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RUSSIA'S CRIMINAL COURT AND PENAL SYSTEM

JOHN L. GILLIN¹

One must understand the underlying ideology of Marxism, if one would comprehend the prison system of the U. S. S. R. With the Revolution the old penological theories were junked along with all the rest of the prevailing cultural bases. According to Marx, Engels, and their modern interpreter, Lenin, crime is the product of the capitalistic economic system. Change the economic order and the fountain head of all crime dries up. Since, however, the Revolution cannot accomplish the change from a capitalist to a communistic society at once, there are forms of anti-social activity due to the transitional stage through which Russia is now passing.

Law is defined by the present Russian penal code as: "the system of social relations which suits the interests of the ruling class, and is protected by its organized power." The purpose of the penal code is "the establishment of legal norms and other legal measures by which the social relations of the respective classes are protected against wrongs through punishment." In Russia today punishments are such as suit the interest of the working class. This class, during the transition stage from capitalism to communism is the ruling class through the dictatorship of the proletariat.

In accordance with the spirit of the Revolution the terms current in capitalistic penology are discarded. There are no "crimes"; there are "wrongs." A wrong is defined as "an act or omission which is dangerous to a given system of social relations, and requires the State to interfere with the wrong-doer." There are no "criminals"; only "socially dangerous persons," those who through their actions commit a wrong against society or threaten the welfare of society. There is no "punishment"; only "measures of social defense." Such measures are "the means of securing proper relations between the wrong-doer and society through compulsory action."

*The Soviet Russian Court System*²

A brief description of the present Russian criminal court system will be of interest in connection with our discussion of the penal system.

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²I am indebted to Zelitch, *Soviet Administration of Criminal Law*, Uni-

When the Bolsheviks seized power in 1917, they were immediately faced by the necessity of setting up tribunals in which to try offenders. Convinced that the old order, in every respect, was at the very antipodes from all the ideals they cherished, the Bolsheviks established revolutionary tribunals to take the place of the old Czarist courts. For a time the former justices of the peace functioned in the lower courts, but upon the promulgation of the first decree on courts all of these former officials refused to participate in the new judicial machinery. Consequently the Bolsheviks were faced with the necessity, not only of setting up a new system, but of introducing an entirely new personnel. These new judges were drawn from factory workers and peasants and those intellectuals who were at least friendly to the Bolsheviks.

In accordance with the early criminal decrees promulgated by the revolutionaries the penalties for the most part were very mild. In the law governing the revolutionary tribunals in Moscow, for example, the maximum sentence provided for any crime was four years. This was in accordance with the Marxian contention that the criminal is the victim of circumstances. Soon, however, it was apparent that changes were needed and a more elaborate judicial machinery for the trial of criminal cases was necessary.

A recent student of the criminal judiciary system of the Soviet Republic has pointed out that in its development it has gone through two different periods—the period from 1917 to 1922, a period of searching and groping, of experimentation on the trial and error method, and the more constructive period between 1922 and the present.³ In this paper we can concern ourselves only with the present system of criminal courts.

Perhaps a general outline of the judicial system of modern Russia will aid in obtaining a clear conception of the system of criminal courts and their procedure.

The judicial system is built on the same general plan as the political structure of the Union and of the constituent Soviet Republics. Since we are interested chiefly in the criminal courts, that part of the court system dealing with civil cases will not be described. Furthermore, in order make the criminal court system as clear as possible I shall describe that system in the R. S. F. S. R.

versity of Pennsylvania Press, Philadelphia, 1931, for information supplementing what I learned by first hand study in Russia.

³Zelitch, *Soviet Administration of Criminal Law*, University of Pennsylvania Press, Philadelphia, 1931.

The Criminal Court System of the R. S. F. S. R.

At the head of the judicial system of the R. S. F. S. R., the largest constituent republic of the Union, is the Supreme Court. It is organized quite differently from the Supreme Court of the United States. Therefore, a brief description of it must be given.

The Supreme Court has control over every phase of judicial activity within the territory of this largest of the seven constituent republics. At the head of this court is a president, corresponding somewhat to our Chief Justice. The President has a deputy and at the head of the various departments of this court are presidents. All of these officers are appointed directly by the presidium of the All-Russian Central Executive Committee. The other judges of the supreme bench are also appointed by the Central Executive Committee, but on the presentation of the Commissariat of Justice with the consent of the President of the Supreme Court. The judges of the Supreme Court may be recalled by the same body which appointed them.

The organization of the Supreme Court seems strange to an American. It is divided into the Plenum, Presidium, and has three general departments—the judicial, the cassational, and the disciplinary department. The Plenum, composed of all the judges of the Supreme Court, together with the Procurator of the republic, or his first assistant, is the highest authority in all judicial matters of the republic. It passes on the interpretation of all questions of procedure or substantive law. Furthermore, the Plenum has entire supervision of all the courts in the republic. It may review, affirm or abrogate regulations and rulings of even the Presidium of the Supreme Court. It may modify verdicts, sentences, decisions, or orders of any of the departments of this court or of any other court in the republic, including the highest courts in the autonomous republics. In short, the Plenum of the Supreme Court is the organ through which unification is brought into the activities of the whole court system of the republic.

