RUSSIAN JUSTICE

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RUSSIAN JUSTICE

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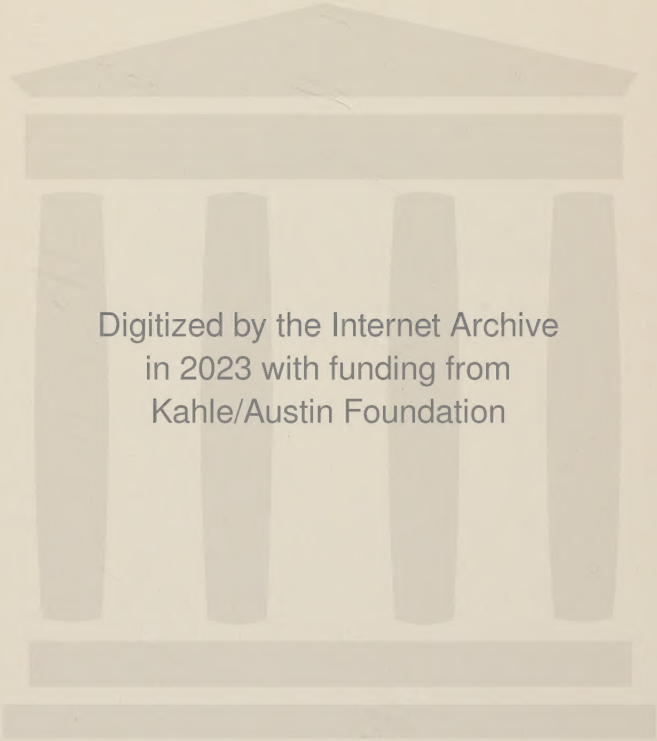
AFFECTION AND GRATITUDE

TO THE MEMORY OF MY FATHER



PREFACE

The problem of crime in the United States is one of our most serious social questions. Within recent years the activities of the gangster and the kidnapper, the increasing number of young criminals whom we do not know how to treat so that they are re-established in life, have brought alarm not only to the social worker and others who try to meet the situation, but to the ordinary citizen as well. Not only is our penal system failing to reform the lawbreaker, but our social conditions are breeding others. The delay in our courts, the influence of politics, and the swaying of sentimental or incompetent juries by artful criminal lawyers without social conscience, are familiar to our citizens. Confronted by all this, we ask ourselves what we might do in order to fulfill our duty in protecting society and at the same time in aiding the transgressor to become a useful citizen.

One thing we can do is to examine closely any system that seems to work in other countries. Russia, with her broad social program, gives much attention to her problem of crime and criminals. Sherwood Eddy, a student of Russia for a long time, has included the humane treatment of prisoners as one of the things which we might profitably get from that country. He might have added also that the simplicity of court procedure by which they arrive at justice has some commendable virtues.

I have visited prisons in many parts of our country as well as in several others and have sat through criminal trials in almost as many places, so in my visits to courts and prisons in the USSR I had an experience that made observation intelligent. There is no doubt that we may learn something from the Russians about the restoration to society of those who contravene the law. Whether one sympathizes with or condemns the political faith of this country, one must admire and respect a people who are able to put ideals into works as they do. They know what they want of the man who is their criminal and they set to work to teach him how to fit into their society.

There are shortcomings in this phase of their work, mostly on the physical side, but they know that as well as we do and are correcting them as rapidly as possible. They have often had to use old buildings because in the short space of years of the new nation they have not had time to build enough modern ones; but they have reformed such gloomy spots as the Women's Prison of Moscow is said to have been in Tzarist days, into a place of considerable light and more livable conditions. There are also some old cells in the Serbsky Psychiatric Institute of much too little ventilation but this building is to be replaced within a short time. Most of the buildings of this institute are already in good condition.

In the United States we have been so led away with preparing better buildings (we still have some of the worst in the world) that we have often forgotten the spiritual side. There are some penal institutions, such as the New Jersey Prison for Women at Clinton, N. J., where an excellent spirit certainly prevails, but even in our best prisons I think that we do not overcome that

feeling on the part of the prisoner that he or she is permanently set aside from normal society. It is the exceptional individual case where this is not true. In the Russian institutions, especially those where there is great freedom, one is struck by the atmosphere that prevails among the prisoners of still being a part of society.

In undertaking to give to the American public in general a picture of the situation in Soviet Russia in regard to crime and its repression certain usual questions have been kept in mind. Interested inquirers, both in this country and abroad, have repeatedly asked me, "What are the courts really like?" "What kinds of crime are committed?" "Who commits them?" and "What is the punishment given?" The answers are found in the pages of this book. Since it is intended to reach the layman as well as the social worker, the student of criminology, the lawyer, and the legislator, an informal approach has been used. It is hoped, however, that this will not tend to detract from the authenticity of the work. No effort has been spared to give as accurate an account as possible, both by means of research over a period of years in connection with my Criminology class and by recent visits to courts and penal institutions.

Gratitude for help must be expressed to many people whom I cannot enumerate here. I am especially indebted to the Assistant Attorney General of the USSR, Prof. A. J. Vishinsky, who gave valuable time for appointments, to Mr. C. S. Smith of the Associated Press who aided me in many ways, to Director Shlaposnitchov of the Institute of Criminal Policy, to Professor Brusilovsky for conferences and appointments he both arranged and participated in and for lectures which I

was permitted to attend, to S. Golunsky, of the Commissariat of Justice, who in addition to such services as were rendered by others, has contributed the further service of reading and criticizing the manuscript. Finally, to my two young countrywomen, Miss Margaret Moore and Miss Margaret Ross, who gave up parts of their vacation in Moscow to contribute typing to the project.

M. S. C.

New York City
October, 1934

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CHAPTER I

INTRODUCTION

Criminal repression in the Soviet Union is bound up with the whole social program which the state has been developing. A good many of us had thought of the Soviet's welfare work as more of a hit-or-miss arrangement, gathering up a few threads here, omitting to notice some quite as important in other places, but as the work is examined in its entirety, it gives evidence of more than usually comprehensive planning.

In making an evaluation of the present situation in regard to any of its phases of development, it is not sufficient merely to consider standards as they now exist, but it is also, of course, necessary to take into account the distance traversed in the brief time and the difficulties surrounding the accomplishment.

The important thing, let us say for an example, in child care, is to see that ten or twelve years ago thousands upon thousands of children were wandering in wild gangs, all over the country, thieving, plundering, killing even, unfed and unclothed, and that today they are, with few exceptions both clothed and fed, being trained and cared for in institutions or at home, and that the period of distress and acute exigency is over. If that had extended to children alone we might understand that with all the forces available the authorities could handle such a situation, but it was a larger

thing than that, and the fact that in the face of what seemed an undertaking of impossible dimensions the authorities were able to come through, and with a program so constructive that it has revolutionized their treatment of offenders against the law, seems something of a miracle. Or again, it is of great significance, especially to such a study as this, that the banditry and roving lawlessness on the part of men in 1922, has been reduced so sharply that this form of crime is pretty well under control. So, it is the distance revolutionary Russia has come, the rapidity of her pace, that are more significant than the actual standards in practice. That is not to say, however, that her present standards always need a defense. Her achievement in treatment of prisoners, for example, which is the subject of this book, does not suffer by comparison with that of western nations.

In the pages that follow attention is given to treatment and to standards, but for the moment, assuming that advances have been rapidly made in the repression of crime, let us focus our interest on other factors that have contributed to this progress. For us it is important to discover, if we can, what factors are responsible for the one-third decrease in the number of criminals which authorities say has been effected since the beginning of the Revolution. Even if their estimate of the reduction seems high, it is still apparent to a student of the situation that a real decrease, perhaps smaller, has been made. The united front with which the nation has attacked its social problems on all sides has, as would be expected, exerted great influence in the handling of the crime problem. Prevention has resulted in a large way from the development in the various phases of social welfare that have gone on

simultaneously, and as one begins to consider the relationship that exists there appears that whole pattern, referred to earlier, which leaves few phases of social and economic life untouched.

The care of children has already been spoken of. It is clear that one of the big problems, among the horde that have puzzled and challenged the group who have had chief responsibility in steering the government, was juvenile delinquency. While authorities gathered these young offenders together and put them in places for care, they were at the same time preparing and carrying out a program for their youth that would prevent others following in the footsteps of the delinquents.

In the preventive program that was now first in interest, the item of education stood at the head of the list. No doubt in the early days of the proletarian state, schools were woefully inadequate, but children were at least placed under the guidance of people who gave them the elements of an education as well as taught them something of how to work. But the nation appears to have a mania for the education of its masses and a point has now been reached where there is university study in sight, with a stipend attached for those who attend, for all those able to take advantage of it. Juvenile delinquency rates have steadily decreased and the development of the school system has obviously contributed largely to this reduced figure.

Health programs are, of course, directly related to crime repression. There is a book on the socialized medicine of Russia, written by Sir Arthur Newsholme of England and Dr. Kingsbury of our own country, that should be read for full information on this subject, but it can be said that the scope of the program is

wide and the extent far-reaching. Beyond the broad development of curative medicine there is the preventive program in which physical culture activities figure largely. As an illustration of the results achieved in this work, a demonstration staged in Moscow in the summer of 1934 was very impressive. The author along with a good many other Americans and other foreign visitors witnessed the parade in which a hundred thousand physical culturists, with their canoes, paddles, tennis racquets, flowers, and other things suggestive of health and enjoyment of life, passed in excellent order, so well disciplined that one group followed another without a break in ranks. There is, of course, a great significance to that when it is considered on a national scale. With every factory and farm providing such a program for its workers there should be a rapid diminution in the number of weaklings who turn to crime.

One finds himself on the defensive at the mention of more liberal divorce laws, but such a provision may actually lessen criminal acts. Since a woman who finds her husband wholly incompatible and wants to remarry some more congenial person has only to indicate her wish in order to be free, she is not nearly as likely to poison her husband or work herself into a state from which some expert psychiatrist will have to untangle her. When the system was first initiated in the Soviet Union we were told that there was a great rush of those who wished to benefit, but that since the first period exhausted the number of those eager for separation, there has been a noticeable decrease. One meets a great number of people who have been married a long time! Such an authority as Vishinsky attributed much of the decrease in criminal acts to these liberal laws.

The rapid industrialization of the country has made

for less crime except in the case of offenses against the state. In that period just before the installation of NEP when farmers and others discharged from the army could find no work, when distribution without production had left the nation in starvation, banditry flourished, but when the five-year plan began to make demands for more workers than could be furnished, a halt was called in the advance of ordinary crime. Also, with work plentiful, there is no problem of providing jobs for those discharged from prisons. With the system of training which gives a skilled trade to every man capable of assimilating the instruction and mastering the tasks, and of giving instruction also to the unskilled type who are thereby enabled to fill some job well, there is no question of work for discharged prisoners. How long this condition will hold depends, of course, on the time it will take for industrialization to reach its zenith and for the population to catch up and exceed the ability of the system to absorb them. However, there is an encouragement of birth control and that may manage the question somewhat better than has been done in other countries gone on before with their industrialization program. Since Russia sits down with pencil and paper and makes her plans of production, perhaps she can do something in the nature of requirements for population increase! [1]

Housing is, of course, one of the biggest problems in

[1] The following comment is offered by a Russian authority: "That is something like the Malthusian theory. We don't believe in it. We are sure that at present, and for a very long time in the future there can be no real over-population. If sometimes something like that seems to happen in the capitalistic countries, it is an illusion. It is the result of the social conditions of those countries. Our social system makes it possible for us to use any quantity of labour and there can be no question of over-population for us. Therefore the question of something like State birth control does not even arise."

Soviet Russia. They are building with feverish rapidity but one suspects it will be some time until they catch up to the need. It is popular to correlate bad health, crime, and most other social evils with congested housing, and one feels sure that much of the blame attached to it is well placed. If Russia can eliminate this condition she will have done much in exercising control of those situations that are supposed to be the major causes of crime. She has her own theory of cause which another chapter discusses, but optimistic socialists believe she is in a fair way to remove that also. Russians know well enough of their shortage of housing and they know the social significance of that shortage, but one cannot rebuild an entire nation in the few short years since their social cataclysm. There had to be a gap somewhere and both lack of trained workers and of material accounts for its existence.

Training for taking part in government affairs, such as elections and jury service, is also conducive to securing law observance. The writer's visit was so taken up with courts and prisons that other angles of investigation were neglected and any ideas as to government practices in democracy are secured second-hand. However, some of those Americans who live there and observe intelligently state that there is a steady progress toward greater participation by the people themselves in government. As education prepares the way, participation becomes more real.

Any mention of fight against crime in this country ought to take into account the establishment of the new culture of this society. At the close of the October Revolution, Russia had as its chief asset a great many millions of people whose rights the leaders had sworn to establish and protect, and who were unlettered, su-

perstitious and without social understanding. Educating children was a small task compared to what they must do with those adults, and in the period when the old culture had come to an end with the last efforts of the civil war and the new had not well begun, crime swelled into large numbers of convicted. But these peasants and workers have many of them learned, at evening classes, at conferences, and in trade unions of various sorts, something of what this order stands for. A new social consciousness that makes the individual feel responsible for the law and order of the country has arisen and makes itself felt even in such small offenses as the case of some thoughtless individual throwing paper in a park which is certain to be otherwise immaculate, or of a more delinquent one climbing on a street car at the front in the hope of not being detected.

The freeing of the people from hardships of the pioneer stage of the new civilization is also beginning to be felt. There is much attention to beauty which I am told was not evident as recently as two or three years ago. Natural yearnings are being satisfied and a broader life is opening; the labor pains of the rebirth of a nation are about over. All this relieves tension and tends to establish a normality of living such as results in a more settled order.

A condition that ought soon to make for a decrease in crime against the state by the so-called class enemy is the fact that the government is now established. We are so accustomed to use the phrase "the Russian experiment" that it is hard for one to give it up; but, it is no longer much of an experiment. The author remembers a gentle reproof given to her when she remarked that since this sort of thing had never been tried before, it was difficult to see how it might work.

There was a smiling rejoinder of "*We* have tried it and it *does* work." Surely there will be a cessation in "crimes against the state" when it is clearly seen that efforts against the order of government will not be of avail.

Emphasis ought, of course, to be put on the social planning that gives security for old age and removes fear of illness and unemployment. It would be impossible to estimate how much crime is due to a feeling of insecurity in society, but there is no doubt that it is a large percentage. Provisions looking toward the elimination of this insecurity have already been effective enough to have a part in the reduction of the number of those driven to crime because of fear of such economic woes.

One point on which observers agree that we need to imitate these people is in the humane treatment of prisoners. It ought to be understood here that "humane" is not synonymous with "coddling." Some of us who do not distinguish have grown shy of that word but in these pages it is used in its proper meaning. Prisoners are given a "man to man" treatment, held to a strict régime just as if they worked in a factory outside. There is discipline in industry and they are prepared to meet that condition, to learn to discipline themselves, but the approach is one of dignity, with any thought of humiliation put far away. It is only when one thinks of the prisoner as suffering undignified imprisonment, degraded by acts of physical or verbal abuse on the part of guards who ought themselves to be in prison, that one stoops to pity and "feels sorry for him," but when a man is subjected only to a constructive training such as it might be a privilege to get, one's sympathy is hardly needed.

The question of how much one can see in a limited

time always comes up when one writes of foreign conditions, and cognizance of it should be taken in this Introductory Chapter. The answer, of course, depends on the preparation of the person for the task. It seems too obvious even to remark that one can live in a country for years and know considerably less about specialized subjects than one trained observer who merely visits the institutions. The book on *Red Medicine* by Sir Arthur Newsholme and Dr. Kingsbury has already been referred to. One would naturally rather trust the judgment of such authorities even though they visit briefly than that of others, unfamiliar with this field, who have resided there for years on end.

The author trusts her own judgment in regard to prisons and courts. She has been seeing both for years, and in many places. Physical equipment is not all that one looks for. There are signs that give things away. There are glances that indicate a whole policy. If a warden tells a visitor of a wholesome approach to his men, and that person then sees the inmates fall away and look up from lowered eyes as he goes through, he knows what to think. If a superintendent says, as one did to the writer, that he does not really enforce the silent system, and one watches the men a while, talking through the side of a twisted mouth as a guard half turns his head and never speaking normally during the entire time of the visit, one knows again that representations are not in accord with practice. Prisoners do not put on acts for visitors, and members of a staff would probably be letting themselves in for trouble with any suggestion that they do so.

The writer expresses no opinions on conditions outside her own field of special investigation, except on obvious points. Other institutions were visited only in

a casual way, but a great deal of life itself was seen. There were long walks in all sorts of places. Groups of children were played with and workmen of all kinds talked to, usually through an interpreter; but there were those with whom the conversation was carried on directly in French, German or sometimes English. All of this formed a background for any conclusions, and years of working with people in a social work relationship had also prepared the writer again for significant observation.

However, the major portion of the book is concerned with research, and that has been thoroughly checked for accuracy of statement by a member of the Commissariat of Justice in Moscow.

CHAPTER II

THE SOVIET THEORY OF CRIME

To UNDERSTAND rightly the theory of crime officially accepted in Russia today, one must read the works of Lenin. Karl Marx is there in the background, to be sure, but he is explained or interpreted in accordance with the opinion of the Soviet Union's first leader. It sounds a simple enough theory—that, with the final attainment of the classless society, crime, which is the result of economic class relationship, will disappear. But it needs some elucidation. The accomplishment of a state of society in which this would be true is not, after all, quite so simple as the statement sounds.

People have tried for a good many years to account for the phenomenon of crime and to work out some manner of punishment that would control even if not eliminate it, as the present Soviet theory permits. Anthropologists tell us that acts not pleasing to the group, even antagonistic to its best interests, are apparently as old as human society itself. Penalties consisting of curses, banishment, even death, were visited upon those who broke the law in the earliest ages of society. Up to very recent years punishment in the form of untold cruelties was dealt out to those who transgressed. Still crime grew and criminals increased with the complexity of civilization. What makes people do those things —commit those acts which are against the folk ways

or state ways of the community in which he lives, and brings him usually to account? Who knows? Within fairly recent times three main theories have attempted to establish the causes and have laid out measures of punishment designed to protect law-abiding society from the criminal and, later, to aid in the readjustment of the individual to life.

We might take a hasty look at these theories before we speak of their rejection by proletariat Russia. The classical school had as one of its chief characteristics the doctrine of free will in the commission of crime. The discretionary power of judges in the years just preceding the development of this theory gave too much play to the possibility, supposedly, of circumstances surrounding the act. As a matter of actual practice, according to such an authority as Gillin, it gave them instead an excellent chance to wreak a personal vengeance on some enemy, or, still acting according to the discretionary power given them, befriend someone to whom they wished to show favor.

But this was one of the evils the classical school of writers decided to remedy. If one committed an act of his own free will, then circumstances had nothing to do with it. A man was a criminal because he chose to be. Thus when two persons committed the same act they should be given the same punishment. And the French Code of 1791 put such a theory into practice, listing a great number of such transgressions and providing for each a set penalty. The difficulties would hardly need to be set down for us. The resulting unwieldy code, the lack of any punishment for acts not listed, made the administration of the code an impossible task.

There was another reason for its modification. It did not take an expert in criminology to see that there were

differentiating conditions surrounding the commissions of crime. It was clear that of two people committing similar acts, the one would have the sympathy of those who saw him, whereas the second would be looked on with contempt. That the people in the street were able to arrive at such a conclusion and public opinion in the days of revolutionary action against tyranny, must have had some effect. At any rate the Code of 1810 in France provided a modification of the definite penalty for a definite crime by setting a maximum and minimum and permitting the judge to choose between. The doctrine of free will in the commission of crime thus became modified to a milder form of the same theory.

The neo-classical school went a step further. While it still recognized the theory of free will and individual responsibility on the part of one transgressing the law, it did decide that in view of evidences being submitted by a body of biologists, physicians, and other scientists, that every person was not free to choose, and was thus not responsible for his behavior. There might, for example, be insanity or imbecility to account for an act. It was, however, necessary to establish that at the time of the crime he was in such a mental state. This theory is incorporated in the practice of our criminal courts today.

But here begins another story. Modern science was developing. Research connected with psychiatry and psychology was adding important contributions to the field of the study of the criminal and an attempt to account for crime. Why did a man do things of such an anti-social nature, things harmful to his fellow beings? The anthropological school with Lombroso as its initial spokesman, entered with its explanation.

This theory, attacking the classical and neo-classical

writers, took a different line, and swung far in the other direction. Why did the criminal commit his crime? Because he was born with certain stigmata that prevented his following other lines of behavior. He had no choice in the matter. Far from the free-will theory that made him a creature responsible for his deeds, this doctrine made him incapable of rational analysis, or any logical deductions as to cause and consequence. Lombroso weighted his argument with facts and figures. He made an extensive study of criminals in Italian prisons and concluded finally that at least a certain percentage of those committing crimes were born criminals with definite physical features characteristic of the lower stages of evolution. However, in his later writings he concluded that only one-third of all criminals belonged to this group. Still having to account for the other two-thirds, he decided that part of this number was insane and that the other belonged in the category for which he invented the term—*criminaloid.* It is in regard to the latter group that we see his recognition of social influences on crime. Besides those born to criminal ways and those committing their acts because of insanity, there was this third group, who while not born to their deeds, still acted like criminals. There was too much proof by this time of the influence of environment for even an ardent advocate of his own theory to deny its importance.

Long before the death of Lombroso, Ferri had written his *Criminal Sociology* and our third main theory was well launched. This school, of course, is prominently with us today. It recognizes biological causes and adds to them the results of various social environments. It goes even beyond that and takes into account

such physical environment as climate, weather, and geographic location.

The Soviet criminal theory repudiates all of the aforementioned and asserts that crime is caused by the exploitation of one class by another. The attitude which accounts for such behavior, they insist, has evolved over a period that has lasted since the state became an instrument in the hands of a ruling class to force a weaker one into submission by making "laws" to protect its own interests and punishing those who transgressed one of these regulations. Because that "conscience" has had a historical development, has been long in the making, it will likewise take time to change it.

But the Marx-Lenin theory assumes that all crime is the result of the exploitation of one class by another, and that with the achievement of classless society—which is the ultimate aim of socialist construction—crime itself will disappear.

Let us trace this line of thought for a moment for fear it is not as familiar as it should be for one to get the full import of this doctrine. According to this belief, there has been one continuous evolution of society toward the establishment of full Communism, beginning with its earliest stage, which will be in its final stage world-wide. But in this evolution, going on since the dawn of history and before, there emerged at one stage of the process an organization through which the stronger element came to rule the weaker and make its members submit to its will. The instrument through which they effected this was the state. From that time on, the interests of the class or group in power have been protected by rules or laws and those who break those regulations, or commit some act not in accord with these interests of the ruling class, are guilty of a crime.

The Marx-Lenin doctrine in rejecting any sort of an idealistic notion such as Rousseau's "social contract" and Hegel's "the reality of the moral idea" as accounting for the state, accepts instead the definition that "the state as organized violence emerged at the definite stage in the evolution of society, that society was broken up into irreconcilable classes, that it could no longer exist without the 'authority' supposed to be above society and to a certain degree isolated from it."

Or again, speaking more plainly, the Marxian formula states "that the state is an organ of oppression of one class by another; that it sets up an order which legalizes and consolidates this oppression modifying the conflict of classes." Thus since the state is an organ of class domination, and crime necessarily, by the same definition, is the commission of an act against the interests of the ruling class, a criminal code would be a formulation of penalties imposed for such acts. When a state is reached where there is no domination of one class by another in society, it would logically appear that there would be no need of a criminal code.

But the Soviet Union has a criminal code now, as we shall later see, and of course a recognition of crime. This, however, in their theory is no contradiction. In the first place there is one class now in power (there is an admitted class basis for criminal legislation), and the transgression of the rights of those in authority, the proletariat or working group, does constitute a serious and major crime. That, of course, is to be expected from the nature of our definition. But what of the group of criminals who come from the working class itself?

They are those whose attitude is the result of long centuries of class struggle, and their point of view can-

not be changed at once. Every effort is made by a policy resulting from this theory to change their "social conscience" by education while they serve their sentence, but even with that effort it is certain that many of the older generation will not be won over to the new way of thinking. Thus they concentrate on youth, as we shall see in a later chapter devoted to the child who comes in contact with the law.

But crime, except in isolated instances, will disappear as need for the state also vanishes. Let us take the word of an authority for it. Commissar of Justice of the USSR, N. Krylenko, writes: "Only under Communism will the state become wholly superfluous, for then there will be no one to suppress in the sense of waging a systematic class struggle against a definite part of the population."

