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John N. Hazard

REFORMING SOVIET CRIMINAL LAW

JOHN N. HAZARD*

Declaring that there is to be a new federal criminal code for the entire Soviet Union to replace the various codes formerly existing in each Republic, the Stalin Constitution[1] opened a new vista for Soviet criminal law. No one imagined at the time of the Constitutional Congress that within less than two months the man who had been designated to draft this new code would be declared an enemy of the people and berated for the ideas he had been teaching as to the nature and function of criminal law. Still less did any one think that within a year the man who had been appointed the first Commissar of the newly formed All-Union Commissariat of Justice would also go the way of an enemy.

The repudiation of Commissar Krylenko during January and February of 1938 has served to re-emphasize the importance of the earlier repudiation of E. B. Pashukanis. Both names had for the past decade been on the lips of every student of Soviet criminal law —respect in some cases developing into reverence as when one of Pashukanis' disciples termed his master's ideas the only correct Marxian theories of law.[2]

This great housecleaning has rested on more than the personal animosities which may have colored previous dismissals. Basic differences in theory underlie the conflict of ideas, and these principles have affected the administration of justice of the nation. Commissar Rychkov, newly appointed chief of the Commissariat of Justice for the Union, declares the errors of Krylenko to have amounted to an attempt to undermine the authority of Soviet law and to weaken the work of court organs which had been trying to strengthen socialist justice.[3]

* Member of the New York Bar, Moscow Juridical Institute, 1934-1937, as agent of the Institute of Current World Affairs.

[1] Adopted December 5, 1936. For English translation of text, see Rappard, Sharp, Schneider, Pollock and Harper, *Source Book on European Governments* (New York, 1937).

[2] For review of early effusive praise, see B. Mankovski, *Protiv Smazyvaniya Samokritiki na Fronte Ugolognogo Prava* [Against Making Too Easy Self-criticism on the Criminal Law Front] (1937) *Sovetskaya Yustitsiya*, No. 9, at pp. 5-6.

[3] See N. Rychkov, *Sovetskii Sud—Boevoi Organ Dictatury Rabochego Klassa* [The Soviet Court—A Fighting Organ of the Working Class Dictatorship] (1938) *Bolshevik*, No. 7 (April 1) 22 at 26.

It would be impossible to overemphasize the seriousness with which the old theories are being attacked. Americans who would understand what is transpiring in Soviet juridical circles cannot ignore the mass of criticism and discussion appearing in the official journals of the Commissariat of Justice, the State's Attorney's office, and the various Institutes.

Before opening the discussion of today's situation in Soviet criminal law it may not be amiss to summarize the major steps taken during the past twenty years. Experience in the Russian Socialist Federated Soviet Republic will be taken as an index of similar events in the other Republics, formed out of what had been the old Empire.

Justice during the first heated stage of the revolution was administered by revolutionary tribunals and courts, staffed by men and women distinguished for their worker's background rather than their legal education. Law directed these people to administer justice in accordance with their revolutionary conscience[4] and gave them no other guide.

With each judge applying such penalties as he thought fit, uniformity was out of the question. To bring order into this picture the government issued a law in 1919 defining the basic elements to be considered in administering justice.[5] Differing from codes in other countries this law defined no crimes and set no specific penalties for specific acts. Its functions were broader—to outline major principles such as the treatment to be accorded minors, and the insane, and to define the approach to those guilty of attempts and of being accessories. Possible types of punishment were listed, but no specific acts were outlined as meriting these punishments.

By 1922 it had become clear that the courts needed a more detailed law. The draft finally accepted[6] bore a resemblance in terminology and structure to codes elsewhere in the world. It looked like a code in that it was composed of sections, some of which outlined general principles similar to those set forth in 1919, while others went on to define specific acts as crimes for which definite penalties were provided.

By 1923 the Russian Socialist Federated Soviet Republic had entered with three other Soviet Socialist Republics into a Union

[4] *Sobranie Uzakonenii, R.S.F.S.R.*, 1918, No. 4, Art. 50. sec. 5 [Collection of Laws, R.S.F.S.R.].

[5] *Idem.*, 1919, No. 66, Art. 590.

