch. Ellwood, *Sociology and Modern Social Problems* (American Book Company, N. Y. 1919, pp. 150-51.) This prognosis proved to be correct. The average number of divorces per one hundred marriages was 5.56 during the 1881-90 decade and 25.89 in the 1940-9 decade representing an increase of 446 per cent.' (Kingsley Davis, 'Statistical Perspective on Marriage and Divorce' *The Annals*, Nov. 1950, pp. 15-16).

³ The wife was obligated to 'dwell with him (husband) in love, respect and unlimited obedience, to show him every gratification and attachment.' In return, the husband was bound to support his wife according to his ability and 'to love her as his own flesh, to live in harmony with her, to respect her, to defend her, to forgive her inadequacies and to lighten her infirmities.' (Arts. 106 and 107 of Volume X, part 1 of the general Code of Laws).

⁴ *Ibid*, Arts. 178 and 179.

⁵ *Ibid*, Art. 165.

⁶ The law of June 3, 1902, improved conditions for children 'born out of wedlock,' who before then were called 'illegitimate children.' The law of March 12, 1914, introduced provisions similar to the French code (Art. 306 of the *Code Civil*) granting the right of couples to separate in case of brutality, serious offences, violation of marital duties, abuse of marital rights, and the contraction of sicknesses which threaten the life or health of the other party or their progeny.

⁷ *Svod zakonov*, vol. X, part 1, Art. 85.

⁸ Cf. the famous novel by Leo Tolstoy, *Anna Karenina*.

⁹ G. C. Guins, 'V kirgizskikh aulakh,' *Istoricheskii Vestnik*, October, 1913.

¹⁰ 'Church marriage is a private affair of those contracting it, while civil marriage is obligatory.' Note to Art. 1 of the Decree of December 18, 1917. 'Children born out of wedlock are on equal terms with those born in wedlock with regard to the rights and duties of parents toward children, and likewise of children toward parents.' (*Ibid*, Art. 10). 'Marriage is annulled by the petition of both parties, or even of one of them.' (Art. 1 of the Decree of December 19, 1917, on divorce). Both decrees may be found in *Gazeta vremennogo rabocheho i krestianskogo pravitelstva*, December 18 and 19, 1917, Nos. 36, 37.

¹¹ Cf. Art. 71: 'Difference of religion between persons intending to enter into marriage does not constitute an impediment;' Art. 72: 'the monastic state, priesthood or the diaconate are not impediments to marriage;' Art. 73: 'marriage is not prohibited to persons who have taken a vow of celibacy even if such persons are members of the white (Catholic) or black regular clergy.' Collection of Laws, 1918, Nos. 76, 77, Section 818.

¹² Code of October 17, 1918, Arts. 52 and 87.

¹³ Article 107.

¹⁴ Article 153. A similar principle, eliminating the parental authority of a father abusing his rights toward his children or known as a man of dishonest and immoral behavior, was already known to modern law. Compare Art. 203 of the Civil Code of California. § 1666 of the B.G.B. opened a series of similar provisions in other countries.

¹⁵ On October 20, 1918, the Cheka ordered the prosecution of those persons, who

after a religious ceremony of marriage, gave the surname of the alleged husband to the bride contrary to the law, which did not recognize the religious ceremony of marriage. Priests who assist in this act, and *militia* officials who issue passports in which they recognize the illegal marriage, all perform 'a counter-revolutionary act,' the Cheka explained. See A. Goikhbarg, '*Brachnoe, semeinoe i opekunskoe pravo sovetsskoi respublikii*' (Moscow, 1920).

¹⁶ The Soviet writer Babel, in one of his stories called 'A letter,' published in the collection *Red Cavalry*, relates how a commander of a company in Denikin's army killed his son, a soldier in the Red Army and how later his oldest son, a commander of a Red Cavalry Regiment, caught up with his father and 'finished him off.'

¹⁷ A. Goikhbarg, *Sravnitelnoe semeinoe pravo*, 2nd edition, 1927, emphasized 'a trend toward the factual abolition of marriage.' (p. 182). In another work of the same period, it was declared: 'Socialism brings the end of the family.' S. Wolfson, *Sociology of Marriage and the Family*, in Russian, 1929, p. 75.

¹⁸ *The Family in the U.S.S.R.*, Documents and Reading edited by Rudolph Schlesinger (London, 1949), pp. 53, 57. Hereinafter referred to as *The Family*.

¹⁹ In one of the stories written by A. M. Kollontai, included in her book *Love of the Toiling Bees*, her heroine, Zhenia, explains her view of love as follows: 'Sex life for me means purely physical pleasure—I change my lovers according to my moods. Now I am pregnant, but I don't care ...' *The Family*, Document No. 4, pp. 72–74; also her *Free Love* (London, 1932).

²⁰ K. Marx and F. Engels, *Works* (Russian edition). Vol. I, p. 266. Quoted by S. Wolfson in his article 'Sotsializm i Semia,' *Pod znamenem Marksizma*, 1936, pp. 31–64.

²¹ *The Family*, Document No. 5, pp. 75–79.

²² Code of Laws on Marriage and Divorce, the Family, and Guardianship, November 19, 1926. Collection of Laws and Decrees of the R.S.F.S.R., 1926, No. 82, section 612.

²³ A comparative study of the differences in the family codes of the three principal Union Republics is given by Freund, *Das Zivilrecht in der Sowjetunion*, erste Lieferung, *Das Familienrecht der Sowjetrepubliken Russland, Ukraine, Weissrussland*, 1927.

²⁴ A church wedding cannot be considered as evidence of *de facto* marriage, without other evidence (Article 2 of the code of 1926). The code grants the protection of *de facto* marriage 'only where there is evidence of a joint household, of co-habitation, and of letters and other documents bearing witness to these marital relations.' *The Family*, p. 130.

²⁵ Article 28–32 of the Code of 1926. 'The official father has no privileges' as regards origin of children. Goikhbarg, *op. cit.*, p. 115. 'Indeed, bigamy itself was a sociological rather than a legal concept,' H. J. Berman, *Justice in Russia*, p. 243, the same author cites an interesting case of bigamy.

²⁶ *The Family*, Document No. 6, pp. 101, 106, 151.

²⁷ Decree of November 18, 1920. Collection of Laws, 1920, No. 10, section 471. Also *The Family*, Document No. 3 (d), p. 44.

²⁸ See stenographic minutes, *The Family*, Document No. 6, p. 114. Polygamy among Moslems is specifically prosecuted (Art. 231 of the Penal Code) as a custom violating the woman's rights and dignity.

²⁹ Quoted by J. Scheftel, in Eliashevitch, *op. cit.*, III, p. 354; also *The Family*, p. 90.

³⁰ Article 183 of the code of 1918.

³¹ 'Adoption shall be allowed only of minors and juveniles under age, and exclusively in the interests of the children.' Article 57 of the code of 1926.

³² During the transitional period, guardianship must have an educative and exemplary character to prove that social breeding and education produce better results than education by loving, but ignorant parents, not having all the means and opportunities which are at the disposal of society. Guardianship was to help parents lose their habit 'of a narrow and unintelligent love for children which is manifested in the trend to hold children at home, not to let them go out of the narrow circle of family life, to contract their horizons, and to make of them, instead of members of a large society whose name is Humanity, egoists as they are themselves, individualists

who put forward their personal interests to the damage of society.' A. Goikhbarg, *Sravnitel'noe sovetskoe pravo*, p. 230.

³³ See Article 69 of the Code of Laws on Marriage, and comments in Gsovski, *Soviet Civil Law*, Vol. II, p. 263.

³⁴ Art. 14 (w) of the Constitution of 1936, as amended in 1947.

³⁵ *Pod znamenem Marksizma*, 1936. Articles by S. Wolffson, V. Svetlov, V. Boshko and A. Godes. The most essential parts of these articles are reproduced in *The Family*, Documents No. 14 and 15, p. 333 ff.

³⁶ *Ibid.*, pp. 360-361. 'The Soviet State is by no means indifferent to the form of development taken by marital relations, relations which tend to the formation of family, which, in turn, is a definite form of social life.' (Godes, see p. 361).