The Presidium, made up of the President of the Supreme Court, his deputy, and the Presidents of the Cassational and Judicial Departments of the court, is an administrative and supervisory body. It assigns judges for service in the various departments, and appoints their deputy presidents, arranges for special investigations and inspections of the departments of the Supreme Court of the territorial and of the provincial courts, and also of the superior courts of the autonomous republics. It also recommends to the Commissariat of Justice inspection of these various courts and may suggest changes in the

personnel of these courts. In reality the Presidium is the executive branch of the Plenum of the Supreme Court.

The Cassational Department has as its chief function judicial review of decisions by the lower courts. Constituted of a president and twelve judges, six of whom are assigned to the criminal division, this department is really the court of appeals from the lower courts. However, it has very much greater power than most of the appeal courts in our country, in that it may reduce a sentence which has been appealed to it below the limit fixed by the Criminal Code. In extraordinary cases the decision of this department may be appealed to the Plenum of the Supreme Court and in some cases the findings of the Supreme Court itself may be appealed to the All-Russian Central Executive Committee.

The Judicial Department is the highest court of original jurisdiction within the republic. It consists of a president and four judges. In the actual hearing of a case either the president of the department or one of its judges presides, and hears the case together with two People's Co-Judges selected from a panel of forty-eight candidates, approved by the Presidium of the All-Russian Central Executive Committee. As a court of original jurisdiction the judicial department of the Supreme Court has jurisdiction over specific persons, irrespective of the nature of the crime or over certain kinds of criminal cases referred to it by some of the high authorities. For example, it takes original jurisdiction sent to it for trial by the Presidium of the All-Russian Central Executive Committee, by the Plenum of the Supreme Court, by the Procurator of the Republic or by the chief of the State Political Bureau. It tries all cases involving offenses in office committed by members of the All-Russian Central Executive Committee, by the People's Commissars and by members of its department, by judges of the Supreme Court, by the assistant Procurator of the Republic, and by the members of the Collegium of the State Political Bureau. It may also take jurisdiction over offenses committed in office charged against provincial procurators and their assistants, against the members of the Presidium of the Provincial Executive Committee, against the President or the Deputy President of the Provincial Courts. However, in certain cases it may refuse to take jurisdiction. For example, it may transfer to any provincial court the trial of those cases presented by the procurator of the republic or by the Chief of the State Political Bureau or those offenses just mentioned committed by provincial officials. Each of the other courts in the Republic except the People's Court possesses a

disciplinary department. The function of this department is to handle proceedings against the members of the judiciary. It is made up of three judges of the Supreme Court with a member of its presidium presiding. It has both original and cassational jurisdiction. That is to say, it acts as a court of appeals from the disciplinary department of the superior court of the autonomous republic and from the various other courts of territorial divisions within the Republic. In addition to its function as a court of appeals it has original jurisdiction over all persons connected with the procuracy, over some of the high officials of the Commissariat of Justice, over all judges of the various subordinate courts in the Republic including the presidents and their deputies, and the procurators and their deputies. It has control also over the advocates attached to the various lower courts. It is clear, therefore, that the Supreme Court of the Russian Socialist Federative Soviet Republic has powers and functions much wider in scope than a supreme court like that of the United States.

The next system of courts down the hierarchical ladder is the provincial court. This court has an organization analogous to that of the Supreme Court just described. It has a Plenum consisting of all of the judges of the court and a Presidium consisting of the president of the provincial court and his two judges. Just as the officials of the Supreme Court are elected by the All-Russian Central Executive Committee, so the president, his deputies and the permanent judges of the provincial court are elected by the Provincial Executive Committee, all for the period of one year but subject to the approval of the People's Commissariat of Justice which also has a right to nominate candidates. They may also be recalled by this body which elects them. However, recall is not effective in their cases without the sanction of the Commissariat of Justice at Moscow. A judge, however, may be removed by a court sentence or by a decree in disciplinary decisions.

The original court of the Soviet Republic was the People's Court based upon the analogy of the pre-revolutionary Court of the Peace. Intended in the early days of the Revolution as the one type of court which should cover all criminal cases, it has lost ground in that respect with the development of Soviet jurisprudence. At the present time the court has jurisdiction over all the less serious cases, while the more serious ones are tried in the provincial court. Nevertheless, recently there has been some tendency to transfer under the amendment of October 1, 1924, certain specific types of the more serious criminal cases to the People's Court.

As at present constituted the court is made up of one permanent judge and two temporary people's co-judges. In fact it is this court that really tries the most of the criminal cases in the R. S. F. S. R. In 1924 it tried over two million cases, while the provincial court tried only 130,000.⁴

The permanent People's Judge is elected for a term of one year by the Provincial Executive Committee, or in some cases by the city soviet, but in all cases on the nomination of the Provincial Court or the People's Commissariat of Justice of the Republic. These permanent judges are eligible for re-election, but may be recalled before their term expires by the body which elected them. However, there has been a tendency to limit the power of the Provincial Executive Committee to recall the People's Judges and center the final decision in such recall in the authorities of Moscow, especially the Commissariat of Justice of the Republic.

Only those are eligible for election as judges of the People's Court who have a constitutional right to vote and in addition a record of two years' service in a responsible position in a governmental institution or in a workingmen's, a peasant's, a social or a professional organization, or who has served three years in a position not lower than that of the People's Inquisitor. The Provincial Executive Committee, in conjunction with the Commissariat of Justice, determines the number of People's Courts for the districts into which the province is divided.