Understand that, in accordance with the theory, criminal repression will exist as long as the state itself is necessary, and for the present the perfect socialist society is a thing of the future. Even when it is fully come there will still be some who will commit acts of a criminal nature, but they will be of such infrequency that there will be no need of penal restriction. Lenin is our authority this time. In Vol. XXI, p. 432, we find the following: "For this there will be no need for a special machine, for a special apparatus of coercion; this will be done by the army of people themselves with the simplicity and ease with which any crowd of civilized people even in contemporary society will stop a street fight of rowdies or will disallow the outraging of a woman."

Perhaps it will be easier to understand the theory that permits of the final disappearance of crime if the legal definition contained in their code were given.

One can see then that with the gaining of strength on the part of the government, with the "mopping up" of the remaining opposition, there could possibly be such a situation. Part 3 of the Criminal Code, Article 6, contains this:

"A socially dangerous act is deemed every act of commission or omission, directed against the Soviet régime, or one which violates the order established by the workers' and peasants' government for the period of time pending transition to a communist régime."

A note added to this article is of special significance in providing for consideration of the circumstances of social class. It reads:

"An act which, although formally falling within one of the articles of the special section of the present code, is free from socially dangerous characteristics, owing to its obvious insignificance or absence of harmful consequences, is not a crime."

It can be seen that crime in the Soviet Union consists mainly of those acts directed against the state by the so-called class enemies; or those desiring to hamper socialist construction. In this situation those acts defined as criminal would tend to have usually an economic basis. And this would substantiate the theory that recognizes no other motive for a crime than an economic one, which, in a society where all needs would be met, would supposedly disappear. That is, if in the final socialist state every one should receive according to his needs—as they insist he will—then the economic motive for crime would be eliminated. This takes care

of those acts which in our own country, we might attribute to economic causes.

But what, we might ask, of those murders or other crimes, motivated by jealousy or rage? The theory answers that those, in the person not ill and requiring medical treatment instead of penal, are rare and the act thus usually constitutes the one crime in the person's career. For example the man who murders his wife in a jealous rage would very likely make a good citizen who would never again commit such an excessive act. However, this, in the person not mentally deranged, would also be a rare occurrence for the reason assigned that marriage and divorce are made so liberal under the laws of the USSR that the jealousy motive in marital tangles is taken care of, and thus one of the main causes of murder is eliminated.

It is interesting to note in this regard that the maximum penalty for murder in Russia in any case, except for death resulting from banditry and robbery with a firearm, is a ten year sentence. In fact the maximum term of imprisonment for any cause is ten years. They hold long sentences to be neither humane nor constructive. If a man is mentally abnormal to a dangerous extent, there are other places for him than prisons. If he has committed such a serious act as banditry or robbery with firearms, he is likely to get a death sentence unless there are extenuating circumstances such as the youth of the offender, and for the other crimes the shorter sentence is held to be more conducive to reformation.

If we note for a moment the chief types of crime against which the penal provisions are directed, we will be able to see what acts any theory must account

for. In the pamphlet *Revolutionary Law* by the Commissar of Justice, N. Krylenko, we find the four main categories of criminal law listed.

First, the laws safeguarding the dictatorship of the proletariat. Under this class are all provisions for penalties for acts of a counter-revolutionary nature; against such things as wrecking, activities of the Kulaks (the middle-class peasants who owned a moderate degree of private property and who were opposed to relinquishing it to the state) directed against the order of government, and against speculators, and any form of pilfering, theft, bribery, and squandering.

In the second category the author places the laws which protect the interest of the toiling masses. These are of various natures. Punishment is here provided for officials who fail to fulfill the pledges of the government as to food and living conditions promised to the working class. Protection is also afforded against excessive fines or punishment of the people. The need for such a measure he illustrates by the case of the imposition of a fine of a hundred rubles in a trivial incident where ten was the maximum permitted by law, and there was no occasion for any at all. An official permitting or contributing to such an act must, of course, be punished. In the same category are provisions against undue severity in enforced collectivisation, which tend to frighten and coerce rather than to the persuasion favored by Stalin. In this category also would fall any law providing for punishment of one committing deeds of violence against one's person.

In the third category [1] are found "laws regulating the inter-relations between the various social strata of the toiling masses." This division consists of the laws

[1] P. 17.

on Soviet trade and is directed against any act that contributes to squandering of goods or disposition of unwanted articles by forcing a customer to take one such article along with his other purchases,[2] or any other act by trade bodies that interferes with the rights of the people.

The fourth category consists of laws punishing nonobservance of regulations as to business accounting and fulfillment of plans by the various economic organizations.

"These categories of law," says this author, "exhaust the fundamental questions that comprehend every aspect of our economic and social life." At this phase of the development of their socialist state they, of course, recognize the necessity for the provisions that their penal code contains. But their faith in their ideal—the final classless society—and the change which it will bring in social consciousness enables them to prophesy according to Lenin the disappearance of excessive acts. "We do not know," he says, "how quickly and in what stages, but we do know that it will be withering away; with their withering away, the state will also wither away." Crime and punishment in their theory are therefore transitory phenomena.

The disappearance of crime will not be achieved with the end of the second five-year plan as some optimists might have expected. There are still sectors where the

[2] The author writes of this: "What is a 'compulsory assortment?' You enter a store and ask for something. Well, you get what you want, but you must also take something else. What? A lamp, for instance. Now a lamp is a good thing to have, but where is the burner? You are curtly told that the lamp comes without a burner. Another store expects you to buy electric flashlights without a battery—a third tags on batteries without flashlights." He also speaks of sweaters sent to a city sweltering in the heat, and skiis to Odessa. All this, he says, is in violation of the law and must be punished. The people's rights must be protected (*op. cit.* pp. 29-30).

struggle between the classes flares up, and where the opposition is for the moment strengthened by influencing some of the toilers themselves to come to their aid. But types of crime outside this group will be steadily losing in degree of social danger and should be treated with increasing leniency. Repressive measures in regard to the first type of crimes, those of menace to the advancing socialist state, must be made more severe until all opposition has ceased and the ideal society ushered in.

Criminal repression will not disappear until the full realization of the Communist order, but then in the words of Lenin once more [3] "free from the thrall of capitalism . . . people will gradually get accustomed to observe the elementary, perennially known rules of social life that were repeated for ages in all books on good conduct; to observe them without the special apparatus of coercion which is called the State."

While these theorists expect that by the end of the second five-year plan, class distinctions will be pretty well smoothed out, criminal repression will still remain to combat the remnants of the old order which will linger on for some time. They emphasize that they have no magic wand for clearing all this suddenly and completely from the consciousness of the people. Crime and criminal repression came at one stage in evolution —the beginning of the domination of one class by another—and they will vanish at another stage—the appearance of the highest phase of Communism.

In a final summation of the theory, crime results solely from a class struggle and will disappear with the extinction of classes, just as the state itself, according to Lenin, will disappear, and the court, now an organ

[3] Vol. XXI, p. 431.

of the state guarding the interests, life, health, and liberty of toilers of the state, will also disappear.

"The period is called transitory," said Professor Brusilovsky in a lecture, "because after the achievement of Communism there will be neither crime nor punishment. Each stage and development of Soviet authority while lowering the importance of some crimes, aggravates the weight of others, depending upon the actual economic and political situation. To us criminal law is no fetish, but a tool for sweeping away the obstacles to socialist construction. Our criminal law is to a high degree historic, our proletarian semi-state is in a stage of constant change and motion toward the construction of classless society."

A theory is only a theory, and when it deals with human beings there is no accuracy of prophecy. The advent of a proletarian state, however, might indicate to some of us that other strange things could happen in the same land, especially so with the social mind that is apparent, and with as sane an approach to criminal treatment as their policy calls for. Let that social mind have another few generations for extension to fringes of the group, and that policy of treatment of criminals come into full play, and we might be as surprised as we are that the Soviet State has not only survived, but has recently been received into the League of Nations as one of the powers.

The student will want to know, though, something of the degree to which the theory proves accurate as the period of socialist construction advances in the Soviet Union. It might be said here that according to Assistant Attorney General Vishinsky there is a decrease in the number of prisoners convicted of such familiar crimes as theft, murder, arson, robbery, rape,

etc., by almost one-third since the days just before the revolution. Chapter IV discusses in detail the crimes committed and some analysis is given of those who commit them. The reader must be reminded again, however, that the authorities contend that no radical change can be made in the social conscience of their people in the one generation of the revolution which has elapsed, especially as so little constructive work was done up to the last few years. It is, however, important to know what problems they have at this time and the chapter referred to above is devoted to that discussion.

CHAPTER III

CRIME REPRESSION SINCE THE REVOLUTION

We turn now from theory to fact. Whether or not a state of classless society will be achieved no one can know; but it is certain that at the moment crime and criminals do exist in Soviet Russia. While our concern is with the present program of criminal repression, a review of the situation since the revolution will give us perspective.

Stalin enumerates three basic aspects of the proletarian dictatorship: "First, the utilization of the power of the proletariat for the crushing of the exploiters, for the defense of the country, for the consolidation of ties with the proletariat of other countries, for the development and victory of revolutions in all countries. Second, the utilization of the power of the proletariat for the final separation of the toiling and exploited masses from the bourgeoisie, for the attraction of the masses to the cause of socialist construction, for state leadership of these masses by the proletarian. And, third, the utilization of the power of the proletariat for the organization of forces, for the abolition of classes, for the transition to a society without classes, to a society without state."

Criminal repression must necessarily be considered in connection with these purposes of the state. It can

be seen that there are three main factors involved. There is, first of all, the crushing of the enemies of the state; secondly, the discipline and control of the toiling masses themselves; and, third, the socialist construction. The method used for accomplishing these ends have changed with the various phases of the development of the Communist state.

Considering first the crushing of those who oppose the order of government or hinder its development, we find the methods of coercion varying from leniency and toleration in the beginning of the Revolution, through the frightful years of the *Cheka* (extraordinary commission to combat speculation and counter-revolution in the early days) reign, to the more severe activities of the OGPU in recent times. Shortly after the October Revolution in May, 1918, all those persons held for political crimes were set free by an act of general amnesty. The results of this liberality were rather serious for the rule of the proletariat, since those released, bitterly determined to overthrow the new and not too firmly seated government, returned to the fight with vigor. Among these was the renowned General Krasnow who organized the White Guard Cossacks and caused no end of trouble to the Soviets.

Such a policy of clemency was bound to end if the Soviet government continued to live. When next they had political prisoners in hand there was a different tale to tell. Whoever of them saw the inside of a prison or place of detention were not released to run back to the fight. We find Stalin defending later severe measures toward these prisoners in an interview with Ludwig in 1932.[1] "Soon it transpired that such leniency was only undermining the strength of the authority of

[1] P. 7.

the Soviets. We committed a mistake in showing such leniency toward the enemies of the working class. If we repeated this mistake any further, we would have committed a crime toward the working class. We would have betrayed its interest. And this became perfectly clear very soon. It became very sure that the greater our leniency toward our enemies, the greater their resistance."

Leniency was no part of their program thereafter. History will attest to the fact. Military Communism and the *Cheka,* agent of superlative revolutionary terror, attended to that. Civil wars are brutal, cruel, and Russia's was notoriously no exception. The period that followed with its terrorist activities is no bright spot in the history of crime repression of post-revolutionary Russia. Lenin threw the responsibility for the establishment of the so-called Red Terror on their class enemies. He says: "You have yourselves to blame, friends! Do not run away with the idea that the Russian peasants and workers have forgotten about your actions. You challenged us to a fight of the most desperate form in October, and in reply to this we have announced the terror, and the triple terror, and if necessary we will make it even hotter for you, if you try again." [2] They tried again, and yet again, the open fighting of the Civil War giving way to underground methods, not deterred by the worst the *Cheka* and its successors the GPU could do. But early measures must have quadrupled, for Communism can no longer be considered a mere experiment.

Who were the people against which this repression was directed? The urban bourgeoisie joined by the rural Kulaks formed the great number. There was a

[2] Lenin, Vol. XXVII, p. 175.

tremendous increase of criminals from these two classes in the early years of the proletarian state. In their combined efforts they were able to prove of much hindrance to the Soviet cause, and, aided by those waverers within the toiling class who were able to be influenced to counter-revolutionary activities, they presented a grave menace. Again Lenin, whom the Russians think of in his kindly moods, showed his grim side. "We must exert every effort," he wrote, "to track down and catch all those highwaymen, all the landlords and capitalists in hiding, in all their disguises, expose and punish them without pity—sly, subtle, experienced, patiently waiting for the opportune moment in hatching their plots; they are saboteurs who will stoop to any crime to do harm to the Soviet rule. With these enemies of the toilers, with the landlords, capitalists, saboteurs, and White Guards, we must be merciless." [3]

Economically, the first period was one of distribution of goods without production. Its aftermath was famine and unemployment and Lenin and Trotsky were at odds over a policy of alleviation. Trotsky, impatient at delay over a program of more complete state ownership, advocated immediate action against all private possession of property. Lenin considered a starving people no advantage in furthering a socialist construction, and was besides a humanitarian. He wanted his people fed. The result was the institution of NEP, the New Economic Policy, which permitted private ownership within limits, and brought about the eventual political annihilation of Trotsky.

The policy of fighting the class enemy remained practically the same even through the era of NEP. There was some let-up in the counter-revolutionary activities

[3] Lenin, Vol. 24, XXIV, p. 434.

on the initiation of NEP, as it had been hoped by those opposed to Communism that this probably indicated the return to Capitalism, but activities of an anti-Communistic nature were still sternly repressed.

N. Krylenko, prosecutor of note and now Commissar of Justice of the USSR, writes in defense against a criticism of mildness toward the enemies of the government at this time: "The form of the dictatorship of the proletariat changes in the different stages of the proletarian revolution. For instance, in the first period of the October Revolution the suppression of the resistance of the exploiters was the most conspicuous feature . . . during the transition to the NEP, the peaceful, cultural, organizational work of the dictatorship of the proletariat was most conspicuous, but this again did not mean that the importance of overcoming the resistance of the exploiters had receded in the least."

The chief agent of "resisting the exploiters" was now the GPU (later, as it became the joint organization of all the republics, the OGPU), the full title of which is the United State Political Administration. There seems no doubt that their midnight arrests and executions were an effective weapon against any counter-Soviet efforts even as the activities of their predecessors, the *Cheka,* had been before.

The method now undergoes an important change. Note this from Lenin.[4] "To the extent that the basic purpose of authority becomes not military crushing but administrative, the typical manifestation of crushing and coercion will become not the method of shooting on the spot, but trial in court." Not in love himself, apparently, with methods such as he felt they had to use, he seized the first opportunity afforded by an

[4] Vol. XX, p. 460.

end of Civil War to advance a revolutionary legality which his party had already been trying to establish.

The Criminal Code was written in 1922, as was also the Code for Criminal Procedure, and the way was paved for an enlargement of orderly court procedure. The provisions of the code gave not greater leniency but legalized measures that had already been practiced. The step of importance, however, was that "tried in court" replaced "shooting on the spot."

The history of violence against the Kulaks, the most startling of all violence used by the USSR in establishing itself, was entering now a modified phase. Nerves were settling somewhat, and panic beginning to clear away. Legal guarantees, so nearly obscured through years when "crushing" was regarded as necessary at any price if the proletariat was to stay in authority, might now begin, at least, to emerge.

Along with this a new idea was put into practice which presents a happier side to the study of crime repression in this country. Since the state could not kill all of its class enemies and certainly would not find it profitable to fill innumerable prisons with them, there developed a new approach to the problem. It is not accurate to say that the idea was new, because it had been present since the earliest days of the Revolution. The Civil War, however, had so disrupted the development of any program that this influence was not properly felt until later.

This new approach was by means of educating and training these offenders so that they might be turned out again as useful workers in a state so greatly in need of all the man power it could muster. Authorities built their plans on the belief that even a class enemy might reform and see his way to becoming a member of the

new society if properly guided. And as for the convicts from among the loyal masses, any program for crime repression must have as its fundamental object the training of these as useful citizens. The theory of how it might be done has turned out to be a practical one. Its translation into government policy was a most significant development and leads straight to the constructive attitude one finds in present-day treatment of prisoners in the USSR.

Most of us, it seems, have had the impression that during the days of the Civil War there were no legal guarantees in the state, but such an idea is not correct. One thinks of courts as suspended, but there were orderly trials even in the darkest days of military Communism when non-judicial bodies like the *Cheka* were at their height. This was possible, of course, almost entirely for those members of the toiling masses themselves and not for enemies of the proletarian authority.

It was a bare year after the October Revolution (November 6–9, 1918) that the Emergency Congress of the Soviets was held in Moscow. And if ever emergency existed in political affairs, it did so then for the Soviets. Civil War was at its highest point, the White Guards aided by Czecho-Slovaks, were in possession of Siberia, the English were pushing to the north and the French to the south. It is surprising that a party at the helm of the ship of state could take its mind even for a moment from such an international and military situation to think of admonishing a people to observe law. But we find Kursky, then Commissar of Justice, rising gravely to remind the Congress and the people that "during the year of revolutionary activity the working class of Russia has elaborated the basic laws of the RSFSR which must be faithfully observed in order to

develop and strengthen the authority of workers and peasants," and the Congress, after listening to his speech, resolved unanimously, "to appeal to all citizens of the Republic, to all organs and all officials of Soviet authority, to observe most strictly the laws of the RSFSR and the rules, regulations and orders issued and to be issued by the Central authorities." A significant effort that was, and one whose importance was momentous to a people struggling through a chaos that must have all but obscured any semblance of order.

To forestall the high-handed measures which they must have seen would be forthcoming as a result of the counter-revolutionary work during the Civil War, they surrounded such action with certain safeguards. It was resolved that "(a) Exact, formal ascertaining by the Soviet institution or official concerned as to the presence of conditions necessitated a departure from the limits of the law; (b) Immediate written notification to the Council of People's Commissars, with a copy for local and interested authorities, should be provided." In the midst of violence and excesses these efforts to establish revolutionary legality were significant.

In March, 1919, the Communist party adopted as a distinctive feature of its program a plank reading: "Our courts have already led to a cardinal change in the character of punishment, resulting on a large scale in conditional sentences, introducing public censure as a measure of punishment, substituting compulsory labor with retention of liberty for imprisonment, replacing the prisons by educational institutions, and allowing the possibility for the factor and time by comradely courts. The Communist party, while urging further development of the court in this direction, should aim for

the ultimate substitution of the system of punishment by a system of measures of educational character."

As early as December, 1917, Lenin sent instructions to the Revolutionary Tribunal, in which he urged that repressive measures take the form of corrective labor tasks, and that the harmful element be dealt with in a reformative way. Shooting was abolished by a decree dated October 28, 1917, and Decree No. 3 of July 20, 1918, provided that one sentenced to a three-month period should be sent to compulsory social labor and should not be guarded while serving. In the Ural region and Siberia prisons were replaced with working homes where study was combined with work.

Various other decrees were adopted, furthering this principle of reformation through education and discipline. In 1919 one such established a distribution committee composed of people of special equipment, by psychiatrists, educators, etc., who were to determine by a study of background, personality, and physical condition of the convict what prison would be best suited to him.[5]

A decree of 1920 dealt with the organization of provincial detention points, and in the main ones there was to be established a university with courses in the sciences—applied, natural and technical—in history and the arts. An attempt was also made to have prisoners trained not just in crafts of their small villages but in factory and larger industrial work, and in spite of Civil War and shortage of shops, the number given such training was raised from 2½ per cent. in 1919 to 10 per cent. in 1920.[6]

[5] Assistant Attorney General A. J. Vishinsky, (Ed.) *From Prisons to Educational Institutions,* Moscow, 1933, p. 31.

[6] Vishinsky, *op. cit.* p. 29.

To refer again to the volume edited by Vishinsky, we find on page 20 a statement that any penal treatment tending to degrade the prisoner was forbidden by a decree of July 23, 1918, to be practiced. This principle is now incorporated in the Criminal Code, Article 9, which reads: "Measures of social defense may not have for their purpose the infliction of physical pain or the degradation of human dignity, as they do not contemplate the purposes of retribution and penalty."

The present-day approach to crime repression in the USSR is, then, through educational and correctional labor. The extreme penalty of death is given now in only three cases: crimes against the state, military crimes, and armed robbery in which death occurs. A. J. Estrin in his book, *The Development of Soviet Criminal Policy,* a 1933 publication, gives a table on page 229 containing the percentages of persons sentenced to different forms of repression, and from 1926 to 1930 the percentage sentenced to death is less than 0.1. For all others the educational program holds even for political prisoners. The author can give no first-hand information on the latter, but official reports indicate that this is true.

In the treatment of criminals, Vishinsky speaks of the indispensable part the state apparatus must play in the realization of their program.[7]

"Within the system of the institutions of proletarian dictatorship," he says, "the corrective labor institutions play a great and serious part, because through them, in effect, is realized the entire judicial policy. These institutions with their entire force of live human relationships, with all their methods and means with the help of which these relations are built, define the real-

[7] *Op. cit.* p. 7.

ity or falsity of the judicial verdict as they define also the extent of achieving of the genuine aim of the problem posed before these institutions."

Soviet jurisprudence is thus based not on restrictive measures alone but on corrective, educational, and cultural ones. The authorities seek to use labor that is constructive as to character and useful economically, and not the kind that brings indignity and resentment when resorted to as punishment or disciplinary measures.

The sentence is designed to be as brief as possible. In the USSR it is not necessary that a prisoner serve more than one-third of his sentence in order to be released on parole, but his release is based solely on the condition of his fitness for return to society. The Observation Commission, whose duty it is to determine the time of such release is required by law to inform itself in intimate detail of the condition of training and education of the prisoners, of the personal characteristics and attitude toward society of each individual. It is thus likely to be able to judge to a higher degree when a prisoner is ready for release. If the figures they give on recidivism with 18 per cent. for men and 21 per cent. for women are accurate then they may be said to judge well indeed.

The policy of re-educating the "enemy," or winning him over to the aid of the state, is still more marked in the treatment of the working masses themselves. Repressive measures must necessarily be used for the discipline of cases among the workers. While penalties are still severe and a decree of August 7, 1932, providing for the protection of state possessions, attaches the death sentence for those who steal or pilfer public property, the measures designed for those of the working

population who transgress the law are in general more liberal.

This is to be expected. It has already been stated that the Russians acknowledge the class nature of their administration of criminal law. The content of the criminal code is directed almost entirely toward the forced subjugation of those elements who would not voluntarily be subjected to the dictates of the ruling class or the proletariat. As a matter of policy they manage this subjugation by the use of such corrective measures as the construction of the White-Sea Baltic Canal when it is possible. Such other provisions as the code contains may be made to apply to the workers, but discrimination is openly observed between the classes.

To refer back for a moment to the decree of August 7, 1932 already mentioned, we may note the indication of the sharpening of the class struggle. The state intensified its program of collectivization in 1928, and launched into a broad program intended to crush the Kulaks and extend Socialism into the villages. The Kulak antagonism immediately became more pronounced, and if we consult a table on page 80 of M. N. Gernet's *Crime Abroad and in the USSR* we see the results tabulated in a sudden jump of crimes against the state.

Cattle were killed, farm machinery was destroyed or put out of order, and plans were hampered in any way possible. There was also organized theft of state property to such an extent that severe measures were considered necessary. Thus the provision by this decree four years later of the death sentence for these offenses. In the meantime the necessity for such a measure was taken care of by the judicial powers and authority of the OGPU.

While this decree is necessarily directed against the definite enemy class, it applies also to the workers themselves who are bribed or otherwise used as tools by the urban bourgeoisie or Kulaks. This, however, is outside the program of treatment of the ordinary criminal, and in no wise is it to be understood that the death penalty is always applied even for those considered to be class enemies. The author personally heard a trial in court in which the indictment was for organized theft, and on appeal the death sentence was commuted to a ten-year sentence. For the more serious offenses, however, such as those involving sabotage in factories, the death sentence is usual, at least for those most responsible.

The program of compulsory education provided for those from among the toiling element who are imprisoned is the chief weapon of the fight against crime by the state. The prisons are equipped (as will be seen in later pages) with all sorts of devices for carrying out this work. The whole criminal law reflects this attitude toward crime repression on the part of the Communist party. The evolution of this code since its establishment in 1922, by a multitude of amendments and two almost new writings, reflects the needs and purposes of the state in various phases of its development in a most interesting manner. It is divided into a general and a special part, and although the general part is appended to this book, it seems of interest here to speak of its various divisions.

The first section is devoted to the purposes of criminal legislation. The second deals with the extent of operation and the limits of action of the code. Section three is concerned with the general principles of the penal policy. Section four deals with the measures of

social defense applied to persons committing various crimes. The fifth concerns the manner in which social defense measures of correctional character are applied, and the sixth deals with conditional sentences and release on probation.