[6] *Idem*, 1922, No. 15, Art. 153.

of Soviet Socialist Republics,[7] but the code structure of each Republic was left unchanged. Each Republic reserved the right under the federal constitution to enact its own criminal code. In keeping with this reserved power the R.S.F.S.R. enacted a new code in 1926[8] to adapt criminal law to changing social and economic conditions. Preserving the form of the 1922 code, the new statute included a general section outlining major principles and a special section listing types of crimes and providing for definite penalties to be applied in each case. This code of 1926 has remained in force until the present day, although numerous amendments have been added. Almost similar criminal codes exist in each of the other Republics constituting the Union.

With this brief review of the periods through which Soviet criminal law has progressed during the past twenty years, the stage has been set for a consideration of the tempest which has been stirred up with the preparations for drafting a new all-union criminal code to supersede the separate codes of each Republic. Examination of recent events will start with an analysis of the theories of E. B. Pashukanis as the man who held the center of the stage in legal circles during the past ten years.

Most fundamental of the errors which have been brought to light for discussion has been Pashukanis' interpretation of the origin of criminal law.[9] A review of his conclusions as to this origin, and a hint as to what is today likely to be accepted as a more plausible explanation will serve as a setting for the complicated superstructure of ideas which has been raised upon them.

To determine the character of criminal law, Pashukanis looked first to the nature of the blood feud. The dominant motive underlying the feud seemed to Pashukanis to be revenge. He noted that the blood feud disappeared only as the economic life of tribal society changed—as exchange of commodities began to be a more regular feature of daily life, fixing the principle of equivalents in the mind of man. Pashukanis declared that as this change in the economy of the tribe advanced, the blood feud disappeared and was replaced by the principle of retribution—by the rule that for each injurious

[7] Constitution approved by the Central Executive Committee on July 6, 1923, and by the Congress of Soviets on January 31, 1934. For translation of text, see Rappard *et al.*, *op. cit.*, *supra*, note 1 at p. V-88.

[8] *Sobranie Uzakonenii, R.S.F.S.R.*, 1926, No. 80, Art. 600, effective January 1, 1927. For English translation of text, see The Penal Code of the Russian Socialist Federal Soviet Republic (His Majesty's Stationery Office, London, 1934).

[9] For Pashukanis' theories see his *Obshchaya Teoriya Prava i Marksizm* (Moskva, 1926) [The General Theory of Law and Marxism].

act there should be exacted a penalty, as nearly as possible similar to the loss inflicted. The rule of "an eye for an eye, and an ear for an ear" seemed to him to bear witness to this principle, amounting to what he called trade, in which the exchange or barter could be analyzed as a contract relationship established *post facto*—after the headstrong act of one of the parties.

Arguing on the basis of this interpretation of history, Pashukanis developed the theory that the judicial form of criminal law is in reality nothing more than the form of equivalents. Having made this step in reasoning, it seemed obvious to him that criminal law was essentially a product of society which centered its economic life around exchange and the free market place. In essence he saw criminal law as bourgeois law, since during the bourgeois capitalist epoch in the history of society, he found trade and the free market place developed in their most exalted form.

Having once analyzed criminal law as bourgeois law of the market place—as a law of equivalents, the next step in Pashukanis' reasoning was to draw the conclusion that in any society which discarded freedom of the market place, which discarded freedom of trade, and substituted planning and controlled exchange, criminal law would begin to disappear. He believed that it would wither away as society progressed closer and closer to socialism.

With these underlying thoughts, Pashukanis turned to examine the role of criminal law in the Soviet Union. He knew that socialism was to have been achieved by the end of the second five year plan, 1937. Even before that date, he found the new Stalin Constitution declaring that the Soviet state was a socialist state.[10] The conclusion seemed obvious—that criminal law should have begun to wither away. From the year 1930 he had been attempting to introduce the changes he thought essential to bring about this decay of criminal law, and he was so successful that his ideas received the support of Commissar Krylenko, and of practically every writer and teacher of criminal law in the Soviet Union.