The People's Co-Judges, while selected for only temporary service, are an essential part of the People's Court. They have as much authority as the permanent judge and are subject to the same disciplinary action for any offenses or violations committed by them. No specific qualifications are set down for the office of Co-Judge of the People's Court. Any soviet citizen who has the right to vote is eligible for this office except those who have been expelled from a social or professional organization for disgraceful conduct until after three years from the date of expulsion. A special commission of each county or district prepares a roll from which the co-judges are selected. This special commission is composed of a member of the local county executive committee, the local assistant of the provincial procurator, and one People's Judge of the county or district. The roll is made up by this commission by selecting from the various occupational groups so as to give 50 per cent of the names on the roll to the working men, 35 per cent to the inhabitants of the villages, and

⁴Zelitch, *op. cit.*, p. 54.

volosts, and 15 per cent to the members of the military. The various factory committees, *volosts'* executive committees, etc., then elect the number assigned to them to go on the roll from which the co-judges are selected. This roll consists of two hundred for each judicial district. The Commission also prepares a special list of co-judges for service at the Provincial Court in the county when the Provincial Court is on circuit. There is no special training or experience required for these co-judges although they are invited to conferences and to attend special evening classes in preparation for their duties. These co-judges are not allowed to sit more than six consecutive days in one year. They really take the place of the former jury but with more power.

In connection with the People's Court there is organized the special session of these courts on labor cases. These sit only in the capitals of the autonomous republics or the centers of the regional and territorial administrative units at the provincial seat of government and in industrial centers. When the People's Court is in this special session it has no authority beyond the limits of the city or industrial center in which it is sitting, and its jurisdiction is limited to labor cases, such as the violation of the Labor Code, such cases as we handle in this country through our Industrial Commissions or similar organizations.

Furthermore, this People's Court has a special type known as the waiting court, designed to take care in the speediest manner of the clearest and least complicated cases. It functions like a regular People's Court with one judge and two people's co-judges sitting, with respect to those cases in which the facts are absolutely complete and the case entirely clear. If during the trial the defendant points out facts which requires an investigation, then the case is referred to the regular People's Court. Appeal from the People's Court is taken to the Department of Cassation of the Provincial Court.

In addition to the Provincial Courts already described there are the courts of the autonomous territories which function on the same basis as the Provincial Courts. Moreover, in the Autonomous Republics there is a special judiciary system operating upon the same principles as prevail in the provinces. In addition there are new administrative units known as Regions, sometimes embracing a number of former provinces and even autonomous territories in which exist regional and circuit courts and which take the place of the former Provincial Courts. The organization and functions of these Regional Courts are modelled upon those of the Provincial Courts. It should

be noted, however, that the Regional Courts have no Department of Cassation, and consequently they do not exercise great authority in matters of supervision and interpretation, and none at all in the realm of cassation. The Plena of these Regional Courts constitute the interpretative organs for all the courts of that region. Appeal from the interpretation of the Plena is made by the President or the Procurator of the Regional Court to the Supreme Court for final action.

The Circuit was first established by the Judiciary Act of December, 1926. It grew out of the fact that Regional Courts could not properly take care of the great amount of business to be found in such a vast territory as a Region. These Circuit Courts are logical successors of the former courts held by circuit representatives of the Regional Court. In organization and function they resemble the Provincial Courts except that they are subordinate to the Regional Court next higher up in the hierarchy. They differ also from the Regional and Provincial Courts in having no presidium. The Circuit Courts make up the four-story system in the R. S. F. S. R. instead of the former three-story system. We now have the People's Court, the Circuit Court, the Regional Court, or when the Regional Court has not been established, the Provincial Court, and the Supreme Court.

In setting up the criminal court system the Bolsheviks have attempted frankly to get away from all bourgeois criminal court systems. While they have not been successful in doing so in every respect, the present system is enough different from any other court system in the world to entitle it to the designation of revolutionary. In general the theoretical principles which distinguish it are: (1) That the criminal court system is an arm or an agency of the Executive branch of the Government, instead of being a separate independent governmental organ intended to check the central executive power of the Government; (2) that in consequence of the principle just mentioned, the criminal court system is for the purpose of defending the Bolshevik regime against its enemy; (3) that ordinary criminals who have become such by reason of their origin, or their economic need should be treated in such a way that they will be corrected of their errors and made good citizens under the Bolshevik regime; and (4) that the procedure should be simple and direct, giving large latitude to the defendant to state his side of the matter and to enable the judges to ascertain the truth with regard to the charges.

The first two principles just stated enable us to understand why the Provincial Court is made the court for what the Bolshevik considers the more serious offenders, and provides for less careful guard-

ing of the interests of the defendant than in those originating in the People's Court. They also explain why the procedure is so different from that found in almost every other criminal court system in the world. While in some respects the system follows that of France introduced into Russia in 1864, nevertheless the departures from that system are so great and fundamental that it may be said to be quite a new system.

The fourth and fifth explain the informality of procedure in the People's Court, the ease with which it is possible to appeal a decision to the Cassation Department, and the provision that the Central Executive Committee may reduce the sentence below that fixed in the Code. They also enable us to understand why so many provisions are made for the protection of the defendant, not only in the original trial but in the appeals that may be taken all the way up to the Central Executive Committee.