³⁷ 'Data from a survey of some hundreds of alimony suits and from observations of 2,000 married metal workers, made by the Central Institute for the Protection of Motherhood and Childhood of the R.S.F.S.R. (*Izvestia*, August 9, 1935) showed that more than 20 per cent of marriages are concluded as a result of one month's acquaintance. This proves that one of the reasons for divorces is the frivolous attitude to marriage among some of the workers of our country.' 'A girl from one of the collective farms who one morning met a student, Nikitin, who had just arrived on a holiday, and married him the same evening. And when this girl became a mother, it was disclosed that Nikitin was already a married man who could not, therefore, continue to live with her.' 'There was a case in the Dyedovskaia Works where a young woman who quarrelled with her husband on the way from the Registrar's Office where they had just been married, immediately turned back to the Registrar to obtain a divorce. (*Pravda*, August 11, 1935). 'A woman who came to the police station to announce that her husband, whom she recently met, had robbed her ... was unable to give her husband's surname,' etc. *The Family*, pp. 341-342.

³⁸ John Hazard, 'Law and the Soviet Family,' *Wisconsin Law Review*, 1939, pp. 224-253.

³⁹ *The Family*, p. 361.

⁴⁰ Art. 1 of the Code of Laws on Marriage, Family and Guardianship, as amended April 16, 1945.

⁴¹ Art. 140 of the Code of 1926.

⁴² U.S.S.R. Laws, text 309, Arts. 27, 28.

⁴³ Articles 18-19 of the Code on Marriages, as amended April 16, 1945.

⁴⁴ G. M. Sverdlov, 'Some Problems of Judicial Divorce,' *Sovetskoe gosudarstvo i pravo*, 1946, No. 7; and the Report of Comrade Abramov in the Institute of Law of the U.S.S.R., *ibid.*, 1949, No. 2, pp. 59-60.

⁴⁵ Rudolph Schlesinger, *The Spirit of Post-War Russia* (London, 1947), pp. 56-58; N. S. Timasheff, *The Great Retreat* (New York, 1946), pp. 201-202.

⁴⁶ Collected Laws of the U.S.S.R., 1936, No. 34, text 309; also Art. 140, 140-a and 140-b of the Penal Code, as amended by the law of May 10, 1937, Laws of the U.S.S.R., Art. 6, text 40.

⁴⁷ *The Family*, 'Conclusion,' pp. 397, 404.

⁴⁸ Ukase of July 8, 1944 (*Vedomosti*, 1944, No. 37), amended November 25, 1947 (*Vedomosti*, 1947, No. 41).

⁴⁹ Article 20 of the decree of July 8, 1944. This provision restored a notorious French law, '*la recherche de la paternité est interdite*,' abrogated in 1912.

⁵⁰ Article 18 of the decree of May 31, 1935: The *militia* has the right to fine parents up to 200 rubles, without applying to the courts, for the mischief and street hooliganism of their children. Article 19: Parents and guardians are financially responsible for the misdemeanors of their children.

Article 20: The representatives of the People's Commissariat of Education or of the *militia* are required to report lack of parental supervision to the social organization at the parents' place of occupation.

Article 22: If the parents are not able to supervise their child's conduct, the People's Commissar of Education petitions the courts to take the child from the parents and place him in a children's home. The parents are obliged to pay the costs of the child's support in the children's home.

⁵¹ Article 58 of the Penal Code as amended according to the law of July 20, 1934, and Article 116 of the same code. (See comments and instructions of February 28, 1939, in the official edition of the Penal Code (Moscow, 1947).

⁵² The abolition of constraint in marriage had a special significance in some parts of the country among native tribes, where polygamy and the system of purchasing brides had been practiced until recently. There are special provisions in the constitutions of some Union Republics, where such practices had been the rule. Cf. Article 99 of the Constitution of the Kazakh Soviet Socialist Republic: 'Resistance to the actual emancipation of women (giving minors in marriage or contracting marriage with them, bride purchase, polygamy, restricted choice of husband ...) is punishable.'

⁵³ The Polish law 'On Marriage and Family' of September 27, 1945, follows the pattern of Soviet legislation; its chief trend is to emancipate marriage and family from the influence of the Roman Catholic Church, *Sovetskoe Gosudarstvo i Pravo*, 1950, No. 7, p. 84.

The Chinese Law on Marriage of May 1, 1950, issued for the transitional period, pursues the goal 'to destroy first of all the old system ... and to ensure to the people the full freedom of marriage.' The general principles of the Chinese law on Marriage are similar to the principles of the Soviet Family law. In Czechoslovakia a special Family Code (Law No. 265 of Dec. 7, 1949) repeats also the Soviet provisions concerning marriage, divorce (Art. 30) and even the right of the wife to deny that her husband is the father of her new born child (Art. 51).

⁵⁴ See Timasheff, *op. cit.*, p. 196.

⁵⁵ Soviet literature, reflecting as usual the prevailing trends of Soviet policy, supports family ties and its moral foundations. Illustrations are A. Koptiaeva's novel, *Comrade Anna* and Lidin's stories: 'Mother,' 'Daughter,' 'Friends,' and 'Brotherhood' in his collection, *Isbrannoe* (Sov. Pisatel, 1948).

⁵⁶ John N. Hazard in his article 'The Child Under Soviet Law,' *University of Chicago Law Review*, Vol. 5, 1937-1938, pp. 424-495 cited official Soviet data which showed that juvenile delinquency reached enormous proportions because of the lack of family control. In Leningrad, in 1934 and 1935, ninety per cent of the delinquents spent their leisure time in an unorganized way outside the family, while only seven per cent of the offenders spent their recreation hours within the family circle. The 2,111 cases examined in Moscow during the same period showed a similar situation. Of this group eighty-eight per cent did not have satisfactory family supervision, while seven and seven tenths per cent spent their time with their families. Thirty-five per cent of the children in correctional labor institutions during the same period were homeless waifs. Cf. also Timasheff, *op. cit.*, p. 322.

⁵⁷ U.S.S.R. Laws, 1940, texts 603, 604.

⁵⁸ In connection with the abolition of co-education, *Izvestia* published an article ('On the Education of Boys and Girls') on August 10, 1943, in which its author, Orlov, explained: 'Boys' schools should have proper grounds for military training and for carrying a specially organized military department in accordance with the program of military education. In girls' schools, the military department should serve the purposes of training for sanitary work, intelligence, etc.'

⁵⁹ In all civilized countries family law acquires the character of an institution of public law. Parental authority is carried out in the interests of children and society, and marital relations are based on mutual respect, dignity and independence, protected by law. This trend is expressed sharply in Soviet law. 'Family law cannot be isolated from the activity of the Soviet government.' G. M. Sverdlov, '*O predmete i sisteme sotsialisticheskogo semeinogo prava*,' *Sovetskoe gosudarstvo i pravo*, 1941, No. 1, pp. 57-70. Cf. 'Soviet Family Legislation (Sverdlov)' *Soviet studies*, Oct. 1950.

⁶⁰ Article 183 of the code of 1918, and Article 57 of the code of 1926. The various motives for which adoption was originally prohibited in the Soviet Union are cited by J. N. Hazard, 'The Child under Soviet Law,' *University of Chicago Law Review*, Vol. 5, pp. 429-430.

⁶¹ See above notes 28, 29.

⁶² 'Property earned by the husband and wife during the continuance of their marriage shall be regarded as their common property.'

'The rights of either husband or wife in respect to land tenure and property used in common by them as members of a peasant household are defined by sections 66 and 67 of the Land Code and by enactments published to supplement the same.' (Article 10 of the Code of Laws on Marriage and Note to Article 10).

Foreign legislation usually allows couples to determine their property relations. The German code, B.G.B., indicates four possible systems: 1426-31; 1437-1518; 1519-48; 1549-57. Cf. also California Civil Code, sections 159-167.

⁴³ *Vedomosti Verkhovnogo Soveta S.S.S.R.*, No. 8, March 6, 1947.

⁴⁴ According to the Soviet Code of Correctional Labor of August 1, 1933 (Collection of Laws, No. 48, text 208), 'persons are sent to correctional labor camps who have been condemned by, (a) a sentence passed by a tribunal: (b) a decree of an administrative body.' (Art. 8).

Some persons are sent to correctional camps without the right to correspond, and then they are lost to their families, especially since there are unlimited ways of prolonging the term of confinement (U.S.S.R. Laws, 1934, text 284, Art. 7; Decree of June 22, 1941, *Vedomosti*, 1941, No. 29).

In cases when prosecution and punishment threaten the families of criminals, the latter may prefer to be divorced; here the anti-divorce trend becomes harmful for the individual and favorable to the government cause.

⁴⁵ The significance of the recent reforms in Soviet family law, especially from the point of view of the interests and advantages of the 'upper classes' and from the point of view of their influence on social mobility, has been discussed by Lewis A. Coser — 'Some aspects of Soviet Family Policy,' in *The American Journal of Sociology*, March 1951, pp. 424-34, accompanied with 'Comment' by Alex Inkeles, pp. 434-35 and 'Rejoinder' by Lewis A. Coser, 436-37.