Today the books setting forth his ideas have been banned; the teachers in some cases dropped from the law faculties; Krylenko ousted from his position; and Pashukanis himself branded as an enemy of the people. No one yet knows what the precise formulation of the newly accepted principles may be, but lecture halls and legal journals have given some clues as to what may be expected.[11]

[10] See Art. 1.

[11] For a general review of theories of law during the first twenty years of

Underlying the new interpretation is a different analysis of the early stages in the history of the development of criminal law.[12] Starting with the rule of Marx that "punishment is nothing more than society's means of self-defense against all violations of the conditions of its existence."[13] Soviet theoreticians today construct the argument as follows:

Punishment did not develop because of the trading conditions of society. Its development paralleled the rise of exchange, but "paralleling" must be distinguished from "evolving from." It is today pointed out that in the development of what was to become criminal law, there first appeared in tribal society the brutal act exemplifying individual revenge, providing a sense of triumph and relief, linked with the realization that the danger had been lessened. Not equivalency of injury, but protection from further danger is thought to underlie the primitive man's actions. Following upon the individual revenge came the blood feud, interpreted today by Soviet theoreticians as a collective form of self-defense of society against all violations of the conditions of its existence, although still bearing only distant similarity to punishment as later provided by law.

When class society developed and law first appeared in the Marxian sense, as a tool of class domination, the Soviet jurists find repression as self-defense, transformed into repression under the criminal law—into a tool of the dominant class in the class-organized society of the period. In keeping with this analysis it appears that criminal law first developed as a tool in the class struggle, having no function in establishing equalitarian compensation for injury or equivalent retribution.

Support for this analysis of criminal law as resting not upon equivalents but upon class defense is adduced from the history of law. Writers cite[13a] the code of Hammurabi differentiating penalties

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the existence of the Soviet Union. see A. Y. Vyshinski, *K Polozheniyu na Fronte Pravovoi Teorii* [Adding to the Situation on the Front of Legal Theory] (1937) *Sotsialisticheskaya Zakonnost*, No. 7 at 30. For detailed criticism of Pashukanis, see A. Y. Vyshinski, *Polozhenie na Pravovom Fronte* [The Situation on the Legal Front] (1937) *Sovetskoe Gosudarstvo*, Nos. 3-4 at 29, 39.

[12] After the repudiation of Pashukanis but before his own complete repudiation Commissar Krylenko gave what is still the only analysis of the errors in historical interpretation. See N. V. Krylenko, *K Kritike Nedavnego Proshlogo* [Adding to the Criticism of the Recent Past] (1937) *Sovetskaya Yustitsiya*, No. 16 at 6.

[13] From Marx's letter about England, quoted in part in N. V. Krylenko, *op. cit., supra*, note 12 at 9, and in full in *IX Collected Works of Marx* (Russian Edition) 89.

[13a] See N. V. Krylenko, *Idem*, at 9-10.

for theft in accordance with the ownership of the property—thus theft of the king's property or property from the temple entailed a fine of thirty times the value; theft of property of a freeman entailed a fine of ten times the value; injury to a freeman was punished by the infliction of an injury of a similar type, while injury to a slave only required the payment of a money sum in retribution. Soviet writers find these variations as reflections of the class character of repression, as evidence of the character of criminal law as a tool in the class struggle. Writers find no equal exchange of value or proportional conformity between the elements of injury and penalty.

Other examples are culled from Russian history, from the time of Ivan the Terrible (1533-1584) when the taking of bribes entailed very heavy penalties for low officials, while nobles were punished only as the Tsar thought necessary. The Code of 1649 of Tsar Alexei Mikhailovich is pointed to because of its list of fines for insults, each fine differing in amount not only in accordance with the rank of the person insulted, but also in accordance with the importance of the monastery or Episcopal See in which he served. Examples are brought forward from other periods, all tending to show that there was no exact equivalence of an eye for an eye, but that for the loss of some eyes a life might be exacted, while for the loss of others, a money payment would satisfy society. The value of the eye injured is believed to have been determined by the class importance of the man whose eye was lost.