The supervisory powers of the court system through supervisory departments in all the higher courts, are intended to bring about a uniform policy and procedure in the trial of cases in the courts of original jurisdiction. The part played by the court in supervising the penal treatment of the convicted offender also shows the intense concern of the Bolsheviks with the purposes which they have in mind in their penal treatment.

On the whole the impression made by an unprejudiced study of the Russian criminal court system is that the Bolsheviks have endeavored in their court system to get rid of many of the objectionable features of many of the court systems of other countries in the interest, first, of the defense of their regime against its enemies; and second, that it is tempered by a deep and anxious concern that the court system shall really perform the function of transforming offenders into good Bolshevik citizens. Those two purposes give rise to the procedures which on the one hand excite the abhorrence of people in Western nations for the severity which is meted out to enemies of society, and on the other hand with the leniency displayed toward those whom the Bolsheviks think are offenders by accident rather than by hostile purpose. There is no question that in Russia at the present time the counter-revolutionary and anyone who talks or acts in a manner hostile to the achievement of the main purposes of the regime is treated with much less concern for his individual liberty than such a person is treated in Western countries. On the other hand, there is no less certainty that the person of proletarian or peasant origin in whose history can be found no hostility to the regime

is treated with much more consideration and with a more earnest desire to correct his habits, than is to be found in our Western court system. The enemy of the Bolshevik's regime is very much more dangerous than the murderer, the property offender, or the sexual offender. These differences are made in response to a different set of values than those which prevail in the rest of the world.

On the whole the criminal court system of Russia deserves careful study by all those who are interested in making the court system an instrument for the correction of the individual inhabitants of a country and for its close correlation with the penal system for the actual correction of offenders.

In this country the prosecution of criminal cases is a public matter, the prosecuting attorney being a public official. In Russia both prosecution and defense are socialized functions of the State. From the Supreme Court down to the People's Court in every case as an agency of the court is the procurator. Appointed from the All-Russian Executive Committee he is also deputy Commissar of Justice. Likewise connected with the Provincial Court is the Provincial Procurator. Corresponding with the procurator in the higher courts there is the People's Inquisitor in the People's Court.

We must keep clearly in mind, however, that the function of a procurator in the Russian courts, like the similar official in French courts and in the old Russian courts, is quite different from that of our prosecuting attorney. In theory originally he was the official who made an impartial investigation on which it was determined whether or not the case was one requiring the attention of the court. This theory, however, has been somewhat modified in the Russian system by reason of the fact already alluded to that the whole court system is looked upon as an arm of the executive authority of the Russian State and of its subordinate divisions.

The bar in Russia is organized like any other profession and operates within the scheme of socialized functions. Originally the Bolsheviks intended to have one department from which both public defenders and prosecutors were recruited. This was abandoned in 1920 when the People's Court Act provided for a separate system of advocates. Since that time the Inquisitor in the People's Courts and the Procurator in the upper courts serve as the prosecuting officials and a College of Advocates under the direct supervision of the territorial provincial and circuit courts act as attorneys for the defense. When designated by the court they must defend without any special remuneration in criminal cases. If the clients can pay they do so, if

not they are defended without charge. Any fee goes into the treasury of the College of Advocates from which the salaries of the Advocates are paid.

Grave abuse of the advocates by the procurator and the court has been reported. Mr. E. Nagel, a former Soviet attorney in articles published in a Paris newspaper since his escape from Russia has charged that frequently defense attorneys in important trials have been summoned to the office of the presiding judge and to the office of the prosecutor by whom the questions they were to put to the witness during the trial were censored. Mr. Nagel charges this was done in the trial of four engineers at the Kurnetzk trial. In this trial he claims he was one of the defense advocates.

Furthermore, it is claimed that the G. P. U. uses its discretion as whether it will turn over to the court system certain offenders or handle them without trial.

In the criminal procedure of Russia there are features quite different from those in our criminal court system. For example, the accusatory conclusion of the Inquisitor's or the Procurator's office is simply a summary of all the facts for, as well as against the accused brought out by the Inquisitor or the police. Up to the stage at which the proceedings actually begin in the court there is nothing contentious about them. At that point, however, the procurator becomes the prosecutor and the advocate becomes the defender. Actually, however, in the People's Court the presence of public prosecutors at the trial is the exception. Zelitch points out that out of over two hundred cases tried in the courts of twelve provinces in 1926 the procurator participated in only 1.4 per cent.

At the trial the privileges of the defendant are very much greater than they are in our courts in that even though he have an advocate he can cross-question witnesses himself, and in that while he may refuse to testify, that fact will be taken into consideration by the judges. He also has the right to challenge a judge in the case for cause. On the whole, while the sporting theory of criminal justice has not been entirely abolished in the Russian court, nevertheless the trial is characterized much more than in our country by an attempt to get at all the facts in the case without regard to what we consider the law of evidence or the other devices historically intended to protect the defendant. In the trial the defendant always has the last word both in presenting the facts and the interpretation of those facts as well as having the privilege to offer objections to the tentative decision which is read to him before final decision is made.