Since the code's adoption in 1922 there have been two important amendments aside from the many year by year. In 1926 when numerous changes were made, the chief feature was a more lenient application of penalties. This was at the time of reconstruction, when the development of the socialist state took on greater emphasis and education in the matter of penal treatment was held to be one of its chief tools. By the change of 1928, deprivation of liberty was limited to sentences of one year or more. Previous to this time sentences of even one day might carry with them deprivation of liberty. The aim now in short sentences is that the convicted person may retain his liberty, but have supervision in his place of work.

In the 1926 edition of the Criminal Code, the whole concept of punishment is abolished. Although, according to Assistant Attorney General Vishinsky, there are certain survivals of old methods and ideas among a few of those connected with penal administration, the official thought is not of retribution or any infliction of pain or even of "just reward." From this time on, the term used is a "measure of social defense" and, as nearly as one can judge both from records and from actual visits to their institutions for criminals, the change has been not only in terminology but in actual practice.

The measures of social defense now provided by the Criminal Code are divided into three categories: first are the measures of judicial and correctional character;

second, measures of social defense of medical character; and third, measures of social defense of medical and pedagogical character.

The measure of social defense of judicial and correctional character are enumerated as follows:

(a) The offender is proclaimed enemy of the toilers and is at the same time deprived of the citizenship of the constituent republic and thereby of the citizenship of the Union of USSR and must be necessarily expelled from its confines.

(b) Imprisonment in corrective labor camps in remote localities of the Union of the USSR.

(c) Imprisonment in common prisons.

(d) Compulsory labor without confinement.

(e) Forfeiture of political and separate civil rights.

(f) Removal from the confines of the Union of the USSR for a certain period.

(g) Removal from the confines of the RSFSR or from the territory of a specified locality with compulsory settlement in other localities or without same, or coupled with the prohibition to reside in definite localities, or without such prohibition.

(h) Dismissal from office coupled with prohibition of occupying a certain post or without any such prohibition.

(i) Prohibition to engage in certain activities or industry.

(j) Public censure.

(k) Confiscation of property—complete or partial.

(l) A fine expressed in money.

(m) Imposition of the duty to make good the damage caused by the culprit.

(n) Warning.[8]

There is in addition the use of public censure as a repressive measure which is a "public expression of

[8] May 20, 1930, Collection of Acts 1930, No. 26, Item 344.

condemnation in the name of the court." It must be published through the press and may be either the only penalty assessed or be added to another. The use of warning is also provided for by Article 43 of the Criminal Code and is practiced in cases where the accused is acquitted but by his conduct gives "every reason to fear commitment of crimes by him in the future." By this means an effort is made to prevent his committing some criminal act in the future.

In the present Criminal Code there is a division of repressive measures into the basic and the supplementary. To the basic measures of declaring one a class enemy with the consequences such a decision carries, deprivation of liberty and compulsory work without deprivation of liberty, are added the other enumerated measures, with the exception of confiscation of property. This is also a supplementary measure but it can be used only in the cases specifically mentioned in the special section of the code.

In summary it might be said that while severe measures still exist and are used in regard to counter-revolutionary activities or crimes against the state, the emphasis in the penal program is decidedly upon educational measures for re-establishing the criminal as a useful member of society in the socialist state. While the beginnings of this policy are almost obscured by the activities of the *Cheka* and the OGPU (whose judicial powers have by the Decree of July 10, 1934, been withdrawn and turned over to the courts) and the extra-legal activities of the Civil War days, yet the germ was there from the beginning of the Revolution and its development is one of the marked achievements of the Soviet government.

CHAPTER IV

WHAT CRIMES ARE COMMITTED AND WHO COMMITS THEM?

In answering the question "What crimes are committed?" one could say in general that it is the usual line-up found in any country plus that category defined as the crimes against the state or the order of government. It would be hard to say what is included in the latter group. It would run the gamut from, let us say, the theft of bread from a collective farm, if it was intended to hamper the rule of the proletariat in any way, to the wrecking of a factory. It depends on the "socially dangerous" character of the person committing the act for one thing, on the social background, and for the other consideration, the motive behind the act. It is quite to be expected that this group ranks at the top of any list of crimes in the USSR.

If one wishes to go into detailed statistics on the subject of crimes committed, there is a small, compact volume, *Crime Abroad and in the USSR,* by M. N. Gernet, which supplies such information. It was, however, published in 1931 which is far in the past, gauged by the speed with which the Criminal Code and judicial practices change under proletariat rule. But in the main the list of crimes are the same and the classifications as to age and sex still hold.

There has been a change in the type of crime since

the days of military Communism. A. J. Estrin, in his *The Development of Soviet Criminal Policy* includes the following[1] as characterizing the period of militarism.

Counter-revolutionary activities
Speculation
Banditry
Adventures
Desertion
Bureaucratism
Occasional bad conduct crimes

He goes on to say that there was considerable growth in crimes of banditry during 1918, practically all having a political or anarchistic coloring. In the matter of desertion, the menace was so great that a special commission was set up to deal with it, and by the time of the entry of the Communist army into Warsaw it had been successfully repressed on the western front. During this period there was likewise an increase in hooliganism, the acceptance of bribery on the part of officials, and speculation. The latter presented an especially difficult problem but was nearly at an end when the institution of the New Economic Policy in 1922 brought new forms of it. From then on it has been one of the crimes that has given most trouble to the government. Acts of pilfering state property in order to resell it at a greater price, or securing goods for speculation by persons working either on a state farm or in a store, are extensive. Since the law of August, 1932, providing a death penalty for taking state property these crimes have decreased in number.

Open warfare between the classes had so far sub-

[1] P. 51 *et. seq.*

sided by 1921 that there was a demobilization of farmers and other workers from the army, and that led to the increase in another crime—banditry. These people, suddenly released from fighting ranks, broke and unable to find work in that period when production was at a low ebb, turned to theft, robbery or banditry, especially the latter, filling the country with a terror all their own.

During this period of 1921–22 there was a very definite growth in the number of crimes committed against persons—not in those of a more serious nature such as murder or severe injury but in sex crime, fighting and insults. The author explains this as resulting from the transition from the old culture to the new. The old was at an end and the new not yet sufficiently established to set up an influence against such acts of attack and rowdyism.

There is a reference here by Estrin to a statement by N. Krylenko which connects the beginning of the crime of sabotage—so serious since to the Soviet government—with activities of former owners during the years of 1921, 1922 and 1923. There was no longer opportunity for armed fighting but the opposition relentlessly kept up its battle by any means at hand and its best methods were to hinder the production without which Communism would be undermined by starvation and physical depletion. From 1923 on, there began to appear with increasing frequency in the courts cases of *economic* counter-revolutionary character. Firearms and open resistance might have gone by the board but sabotage grew apace until 1925–26 when it reached its greatest height.

A numerical count of court convictions in 1925 would make it appear that there was a tremendous drop in

ordinary crimes and an increase in those of a political type. There is an explanation for this in the fact that a reform of the Criminal Code in 1924 deleted a number of crimes of lesser importance, and there was a consequent lessening of 300,000 in convictions during the following year, most of which loss was, of course, from the ranks of the ordinary criminals. Class lines were drawn in a still more distinct fashion, thus emphasizing the direction criminal repression was to take for some time to come.

The character of crimes against the state are today mostly of an economic nature. Before, however, we set down some of the more important ones that harass law enforcement let us look at a brief list of the type of acts which are encountered in court cases.

(a) Crimes against the state
(b) Crimes against the person
(c) Crimes against property
(d) Official crimes
(e) Hooliganism

The items here of particular interest to foreigners are the first and the last. The list of crimes included in the first category will shortly be enumerated. As for the last, the term "hooliganism" covers a multitude of crimes. If one suddenly gets up in a theater and strikes his neighbor without apparent cause, such is an act of hooliganism. It was described to the writer as defining "unmotivated" acts. If one does not pursue "motivation" into psychological or psychiatric realms that explanation pretty well expresses what is meant. Deeds not logically accounted for might come a little closer. If a group of young men go out just to "raise cain" for no particular cause they may destroy property, attack

a man, and do various other criminal acts which would all fall within the definition of hooliganism. The charge corresponds roughly to our "disorderly conduct," except that the deeds committed may be of a more serious nature. But into this category are lumped a miscellany not classified otherwise.

Now, what are the chief crimes against the state? There would be, first of all, such major deeds as counter-revolutionary activities and the dissemination of propaganda. There are no longer organizations fostering counter-revolutionary work, but a great amount of such work is carried on. Individuals with malice aforethought, work their way into factory or collective farm, and spread what discontent they may. The author heard, for example, of the trial of the director of a collective farm who managed cleverly to see that the plan of production was unfulfilled.

Next in line would be industrial sabotage and attack on or the theft of government property. So prevalent had the latter become by the committing of such acts as killing cattle or the destruction of anything possible, as well as organized theft of state property that the government had recently acquired, that the Law of August 7, 1932, providing the death penalty for such crimes, was enacted to meet the situation. On some occasions of organized theft the motive is for personal gain rather than one of desire to harm the state. For example, the author heard one case in court where the theft of grain from a collective farm was resold in speculating and the gain to the eleven persons involved was some 20,000 rubles. The death penalty was given to the leaders, prison sentences to the others. There is also the evasion of government orders and taxes, insubordination to the demands of the law, insults by word

of mouth, if such involves a Kulak as against an officer. This does not by any means complete the possibilities, but it lists the headings under which the majority of such acts come.

Sabotage hardly needs comment here. So associated has the term come to be with industrial affairs in Russia that one would expect to find it ranking high as a crime against the state. It is, of course, committed by the enemies of the established order, and has hampered the progress of collectivization and industrial development to a great degree. Five men were shot and the others in the plot sentenced to ten years in prison (corrective labor with deprivation of liberty) during the past summer for burning a large factory in the Ural region by electric wire manipulation. Activities of the disorganized opposition have centered in crimes of this sort as the most effective weapon in its hands. Not much quarter is shown when guilt is established. The extreme penalty is surely and speedily given.

An enumeration of the counter-revolutionary crimes listed in the Criminal Code includes the following:

Any act directed towards overthrow, undermining and weakening of the peasants' and workers' order of government.

Armed uprising and entering Soviet territory.

Communication with a foreign government for counter-revolutionary purposes.

Extending aid and comfort to that part of the international bourgeoisie which aims at the overthrow of the Communist order.

Inducing a foreign government by means of forged documents to declare war or to make armed intervention, or by the same method to induce blockade, confiscation of prop-

erty of USSR, interruption of diplomatic relations, renouncing of a treaty.

Espionage.

Transmission, collection, or theft, of economic information.

Undermining of state industry, transport, trade, monetary circulation, cooperatives, committed with a counter-revolutionary purpose.

Commission of terrorist acts against representatives of the Soviet order or workers' and peasants' organizations.

Destruction or damaging with counter-revolutionary purposes by means of the use of explosive, arson, or any other method, of railways, and other means of transportation, means of communication, aqueducts, community warehouses.

Propaganda and agitation containing an appeal to overthrow, undermine, or weaken the Soviet order. Circulation or preparation of literature. Same actions in time of mass disorders, or making use of religious and national prejudices, or in time of war or in localities under martial law.

All kinds of organizational activity directed toward preparation and commission of crimes mentioned in this chapter as well as participation in an organization founded for the preparation or commission of one of the crimes mentioned in this chapter.

Failure to report a known counter-revolutionary crime or preparation for same.

Any action or active struggle against the working class and the revolutionary movement committed while in office under the Tzarist régime or under the counter-revolutionary government during the Civil War.

Counter-revolutionary sabotage, i.e., premeditated omission to carry out the duties or deliberate negligence in carrying them out with the specific purpose of weakening the authority of the government.

Chief in the list of "official crimes" is the accepting of bribery, dealing out sentences in excess of the provision of the law, or beyond what circumstances warrant, failing to fulfill one's duty, taking the law into one's hands, etc. As an example of punishment in excess of justification of circumstances there is a case recorded in which a drunken priest was given a heavy penalty in a Siberian People's Court. In view of the government's attitude toward religion one would suppose that such a sentence might stand, but when it was called to the attention of the higher court, the prosecutor was removed from office and the militiaman was arrested.

Commissar of Justice Krylenko, in his *Revolutionary Law,* lists a number of omissions and commissions on the part of officials, but when a complaint of, or information on, such acts reach the authorities, action follows. The population, taught from the cradle up that this is their government, has no timidity, apparently, about seeing that men in office regard the laws of the land, if they have information of acts to the contrary. This authority says, after mentioning a variety of actual cases of such violation, "The struggle against distortions of this kind must be waged with absolute ruthlessness." [2]

The other two classifications—crimes against the person and against property—include what they would in our own country, but penalties imposed differ from ours a great deal. Since they, as our most elementary groupings, are generally understood, and since outside of crimes against the state or order of government, these two comprise the great bulk of criminal transgressions in Russia as well as in our own country, it

[2] P. 23.

seems of general interest to include here, even at the risk of being tedious, those two chapters of the Criminal Code which relate to these classes of crime, and they are therefore inserted.

CRIMES AGAINST LIFE, HEALTH, LIBERTY, AND DIGNITY OF PERSONS

136 Premeditated murder committed: a) Out of greed, jealousy (if it does not come under description in Article 138) and other base reasons; b) by a person previously convicted for premeditated murder or bodily injury who served the measure of social protection established by the court; c) by means particularly painful to the victim; d) for the purpose of lightening [the consequences of] or concealing another grave crime; e) by a person whose duty it was to have particular care of the victim, or f) making use of the helpless condition of the victim.
Deprivation of liberty for a period up to ten years.

137 Premeditated murder not coming under the provisions of paragraph 136,—
Deprivation of liberty up to period of eight years.

138 Premeditated murder committed in a state of sudden and strong emotional excitement, caused by violence or grave insult from the victim,—
Deprivation of liberty for period up to five years or compulsory labor for period up to one year.

139 Murder caused by carelessness, as well as murder resulting from exceeding the limits of self defence,—
Deprivation of liberty for period up to three years or compulsory labor for period up to one year.

140 Abortion caused with consent of the mother by persons not having the proper medical qualifications or by persons having such qualifications but in unsanitary conditions,—

Deprivation of liberty or compulsory labor for period up to one year or fine up to five hundred rubles.

If these acts were committed under conditions given in the first part of this paragraph, professionally or without consent of the mother or having as their consequence death,—

Deprivation of liberty for period up to five years.

141 The bringing of a person who is financially or in some other way dependent on another person, by cruel treatment of the dependent person or in other similar way to suicide or to an attempt at same,—

Deprivation of liberty for period up to five years.

The giving of aid or incitement to suicide of a minor or a person knowingly incapable of understanding the nature and meaning of the act committed or a person incapable of self-guidance if suicide or attempt at same followed,—

Deprivation of liberty for period up to three years.

142 Premeditated grave bodily injury which carried as a consequence loss of sight, hearing, or any other organ, permanent disfigurement, mental illness, or any other injury to health, combined with considerable disability,—

Deprivation of liberty for period up to eight years.

If as a consequence of such injury death followed or if it was committed by means having the character of torture, or causing suffering, or if such injury came as a consequence of inflicting systematic though light injuries,—

Deprivation of liberty for period up to ten years.

143 Premeditated light bodily injury, not dangerous to life, but causing injury to health,—

Deprivation of liberty or compulsory labor for period up to one year.

Premeditated light bodily injury without causing injury to health,—

Compulsory labor for period up to six months or fine up to 300 rubles.

144 Bodily injury coming under paragraph 1, Article 143, committed under influence of sudden and strong, emotional excitement caused by violence or grave insult to the offender on the part of the victim,—
Compulsory labor for period up to six months or fine up to 300 rubles.

145 Bodily injury caused by negligence if it came as a consequence of a knowing infraction of safety rules established by law or government orders and having as its consequence conditions aforementioned in Article 142 and the first paragraph of Article 143,—
Compulsory labor for period up to one year or fine up to 500 rubles.
Bodily injury caused by negligence not having grave consequences,—
Compulsory labor for period up to six months or fine up to 300 rubles.

146 Premeditated assault and battery and other violent acts combined with infliction of physical pain,—
Compulsory labor for period up to six months or fine up to 300 rubles.
If said acts had the character of torture,—
Deprivation of liberty for period up to three years.

147 Violent, illegal deprivation of liberty of some person,—
Deprivation of liberty or compulsory labor for period up to one year.
Deprivation of liberty by a method dangerous to life or health of victim, or accompanied with infliction of physical pain,—
Deprivation of liberty for period up to three years.

148 Placing in a hospital for mental cases of a person known to be sane out of greed or other selfish purpose,—
Deprivation of liberty for period up to three years.

149 Theft, or concealment, or exchange of some one else's child, motivated by greed, vengeance, or other selfish purpose,—
Deprivation of liberty for period up to three years.

150 Infection of a person with a venereal disease by a person aware of having said disease,—
Deprivation of liberty for period up to three years.
Knowingly exposing of a person to the danger of infection with venereal disease through the sex act or some other act,—
Deprivation of liberty or compulsory labor for period up to six months.

151 Sex relation with persons not having reached sex maturity combined with corruption of the morals or with perverted forms of sex satisfaction,—
Deprivation of liberty for period up to eight years.
Sex relations with persons not having reached sex maturity committed without aforesaid aggravating circumstances,—
Deprivation of liberty for period up to three years.

152 Corruption of the morals of children or minors committed by means of immoral acts toward them,—
Deprivation of liberty for period up to five years.

153 Sex relations by means of physical violence, threat, or by intimidation or making use, through deception, of the helpless condition of the victim (rape),—
Deprivation of liberty for period up to five years.
If said rape had as its consequences the suicide of the victim or was committed toward one not having reached sex maturity, or even though on a person having reached said maturity but committed by several persons,—
Deprivation of liberty up to period of eight years.

154 Forcing a woman to enter into a sex relationship or satisfy sex passion in some other form by a person on whom said woman was financially dependent or to whom she was in a subordinate position,—

Deprivation of liberty for period up to five years.

155 Forcing to engage in prostitution, procuring, maintenance of houses of assignation, also engaging in traffic of women for purposes of prostitution,—

Deprivation of liberty for period up to five years with confiscation of all or part of property.

156 Deliberately leaving a person without help, when said person, in a condition dangerous to life, is incapable of measures of self-protection because of minority, feebleness, sickness, or helplessness generally, in cases when the person leaving the other helpless was in duty bound to have cared for the abandoned and was able to extend help,—

Compulsory labor for period up to six months or fine up to 300 rubles.

156[1] Not extending of help by a ship's captain to persons perishing on sea or on other bodies of water if said help could be extended without grave danger to the ship, crew, or passengers,—

Deprivation of liberty for period up to two years. June 25, 1929 (Collection of Acts No. 60, Article 513).

157 Not extending of help to a sick person without satisfactory reasons by a person having as his duty by law or special regulation the extending of such help,—

Refusal of a person engaged in medical practice to extend medical aid if said refusal knowingly to said person could have been dangerous to the patient,—

Deprivation of liberty or compulsory labor for period up to one year or fine up to 1,000 rubles.

158 Malicious evasion of payment, for the support of children in spite of being capable of such payment,—

Deprivation of liberty for period up to six months or fine up to 300 rubles.

Abandonment by parents of minor children without support as well as forcing children to beg,—

Same measure of social protection.

159 Insult inflicted verbally or in writing,—
Fine up to 300 rubles or public censure.
Insult inflicted by action,—
Compulsory labor for period up to two months or fine up to 300 rubles.

160 Insult inflicted through generally circulated or exhibited publications or pictures,—
Compulsory labor for a period up to six months or fine up to 300 rubles.

161 Slander, i.e. circulation of knowingly false defaming rumors,—
Compulsory labor for period up to six months or fine up to 500 rubles.
Libel in an article published in the press or multiplied by some other means,—
Compulsory labor for period up to one year or fine up to 100 rubles.

PROPERTY CRIMES

162 Secret appropriation of someone else's property (theft) carries with it:
a) If committed without application of any mechanical devices, for the first time and without conspiring with other persons,—
Deprivation of liberty and compulsory labor for a term up to three months.
When committed under the same conditions, but because of need and unemployment for the purpose of satisfying the minimum requirements of self and family,—
Compulsory labor for a term of three months.
b) Committed repeatedly and with regard to property which is a known necessity for the existence of the victim,—
Deprivation of liberty for a term up to six months.
c) If committed with application of mechanical de-

vice or repeatedly or by previous conspiracy with other persons, and also, even without the aforementioned conditions when committed in railroad stations, docks, ships, railway coaches, in hotels,—
Deprivation of liberty for a term up to one year.
d) When committed by a private person from state or community warehouses, railway cars, ships, or other storage places, or in the places of community use (aforementioned in sub-paragraph) with the application of mechanical devices, or by conspiring with other persons, or repeatedly, also when committed though without aforementioned conditions by a person having special right of entry into these storage places, or [by persons engaged in] safeguarding them, or in time of fire, flood, or other social calamity,—
Deprivation of liberty for a period of two years or compulsory labor for a period up to one year.
e) When committed out of state or community warehouses and storage places by a person having special right of entry in same or [by persons] safeguarding them, with application of mechanical devices, or repeatedly, or by conspiring with other persons, and also any theft out of the aforementioned warehouses and storage places when the theft is exceptionally large,—
Deprivation of liberty for a period up to five years.

NOTE: Theft of material and tools committed in the factory or mill by a workman or employee within the confines of his own [his place of employment] enterprise the first time and when the value of the stolen goods does not exceed 15 rubles carries disciplinary punishment in accordance with special schedule established by the People's Commissariat of Labor.

163 Theft of electric current,—
Deprivation of liberty for a period of one month with compulsory restitution of the loss inflicted.

164 The purchase of goods known to be stolen,—
Deprivation of liberty and compulsory labor for a period up to six months and fine up to 500 rubles.
Same actions committed professionally,—
Deprivation of liberty for a period up to three years with confiscation of property.

164a Purchase, possession and sale of fire arms, known to be stolen (hunting arms and small caliber arms do not come under the provisions of this article) and ammunition therefor,—
Deprivation of liberty for a period up to 5 years. June 17, 1929 (Collection of Acts, No. 50, Article 512).

165 Open appropriation of some one else's property in the presence of the person having possession, use, or authority over such property (robbery) when committed without use of force,—
Deprivation of liberty for a period up to one year.
Same action when committed by a group of people or repeatedly,—
Deprivation of liberty for a period up to five years.

166 Secret as well as open appropriation of horses or cattle from the laboring agricultural population as well as those engaged in animal husbandry,—
Deprivation of liberty for a period up to five years.
Same actions, committed repeatedly or in conspiracy with other persons,—
Deprivation of liberty for a period up to eight years. Aug. 7, 1928 (Collection of Acts, No. 102, Article 645).

166a Secret or open appropriation of fire arms (except hunting arms and small caliber arms do not come under the provisions of this article) and ammunition for same if this action does not come under Article 59 of this Code,—
Deprivation of liberty for a period up to five years. June 17, 1929 (Collection of Acts, No. 50, Article 512).

167 Robbery, i.e., open attack for the purpose of taking possession of someone else's property, combined with use of force dangerous to the life or the health of the victim,—
Deprivation of liberty for a period up to five years.
Same acts, committed repeatedly or having as a consequence the death or maiming of the victim,—
Deprivation of liberty for a period up to ten years.
Armed robbery,—
Deprivation of liberty for a period up to ten years, and with aggravating circumstances—Supreme measure of social protection. Aug. 26, 1929 (Collection of Acts, No. 65, Article 641).

168 Appropriation, i.e., withholding with mercenary purpose of somebody else's property, entrusted for a definite purpose, or embezzlement of that property,—
Deprivation of liberty for a period up to two years.
Appropriation of a fund,—
Deprivation of liberty for a period up to one month.

169 Misuse of trust or deception for the purpose of obtaining property or other personal advantage,—
Deprivation of liberty for a period up to two years.
Misuse of trust or deception for the purpose of obtaining property or other personal advantage having as its consequence infliction of loss to a state or community institution,—
Deprivation of liberty for a period up to five years with confiscation of entire or part of property.

169a The issuance of a check, which knowingly to the issuer is not subject to payment, and also cancellation of the check by him without satisfactory reason, or taking any other measures for the prevention of the receipt by the check holder or the amount of the check, as well as passing by the check holder of a check which knowingly to him is not subject to payment by the agent on whom it is drawn,—
Deprivation of liberty for a period up to two years.

Same acts having as their consequence infliction of loss to a state or community institution or enterprise,—
Deprivation of liberty for a period up to five years. Feb. 28, 1930 (Collection of Acts, No. 11, Article 131).

170 Forgery with mercenary purpose of official papers, documents and receipts,—
Deprivation of liberty or compulsory labor for a period up to one year and fine up to 1,000 rubles.

