

# SOVIET LAW REFORM—DATELINE MOSCOW 1957

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DURING a month's stay in Moscow in August-September 1955, I learned that a larger-scale movement for law reform was underway in the Soviet Union, a movement whose dimensions could not easily be grasped by reading Soviet legal literature and the Soviet press.<sup>1</sup> A second trip to Moscow in May 1957 yielded additional information from leading Soviet jurists—justice officials, law professors, judges—who are themselves actively participating in drafting new legislation and new codes.<sup>2</sup>

That one must go to Moscow to learn of salient developments in Soviet law is testimony to what is today the most shocking feature of the Soviet legal system: the existence of secret laws. On the other hand, that one can go to Moscow and be told about the contents of secret laws and the unpublicized implications of published laws testifies to a certain relaxation of the secrecy. Slowly but significantly, the importance of publicizing legislation and judicial decisions is being recognized.<sup>3</sup>

The existence of even a limited secrecy, however, together with other restrictions upon free discussion imposed by the Communist system, particularly the rule that once a "Party line" is adopted it is not to be publicly criticized, raises doubts as to the value of statements made by Soviet jurists. Are they worth repeating? No simple answer can be offered. Some statements are, I believe, of great value and well worth repeating; others are not. Of course,

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1. See Berman, *Law Reform in the Soviet Union*, 15 AM. SLAVIC & EAST EUROPEAN REV. 179 (1956); Berman, *Impressions of Moscow*, Harv. L. School Bull., Dec. 1955, p. 7; Berman, *Soviet Legal Reforms—Some Steps Toward Justice*, The Nation, June 30, 1956, p. 546; N. Y. Times, Dec. 16, 1955, p. 1, col. 4 (containing several factual errors).

2. In Moscow in August-September 1955, I interviewed over twenty law professors, judges, practising lawyers and officials of the Ministry of Justice and of the Procuracy. The Procuracy is roughly equivalent to our attorney general's office but has considerably wider powers. See note 58 *infra*. In May 1957, I met many of the same people again, as well as some others. The interviews were arranged at my request by the legal section of VOKS (Society for Cultural Relations with Foreign Countries). The conversations were in Russian, generally without an interpreter, except that I talked in English with Professor S. A. Golunskii, head of the Institute of Criminology of the Procuracy of the U.S.S.R. The interviews generally lasted at least an hour-and-a-half; in the case of P. I. Kudriavtsev, Deputy Procurator General of the U.S.S.R., the conversation lasted three hours and forty-five minutes. I was able to talk with some people on two or three separate occasions. I took extensive notes of each interview.

Though not yet generally recognized as an important technique of legal scholarship, interviewing would seem to be an almost essential method of learning about changes in a legal system which are taking place but which have not yet been completed. Further, with respect to Soviet law, it is an indispensable method of discovering certain important developments which are not mentioned in Soviet textbooks, treatises, journals or published legislation received abroad.

3. On the extent, causes and significance of secrecy in the Soviet legal system, see pages 1209-11 *infra*.

it is important to apply proper standards of credibility to the statements offered, to judge their inherent probability or improbability, to weigh them in the light of corroborating or discrediting evidence. Merely to reject them out of hand can lead to absurdities.<sup>4</sup>

#### POLITICAL CRIMES

The most sensational revelation made to me in 1955 was that the Special Board of the Ministry of Internal Affairs—the chief legal instrument of terror in the past—had been abolished by a secret edict enacted shortly after Beria's arrest in 1953.<sup>5</sup> I was further told that cases decided by the Special Board were being reheard by the military tribunals and the regular courts, and that persons found to have been unjustly convicted were being rehabilitated. Apart from these disclosures, I then learned of no new legal developments in the area of political crimes. I was told that "the climate had changed," and that very few prosecutions were brought under article 58 of the Criminal Code on counter-revolutionary crimes.<sup>6</sup> But my informants indicated that no substantial changes were likely either in article 58 or in the special secret procedure in the military courts used in prosecutions under certain sections of that article.<sup>7</sup> This prediction was unduly pessimistic; for in April 1956, the

4. *But cf.* Gsovski, *New Trend in Soviet Justice?*, 5 PROBS. COMMUNISM, Jan.-Feb. 1956, pp. 25, 29.

5. By a decree of November 5, 1934, the Special Board of the Ministry of Internal Affairs was authorized to sentence to labor camps persons considered to be "socially dangerous," SOBRANIE ZAKONOV SSSR no. 11, art. 84 (1935) (hereinafter cited as COLL. LAWS USSR), in a secret administrative procedure in which there was no right of counsel and no right of appeal. See decree of July 10, 1934, *id.* no. 36, art. 283. The Special Board, with its various branches, was the chief legal instrument of terror during the Great Purge of the late 'thirties and thereafter.

The abolition of the Special Board was unknown even to top American specialists on Soviet affairs prior to the disclosures made to me in August 1955. It had, however, previously been reported in England. See Johnson, Book Review, 2 J. Soc. PUB. TEACHERS OF LAW (n.s.) 244, 245 (1954). It was first publicly confirmed in the leading Soviet legal-political journal *Sovetskoe Gosudarstvo i Pravo* (Soviet State and Law), Jan. 1956, p. 3. The secret 1953 edict has not yet been published; its date has recently been given as September 1953 in an unsigned article *What Has Been Done to Strengthen Socialist Legality*, in *Partiinaiia Zhizn'* (Party Life), Feb. 1957, pp. 66, 68.

Throughout this Article titles of articles in Soviet journals will be given in translation. Titles of journals and books will be given in transliteration and, in parentheses, in translation.

6. Actions are called counterrevolutionary if "directed toward the overthrow, undermining, or weakening of the Worker-Peasant soviets . . . or toward the undermining or weakening of the external security of the USSR or of the basic economic, political, and national [i.e., ethnic] conquests of the proletarian revolution. By virtue of the international solidarity of interests of all toilers, such acts shall also be considered counterrevolutionary if directed against any other toilers' state, even if that state does not form part of the USSR." See UGOLOVNIY KODEKS RSFSR (Criminal Code of the R.S.F.S.R.) art. 58 (1) (1956). The criminal codes of the other constituent republics of the U.S.S.R. contain identical provisions. Article 58 is discussed in BERMAN & KERNER, *SOVIET MILITARY LAW AND ADMINISTRATION* 155-58 (1955) and is translated in its entirety in BERMAN & KERNER, *DOCUMENTS ON SOVIET MILITARY LAW AND ADMINISTRATION* 95-100 (1955).

7. UGOLOVNIY PROTSESSUAL'NIY KODEKS RSFSR (Code of Criminal Procedure of the R.S.F.S.R.) art. 466-70 (1952), translated in *id.* at 157, provide that trial of terrorist

Presidium of the Supreme Soviet of the U.S.S.R. publicly repealed the special procedure<sup>8</sup> and eliminated the jurisdiction of military courts over all political crimes committed by civilians except espionage.<sup>9</sup>

Another far-reaching change in the law relating to political crimes remained secret, however, until it was disclosed to me in May 1957: the de facto repeal of article 58(1c) which makes close relatives of servicemen who fled beyond the border liable to exile for five years, whether or not they had any connection with, or knowledge of, the desertion.<sup>10</sup> This barbaric provision, I was told by Deputy Procurator General of the U.S.S.R., P. I. Kudriavtsev, "is no longer applied. There has not been a single prosecution under it in the last three or four years; for example, none of the relatives of Beria, Abakumov, or Merkulov were punished.<sup>11</sup> The provision will certainly not be in the new criminal codes now being prepared."<sup>12</sup>

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organizations and terrorist acts under articles 58(8) and 58(11) of the Criminal Code may take place twenty-four hours after presentation of the indictment to the accused, that the case shall be heard in the absence of the parties, that no appeal or petition for mercy shall be allowed and that the death sentence shall be executed immediately upon sentencing. These articles are based on the so-called Kirov Law enacted in December 1934 immediately after the death of Sergei Kirov and used in the trials of persons charged with complicity in his assassination.

The procedure established by these provisions was used in the trials of L. P. Beria, former Minister of Internal Affairs, in December 1953, and V. S. Abakumov, former Minister of State Security, in December 1954. On the opinion of Soviet jurists in 1955 with regard to the future of these provisions, see Berman, *Law Reform in the Soviet Union*, 15 AM. SLAVIC & EAST EUROPEAN REV. 179, 184 (1956).

8. *Vedomosti Verkhovnogo Soveta SSSR* (Journal of the Supreme Soviet of the U.S.S.R.; hereinafter cited as *Vedomosti*), no. 9, art. 193 (1956). The Presidium of the Supreme Soviet is a body of 33 men empowered to enact so-called edicts (*ukazy*, "ukases") between sessions of the parent body.

9. *Ibid.* "All cases of state crimes committed by civilians, except for cases of espionage, are [by this edict] excluded from the jurisdiction of the regional, territorial and supreme courts." *What Has Been Done to Strengthen Socialist Legality*, *supra* note 5, at 69. The military tribunals continue to have exclusive jurisdiction over all crimes committed by military personnel, and over complicity in military crimes committed by civilians. See BERMAN & KERNER, *SOVIET MILITARY LAW AND ADMINISTRATION* 108-09 (1955).