On the other hand because of the theory of the Bolsheviks as to the function of the court, many of what we call the rights of the defendant are ignored in a Russian trial. The court does not function as an impartial arbiter between the State and the citizens. It entertains no doctrine of inalienable rights of the individual citizen. Its purpose and function is to find out the facts with regard to the case and to defend the Bolshevik regime. Nevertheless, in the People's Court to which cases menacing the regime do not go, the function of the court in addition to ascertaining the truth of the charge, is to adapt the treatment to the correction of the individual.

Russia's Penal System

Russia's penal code is based upon no sentimental humanitarianism. Like her other laws, it is the outcome of cold logic working from certain premises looked upon as self-evident with the same assurance as that of the mathematician who accepts the axioms of geometry. These axioms are the fundamental Marxian and Leninist principles. From these grow the fundamental penological principles. These principles may be summarized as:

1. "Wrongs" are the results of long centuries of acculturation in a capitalistic society;
2. Some individuals are unable to adapt their habits to a new social order;
3. Others can more easily form a new habit-pattern and thus can adapt themselves to a new order of things;
4. The purpose of "punishment" is to protect society.
5. Society should attempt to change the attitude of "wrongdoers" by every method known to modern pedagogical and medical science;
6. Those who cannot be "reformed" should be "isolated" from society for its protection.

It is clear that these principles are the products partly of Marxian and Leninist doctrines and partly of modern science. Convinced of the soundness of these principles the Bolsheviks apply every known method to those they think amenable to correction with an energy and enthusiasm born of firm conviction.

Relentlessly logic is applied and leads to the conclusion that every effort must be made to re-form on the basis of communistic ideals each individual's attitude towards society. He must no longer seek his own egoistic purposes, but the welfare of the whole group. Society must apply to him all the resources it possesses—education,

propaganda and coercion—to create in him this new communistic attitude and pattern of conduct. If on account of his inflexibility society cannot make him conform to this pattern, then he must be “isolated.” Consequently the notion that Russia has done away with capital punishment even for non-political offenders is an error. She does claim that she reserves that ultimate measure for the protection of society for irreclaimable “enemies” of the social order whether their acts are what we call “political” or are dangerous to other individuals. In this matter Soviet Russia is as relentlessly logical as Garofalo, the Italian penologist. So also the multifarious forms of treating the offender grow naturally out of the premise that some individuals are susceptible to change under various types of social pressure. No sentimentality here; just cold logic. No tears over the possible mistakes made in selecting those to be eliminated; some risks must be taken for social protection. However, every effort must first be made to correct the wrong-doer.

The novelty of the Russian penal system lies in the seriousness with which it has attempted to correct offenders. Believing that most “crimes” grow out of the spirit and results of a capitalistic economic system, the Soviet authorities naturally place chief emphasis upon training in industry, providing a means of livelihood by labor and “educational” measures whereby the individual will come to share the ideals of a communistic social order. The Soviet leaders recognize that a capitalistic society cannot at once be transformed culturally into a communistic one. Socialism is the intermediate stage. During this transition stage some concessions must be made to the old cultural survivals in people’s habits, but as rapidly as possible progress must be made to the realization of communistic ideals.

Hence, confinement for the purpose of trying to re-orient the erring individuals is necessary as well as to prevent their doing harm to individuals and to the social order. During this period of confinement society has a chance to order the life of these persons most closely and if possible convert them into good members of society. The first task is to train them in industry. So the prisons are great trade schools.

More interesting still, instead of conducting their prisons on the theory that prison labor and free labor are in inevitable conflict, Russia arranges the closest connection between prison labor and free labor. The prisoner must be brought to realize the solidarity of all labor. He is not an outcast, but a part of the labor-force of the nation. If he was a member of a trade union upon being sent to prison

he does not lose that connection. In fact the prisoner who shows by his industry and conduct that he is one with the great body of free workers, may be sent from the prison during the later stages of his sentence and go to work in a factory. Here he will be under the special care of a group of workers in the factory without any stigma attached to him because of his prison record.

Further, the Russian code allows him, as he develops habits of industry and good behavior, to have furloughs from prison to live with his family and help them in their work. In order to test his stability furloughs from a day to three weeks are allowed as he nears the end of his sentence. These furloughs are in the nature of what we call parole. Supervision is provided by the factory workers or in the country by the local Soviets.

In accordance with their theory of the purpose of confinement, the Soviet authorities have done away with life sentences; the longest sentence is ten years. If a man cannot be changed in that time he cannot be changed at all. In juvenile cases, however, the judge may at the instance of the prison authorities add somewhat to this sentence.

In the prison the offender is subjected to a system of propaganda and social pressure intended to inculcate in him the proper ideals and attitudes. If he is of worker or peasant origin, or even if not but shows adaptability to Sovietism, he becomes a member of cultural groups within the prison intended to complete his transformation. Thus he gets an opportunity for self-expression in accordance with the ideals governing Russia. Wall newspapers are before his eyes each day feeding to him the dominant cultural ideals. Slogans cry at him from the walls. Books and magazines are constantly before his eyes inculcating Leninism and Marxism. Quotations from the words of Marx, Engels, Lenin, and Stalin flare in red before him at every turn. He takes part in clubs, classes, study groups, plays, musicales, etc., in which the ideals of Sovietism are promulgated with him as a participant as well as an observer. Groups are organized for self-government. In some institutions these groups handle all minor cases of discipline. These freer expressions of the prisoners are limited to those of peasant and worker origin, or to those who show their sympathy with the aims of the proletariat.