Changes in the penalties exacted at different periods in the history of society are found to represent not a change in the value of commodities, but a change in the ruling class's evaluation of the danger inherent in one or another criminal act. The extent of suffering inflicted in exacting the penalty is thought to reflect the level of culture of a given society. In this way the torture accompanying punishment in the culturally backward Middle Ages is accounted for. Following the argument through, the bourgeoisie's working out of a less brutal criminal law reflects bourgeois democracy, which calls for no punishment if the act is not defined as a crime in the law, and which calls for no punishment if the person who committed the act is not at fault.

All of this analysis makes up the background on which the specific errors of Pashukanis and his school rest. One of the most serious of these errors is now thought to be his refusal to consider important the fault of the person who may have committed an act

harmful to the state and the ruling class.[14] He discarded any examination of the fault of an individual in determining need for punishment because he thought this was a bourgeois principle, and, as such, one of the principles which should begin withering away as socialism was achieved. He swung himself into the sociological school of jurisprudence, and put forth as the sole criteria of punishment, the extent of social danger represented in the person who commits an act. He declared that the purpose of criminal law should be stated as the provision of measures for social defense. In short, he advocated penalties for persons deemed dangerous, regardless of whether they had been at fault in committing the act. He stated that the struggle with crime can be looked upon as a medico-pedagogical task, and he discarded as no longer necessary the jurist's analysis of the elements of a crime, of fault, of distinction between participation, complicity, incitement, and so forth.

Critics now find that such an approach overlooks the position of the individual in society and in history.[15] Pashukanis is thought to have fallen under the spell of the economic historians such as Pokrovsky, who have been repudiated for failing to see other elements than economics in causing history to take the turns it does. Writers remind their readers of Lenin's admonition that although the basic question in evaluating the social activity of a personality is the question of the conditions which assured the success of this activity, there still must be considered the fact that man can reason and has a conscience.[16] Class interests are said to direct human activity, but people are held to make their own history and in consequence must be accounted responsible for their acts.

The correct approach to the question of fault is now carefully to consider this aspect as playing a great part in determining the relative danger of a given individual to the ruling class. The Soviet court must, in all but a few exceptional cases, consider the extent of intention or criminal negligence in an act, refusing to punish the man who was not at fault. Fault must not be looked upon only as a "crooked mirror reflecting the danger involved in the criminal act."[17] It is far more than that to the present-day

[14] See B. Mankovski, *Protiv Antimarksistskikh Teorii v Ugolovnom Prave* [Against Anti-Marxist Theories in Criminal Law] (1937) *Sotsialisticheskaya Zakonnost*, No. 7 at 13.

[15] See N. V. Krylenko, *op. cit., supra*, note 12 at 7.

[16] See I, V. I. Lenin, Sochineniya [Collected Works] (2 ili 3 izd., Moskva, 1923-35) 77.

[17] See statements of Staroselski quoted in B. Mankovski, *op. cit., supra*, note 14 at 13.

Soviet jurists—it is the heart of the problem in determining whether a person should be punished.

Another basic error of Pashukanis and his school lay in his analysis of the nature of punishment.[18] He saw it only as bare force, lacking elements of educational value. His teaching found its broadest expression in the work of Commisar Krylenko. Krylenko overlooked Lenin's statements that education must go hand in hand with the repressive functions of the law.[19] Failing to see the educational aspects of criminal law, the former theoreticians also failed to see the importance of punishment as a threat to other incipient criminals.

Reflecting these ideas, Pashukanis urged the discarding of the word "punishment" from all articles of the code, and urged the substitution of the words "measure of social defense."[20] This longer phraseology is now found cumbersome and even confusing, and the old word is being re-introduced. Krylenko, shortly before his complete repudiation, admitted that he omitted passages of Lenin supporting the use of the old word. Krylenko lays his omission to the danger faced by investigators in permitting their research to be influenced by their convictions.[21] It is unquestionable that the word has been used by Marx and those who followed him. Critics now say that only a person who thought of law as bourgeois and would therefore discard all of its terminology and characteristics in socialist society could have urged the discarding of a term which meets all needs of the time in Soviet criminal law.