Prior to this edict, civilians were subject to the jurisdiction of military courts for the so-called counterrevolutionary crimes of treason, espionage, terror, sabotage, arson, and "other types of subversive acts" under sections 6, 8 and 9 of article 58. *Ibid.*

10. See *id.* at 69.

11. See note 7 *supra*. V. N. Merkulov, former Minister of State Control, was tried and sentenced to death in December 1953 together with Beria and others. Kudriavtsev's examples seem ill chosen, since none of the persons named fled beyond the border. When I mentioned this, he said: "A person can be a traitor to the motherland in Moscow just as well as in Berlin or Paris, and what greater traitor has there been than Beria?" Perhaps his impatience with the question was due in part to the desire to emphasize that punishment of relatives in general, and not merely relatives of servicemen who flee the country, is no longer practised.

However the statements of Kudriavtsev regarding Soviet law and policy may not be applicable in Albania, where relatives of discredited political leaders have reportedly been exiled as recently as April 1957.

12. For discussion of the new criminal codes, see text at notes 42-60 *infra*.

When asked whether any directive of the Procurator General of the U.S.S.R. instructed procurators not to prosecute under article 58(1c), Kudriavtsev replied that no directive had been issued but that the matter had been discussed at a conference of procurators and that "by common consent and understanding it had become a 'dead' law." He further said that all people previously convicted under article 58(1c) had been rehabilitated under the 1953 amnesty decree.<sup>13</sup>

Both Kudriavtsev and Viktor N. Kalinin, head of the Scientific Research Division of the Ministry of Internal Affairs, gave statistics on the release of political prisoners from labor camps since Stalin's death in March 1953. Kalinin said that less than one per cent of the present prisoners are "politicals," while Kudriavtsev's figure was "less than two per cent." Although neither would offer absolute figures, Kudriavtsev apparently wanted to convey the impression that about three million persons were under detention in March 1953, almost half of whom were "politicals," while now some 800,000 or 900,000 persons are under detention, less than 18,000 of whom are "politicals."<sup>14</sup>

Whether or not these figures bear any relation to the realities,<sup>15</sup> it is very likely that a vast number of political prisoners have been rehabilitated in the past four years.<sup>16</sup> Kudriavtsev said that a special commission has been established in every labor camp to review each conviction in the past twenty to thirty years, and that the commission, set up under the Supreme Soviet of the U.S.S.R., has the power to rehabilitate locally without recourse to higher authority. He added that the task of rehabilitating people in the camps is now completed, although the rehabilitation of persons who finished serving their sentences or who died in the camps is still going on.

#### LABOR CAMPS

The figures given to me concerning the number of people under detention in the Soviet Union are the first statistics Soviet officials have released on the subject. In view of this release—as inadequate as the figures are—and of the agitation for publication of labor camp statistics by Soviet jurists and, indeed, by the Procurator General of the U.S.S.R. himself,<sup>17</sup> it seems likely

13. *Vedomosti*, no. 4 (1953). The amnesty released, among others, all persons sentenced for five years or less. See note 18 *infra*. The amnesty edict is translated in BERMAN & KERNER, *DOCUMENTS ON SOVIET MILITARY LAW AND ADMINISTRATION* 121-22 (1955).

14. See page 1196 *infra*.

15. Estimates of Western specialists have ranged from "two to three" to "over twenty" million. See *Report of the Ad Hoc Committee on Forced Labour*, Studies and Reports of the International Labour Office (New Series), No. 36, at 440-43 (1953).

16. That large numbers have been released is corroborated by statements made to American and other foreign visitors to the Soviet Union by many Russians who have themselves been freed in recent years.

17. In an article which appeared in May 1956, Procurator General Rudenko criticized the unnecessary withholding of statistical information for its deleterious effect on research. "In order successfully to carry out the struggle against crime," he stated, "it is necessary to know how crime develops not only qualitatively but also quantitatively (in terms of

that the Soviet government is preparing official statistics and that the figures I was given will roughly correspond to them.

The number of prisoners sentenced to places of detention in the Soviet Union today, according to Kudriavtsev, is less than 30 per cent of the number detained prior to Stalin's death in March 1953. Moreover, of the persons now serving sentences, more than half have been sentenced since March 1953. If these figures are accurate, they mean that over 85 per cent of persons serving sentences in March 1953 are no longer under detention. Kudriavtsev also reported that under the amnesty of March 1953, approximately 52 per cent of all detained persons were released.<sup>18</sup> Of the remaining 48 per cent, all have had their cases reviewed, and many have been rehabilitated either by reviewing courts or boards<sup>19</sup> or by subsequent amnesties.<sup>20</sup> In addition, he declared that approximately 50 per cent of people presently under detention were convicted for theft,<sup>21</sup> approximately 20 to 30 per cent for "hooliganism,"<sup>22</sup> and the rest for

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methods of crime, character of criminal activity, etc.). To know this is possible only by analyzing statistical materials and by gathering cases grouped according to defined forms of crimes." Rudenko, *Tasks for the Further Strengthening of Socialist Legality in the Light of the Decisions of the 20th Congress of the C.P.S.U.*, Sovetskoe Gosudarstvo i Pravo (Soviet State and Law), no. 3, at 15, 21 (1956).

In an unsigned editorial in the September 1956 issue of the same journal, the point was made even more forcefully: "It is well known, for example, that for the successful struggle against crime the study of its causes has great significance. But the general figures as well as every kind of record and report were closed; scholars could not make use of statistical data and necessary documents, with the result that in the course on criminal law the section on the study of the causes of crime was excluded. . . . Also the Corrective Labor Code was to a large extent replaced by departmental and other secret instructions . . ." *For the Improvement of Legal Education in the USSR*, *id.*, no. 6, at 3, 7.

18. See note 13 *supra*. In addition to releasing all persons sentenced for a period up to and including five years, the amnesty released persons convicted of official and economic crimes and of certain (non-political) military crimes, as well as women with children under ten years of age, pregnant women, minors under eighteen, men over fifty-five, women over fifty and persons suffering from serious incurable ailments. Sentences for persons serving terms of more than five years were reduced by half. The amnesty did not extend to persons sentenced for more than five years for counterrevolutionary crimes, large-scale plunder of socialist property, banditry or intentional homicide. .

19. See text at notes 5-6, 13 *supra*.

20. An amnesty of 1955 freed persons imprisoned for collaborating with the Germans during World War II and revoked the non-application of the 1953 amnesty, see note 18 *supra*, to persons sentenced for theft of socialist property. *Vedomosti*, no. 17, art. 345 (1955). An amnesty of 1956 freed former Soviet military personnel convicted for surrendering to the enemy. *Vedomosti*, no. 19 (1956).

21. Theft of personal property and of state or social property is punishable by confinement to a corrective labor camp for from five to twenty years under edicts of June 4, 1947. *Vedomosti*, no. 19 (1947). The minimum punishment for theft of state property has recently been reduced. See note 48 *infra* and accompanying text. The Criminal Code authorizes courts to fix a sentence lower than the minimum prescribed by any particular code provision when it finds exceptional circumstances so warranting. *UGOLOVNIY KODEKS RSFSR* (Criminal Code of the R.S.F.S.R.) art. 51 (1953).

22. "Hooligan acts in enterprises, institutions or public places" are punishable by imprisonment for one year under article 74 of the Criminal Code of the R.S.F.S.R. and by

miscellaneous crimes. Of the political prisoners, most were convicted of collaboration with the punitive divisions of the German police and army during the war.<sup>23</sup> He claimed that the prisoners in the Soviet Union today are fewer than in the 1920's, and less than one third of the number of prisoners in pre-revolutionary Russia; the latter number he alleged to be two million but apparently meant its relation to the present figure to be modified by the increase in population of about forty million.<sup>24</sup>

More interesting than these figures—in view of their obscurity and incompleteness—is the report given of an unpublished decree of the Council of Ministers of the U.S.S.R. of October 25, 1956 on conditions of detention. The decree, I was told,<sup>25</sup> eliminates the term “corrective labor camps,” and allows only two forms of prisoner detention, “corrective labor colonies” and prisons.<sup>26</sup> Secondly, it announces the “principle” that a person sentenced to deprivation of freedom be sent to a place of detention in the region in which he lives. The new law also is said to require a far more liberal regime for prisoners than

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sentence to a corrective labor camp of from three to five years if committed in a violent or disorderly way, or repeatedly, or obstinately despite efforts of organs of social protection to stop them, or with “exceptional cynicism or insolence.” The word “hooligan” (*khuligan*) is not defined in the code. By interpretation of the Supreme Court of the U.S.S.R., it refers to a breach of the social order which clearly manifests disrespect for society. Thus offensive conduct manifesting only personal hostility to the victim is not hooliganism. UGOLOVNYI KODEKS RSFSR (Criminal Code of the R.S.F.S.R.) art. 74 & note (1953). In December 1956, a summary jail sentence of three to fifteen days was authorized in cases of so-called “petty hooliganism” which do not fall under article 74. See note 49 *infra* and accompanying text.

23. Kudriavtsev said that if the political prisoners sentenced for collaborating with German punitive units were released “the people who remember their crimes would not treat them nearly as well as they are being treated in the labor colonies.” At another point in the conversation he stated: “Our conscience is clear that the political prisoners who are now in the colonies actually committed crimes against the state.”

24. Kudriavtsev's figure of two million prisoners in pre-revolutionary Russia seems greatly exaggerated. See 34 BROKGAUZ & EFRON, *ENTSIKLOPEDICHESKII SLOVAR'* (Encyclopedia) 365 (1902) (81,853 men and 8,288 women were under detention in all prisons of Russia on Jan. 1, 1900); 31 *id.* at 384 (298,577 persons in exile in Siberia in 1897). In 1900, the power of peasant and citizens' societies to impose exile for certain offenses—which accounted for almost half the number of persons exiled in 1897—was withdrawn. In April 1917, the Provisional Government abolished all remaining forms of exile. 41 *ENTSIKLOPEDICHESKII SLOVAR' RUSSKOGO BIBLIOGRAFICHESKOGO INSTITUTA GRANAT* pt. IV, at 302-03.