171 Deceptive change with mercenary purpose of the appearance or properties of objects, intended for sale or social use, if that said change had or could have had as its consequence the infliction of injury to health, as well as sale of such objects,—
Deprivation of liberty up to one year with confiscation of part of property with prohibition of the right to sell merchandise, or fine up to 1,000 rubles.

172 The making or keeping for the purpose of sale of a forged stamping tool, the stamping of jewelry and bars of gold, silver and platinum, affixing to objects made from other metals of stamps and marks having resemblance to the official stamping mark, as well as sale of aforementioned objects,—
Deprivation of liberty for a period up to two years or compulsory labor for a period up to one year, with confiscation in both cases of forged objects and stamping tools.

173 Usury, i.e., receiving of interest on money or property lent at a rate exceeding the interest rate established by law, and in particular, inclusion of the interest in the principal amount of the loan, or withholding a remuneration out of the amount received by the borrower or providing of fine and penalty for delay in payment of the loan or in other concealed forms,—
Deprivation of liberty or compulsory labor for a term up to one year or fine up to 5,000 rubles.
The same acts committed either professionally or by

making use of the embarrassed state of the borrower,—

Deprivation of liberty for a period up to two years with confiscation of part of the property or without such confiscation, or with fine up to ten thousand rubles.

Making available for use of means of production and cattle for a monetary remuneration or remuneration in kind or on condition of payment by labor obviously in excess of the customary amount for this locality, making use of the need or embarrassed position of the user,—

Deprivation of liberty for period up to one year. Mar. 29, 1928 (Collection of Acts, No. 38, Article 283).

174 Extortion, i.e., demanding of transfer of property advantages or rights to property or committing of any kind of actions, of a property character, through fear of coercion of the person of the sufferer, spreading of defaming information or destruction of his property,—

Deprivation of liberty for period up to three years.

175 Premeditated destruction or damage of property belonging to private persons,—

Deprivation of liberty or compulsory labor for period up to six months or fine up to 500 rubles.

Same acts when committed by means of arson, flooding, or any other generally dangerous methods,—

Deprivation of liberty for period up to five years.

Same acts if they are followed by loss of human life or a community misfortune,—

Deprivation of liberty for period up to ten years.

176 Omission by a captain of one of the ships involved in a collision at sea of taking necessary measures for the saving of the other ship, in so far as such measures could be taken without serious danger to the said captain's passengers, crew, or ship, regardless of the responsibility for not extending help to the crew and the

passengers of the ship suffering from the calamity (Art. 156)—
Deprivation of liberty or compulsory labor for period up to one year or fine up to 500 rubles. June 25, 1929 (Collection of Acts, No. 50, Article 513).

177 Making public an invention before registration without the consent of the inventor, as well as unauthorized uses of literary, musical, or other artistic or scientific productions with infractions of the copyright law,—
Compulsory labor for period up to three months or fine up to 1,000 rubles. August 30, 1931 (Collection of Acts, No. 59, Article 429).

178 Unauthorized use for purposes of unethical competition of someone else's trade mark, design, model, as well as someone else's firm name, or someone else's name,—
Compulsory labor for period up to six months or fine up to 3,000 rubles.

Those familiar with women's prisons in our own country will have missed "prostitution" from among the crimes enumerated in the Soviet Criminal Code. This practice is treated as a social problem in Russia, and rightly, in the opinion of most persons interested in penology, it is not held to be a crime. The six articles in the code directed against sex offenses, it will be noted, provide penalties for rape, or, in the interest of public health, for the infection of a person with a venereal disease by one aware that he (or she) has the disease. By treating prostitution as a social problem Russia has almost eliminated it. Women plying this trade are picked up by inspectors at railroad stations or other public places and taken, not to a jail, but to a prophylactorium where they are taught a useful trade

with a view to removing the economic cause which is held to be the chief one in this practice. Many of the women at these centers have come voluntarily, the director of the prophylactorium in Moscow reports, through friends who have already received training and treatment. As a result of this omission from the Criminal Code, one does not find in women's prisons that the chief cause of sentence is sex offense as it is in the United States, nor that the prisons are filled with a group who not only in the opinion of the author, but also in that of such organizations as the Women's Prison Association of New York, should not have been sent there.

Who commits the crimes? Immediately following the Revolution the chief concern in regard to the crime situation was the suppression of those acts which jeopardized the authority of the Soviet government, but as the program of Socialist construction went forward, as they got the political situation more in hand, the type of prisoner began to change in the predominant number. Counter-revolutionary organizations were practically wiped out; the Kulak war, though still going on, somewhat thinned out, and in the residue of those of the criminal ranks there now appeared more of such types as constitute the convict population of other countries. In other words, the social composition of the group changed. Instead of there being more of an otherwise honest group of middle class farm people whose crimes consisted in efforts to overthrow a government, there was a rising percentage of ordinary criminals. This does not mean to say that the government is not still confronted with a great number of crimes against the state, by those of the bourgeoisie and Kulak class who, while not attempting to organize

counter activities, still manage to get into collective farm or factory and cause a great deal of trouble, but it is noticeable that the other type of crimes is being given more attention and that programs of treatment are designed to apply to that problem.

In age, considering both sexes, the peak is reached in criminal acts at about twenty-four years. The curve descends sharply to forty and in a more leisurely fashion from forty to sixty. Official figures give the age group of 14-18 years as committing 2.5 per cent. of all crimes, 18-24 as being responsible for 25 per cent., and 24 and above, for the remaining. The crimes committed by the first group are almost wholly stealing; in the second group there are, of course, all sorts, but hooliganism figures large, and in the third there is every kind of law breaking.

The youth, then, from 14-18 years are guilty of theft, more than of any other crime, both as to male and female, and next to that are crimes against the person—fisticuffs, breaking of bones, etc. Then, there shows up a phenomenon that is noted both in juveniles and adults—the female commits more crimes against the order of the government than do the men, relatively speaking. The author asked repeatedly for an explanation of this fact, and one man who had come from the rural districts, and is now an Intourist representative in Moscow, gave an interpretation which may or may not be right. It is interesting enough to pass on. The men, he said, did not resist collectivization so intensely when they saw that it was no use, but when a woman had collected a few goats or pigs, or a cow or two, it was no use trying to take them from her. She poisoned them first. No ideal of a final society in which

she could take according to her needs could make up to her for the immediate loss of her treasures.

Here is a more extensive comparison of the crimes committed by male and female transgressors. The first important thing to note is that the female is more given to excesses than the male in crimes of a less serious nature (Gernet, *op. cit.* p. 169). In one type of crime, hooliganism, the male is in the majority, with a percentage of 27.4 as against the female's 2.8; but, in all other groups the woman is far in the lead. She commits six times the offenses of the men in insults, five times as many in the illegal manufacture of liquor, twice as many for assault, etc.

However, in the crimes carrying sentences of above a year the men take the lead again. Note this table from an article *Women in Correctional Labor Institutions,* by A. Shestakova and B. Utievsky, included in the volume edited by Vishinsky. It shows clearly to what point women exceed in crime.[3]

Length of sentence	Per cent. of male	Per cent. of female
Up to 3 months	8.7	18.3
From 3 to 6 months	11.6	20.1
From 6 months to a year	16.8	21.0
From 1 year to 2 years	21.1	17.1
From 2 years to 3 years	13.6	11.1
From 3 years to 5 years	14.6	7.9
From 5 years to 10 years	12.6	4.5

The social composition of the criminal group in the USSR is, as is to be expected, different from that of the ordinary capitalist country. In the first group of crimes mentioned the guilty are largely those of the village bourgeoisie and the rural Kulaks, who still struggle

[3] P. 358.

against the socialist order. They are persons who would not ordinarily be included in a criminal classification. Yet if we regard any legal definition of crime as including acts that contravene the rules and regulations of the proletariat society then they are actually criminals.

While this group commits most of the crimes against the state, the laborers themselves constitute the major portion of persons committing other types of crime. We find Professor Gernet,[4] dividing them into owners of property or employers, and laborers. In theft we have a percentage of 12.2 for the first class, and 21.9 for the second; banditry is .8 per cent. for the first, and 1.7 per cent. for the second; murders 1.6 per cent. for the first, 2.4 per cent. for the second; hooliganism is 9.3 per cent. for the first, and 11.4 per cent. for the second. The situation is reversed in regard to crimes against the person. We find the first group there with a percentage of 10.5 and the second with 7.1.

There is some substantiation of the theory of the economic basis of crime which disciples of Marx and Lenin hold to so firmly in the fact that the curve for crime and unemployment rise and fall together. Russia claims to have no unemployment problem now, but there are those who do not work. There is always an idle band in any country. She has her dregs, misfits, and those who fall by the wayside from a variety of causes. And it is from this group that a large degree of criminals come. It furnishes its quota in Russia, too.[5]

There is danger of getting too statistical. We want only to have a picture of the situation. Since 1928, the date already referred to as the beginning of a program to extend Socialism from villages to cities by means of

[4] P. 167.
[5] Gernet, *op. cit.* p. 167.

collectivization, the curve for crimes against the state has risen. The Kulaks and the village middle class have waged a relentless war, apparently not daunted by what happens to those who are caught. Or, it may be heroism of a kind, even if a misplaced one. However, the expressed attitude of the authorities who administer the corrective labor system is steadfastly to win them over, to persuade and to educate in such a political fashion that they will be convinced. Whereas "crushing" was once the order of the day, the firmer establishment of the government now gives leeway for the more constructive measures. It is interesting to note that whoever is responsible for that political education knows his approaches well, if the statements of authorities are accurate. They have released enough, they say, to see what zealous citizens it turns back to society. I have no figures on it. But as I said in the preface, they know what they want of the man who is their criminal. Given that, accomplishment is easier. It is no small thing to persuade a man that the society he thought he was against was his all the time.

CHAPTER V

WHAT THE COURTS ARE LIKE

The courts of Russia, in their present form a result of seventeen years of revolutionary evolution, and a mixture of proletarian ideas with older principles of justice, represent one of the most interesting developments in the country. It has been the aim of Soviet rule that the working class should by its participation in government be able to take part in carrying out the laws of the land. The administration of justice by the proletariat through which "Every representative of the masses, every citizen, must be placed in such conditions that he will be able to take part in discussing the laws of the state, in the choosing of his representatives, and in the carrying out of the laws of the state," was a principle expressed by Lenin as early as 1918. The policy in political education has moved steadily toward the fulfillment of this plan. The use of jurors and their selection yearly in such a manner as will include a great number in the service is one way in which participation in administering and discussing laws is being carried out. Another is in the use of comradely courts carried on by the people of village or factory, which are later discussed.

The responsibility of the courts in the establishment of strict legality has been increased tremendously by two recent events. The first was the meeting in April,

1934, of the first All-Union Conference of Jurists which made wide recommendations in regard to attaining a higher quality of work on the part of courts, prosecution, and correctional labor institutions. The second act of significance was the reorganization of the OGPU by the formation of the Commissariat of Home Affairs and the transference of all judicial functions to the courts of the land. It takes brief time and space for this last statement, but it would require a good many pages to discuss the full significance of the step, and a number are devoted to it a little later.

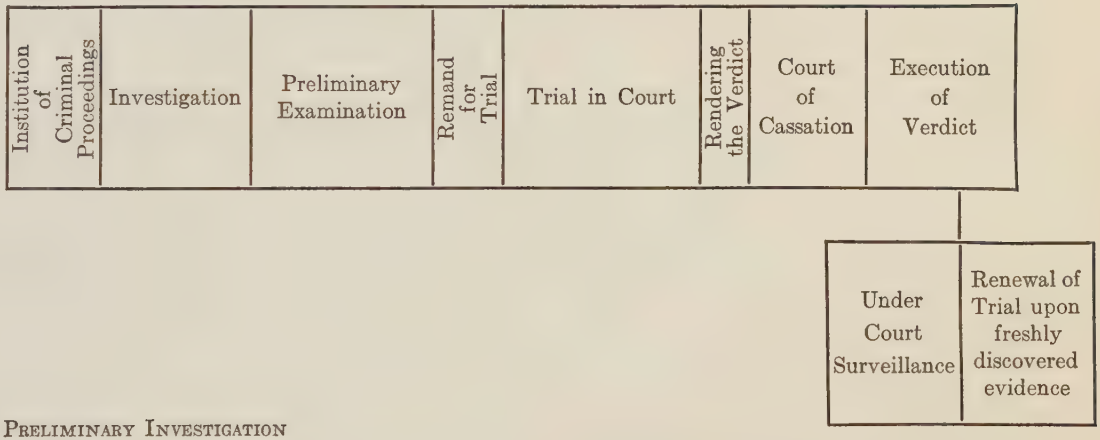
As for the work of the All-Union Conference of Jurists, it is of high significance just now when the observance of legality and the establishment of a wide legal consciousness are so important in the relatively advanced stage of socialist construction which the state is entering. Openness must be the observed principle, and secrecy, even though legally judicial, discouraged, if confidence is to be widespread. A government cannot continue turning trials over to secret tribunals outside its judicial system and enjoy a reputation, even among its own loyal masses, of being adequately established. A normality of functions of institutions can go far toward establishing, even if only psychologically at first, a normality of conditions.

Likewise, sentences must be constructive. This was not a new note as will be seen throughout this book. All along the party program had advocated an educational approach to the treatment of criminals, and year by year had strengthened provisions for realizing the fulfillment of its plans. But the emphasis on this problem by so authoritative a body brought it freshly to the attention of the courts.

Note the recommendation of the Conference in this

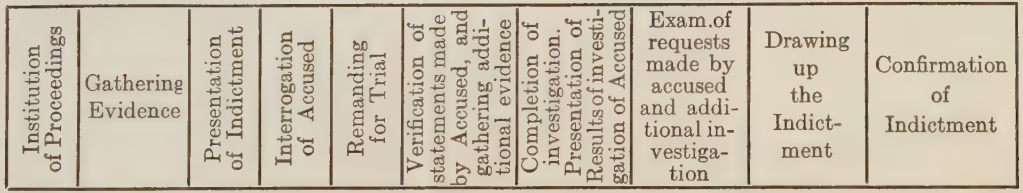
SCHEME OF CRIMINAL TRIAL IN RSFSR*

STAGES OF CRIMINAL TRIAL



PRELIMINARY INVESTIGATION

BASIC FORMS OF PROCEDURE



*All charts adapted from originals in USSR.

regard. "In order to insure the effectiveness of judicial work, the judges should endeavor to ascertain the economic and social-political results of the verdict rendered by them, being assisted in this work by public opinion organized around the judicial institutions." The same body placed a responsibility for prevention of crime on its courts. It was not only a duty to pronounce a sentence on a guilty person, but the tribunal must by means of its favorable position discover the reason for the circumstance of the crime. The recommendation ran, "The court, when trying a case, should not only establish the guilty persons but should also disclose those economic and organizational defects and shortcomings which create a favorable atmosphere for criminal actions, signalizing such circumstances to the attention of the Party and Soviet organs by means of special riders. The results of such signalizing should be checked up from time to time."

Thus, as an important instrument in the accomplishing of the socialist society which is the goal of the people, the court's function is first to subdue the enemies that would undermine any such progress, and second to aid in giving discipline and control to those of the proletariat themselves who are not strong enough on their own account. Added to that, it is an organ of prevention.

It is not within the purpose of this volume to give a detailed description of the system of courts existing in the country at present, but a brief account is necessary. Before going further it may be well to repeat the reminder that a class distinction is fundamental in administering the criminal law in the USSR. This statement will appear too many times very likely, in relation to various phases of the subject, but it is important.

The court as an organ of the state is devoted in its administration of law to carrying out the purpose and policy of the state, and since the class idea is prevalent in the government, it will have to be also in court action. With this explanation we proceed.

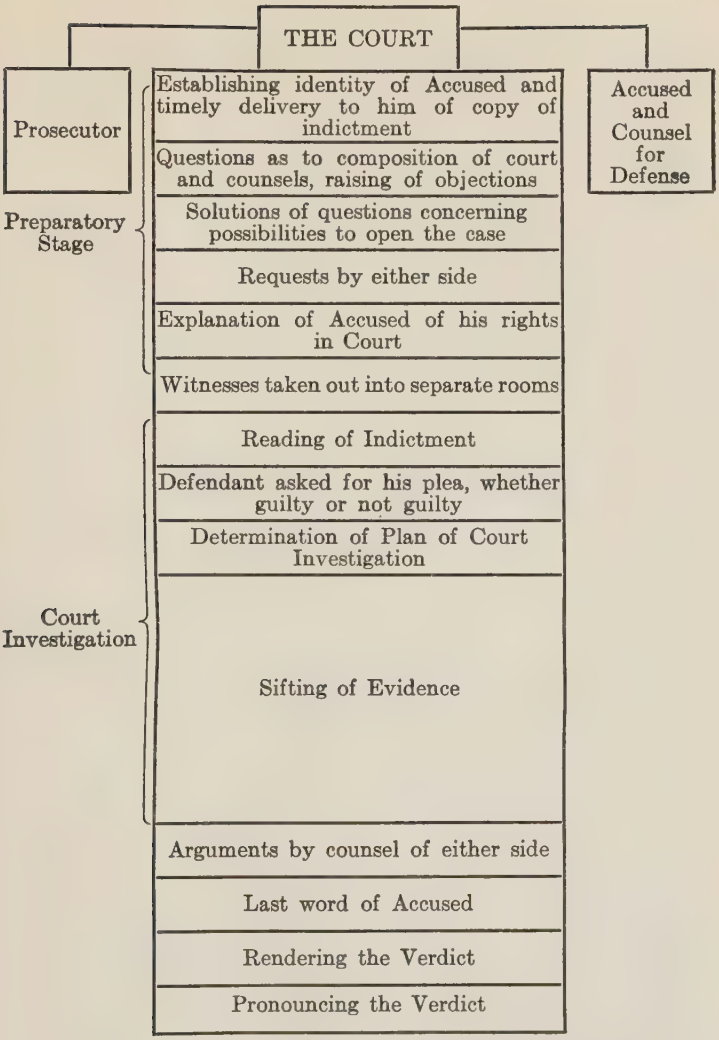
There is at the very bottom of the judicial system the People's Courts.[1] The territory represented by one such has a population of from 20,000 to 100,000. Its jurisdiction may include any case against property or person not carrying a death sentence, although the more serious ones go in actual practice to the higher courts. It has other functions than as a lower court of the first instance. It is a member of the observation commission which supervises the correctional labor policy at the local penitentiary or correctional labor institution. It has an administrative function when the judge, sitting without the jurors in a "business session," decides whether the evidence gathered in a preliminary investigation is sufficient to warrant court proceedings.

In trials the People's Court is presided over by a judge assisted by two jurors who actually have most of the rights and responsibilities of the judge, and might, therefore, be called co-judges. The judges for the People's Courts are elected for a one-year term by the local Soviet and may be recalled either by the same body or by the Commissar of Justice for sufficient cause. This provision for impeachability is one of the basic principles of organization of the Soviet courts.

The judges of these lower courts are representatives of the working class for they themselves are of their number. A judge (and, he seemed an adequate one), in

[1] Military crimes are under the jurisdiction of military tribunals and transport crimes of the transport courts of the various railway lines.

COURT TRIAL


THE COURT
Prosecutor
Accused and Counsel for Defense
Preparatory Stage
Establishing identity of Accused and timely delivery to him of copy of indictment
Questions as to composition of court and counsels, raising of objections
Solutions of questions concerning possibilities to open the case
Requests by either side
Explanation of Accused of his rights in Court
Witnesses taken out into separate rooms
Court Investigation
Reading of Indictment
Defendant asked for his plea, whether guilty or not guilty
Determination of Plan of Court Investigation
Sifting of Evidence
Arguments by counsel of either side
Last word of Accused
Rendering the Verdict
Pronouncing the Verdict

a city court of Moscow with whom the writer talked was a baker before he took up his present profession. The qualifications of the office are that in addition to being from among the toilers the judge must have "a record of two years' responsible work in state or workers' and peasants' public trade union, or party organization of the workers, or of three years' practical work in organs of Soviet justice in the capacity of not less than judicial investigators." Whether this may be regarded as high fitness or not, it seems to insure the selection of men of fair ability for the job. Perhaps it is that business of recall that makes them so careful, but those whom the writer saw sitting were impressive in their earnestness and efforts to arrive at a constructive sentence.

The jurors, whom we may think of as co-judges, are about 40 per cent. women and 60 per cent. men. These persons are elected by factory committees, Red Army sections, and village Soviets, and a special commission distributes the number to be elected among these various groups in the percentage of 50 per cent. to the first, 15 per cent. to the second, and 35 per cent. to the third. There are no specific qualifications, except the right to vote, but there is the restriction that "A person has no right to be a juror, if he has been expelled from a social or professional organization for a disgraceful offense or conduct, for a period of three years from the day of expulsion. . . ."

The names of the candidates for jurors are posted, and objections, if motivated, may be presented to the election committee. When the list of elected ones is finally sent to the commission, the latter prepares another list of those to serve in the various courts. Each

serves for only six days of the year, and during absence from work in the act of performing this duty the worker retains his place and wage of employment.

While there seems to be no specific preparation for the task of a juror beyond the requirement that the judge explain to those who sit with him their rights and duties, there are conferences held and some evening classes which acquaint them better with the work before them.

Before we pass to the consideration of the next step in the Soviet judicature it would perhaps help in getting a clear picture of jurisdiction and procedure to take a look at some of the cases before the People's Court. A typical day is described from the writer's notes.

In the first trial we attended in the morning the room used was a small one, perhaps with a capacity for seating forty people altogether. It was on the ground floor of the building, and street cars clanging along their track outside made hearing difficult. On a slightly raised dais underneath a picture of Lenin there was a long plain table covered with a green cloth. Three chairs were placed at the back and one at the end. Three men and a woman, evidently having something to do with the case about to be tried, were already in the court room when we entered. The benches on which we took our places were arranged on either side of the narrow aisle.

Exactly at the hour set for the beginning of court, a door at the back of the room opened and a man, accompanied by two women, entered. The women sat in the outside chairs at the back of the table; the man took the center one. Already the young woman, who

had been in the room on our arrival had seated herself at the end of the table. She was the clerk, the man was the judge, the two women the jurors.

The judge was obviously of the toiling classes, as were also the women. The judge, with his short black mustache, his close-cropped hair, his ordinary working clothes consisting of dark suit and blue shirt, ignored us and immediately got to work. The women were perhaps a little more conscious of our presence. The older in particular reached up to push back her hair, a little later smoothed her dress, a simple black cotton one. We noticed that her hands had seen much work. The other woman, about thirty and good looking, turned curious eyes toward us a moment, but finally gave her attention to the men who were seated on the front bench ahead of us.

The judge adjusted his glasses and read from the papers in his hand. The plaintiff had worked faithfully for a school, discharging all his duties as per requirement, but he had not been paid. He was asking for his money.

There were no attorneys, neither defense nor for the plaintiff. The plaintiff had his witness; he told his story, then summoned his corroborator, who had been excluded as required by law. The school representative told his side. The women jurors, forgetting us by that time, listened attentively, and the older asked frequent questions. The judge too, interrogated often.

It seemed obvious to us that the verdict should favor the man whose wages had been withheld, but it is difficult to tell about court decisions. We waited an instant; the three behind the table conferred so briefly that it was plain there was no dissension. The school was ordered to pay, and was fined five rubles. As simply

as that and requiring hardly more time than the telling here, it was finished.

We left the room as the next case was called and went upstairs. A trial of some seriousness was in progress there. The judge sitting appeared of unusual intelligence. He was leaning forward, questioning the man in front of him, and he took no note, apparently, of our entry. One juror was a woman, the other a man. There was the same long table, the clerk at the end, a red cloth (Communist symbol), instead of the green, an especially attractive picture of Lenin, and one of Stalin.

We asked cautiously of one of the spectators what the case was about. A factory director was on trial, accused of criminal negligence by the workmen, because he had been given money to insure the factory against fire some three or four months previously, and had failed to do so, thus imperiling the lives of those who worked there.

But even though there might have been a severe sentence, if the motive was proved sufficiently base, there still were no attorneys, either for the state or defense. The defendant told his story. He had been ill and on vacation, but the matter of insurance would have his immediate attention, he said. He brought in his witnesses; but the workers' evidence outweighed his. He had been warned, they said, and he had gone carelessly on.

But, said his witness, he had been a good worker. He had managed his factory well. It had done its prescribed quota and more. It was not right nor just that he should suffer for one negligent act.

The verdict was not so simple. The judge and jury retired into the mystery of the consultation room at the

back. We sat wondering what sort of penalty, in case guilt was adjudged, would be imposed. Five minutes passed and they returned. The man was held guilty of negligence, and since he had been warned, and since the act was of a serious nature, imperiling the lives of workers and the property of the state, some measure must be used to impress him. He stood quietly, but the fingers of the hand hanging at his side worked nervously. The judge paused a bare moment, shuffled his papers, and then spoke.