See also Dietrich A. Loeber, 'Der Umbruch im Eherecht der Sowietunion' (*Ost-Europa*, Juni 1952, pp. 169-176).

PART VII, CHAPTER XXIII

¹ J. N. Hazard, 'Reforming Soviet Criminal Law,' *Journal of the American Institute of Criminal Law*, Vol. XXIX, 1938, p. 169. Pashukanis qualified criminal law as a part of the general body of law which is bourgeois in nature. His opponents (see references in Prof. Hazard's article) insisted that law protecting the socialist state is socialist law.

'The criminal code is thus not simply a bourgeois institution but has existed in all societies, and will continue to exist under socialism.' (Harold J. Berman, 'Principles of Soviet Criminal Law,' *The Yale Law Journal*, 56, 1947, p. 803-836).

² Soviet jurists assert that a politically conscious citizen of a socialist society does not commit crimes (see above Ch. IV, note 36). Crimes are mostly a manifestation of the survival of the past in the peoples' minds. Cf. A. Piontkovskii's critical review (*Literaturnaiia Gazeta*, January 2, 1950) of the book by B. Utevskii, *General Studies on Criminal Breach of Trust*.

Utevskii's general idea contradicts the thesis explained above. He emphasizes the significance of the training of new Soviet specialists and their technical skills which allow them to increase their responsibility. Breach of trust thus becomes a crime for the newly trained Soviet officials and is not a survival of the past.

³ Art. 1 of the proposed new Code of Criminal Procedure mentions the protection of the socialist state of workers and peasants, the protection of the social and political structure of the state, the protection of the socialist system of economy and of socialist property rights, and legal interests of citizens of the U.S.S.R. (See John N. Hazard, 'Soviet Criminal Procedure,' *Tulane Law Review*, Vol. XV, Feb., 1941, pp. 220-240.,

⁴ See above Ch. IV, 3.

⁵ *Vedomosti Verkhovnogo Soveta*, 1947, No. 19.

⁶ 'Crimes which we consider extremely serious, such as murder and manslaughter, are punished by comparatively short prison sentences,' remarks a student of Soviet Law, 'while crimes involving theft of communal property or affecting society as a whole more than individuals, are visited with comparative severity.'

R. L. Meck, 'Soviet Law and Justice,' (*New Zealand Law Journal*, Feb. 16, 1943). After 1943, this difference became still more striking.

⁷ *Izvestia*, August 20, 1947.

⁸ Goliakov, *op. cit.*, (see Ch. IV, note 30), pp. 174-175.

⁹ Circular of 1929, Goliakov, *Ibidem*.

¹⁰ Criminal Code, Art. 58 (8): 'The commission of acts of terrorism against representatives of Soviet authority or executive officers of revolutionary workers' and peasants' organizations, or participation in such acts, even by persons who do not belong to counter-revolutionary organizations, entails the measures of social defense prescribed in Art. 58 (2).'

¹¹ As far as judiciary procedure is concerned, here again there is the same distinction in the Soviet legal system which was stressed in regard to regulations about the punishment of a crime against a private person and of an act against Socialist property and the Soviet state. (See Ch. 24).

¹² 'The Criminal Code of 1922, seeking to draw a contrast with the capitalistic world, limited imprisonment to a maximum of ten years. This was humane as compared not only with old Russia but with democratic countries. Regarding the U.S. in particular, Soviet textbooks and lectures on criminology sought to expose the cruelties of its prisons and drew comparisons between the principles—the principles, to be sure, not the practice—of American and the Soviet penal systems.' 'Meanwhile practice remained strangely remote from principle.' (B. W. Maxwell, *The Soviet State*, 1934, p. 234).

¹³ See Goliakov, *op. cit.*, p. 200. The ukase of December 10, 1940, as a special and more recent law, repeals the general rule of Art. 22 of the Criminal Code prohibiting capital punishment for minors (*lex posterior specialis derogat legi priori*).

¹⁴ Art. 58, 1-a to 1-g of the Penal Code.

¹⁵ Resolution of TSIK and S.N.K. of the U.S.S.R. of November 5, 1934, (U.S.S.S. Laws, 1935, No. 11, text 84).

¹⁶ Prof. H. Berman relates the case of engineer D. Buligin (now in the United States). 'I was pleasantly surprised,' Buligin reports, '... we were accused of criminal negligence, under Article 114, which carries a maximum penalty of ten years in prison, whereas Article 58, on counter-revolutionary crimes, could have meant capital punishment.' (*Justice in Russia*, p. 86). See also *Possev*, 1951, No. 9, pp. 13-14.

¹⁷ All these examples are borrowed from the annotated edition of the Penal Code of the R.S.F.S.R., Moscow, 1947. From more recent editions of the Penal Code many of these examples have been excluded.

¹⁸ Cf. John N. Hazard, 'The Soviet Court as a Source of Law,' *Washington Law Review*, Vol. XXIV, No. 1, Feb. 1949, pp. 80-90.

¹⁹ *Sbornik deistvuiushchikh postanovlenii i direktivnykh pisem Verkhovnogo Suda SSSR. 1924-1944*. Moskva, 1946, pp. 42-48.

²⁰ See next chapter, notes 27, 29 regarding the adaptation of the Correctional Labor Code of the R.S.F.S.R. of October 16, 1924, (R.S.F.S.R. Laws, 1924, text 870). See regulations of the Central Executive Committee and Council of People's Commissars of the U.S.S.R. from August 1, 1933 (Collection of Laws, 1933, No. 48, Text 208). See also article about this code in *The Soviet Encyclopedia of State and Law* (in Russian), Vol. II.

²¹ According to the resolution of the Presidium of TSIK of the U.S.S.R., passed in 1933, workers, employed persons and farmers of kolkhozes, sentenced to compulsory labor without deprivation of liberty, have to serve as a general rule at the place of their permanent job.

²² 'Corrective-labor work without deprivation of liberty is at the present time one of the most commonly practiced forms of punishment.' *Osnovy Sovetskogo Gosudarstva i Prava*. p. 540.

²³ Penal Code Article 35. In 1930, in the R.S.F.S.R., the application of the exile penalty was broadened. Collection of Laws, 1930, text 344.

²⁴ Chronologically, concentration camps with their cruelties and inhuman exploitation of human labor, were established in the U.S.S.R. earlier than in Germany. A historical survey as well as the description of different camps and methods of exploi-

tation of convicted and exiled are given by D. Dallin and Boris Nicolaevsky, *Forced Labor in Soviet Russia*. Yale University Press, 1947; the most recent description by the former prisoner of the camp, M. Rozanov, *Zavoivateli belykh piaten*, Verlag Possev, 1951. See also *The Challenge*, Bulletin of the Association of Former Political Prisoners of Soviet Labor Camps. N. Y. Vol. V, No. 1-4, 1951.

²⁵ Goliakov, *op. cit.*, p. 130.

PART VII, CHAPTER XXIV

¹ Decrees of November 24, and December 19, 1917.

² 'The definition of socialist justice must characterize its goal, which is to protect the socialist order and its organization based on the principles of socialist democracy and guaranteeing genuine equality before the law to all citizens.' (N. P. Polianskii, *Referaty*. Publication of the Akademiia Nauk, Otdel Ekonomiki i Prava. 1945, p. 45).

³ Law on the Judiciary of the U.S.S.R. and the Union and Autonomous Republics of August 16, 1938. (*Vedomosti*, 1938, No. 11) Translated by V. Gsovski, Vol. II, No. 36.

⁴ R. L. Meck, *op. cit.*, (See Ch. 23, note 6).

⁵ N. Polianskii, 'Stalinskaiia konstitutsiia v sude i prokurature,' *Sovetskoe Gosudarstvo i Pravo*, 1938, No. 3, p. 77-86.

⁶ A. J. Vyshinskii, *Teoriia sudebnykh dokazatelstv v Sovetskom prave*. Moskva, 1946, p. 53. See some other quotations, Gsovski, Vol. I, p. 255.

⁷ See above Chapter 1.

⁸ John Abt, 'Some Observations on Soviet Law and Lawyers,' *Lawyers Guild Review*, Vol. 5, Nov., Dec., 1945.

⁹ The American procedure is also mixed with both inquisitorial and contentious features. The first step in this direction was made by the Austrian legislation on civil procedure.

¹⁰ A Vyshinskii, *op. cit.* pp. 7-8. The so-called *Freirechtsbewegung* allowing the judge the possibility of law-making if there are gaps in law, is flatly rejected by the Soviet science of law.

¹¹ Vyshinskii, *ibidem*, p. 149.

¹² *Ibidem*, p. 204.