25. The decree was mentioned briefly in *What Has Been Done to Strengthen Socialist Legality*, *supra* note 5, at 67. I asked if I could have a copy of the decree but was told that it had not been published. In fact, decrees of the Council of Ministers have generally not been made public since 1950. Edicts of the Presidium of the Supreme Soviet are generally, but not always, published.

26. “Corrective labor colonies” have hitherto been reserved for persons sentenced for terms up to three years. They are distinguished from corrective labor camps by a more lenient regime, with visits and even leaves of absence sometimes permitted, and by the fact that they are not generally in remote regions of Siberia. Prisons were considered “bourgeois” until 1936 when they were restored for “more dangerous crimes” at the discretion of the courts. *COLL. LAWS USSR* no. 44, art. 370 (1936). However, they seem to have been used relatively infrequently.

existed in the labor camps, including lighter work loads, work for which the prisoners are trained rather than merely coarse labor, schooling through the eighth grade, technical training of various kinds, emphasis on educational and cultural activities and a certain amount of self-government.<sup>27</sup> Finally, and perhaps most important, the new law supposedly transfers the administration of labor colonies to the joint control of the Chief Administration of Corrective Labor Colonies of the MVD and the executive committees of the regional councils, the chief organs of local government, operating through local Supervisory Commissions. The local Supervisory Commissions—one for each colony—include representatives of local trade union, Young Communist and administrative agencies. They not only inspect and supervise but also have authority to dismiss labor colony personnel.<sup>28</sup>

Unfortunately, the law of October 25, 1956 was enacted without an accompanying appropriation, and thus far not many new labor colonies have been constructed. A few may be found in Georgia and Armenia, according to Kudriavtsev, but the old labor camps, almost all of which are situated in Siberia, must still be utilized. He stated that about one third of the former labor camps are presently in use; thus if his figure of a seventy per cent decline in

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27. Kudriavtsev stressed the psychological importance of useful work. "The prisoners shouldn't just sit and suck their fingers. Being without work is the worst punishment a man can have. A prisoner wants to do useful work—he is used to working, he wants to improve his professional qualifications, and good work is a means of reducing his sentence. The labor camps were mostly in remote places in Siberia where there was timber and gold, but not work requiring skill."

He added that it is advantageous to serve one's sentence in the region where he lives. "Then one can see relatives from time to time, and it is less oppressive psychologically. It makes no sense to send a man from Kiev to Krasnoirsksk, or from Riga to the other side of the Urals."

Kalinin, who as head of the Scientific Research Division of the Ministry of Internal Affairs is responsible for the study of conditions of detention, and his assistant, Professor Evsei Shirvind, both stressed that the change from labor camps to labor colonies "is not merely a terminological reform." The teaching of prisoners, they said, is now under the supervision of the ministries of education of the various republics, and great stress is being laid on the principles of Makarenko (a progressive educator of the 'twenties, many of whose ideas were repudiated in the 'thirties and 'forties). Also there is a new emphasis, they stated, on development of libraries in the colonies, opportunities to listen to the radio and attend moving pictures, and facilities for creative participation in concerts and sports, together with limited self-government by the prisoners. They termed this a trend toward "democratization" of life in the colonies.

The interviews did not clearly reveal to what extent these rights and privileges were enacted in the decree of October 25, 1956, and to what extent they are contained in a draft Statute on Corrective Labor which is said to be already introduced into practice though not yet formally adopted. Kudriavtsev spoke of "proper educational facilities for prisoners, proper work, proper wages, their rights to write letters, to go to the movies, to attend school, to take training courses, to have their comrades' courts, and so forth." When I asked where these rights are set forth, he replied that they are in the new Statute on Corrective Labor, in existing laws and in the decree of October 25, 1956.

28. Local Supervisory Commissions were established by the 1924 Statute on Corrective Labor, but Kudriavtsev stated that they subsequently ceased sitting.

prisoners is accepted, a large proportion of criminals are now being sent to regions remote from where they live. "We do not like to spend our money on building new places of detention for criminals," one person said. "The principle that work in labor colonies should be connected with some useful economic activity, such as a factory, means that it will take time to set up new colonies," another added. On the other hand, Kalinin stated that the majority of persons now serving sentences are in colonies. I neglected to inquire what proportion were sentenced for less than three years; the question is relevant, since even before the current reform, sentences up to three years were served in corrective labor colonies, not in corrective labor camps.

Probably the most important change in the conditions of detention in the Soviet Union since 1953—a shift in administrative personnel—is impossible to measure. Kalinin and his assistant, Professor Evsei Shirvind, stressed that new people are now administering the colonies, that they are on the whole much better qualified than their predecessors and that many of them are professional educators and people with legal training. Kudriavtsev said: "The cadres have changed significantly. Many workers have been replaced." Indeed, Kudriavtsev was personally in charge of sweeping the Augean stables when, in connection with the arrest of Beria, the administration of labor camps was transferred from the MVD to the Ministry of Justice.<sup>29</sup> The assignment was given to Kudriavtsev, then First Deputy Minister of Justice.<sup>30</sup>

At the same time, the cleansing of the MVD and its separation from the security police were initiated. "The Committee on State Security has nothing to do with our work," Kalinin volunteered. "It makes no difference whether or not we are dealing with spies or with any other kind of criminal, the MVD is entirely independent of the security organs in running the camps." He did admit, however, that the political prisoners are kept separate from the non-politicals.

I asked whether the large-scale release of prisoners from the labor camps did not involve an economic sacrifice in terms of the loss of a mobile labor force. Kalinin replied: "It has been proved that the camps were not profitable from an economic point of view. The ministries did not like to make contracts with the camps because the costs were so high." I asked then whether it was true, as some said, that about ten guards were required for every one hundred prisoners. Kalinin said the figure was too high—not more than five guards were needed.

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29. Kudriavtsev held the post from April 1953 to February 1954. Although it was fairly widely known that the administration of the labor camps was transferred to the Ministry of Justice during that period, I believe this is the first official confirmation of it.

30. Kudriavtsev said that he entered the Procuracy in 1927 and has been there ever since, except for eight years from the end of 1947 to 1956, when he was First Deputy Minister of Justice of the U.S.S.R. My three hour and forty-five minute interview with him left me with the impression of a man of unusual ability, vitality and toughness. Among other things, he has found time to be the chief editor of a recent two-volume legal encyclopedia, the *IURIDICHESKII SLOVAR'* (1956), and, before the war, to teach a course at the university in political economy, devoted largely, he said, to the theories of Adam Smith and Ricardo.

Kalinin furnished a clue as to why the new law on labor colonies has not yet been published, even though officials can talk about it to a visiting American. He stated that a draft statute on corrective labor, submitted by the Ministry of Internal Affairs to the government, now awaits enactment, and that much contained in the draft is already in force under the unpublished law. In other words, the government is almost but not quite ready to complete the reform.

#### RE-WRITING THE CODES

The long-range significance of Soviet statutory changes in the area of political crimes is diminished by the fact that in that area of law, more than in most others, statutes are easily blown about by the shifting winds of policy. In other fields, law tends to establish irreversible practices and new institutions. To take an example from civil law, Soviet policies with respect to workmen's compensation and safety measures in factories have been strongly influenced by doctrines of tort law, legal aspects of insurance and the requirements of civil procedure.<sup>31</sup> Similarly in criminal law, penal sanctions against unauthorized quitting, lateness and absenteeism by workers in peacetime had to be abandoned because they exceeded the limits of effective legal action and could not have been maintained without drastic changes both in substantive criminal law and in criminal procedure.<sup>32</sup> Thus the current Soviet movement for recodification of the law relating to the judiciary and the legal profession, crimes, labor, family relations and similar matters may well have a more enduring influence upon Soviet policy and politics than the more dramatic changes in the statutory law of political crimes.<sup>33</sup>

In considering the current movement for re-codification, one must bear in mind that similar movements have been going on in the Soviet Union for almost thirty years. The present codes—criminal law, criminal procedure, civil law, civil procedure, labor law, family law and land law—all date from the 1920's. After the end of the New Economic Policy in 1928 and the beginning of the so-called period of the Five-Year Plans, with collectivization of agriculture and rapid industrialization, agitation arose to revise the codes in conformity with principles of "transition to socialism." But in 1936, it was proclaimed that socialism had now been achieved; the "transition" drafts of the early 1930's were denounced, and new "socialist" codes were demanded.<sup>34</sup>

The NEP codes are republican codes; each of the sixteen constituent republics has its set, though the R.S.F.S.R. codes served as models which were

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31. See KONSTANTINOVSKY & BERMAN, *SOVIET LAW IN ACTION: THE RECOLLECTED CASES OF A SOVIET LAWYER* 65-71, 76-77 (1953); Hazard, *Personal Injury and Soviet Socialism*, 65 HARV. L. REV. 545 (1952).

32. See note 45 *infra* and accompanying text; cf. Berman, Book Review, 66 HARV. L. REV. 950, 954-55 (1953).

33. The text discussion assumes that the changes in the statutory law of political crimes do not reflect a fundamental constitutional reform. No evidence of such a reform exists apart from the statutory changes and the new policy which they manifest. See pages 1214-15 *infra*.