For six months the man was to have no political rights and his party connections were to be cut off. But he was to stay in his job; go right on with the work he had done so well, and give up fifteen per cent. of his salary for the six month period. Even the accused seemed to feel that the penalty was just, and there was obvious agreement among those who listened.

So much for the People's Court, the basic nucleus in the Russian judicial system. Now, for the second step in the judicature. The People's Court takes care of the great mass of cases, both criminal and civil, and in addition exercises a function of supervision in regard to the village public courts and comradely courts of factories and other state institutions. But this will be discussed later.

Just now we pass to the Regional Court. It is both a court of cassational instance (the form review of a criminal case usually takes in the USSR) and a court of original jurisdiction for more serious cases. Its territory comprises a province or region of three to eleven millions population. It is, first of all, the organ of control of all the courts within its region. It supervises the work of the People's judges, as well as selects and pre-

sents the names of such to the regional executive committees for election.

A word must be said here as to the use of the cassational method. The court of appeals was abolished by the first decree issued by the Soviets on the courts, and in its place was the following provision.[2] "Complaints from verdicts of the People's Courts may be lodged by each of the interested parties exclusively on account of formal infringement of the rights and interests of the given party in the conduct of the case or in the judicial examination of the case, and as such constitute cassation complaints, and may not touch upon the substance of the verdict." Thus the law seems to prevent the right of the court to go into the substance of the case. Such, however, is not actually a fact.

The ruling of the Supreme Court in regard to criminal cassation, in 1924, laid down the general rule for cassation review which is still followed. "The court of criminal cassation, being a cassation court in that it does not go into the substance of the case, at the same time avoids a purely formal bureaucratic approach to the case. While never turning into a court of appeals, it does not hypocritically shut its eyes to the substance; manifest lack of elucidation of the circumstances which should have influenced the verdict, inconsistency of the punishment with the crimes committed, manifest errors and contradictions between the verdict and the undeniable facts of the case, . . ."

Thus, the Code of Criminal Procedure permits a form of revision on the complaint of the proper parties, which combines the elements of cassation as practiced by the French courts with a method of appeal and to-

[2] Act 349 of Code of Criminal Procedure, now in force.

gether make up the cassation-revision form of investigation.

These complaints may be made by the defendant and his lawyer, the state prosecutor, the plaintiff and his legal representative, or by the legal suitor and his representative. Complaints by any other persons result in the case being handled by judicial supervision.

The form of the complaint follows no standard rule. A peasant may write a few words on a piece of paper, without even setting forth his argument, and the case will pass to the proper cassation court and be completely checked up.

The form of judicial supervision differs somewhat from the cassation method. The latter depends on the action of the parties concerned while the first depends on the intervention of the chairman or prosecutor of the court of the first instance. From this it can be seen that the normal way to have a criminal case reviewed is by the cassation method, on complaint by the interested parties.

We will pass from the work of the Regional Court as a court of cassation or supervision to look at a case which it tries in its capacity as a tribunal of first instance. In cases of appeal there are three judges sitting, but in cases of original jurisdiction there is the one judge and two jurors just as in the lower court. The judges of the Regional Court are elected by the Regional Executive Committee from a list of names presented by the Commissar of Justice. Their term of office is for one year. The qualifications are that in addition to the requirements for a People's judge, the candidate shall also have served in a judicial capacity in a position not lower than the People's Court for a period of three years.

On our visit to the regional court we found a somewhat larger room, seating perhaps a hundred persons, but still lacking any formal atmosphere. Its standing capacity was crowded when we arrived. Even the door leading to the corridor was open and filled with men and women. We attempted to look over, but the spectators politely made way for us. We saw, as we edged forward, the usual picture of Lenin, the familiar red cloth on the table. One knew at once by the atmosphere of the room that a case of interest was in process of trial. The judge and jurors were already in their places and the judge was reading the charge which alleged that the four young men and a girl on the front seats in the custody of an officer, had some two weeks before entered and robbed the house of the woman across the aisle from them, and that such robbery was accompanied by the use of a firearm in which the husband was wounded. No murder, however, was done. In that case death could have been the assessed penalty.

Three attorneys for the defendants sat at the side of the room, but as the trial proceeded we noticed how little part they took. The judge questioned the defendants, and got the story almost entirely from them. Witnesses were there and the judge and jurors interrogated them as they came, but they turned again and again to the accused to check up, to give them a chance to verify or deny. The procedure was highly informal. The court sought to find out the truth of the matter, but we soon saw that the inquiry went even beyond that. True to the duty imposed on him in the matter of discovering the reason for the circumstance, the judge pursued his questioning. He wanted to find the motive for such conduct. To discover that he questioned the young criminals on the whole circumstances

of their lives, of their social background, without regard to apparent relevancy. Guilt was not in question, but the "measure of social defense" to be applied depended on the whole circumstance of the deed. One of the offenders had run away from his home with his grandmother, from a good job, but he appeared to have been led by the older who admitted that he did not want to work. The girl, defiantly, confessed. The youth, who used the gun, was asked again why he shot the man. He looked down and said he did not know, unless it was because the victim did not raise his hands soon enough. The spectators, jammed to the door and tense, laughed in relief. The judge did not reprove them, but he did not laugh, and the room became quickly silent.

The judge surveyed the defendants with something of sorrow; we were particularly interested in his attitude for he appeared to be concerned that the young people should deliberately choose such a career, and gave occasional words of admonition. But judges and citizens alike in the USSR have faith in what labor of a correctional sort can do for the construction of character. The next day the young offenders were sentenced to institutions where the ruling principle, in accordance with Soviet policy, is to teach them the dignity of work, and how to do some important kind well, and where they will be given certain cultural and political education.

There is next in the system the Supreme Courts of the seven republics—much like our own state Supreme tribunals—which act both as organs of judicial control for all courts of the territory, as courts of appeal for those lower courts subject to their jurisdiction, and as courts of original jurisdiction in more serious cases.

The judges of these courts are elected by the Central Executive Committees of the respective republics.

At the top of the judicial system is the Supreme Court of the USSR. It is, of course, the organ of highest judicial supervision, and in its various branches acts as a court of appeals of all cases from various lower tribunals. The Military Section reviews the cases appealed from the military tribunals, the Transport Section performs the same function for those appealed from the railroad courts. Its judges are elected by the Central Executive Committee of the USSR for a term of one year, and they must have had at least three years' service as judge of the People's Court.

In original jurisdiction this court has only the most important cases in the Union. The Code of Criminal Procedure specifies: "The Judicial Department of the Supreme Court as a court of first instance, shall take jurisdiction (1) over cases of exceptional importance, when sent to it for trial by the presidium of the All-Russian Central Executive Committee, the Presidium of the Supreme Court, as well as cases offered for adjudication by the People's Commissar of Justice, the Prosecutor of the Republic [now, the Attorney General] or the chairman of the State Political Bureau (OGPU). The Supreme Court has the right to accept for its adjudication or transfer for adjudication to any provincial court at its discretion cases offered for its adjudication by the prosecutor of the republic or Chairman of the OGPU. (2) Over cases involving offenses in office committed by members of the All-Russian Central Executive Committee, the people's commissars and members of the *Collegiums* of People's Commissariats, members of the Supreme Court, the assistant prosecutors of the Republic. (3) Over cases of alleged

offenses in office on the part of the provincial prosecutors and their assistants, the members of the presidium of the provincial executive committee, heads of its departments, chairmen or deputy chairmen of the provincial court." All cases enumerated in this paragraph may be accepted by the Supreme Court for its adjudication or transferred by it to a provincial court depending on the importance of the case.[3] In several of these cases jurisdiction is not mandatory and may be transferred to other appropriate courts.

One of the cases tried by it and familiar to most Americans was the Metropolitan-Vickers case of two years ago, in which a certain group of Englishmen was accused of sabotage. But to continue the method used in discussing the lower courts, let us again consider a case. The following was appealed from the Siberian Regional Court, and does not present the human elements of cases of the first instance, yet it has its interesting points.

The building itself is a scant two blocks from the spot where Lenin lies in his red granite tomb. There was a militiaman inside the entrance who directed us upstairs to the proper room. Another officer was in the hall but he only looked at us curiously as we went by. It is the highest court of the land, and we were impressed by the informality of the approach.

Three judges presided in the room which presented a more formal appearance than those of the courts visited previously. An armed guard stood at the door leading out into the room at the back. Across the aisle from us sat three lawyers, the defense counsel. At the end of the table was the prosecuting attorney, a woman of some thirty years, who seemed competent and de-

[3] Code of Criminal Procedure, Sec. 449.

termined. Above the judges the usual portrait of Lenin looked down upon us. As we entered two young Russian women got up from the benches at the front to make way for us. They were the wives of the two condemned men whose case was on appeal.

The judges themselves, all men, were impressive in their dignity, and seemed intelligent and capable. They were dressed simply in ordinary street clothes, the dark shirt of one was open at the throat. One of them, not the chairman, read the charge in the original case. Two men had been condemned to die for murder and robbery. One, the manager of a fur factory, had stolen money to the amount of 7,500 rubles from the factory, and he and a companion, in a boat with a third, were crossing a lake. The third had a sum of money in his possession. While they stopped on the shore of the lake the first two sent the third for wood, and as he returned, they waylaid him and clubbed him to death. The Siberian Regional Court had sentenced the men to be shot.

After the reading, one of the defense attorneys spoke at length. In Russia there is no death sentence for murder, but for robbery in which murder occurs such a penalty is attached. The counsel, realizing that weight of evidence was against him, tried to separate the crime into two distinct acts. It was his one chance. The murder had been motivated by other causes, he said, and robbery followed as an afterthought. He contended also that the stick with which the man was killed did not constitute a weapon.

Of course, his argument did not hold and in addition the prosecutor pointed out that the one man had already stolen money from the state, which act in itself might carry the death penalty. The judges retired and

we discussed the case while we waited. The defense attorney, who had spoken, walked up and down the aisle. The two wives were quietly huddled in seats farther back. A bell sounded, the court returned, and the chairman or presiding judge read the decision allowing the sentence to stand.

The case illustrated also the speed with which trials are completed after the crime is known. The murder of the man had occurred in October of 1933, but the body was not discovered until the latter part of June of 1934. There was no certainty of the third man's death until that time as the other two had steadfastly maintained that he had left them. But less than one month after the discovery of the body, the two men had been tried and condemned to death. That was on July 19, and it was on August 9th that we heard the Supreme Court uphold the sentence. That is probably one of the main reasons why such deeds do not flourish there.

There is still to mention the village public courts and the comradely courts of factories and various institutions. These occupy a special place in the judicial system and were therefore not mentioned except in passing in the beginning of the chapter. They are under the supervision of the People's Courts, and are for the purpose of interesting the large masses of people in handling such violations of laws as occur in factory or village. Among such problems would be disorganization of production in factory, on the farm, or in offices, as well as drunkenness, indolence, etc.

These courts are of, by, and for the people. There may be some little matter of form separating the masses from the formal courts, but they handle these among themselves. At a meeting of the workers of a given village a chairman and not less than ten members are

elected to sit as a court. The factory conference follows the same plan, and elects a chairman, one or more substitutes, and not less than ten members, the exact number to be decided upon, from among the shockworkers of the factory or office.

The People's Court, functioning as a supervisor of these organs, may decide that a case is outside their competency, and take it from them or cancel the decision in a case that is considered not to have been within their jurisdiction, but the decision given in cases which are considered to be proper to them is final and subject to no appeal.

A friend who was a spectator of the proceedings related the following case to the writer. A man had been drunk and had beaten his wife, not injuring her but outraging the village. In the presence of a large group of interested neighbors, the court assembled and tried him and decided that he must go forth from the apartment where he lived with his family and shift for himself as best he could. He did not deserve the shelter the home afforded him. There was no appeal. He left.

What are more definitely the types of cases handled by the comradely courts which, like the village public courts are free from any formal judicial rules?

The following is quoted from a lecture delivered by S. Golunsky of the Commissariat of Justice.

"The comradely courts examine cases:

(a) of violation of labor discipline, to wit: repeated late-coming for work, staying away from work, reporting for work in a drunken condition;

(b) of systematic neglectful attitude to socialist property (machines, tools, materials, premises, etc.);

(c) of turning out misfits above the allowed limit;

(d) of insults either by word of mouth or in writing, or

action (spreading false derogatory stories about individuals), and inflicting blows without bodily injury;

(e) of thefts from factory and office by workers upon the territory of the enterprise, as well as of materials and tools belonging to the enterprise to the value of not more than 50 rubles;

(f) of Hooliganism that is not subject to criminal prosecution, and other behavior which does not correspond with the requirements of public decency and reflects the negative sides of social life."

From the same source is taken the following list of penalties imposed.

"The following penalties may be imposed by the comradely courts:

(a) public warning;

(b) public censure with announcement in the wallnewspaper or in general press;

(c) a fine of not more than 10 rubles for the benefit of public organizations (Chemical Defense Society, Children's Friends, etc.);

(d) reparation of damage caused to property, if not in excess of 50 rubles;

(e) raising the question before the administration of discharging the culprit;

(f) raising the question before the trade union of expelling a member from the union for a stated period."

Examination of the cases must take place not later than five days from the time of registration of the complaint.

As a closing paragraph I set down the basic principles of organization of the Soviet Courts. It summarizes what has gone before.

(a) administration of justice exclusively by toilers;

(b) election of judges and accountability before the electors;

(c) impeachability of judges, the latter being independent from any local or personal influences but most intimately bound up with their class and called upon to carry out the policy of their class;

(d) collegiate trial of judicial cases, as a rule, by a body of three people with an assured majority to the people's jurors, and

(e) participation of jurors in trial and judgment upon equal terms with the state judges, both in regard to fact and in regard to law, i.e., in the full scope of the rights of the state judge.

CHAPTER VI

THE PRELIMINARY STAGE

Let us start with the beginning. The Criminal Code of 1927 specifies how proceedings may be begun. We should expect that there would be an arrest, but this may not be the case. In fact it is unlikely except in the more serious cases. In the lesser ones there will almost surely be none at all. What happens then? There are two main possibilities.

First of all, the prosecutor, the investigators, the militia or the agency of Administration of State Safety of the People's Commissariat of the Interior (formerly the OGPU) may start proceedings when they know or are informed of a criminal act. Since these organs are by their nature in a position to know of criminal law violations, it is usual for a case to start with them. The course they take will be discussed in a moment.

The second manner in which criminal procedure is usually instituted is on complaint made to a competent authority by a person, an organization, an official, or by a confession on the part of the criminal, in which the officials proceed as mentioned above, if there is evidence of a criminal act. Otherwise they take no action, and so notify the complaining person or agent, in which case he may appeal to a proper court if he so wishes. Thus, if a citizen comes to a proper authority and complains, either orally or by writing, of some act, but does

not present sufficient evidence that a crime has taken place, the authority refuses to start initial proceedings. Often, not even a confession on the part of the supposed guilty party will be accepted as *prima facie* evidence. This decision on the part of the authority not to proceed may, however, be appealed to the competent court within seven days.

When once this evidence is accepted as indicating that a crime has been committed there may or may not be an arrest. Quite naturally, if a serious crime has been committed such as murder, and the criminal is making an effort to escape, there is arrest and detention. The law, however, states [1] that "No person shall be deprived of his liberty and taken into custody otherwise than in the instances and in the manner provided by law."

Later, in the same edition of the Code,[2] there is an enumeration of the cases in which an arrest may be legally made. They are "(1) When a criminal is apprehended while making direct preparations, or while actually engaged in commission of the crime, or immediately afterwards; (2) When the victim or eye witnesses point to a given person as the one who committed the crime; (3) When articles of evidence are found on the person of a suspect or in his dwelling; (4) When a suspect attempted to flee or is apprehended while in flight; (5) When a suspect has no domicile or a permanent occupation; (6) When a suspect cannot identify himself." These are the six instances in which an arrest *may* be made. The police, however, may use their judgment as to the necessity of such action, and in the event of detaining the supposed criminal they

[1] Code of Criminal Procedure, 1923, section 5.
[2] Section 100.

must report within twenty-four hours either to the prosecutor or to a judge of the People's Court, in whose jurisdiction the case may be, giving information as to who made the arrest, when, where, and at what hour, information obtained in regard to the person held, the crime with which he is charged, reason for the arrest, and the name of the official signing the order for arrest.[3] If the evidence obtained is sufficient to warrant holding the person for investigation the authority to whom the report is made gives his assent. Otherwise he reverses the decision and the man is released.

In the absence of these conditions an arrest may not be made and in that event the method of securing attendance is to have the suspected person sign a declaration that he will appear when summoned.[4] However, there is a way provided to meet necessity. If the act committed appears to be of a nature so serious that it would carry a penalty of more than a year's sentence to imprisonment, one of the above measures may be selected so that he may be held.

While it is usually the police organs acting as investigators who take a person into custody at the beginning of a trial, the investigator may also order an arrest. The Code in Section 145 provides: "Means of cutting off the possibility of escape shall be selected only after the suspected person has been formally accused and can be altered or abolished after the first questioning. In exceptional cases these means may also be applied to mere suspects who have not yet been declared accused."

Who makes arrests in the USSR? The police force is the militia. This organ not only makes the elementary

[3] P. 107, *Commentaries.*
[4] Criminal Code of 1927, Section 103.

inquiry on cases which come under the jurisdiction of the investigator—to be discussed more fully in later paragraphs of this chapter—but they may themselves also conduct such preliminary investigation in all other cases. Besides carrying out the official open investigation they also carry on detective activity in order to establish grounds for future criminal trial.

But there is another agent of arrest. Wherever Russia is known, the "Gay-Pay-Oo" is a familiar institution. The *Cheka* of early revolutionary days gave way in 1922, in the days of NEP, to an organ a little less frightening. But the OGPU had an ability on its own account to send shivers down the backs of people and caused would-be lawbreakers of the less hardy type to check their actions. If those critics, who feared that NEP ushered in an era that would in its mildness take power from the direct hands of the proletariat and turn it over to well-established revolutionary law, had waited for this organ to be in action they would have been reassured. Whether all the deeds attributed to this secret police be truly theirs or not, it is certain that it has been an effective means of protecting Soviet authority. It has been a court unto itself as well. It was, until July 10, 1934, empowered to punish even by shooting "all persons apprehended while participating in a banditry raid or armed robbery," and the purpose for which it was avowedly organized was to "unite all the revolutionary powers of the republics for the purpose of combatting political and economic counter-revolution, espionage and banditry." It is in this enumeration of crimes that it has jurisdiction as an organ of preliminary investigation.

This organization has directed most of its attention to counter-revolutionary activities and uses its judicial

powers mostly against the enemy class. Ordinary criminals arrested by it are usually turned over to the courts for trial. As for the actual number shot during recent years, there seems no way to judge, but indications are that they have been sparing in executions.[5] There are other phases of their work such as the maintaining of places of deprivation of liberty which will be discussed later.

The OGPU has recently been incorporated into the newly formed All-Union People's Commissariat of Home Affairs as the Administration of State Safety, and its judicial *collegium* has been abolished. The significance of this is apparent. It ends a chapter in the history of Soviet Russia. Cases once disposed of by this organization now will pass through the courts, and the pictures the world held of midnight secret trials will have to be put away. While the activities of the OGPU were duly authorized by law, the possibilities of excesses under such a system seem apparent, and the establishment of a more definite order of legality is bound to produce a quieter confidence. Because of the widespread interest in the transferring of this authority, the entire decree is given here.

The Central Executive Committee of the USSR decrees:

(1) To form an All-Union People's Commissariat of Home Affairs, including in its composition the United State Political Department (OGPU).

(2) The People's Commissariat of Home Affairs is to be entrusted with:

(a) The guaranteeing of revolutionary order and state security.

(b) The protection of public (socialist) property.

[5] See Chamberlin, *Soviet Russia*, p. 390.

(c) Registration of civil acts (registration of births, deaths, marriages and divorces).

(d) Protection of the frontiers.

(3) The following departments are to be formed in the People's Commissariat of Home Affairs:

(a) Chief Department of State Security.

(b) Chief Department of the Workers' and Peasants' Militia.

(c) Chief Department of Frontier and Internal Protection.

(d) Chief Department of Fire Protection.

(e) Chief Department of Corrective Labor Camps and Labor Settlements.

(f) Department of Civil Acts.

(g) Administrative and Business Department.

(4) To organize in the Union Republics People's Commissariats of Home Affairs, acting on the basis of the law on the All-Union People's Commissariat of Home Affairs, and in the RSFSR to establish instead of a People's Commissariat of Home Affairs for the Republic an Institute Plenipotentiary for Home Affairs of the RSFSR.

Departments of the People's Commissariat of Home Affairs of the Union Republics are to be organized in the autonomous republics, regions and provinces.

(5) To abolish the judicial collegium of the OGPU.

(6) The People's Commissariat of Home Affairs of the USSR and its local organs are to send all cases of crimes on the completion of their investigation to the competent judicial organs in accordance with the legal requirements.

(7) Cases under the Department of State Security of the People's Commissariat of Home Affairs are to be directed to the Supreme Court of the USSR, while cases of such crimes as high treason, espionage and similar crimes are to be handed over to the military collegium of the Supreme Court of the USSR or to the competent military tribunals.

(8) A special conference is to be organized under the People's Commissar of Home Affairs of the USSR which, on

the basis of the regulations, is to be entrusted with the right of applying, by administrative order, banishment, exile, imprisonment in corrective labor camps for a period not exceeding five years and banishment beyond the frontiers of the USSR.

(9) To instruct the People's Commissariat of Home Affairs of the USSR to present to the Council of People's Commissars of the USSR regulations for the All-Union People's Commissariat of Home Affairs.

M. KALININ
Chairman of the Central Executive Committee of the USSR

A. YENUKIDZE
Secretary of the Central Executive Committee of the USSR

Moscow, Kremlin
July 10, 1934.

What judicial authority is to handle the cases previously in the jurisdiction of the *collegium* of the OGPU? Here is the decree:

In connection with the organization of the People's Commissariat of Home Affairs of the USSR and with the object of insuring the proper consideration of cases handed over to the judicial organs and investigated by the People's Commissariat of Home Affairs of the USSR and its local organs, the Central Executive Committee of the USSR decrees:

I

(1) The Cases of state crimes (counter-revolutionary and against administrative order), with the exception of those indicated in the subsequent points of this section, investigated by the People's Commissariat of Home Affairs of the USSR and its local organs, are subject to the jurisdiction of the Supreme Court of the USSR, the Supreme Courts

of the Union Republics, the regional and provincial courts and also the principal courts of the autonomous republics.

Special collegiums composed of a chairman and two members of the Court, are to be formed in the judicial institutions of the USSR and Union republics, named for the consideration of these cases.

(2) Cases of high treason, espionage, terrorism, causing explosions, incendiarism and other forms of crime (Art. 6, 8 and 9 of the law on state crimes), investigated by the People's Commissariat of Home Affairs of the USSR and its local organs, are subject to the jurisdiction of the military collegium of the Supreme Court of the USSR and competent military tribunals of the districts.

(3) Cases of crimes on the railway and water transport, investigated by the same organs are subject to the jurisdiction of the railway and water transport collegiums of the Supreme Court of the USSR and the courts of the railways and water transport to which they belong.

(4) All other cases, investigated by the same organs, are subject to the jurisdiction of the People's Courts in the usual order.

II

For the consideration of appeals against the resolutions of the Plenums and Presidiums of the Supreme Courts of the Union Republics, and also appeals against the sentences, decisions and definitions of the collegiums of the Supreme Court of the USSR, a judicial-supervisory collegium of the Supreme Court of the USSR is to be established which is to be composed of the Chairman of the Supreme Court of the USSR and two of his deputies, who are to have the right of directly rescinding or changing the resolutions, definitions, decisions and sentences of the Supreme Courts of the Union Republics and Collegiums of the Supreme Court of the USSR.

Considerations of cases in the judicial-supervisory collegium of the Supreme Court of the USSR are to take place

with the obligatory participation of the State Prosecutor of the USSR or his deputy.

Resolutions of the judicial-supervisory collegium of the Supreme Court of the USSR may be appealed against by the Chairman of the Supreme Court of the USSR and the State Prosecutor of the USSR in the plenum of the Supreme Court of the USSR and in the presidium of the Central Executive Committee of the USSR.

III

In conformity with sections I and II of this decree, to recognize the necessity of strengthening the staffs of the Supreme Courts of the Union Republics, the regional and provincial courts and military tribunals.

To instruct the Central Executive Committees of the Union Republics to oblige the People's Commissariats of Justice and Chairmen of the Supreme Courts of the Union Republics to work out and carry through in the fixed order, within a period of five days, appropriate additions to the staffs of the Supreme Courts of the Union Republics, the regional and provincial courts.