¹³ *Ibidem*, pp. 130-31.

¹⁴ R. L. Meck (see above note 4) characterizes the Soviet court as 'a working-class meeting for a particular purpose—the passing of judgment on a comrade who has committed an offense.' In case of a crime—the investigator is strictly bound to investigate all aspects of the case. Ivan's rights are safeguarded by an elaborate series of rules ... He can choose a lawyer ... If he is in financial need he has the right to legal services at a reduced fee, or the legal services may even be rendered to him free of charge.' Meck spoke of certain courts. In a more general form H. Laski appraised the achievements of the Soviet justice, *Law and Justice in Soviet Russia*, The Hogarth Press, London, 1935.

¹⁵ H. Berman cites again in his *Justice in Russia* (pp. 85-89) Buligin's case. This case gives evidence of how precarious is the destiny of every defendant indicted in a crime against interests of the state. Although Buligin was finally acquitted, his fate, in spite of his innocence, had been hanging by a thread. If Prof. Berman referred to his case as evidence 'that they (cases) are generally dealt with according to accepted standards of law and justice' he did not choose convincing evidence for some of his readers, at least.

¹⁶ Cf. Prof. John N. Hazard, 'Soviet Criminal Procedure,' (See above Ch. XXIII, note 3).

¹⁷ Articles 53-62 of the Judiciary Act, Statute on Military Tribunals, and Ukase of the Presidium of the Supreme Soviet on Martial Law, June 22, 1941. Translated by V. Gsovski, Vol. II. Nos. 38, 39.

¹⁸ Art. 2 of the Code of Civil Procedure.

¹⁹ 'The founders of such a state (that lives in fear) no doubt consider that they must

at all costs retain the power to curb any deviation from state policy ... to bring the policy of the public into line with public policy, by which I mean state policy.' Hence the right of revision. (Scrutator, 'The Soviet Legal System.' *Law Journal*, January, 1944.

The Soviet practice of revision contradicts the ancient principles: *Ne bis in idem*, *Nemo debet bis vexari*.

²⁰ *Izvestia*, January 3, 1950.

²¹ 'The Russian Judicial System,' *South African Law Journal*, Vol. 62, pp. 344-46.

²² Before 1938, subordination of the Supreme Court's operation 'to over-all Party guidance of the system of government was not denied.' Though its independence (Art. 112 of the Constitution) is strongly emphasized in recent Soviet theory 'there is no suggestion, however, of freedom from consideration of government policy.' (Towster, *op. cit.* pp. 302-4) See also Gsovski, *op. cit.*, p. 249.

²³ See above Chapter VI and Golunskii, 'Verkhovnyi Sovet U.S.S.R. i organy justitsii,' *Sovetskoe gosudarstvo*, 1938, No. 3, pp. 87-93. Also J. N. Hazard in *Foreign governments*, Ed. by M. Marx, 2nd Ed, 1952. pp. 452-55.

²⁴ The decree of the TsIK and Council of People's Commissars of the U.S.S.R. of Nov. 5, 1934. Collection of Laws, 1935, No. 11, text 84. See also Askarkhanov, *Administrativnoe Zakonodatelstvo*, pp. 126-27.

²⁵ Collection of Laws, 1935, No. 7, text 57.

²⁶ Decree of the Central Executive Committee of July 3, 1931. Collection of Laws, 1931, No. 44, text 298.

²⁷ The Labor Correctional Code of the R.S.F.S.R. of 1933 with later amendments of 1934 is translated and included in the *Materials for Study of the Soviet System*, J. H. Meisel and E. S. Kozera editors. Ann Arbor, Michigan, 1951.

According to Art. 1 of this code: 'The aim of the penal policy of the proletariat in the transitional period from capitalism to communism is the defense of the proletarian dictatorship and socialist construction realized by it against infringements on the part of the class-dangerous elements and against violations on the part of the de-classed elements as well as the unstable elements among the toilers.'

²⁸ Articles 28, 34, 37, and 46 of the Correctional-Labor Code. In the above cited book by D. Dallin and B. Nicolaevsky (p. 273) is reproduced an official document instructing local authorities about the technique of separation of husbands and wives.

²⁹ See V. Gsovski, Vol. I, p. 237-38.

³⁰ Solomon M. Schwarz in his article 'Russia's Planned Slavery' (*New Leader*, February 12, 1951) has expounded the official data of the Soviet national economic plan for the year of 1941 as it was revealed in the official publications of the Soviets. The book containing this plan was found by the British and Americans in Germany after the war. According to this official document, almost one-fifth of the gigantic program of capital works planned for 1941 was assigned to the NKVD. 'For the GULAG alone (the Chief Administration of the camps of NKVD), a 2,675,000,000 ruble program of capital works was planned for 1941, and for the Chief Administration of Railroad Construction of the NKVD, a program of 1,350,000,000 rubles.'

PART VIII, CHAPTER XXV

¹ The aims and interests of every state are determined by the character of its social and political structure; foreign policy is but a continuation of the domestic policy, it depends upon the principles of the domestic public law. (D. B. Levin, 'K voprosu o poniatii i sisteme sovremennoego mezhdunarodnogo prava,' *Sov. Gos. i Pravo*, 1947 No. 5, p. 8). International law differs from the municipal law, as concerns its social content, because it expresses the will of different social classes, which acquires significance of law in the process of struggle and co-operation on the international arena between the nations with a different social and political structure. (D. B. Levin, 'Mezhdunarodnopravovoi nihilizm,' *ibid.*, 1948, No. 6, p. 22).

² E. Korovin, *Sovremennoe mezhdunarodnoe publichnoe pravo*, M. 1926, p. 5. See also his *Mezhdunarodnoe pravo perekhodnogo vremeni*, M. 1925.

³ Pashukanis's article 'Mezhdunarodnoe pravo' in the *Entsiklopedia gosudarstva i prava*, 1929, Vol. II, p. 822.

⁴ T. A. Taracouzio, *The Soviet Union and International Law*, N. Y. Macmillan Co, 1935; A. Makarov in *Zeitschrift fuer auslaendisches Oeffentliches Recht und Volksrecht*, No. 3.

⁵ Taracouzio, *Op. cit.*, p. 12.

⁶ Pashukanis, *Ocherki mezhdunarodnogo prava*, 1935. Cf. J. N. Hazard, 'Cleansing Soviet International Law of Anti-Marxist Theories.' *The American Journal of International Law*, Vol. 32, 1938, pp. 244-252.

⁷ 'As a state among states the Soviet Union, after the N.E.P. period, no longer fostered world revolutionary aspirations, and traditional international law served very well the purpose of maintaining her international position,' Joseph Florin and John H. Herz, 'Bolshevist and National Socialist Doctrines of International Law.' *Social Research*, Vol. 7, Feb., 1940, p. 9.

⁸ See Rappoport, 'Protiv vrazhdebnykh teorii mezhdunarodnogo prava,' *Sov. Gos. i Pravo*, 1937, No. 1-2, pp. 92-98.

⁹ E. Korovin's letter in *Sov. Gos. i Pravo*, 1935, No. 4, p. 171.

¹⁰ E. Korovin, Review of the *Soviet Union and International Law* by T. A. Taracouzio, *Harvard Law Review*, 1936, pp. 1392-95.

¹¹ Vyshinsky's Report and his leading articles on Law are published in book form. *Voprosy teorii gosudarstva i prava*, Vsesoiuznyi Institut Iurid. Nauk M-va Iustitsii. Gosizdat-vo Iur. Literaturny. M. 1949.

¹² Antonov, 'K voprosu o mezhdunarodnom prave' *Sov. Gos. i Pravo*, 1938, No. 4, pp. 71-73.

¹³ E. Korovin, 'Mezhdunarodnoe pravo na sovremennom etape,' *Bolshevik*, Oct. 1946, p. 26.

¹⁴ E. Korovin, 'The Second World War and International Law.' *The American Journal of International Law*, Vol. 40, 1946, pp. 742-43.

¹⁵ *Mezhdunarodnoe Pravo*, Moskva. Iurid. Izdat-vo Min-va Iustitsii 1947, p. 8-10.

¹⁶ Repeated by Vyshinskii, 'Mezhdunarodnoe pravo i mezhdunarodnye organizatsii,' *Sov. Gos. i Pravo*, 1948, No. 1, p. 17; Vyshinskii emphasized even earlier that 'in the struggle of the U.S.S.R. for the new principles of the international law the principles of the socialist law, the principles of socialism are expressed.' *op. cit. Sov. Gos.* 1939, No. 3, p. 12. 'The capitalist nations and their ideologists,' he said in his other article, 'try to present their foreign policy as a pure and immaculated, in a nimbus of objectivity and classless impartiality ... The Soviet law on the other hand openly proclaims the class character of its principles.' (*Mezhdunarodnoe pravo i mezhdunarodnye organizatsii*, p. 19).