34. See BERMAN, *JUSTICE IN RUSSIA* 38, 44-50 (1950).

followed closely and which, indeed, a few have adopted outright. The 1936 Constitution, however, provided for all-union criminal, civil and procedural codes. From 1936 on, efforts were made to draft such codes, and some completed drafts were printed, although none were made public. For reasons never explained in Soviet writings, the adoption of new all-union codes seemed to present insuperable difficulties.

In 1955, I was told by a succession of Soviet jurists that draft all-union codes of criminal law and criminal procedure were virtually completed and would probably be presented to the Supreme Soviet of the U.S.S.R. for adoption early in 1956. However, no drafts were offered at the semi-annual session in February 1956, and one year later, the Supreme Soviet amended the Constitution to eliminate the requirement of all-union codes.<sup>35</sup> The amendment provided for individual republican codes to be rewritten on the basis of new all-union "foundations" (*Osnovy*), or basic principles, to be enacted by the Supreme Soviet of the U.S.S.R. The decision against all-union codes was connected, I learned in May 1957, with the general policy of decentralization advocated just at the time the draft all-union codes were to be presented to the Supreme Soviet. Delay in the enactment of all-union foundations has been due principally to the necessity of discussing their proper scope; also the drafts of foundations have been undergoing revision at the hands of the various commissions in charge. "It is the fate of drafts," Professor M. S. Strogovich said, "continuously to be changed."<sup>36</sup> Nevertheless, progress has been made.

A draft of foundations of the judiciary and the legal profession has been approved by the two Legislative Proposals Commissions of the Supreme Soviet, apparently the highest drafting commissions, and is ready for adoption. A law professor who sits on a consulting body of one of the Legislative Proposals Commissions—D. S. Karev, Dean of the Law Faculty of Moscow University—told me in May 1957 that "if there is time the draft will be presented to the Supreme Soviet at the present [May] session." Apparently there was not time, but it was announced to the press that the draft was finally approved and would be presented at the next session.<sup>37</sup> Dean Karev said that the draft does not much differ from existing law. It does not provide for jury trial in certain cases, as some Soviet jurists have advocated. On the other hand, he mentioned two new features in the draft: all new judges must have a legal education, and the colleges of advocates, composed of most lawyers who are not legal advisers of state business enterprises, will have more independence.

Drafts of foundations of criminal law and of foundations of criminal procedure have been approved by the Juridical Commission of the Council of Ministers, according to a law professor who is a member of one of the consulting bodies

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35. *Vedomosti*, no. 4, art. 63 (1957).

36. Professor Strogovich, perhaps the leading Soviet expert on criminal procedure, speaks from experience. Provisions which he has succeeded in getting through the drafting commission for which he is a consultant have apparently not always been treated with respect by superior commissions.

37. Tass dispatch, Moscow, May 14, 1957, on file in Yale Law Library.

of that commission. However, a consultant of one of the Legislative Proposals Commissions of the Supreme Soviet later said that his commission recently considered the Juridical Commission's criminal procedure draft, and "when we were finished stone was not left upon stone." He assured me, nevertheless, that the Legislative Proposals Commissions will probably present drafts of criminal law and criminal procedure to the Supreme Soviet in the fall of 1957; the differences of opinion that now exist, he said, are mostly confined to detail.<sup>38</sup>

A draft of foundations of labor law has been submitted to the Council of Ministers by its Juridical Commission. Professor A. S. Pasherstnik, a leading specialist in labor law who helped prepare the draft, said that the draft has been sent out to the ministries and to various individuals for their opinions.

Each of these drafts—judiciary and legal profession, criminal law, criminal procedure and labor law—is scheduled to be presented to the Supreme Soviet in the fall of 1957, according to N. K. Morozov, one of the two vice-presidents of the Supreme Court of the U.S.S.R., who himself is a consultant on criminal law to the Legislative Proposals Commissions of the Supreme Soviet. With respect to the scope of the foundations in these four fields, it appears that the most important aspects of the law generally will be covered, and that variations in detail will be permitted to the republican codes. For example, the foundations of criminal law will leave some leeway to the republics to vary the sanctions for particular crimes. On the other hand, Professor Pasherstnik said that the foundations of labor law, judging by the present draft, will amount in fact to a code; this is inevitable, he added, since the basic principles of labor law do not allow for much differentiation of particular provisions.<sup>39</sup>

Other drafts of foundations which may be prepared are not far advanced. Thus, in family law, some preliminary discussion has occurred on liberalizing marriage and divorce law and alleviating the situation of children born out of wedlock,<sup>40</sup> but in civil law, civil procedure and land law, drafts are not being

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38. Professor S. A. Golunskii, who is head of the Institute of Criminology of the Procuracy of the U.S.S.R., on the other hand, said that delays in completing the draft foundations of criminal law have been due chiefly to the "very difficult legislation now being prepared to deal with the reorganization of industry." Professor Strogovich stated that one of the causes of delay has been the fact that "the cult of personality still manifests itself from time to time."

39. Professor Pasherstnik stated, however, that Professor N. G. Aleksandrov, another leading expert on labor law, has been urging that the foundations should contain merely the broadest statements of principles, e.g. the right to work, the right to rest and leisure, leaving the detailed law of hiring and firing, wages, workmen's compensation and so forth, to republican codes. See Aleksandrov, *Certain Questions of Labor Law in the Light of the Decisions of the 20th Congress of the C.P.S.U.*, *Sovetskoe Gosudarstvo i Pravo* (Soviet State and Law), no. 3, at 36 (1956). Professor Pasherstnik added: "So far, Professor Aleksandrov's views on this have not prevailed."

40. The Soviet press has recently discussed possible liberalization of requirements for both marriage and divorce, re-establishment of paternal responsibility for support of children born out of wedlock and other changes in family law. Professor G. M. Sverdlov, perhaps the leading Soviet expert on family law, told me that there is little prospect of drastic change, though some steps are likely to be taken to alleviate the position of children born out of wedlock.

talked about, though individual reforms in these areas are discussed in Soviet legal literature.

The jurists with whom I talked both in 1955 and 1957 indicated that the primary obstacles to the enactment of new Soviet codes are technical in nature and are being rather quickly overcome. In speaking of what had held up codification in the past, one prominent jurist stated that prior to 1953, "there was no pressure from above; no one at the top was sufficiently interested." Since 1953, and especially since 1955, he said, that situation has changed.<sup>41</sup> Apparently, the Communist Party leadership has come to realize that law reform is essential to economic, political and social stability. Moreover, the post-Stalin "thaw" has made it possible to draft new formulations of "socialist" principles of law without the mortal fear of being accused of some kind of deviation. On the technical level, the decision to divide the burden of drafting between the all-union and the republican authorities has eased the job considerably, since difficult problems may be shifted from the all-union foundations to the republican codes. Moreover, a great many of the provisions which will go into the future law appear to be already in force by virtue of recent legislation or administrative directives. The re-codification may well be largely accomplished; we just do not know about it yet. It would be folly not to realize, however, that there's many a political and ideological slip 'twixt the Soviet cup and the Soviet lip.

#### CURRENT TRENDS IN SOVIET LAW REFORM

A number of important reforms in the fields of criminal law, criminal procedure and judicial administration have been introduced since 1955. Criminal responsibility for some acts has been eliminated altogether. Thus, by successive edicts in 1955, imposition of criminal penalties was eliminated for a collective farmer's failure to fulfill the required amount of work on the collective fields,<sup>42</sup> for unauthorized travel on freight trains,<sup>43</sup> for sale, exchange or release by managers of surplus equipment or materials<sup>44</sup> and for lateness, absenteeism or unauthorized quitting on the part of workers.<sup>45</sup> Moreover, the law making

41. The statement was made by Professor Golunskii. In speaking of 1955, he was presumably referring to the resignation of G. M. Malenkov in February of that year.

42. I was told of this edict in 1955 and again in 1957, but have not seen it. The first reference to it which I have seen in Soviet literature is in *What Has Been Done to Strengthen Socialist Legality*, *supra* note 5, at 69.

43. *Vedomosti*, no. 5, art. 114 (1955).

44. *Vedomosti*, no. 8, art. 183 (1955). The punishment for this crime under the 1941 law was two to five years imprisonment. See BERMAN, *JUSTICE IN RUSSIA* 69 (1950); KONSTANTINOVSKY & BERMAN, *op. cit. supra* note 31, at 33 (the Odessa Bread Trust, in April 1941 forced to apply for permission of the Council of Ministers of the U.S.S.R. to transfer two bags of flour weighing 160 kilograms from one bakery to another, received the reply from the Chairman of the Council of Ministers, "Transfer permitted. Signed Molotov").

45. *Vedomosti*, no. 10, art. 203 (1956). Criminal sanctions for these acts were imposed in 1940. An unpublished edict of 1951 apparently eliminated the sanctions—at least in most

innocent relatives of servicemen who desert beyond the border liable to exile for five years is said to be no longer applied.<sup>46</sup> Also, the policy of prosecution for official negligence is said to have been modified by directives of the Procurator General of the U.S.S.R. which authorize prosecution only in exceptional cases.<sup>47</sup>

Criminal sanctions for some acts have been considerably reduced. By an edict of January 10, 1955, sentences for petty theft of state and social property have been reduced from a minimum of five or seven years' deprivation of freedom to a fine of twenty-five per cent of monthly wages from six months to a year or three months' deprivation of freedom or, in aggravated cases, deprivation of freedom from one to two years.<sup>48</sup> Similarly, an edict of December 19, 1956, establishing a summary procedure for trial of so-called "petty hooliganism" and jail sentences of three to fifteen days, makes it easier for courts to avoid handing down long sentences to labor colonies for what in fact amounts to a breach of the peace.<sup>49</sup> Further, summary detention of transport workers for disciplinary offenses has been abolished,<sup>50</sup> and the system of probation has been liberalized.<sup>51</sup>

The accused has also benefited from the modification of judicial doctrines. Courts have narrowed the definitions of conspiracy and "gang",<sup>52</sup> also the doctrine of analogy, which allows conviction for an act not specifically pro-

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cases—but left the prohibition. See HAZARD, LAW AND SOCIAL CHANGE IN THE U.S.S.R. 186 (1953).