To instruct the Chairman of the Supreme Court of the USSR to work out and carry through in fixed order, within the same period, addition to the staffs of the Supreme Court of the USSR and the military tribunals of the districts.

M. KALININ
Chairman of the Central Executive Committee of the USSR

A. YENUKIDZE
Secretary of the Central Executive Committee of the USSR

Moscow, Kremlin
July 10, 1934.

Thus does Russia make another advance in the administration of her criminal law.

With proceedings begun, the next step is to determine by preliminary investigation if the suspect is to be definitely accused and held for trial. The purpose of this is to keep the court calendar from being crowded with cases which ought never to come to trial because the accusation is unfounded. It likewise guarantees the investigation and consideration of the substantial facts and saves much of the court's time. The organs involved here are the prosecutor, the investigators appointed by him, and attached to his office, the police (militia) and the body formerly known as the OGPU.

There is a great deal of informality and flexibility in the matter of this preliminary investigation. The investigator may take the whole matter into the atmosphere where the crime was committed. He may conduct it among the workers of the factory, if the act occurred there, in order that the workers themselves may aid in furnishing proofs, and in checking up the various facts. He also benefits in this way from the public opinion in regard to the case. This method of investigation in regard to labor crimes, both in factories and more recently in agricultural spheres, has been growing more and more common.

In the more complex cases this investigation is carried on by the prosecutor himself after the initial evidence is turned over to him by the militia, organs of criminal detection, or other competent authority making the first inquiry. In lesser cases the investigating organ will usually prepare the case although the prosecutor may at any time examine the evidence and otherwise supervise the conduct of the case. Now that (since 1933) there is an Attorney General of the USSR, centralizing the prosecuting forces of the entire federated republics, the most important cases such as the famous

Metropolitan-Vickers would be turned over to his personal supervision.

In this preliminary investigation it is the duty of the prosecuting attorney under whom it is carried on to see that evidence both for and against the suspect is gathered. If he neglects to see that the rights of the person under suspicion are protected and permits a case to come to trial when the evidence, if properly gathered, would indicate innocence, then he is laying up trouble for himself and will probably have to answer to a higher authority.

To the end that all information and evidence may be secured, the investigator is given wide powers as to search and seizure of anything having a relation to the case. But if one thinks of rough-shod entry and abuse, he may be consoled by certain restrictions which the law places around such activities. In conducting searches and seizures the investigator calls in official witnesses. Persons participating in the case as parties to it, and relatives of the parties, cannot be official witnesses. And Sec. 177 of the Code of Criminal Procedure states that "the searches and seizures are to be made in daytime, except in cases which cannot be postponed." The searcher is further ordered to announce his decision to make the search and to use all possible care to avoid damage (Section 179 of the same Code), and the additional protection is given to the accused in that the investigator is to see "that the facts of the private life of the person searched which have no relation with the case shall not be made public." [6]

All articles seized in such a search must be listed, remarks made, and a copy deposited with the person or

[6] Sec. 181.

his family, and the articles themselves must be sealed at the place before being taken away.[7]

Mail may also be seized by the investigator if permission has been given by the prosecutor, as may also any telegraphic or other communications, but the safeguard is provided that a representative of the postal-telegraphic institution must be present.[8]

In the first stage of the preliminary investigation there is no "accused." [9] The aim at this time is to find if a criminal act has really been committed and if so who committed it. After the deed is decided to be of a criminal nature and is definitely attributed to a particular person or persons then the second stage is undertaken. At this time the "decision" is framed, and the accused is notified that he is to appear before the authority. This "decision" is written after the evidence has been carefully weighed and guilt indicated. This document must contain all the information and circumstances gathered up to that time.

When the person has been finally accused he is summoned to appear before the investigator who is handling the case. He is not yet definitely held for trial. When he appears he is made acquainted with the accusation. "And that does not mean," a prosecutor told the writer, "that he is given a chair and table and told to read the papers before him. The whole thing is explained to him by the authority in charge." Thereafter he is questioned and given a chance to tell his side of the matter. His statements are checked and any new evidence is gathered.

[7] Sections 183, 184, 185.
[8] Sections 186-188.
[9] Except in such obvious cases that no investigation would be necessary. An example of this would be a man actually caught murdering another.

Steps must now be taken to insure his appearance during the completion of the investigation. The Code of Criminal Procedure provides for five measures, as follows: [10] (1) He will not leave the place specified in the statement he signs without the permission of the proper authority which is the investigator or the court. (2) *Personal or property parole.* In the arrangement for property parole, the organization signing the bond must produce the accused when wanted or forfeit the sum of money agreed upon, but in the personal parole the persons (not less than two) who have agreed to produce the accused when wanted may, on failure to do so, be fined or sentenced to compulsory labor for a period up to three months. (3) *Cash bail.* Either he or other persons may deposit with the court a cash bail to insure his presence, the amount to be determined as in our courts, by the seriousness of the crime. (4) *Detention in the home.* The person may be restricted to his own home, as in the case of illness, or if a woman, because of pregnancy or of the care of her children. (5) *Holding in custody.* To be used in more serious cases. This latter is permissible only in certain prescribed cases. One of the conditions is that the case be of such a nature that the penalty, if conviction is secured, will be for a year or more of imprisonment. In addition one may be held in custody in cases covered by a definite enumeration in the Code of Criminal Procedure, in which the sentence is not to exceed one year. The third possibility is in case of such serious crimes as banditry, or those of a socially dangerous nature.

In the use of these measures the class nature of the criminal trial is strikingly portrayed. If the personality

[10] Sections 144 and 150-154.

of the accused, or the crime he has committed, represents a high degree of social danger then one of the more severe measures is chosen. This would be the case for one appraised as a class enemy.

The preliminary investigation may not yet be completed. If the evidence seems conclusive the prosecutor may end the preliminaries by simply drawing up the accusatory decision and conveying such information to the accused, but there may also be much more to this stage of procedure.

With the appearance of the accused for questioning a whole new set of resources may be opened up. He mentions witnesses of his own, he gives his own testimony. His relatives must testify if needed. Apparently no one is omitted but the defendant's counsel. And any falsifying or hiding of evidence on the part of any witness makes him liable to more severe punishment. Even though there is no oath administered due to the official attitude toward religion, there are still effective means of impressing a witness with the importance of telling the truth, one of which is to let him know what will happen to him if he is caught deviating from it!

But to go back to the investigation. The accused may make certain requests or demands, and as indicated before, it is not only the duty of the investigating authority to see that they are met if reasonable, but if he neglects to take cognizance of any fact in favor of the defendant he is placing his own position in jeopardy. Not only must the investigator inquire into circumstances and facts that determine guilt or innocence, but he must also find out anything he can that will help in determining the measure of social defense to be given. What, for example, would be some of the things that he would want to know?

First and foremost at this time is the question as to whether or not the act was committed in an attempt to restore the bourgeoisie to power; after that the motive and circumstances of the act. In Soviet jurisprudence circumstances play an important part in disposing of the case. The history of the accused himself will be of help if there is a consideration of insanity, the whole circumstances of the crime will establish whether there was coercion, or threat, or whether the offender was at the moment of committing the crime in a state of destitution, hunger, or strong excitement, or influenced by any extremity of personal or family conditions. All of these circumstances are considered extenuating and influence the penalty assessed.

In the establishment of all relevant facts pertaining to the case the investigator may summon any experts deemed necessary. These must appear and give their conclusions no matter whether they aid or harm the accused, and a refusal to do so carries a fine of fifty rubles. The use of experts by the criminal courts in Russia will be discussed later but for the time being it may be said that such a custom is in wide use.

The calling of experts or other witnesses may also be at the request of the accused. The law provides [11] that "The investigator shall not have the right to refuse the request of the accused or of the complainant to summon additional witnesses or examine experts if the facts or circumstances sought to be established may have any bearing on the case." Not only that, but the investigator is likewise limited in interpreting some line of inquiry sought by the accused as not having relevant bearing on the case. Not only must he furnish some adequate grounds for such a refusal, but he must

[11] Code of Criminal Procedure, sec. 112.

also state in writing his reason for taking such a stand.

The number and kind of experts to be used are determined by the investigator if it is on his initiative that they are called. But if the defendant requests others he must call them, unless it is impossible to get the desired expert or unless the granting of this request would delay the preliminary hearing beyond the time legally set. It might be that the defendant would purposely request some one whom it was impossible to produce in order to secure delay, and in such an event, the investigator is naturally not forced to comply.

The question of sanity may arise during the preliminary investigation and the proceedings may be dismissed on the grounds of insanity at the time of the commission of the act. If it is judged that the insanity has set in since the act then the trial is postponed until a cure is effected. There is a Judicial Psychiatric Institute where persons awaiting trial are observed for this purpose; but in order to facilitate the work of the medical staff the investigators gather all pertinent data as to the mental history of the accused.

With all the information finally assembled the investigator is in a position to make his decision. The police organs, in their initial investigation, may discontinue the case if they find the evidence does not warrant going on. The investigator, if the case has been in his hands, may likewise discontinue for lack of sufficient evidence. And the prosecutor, with the collected data in his hands, may decide that there is no case. But if the person or organization first initiating proceedings is convinced that this is a mistake, the decisions in each of these cases may be appealed to the next higher authority and finally to the court of proper jurisdiction, within a month.

But the investigator may decide to hold the accused for trial. In this event as soon as the investigation is completed the accused is notified of the decision and all the facts laid before him. He must be informed of his right to examine the entire records in the case, and the investigator must be sure that he is acquainted with the entire contents. If he is able to suggest anything to be added, the investigator must see that it is included before it finally leaves his hands. Any basic error in this stage of the proceedings may be the cause of a reversal by a higher court, so that great care must be taken to fulfill all points of law.

A time limit is set by law as to the completion of this investigation. One used to American delays gasps at the speed with which these people dispense justice. One month from the time the defendant is formally accused the preliminary inquiry must be completed. However, this is not always possible, as appeals may be taken all along on the acts of investigator or prosecutor, and other delays may occur. But certainly all speed possible is used and there is no question of postponement of trial to the extent that we are accustomed to in our country.

With the preliminary investigation completed the accused is formally held for trial. This may, in the simpler instances, be by the judge of the People's Court in cases when there is no necessity for investigation or in those cases when the police officers make all investigations and forward the information to the People's judge. This would be true in cases involving sentences of less than one year.

In cases punishable by not less than one year sentence, yet not of so serious a nature as to require a preliminary inquiry, the investigator holds the accused for

trial, on the basis of the information submitted to him by the police or OGPU. In such cases, all the evidence gathered together with the decision of the organs making the investigation is forwarded to the investigator, who, if he agrees submits the records to the competent court. There it is put on the trial list. If he feels that the conclusion to hold for trial is not warranted, then he may refer it to the court of proper jurisdiction for approval or rejection. In cases where the investigator himself is in charge of the preliminary inquiry he forwards his findings to the prosecutor, and he holds for trial in precisely the same way as was indicated above.

CHAPTER VII

SCIENTIFIC AIDS TO THE COURT

It has already been said that a heavy responsibility has been thrown on the courts in the USSR in regard not only to establishing guilt but also to finding, within the bounds of the provisions of the law, the proper measure of social defense to insure a corrective influence on the one on whom it is assessed. Guilt is often obvious, but the proper steps to take in an attempt to see that the offender does not repeat his crime do not usually show themselves with such clarity.

The court, in trial, is not limited in any way in its efforts to get complete testimony and an accurate interpretation of such information. It is one of the fundamental principles of the administration of Soviet criminal law that the responsibility for the fullness and correctness of both investigation and verdict in the course of the trial rests on the court, and it may take any action on its own initiative to secure such ends. The prosecution and the defense may actually conduct the case within the bounds and direction which the court gives, but the court sets such limits and directions, interferes at any time on any point not cleared up by the argument, and decides on all questions relative to the examination. The court is independent of the opinion of either party in the trial and it is its responsibility to investigate any circumstance that appears essential to

the case, whether the parties request it or not. It may likewise rule out what appears to be non-essential, even if it is requested by one of the parties. It is master of the whole proceedings and the expressed basic principle guiding its actions is to get at the truth of the incident involved and interpret the act in the light of all circumstances, so that a correct measure both for the protection of society from the socially dangerous and for the rehabilitation of the individual may be given.

Superhuman wisdom would be required to fulfill such a demand if the judge acted alone, or even in conjunction with his co-judges, the two jurors. But the Code of Criminal Procedure has provided that he be supplied with whatever aid scientific research and endeavor can give. During the trial the court may call experts and it may also have the benefit of advice or testimony of specialized institutions connected with it.

With no further evidence than the space devoted to the use of experts by the Code of Criminal Procedure, one would know that much importance was attached to the practice in the USSR. It is the subject of many articles, not only as regards the use of such aids in the court trial but, as already seen, in the preliminary trial as well. It might, because of its frequency, become a loose, taken-for-granted observance, but there are safeguards which make it a matter of serious regard.

One matter of interest in the use of such experts as the defense itself may request to have called is that there is never any financial transaction between the two. The expert receives his fee from the state and in case the defendant is found guilty it is charged to him. This practice eliminates the possible sense on the part of the expert that he must give evidence, or rather interpretations, in favor of the man from whom he is re-

ceiving money. He has no feeling of obligation in this direction and is thus more disposed to give unprejudiced opinions. The spectacle of the bitter clashing of "alienists" hired by prosecution and defense is not likely to take place in a Soviet court room. Opinions naturally differ and on occasion the court may have to summon others, so that he may see which way the weight of opinion falls, but the dividing line is not due to a desire on the part of either to defend his client.

Experts are called by the courts whenever specialized information of any kind that is desired is available. Article 63 of the Code of Criminal Procedure states that "Experts are called in when in the investigation and examination of the case, special knowledge in science, art, and the crafts is required." And in a note to the same article it is further provided that "Experts must be called in to establish the cause of death and the character of bodily injuries, as well as in order to determine the psychic condition of the accused or of the witness if there be any doubt on this score in the opinion of the court or of the investigation."

A limitation is, of course, placed in that a science may not have grown in such a way as to furnish a reliable basis for inspection of evidence and conclusions. On the other hand something of an unusual nature may be called in a case presenting such a problem as one related to the author by a state prosecutor. In the USSR one causing a suicide receives a severe sentence. In a case of a double suicide of two women, there seemed no clue pointing to the guilt of any person until a small drawing was discovered. On the evidence obtained from this paper, with the aid of an expert in the identification of characteristics of lines and angles, an arrest was made and a confession and corroborating

data obtained. This would not ordinarily be a legitimate line of expert aid, but in this case it afforded the only chance of detection. It is an excellent example of a case where expert testimony may be the only available resource.

The expert, once summoned, has practically unlimited rights and privileges in gathering needed material for forming his conclusions. He is given all the data in the case for study, and he attends throughout the entire trial exactly as do the prosecution and defense. He may question the witnesses, ask for any further materials such as publications, documents, records, or even the subpœnaing of witnesses, and the court sees that his requests are granted. It is said that there is no known case of a refusal of co-operation with the expert on the part of either court or investigator. He is responsible in arriving at the proper solution of the case, and he is held accountable for any negligence in obtaining any information that can contribute to the accuracy of his conclusion. He may make an error but he may not falsify, at least not without penalty. The Code of Criminal Procedure which devotes so much attention to this matter of experts says, "In regard to answering summonses, obligation to speak the truth, responsibility for false testimony, i.e., for deliberately false and not mistaken testimony, the expert shall be equal to witnesses."

But experts may disagree, even honestly and without regard to a fee! Also, it is conceivable that one might be inadequate. An American mind, at least one whose owner has attended court in the United States, might understand such a contention. The Soviet Code of Criminal Procedure takes care of that possibility, too. In Article 300 we find it provided that, "If the expert

conclusion be found insufficiently clear or inadequate, and also in the event of dissension among experts, the court shall appoint new experts, either on its own initiative or upon the request of either side."

The conclusion of the experts is given at the close of the hearing and is attached to the records of the case. The court does not have to agree with the findings but he must consider them. He is free to criticise, and so, for that matter, is either of the sides in the case. But, in any disagreement he must defend himself well. The Code of Criminal Procedure again says:[1] "However, if the court disagrees with the conclusion of the experts, such dissent shall be minutely motivated either in the verdict or in a special rider."

The testimony of the expert is held to be of peculiar character in Soviet judicature. He is not a witness, giving facts, but it is his function to examine and appraise facts, to inspect and to weigh and to give his opinions and conclusions in the special way of which he is capable. His evidence is distinguished from the other given in the trial in that it is specialized and independent. In other words the court can look after the facts but he wants the expert to tell him the meaning of what he finds out. And the experts have accepted the challenge and the responsibility with vigor. They have developed what might almost be called an "official psychology" that fits well into the nation's philosophy.

This science, called "judicial psychology," occupies first place among the branches used by the courts in the Soviet judicature, and the second of importance is correctional labor psychology. The authorities attach no importance to what we call criminal psychology because they reject the idea that the criminal has any

[1] Article 295.

psychological or biological peculiarity. The use of the term alone suggests that they have, and the content likewise reminds them of some brand of Lombroso doctrine. For their theory of crime with its economic base, with its contention that this phenomena results practically *in toto* from the exploitation of one class by another, such a consideration would not do. Here one sees an application of their theory of crime. The criminal for them is like other people, and as the classless society approaches its perfect state a new social consciousness will evolve and any urge to crime will disappear.

They reject likewise a juridical psychology which makes use of an analysis of psychological concepts into such elements as "imprudence," "intent," "spiritual agitation" because its content is too much one of juridical scholasticism, and affords no practical aid.

Judicial psychology, considered in its broader sense, would involve the correctional labor psychology referred to above as one branch of this science important to the Soviet judicature. Defined in this larger way it would mean the application to the work of the court and the corrective labor institutions of all results of psychological research. Used in the narrower meaning it refers to criminal procedure psychology, or the application of whatever is known in this field to the case as a whole during the procedure or what transpired in the preliminary investigation. It would comprise the psychology of the accused, of the witnesses, of any other participant, even of the judge, jurors, experts themselves, and of the prosecutor and defense. They emphasize that they do not deal with the breaking up of the personality under consideration into such atoms as attention, memory, etc. as is done in the German school, but that they study the entire behavior of the

witness, or other person, against a background of the broad, whole situation of the judicial investigation. They interest themselves, first of all, in the obtaining of true testimony and later in its correct appraisal, and their chief endeavor is to develop a better technique to arrive at these ends. With the emphasis they put on the importance of this usage and the talent they have in the field and the serious attitude the research workers take toward the problem, they should develop something compensating for their great effort.

But in the field of correctional labor psychology there should be an even greater future. This is where the practical worker begs for more light from his scientific colleague. It is one field, said an authority, where the practical worker has gone on ahead of the research worker. There is eagerness to regenerate the psychology of the lawbreaker, to get him so readjusted that he will fit usefully into life. But more of this will be found in the chapter on Corrective Labor.

To think only of the individual and his happiness would spur a scientist on to great effort, but it is even more than that in this instance. The nation's progress toward its ideal depends on the successful use of these unfitted elements. It is no wonder that so many of the best minds are devoting themselves to working out the most adequate possible corrective labor policy. Filled with zeal as they are for their cause, they feel the responsibility which rests on them of making every human possible of use in the Socialist order.

There are two institutes attached to the judicature in the USSR that require special attention in this consideration of expert aid rendered to the courts. Their work is of the utmost importance in the whole system of criminal procedure and the administration of cor-

rective labor. The two referred to are the Serbsky Memorial Judicial Psychiatric Institute and the Institute of Criminal and Correctional Labor Policy, both attached to the office of the Attorney General and to the Commissariat of Justice. It was in visits to these two places that the writer experienced the greatest enthusiasm for what is being accomplished in the field of criminal repression in the USSR. Work of the finest type is being carried on in the lines covered by these two institutions by staffs well equipped for their respective fields of endeavor.

The writer visited the Institute of Criminal and Correctional Labor Policy several times, looked through its library and used its books, and had the aid by conferences and advice of Director Shlaposnitchov, of the assistant director, of Professor Brusilovsky, and others of its officers. It is admirably staffed all the way through by persons not only of ability but of social conscience. The seriousness with which they attack the problems which face them and their acquaintance with the work being done in other nations are bound to impress anyone.

This Institute carries out the usual policy in the USSR of combining the theoretical and the practical. Along with those who are engaged in problems of research into the cause and treatment of crime there come the workers from the courts with practical problems to solve. Working in the library and reference section are persons who read and speak several languages and who carry their research into the study of foreign legislation and reports.

There are a number of sections devoted to special lines of inquiry, chief of which are: Criminal Law and Criminal Trial, a Judicial Section, Statistical Section,

and one giving its attention to the problems of juvenile offenders.

Serbsky Memorial Judicial Psychiatric Institute is the principal other scientific body on which the courts rely for solving their crime problem. It has likewise its practical and theoretical side. Research is carried on by a large staff of medical men and women, of research workers, of professors, and collaborators, and it publishes the results in numerous volumes. It also holds conferences and discussion meetings. It is equipped with all the latest devices and instruments for treatment of its cases and works in close contact with judicial establishments. Its director gave the following as the purposes of the Institute:

(1) To examine all those about to be tried when there is a question as to psychic condition.
(2) To aid all correctional labor camps both as to policy and on actual cases.
(3) To help in problems of juvenile delinquents.
(4) To carry on research in the problems connected with the work of the Institute.
(5) To establish graduate courses and train medical aids.

The capacity for patients is one hundred and fifty beds, these are divided into different groups; such as those for men, for women, for children, for the definitely deranged, and for those who are of apparently sane condition.

No one is admitted at Serbsky except those who have come in contact with the law, through its contravention. When a question of sanity comes up in a case at trial or in the preliminary stage of procedure, it may be cleared up by a brief examination by doctors, but in every case where extended observation is needed the

person is sent to Serbsky. After not longer than a month a report is made to the court. In case insanity is adjudged by the staff, then the patient may be sent to a hospital where care is given him, or, if he is dangerously demented, he is placed in an institution where there is more restriction and compulsory treatment and care.

The Institute maintains a department where children are kept, and where they are taught by teachers who come in for that purpose, and trained in certain arts and crafts. Also, some adults are kept beyond the month period when it is thought that only brief treatment is needed so that the trial may go on. There was one who had been there for eight months and another for six at the time of the author's visit.

Because of the short period of retention in this place one would not expect that much of a constructive nature could be done in the matter of work. But here the policy of Soviet treatment shows to advantage. The shop teacher exhibited to us with pride what he had been able to accomplish, and his enthusiasm was justified. In accordance with their theory that labor can correct almost anything they use it here as a constructive treatment. They also use, as has already been said, all of the latest medical and psychological therapy, but there is at the same time an insistence that training for work, giving one something to do and teaching him how to do it well, is the best way to psychical readjustment.

Pursuant to the fulfillment of this idea those sent here make things and they are carefully observed while they work. Some of the objects in the shops and on exhibit in a small conference room were beautiful models. Among those, of especial note, there was an airplane, perfect in minute detail, a movie machine, a sys-

tem of traffic lights, and a collective shop made by the children. The latter would have a political significance, of course, and serve to put over education of a socialist nature.

As one goes into Serbsky Institute one encounters a guard at the outer gate, and the feeling is that here is a prison. It is, of course, of a kind. Men who are in this place are, many of them, of a dangerous nature, such as we would call criminally insane. This terminology will not do, however, for Soviet criminology, as one may be either insane or criminal, but not both. But a number are guilty of murder, are pleading insanity as a defense when they may, of course, be sane; a number have made homicidal attacks on individuals. With this in mind one expects to see more of a prison atmosphere prevail.

On the outside there were no armed guards in evidence, and we were told that there were none. When we went through a ward of some twenty-odd men of the most dangerous type with only a woman attendant, and no one else about, the writer frankly felt somewhat nervous. It seemed they ought to be under guard, but the woman in charge assured us that there had never been an attack by one of them on an attendant. The attitude of the Serbsky staff toward the patients and the attitude they manage to get from them in return seemed to us remarkable.

We went through the gardens where those persons of a less dangerous nature were reading, talking, or doing whatever they wished. Some came to speak to us. One wished to make a long speech. A part of these were judged to be mentally normal, others must return to face their trial. We came at last to the place where are kept the most obstreperous; those who would surely

make an attempt to escape if not restrained. This was the only example the writer encountered in Russia of persons locked in cells. There may be others in isolated instances, but solitary confinement has been done away with as a matter of policy. The building housing these prisoners was two-story, and the cells faced inward on the garden. There were tall big windows of unbreakable glass affording plenty of light, but the ventilation was bad. A remark was made to that effect and we were told that it was an old building they had had to utilize, and that it was to be replaced within the year. It certainly was out of keeping with the rest of the place, and made us think that it would actually be taken care of before long. However, there were not many persons there. Glass panes in the doors enabled one to peer in and there were only ten inmates in all the rooms on the two floors.