¹⁷ I. M. Lemin, *Bor'ba dvukh napravlenii v mezhdunarodnykh otnosheniakh*, Izd-vo Pravda. M. 1947, p. 24-25.

¹⁸ M. Rappoport, *op. cit.* p. 94-95.

¹⁹ Vyshinskii, 'Osnovnye zadachi nauki sotsialisticheskogo prava,' and in his article cited above in note 16. The same definition in the textbook *Mezhdunarodnoe Pravo*, 1947, p. 5.

²⁰ Alvarez A.—considers general principles of law as a 'natural law.'—*Exposé de motifs et déclarations des grands principes du droit international moderne*. Paris, 1935, p. 20. Soviet jurist P. S. Romashkin,—as 'general principles of law recognized by the civilized nations.' (K voprosu o poniatii i istochnikakh mezhdunarodnogo ugolovnogo prava,' *Sov. Gos. i Pravo*, 1948, No. 3, p. 29).

In the more recent article by Korovin ('Ob obshchepriniatykh normakh mezhdunarodnogo prava,' *Sov. Gos. i Pravo*, Sept. 1951, pp. 14-19 the application of the 'basic', 'elementary', 'generally recognized' norms of international law by both bourgeois and socialist states is explained as 'a simple coincidence.' Semi-feudal Afghanistan, capitalist Britain and socialist Russia recognize certain rights and privileges of diplomatic agents in the same manner as they recognize some norms concerning murder, theft, etc. The norms are similar, but they protect different interests. Many norms and treaties cannot, however, be recognized by the socialist state. Agreements on the other hand are entirely possible "within the framework

allowed by the two systems, but only within this framework." (Cf Stalin, v. X, p. 123).

²¹ Vyshinskii, 'The XVIII-th Congress of the Communist Party,' *Sov. Gosudarstvo*, 1939, No. 3, p. 12.

Cf. also F. I. Kozhevnikov, 'Nekotorye voprosy mezhdunarodnogo prava v svete truda J. V. Stalina 'Marxism i voprosy yazykovedeniia' *Sov. Gos. i Pravo*, June 1951, pp. 25-36.

²² One of the Soviet specialists in international law, D. B. Levin has acknowledged (*op. cit.*, p. 12 see above note 1) that, because of the absence of international legislation, international customs and first of all bilateral and multilateral conventions are used as main sources of international law. Resolutions of international organizations and of United Nations in particular are an additional source of international law.

²³ *Mezhdunarodnoe Pravo* (textbook), 1947, pp. 20-27 and Ch. VIII. In the same textbook, ed. 1951, pp. 15-17, only treaties and customs are acknowledged as sources.

²⁴ E. Korovin, 'Soviet Treaties and Intern. Law,' *A.J.I.L.* Vol. 22, 1928, p. 753.

²⁵ L. B. Shapiro, 'The Soviet Concept of International Law,' *Yearbook of World Affairs*, Vol. II, 1948, p. 272-310.

²⁶ *Ibidem*, p. 287.

²⁷ A. J. Vyshinskii, 'Mezhdunarodnoe pravo i mezhdunarodnye organizatsii,' *Sov. Gos. i Pravo*, 1948, No. 1, p. 3.

²⁸ E. Korovin, *op. cit.* (see note 24), p. 763.

²⁹ In the United Nations Vyshinskii protested against the widening of the authority of the International Court of the United Nations. See A. Vyshinskii, *op. cit.* (note 27), p. 11-13. Insofar as Vyshinskii objected to conferring upon the International Court of the United Nations the right to rule in a case when the General Assembly of the U. N. could not reach any decision, he was formally correct in that this would contradict the statute of the United Nations.

³⁰ P. S. Romashkin, *op. cit.* (see note 20) p. 22.

³¹ Cited from the report concerning the discussion of a paper presented by a certain Z. S. Bassin to the Moscow Institute of Law. The disputant severely criticized the idea, which he ascribed to Anglo-American jurists citing the desirability of having international legislation. See *Sov. Gos. i Pravo*, 1950, No. 7, p. 85.

³² T. A. Taracouzio, *op. cit.*, pp. 26-27; Cf. L. B. Shapiro, *op. cit.* p. 287 and Rudolf Schlesinger, *Soviet Legal Theory*, p. 284.

³³ As Soviet practice discloses it, the first stage is mobilization of national sentiment and the entrance of peasantry into the struggle for political liberties in general and for political rights in particular. The second is antagonism against international capital. Finally the victory of the proletariat. Cf. Lenin, Vol. XXV, p. 6-7.

³⁴ Rappoport, *op. cit.* p. 97.

³⁵ *Pravda*, May 3, 1947.

³⁶ Joseph Florin and John H. Herz, *op. cit.* p. 12, 30.

³⁷ M. Chakste, *op. cit.* pp. 31-32.

³⁸ D. B. Levin, 'K voprosu...' (see note 1), p. 21; Cf. also the attacks in the Soviet press against the 'cosmopolitanism' (world citizenship) V. M. Chkhikvadze, 'Razvivat' i kultivirovat sovetskii patriotizm,' *Sov. Gos. i Pravo*, 1949, No. 4, p. 1-7; *ibidem*, No. 4, pp. 40-46 Report about the discussion, 'Bor'ba s kosmopolitizmom.'

See also A. Vyshinskii's polemical remarks against Kelsen's theory of the priority of international law as expressed in his 'The Pure Theory of Law and Analytical Jurisprudence,' *Harvard Law Review*, Nov. 1941. 'One cannot agree with the idea as though International law were a foundation of national law. On the contrary one can assert that national law is a source and basis of the policy and methods of regulation of international relations between a certain state with other members of the international community.' Vyshinskii, 'Mezhdunarodnoe pravo i mezhdunarodnye organizatsii,' p. 17.

Vyshinskii's objection against H. Kelsen's idea is indicative of the Soviet attitude toward a tendency to unite the world, as it exists, with its variety of social and economic structures.

³⁹ E. Korovin's Review on Taracouzio's book, p. 1394 (see above note 10).

⁴⁰ I. D. Levin, 'Printsip suvereniteta v sovetskom mezhdunarodnom prave,' A

lecture, *Izd-vo Pravda*, M. 1947, p. 8. He defined also sovereignty as 'both legally fixed and factual capacity of a state to fulfill its functions on its territory with the right of the supreme power and as independent member of the international community.'

⁴¹ I. D. Levin, 'O sushchnosti i znachenii printsipa suvereniteta,' *Sov. Gos. i Pravo*, 1949, No. 6, p. 44.

⁴² I. D. Levin, 'Printsip suvereniteta...', p. 3-5.

⁴³ A. Vyshinskii, 'O nekotorykh voprosakh v teorii gosudarstva i prava,' *Sov. Gos. i Pravo*, 1948, No. 6, p. 7.

⁴⁴ E. Korovin, 'Za sovetskuiu patrioticheskuiu nauku prava,' *Sov. Gos. i Pravo*, 1949, No. 7, p. 10. Korovin forgot evidently that in 1941, when Germany occupied Yugoslavia and Greece, the Soviet Union ordered the Yugoslav and Greek diplomats in Moscow to leave the country under the pretext that they represent governments which have ceased to exist. The same had been practiced by the Soviet Union concerning other occupied countries unless their governments in exile, as for example the Czechoslovakian in the person of Benes, concluded special pacts recognizing Moscow's protectorate.

⁴⁵ I. D. Levin's article, pp. 33-34, and his lecture, p. 4.

⁴⁶ The Soviet government was primarily guided by political opportunism and economic exigencies in the relations with foreign governments and international collective bodies. As far as it was involved in a gigantic process of building socialism in Russia alone, it became friendlier in its intercourse with foreign countries. Ch. Prince, 'The U.S.S.R. and International Organizations,' *The Am. Journ. of Intern. Law.*, July 1942, p. 445.

⁴⁷ Cf. Stalin's answer to Wallace, May 17, 1948. (*Pravda*, May 18, 1948).

⁴⁸ Let states of 'the imperialist type' be destroyed and organize inter-soviet states. Then the principle of sovereignty 'will lose its significance... (being) substituted by the principle of the proletarian dictatorship.' M. Chakste, *op. cit.*, p. 34.

⁴⁹ E. Korovin, 'Vklad v mezhdunarodnoe pravo,' *Sov. Gos. i Pravo*, 1947, No. 11; translated under the title 'The Contribution of the U.S.S.R. to International Law.' *Soviet Press Translations*. Dec. 1, 1948, pp. 655-664.