Pashukanis is found guilty of another basic error—in urging the elimination of what Soviet writers have termed the system of "dosage," or what Krylenko called the price-list system of code writing.[22] Krylenko and Pashukanis demanded that the criminal code, which they hoped to have adopted in 1930, eliminate the system of defining crimes in detail, not following the section of definition with a precise recital of the penalties involved. They urged that the Criminal Code have only one part—a general section giving

[18] See B. Mankovski, *Protiv Antimarksistskikh Teorii v Ugolovnom Prave* [Against Anti-Marxist Theories in Criminal Law] (1937) *Sotsialisticheskaya Zakonnost*, No. 6 at 43.

[19] See B. Mankovski, *op. cit., supra*, note 18 at 47.

[20] This change was made in the 1926 Criminal Code of the R. S. F. S. R., see sec. 1. For English translation of text, see The Penal Code of the Russian Socialist Federal Soviet Republic (His Majesty's Stationery Office, London, 1934).

[21] See N. V. Krylenko, *Lenin o Sude i Ugolovnoi Politike* [Lenin on the Court and Criminal Policy] (1937) *Sovetskaya Yustitsiya*, No. 18 at 4, 6.

[22] See B. Mankovski, *op. cit., supra*, note 2 at 7.

general principles to guide the courts in administering justice. They asked for the elimination of what is now the second part of the code, the special section, listing crimes in each article and following each crime with a prescribed penalty. When pressed hard on this point, they declared that the penalties prescribed might be allowed to remain, but only as points of orientation for a judge to use in deciding what might be suitable.[23] The judge was not to be bound by the narrow limitations, but might apply whatever penalty he thought necessary to assure the protection of society.

All of these desires to depart from established methods in drafting a criminal code are laid to the fact that Pashukanis thought that criminal law as a part of the general body of law was bourgeois in nature.[24] This conception of his underwent considerable re-statement during the early thirties under the growing attack from some quarters of the legal fraternity in the Soviet Union. When they succeeded in proving their point that law was not bourgeois in its nature or substance, Pashukanis had to accept the change in theory, although now he is criticized for not in fact having made the change in his own mind. Writers say that if he had completely eradicated his erroneous views, he would not have been led to the errors which eventually caused his downfall in 1937.

When faced with the necessity of at least stating that law was not bourgeois in substance; but socialist because written and applied by the proletariat in their effort to create socialism, Pashukanis still clung to half of his idea, and said that although socialist in substance, the law was apparently bourgeois in form. This conclusion was suggested to him because he and his predecessors had used the French, German, and Swiss models in drafting the Soviet codes, and some articles were identical with articles in bourgeois codes. Pashukanis thought this was a bourgeois form, and so he tried to find a way out of the dilemma in which he was placed, in having to recognize that a new socialist law had been created, even though the terminology of bourgeois law remained. He established the theory that Soviet law was socialist in substance, but bourgeois in form.

The full ramifications of this error have been discussed elsewhere,[25] but to fully understand all that has been transpiring in

[23] See N. V. Krylenko, *Proekt Ugolognogo Kodeksa Soyuza S. S. R.* [The Draft Crimnal Code of the U. S. S. R.]. 1 *Problemy Ugolovnoi Politiki* (Moskva, 1935) 3 at 19.

[24] See A. Y. Vyshinkski, *op. cit., supra,* note 11 (second citation) at 47-50.

[25] See Hazard, *Housecleaning in Soviet Law,* 1 The American Quarterly on

Soviet legal thought, one must catch a glimpse of the extent of the attack upon Pashukanis by the Soviet Marxian philosophers. These refer back to Hegel to prove that there can be no rift between form and substance, and go on to draw the conclusion that if Soviet law is socialist in substance, it must also be socialist in form. To hold otherwise would be an attempt to try and use the bourgeois form to roll back Soviet law to a bourgeois substance. In short, it is believed that the attempt is linked with that declared as being Trotsky's—to secretly push the Soviet Union back to a bourgeois state and thus defeat the purposes of the revolution. Writers today point out that new principles, new phraseology, new purposes pervade Soviet law, and that it is a socialist law and has been such since the first days of the revolution, serving the purpose of protecting the proletariat, as a class committed to the conduct of the state apparatus in such a way that it will lead to the abolition of economic classes, eventually making unnecessary a state apparatus of compulsion.