It was in one of these cells, where all the furniture is secured to the floor, that we were allowed to talk for a moment to a man who is quite a character in criminal circles in the USSR. He is held to be the chief swindler of the country and a recital of his escapades made the assertion sound entirely plausible. Perhaps it should be emphasized for fear that it was not made clear above, that it is not the ravingly insane who are kept in these rooms. They are the ones kept in the ward already mentioned. These are they who are the more dangerous criminally, who possibly are not insane at all. The swindler was held to be normal mentally, and if he got away with all that his record enumerated one feels sure he must be.

The swindler, a young man of near thirty, thin, dark, sat morosely on his cot as we went in. The attendant spoke to him, put her hand on his shoulder. We had the

story of him before we entered. He had been in prison a number of times, he had supplied a luxurious living to himself and admiring companions over a period of years. He had been sent to this Institute at several of his previous trials and the opinion had been each time that he was mentally normal. A few months before our visit he had been returned to court to stand trial, and had been sent to a corrective labor institution. But he had refused to work. He had refused to follow any of the prison régime, and the authorities had returned him to Serbsky for a check on his mental condition. He ignored us, seemed hardly to be conscious of our presence, as he begged to know of the young woman what they were going to do with him now. She talked to him for a few moments in an encouraging manner. Her effort with him, she said, was to convince him of a better way of living by means of the training he would get in the corrective labor institution.

We had already been in the children's department and had talked there to two girls whom we were told to remember for future reference. One in particular was a pretty, gentle-appearing child of twelve. Here is her story. She had been a run-away, she had wandered in various parts of the USSR, or so she said. Her acts of a criminal nature had all been directed against children. She had stolen several whom she said she had pinched and tortured in a sadistic manner and killed. The number she set at ten, but there was no verification of her report. She had become well enough known and feared in certain sections so that she was threatened by mothers of young children if she so much as entered the village or town. She had a few months previously come into the care of the Institute, and they felt sure that an entire change of her whole character had been

effected. On the wall of the room where she stayed she had put some pictures, and she had become interested in art as well as other work and study. They thought her normal, and although her family wished her returned to its custody, the opinion was that the environment had not up to then been sufficiently constructive to permit that. They were sending her to an institution at Leningrad where she was to be taught and trained in some labor.

Even at the risk of being tedious, it seems desirable to record two more cases among the children. In a yard at the rear of the building we found a group of boys at play. Two of them were indicated as presenting challenging problems. Safely back in a conference room we heard of what they had done. The first case especially was interesting as indicating that animosity does not always exist in the treatment of those who are in opposition to the proletariat rule.

A boy of seventeen, who was the son of a Kulak, had been discharged from his job for indolence. He went later to stay with a friend overnight. He wanted the friend to go with him to some place to which the mother objected. Filled with anger he waited until the son had departed for school the next morning, then murdered the mother, took some money which she had in the house, and escaped. When caught, he was sent to Serbsky for examination and the analysis showed mental deficiency and a difficult, sulky character. They had kept him for a time, had made some progress with him, and were then about to send him to a medical-pedagogical institution for juveniles where he would be trained and treated.

The other boy, a charming black-haired fellow of thirteen, was held to be normal, but he was an alcoholic

and stole constantly. The trouble in his case seemed to be in an irrational, coddling kind of upbringing. The decision was to send him to a state educational institution.

There were only seven women inmates of the institution at the time of our visit and in view of the high percentage of women criminals in the USSR that seemed strange. No explanation was vouchsafed in answer to a question as to the cause, but it might indicate that women in this country do not base a defense plea on grounds of insanity!

With such thorough effort as the care in Serbsky indicates, the conclusions as to mental condition ought to be as authoritative as human fallacy permits. The institution has representatives in various shops and schools and co-operates closely with the heads of the various prisons, and every effort is made at supervision and observation of those within its jurisdiction. We asked for statistics on results and were reminded that this work is all very new in the USSR, of necessity, and that figures were not complete, but that we could be assured that the results were worth to them all the painstaking care they put on their work.

CHAPTER VIII

THE PROSECUTION

The functioning of the prosecution in the Soviet judicature is of especial interest to a student of criminal procedure. Its development from the time of the total abolition of the institution as it had existed in the Tzarist régime, by Decree #1 of 1917, to the establishment of the office of the Attorney General in 1933, has been experimental and not without dissension among the ranks of the Central Executive Committee itself.

In the early years following the Revolution when everything Tzarist was swept away, there prevailed a spirit of liberalism so far as the rights of the people were concerned. In the sudden accession of power by the proletariat, lack of restraint was the predominating note, and this philosophy—if such irrational conclusions could be called one—of the epoch was reflected also in the procedure of the criminal courts. A more conservative opinion had wished merely to place the defense on an equal footing with the prosecution to correct the dominance of the state over the people in such a manner as it had been practiced for all the years of the reign of Tzars. But this was not enough to satisfy those who were clamoring for everything to be placed in the hands of the proletariat, the administering of justice as well as other branches of government.

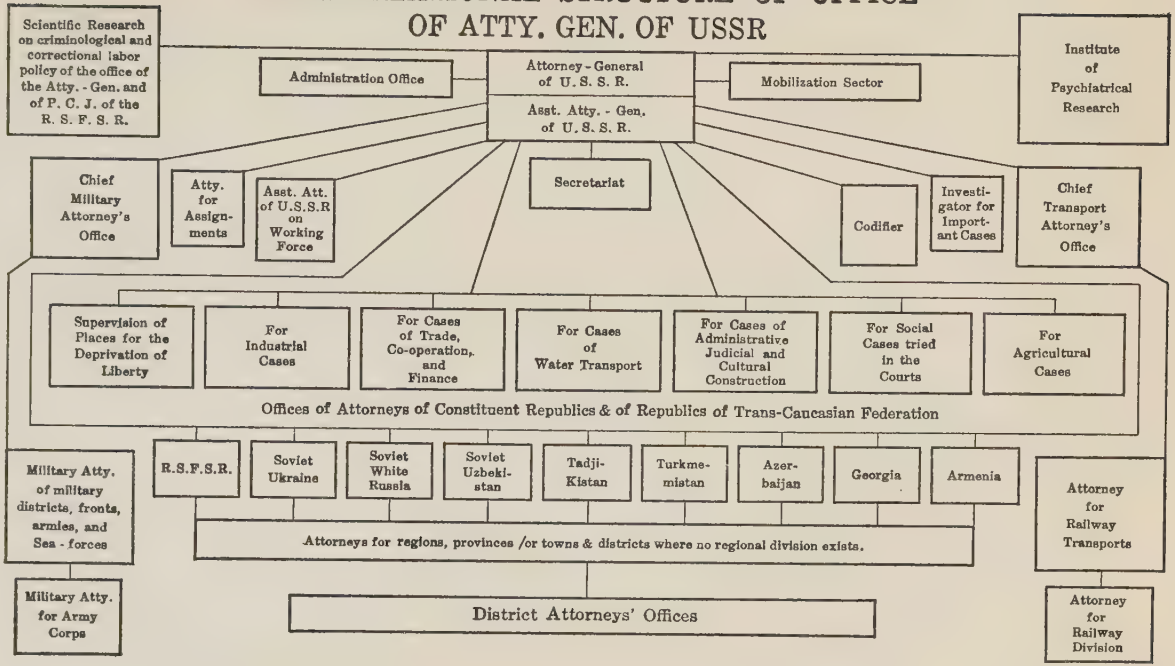
In this moment of judicial liberalism prosecution

through official channels was done away with, and in its place the persons in attendance at the trial were vested with the right of accusal as well as defense. It must have distressed many a hardy judge, even though he sat as a representative of the toiling masses himself, to try to figure out a decision in the face of untrained and conflicting contentions. At any time during the trial any citizen might rise and address the court either in behalf of the accused or as the state's prosecutor. The idea took hold rapidly, and up to the beginning of its control in 1918, it was so widely used that it became customary for the judge to call on some one in his audience to act as defender or accuser of the person on trial.

It was bound to lead to difficulties. Civil war was at hand, the class struggle was at its height, and the court was an organ of the state in its struggle against its enemies. Even the most liberal saw that it would not do. Some system must be used whereby the prosecution of cases would be strengthened.

There is an interesting point involved in the restoration of the prosecution, as it now began, even though it was of revolutionary expediency. It was a swinging back to the western criminal law administration which they had annihilated at the beginning of their rule. A legal man said to me in this regard, "We acknowledge that there are many good points in the capitalist system, and we do not hesitate to borrow what are useful to us." In court procedure, even while they do preserve the proletarian administration, one can recognize many things about their orderly procedure that has its foundation in familiar bourgeois practices. There is no denial of this on their part. Certain well established ideas of justice have proved over long years to be adequate and proper and these have been incorporated into their

ORGANIZATIONAL STRUCTURE OF OFFICE OF ATTY. GEN. OF USSR



own judicial structure. The early disorganized practices of the proletarian administration of justice gave way when necessities and panic of the Civil War had been dissipated to a deliberative plan resulting in the many codes of 1922.

Before this a resurrection of the public prosecutor was on its way. Revolutionary tribunals, in their post as out-sentinels in the struggle of the government, were the first in the demand for sterner equipment of prosecution, and political expediency put an end to judicial liberalism in their practice. Characterizing this period was the attitude that placed in the hands of the *Cheka* the power to impose even the death penalty on those persons charged with political offenses such as the participation in counter-revolutionary activities, deliberate destruction of property or espionage, and other such crimes against the state. It was felt that if the proletariat was to continue to rule it was no time for softness, either in the judicial system or in the non-judicial tribunals which continued to exist through the bloody days of the Civil War period.

As just pointed out, it was in the Revolutionary Tribunals, created by Decree of November 24, 1917, and differing very little from the People's Courts except in the requirement as to the number of co-judges,[1] that the first change came in regard to the prosecution. Let it be understood that although these tribunals were organs of the revolution and continued in force for five years, they were proper judicial institutions, with a definite prescribed procedure and jurisdiction. There had been too much mildness in their administration, so much so that the present Commissar of Justice, N. V.

[1] Six sat in the Revolutionary Tribunals while two were required in the People's Court.

Krylenko, stated in his Soviet law,[2] that "Their softness with regard to sentences discredited them completely."

There were too many of them in the first place and by Act of May, 1918, their number was reduced so that they remained in existence only in the capitals of the provinces and other important places. But that reform would not necessarily make them deal out sterner justice, and by this same Act there was created at each of the existing tribunals a *collegium* of prosecutors. To make the check-up more complete there was also established a Central *Collegium* of State Prosecutors in connection with the All-Russian Central Executive Committee created by an act of June, 1918.

The character of the Revolutionary Tribunals was undergoing a change. Sternness and determination now marked their attitude. Mildness was fading away as class struggle advanced. They were created to spike the activities directed against the achievements of the Revolution or designed to weaken Soviet authority. It was not enough that some citizen give voice to a plea for conviction; it was neither sufficient that local tribunals be left to carry on their own unaided and unsupervised prosecution. There must be central supervision. This very distrust of local competency led later to a dissension in which Lenin had to take a hand, but for the time being, it served its purpose.

By the decree already referred to (of May, 1918), the central *Collegium* was given wide powers. It might demand of local prosecutors or tribunals that certain cases be transferred to Moscow or in the event the case remained in its original territory, it might send prosecutors there to see that it took the direction desired. It

[2] P. 55.

might also demand an accounting from the local *collegiums* so that by supervision they could be sure that the functions of these organs to look after all facts of criminal action committed by any person anywhere and the institution of criminal procedure might be faithfully and zealously fulfilled.

By the Revolutionary Tribunal Acts of 1920, all previous acts pertaining to tribunals were repealed and sweeping changes again occurred. Counter-revolutionary activity was on the decline, the Civil War was receding, and non-judicial methods of suppression not so much needed. Orderly government was growing stronger. The *Cheka* suffered the abolition of its special tribunal, the military judicial powers even were required to comply with the provisions of this Act. As a result of these curtailments the powers of the Revolutionary Tribunals were widened and jurisdiction extended to include any case involving counter-revolutionary charges as well as any other that was of a nature dangerous to the Soviet Republic. Not only was the jurisdiction of these tribunals enlarged but their power of punishment was likewise increased and was now practically unrestricted. With such authority they could assess any measure of repression which they thought necessary to the occasion and could thereby cover any ground lately held by extra-judicial bodies. These tribunals were established in the capitals of the various provinces and by permission of the Commissar of Justice might also be instituted in the larger cities.

What happened in regard to the prosecution? The *collegiums* of prosecutors set up by the previous acts were abolished and in their stead there now appeared state *collegiums* of defense and prosecution, both for the people's court and for the Revolutionary Tribunals.

From this time on more attention was given to the perfecting of a system and technique of prosecution. The qualifications for the person filling this office became of a more adequate nature. He must be a man competent to make an appearance before an assemblage, to speak or otherwise conduct public affairs, and he must also know the Soviet system of government thoroughly as well as be acquainted with the workings of trade unions. There was still no centralized system such as exists today since the prosecutors were at this time provided merely to represent the people in trial, much as a defense lawyer might be appointed in a particular case. But the era of floundering, of experimentation, of entertaining thought of complete proletarian administration of law, had made its contribution, and the evolution moved on with the rapidity with which other things have moved in Soviet Russia. In 1922 there was another Act containing other innovations.

By this Act there was a general revision of the whole system of judicial legislation, and there emerged such results as the Criminal Code, the Law on Basic Property rights, the Code of Criminal Procedure, and the year of 1923 furnished additional legislation. The matter of some centralization of a state prosecution seems to have been taken for granted, but the form that the organization was to have, the basic principles, brought forth differences of opinion as we shall see later.

The New Economic Policy had been introduced and the economic and political situation in the country was in a confused and complex state. Civil war had died down but the class struggle, already well on its feet, took encouragement from the feeling among the property owners that capitalism, at least in a modified form, might with timely effort be brought back. The

form of conflict now encountered was hardly less threatening to Soviet rule than had been the more open warfare. The government, dependent on its courts, now effectively augmented by the judicial powers of the terrifying GPU, needed a strengthened prosecution.

In May of 1922 the People's Commissariat of Justice presented its proposal of organization to the All-Russian Central Executive Committee and found itself immediately on the defensive against attack by opposition within the Communist faction. This had not been expected, and there was some dismay when the main points were rejected altogether. Once before, a central *collegium* of prosecutors—even though for the Revolutionary Tribunals—had cast reflection on local organs by demanding transferal of cases to their jurisdiction or by sending one of their own number to prosecute locally. Now, as the Commissariat of Justice proposed: (1) the direct subordination of the local prosecutors to the Prosecuting Attorney of the Republic who appoints and dismisses them, and (2) the right of local prosecutors to protest before the central authorities against unconstitutional decisions by local executive committees, it was held by the majority of the Central Executive Committee that there was in such suggestions an element of distrust of local authorities too strong to be accepted. A commission appointed by the session, in rejecting such proposals, made one of its own. It was suggested that there be set up a "dual" subordination of prosecutors, making them responsible both to the central authority and to the local executive committee.

Such a state of affairs brought intervention from the captain of the ship of state. Lenin wrote a special let-

ter to Stalin that brought the opposition to terms when it was read before the Central Executive Committee. He enumerated therein some of the causes of the difficulties of establishing revolutionary legality and a lack of uniformity of the application and administration of the laws were chief among these. Likewise, there was always the alibi of local peculiarities and conditions. For us of the United States who have struggled with forty-eight different types of provisions, of applications, and administration, there is understanding of his argument. A suggestion of anything possible to prevent it seems unanswerable. "The basic evil in the whole of our life and in the whole of our lack of culture," wrote Lenin, "is in the ancient Russian attitude of laissez-faire and in the custom of semi-savages who want to retain the local justice of Kaluga as distinguished from that of Kazan."

He then puts a question. Can it be tolerated in a country of proletarian dictatorship, in a country building up a socialist economy? Here is his answer. "There can be no Kaluga justice different from that of Kazan, but there must be a uniform All-Russian justice, and even a uniform justice for the whole Federation of Soviet Republics."

That started the effort toward uniformity. The most recent chapter in the development was in 1933 (June 23) when the office of the Attorney General was created to centralize the prosecution of the whole Soviet Union. There have been steps between the two enactments but they have moved steadily toward the recent accomplishment. In the earlier organization the position as head of the public prosecution of the USSR, now held by the Attorney General, was occupied by the Commissar of Justice.

The duty of the prosecution, now headed by the Attorney General of the USSR, is not merely to prosecute. His functions are far beyond that limit. If he were confined to that there would not be great importance to his office.

In the Soviet judicial trial the prosecutor is robbed of his glamorous rôle as he appears in our own courts. He, as well as the defending attorney, is a mere assistant to the court, there to aid it in getting at the truth of the affair before them. It is apparent that he has been appointed in such a manner that he is nearer to the judge than the defense lawyer. He is likely of the same party affiliation, he comes from the same social class, he is in sympathy with the order of government. It is certainly more likely that he exerts a greater influence on the court than the other side's attorney who may hold an opposite viewpoint. One notices that often the defense attorney is of a different appearance in manner of dress, in terminology, and in speech, from the court and prosecutor. It may be supposed that this occasionally causes the court to decide against him, even though the bias is unconscious, since it is very likely that he is defending a person who is a "class enemy," and with whose point of view he may be in sympathy.

That would probably have been truer a few years ago than it is now. With the prevailing attitude of "winning over" wherever possible, and the "crushing" of only those who are distinctly to be feared as socially dangerous, there seems to be no great prejudice shown. It must exist to a degree, but antagonism does not seem a part of the present policy of state. If a person before the court can be made into a useful citizen then the object is to do it. Those who deliberately continue

to struggle against the laws of the class in power will certainly be dealt with in an uncompromising manner, and if it is fairly clear the crime is of this nature then a defending lawyer would hardly be listened to with very much thought. It would be the day of the prosecutor. Likewise in establishing the class nature of the crime, the word of the prosecutor would be worth more to the court because of his sympathy with the existing order. But since it is to the interest of the state to protect an individual, to retain the aid and sympathy of all possible and to win and keep the confidence of its masses, it is not likely that there will be many who are innocent in this respect convicted in the regular judicial trials where open sessions prevail and the people in large numbers attend. One of the impressive characteristics of the court room in the Soviet Union is the attendance and interest of the citizens. They discuss the verdict with animation and it is to be noted that they usually agree with the court's decision. If those in attendance disagreed too often it would hardly be a good thing for the judge. It will be remembered that power of impeachment is exercised in this country.

The lack of importance of the prosecutor in trial is exemplified by his absence from trial frequently, in the People's Court. It is not usual in this lower tribunal for either prosecutor or defense lawyer to be in attendance. At times, however, they do appear. But there is no place in the system for the ingenious display of a game of wits between attorneys as there is no jury such as ours nor anyone on whom an emotional impression could be made. There is really no great need in the ordinary case for attorneys either for the state or the defense. The court has both the power and responsibility to see that all evidence is placed before it. There

can be no such objections to its introduction as we are accustomed to hear, resulting in the escape of criminals from the law because of the lack of admission of evidence. The story comes out, the witness tells the tale without any instruction to answer "yes" or "no" to the questions put to him. As already illustrated by actual cases, it is an informal narrative, interrupted by pertinent questions by judge or jurors or other parties to the case.

To see, then, what the prosecutor's functions are, let us look at the following list as given in 1922 at the establishment of the centralized prosecution.

(1) To supervise on behalf of the State the legality of the actions of all administrative organs, economic institutions, public and private organizations, and private persons, by instituting criminal proceedings against guilty persons and by protesting against decisions infringing upon the laws.

(2) To observe directly the activities of investigation organs, criminal inquiry organs, and also the activity of organs of OGPU.

(3) To prosecute in court. [Note that this is third in order of importance.]

(4) To see to the proper treatment of inmates in homes of correction.

As can be seen from this enumeration the functions of the organs of Soviet prosecution extend far beyond the limits of mere judicial supervision.

Accordingly, the Attorney of the Republic (originally in RSFSR, the People's Commissar of Justice) was entrusted:

(1) To look after the legal activity of all the People's Commissariats and other central institutions and organiza-

tions and to make proposals for the repeal or amendment of orders and regulations issued by them that are not consistent with the law.

(2) To protest against such orders and regulations before the Council of People's Commissars and the Presidium of the All-Russian Central Executive Committee with a view to their abolition [the protest by the Attorney General does not stop, however, the carrying out of an order against which a protest was made].

(3) To guide and control the activities of local prosecuting organs. The functions of local prosecutors were:

(a) To propose to local executive committees the repeal or amendment of regulations and decisions that do not conform to the law, and

(b) To protest against such regulations and decisions, through the Attorney General of the republic, to the Council of People's Commissars or to the Presidium of the All-Russian Central Executive Committee.

In the realm of combatting criminality, the Public Prosecutor was commissioned:

(a) To institute local proceedings against officials and private persons either on his own initiative or on complaints and statements received by him.

(b) To look after the conducting of inquiries and preliminary investigations, to advise organs of inquiry and preliminary investigation on the question of restrictive measures and other questions connected with preliminary investigation, and to conform the indictment drawn up by investigators.

(c) To decide the question of prosecution or cancelling of cases coming up to him from investigating organs, to take part in preliminary sittings of the court on the question of trying or dismissing a given case.

(d) To prosecute in court.

(e) To protest in the order of cassation against verdicts and findings of the court, and also protest by way of supervision against verdicts of the first instance and

cassation decisions of regional and provincial courts that have already come into force.

(f) To look after the proper treatment of inmates in all places of detention without exception, and to liberate persons improperly held.

From this enumeration it can be seen that his duty as prosecutor is third on the list. But it is in this function that we think of him and it is this part of his work that we shall go into in some detail because of its connection with what we are studying.

In relation to the prosecutor's occupation with criminal procedure there is first the preliminary investigation. When the militia or the former organs of the OGPU or any other agent turn over to the investigator certain material evidence of crime the prosecution starts to function. The office of the prosecution is to institute criminal proceedings on the first definite suspicion that a crime has been committed.

While the proceedings are in the preliminary stage the position of the prosecution is very different from what it will be later. He is now concerned with finding out the truth of the situation and not of "fastening" upon some one an act of which he is not guilty but for which there must be a conviction. If he goes into court for trial too many times with cases that are not supported by the testimony as brought out by the court the inference is that he either is not honest or not capable in his preliminary investigation. While a prosecutor often makes a mistake, as further court testimony may show, and is in honor bound to withdraw prosecution when he discovers it, this would probably be because of circumstances which he could not control such as the absence of a witness or the testimony of one not revealed at that time.

So, in the preliminary examination he is not an accuser. He is the chief of all that takes place, and he is in full charge. His investigator carries out the work of this stage in less complex cases but the prosecutor is responsible for direction and policy. He does not seek evidence of guilt at this time any more than he tries to establish innocence. He gathers every available bit of data and then makes his decision as to whether the case is to go on. But once he has come to the conclusion that the indictment is sufficiently well founded and the accused becomes the defendant in the judicial trial, his position is changed.

In the trial he is the prosecutor. He now believes the defendant guilty or he would not have remanded him for court action. He now takes part in weighing the evidence produced in court and urges some measure of punishment in his speech. But so intent is he still on getting justice that he may cease his prosecution if he decides that he has been wrong in his preliminary examination. It is his duty to do so and to convince the court he is correct in his action. One prosecutor told the writer of four occasions in his own practice when he had done this. One has an incredulous feeling in hearing a prosecuting attorney make a plea for the reduction of a sentence or for a verdict of not guilty, but such a case is recorded in the following paragraphs.

In the Supreme Court a case was on appeal from a Regional Court. A group of seven men had been found guilty of stealing vegetables and fruit from a co-operative store in which one was manager. They had resold the articles and had thereby made some 20,000 rubles. The two leaders had received the death penalty, the others lesser ones. The death penalties had been ap-

pealed and the prosecutor and the defense attorneys were present with their arguments.

The defense lawyer spoke quite at length, arguing that the amount had been really smaller than was stated, that the character of the men had always been good, and then he went to points of law. He contended that it had been a mistake to apply the Law of August 7, 1932, providing the death penalty for larceny of state property, to this act as no theft of state property had actually taken place. The men had paid the regulation amount to the state, but had simply sold the fruit and vegetables at an advanced price over state prices, for a sufficient period to bring in the money in that manner. He contended that instead the men were guilty of using official position for personal benefit and that Article 109 of the Criminal Code, providing punishment for such a crime, should have been applied.