⁵⁰ E. Korovin, 'Za sovetskuiu patrioticheskuiu nauku prava,' pp. 6-12.

⁵¹ Also D. B. Levin: 'The ideas of World's Law and World's government are the ideas of American imperialism.' ('Mezhdunarodno-pravovoi nihilizm,' *Sov. Gos. i Pravo*, 1948, No. 6, pp. 23 ff).

⁵² *Soviet Press Translations*, Dec. 1, 1950, p. 658.

⁵³ 'The revolutionary features of early Bolshevik ideology are reflected in the "right of revolutionary intervention" as proclaimed by Korovin and in his interpretation of the principle *rebus sic stantibus* as constituting "a little annex to a great revolution".' (Florin and Herz, *op. cit.*, p. 16).

⁵⁴ Korovin, *Mezhdunarodnoe pravo perekhodnogo vremeni*, p. 61.

⁵⁵ Korovin's Review on Taracouzio's book.

⁵⁶ E. Korovin, 'Soviet treaties and International Law,' (see note 24), p. 754.

⁵⁷ Korovin, see notes 49 and 52.

⁵⁸ *Ibidem*, concluding part.

⁵⁹ A. Vyshinskii, 'Mezhdunarodnoe pravo i mezhdunarodnye organizatsii,' p. 91.

⁶⁰ F. I. Kozhevnikov, 'I. V. Stalin ob osnovnykh printsipakh sovremennogo mezhdunarodnogo prava,' *Sov. Gos. i Pravo*, 1949, No. 12, p. 107. A war is unjust, according to Stalin, if it violates the norms of international law, 'O Velikoi otechestvennoi voine,' p. 12.

⁶¹ Korovin, 'The Contribution...' subdivision VIII.

⁶² *Ibidem*, concluding part.

⁶³ 'A just war does not seek annexations, it is a war for liberation with the purpose either of protecting a certain nation against an attack from outside and an attempt to enslave it, or for liberation of a people from capitalist enslavement, or, finally, liberation of colonies and dependent countries from the yoke of imperialism.' (*Istoriia VKP (b)*, A short course, M. 1938, p. 161, quoted by F. I. Kozhevnikov, *Textbook of International Law*, Iurid. Izd-vo M-va Iustitsii. M. 1947, p. 223).

'Hague rules were calculated for war of a different type and for a totally different international situation,' than in the present world. Military occupation of the territory of an aggressive state is necessary for replacing of the old government instead of protecting 'reactionary social forms and political institutions which led the country on the path of international crime ... With aggression an international crime, neutrality becomes a form of connivance at this crime.' Korovin, 'The Second World War and International Law,' pp. 753-54.

⁶⁴ K. W. Davis, *The Soviet Union and the League of Nations, 1919-1933*. Geneva Special Studies, Vol. V, No. 1, 1934, p. 4. Quoted by Charles Prince 'The U.S.S.R. and International Organizations,' *The Am. Journal of Int. Law*, July 1942, p. 428.

⁶⁵ See note 46.

⁶⁶ E. Korovin, 'The Contribution...', Section VII.

⁶⁷ E. A. Korovin, 'The Second World War...', p. 743. At the same time, however, he emphasized that international law is, for the time being, in the arena of the struggle of two opposite tendencies—the progressive-democratic vs. the reactionary-imperialistic; each group carrying out its own line and directed by its own motives might be, however, interested in supporting and preserving a certain amount of generally binding legal norms in international relations' E. Korovin, 'Mezhdunarodnoe pravo na sovremennom etape,' (*Bolshevik*, Oct. 1946, p. 25).

⁶⁸ A. Vyshinskii, 'Mezhdunarodnoe pravo i mezhdunarodnye organizatsii,' p. 3.

⁶⁹ 'Amerikanskii imperialisizm stremiatsia prevratit' OON v prostoi pridatok gosudarstvennogo departamenta S.Sh.A.' (Editorial article, *Sov. Gos. i Pravo*, 1950, No. 12).

⁷⁰ Protection of human rights cannot be separated from the struggle for the equality of nations, nor a nation's right to independence and sovereignty, rights against the policy of persecution and enslavement, and rights against violation of the sovereignty of weaker nations (under the pretext, for example, of trial in the international court, or of complaints of citizens against violation of their rights by the state). The Soviet state is struggling for a *real* guarantee of their rights and fundamental freedom for the nations.' G. Tavrov, 'O mezhdunarodnoi zashchite prav cheloveka,' (*Sov. Gos. i Pravo*, 1948, No. 7, p. 10).

⁷¹ Cf. Editorial in *Izvestia*, August 6, 1950 (translated in *The Soviet Press Translations*, Vol. V, No. 15, Sept. 1, 1950, pp. 461-464).

⁷² Art. 42 of the Charter of the United Nations.

⁷³ North Korean Republic has established diplomatic relations with the U.S.S.R., Mongol People's Republic, Poland, Czechoslovakia, Rumania, Hungary, Bulgaria, Albania, Chinese Republic and German Democratic Republic, Cf. Tavrov, 'The Korean Problem after W.W. II,' *Sov. Gos. i Pravo*, 1950, No. 7, pp. 26-42.

⁷⁴ Cf. Antonov, *op. cit* (see note 12), p. 69.

PART VIII, CHAPTER XXVI

¹ The U.S.S.R. concluded treaties of mutual assistance and friendship with Czechoslovakia on December 12, 1943; with Poland on April 21, 1945; with Rumania on February 4, 1948; with Hungary on February 18, 1948; with Bulgaria on March 18, 1948; and in Asia—with the Mongolian Republic, on February 27, 1946; with China, on February 14, 1950; and a treaty concerning economic and cultural cooperation with the Korean People's Republic on March 17, 1949.

Correspondingly, the People's Republics have concluded identical treaties concerning mutual assistance: Poland and Czechoslovakia on March 10, 1947; Rumania and Czechoslovakia on January 16, 1948; Bulgaria and Rumania on January 16, 1948; Hungary and Poland on June 18, 1948; Albania and Bulgaria on December 18, 1947, and Rumania and Poland on January 26, 1949.

² V. F. Generalov, 'Ob osnovnykh chertakh mezhdunarodno-pravovogo sotrudnichestva Sovetskogo Soiuza i stran narodnoi demokratii.' *Sov. Gos. i Pravo*, 1950, No. 7, p. 15.

³ A. Berezkin, 'Amerikanski imperialisizm-zakliaty vrag Sovetskogo Gosudarstva.'

Bolshevik, 1951, No. 3; also E. Tarle, 'K istorii anti-sovetskoj politiki amerikanskogo imperializma,' *Bolshevik*, 1951, No. 1, pp. 56-69.

⁴ Generalov, *op. cit.* p. 20.

⁵ B. S. Man'kovskii, 'Novyi etap v razvitii narodno-democraticeskikh gosudarstv kak gosudarstv sotsialisticheskogo tipa.' *Sovetskoe Gosudarstvo i Pravo*, 1950, No. 7, p. 2.

⁶ The post-war constitutions of Albania and Yugoslavia were issued in 1946; of Poland originally a short constitutional act, in 1947, and the constitution, in 1952; of Bulgaria, in 1947; of Czechoslovakia and Rumania in 1948 (the new constitution of Rumania, in 1952); the constitution of Albania was developed and essentially amended in 1950; and on January 13, 1953, Yugoslavia has amended its constitution with some essential deviations from the Soviet pattern. Some of these constitutions are published by Samuel Sharp, *New Constitutions in the Soviet Sphere*. Foundation for Foreign Affairs. Washington, D. C. 1950. The decree of October 24, 1945, concerning nationalization of mines and industrial enterprises in Czechoslovakia and the Law of January 3, 1946, concerning the nationalization of basic branches of the national economy in Poland are published in the form of an annex to the pamphlet by S. Sharp, *Nationalization of Key Industries in Eastern Europe*, Washington, D. C. 1946; some of these constitutions—in *Slavonic Encyclopedia*, J. Roucek, editor. New York, 1949, pp. 1405 ff.

⁷ Laws concerning local soviets were issued in Albania on August 8, 1946; in Czechoslovakia regional committees were established by the law of December 21, 1948, and local committees on February 28, 1950; in Bulgaria—on February 17, 1948; in Rumania on January 13, 1949 and in Poland by the law of March 20, 1950.

⁸ Man'kovskii, *op. cit.*, p. 4.

⁹ *Ibidem*, pp. 6-7.