Lest the discussion of theory be discarded as a tempest in a teapot, Soviet writers would call attention to the practical effect Pashukanis' ideas have had upon the administration of justice in the Soviet Union. Provincial courts, believing that the 1926 criminal code was soon to be a thing of the past began applying principles reflected in the draft suggestions of Pashukanis. Writers say that these draft codes were more generally distributed in some areas than were copies of the criminal code in force.[26] Courts are accused of having given court sentences lacking all relation to the guilt or fault of the accused. Writers explain that the legal form of the sentence was poor and that this laxity of form found reflection in the generally accepted slogan: "A minimum of form and a maximum of class substance."[27]

Elimination of consideration of fault went so far that the standard commentary on the criminal code advised courts that section 10 calling for the examination of *mens rea* and criminal negligence should not be interpreted in such a way as to put forward these

the Soviet Union (1938), No. 1 (April) at 5, and *Cleasing Soviet International Law of Anti-Marxist Theories*, XXXII American Journal of International Law (1938), No. 2 (April) at 244.

[26] See *Polozhenie v Teorii Ugolognogo Prava* [The Situation in the Theory of Criminal Law] (1937) *Sovetskaya Yustitsiya*, Nos. 10-11 at 10, 13. An abstract of the discussion in the All-Union Institute of Juridical Science.

[27] See B. Mankovski, *op. cit., supra*, note 2 at 9.

subjective factors as necessary conditions for the application of all measures of the Criminal Code.[28]

This encouragement of complete disregard of the precise provisions of the code led to a broad application of the section permitting application by analogy to punish an act for which there was no definite section. The court practice had led to the result that no citizen could foretell what was a possible criminal act, since the analogy section might be applied to cover any act. Today this position is decried, and although the analogy section will be retained in the new All-Union code,[29] commentators[30] and the courts[31] advise narrow application to cases where the act would be criminal under a regular section, but where the penalty of the regular section would seem inadequate. It is now being applied in this manner to some cases where murder has been committed in a particularly revolting way, as in the cases of trunk murders where bodies have been quartered and left in suitcases and boxes. These acts, falling ordinarily within the provision of the law relating to murder, for which only ten years imprisonment may be awarded, are by analogy being brought under the section on banditry. This latter section permits the application of the death penalty.[32]

The lax approach to the strict provisions of the law has led to what is thought to be an inordinate amount of errors in the sentences of lower courts. The new Commissar of Justice writes that some courts are giving insignificant penalties to thieves, rowdies, and those who evade alimony payments, while lesser offenders are receiving very heavy penalties.[33]

Soviet writers still hesitate to define a crime, but the new draft for the All-Union criminal code states, in Art. 3, that "A socially dangerous act provided against by the present code is a crime."[34] This wording may be changed before final promulgation to emphasize more clearly the danger to the class, and not just vaguely the

[28] See D. Karnitski i G. Roginski, *Ugolovnyi Kodeks R. S. F. S. R.* (8 izd., Moskva, 1936) at 31.

[29] As sec. 6, see N. V. Krylenko, *op. cit., supra,* note 12 at 6.

[30] See A. Y. Vyshinski, *Rech Tovarishcha Stalina 4ogo Maya i Zadachi Sovetskoi Yustitsii* [Comrade Stalin's Speech of May 4, and the Tasks of Soviet Justice] (Moskva, 1935) 50.

[31] See *Sudebnaya Praktika v Ugolovno-Sudebnoi Kollegii Verkhovnogo Suda Soyuza S. S. R.* [Court Practice in the Criminal Law College of the Supreme Court of the U. S. S. R.] (1937) *Sovetskaya Yustitsiya,* No. 16, 43 at 47.

[32] Compare secs. 136 and 59[3] of the Criminal Code of the R. S. F. S. R., *cit., supra,* note 8.

[33] See N. Rychkov, *O Narodnykh Sudakh* [The People's Courts] (1938) *Pravda,* No. 83 (7408) of March 25, 1938, p. 2.

[34] See N. V. Krylenko, *op. cit., supra,* note 12 at 6.

danger to society in general. Such a change in wording is a refinement, possibly made necessary by the discussion of the past few months.