While Soviet Russia in her new code ignores the ancient distinction of felonies, crimes and misdemeanors, all "wrongs" are considered to be menaces to society. Thus, at one blow the historical significance of these ancient categories have been destroyed. These

"wrongs", however, are divided into three categories: (1) wrongs against the state, society, and the economic system; (2) wrongs growing out of self-seeking motives; and (3) wrongs against police regulations governing health conditions, sanitation, etc. Moreover, under the revised code the previous distinction between the bourgeois classes, on the one hand, and the workers and peasants on the other has been abolished. In the present code, however, acts against the Soviet regime are the most grave, crimes against the person next and crimes against property least important. The maximum sentence of confinement for first degree murder is ten years, for unpremeditated murder five years, and for other crimes less. As indicated above capital punishment is reserved for incorrigible criminals.

Three penal principles are fundamental to the new code: (1) confinement is reformatory in purpose; (2) in order to protect society and to secure reformation a system of classification is set up for those confined, segregating the more dangerous from the less, the hardened from the first offender, and adapting the treatment to the individual, with greater freedom and more privileges for each progressive class; (3) "isolation" of the incorrigible. With the ordinary variety of wrong-doer, Russia is attempting to carry out only more consistently the most advanced penological principles of Western society. What is the organization which she has devised to effectuate these ideals and principles?

The Correctional System

Russia, like Western nations, has two sets of agencies: (1) institutions in which offenders are confined; and (2) supervising and administrative units.

Correctional Institutions

Among the institutions she has hospitals for the physically or mentally abnormal—health institutions and health colonies. She has followed the West in setting up for young delinquents schools of a medico-pedagogical character.

The more frankly correctional institutions fall into five classes. (1) There are *houses of confinement* for those under investigation, for those who have broken away from their legal sentences and for those who have been sentenced to deprivation for not more than six months. (2) There are *labor reformatories* for those sentenced for over six months whom the authorities believe did wrong because they

had not learned a good trade. These institutions are intended to teach offenders a trade. (3) Then, Russia has *labor colonies* for workers and peasants deprived of liberty for not more than five years, who in the belief of the court committed the act from economic necessity, are first offenders, and have not tried to escape suspicion. (4) The next series of institutions are called *vocational isolators*. They are for those deprived of freedom who are not workers or peasants and have committed the wrong because of their class interests. These institutions are for those also of working class origin who are deemed to be especially dangerous to the state or are in need of disciplinary treatment for a time. (5) Lastly, there are *transitional labor reformatories*—what we might call discharge institutions to prepare offenders for transition to free society. These prisoners have been in other institutions and have shown ability to adapt themselves to normal social life.⁵

It is clear that the system is devised to correct the offender and return him to society. The means employed are associated labor, social pressure, education for a trade, education in Sovietism and, in certain stubborn cases, disciplinary treatment. In all these institutions the Code provides that there shall be no brutality, no use of chains, no deprivation of food, no use of solitary confinement, and no such degrading devices as interviewing visitors through screens. Prisoners are transferred from one institution to another as the authorities see improvement in attitude and conduct. Work for all is compulsory. Two days of labor counts as three days of the sentence for those who make good progress. Labor conditions in the prisons are controlled by the same labor code as governs free laborers. Those condemned to labor in these institutions are entitled to two weeks furlough each year after the first five and a half months. If they belong to the working class, this furlough is deducted from the sentence. The wages paid the prisoners are about the same as those paid free labor, less the cost of maintenance. Those condemned to forced labor receive about 25 per cent less. The prisoner may spend a greater proportion of his wages as he advances in grade. The institutions must be self-supporting, so careful management is required.

The educational work in the prisons is a unique feature. There is regular class work, recreation with an educational aim, wall and

⁵I did not see any distinctly political prisons. I was told by the Procurator at Kiev that political prisoners who are sent to prison are treated no differently from other criminals. I gained the impression, however, that such of them as are considered incorrigible counter-revolutionaries are eliminated at once either by being shot or exiled.

printed newspapers, clubs, theatrical performances, sports, musical activities, and self-government in the most advanced grades. Every sort of stimulus and pressure is brought to bear to socialize ("sovietize") the inmates. In the institutions I visited, including old Czarist buildings and modern farm industrial colonies, I saw these activities carried on with great enthusiasm and earnestness.

In the institutions for adults the inmates are divided into three categories: (1) those deprived of freedom and condemned to strict isolation; (2) habitual and certain bourgeois offenders; (3) all the others. Cutting across these categories is a classification or grading system of three grades. Prisoners in the first and second categories on entrance automatically enter the lowest grade. By proper conduct after a minimum part of the sentence has been served—one-half of those of the first category and one-fourth of those of the second—they may be promoted to the middle and upper grades. The prisoners of the third category may be assigned by the Supervising Commission to any of the three grades. As an incentive to good conduct and industry as a prisoners advances in grade his privileges are increased.

The disciplinary measures are limited to reduction in grade with loss of privileges, limitation of the use of personal funds, isolation of the individual up to fourteen days and in removal to an *isolator* where harsher treatment prevails. However, solitary confinement in Russia does not exist in our sense of the word. It is prohibited by the Code. It consists of a stricter separation from the outer world, disbarment from outdoor work and from furlough.