46. See note 10 *supra* and accompanying text.

47. Professor Golunskii, who told me this, said that there have been very few such prosecutions in recent years. For the extent to which the Soviet law of official negligence is a threat both to exercise of initiative by enterprise managers and to legal security, see KONSTANTINOVSKY & BERMAN, *op. cit. supra* note 31, at 16-25.

48. This edict was not individually published, but it is included in the 1956 edition of the R.S.F.S.R. Criminal Code, which I saw in Moscow but which is not yet available in the United States. The edict is summarized in *What Has Been Done to Strengthen Socialist Legality*, *supra* note 5, at 69. The effect of the edict is to make petty theft of state property punishable far less severely than petty theft of personal property. See note 21 *supra*.

49. The edict is published in *Sovietskaia Rossiia*, Dec. 20, 1956, p. 1, col. 6. See also note 22 *supra*.

50. See *What Has Been Done to Strengthen Socialist Legality*, *supra* note 5, at 69.

51. An edict of July 14, 1955 permits release on probation of persons who have completed two-thirds of their sentences. See UGOLOVNYI KODEKS RSFSR (Criminal Code of the R.S.F.S.R.) note to art. 54(1) (1956). A previous edict of April 24, 1954 permitted release on probation of persons who committed crimes when under eighteen years of age, after they had served one-third of their sentence, or remission of the sentence after six months.

52. The U.S.S.R. Supreme Court ruling of March 19, 1948, which permits a broad definition of a "gang," is not included in the 1956 edition of the Criminal Code of the R.S.F.S.R. as it was in the last previous edition (1953), as a note to articles 20 and 28. Instead, a ruling of the U.S.S.R. Supreme Court of May 28, 1954 which states that theft by a group is not necessarily a conspiracy, and that each participant in a conspiracy is responsible only to the extent of his personal share in the prohibited action, is inserted.

hibited but "analogous" to a proscribed act, is said to be no longer applied.<sup>53</sup> In addition, the Supreme Court of the U.S.S.R. instructed lower courts on October 23, 1956 that they were interpreting the doctrine of necessary defense of oneself or another too narrowly in criminal cases.<sup>54</sup>

Some of the worst features of Soviet criminal procedure have been eliminated or partially corrected. Not only has the special secret procedure in the military tribunals for trial of espionage, subversion and terrorist acts been abolished, and the jurisdiction of military courts over political crimes committed by civilians limited to cases of espionage,<sup>55</sup> but practices designed to give the accused further protection have reportedly been established. In the preliminary investigation of criminal cases, the investigator, though subordinate administratively to the procurator, who is also the prosecutor, cannot be ordered by him to bring an indictment.<sup>56</sup> Moreover, the burden of proof has been placed more squarely on the prosecution, and the standards of proof have been raised.<sup>57</sup>

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The decisions and rulings of the U.S.S.R. Supreme Court were not generally available to the public between 1950 and 1955. See page 1209 *infra*. The 1956 edition of the R.S.F.S.R. Criminal Code is not yet available in this country.

53. See UGOLOVNIY KODEKS RSFSR (Criminal Code of the R.S.F.S.R.) art. 16 (1953). For the history and significance of this article, see BERMAN, *JUSTICE IN RUSSIA* 27, 47, 214, 274 (1950); BERMAN & KERNER, *SOVIET MILITARY LAW AND ADMINISTRATION* 69-71 (1955).

54. This issue has been frequently discussed both before and after the Supreme Court instruction. The instruction is referred to in *What Has Been Done to Strengthen Socialist Legality*, *supra* note 5, at 71.

55. See *Vedomosti*, no. 9, art. 193 (1956).

56. This was told to me in May 1957 by Professor S. A. Golunskii, head of the Institute of Criminology of the Procuracy of the U.S.S.R.

57. A. A. Piontkovskii, a well-known Soviet professor of criminal law, has recently attacked A. Ia. Vyshinsky, Procurator General of the U.S.S.R. and Minister of Foreign Affairs under Stalin, on the ground that he attached too much significance to the evidentiary value of confessions, that he allowed the belief to arise that the accused was responsible for establishing his innocence in the same way that the prosecution was responsible for establishing his guilt, that he did not advocate strict enough standards of proof of complicity, and that he ignored the subjective rights of the citizen and focused instead on the subordination of the citizen to the state. *Izvestia*, March 1, 1957, p. 2, col. 1. In an unsigned article, *The 20th Congress of the C.P.S.U. and the Tasks of Soviet Legal Science*, *Sovetskoe Gosudarstvo i Pravo* (Soviet State and Law), no. 2, at 8-9 (1956), Vyshinsky is criticized for denying that the court in a criminal case must establish absolute truth and for asserting that the court may convict a person on the mere basis of the probability of certain facts. "This kind of assertion," the article states, "departs from the demands of the Party and the Government for strictest observance of legality in the activity of investigating, judicial and procuracy organs." *Ibid.* Vyshinsky has been criticized in similar terms in other articles.

Professor M. S. Strogovich, on the other hand, who had criticized some of Vyshinsky's theories even before his death, stated to me in May 1957 that it would be incorrect to say that Vyshinsky's doctrines as a whole are in disfavor in the Soviet Union today. "The general tendency and direction of Vyshinsky's teachings were correct," Professor Strogovich said, "but he had certain individual erroneous theories. I consider myself his pupil, though we quarreled. He criticized me more than I criticized him—which is thoroughly understandable. Some of Piontkovskii's criticisms are right, especially those referring to

The enforcement machinery and the court system have also been substantially reformed. A comprehensive statute defining the rights and duties of the Procuracy as an agency of supervision of the legality of administrative and judicial acts was enacted for the first time in Soviet history on May 24, 1955.<sup>58</sup> This edict specifically imposed criminal as well as disciplinary responsibility upon procurators for failure to protest any illegal acts committed in the administration of places of detention.<sup>59</sup> An edict of May 31, 1956 abolished the Ministry of Justice of the U.S.S.R., and on August 4, 1956, regional and territorial divisions of the republican ministries of justice were eliminated. The lower courts were thus freed from supervision by justice officials.<sup>60</sup>

By a law of February 12, 1957, the Supreme Court of the U.S.S.R. was reorganized to permit more decisions to be made by the supreme courts of the constituent republics; concurrently, a new president was appointed to the

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Vyshinsky's writings on complicity and the burden of proof, but on the whole I think the article is one-sided."

Professor S. A. Golunskii said that there is no strong feeling against Vyshinsky and that he is not particularly identified with the end of the Stalinist period. He said that Vyshinsky is now being criticized especially for stating that in political cases, as distinct from non-political, an uncorroborated confession is enough basis for a conviction, and for making certain other distinctions in standards of proof for political and non-political cases.

58. *Vedomosti*, no. 9, art. 222 (1955). The Procuracy, concerned with the observance of laws generally, has power to prosecute criminal cases and to protest to higher judicial and administrative authorities any judicial or administrative act which it considers contrary to law. Thus it can protest lower court decisions in both criminal and civil cases and can investigate conditions in any enterprise or institution to reveal illegal activities to higher administrative authorities of such enterprises or institutions as well as to institute criminal action. The Procuracy is also charged with primary responsibility for criminal investigation preceding indictment. The Procurator General of the U.S.S.R. is appointed by the Supreme Soviet of the U.S.S.R. for a term of seven years, and he appoints the republican, regional and local procurators. See, generally, I GSOVSKI, *SOVIET CIVIL LAW* 846-51 (1948); BERMAN, *JUSTICE IN RUSSIA* 168-73 (1950).

59. The edict states that the procuracy has "liability" (*otvetstvennost'*) for observance of legality in places of detention. *Vedomosti*, no. 9, art. 222 (1955). Professor Golunskii told me in August 1955 that this provision has considerable importance, and that it is an innovation. I asked him in May 1957 whether procurators had been prosecuted in the past two years for failing to protest abuses in administration of labor camps. He said that disciplinary action had been taken against procurators in a few such cases, but there had been no criminal prosecutions. Deputy Procurator General Kudriavtsev stated that in some labor camps, perhaps a dozen, procurators had been appointed to remain on the spot, indefinitely, to supervise the observance of legality. See Statute on Supervision by the Procuracy in the U.S.S.R., *Vedomosti*, no. 9, art. 222, § 32 (1955) ("on the organs of the procuracy is imposed liability for the observance of socialist legality in places of deprivation of freedom"); *id.* § 33 ("the procurator is obliged systematically to visit places of deprivation of freedom"); *id.* § 36 ("the administration of a place of deprivation of freedom is obliged within a period of not more than twenty-four hours to direct to the procurator [any] complaint addressed to him").

60. *Vedomosti*, no. 12, art. 250 (1956). In the past, Ministry of Justice officials have been appointed to attend trials and generally observe the conduct of judges in order to report deficiencies. They have also prepared the court budgets.

Court who has considerably more political prestige than his predecessors.<sup>61</sup> The same law abolished the special system of transport courts, including the railway and waterway divisions of the Supreme Court of the U.S.S.R.<sup>62</sup> Accordingly, jurisdiction over offenses committed by transport workers and officials was left in the regular criminal courts.