¹⁰ Cf. Art. 130 of the Constitution of Czechoslovakia and Art. 78 of the Constitution of Rumania, etc.

¹¹ Art. 30, 31 of the Instruction No. 3 of April 12, 1950. See details in the article of M. A. Shafr and E. K. Saulevich, 'Novye uspekhi v gosudarstvennom stroitelstve Pol'shi.' *Sovetskoe Gosudarstvo i Pravo*, 1949, No. 12, pp. 68-69.

¹² B.S. Man'kovskii, 'Narodno-democraticeskaja respublika-politicheskaja forma diktatury rabocheho klassa,' *Sovetskoe Gosudarstvo i Pravo*, 1949, No. 10, p. 18.

¹³ The principles of the People's Democracy just as of the Soviet state are determined under a proper Marxist-Leninist leadership of the Communist party. See N.P. Farberov, 'O klassakh i partiakh v stranakh narodnoi demokratii.' *Sovetskoe Gosudarstvo i Pravo*, 1949, No. 9, p. 13.

'Judges of the People's Democracies may and even must be the members of the Communist or Labor Party'. S. L. Zivs, 'Organizatsia suda v evropeiskikh stranakh narodnoi demokratii.' *Sovetskoe Gosudarstvo i Pravo*, July, 1951, p. 58).

¹⁴ The constitution of Yugoslavia in its new wording leaves right to nominate candidates to the Socialist league consisting of the Communist Union and members of the socialist parties. It is not prohibited to nominate more than one candidate. However, all candidatures are subject to a special screening and thus election of one or another does not change anything in the composition of Scupshchina.

¹⁵ In the preamble to the Constitution of Czechoslovakia we read: 'We are ready to protect with all our forces the conquest of our national and democratic revolution against any intrigues of domestic as well as of international reaction.'

¹⁶ The best illustration was given by the events of February, 1948, in Czechoslovakia. 'It was a purge of the state apparatus from the elements inimical to the people's democracy.' (*Pravda*, March 11, 1948). 'The leading role in the state's organs is secured to the progressive democratic forces organized in the National Front under leadership of the Communist Party of Czechoslovakia' (V. F. Kotok, 'The New Constitution of Czechoslovakia' *Sovetskoe Gosudarstvo i Pravo*, No. 12, 1948, p. 32).

¹⁷ Generalov, *op. cit.*, p. 4.

¹⁸ *Pravda*, January 14, 1949.

¹⁹ Art. 11 of the law of March 20, 1950.

²⁰ A large number of officials or employees in the elected organs means that the agents of the government represent the population. This phenomenon characterizes the composition of the Soviets in other countries too. See E. A. Smirnov, 'O mestnykh organakh gosudarstvennoi vlasti v narodno-demokraticeskoi Bolgarii.' *Sovetskoe Gosudarstvo i Pravo*, 1950, No. p. 63.

²¹ N. J. Kuprits, 'O gosudarstvennom stroe narodnoi respubliki Albanii,' *Sovetskoe Gosudarstvo i Pravo*, 1950, No. 9, pp. 62-71.

²² N. P. Farberov, *Gosudarstvennoe pravo stran narodnoi demokratii*. Gosizdat. M. 1949. pp. 299-322. See also Lawrence Krader, 'Mongol Law-Later Developments' *Washington Law Review*. Vol. 23, No. 2, pp. 178-181; *ibidem*, the text of the constitution of June 30, 1940.

²³ Art. 45: 'The territory of the Federal People's Republic of Yugoslavia consists of the territories of its republics and forms a single state and economic area'.

²⁴ Sec. 121 (4) of the Constitution. The Central Government of Czechoslovakia is actually composed of both Czechs and Slovaks. Cf. Kotok, *op. cit.* See supra, note 16.

²⁵ Even backward Rumania, as one Soviet commentator asserts: 'is a state of a special type approaching socialism in its own specific manner' (Levin, 'Comments on the Constitution of the Romanian People's Republic,' *Sovetskoe Gosudarstvo i Pravo*. No. 6, 1949, p. 58). In Hungary, according to the law of December 28, 1948, all factories and plants are nationalized, and collectivization of agricultural economy is rapidly developing (see M. Kharlamov, 'Hungary on the way to Socialism,' *Izvestia*, Jan. 31, 1950).

²⁶ I. P. Trainin, 'Demokratii osobogo tipa,' *Sovetskoe Gosudarstvo i Pravo*, 1947, No. 3, p. 3.

Later the Soviet writers, Farberov, Kotok and Man'kovsky began to characterize the revolution in the Soviet satellites as the anti-bourgeois, socialist revolution and the people's democracies as the states of the proletarian dictatorship in its early stage.

In order to liquidate the capitalist elements and organize a socialist economy the people's democracies smashed the mechanism of the bourgeois state, its army, police and bureaucracy and replaced them with the revolutionary army, police and administration. The proletarian rule is represented by the Communist parties. All the organizations entering the National Front constitute a system of transmitting belts linking the Communist parties with the toiling masses. (H. Gordon Skilling, "People's Democracy" in *Soviet Theory*, *Soviet Studies*, July 1951, pp. 16-33; October, 1951, pp. 131-144).

²⁷ See *Journal on Polish Law*, published in Poland since January 1947.

²⁸ '...the state directs the economic life and development of the country in accordance with a general economic plan' (Art. 15 of the Constitution of Yugoslavia). provisions in Arts. 8-9, Albania; Arts. 8 and 12; Bulgaria; Secs. 162-164, Czechoslovakia; Art. 5, Hungary; Art. 7, Rumania.

²⁹ Art. 9, Albania's Constitution; Art. 19, Bulgaria; Sec. 158, Czechoslovakia; Art. 8, Hungary; Art. 8, Rumania; Art. 18, Yugoslavia. For more details see N. P. Farberov, *Gosudarstvennoe pravo stran narodnoi demokratii*.

³⁰ 'At present the central planning organs are established in all people's republics.' Z. I. Shkundin, 'Pravovoe regulirovanie khoziaistva v stranakh narodnoi demokratii.' *Sovetskoe Gosudarstvo i Pravo*, 1949, No. 7, p. 37. also 'Strany narodnoi demokratii na puti k sotsializmu,' *Bolshevik*, 1949, No. 16, Editorial, p. 1-8.

³¹ N. P. Farberov, 'Novye momenty v razvitii narodnoi demokratii,' *Sovetskoe Gosudarstvo i Pravo*, 1949, No. 1, p. 49.

V. F. Kirichenko, 'Bor'ba s prestupnymi posiatelstvami na ekonomicheskii stroi evropeiskikh gosudarstv narodnoi demokratii,' (*Sov. Gos. i Pravo*, June 1951, pp. 37-46).

³² M. A. Shafir and E. K. Saulevich, *op. cit.* (see note 11) pp. 66, 71-72.

³³ 'The role of the state as a reformer in the countries of people's democracy is determined by the fact that all the fundamental means of production are in its hands.' P. Figurkov, 'Stroitelstvo sotsialisticheskoi ekonomiki v evropeiskikh stranakh narodnoi demokratii,' *Bolshevik*, 1949, No. 20, p. 53.

Cf. Eduard Taborsky, 'Government in the "People's Democracies".' *The Annals of*

the American Academy of Political and Social Science, Vol. 271, Sept. 1950, pp. 59-62.

³⁴ E. Taborsky, *op. cit.*, p. 57.

³⁵ Resolution concerning organization of Cominform was adopted at the end of September, 1947, in Warsaw by the representatives of the Communist Parties of Yugoslavia, Rumania, Hungary, U.S.S.R., France, Czechoslovakia, and Italy, and the Labor parties (Communist in fact) of Poland and Bulgaria.

³⁶ *Bolshevik*, 1947, No. 19, p. 5.

³⁷ See Diko Tomasic, 'The Structure of Soviet Power and Expansion,' *The Annals*, Sept. 1950, pp. 35-37; and George B. de Huszar, 'Use of Satellite Outposts by the U.S.S.R.,' *ibidem*, pp. 160-161.

³⁸ D. Tomasic, *ibidem*, p. 35.

³⁹ E. Taborsky, 'A Polish-Czechoslovak Confederation,' *The Journal of Central European affairs*, Vol. 9, No. 4, January, 1950. pp. 379-395.

⁴⁰ A. Alymov and S. Studenkin, 'Soviet federalism and the democratic centralism.' *Sovetskoe Gosudarstvo i Pravo*, 1933, No. 1-2, p. 131.

CONCLUSION

¹ *Soviet Legal Philosophy*, p. 294.

² *Ibidem*, Strogovich, p. 374; Trainin, p. 442.

³ *Ibidem*, Trainin, p. 447.