Naturally the educational measures are reserved chiefly for those condemned to a long enough term to make them serviceable. However, persons held for investigation must attend the classes whenever they happen to be held in institutions where they are in contact with prisoners.

Supervising and Administrative Bodies

The whole Soviet correctional system is under the Peoples' Commissariat of Home Affairs. In this department of the government is the body known as the Chief Administration of Correctional Institutions. This body has the supervision over all such institutions in the Union of Soviet Republics, whether of the R. S. F. S. R. or of the Autonomous Republics. This body is represented by a supervisor appointed from Moscow in each *krai*, or governmental area.

The administration of the local institutions in the autonomous republics is in charge of the Chief Prison Inspection for those re-

publics or, if large, of the *krais*, into which they are divided. But the orders of the Chief Administration at Moscow must be carried out by the Chief Inspection. Thus unity is secured in the administration of all such institutions throughout the far-flung Union.

In each government or *krai* is a Distributing Committee composed of a representative of the Chief Inspection Office of that area, a judge, a representative of the Workers and Peasants Inspection and a member of the industrial council of that area. The functions of this committee are as follows:

1. To distribute to the appropriate institutions those condemned to deprivation of freedom, and their transfer from one reformatory institution to another better suited to the case.

2. To transfer inmates of the second and third categories from one grade to the next higher or lower upon the expiration of the minimum time provided for in the Code or upon such conduct by the inmate as warrants his demotion. Also to place before the Chief Administration of Prisons proposals for the transfer to what we should call parole of first class prisoners.

3. To place before the judge proposals to increase the minimum confinement for minors who have not shown sufficient improvement at the end of their sentences. The judge has the power to increase such sentences as a matter of social protection.

4. To place before the proper authorities proposals to promote or demote worker-prisoners to whom should be applied other reformatory methods than the ones used for the sake of more effective reformation or deterrence.

5. To release conditionally or unconditionally prisoners and those condemned to hard labor without guards. This may be done by pardon or by the expiration of the minimum period prescribed by the Code.

6. To compute and administer the diminution of sentence by what we call "good time" (three days of the sentence for two days work).

7. To discuss with local officials proposals to establish new institutions, or proposals of new regulations, or plans for improvement of existing institutions.

8. The Distributing Commission has immediate charge of all the correctional institutions of a governmental unit.

Appeal may be taken from the decision of the Distributing Committee to the Chief Administration of Prisons.

The decisions of the Distributing Committee with reference to the handling of individual prisoners and those condemned to hard labor without guards are to be made after a careful examination of all the facts in each case. This inquiry should include his class affiliations, age, character, motive in committing the act, cause of the offense, the sentence of the judge and the reason for that sentence, previous convictions, his work record, special skills, habits and the effect upon him of prison treatment. Thus the Distributing Committee forms the central link between the reformatory institutions and the courts on the one hand and between the central administration and the local administrative unit upon the other.

In each institution the administration is in the hands of a Supervising Commission instead of in the hands of the Warden and his staff as with most Western European and American prisons. This Commission is composed of the warden of the institution, a judge and a representative of the Economic Bureau. This is the famous "triangle control" to be found not only in the Russian prisons but also in her industrial institutions and farm collectives.

In general the functions of this Commission are to prepare all the proposals for action by the Distributing Commission. It also deals with furloughs for prisoners, disciplinary measures for overstaying furloughs, visits to prisoners (of middle grade) and the general management of the prison.

The Warden within the limits set by the functions of these supervisory bodies controls the internal arrangements of the institution. He is much more limited in his control than the warden in prisons in the United States. Yet, he is the most important member of the personnel. In spite of the limitation of his powers by the "triangle" Supervising Commission he must be the guiding spirit.

In the discussion thus far mention has been made of "forced labor without guards." This was intended to be an advanced and more lenient method of correcting offenders. Such sentences varied in length from seven days to one year. Under this method the wrongdoer was not sent to an institution but was forced to work under a special administrative bureau at Moscow with a subdivision in each governmental area. The work might be that at which he had been employed or some form of unskilled labor. In practice, however, "forced labor without guards" was found to conflict with free labor. Its use has been limited, therefore, although it is still used to a certain extent.

Socialist competition has been introduced from its practice in free industry. It is a method of organizing the prisoners into groups which compete with each other in the fulfillment of the "planned" program of production. For example, in a farm colony for prisoners near Leningrad in the common room of the prisons was posted on a blackboard the percentage of fulfillment of its task accomplished by each group the previous five days. This varied from 40 per cent to 120 per cent. By "shock work" is meant the placing of a group of unusually efficient and enthusiastic prisoners in charge of a task on which the group in charge of it failed—say finished it only 40 per cent. By these two methods stimulation is provided to secure the greatest industry and the best conduct. Moreover, these shock brigades are selected by a general meeting of the prisoners. In addition to prisoners these brigades include representatives of the committee of prison employees and workers, a working instructor and a representative of the educational and training section of the prison. These brigades are directed by a council elected by the section or by the general meeting of the prisoners. The functions of these organizations within the prisons are not limited merely to industrial production but to every purpose of the institution—normal working rates, socialist competition, the plan of work, nutrition and the preparation of food, checking of rough behavior and lax self-discipline, raising the industrial qualifications of the prisoners, newspaper and propaganda work in the prison, payment for labor, premiums, theoretical and practical training, general and political education of the prisoners. It is a unique form of self-government.