If the inquiry is extended to fields unrelated to criminal law, criminal procedure and judicial administration, the list of reforms could be greatly lengthened.<sup>63</sup> Perhaps the most significant items would be the substantial increases in social security benefits,<sup>64</sup> the reduction of working hours from 48 per week to 44 or 41 in various industries,<sup>65</sup> and the law of February 1957

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61. *Vedomosti*, no. 4, art. 85 (1957). The court was reduced in size from 78 judges to 12 (including a president and two vice-presidents), and from 35 people's assessors (two of whom sit with a judge in each case of first instance) to 20. A criminal, civil and military division now exist; in addition the entire court meets in plenary sessions. The possibility of direct removal of cases from regional courts to the Supreme Court of the U.S.S.R. on protest of the Procurator General of the U.S.S.R. or the president of the Supreme Court of the U.S.S.R. was eliminated; all cases, except those of first instance, must now go through the republican supreme courts before being reviewed by the all-union Supreme Court. Cases of first instance are taken by the U.S.S.R. Supreme Court at its discretion.

The reform was designed primarily to increase the efficiency of the Supreme Court by reducing its work in relatively unimportant cases. Vice-president N. K. Morozov stated in May 1957 that a very large majority—perhaps 75%—of the cases reviewed by the Supreme Court of the U.S.S.R. in recent years has involved merely the question of whether the sentence was proper, and in such cases, he said: "We never could be sure after we were through with them whether we had improved on the decision below." Since the February reorganization, he added, the work of the Supreme Court has been reduced by about 70%. However, he agreed that the jurisdiction of the Supreme Court remains as wide as it was formerly. Further, the republican supreme court judges sit with the U.S.S.R. Supreme Court in the plenary sessions of that court, where decisions of the three divisions of the Supreme Court may be reviewed and instructions to lower courts are issued.

The new president of the U.S.S.R. Supreme Court, Alexander F. Gorkin, from 1938 to 1953 and from August 1956 until his appointment to the Supreme Court in February 1957 was Secretary of the Presidium of the Supreme Soviet of the U.S.S.R., a 33-man body which enacts edicts between sessions of the Supreme Soviet. He does not sit on any of the divisions of the Supreme Court, but presides over the plenary sessions.

62. One commentator termed the elimination of the transport courts and the 1953 abolition of the MVD military courts examples of steps toward "equal application of the laws." See *What Has Been Done to Strengthen Socialist Legality*, *supra* note 5, at 68.

63. The list can also be extended in related fields. Thus, one might add the two amnesties since 1954 and the unpublished decree on the administration of corrective labor colonies. See notes 20, 24-28 *supra* and accompanying text. In addition, the Ministry of Internal Affairs and its subordinate police organs have undergone a reorganization. Very little information has been released on this reorganization. It is discussed vaguely in *What Has Been Done to Strengthen Socialist Legality*, *supra* note 5, at 67.

64. Substantial increases in old age pensions, workmen's compensation rates and pensions in event of loss of support were made in 1956.

65. In the Central Committee Report to the 20th Congress of the Communist Party, N. S. Khrushchev stated that: "The Party Central Committee has made the decision to change during the Sixth Five-Year Plan to a seven-hour day for all workers and employees . . . in coal and ore mining to a six-hour working day and to a six-hour day for young people from 16 to 18 . . . also to a six-hour day for workers and employees on Saturdays and on the eve of public holidays. Beginning in 1957 the Party and the Government

revising the procedure for hearing workers' grievances to give workers greater protection.<sup>66</sup> Mention should also be made of the restoration of national autonomy to various peoples dispersed after the war as punishment for collaboration with the Germans.<sup>67</sup>

From some Soviet jurists, one gains the impression that recent months have witnessed a settling down in the fields of criminal law, criminal procedure and judicial administration and that a conservative viewpoint is beginning to prevail over the more radical spirit of the past two or three years. If this impression is correct, advocates of jury trial for the most serious criminal cases,<sup>68</sup> of removal of the power of preliminary investigation of criminal cases from the Procuracy to the police<sup>69</sup> and of right to counsel from the beginning of the preliminary investigation<sup>70</sup>—three striking examples of proposed reforms which recently received publicity in Soviet literature—are not likely to be successful. One senses that the conservatism is of two kinds. One is a genuine conservatism which, in the words of Kudriavtsev, prefers to “make

will transfer one branch of the economy after another to a seven-hour working day or . . . to a five-day week (with two days off and an eight-hour day).” DOCUMENTARY RECORD OF THE 20TH COMMUNIST PARTY CONGRESS AND ITS AFTERMATH 48-49 (Gruliov ed. 1957). Legislation was subsequently enacted establishing a six-hour day for workers and employees on Saturdays and on the eve of public holidays, *Vedomosti*, no. 5, art. 135 (1956), and reducing the maximum hours for persons of sixteen to eighteen years of age to six hours per day, *Pravda*, May 29, 1956, p. 1, quoted in 22 CURRENT DIGEST TO THE SOVIET PRESS, no. 8, p. 18 (1956).

66. Edict of the Presidium of the Supreme Soviet of the U.S.S.R., January 31, 1957, and decree of the Council of Ministers of the U.S.S.R. and the All-Union Central Council of Trade Unions, published in *Trud*, Feb. 21, 1957, p. 3, col. 1.

67. *Vedomosti*, no. 4, art. 78 (1957).

68. See Rakhunov, *Some Questions of Criminal Procedure*, *Izvestiia*, March 27, 1957, p. 2, col. 1. Rakhunov proposes that “in cases of state crimes, murders, robberies, etc., the number of people’s assessors should be increased [from three] to, say, six . . . . It would be well to discuss also the question of delineating the duties of the judges and the people’s assessors. . . . It seems to us that the decision of the question of the guilt of the accused in some categories of crimes should be transferred to the competence of the people’s assessors. In form this would resemble trial by jury. . . .” *Ibid.* At present the two lay assessors sit as co-judges with the professional judge, all three having equal votes on all matters before the court.

69. See Barsukov, *For Further Improvement of the Organization and Activity of the Soviet Police*, *Sovetskoe Gosudarstvo i Pravo* (Soviet State and Law), no. 2, at 33 (1957); notes 70, 76 *infra*. Barsukov is head of the Chief Administration of Police of the Ministry of Internal Affairs.

70. As in continental European legal systems generally, Soviet law provides for a preliminary investigation of crimes by an impartial investigator, who has the power to indict. The indictment is the basis of trial in the courts. Under present Soviet law, the preliminary investigation is conducted by an official of the procuracy called an investigator. At the same time, the police have the right to make an “inquiry,” which may in fact amount to an investigation. The Soviet citizen suspected of commission of a crime is not permitted to have counsel either at the police inquiry or at the preliminary investigation. Some now propose that he be given the right to counsel at the stage at which he is formally charged with commission of the crime but prior to the final issuance of the indictment; others contend that he should be permitted to have counsel when the investigator first presents a draft of the charges to him.

haste slowly," fearing that if too much is attempted at once, the whole program may collapse. The other is a bureaucratic conservatism which distrusts all change, partly because of the threat of loss of position and prestige which change portends for those chiefly responsible for the past.

Still, it is refreshing to discover in Moscow wide differences of outlook and opinion which can be very roughly labelled "radical," "liberal," "conservative" and "reactionary." Even Soviet law professors seem to take pleasure in reporting that "there is disagreement on this point," or "I take the other point of view, but I am in the minority." By the same token, it is discouraging to discover exceptions to the spirit of legality and, in connection with these exceptions, an apparent absence of freedom of discussion.

A startling example of a threatened reversion to the use of extra-legal procedures of punishment may be found in a law "against anti-social, parasitic, elements," proposed for public discussion first in the Baltic, Central Asiatic and certain other republics, recently in the R.S.F.S.R., and now adopted in two republics. The law would subject an ill-defined class of persons "who lead an anti-social, parasitic way of life, who evade socially useful work and also those who live on unearned income" to banishment for two to five years to another place within the republic, the sentence to be meted out by "a general meeting of citizens," with review by local government executive authorities.<sup>71</sup>

None of the Soviet professors, judges and officials with whom I spoke about this law, then not yet adopted, would deny that it contradicts the spirit of the Soviet law reform movement, but none would expressly criticize it and most ultimately defended it. Deputy Procurator General Kudriavtsev agreed that "it isn't right to punish a man for doing nothing." Nevertheless, he argued "the people should discuss it and should decide. The Constitution says, 'He who does not work, neither shall he eat.' Why should a person who has been educated, supported, fed and trained for work by Soviet society be allowed to live a parasitic life? He ought to work."<sup>72</sup>

I asked Supreme Court Vice-President Morozov whether the law did not conflict with the provision of the Soviet Constitution that the judicial power

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71. The law was adopted, in identical terms, in the Uzbek and Turkmen Republics at the end of May. See *Pravda Vostoka* (*Pravda of the East*), May 29, 1957; *Turkmenskaia Iskra* (*Turkmen Spark*), June 1, 1957. Its proposed adoption in the R.S.F.S.R. is reported in *N.Y. Times*, Aug. 22, 1957, p. 1, col. 3.

The law states that it is inapplicable to minors and to persons who have committed acts punishable more severely under existing criminal laws. The sentence is to be meted out by a social assembly of citizens summoned by housing committees in the cities and towns, and by the village councils in the villages. The sentence goes into effect when confirmed by the executive committee of the district or city council.

The law also authorizes the regular courts (as contrasted with the social assemblies of neighbors) to impose criminal sentences of two to five years of exile, with obligatory assignment to work at the place of exile, for vagrancy and mendicancy. See also note 72 *infra*.