The new code will provide precise definitions of different types of crime and provide penalties for them, although the code will still retain the principle of an upper and lower limit for each penalty within which the judge is allowed leaway so as best to fit the case at hand.

Judges and legislators will be asked to reconsider the nature of punishment so as to see its value as an educational factor in the community. There is not, however, any suggestion of making all punishment fit the aim of rehabilitation. No elimination of the death penalty is envisaged for those who commit counter-revolutionary acts. For those individuals the law is severe, although the amendment of the fall of 1937[35] in introducing a long penalty of 25 years in such cases as an alternative to shooting has been an attempt to provide a compromise between removal of dangerous persons and some attempt at rehabilitation and re-education.

Fault of the transgressor must be examined in the determination of the need of punishing under the new code. Only a very few exceptions remain, in cases where the safety of the state is thought to be very seriously threatened. One of the best known of these exceptions is that applying to the adult members of the family of a member of the Red Army who commits treason, by fleeing abroad. By the law of July 20, 1934,[36] those members of the family who knew of the intended act may be imprisoned for periods from five to ten years, even though they did not aid in the carrying out of the act, while the remaining adult members of the family as well as persons living with the criminal at the time of the act of treason are to be deprived of their electoral rights, and exiled to remote regions of Siberia for five years, even though they had no knowledge of the plans.

Another exception is that permitting administrative exile[37] for periods up to five years by a committee of the Commissariat of the Interior, composed of the Vice Commissar of the Union Commissariat of the Interior, the agent of the Commissariat of the Interior for the R.S.F.S.R., the Chief of the Militia, and the Commissar of

[35] See law of October 2, 1937, *Sobranie Zakonov i Rasp, S. S. S. R.*, 1937, I, No. 66, Art. 297. [Collection of Laws, U. S. S. R.]

[36] Carried into the Criminal Code of the R. S. F. S. R., as secs. 58[1a], 58[1b], and 58[1c]. For justification of this law, see Speech of N. V. Krylenko, of February 11, 1936, translated into English in *op. cit., supra*, note 1 at V-166.

[37] See law of November 5, 1934, *Sobranie Zakonov i Rasp., S. S. S. R.*, 1935, I, No. 11, Art. 84.

the Commissariat of the Interior in the Republic in which the act was committed. The only requirement for this action is that the committee find that the person is deemed to be socially dangerous.

These exceptions are in keeping with Lenin's historic statement:

> "I have discussed soberly and categorically which is better, to put in prison several tens or hundreds of instigators, guilty or not guilty or to lose thousands of Red Armymen and workers? The first is better. And let me be accused of any mortal sin whatever and of violating freedom—I admit myself guilty, but the interests of the workers will win out."[38]

With these suggestions in the press of the Soviet Union one can piece together the essential elements of the new attitude to criminal law. Its source is being re-emphasized as lying in the need for the protection of class society, having no relationship to the equivalents of bourgeois exchange. It is a new Soviet law, socialist in both form and substance, and for that reason it has no reason to wither away. On the contrary it must become stronger than ever during this period of socialism.[39] It must be applied by judges well trained in the law, who will give true value to the importance of fault in the criminal; who will apply the penalties of the law precisely and as little as possible by analogy.

The laws themselves must be framed carefully and with an eye to their educational value, both to the person committing the crime and to the persons likely to be dissuaded from commission of crime by fear of punishment.

Finally the Soviet jurists demand a realization of the change introduced in Soviet law by the new Stalin Constitution,[40] which is attempting to develop a new approach to the value of the individual, respecting his interests and making certain that punishment is inflicted only upon the deserving. Only the situation involving great state danger can now be permitted as an exception to this principle. It is unfortunate that the exception, at this time of international tension, is being invoked to play an important part. Time alone will tell whether more peaceful years will see complete realization of the principles now being heralded in the press as the principles to guide the Soviet Union's jurists as they enter the second score of years after the creation of the proletarian state.

[38] See XXIV V. I. Lenin, *op. cit., supra,* note 16 at 241.

[39] See Political Report to Sixteenth Party Congress (1930), 2 J. Stalin, *Leninism* (Eng. ed., Moscow, 1933) at 342.

[40] See B. Mankovski, *op. cit., supra,* note 18 at 54.