The "comradely courts" are organized by the prisoners under rules established by the Commissariat for Home Affairs to fight against violation of labor and prison discipline, against the lack of comradely relations among prisoners and against the influence of the old prison regime. Here the violators are tried and discipline applied by the prisoners themselves. The sentence must be ratified by the warden. The penalties take all sorts of forms consistent with the purposes of reformation.

Appraisal of the Russian Prison System

The following appraisal is a summary of the author's judgment of the Russian experiment in dealing with offenders. Space does not permit justification of his opinion. He can say only that these judgments are based upon what he was able to learn from those in Russia who are in a position to know what are the results of the

system and upon his long and rather extensive observations in the prisons of a large part of the world.

1. On paper the Russian system is the most forward-looking in the world. Its aim is frankly correctional or eliminative. Just as frankly correction means adaptation to the letter and spirit of Sovietism. Elimination is determined on the same basis.

2. For those who show by their conduct that they are amenable to correction every effort is made to prevent the development of a sense of social isolation; solidarity with the dominant group is cultivated in every possible way.

3. For those who show that they are incorrigible there is only one end—"isolation." Before that end is reached every effort is made to correct them. From the Soviet point of view that is the purpose of the colonies of Kulaks and other "enemies of the public" at Archangel and in Siberia.

4. Based upon a theory of economic and social determinism the Russian system has no place for a doctrine of free will. If a person will not or cannot reform in the sense indicated above, he must for the welfare of society be cut off. All the correctional and disciplinary measures are intended to ascertain to which he belongs.

5. The emphasis upon the role of economic opportunity and industrial and social training in correction is found nowhere else. Even negative disciplinary measures are conceived as reformatory in purpose. There is no punishment for retribution.

6. Place is made, although a minor one, for the treatment of pathological criminals. One gains the impression that the Russians believe that these are a negligible fraction of the total number of wrong-doers. They are treated as sick persons, not as criminals. Little emphasis is placed upon the influence of heredity. Social and economic factors are vastly more important.

7. One of the major difficulties in Russia, as everywhere else, is the matter of proper personnel. With the emphasis upon loyalty to Marxian and Leninist doctrine it is difficult to get men who are good communists and at the same time have those personal qualities which make them good prison administrators and subtle moulders of social personalities. Here is where most of the departures from the ideals occur. Doubtless they happen in Russia as elsewhere. While the usual prison cruelties are forbidden by the Code, it is probable that they occur due to this difficulty.

8. The "triangle" control in the Russian prisons, is a unique thing. It is an attempt to apply to the management of the prisons

the methods employed in the control of Russian industry. It has the theoretical advantage that it keeps the labor organizations in close touch with prison industry and with the prisoners. It has the disadvantage that it divides responsibility and delays action. From the standpoint of both theory and practice a judge on the Supervising Commission is an advantage.

9. The introduction of a kind of self-government into the Russian institutions is the most thorough-going attempt to apply this principle ever attempted. It seems rather complicated, but those with whom I talked about it said that it works remarkably well. It attempts to do away with some of the abuses found in the American experiments and yet brings to the prisoner a sense of participating responsibility.

10. The progressive system of grading is on the basis of the German and English systems. It works well.

11. The attempt to classify the prisoners in different institutions works well in the more populous governmental units, but is difficult in the less populous. In the latter often different categories are in the same buildings.

12. The farms and industrial colonies without walls and with a minimum of guards is an experiment worth watching. So far as I could learn it works well, if proper personnel is in charge and if careful attention is given to the selection of the inmates.

13. The retention of the definite sentence is a survival of a theory inconsistent with the fundamental theories of the Russian system and should be abrogated. The only advance here is the right of the judge to add to the sentence of a juvenile. It is in line with the German system of reserving such power to the judiciary rather than to a commission or board.

14. The methods used to keep intact the economic and social ties are unique and effective. The periodical furloughs with the family is a step forward. The prison wage is wholly commendable. The effort to keep in close touch the prisoner and free laborers and employers is most commendable.

15. The deprivation of civil rights has more justification in Russia than in most countries, but is a survival which might well be eliminated.

16. Doubtless there are abuses in the Russian system. The authorities admit that in many respects they have not yet realized their ideals. Probably there is left some brutality, some "inhumanity to man" in Russia's prisons. Mistakes of judgment are inevitable in

any system. Over-zealousness, irritation, and snap judgment perhaps still remain. They do in any system.

17. Of the other prisons no statistical study has been made as to the results. However, as I visited prisons, especially the farm and industrial colonies I was shown the pictures of many graduating classes and was told of many who had become agronomists and technicians on Russian state farms and collectives and in Russian industrial establishments.

On the whole the Russian prison system is one of the most daring experiments in penology in the world. As such it deserves the most careful study. It may well be that it is working out in many respects new and more hopeful ways of dealing with the problem of the criminal. It should not be dismissed because it is Bolshevik or because there are cruelties in its operation. It should be judged strictly on its merits. Those merits it has not yet had time to demonstrate. Its demerits also are not yet fairly assessable. Moreover, it need not be judged as a whole. Progress in any line usually comes only by the adoption of parts from any one system. Russia has features American and Western European penology might well adopt. These I have indicated in appraising the system. The Russian system should be studied in connection with the other systems of the world, such as I made in my *Taming the Criminal*.