72. No provision in Soviet law specifically punishes failure to work, despite U.S.S.R. Const. art. 12, partially quoted by Kudriavtsev, which states: "In the U.S.S.R. work is a duty and a matter of honor for every able-bodied citizen, in accordance with the

shall be exercised by the courts. He replied immediately, "No, since this is not the exercise of judicial power—the general meeting is not acting like a court." Professor Golunskii, head of the Institute of Criminology of the Procuracy and formerly a member of the International Court of Justice, answered the same question more cautiously. "It would depend," he said, "on whether banishment to another locality within the republic is a form of criminal punishment." He added that in certain cases a tenant can be evicted for misbehavior and that such eviction is not considered a criminal punishment. All said that the proposal "is not yet law," and that one must wait to see what "the people" decide. I could not avoid the strong suspicion that the proposed law is sponsored by high Communist Party organs and hence none of the jurists dare attack it.

#### THE PROBLEM OF SECRECY

An obvious difficulty in analyzing the problem of secrecy is that the subject is by definition obscure. It is very difficult to know precisely where secrecy marks the Soviet legal system, and impossible to know its extent and its effect on the reform movement.

In 1950, the decisions of the Supreme Court of the U.S.S.R. and the decrees of the Council of Ministers of the U.S.S.R. ceased to be available to the public either inside or outside the Soviet Union. I learned in Moscow in 1955 that *Sudebnaia Praktika* ("Judicial Practice"), the collected decisions and rulings of the Supreme Court, continued to be printed and circulated to judges, procurators, and some others—about 50,000 subscribers altogether—and that it was still available to scholars and lawyers in libraries. Apparently, the decrees of the Council of Ministers, which include most of the operative legislation of the Soviet Union, though technically the term "legislation" is reserved for acts of the Supreme Soviet, were no longer collected in bound volumes and were merely circulated individually to the various officials and agencies thought to be directly affected. Laws and edicts of the Supreme Soviet of the U.S.S.R. and its Presidium continued to be regularly published, and while individual edicts occasionally appeared to be kept secret, one was not acutely conscious of that fact until the Soviets recently began talking about, and in some cases publishing, particular edicts said to have been enacted some time previously. Presumably, these secret edicts were circulated to authorized personnel.

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principle: 'He who does not work, neither shall he eat.' The principle applied in the U.S.S.R. is that of socialism: 'From each according to his ability, to each according to his work.'

The first principle quoted is from the New Testament, II Thessalonians, iii, 10. The second is from the Marxist gospel, in which the socialist stage is expected to be followed by a stage called communism in which the principle will govern: "From each according to his ability, to each according to his need."

Kudriavtsev stated that the new law on anti-social, parasitic elements is needed because article 35 of the Criminal Code, which provides for exile of persons whom the court considers socially dangerous, can no longer be applied in view of the abolition of the Special Board of the Ministry of Internal Affairs. See note 5 *supra* and accompanying text.

In 1957, however, Supreme Court Judge Morozov told me that *Sudebnaia Praktika* has been publicly available to subscribers since early 1956, and he presented me with several back issues.<sup>73</sup> I was also told that since 1956 the decrees of the Council of Ministers of the U.S.S.R. have been widely circulated once again, though they are not yet available to the public.<sup>74</sup> Finally, I was informed that *Sotsialisticheskaia Zakonnost'* ("Socialist Legality"), the journal of the Procuracy of the U.S.S.R., which also was withdrawn from public circulation in 1950, has been once more available to the public since 1956, though the number of copies is limited and none has been sold abroad, at least not through regular channels.

That the veil of secrecy which still shrouds Soviet law is being lifted to a limited extent indicates that some people in the Soviet Union recognize the importance of publicizing laws and that these people have a measure of influence on governmental policy. But why has the Soviet government kept and continued to keep secret many of its recent humanitarian law reforms? I asked this question of virtually every professor, judge and legal official whom I met. The almost universal answer was, "More will be published in the future." One—Kudriavtsev—amplified: "When we are finished, we will publish."

Indeed, from the Soviet point of view, some possible advantages inhere in not publishing the reforms immediately as they occur. First, announcing the abolition of an evil a considerable time after it ceased to exist may seem less embarrassing. For example, it may appear easier to say that "for four years there have been no prosecutions under article 58(1c)," rather than to have said three years ago, "for one year there have been no such prosecutions," or to have said four years ago, "we have just issued a directive prohibiting such prosecutions in the future." Second, disclosing a series of reforms simultaneously rather than individually may make for better propaganda since a piecemeal disclosure would not be as impressive and would continuously call attention to the existence of evils needing reform. Third, the Soviet government may

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73. Procurator General Rudenko wrote in 1956: "There is no doubt that the decisions of the judicial divisions and the decrees of the plenum of the Supreme Court of the U.S.S.R. published in the journal 'Judicial Practice of the Supreme Court of the U.S.S.R.' exercised a great influence on the activity of judicial and procuracy organs. However up to now far from all such decisions and decrees are being published, and the choice of published materials often has an accidental character and hence cannot serve as a reliable guide for the work of the judicial and procuracy organs. In our opinion, it would be time to go over to the publication of all decisions of the judicial divisions and decrees of the plenum of the Supreme Court of the U.S.S.R., expanding correspondingly the scope and increasing the frequency of publication of the journal 'Judicial Practice of the Supreme Court of the U.S.S.R.'" Rudenko, *supra* note 17, at 20. In January 1957 the name of this journal was changed to Bulletin of the Supreme Court.

74. "In many instances particular relationships are regulated by a multitude of legal regulations, part of which are generally not known not only by scholars but also by practical workers, which leads to incorrect decisions, and the pinching of the rights of citizens, and gives rise to contradictory practices. It is impossible to speak at all seriously about propagating Soviet legislation when systematic collections of laws are published in secret editions and are accessible only to a limited number of officials." *Ibid.*

not want to broadcast certain reforms too loudly—especially those connected with relaxations in criminal law—for fear some Soviet citizens may be induced to take advantage of the new leniency. Finally, some individual reforms are incomplete, and the scope of the whole movement is not yet entirely determined. Very likely, certain reforms are experimental; indeed in a sense the entire policy is an experiment. Until the government decides just how far it will go, it prefers not to show its hand—a consideration which was probably foremost in Kudriavtsev's mind when he said, "When we are finished, we will publish."

Why, then, were Soviet jurists and high Soviet officials willing to disclose to a visiting American facts not yet publicly announced? Unquestionably, these facts had been declassified, and the government was planning to publish them. In the in-between period, jurists were free to disclose them to anyone who asked, and I was the first who had the opportunity. American newspapermen have not been allowed to interview Soviet jurists, or indeed any Soviet officials below the very highest rank. All interviews by correspondents must have the approval of the chief of the press bureau of the Ministry of Foreign Affairs. My interviews with Soviet legal experts and justice officials were approved by the legal section of VOKS, as they were apparently considered to be in the interest of "cultural contacts." Accordingly, I was able to learn of the reform movement.

My informants appeared scarcely aware that speaking of an "unpublished statute" seems anomalous to Americans; apparently it did not occur to them that we expect *all* judicial and legislative acts to be a matter of public record available to anyone. Again and again, I asked what is to prevent a return to the evils of the past. I urged that the first necessary condition of a guarantee against such reversion is publicity of laws and their full availability to any person. They said that they believed the future would witness "more" publicity, "less" secrecy; but they did not promise "no" secrecy, and I suspect they do not and cannot conceive of a legal system in which there are no secret laws. "I agree," one of them said in response to the point that secret laws are a threat to legality, "but it is not necessary to publish everything."

#### CONCLUSION

A substantial liberalization of Soviet law has taken place in the past four years, and especially during the past two years. The new all-union foundations promised for next fall and the republican codes to be based on them are being drafted in a manner designed to embody this liberal trend. It is of no use to argue a priori that the Soviet legal system cannot be otherwise than a sham so long as the leadership is not bound by effective constitutional restrictions upon the exercise of force against those whom it considers enemies.<sup>75</sup> That the Soviet leadership is not so bound and that the Soviet legal system is not

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75. See Maxwell, *A Contrast in Viewpoint: Lawyers in the United States and Russia*, 43 A.B.A.J. 219 (1957). Maxwell makes several serious errors in this article, which was based on an address delivered to the Missouri Bar in October 1956. Thus he states: "As you all know, and as the present rulers of Russia freely admit, court proceedings under

a sham but a very real and vital factor in Soviet life are matters of observable fact. The notion that a system of law and justice cannot co-exist alongside a system of force and injustice is contradicted many times by history and by experience—in Caesar's Rome, in Tudor England, in contemporary South Africa and in many other times and places.

Even the most violent enemy of Communism should recognize that the leaders of the Soviet Union consider "legality" (*sakonnost'*) as something which has positive value for the Soviet Union and for their own position of leadership in the Soviet Union. By eliminating special procedures for most political crimes, by abolishing the jurisdiction of military courts over civilians except in cases of espionage, by abolishing the liability of innocent relatives of deserters, by releasing over a million political prisoners from labor camps

Joseph Stalin were to an overwhelming extent merely a travesty of justice." *Ibid.* This statement is applicable only to court proceedings in political cases.

Maxwell also states that the special procedure in the military courts in certain cases under the so-called Kirov Law, see note 7 *supra*, has not been repealed for instances involving treason and terrorism. See Maxwell, *supra* at 220. In fact, it has been repealed for those crimes, but is retained for cases of espionage. See text at notes 7-9 *supra*.