⁴ See above, Ch. II, III, and XII.

⁵ M.N. Agarkov, 'Osnovnye printsipy Sovetskogo grazhdanskogo prava', *Sov. Gos. i Pravo*, 1947, p. 35.

⁶ *Osnovy sovetskogo gosudarstva i prava*. Moskva, 1947, p. 504.

⁷ Cf. The Materials for the XIXth Congress of the ACP (b) in October, 1952 (*The Current Digest of the Soviet Press*, Nov. 1952, No. 41). An amazing picture of the failure of the Soviet agricultural economy had been presented by the new Secretary of the C.P., Khrushchev in his momentous report to the Plenary Session of the Party Central Committee, September 3, 1953. His main statements were the following ones: '... from 1940 through 1952 gross agricultural output increased (in comparable prices) only 10%; An obvious discrepancy between the populations' growing needs and the production level has been formed during past years; ... husbandry is in an unsatisfactory economic state; ... the same can be said for vegetables and potatoes; ... the unsatisfactory leadership of collective and state farms and M.T.S.; ... labor discipline is still very low in many collectives; the number of cows at the beginning of 1953 was 3,500,000 less than at the beginning of 1941 and 8,900,000 less than at the beginning of 1928; the area sown to vegetables is 250,000 hectares less than 1940.'

⁸ Memorandum published in *Pravda* and other Soviet papers on January 30, 1939.

⁹ *Pravda*, November 4, 1946.

¹⁰ Lenin, *Sochineniia*, Vol. XXXIII, p. 14.

¹¹ Stalin, *Voprosy Leninizma*, Moskva, 1922, p. 59.

¹² Ukase of July 6, 1945. *Vedomosti Verkhovnogo Soveta SSSR*, 1945, No. 39.

¹³ As an example: Ukase of June 28, 1949, on the militarization of the guard of the Ministry of Ways of Communication; the earlier example the militarization of river fleet.

¹⁴ The Soviet attitude toward certain institutions of international law cannot be correctly explained on the basis of 'patriotic feelings and pride' as J. Hazard does it in his article 'Soviet Union and International Law' in *The Illinois Law Review*, Vol. 43, November-December, 1948.

¹⁵ Many illustrations of this divergence in fundamental principles of international law are given by Charles Prince: 'Current Views of the Soviet Union on the International Organization of Security, Economic Co-operation and International Law: A Summary,' *The American Journal of International Law*, 1945, pp. 450-485; also in *The Annals* ('Soviet Policy in the United Nations,' by C. Dale Fuller, and others).

¹⁶ 'A claim by Russia to be bound only by a portion of the law of her own selection,' L. B. Shapiro, 'The Soviet Concept of International Law,' *Year Book of World Affairs*, Vol. II, 1948, p. 287.

¹⁷ Attack on Poland and on Finland; violation of non-aggression pact with Japan; postwar policy in Manchuria and in Iran.

¹⁸ *The Annals*, p. 160. In Germany the Soviet Union transferred a number of factories into its own property for the reparation account. The twenty-five holding companies control about 180 factories belonging at present to the Soviet Union.

¹⁹ L. D. Levin, in his widely circulated pamphlet *Printsip suvereniteta v sovetском i mezhdunarodnom prave* (*The Principle of Sovereignty in Soviet and International Law*), Moscow, 1947, pp. 11, 15, emphasized the fact that in addition to formal political independence, true sovereignty presupposes economic independence from the imperialist states and sufficient defensive power. From the point of view of this theory, sovereignty of the Constituent Republics of the Soviet Union has to be denied. Levin's theory, though corresponding to the Soviet attitude toward small nations, has naturally been criticized for political reasons and rejected by Soviet jurists (see below Ch. XXV, 3 and note 43). Sergius Yakobson, in his article 'The Soviet Concept of the Satellite State' (*Review of Politics*, April, 1949, v. 2, No. 2, pp. 184-195), asserts that within the sphere of Soviet political influence, actual sovereignty has already been abolished. His conclusion corresponds to Levin's theory because the satellites have neither economic independence nor sufficient defensive power. The Soviet practice of extermination of all inimical groups in the occupied countries finds its theoretical justification in Professor Korovins' discussion of the Hague rules (Eugene Korovin, 'The Second World War and International Law,' *The American Journal of International Law*, v. 32, p. 753). Every anti-Communist and anti-Soviet organization and group is 'anti-democratic,' and its extermination is a sacred duty of the Soviet Union as the protector of justice and liberty and as a real democracy. From this point of view any preventive military measures can also find justification and approval.

ABBREVIATIONS

A. J. I. L.	The American Journal of International Law
B. G. B.	Bürgerliches Gesetzbuch, German Civil Code of January 1, 1900
<i>Bolshevik</i>	The <i>Bolshevik</i> , Theoretical and Political magazine of the C. C. of the ACP (b) Since the end of 1952 renamed in <i>Kommunist</i> .
Civil code	<i>Grazhdanski Kodeks</i> of the R. S. F. S. R.
Constit.	The Constitution of the U. S. S. R. of 1936.
Code Civil	The Code Napoleon.
Collection of Laws	<i>Sobranie uzakonenii i rasporiazhenii Vremennogo Pravitelstva</i> (Russia, February-October, 1917)
Criminal Code	The Penal Code of the R. S. F. S. R.
Current Digest	The Current Digest of the Soviet Press, published each week by the Joint Committee on Slavic Studies, N. Y.
Decree	Postanovlenie or Resolution of the Government.
Eliashevitch	<i>Traité de Droit Civil et Commercial des Soviets</i> par Basile Eliashevitch, Paul Tager et Baron Boris Nolde avec le concours des autres juristes. Paris, 1930.
<i>Gosarbitrazh</i>	<i>Gosudarstvennyi arbitrazh</i> , Governmental Arbitration, Its official organ is Bulletin <i>Arbitrazh</i> .
<i>Ispolkom</i>	Executive Committee of one or another local Soviet.
<i>Labor Legislation</i>	<i>Zakonodatelstvo o trude</i> , annotated Labor Code.
<i>Mezhdunarodnoe pravo.</i>	Textbook of International law. Publication of the Ministry of Justice in two volumes. Moskva, 1947. New edition of 1951 with essential changes.
M. T. S.	Machine Tractor Stations.
N. E. P.	New Economic Policy, a period since 1922 through 1928.
<i>Ostevropa</i>	<i>Zeitschrift für Gegenwartsfragen des Ostens</i> , Stuttgart.
<i>Pravo</i>	A weekly publication in prerevolutionary Russia under collective editorship of a group of Professors of Law and lawyers.
<i>Pravo Sovetskoi Rossii</i>	A symposium in two volumes published by Russian professors of Law in Prague, Czechoslovakia in 1925.
<i>Possev</i>	A weekly. Social and Political Review in Russian Language. Frankfurt/Main. Germany.
<i>Problemy Leninisma</i>	Also <i>Voprosy Leninisma, Leninism</i> . A symposium of speeches and articles by Stalin.
S. C. G. B.	Civil Code of Switzerland
<i>Sotsialisticheskaiia Zakonnost'</i>	Periodical of the Procuratorship of the U. S. S. R.
<i>Sotsialisticheskoe Zemledelie</i>	Periodical devoted to the problems of agricultural economy, in 1953 renamed <i>Selskoe Khoziastvo</i> .
<i>Sovetskaia Iustitsia</i>	Periodical of the Ministry (earlier People's Commissariat) of Justice of the U. S. S. R.
<i>Sovetskoe gosudarstvo i pravo</i>	The Soviet State and Law. Magazine of the Institute of Law of the Academy of Sciences of the U. S. S. R.
<i>Sovetskoe gosudarstvo, also Sov. Gos.</i>	The same magazine before 1940.

Soviet Press Translations	Publication of the Far-Eastern and Russian Institute, University of Washington, Seattle, Washington.
TsIK of the U.S.S.R.	Central Executive Committee of the Congress of Soviets replaced since 1936 with the Supreme Soviet of the U.S.S.R. and its Presidium
TsIK of the VKP(b)	Central Executive Committee of the All-Union Commu- nist Party, bolsheviks. Since the end of 1952 renamed as Central Committee of the Communist Party of the Soviet Union (CPSU).
U.S.S.R. Laws, also <i>Sobranie Zakonov SSSR.</i>	Collection of Laws and Decrees of the Sobranie Zakonov U.S.S.R.
<i>Vedomosti Verkhovnogo Soveta</i>	Official organ of the Supreme Soviet of the U.S.S.R. and its Presidium.
VKP (b) also C.P.S.U.	Communist Party of the U.S.S.R.

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