He states further that: "In Russia the proof is gathered by the Public Prosecutor before trial and his finding of guilt or innocence, based on his investigation, is what determines the outcome of the trial. The trial itself is little more than an official cachet, a legalizing stamp, a Good Housekeeping Seal of Approval, affixed to the Public Prosecutor's work." Maxwell, *supra* at 221. That this assertion is inaccurate is evidenced not only by the rules of criminal procedure, which in general follow the continental pattern as contrasted with the Anglo-American, but also by the fact that in many reported cases the defendant is acquitted.

Finally Maxwell states that: "Actually there is little for the lawyers to do in the U.S.S.R. As you know, the government owns all the property and conducts all business. Since the lawyer is an arm of the government, he is in no position to sue his employer. Consequently his function is reduced to handling small cases between individuals and the defense of persons accused of crime. Is it then surprising that there are only 12,000 lawyers in the Soviet Union engaged in private practice, serving a population estimated at 200,000,000 people . . . ?" *Id.* at 222. The facts are as follows: In addition to about 18,000 lawyers called "advocates," who advise and represent individuals in civil and criminal cases—including suits between individuals and state enterprises, of which there are many—there are a great many more lawyers called "jurisconsults"—the numbers are unavailable but I would guess 50,000—who advise and represent state enterprises. There are some 400,000 suits between state enterprises tried every year in a special system of courts called *gosarbitrazh*. Moreover, by no means all cases between individuals are "small cases." There are many wealthy people in the Soviet Union—income is divided just about as unevenly there as in the United States—and suits are brought over wills, title to houses, author's and inventor's royalties and similar matters. Finally, the lawyer in non-political cases is not "an arm of the government," but the representative of his client, and he is supposed to fight his client's legal battle.

Maxwell is right, however, in saying that the top leadership "still maintains unchallenged control of all the state functions, law giving, law enforcement and law judging," *id.* at 221, and that "any distortion of the principles of justice may be rationalized by saying that it is necessary for the preservation of the state," *id.* at 220. I believe he has been misled by his inability to believe that a totalitarian system of government which operates by despotic methods in politics can create a legal order which operates with considerable stability and independence in matters considered non-political.

and by similar measures, the Soviet leadership is seeking to enhance its political prestige and to create conditions of greater confidence both at home and abroad. By relaxing the rules on official negligence and economic crimes, by improving workers' conditions and enhancing workers' rights, by introducing more decentralization of operations and of planning in the economic sphere, the Soviet leadership is seeking to lay a basis for increased efficiency and increased productivity in the economic sphere. By increasing the prestige and independence of the courts and the legal profession, by lowering criminal penalties for theft of state property, by abolishing criminal penalties for abortions, by humanizing in various respects the system of labor law, criminal law, social insurance, family law and other branches of law, it is seeking to create a stronger social order, a happier and more loyal people.

Under Stalin, too, the Soviet leadership placed a high value on legality. "Stability of laws" was Stalin's slogan, carried by Vyshinsky, and the making of new draft codes has been going on since the 1930's. Stalin, however, was torn between his desire for stability of laws in the non-political sphere and his megalomaniac suspicion of political enemies. As long as widespread terror existed in the political area, the proponents of legality in the non-political field were under a serious handicap. For the security police determined where the two met. This does not mean that there was no legality under Stalin; it means rather that the sharp dualism of law and terror prevented certain needed law reforms.

That a large measure of legality existed under Stalin is evident from the fact that the present law reforms are being made within the framework of pre-existing Soviet law. Except with respect to the law of political crimes, the Soviet legal system has not been basically changed. The new codes are building on the pre-existing codes as well as on the newer legislation, according to the jurists who are helping to draft them. In short, the Soviet law is undergoing not a revolution but a series of substantial reforms, long overdue.

The vigorous discussion and debate now going on in the Soviet Union regarding how far the reforms should be carried is perhaps as significant, in the long run, as the reforms themselves. The limits of the discussion are set, of course, by the leadership of the Communist Party—a fact demonstrated by the absence of public criticism of the proposed law on parasitic elements. Yet the limits are fairly wide. Thus the Procuracy and the MVD can debate publicly on which organization should have jurisdiction over the preliminary investigation of crimes.<sup>76</sup>

Even more important is the fact that hundreds of people are being enlisted to help create new laws and new institutions which are intended to endure. With the establishment of legislative drafting commissions in the Supreme Soviet and in the Council of Ministers of the U.S.S.R., deputies of these two bodies meet periodically with groups of expert consultants to consider draft

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76. See note 69 *supra*. A reply to the article cited in that note appears in *Sovetskaia Iustitsiia* (Soviet Justice), May 1957, no. 2, a new legal journal, published by the R.S.F.S.R. Ministry of Justice, which is as yet unavailable in this country.

provisions of the various projected codes. For example, the Supreme Soviet commissions meet with one committee of experts studying the law on the judiciary and the legal profession. This committee is composed of, among others, the Procurator General of the U.S.S.R., the President of the Supreme Court of the U.S.S.R., and leading professors of court organization. The commissions meet with another committee concerned with criminal law, including one of the four deputy procurator generals, one of the two vice-presidents of the Supreme Court, and leading professors of criminal law. At these meetings, articles of the various drafts are analyzed. Necessarily, the groups must consider the effect of the language in a particular provision upon various hypothetical cases which might arise in the future, in addition to comparing it with existing law. Moreover, the drafts have been previously subjected to the scrutiny and comment of the ministries—that is, of the economic, political and social organs. This is conscious institution building, conscious structuring of the social order for a long period of time. It provides an invaluable schooling. However the codes turn out, the process of codification itself is bound to have an important stabilizing effect upon a society which has known too much upheaval, too much instability, and is longing for order.

Yet law and order cannot now be considered entirely secure in the Soviet Union. They can never be out of danger so long as the leadership endorses the philosophy that law is basically an instrument of force and that where the instrument fails, force must use more ruthless means. Nor can law be completely secure while the leadership believes that all social institutions and processes are essentially products of the time, of a given stage of historical development, and that there is nothing beyond the given stage, nothing sacred.

It was my unpleasant fortune to be given a heated lecture on this basic philosophy by Deputy Procurator General Kudriavtsev in the course of our nearly four-hour conversation. "Do not forget," he warned me, "that we have in the Soviet Union the dictatorship of the proletariat, and that law must serve the state authority." I asked: "Suppose the law conflicts with the interests of the state, which prevails?" "The interest of the state," was the quick and firm reply. He amplified: "Compulsion may be necessary. The Special Board of the MVD was necessary in its time, in the late 'thirties. Only it was later abused. The Cheka, which Lenin introduced, was entirely justified. No revolution is bloodless—ours is the most bloodless revolution in history, far more bloodless than the French or the English revolutions."<sup>77</sup> I asked: "When

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77. The Cheka, an abbreviation for Extraordinary Commission for the Struggle against Counterrevolution, Sabotage and Official Crimes, came into being in December 1917. Latsis, one of the leaders of the Cheka, wrote in 1921: "Not being a judicial body, the Cheka's acts are of an administrative character. . . . It does not judge the enemy but strikes. . . . The most extreme measure is shooting. . . . The second is isolation in concentration camps. . . . The third measure is confiscation of property. . . . In its activities the Cheka has endeavored to produce such an impression on the people that the mere mention of the name Cheka would destroy the desire to sabotage, to extort, and to plot." See 1 GSOVSKI, SOVIET CIVIL LAW 235 (1948). The Cheka was abolished in 1922, but its functions were assigned to a newly created State Political Administration (GPU), which in 1923 was transformed

will your revolution be over?" He replied: "We live in an age of war and revolution. The revolution goes on." And then, to make crystal clear the connection between this basic historical perspective and the law reforms we had been discussing, he said: "If it becomes necessary we will restore the old methods. But I think it will not be necessary."

Here, in one statement, is the philosophy of the supremacy of force, of overriding historical necessity and of an age of war and revolution. It was expressed by the man who in 1953-1954 was in charge of cleaning out the labor camps, a person who seems to believe intensely in the wisdom of the new policy of strict legality, protection of the accused, equal treatment of political and non-political offenders and similar measures. This was the same man who said to me: "Before [under Stalin], the procuracy and the judiciary were ousted in political cases. The security organs stepped in. That was the tragedy of it."

Unless and until serious trouble arises—far more serious than we have yet witnessed—either on the domestic front or the international front,<sup>78</sup> the new policy will probably work. If and when such trouble occurs, we shall probably witness an acute sharpening of the struggle between the institutions of legality and the institutions of force. It will be interesting to see who in Soviet Russia then stands on the side of force and who on the side of legality.

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into a federal body, the United State Political Administration (OGPU). In 1934 the OGPU was transformed into the People's Commissariat of Internal Affairs (NKVD), and in the same year the Special Board (*Osoboe Soveshchanie* or OSSO) of the NKVD was created. See note 5 *supra*. In 1946 all People's Commissariats were renamed Ministries, and hence the abbreviation NKVD was replaced by MVD. For the history of the Cheka, see I Gsovski, *SOVIET CIVIL LAW* 234-40 (1948).

78. I asked Professor Golunskii whether the increase in international tension had affected or could affect the law reform movement. He replied that it had not, but that it could if it became serious enough. "If we had been at the brink of war," he said, "I doubt that we would have abolished the jurisdiction of the military courts over various counter-revolutionary crimes, for example. But the events of the past year have not been serious enough to alter the course of our internal reforms."

# THE YALE LAW JOURNAL

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VOLUME 66

JULY, 1957

NUMBER 8

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