His points had not been well made and when the prosecutor arose to speak one was quite prepared for his demolition of the previous argument. He was an able, well-trained man. No one consults any precedents or books of law in the Soviet court. The observer is struck by the absence of such volumes from the room. The court judges each case on its merits in the light of certain established policy. It seemed only a matter of formality for the judges to retire and bring back the decision that the verdict should stand. But the peculiarity of the prosecution in this judicial system now showed. The attorney paused, started again. He reminded the court that the men were young, that this was the only offense with which they had been charged and that one of these in particular had been a good citizen until he had begun to drink too heavily. He thought the sentence too severe and that it should be

commuted to the maximum ten-year term. He likewise recommended that some of the sentences of the lesser members of the group needed revision. The court acted on his recommendation and the two wives present were able to go into frenzied joy over the giving back of life to their respective husbands.

The case brings out the attitude of the prosecution toward their tasks as accusers. The basic function of the prosecutor is to establish all the testimony he can to support an indictment before the court. That is what he comes into court for. The defense has its lawyer to see that its interests are protected. The prosecutor thinks of the side of society and the state. But at the same time, theoretically, he must not do anything to prevent the real truth of the case from being revealed. It is not in keeping with the rôle and dignity of his office to keep back evidence, to shuffle facts, or in any manner to defeat the carriage of justice. And in attempting to carry out the higher requirements of his office he cannot insist on the charges of the indictment if the testimony brought out at the trial has modified them.

It is interesting to note that there are deviations from the general principle that the prosecutor conducts the prosecution at the trial. Throughout the land there is a system in practice of giving training to the more able among the peasants and workers to act in the capacity of public accuser in the simpler cases. This special prosecutor is usually unaided unless the case is of a more serious nature, when he will probably serve in conjunction with some member of the prosecutor's office. This service is of a wholly voluntary nature with no pay attached, but there is compensation for the in-

dividual in the position of importance he occupies in his community.

There are also cases where the plaintiff hires his own lawyer to prosecute the case and a public prosecutor appears only if the case is of such a nature or takes such a turn that there is a public interest which needs protecting, or in case there must be intervention to secure fair play. An example of this type of case would be one in which there was bodily injury that while causing pain still had no serious consequences. Cases involving insults, libels and slander likewise are often prosecuted by private attorneys without the aid of the public official. In all of such cases action is not brought by the state, of course, but is begun by the oral or written complaint of the injured party and may be settled by the plaintiff and defendant between themselves at any time while the trial is in progress.

In cases involving such charges as the violation of patent or copyright laws, forced sexual intercourse, and a few others of a private nature, the procedure is still different. Prosecution is by the public prosecutor but even though he knows of the existence of such violations he cannot institute proceedings. The injured party must make the complaint and give co-operation but while he may have his own lawyer also the state takes charge of the prosecution.

For a more complete picture of the prosecution as it exists in the Soviet Union today, its organization is briefly given. It follows:

(1) The Attorney General of the USSR who is the head of the prosecution in the Soviet Union. He has, of course, a staff of assistants. He is appointed by the Central Executive Committee, and is also responsible to the Council of People's Commissars.

(2) The Assistant Attorney General of the USSR, appointed by the Presidium of the Central Executive Committee.

(3) The attorneys of the various federal republics who are appointed by the Attorney General of the USSR on approval by the Central Executive Committees of the respective republics.

(4) The prosecutors of the regional and provincial courts are appointed and may be dismissed for cause by the attorneys of the federal republics with the consent of the Attorney General of the USSR.

(5) The attorneys for military and transport tribunals are appointed and may be dismissed by the Attorney General of the USSR.

(6) District attorneys and people's investigators are appointed and dismissed by regional and provincial attorneys.

(7) Senior investigators and investigators on most important cases are appointed and dismissed by those attorneys to whom they are attached.

The duties with which they are charged are:

(a) To supervise the consistence of decisions and regulations of separate departments of the USSR and federal republics and of local authorities with the constitution of the USSR and the decisions and regulations of the government of the USSR.

(b) To look after the correct and uniform application of the laws by the judicial institutions.

(c) To institute criminal proceedings and to prosecute in all legal instances throughout the territory of the USSR.

(d) To look after the legality and correctness of the actions of OGPU, militia, and correctional labor institutions on the basis of a special order.

(e) General guidance of the activities of the prosecution in the federal republics.

CHAPTER IX

THE DEFENSE AND THE DEFENDANT

The Bar has had a precarious existence under Soviet rule, but it seems now to have come on to firm ground. Going back to that First Decree of 1917, when the prosecution was swept away, we find the institution of private attorneys suffering a like fate and an idea substituted that anybody might be an attorney and defend. However, a limitation was soon put on the "anybody" by the Second Decree on Courts which created the *collegium,* the duties of whose members were both to prosecute and to defend. While any citizen might become a member of this *collegium* on the proper recommendation of the Soviets of workers', soldiers', and peasants' deputies, he was supposed to give his time and attention to being an attorney, which somewhat narrowed down the first broad inclusion. There must have been some slight ability, too, on the part of the persons appointed, over the ordinary run of citizen, in order that they be recommended to membership.

This method of providing for defense and prosecution existed until 1920. The People's Court Act of 1918 changed the status of these defenders and prosecutors in that they were made officials of the Republic and were accorded a salary equal to that of a people's judge. These members of the college in their capacity

as defenders were augmented at times by relatives of the defendant and at times replaced by the legal adviser of an institution, appointed by the director to serve in some particular case.

By 1920 this system of one body affording now a prosecutor, now a defender, was found to be not adequate, not in keeping with the rights of the defendant which orderly legality must establish, nor, on the other hand, providing a sustained attitude of prosecution such as the state needed. The People's Court Act of that year created separate institutions for the two purposes. There was now evidence of a selected membership. Not just "any citizen," even though he might devote himself to the duties of the *collegium,* could serve, but there was to be a list prepared by the local Soviets, of persons who were qualified to act in this capacity. From this list defending advocates were to be selected for temporary duty, not to exceed six days in a six month period, and were to be paid a sum in proportion to the remuneration received by a co-judge.

It was something in the nature of our own jury service, and was regarded as a solemn duty of a citizen qualified for the function. In the Collected Laws of 1920 we find a circular from the Commissar of Justice issuing instructions and admonishing that the defense in court, in criminal cases, is a social duty of all citizens, who, because of profession, education, or party affiliation, are qualified to appear as defenders at the trial.[1] Doubtful defense it may have been to one whose life hung in balance, but the institution was progressing toward a time when persons on trial might be ably represented in the judicial inquiry.

The institution of the New Economic Policy, bring-

[1] Collected Laws, No. 100, Article 543, 1920, Section 5.

ing a new complexity and confusion into the economic and political life of the Union, created new necessities of various kinds, one of which, as we have already seen, was a development in the administration of Criminal Law. With the remarkable rapidity of the development of institutions in other lines, the Soviet judicial system began to take firmer shape and to assume a character of responsibility for orderly legality. If the court was to provide equality of opportunity and privileges to all, thus fulfilling the slogan of the Socialist State of which it was an organ, then the rights of the defendant must be protected, not only by legislative safeguards but by means of adequate representation at the bar of justice. If prosecution was to be stiffened in this era of fighting the opponents in a new way, then a balanced procedure called also for more adequate aid to the man accused.

The Advocacy Act of 1922, with its sweeping reforms for the judiciary, restored to the Union the possibility of adequate defense for the person who stands accused in court. It created the *collegium* of lawyers, and made its members responsible for the legal aid of a party held for trial. The number of members of the college were, however, to be restricted by authority of the provincial departments of justice.

This limitation was removed by the Judiciary Act of 1926 which elaborated the provisions of the earlier Act and dealt fully with the organization, function, and duties of the *collegium*. While the number is not restricted, the member, when accepted by the *presidium* of the *collegium*, may be rejected by the provincial executive committee within a month from the time it is informed of his admission.

The qualifications required of the members provides for at least two years' service in some judiciary position

within the Soviet Union not lower than the People's Court which insures an acquaintance with the law. To be admitted one must also either have a higher juridical education or have passed a prescribed examination. Admission is refused to those who have been expelled from public organizations for misconduct (for a period of three years), condemned for crimes, or under trial or investigation the member is suspended in certain cases. No lawyer may defend in court unless he is a member of the *collegium,* or bar.

The *collegium* is self-governing along the lines of other Soviet institutions. It elects its own *presidium* which works out the general problems of the organization. It decides on disciplinary questions, on general plans of work, and on the fees to be paid by its members. It has no authority over the fees to be paid by clients. That lies in the hands of the Commissariat of Justice which sets up a regular schedule, according to the ability of the person to pay and the complexity of the case. There are four groups according to these provisions. At the bottom are the poor, so designated by the people's court, who pay no fees; in the next group are those workers, clerks and peasants who are permitted a small rate; the third group consists of any not included in the first two, who may also pay a rate set by the Commissariat; and there is the final group who, not needing the intervention of the Commissar, may make its own terms with the *collegium.*[2]

The duties of the members of this organization do

[2] In Moscow alone there are about fifty private lawyers not connected with any "corporation," later to be described, who may be hired as they would be anywhere. They are those sufficiently well known to attract a private practice, and do not need the aid the corporation can give. They agree on the fee to be paid, without any intervention on the part of the state, and are not restricted in income.

not consist alone in defending in court. The members of the *collegium* attached to the courts, provincial, regional, or organized as county bureaus, deliver lectures on law, acquaint the masses with their legal rights and duties through visits to large factories and other centers, and must defend without pay any case referred to them. The first duty of the legal profession is concerned with the observance of revolutionary legality, but within the bounds set by this legality, he must defend his client. The protection of this same individual is, however, the acknowledged duty of both judge and prosecutor, so why the necessity of defense counsel at all in such a system, one wonders.

As already pointed out the simpler cases tried in the People's Court rarely do have attorneys on either side, but in the more complicated cases the story may not be so easily got at. It may be necessary to the honest defense of the accused or in the determination of his sentence that certain orders or decrees about which he knows nothing be applied to his case. In such an event he needs some one who is acquainted with various enactments. In the next place he may not be of a nature so cool and composed when his life or liberty is at stake that he can interrogate witnesses himself, cross question, and otherwise exercise his legal rights. Likewise, if it is a serious case, when he gets his last word before the court he will want it to be an effective one. The speech of a good lawyer, analyzing and weighing the evidence, may be a deciding factor. Straightforward and interested in the protection of the state as a lawyer may be, he is likely to think of some points in favor of his client that neither judge nor prosecutor would find unaided. And that leads to the third and last ac-

knowledged reason for the use of private attorneys. It is likely that the prosecutor may be prejudiced in favor of the guilt which he has already seen indicated by the evidence he had in hand when he remanded the accused for trial. It is likely also that the judge, having found that evidence sufficient to sustain the indictment, may not be able to see some things on the other side that a legal adviser hired for the purpose would be able to find. The authorities on criminal law believe that, too, and therefore, on the theory that innocence is presumed until guilt is proved, they provide for an advocate who is more likely to be conscious of the innocence. A question occurs here as to whether an advocate would risk defending a client whom he knew to be guilty through a confession or otherwise. Theoretically, he would only in this case attempt to interpret or explain the act so as to get freedom or a lesser sentence.

The defense often has a lawyer when there is no prosecuting attorney present. In the People's Court the state representative may not appear, and yet the counsel for the defense is always admitted. The reverse cannot be true. There can be no prosecutor present without the defense counsel. One of the specific provisions of the law is that on all occasions when a prosecutor appears for the state there must also be a counsel for the defendant. In case the latter has not been able to get one or is not able to pay, the court looks after the matter for him by having the *collegium* of lawyers appoint a counsel. It may be a case a lawyer would not want; it may be the worst of the so-called "class enemies," but some one must serve. Not only that, but if the complexity of the case warrants it, one of the best must be appointed. The *collegium* pays the member serving on

such an unremunerated errand out of its own funds, according to the fees he is accustomed to receive and according to the complexity of the case.

There is one other condition in which the court must see that the defense is represented by counsel. If the defendant is deaf or dumb or suffering from any physical handicap that will prevent his understanding correctly the procedure of the case counsel is obligatory. Likewise, in the case of juveniles of 16-18 years of age (the court does not handle the cases of those under 16), the instructions of the Commissariat of Justice is that there be counsel provided.

The defense counsel, once in charge of the case, has rights and privileges as great as the prosecution. He may see his client as often as he wants to, for as long as is necessary, without the presence of any attendant or official. He has the right to advise the defendant all during the trial. He has the right to records in the case so that he may study it thoroughly and introduce any evidence he finds necessary in the interest of justice for his client. And he has a right to the last word. He not only makes the final speech but he questions witnesses after the prosecution.

The lawyers of Russia, with the exception of a few independent ones, are organized into "collective corporations." This, of course, is right in line with the socialist theory of government. While lawyers have a right to engage in private practice there are a number of reasons why one would prefer to be a member of one of these collective bodies. Let us look at some of the characteristics of these organizations. The following list was given by Professor Brusilovsky, who is himself a member of the collegium.

"(1) The individual lawyer has no direct financial transaction with the client. The fee is fixed by a special consultant and paid to the treasurer of the 'collective.'

(2) The lawyer may go on his vacation knowing his client will be served by colleagues. While on vacation he draws a salary equal to his normal monthly income.

(3) There is value in consulting a number of lawyers on a case to clear up difficult points. This is especially valuable for the young members.

(4) Fees are differentiated according to the qualification of the individual lawyer, his service record, experience and ability. He is insured against sickness and incapacity.

(5) Membership—It is open to all citizens who: (a) possess electoral rights, (b) have a certain record of service in the organs of Soviet justice, and (c) have either passed the prescribed examination or have received a superior juridical education."

We have been considering up to now in this chapter the organization of the defense provided for in the law. This is the machinery through which the rights of an individual may be protected in criminal procedure. Now, let us turn to the defendant himself as he appears in the case and see what safeguards are given him.

There is, first, the matter of the preliminary trial. While that phase of the case as a whole has already been discussed the rights accorded to the suspected person were purposely not emphasized since that angle of the proceedings properly belongs here.

To begin with, let us suppose the suspect is held in custody by the arresting organs, the militia or the former agents of the OGPU. They can keep him just twenty-four hours, and no more, until they must get permission from the people's judge or from the prosecuting attorney for his detention. If they cannot get

enough evidence in that time to support the arrest there is nothing to do but release him. That does not mean, however, that the case must be dropped. If they are convinced of his guilt, but have not been able by that time to establish it, the authorities may permit the man to be held a longer time so that the case can be built up, or in case the suspicion has not enough grounds even for that, they may go on working quietly until they do uncover what they want. However, for the sake of our case, suppose the prosecutor gives permission for the man to be held. In fourteen days there must be either release or sufficient evidence to hold him. While there are no *habeas corpus* proceedings in the administration of Soviet law, there is the assurance that a man must be either released at the end of two weeks or some testimony produced that will justify his being held.

Nor may he languish in jail while his trial is put off from day to day. The maximum time permitted for the preliminary work and the bringing of a case to trial is one month. Obviously there may be cases when it will be absolutely necessary to extend this limit and by permission it may be extended. But the law provides that there must be reasons shown as to why extra time is asked. The fact that this limit is adhered to in practice is shown by records that in the city court trials of Moscow 75 per cent. of the cases are tried in ten days and the majority of the others in fifteen or twenty. It is quite likely that there are cases in which an arresting organ holds a man more than the twenty-four hours or an investigator permits more than the maximum time to elapse before trial, but members of the Commissariat of Justice insist that if detected in such acts the agents are swiftly and surely punished. Those in authority do

not hold in high esteem those officials who do not cooperate in the establishment of revolutionary legality. While there would, of course, be no statistics of such illegal practices, those in prison of whom the writer asked the question about the time of pre-trial detention gave answers of periods which were all within the limit except two. One man indicated that his rights had been violated, the other gave causes for his detention beyond the period.

The person under suspicion (it will be recalled that he is not the "accused" until such time as a definite accusal is made) may make a complaint at any time against the actions of those conducting the preliminary inquiry or investigation, and such a complaint may be appealed within seven days, not only to the prosecutor but to the judge under whose jurisdiction the case may be. If it is a serious case, he may from the beginning have employed counsel to do that for him, but in the event of the simpler case, or of his having no counsel, there is sure to be some interested person among family or friends who will attend to this for him, if he should be detained in such a manner that he could not reach the proper authority and the one against whom he complained would not take care of the matter for him. The law provides that such an official must receive and transmit a complaint directed against him, but there might conceivably be instances when meeting this duty would be unpleasant—especially if the official was guilty.

During the preliminary trial the defendant is protected in every possible way. If he has not been in custody the initial steps may have been taken without his cognizance. This may have been necessary in order to prevent his escape while ground was being prepared

for holding him. But, if there is sufficient evidence to warrant an investigation he is now apprized of it. He may be summoned to appear in almost any manner—by telephone, telegraph or otherwise, or if the circumstances are such that his escape must be prevented, he may be then arrested. In any case he now participates in the investigation which, it is remembered, is carried on by the investigator or, in the event of a serious case, by the prosecutor.

He is now told what the charges against him are, and it is made very clear to him. He may at this moment offer an explanation of the substantial facts which will put an entirely new interpretation on the case, and cause its dismissal, if he substantiates what he tells. It is to be remembered that there are no sides taken in this stage of the procedure. It is usual that no counsel has yet appeared for the person under inquiry, the prosecutor is acting in his rôle of collector of information and there is, theoretically, at least, no effort to pin either guilt or innocence on to the party. The accused (he becomes "accused" from the moment the charge is officially explained to him) may suggest witnesses, may request experts, as we have previously seen, and attach any proofs to the documents, and such requests must be granted unless the investigator is convinced that they have no real importance in the case. If he does the latter, he is likely to be rather sure of his ground, as otherwise his judgment would face reversal when his decision was appealed to a higher authority.

We have already referred to the use of experts and the accused person's rights as to selection. With all the information collected and the decision made, his chance to submit evidence to prevent the trial is still not exhausted. On the decision of the investigator to present

the accusation, the person against whom it is directed may go over all the materials collected. Now, in the light of what he finds, he may offer further elucidation himself or he may request further witnesses who will be able to shed additional light. He is given every opportunity here, by law at least, to get in a stroke that will indicate his innocence. And in the event it goes to the court, in spite of his efforts, the judge may be convinced of the weight of his argument or evidence and direct the investigator to either build up his case better or dismiss it.

We will suppose it stands. The administrative session of court places the case on its calendar. It comes to trial after not longer than a month from the time the accusation is handed over by the investigator, and the accused becomes the defendant. In the meantime the accused will have secured his counsel. Little was said about the part a counsel for the defense might play in the preliminary stages, for the reason that except in serious cases there would almost surely be none at that time. The normal time for the appointment of one by the court, in cases requiring this, would be immediately after it was decided to hold the person for trial. On the presentation of the accusation to the accused he is informed of his legal right to counsel. In case he is unable to provide for an attorney he petitions the court for aid. Likewise, if he chooses one at this time, he submits the name for approval. Then the court, in its administrative session, when deciding whether to hold the accused for trial, likewise settles the question of counsel, if the accused has petitioned, by approving his choice or appointing one. Approval of his choice is necessary only if he has selected some person outside of such authorized lists as members of

the *collegium* or some representative provided by government institutions. Otherwise he may select whomever he will among the authorized persons and be assured that that person must act for him and for a fee that will be set for him within his ability to pay. The element of contest which is one of the basic principles in the Soviet judicature is now found for the first time. Two parties are aligned one against the other, each to prove its rightness. From this time on, the accused is the defendant and there are two sides to the case. Let us see the trial.

The defendant has the right to a public trial. This, too, is one of the principles of criminal procedure of the Soviet courts and by its observation there is insured fairness through public opinion. Through publicity there is brought about both the education of the people and the control of the court by them. There are only two conditions under which the trial may be behind closed doors—when a state secret must be kept, and in sexual crimes where intimate details must be revealed.

The defendant has a right to be present at his own trial, unless he voluntarily stays away. A case may be tried without him, if he has given his consent or when he has failed to respond to the summons. In the latter case, however, it must be clearly shown that an effort was made to reach him and that he directly evaded it, or there will probably be a reversal of the verdict in the higher court. An attempt to use his lack of response as an excuse for trial without his presence would have to be supported sufficiently to avoid abuse. In simpler cases when there is no possibility of imposing a prison sentence, his presence may not be required by the court,

but in offenses punishable by a prison sentence he must be there if he can be found.

As the case opens, the presiding judge explains to the defendant his rights, as a party to the court, to make use of all material, to examine and cross-examine witnesses, and to make any statements he will at any stage of the trial. These things he may do even though he is represented by counsel, and if he has decided to defend himself or entrust it to some relative he is sure to find plenty of opportunity to exercise this right. The writer witnessed one case in which a simple-looking workman took care of his interests so well that one could understand his going to trial without legal aid. Before his vehement and rapid-fire interrogation, witnesses quailed and became confused. The informality of the proceedings permits of participation without timidity in most cases. There is no fear of set rules of the game, because they do not exist. The accused defends himself as he would before his neighbors.

The next assurance is that the defendant may cause the removal of judge or juror if there is likely to be bias in his attitude. Perhaps one of them is relative or friend to the injured party, or to some other person who would be interested in the conviction of the defendant. In that case he may challenge, giving his grounds therefor, and the question will be decided by the rest of the court sitting without the member so indicated. If he is overruled he has that fact as grounds for complaint to the cassation instance.

And now as the case goes to trial, with the defendant a party to the court so that he may spar as he wishes with prosecutor or clash with witnesses, either with counsel or without, he has also the right of presumption of innocence until proven guilty. It would seem

that the preliminary trial had already established guilt sufficiently so that the actual trial would merely bring to light what had gone before, and establish the degree of guilt. But such is not the theory incorporated in Soviet criminal law. It may be that evidence will take a different turn, that the very atmosphere of the public trial will provide a new viewpoint. The object of the preliminary investigation is not to constitute a determination of guilt but to give guarantee that there are some grounds for trial. Authorities on the administration of criminal law point to the relatively low percentage of convictions, there being, according to one authority, almost one-third of those remanded to the People's Court dismissed, and a lack of conviction of at least a quarter of those actually reaching court. From that one would judge that the holding for trial by the investigation organs of the courts does not mean in actual practice that one's guilt has been established.

During the trial the defendant has every right which he has already been accorded in the preliminary procedure, but they are now rendered broader and of more value because he is familiar with all the data that have been produced, and all the witnesses who have been gathered by the investigation are now before him for questioning. Through his cross-examination of the state's witnesses he may develop lines of proof that he can substantiate by calling further witnesses of his own, or he may refute the state's contention. Some expert, whom the investigation used for some specific interpretation, may change his own opinion in the light of some explanation which the defendant himself or his witness can give. He has here three distinct privileges—he may request certain witnesses, other experts, or fresh proofs from the state if the case is to be sus-

tained; he may give explanations to the court of the circumstances surrounding the commission of the act at any time and as often during the trial as he wishes or thinks necessary; and he has the invaluable right to take part in the examination of all witnesses, experts, or others who take part in the trial. And now, if he has been directing his own defense he may also make the final speech and thus leave the last word with the court as it goes forth to deliberate on the verdict.

There is some difference in the privileges and rights accorded one tried in the People's Courts and in the higher courts. The reason is not far to seek. In the People's Court there are no cases of a class nature of the serious sort. There could not be, since the jurisdiction of the People's Court does not extend to crimes punishable by the death sentence. Here come the people from among the masses who have violated the law, but when a Kulak or one of the bourgeoisie is involved and the offense is against the state or the order of government, the case goes to a higher tribunal and the rights of the defendant are more circumscribed. In a trial when the accused is of a socially dangerous character, and restrictions are held to be necessary, the discretionary power of the judge may draw such limits as depriving the defendant of rights of counsel, of certain witnesses, or of records in the case. Such procedure, however, is said to be unusual and resorted to only in cases where the offense is of a highly dangerous character. Even in such an instance the defendant may still conduct his own case with all of his customary rights. The accused may be a socially dangerous character who must necessarily be subjected to restrictions. It is likely that this happens in a small degree and only in the most serious cases, but in fairness a chapter deal-

ing with the rights of the defendant should call attention to this possible limitation.

To see the defendant in court one is impressed with the amount of liberty he has. One forgets that he is the man whose life or liberty is in jeopardy. He talks, he interrogates, he explains and argues. And it is amazing to see how these people have come to understand the working of the law. It is a part of the duty of the *collegium* of lawyers to help in explaining and popularizing the Soviet laws and a good job they have done of it, too. Of course, they have had their helpers, but one finds children who know why the law of August 7, 1932, providing a death penalty for larceny from the state was necessary, and as for the enactment which specifies a five-year period of imprisonment for adulteration in an effort to make for better quality, every housewife knows the answer. She demands better material for her dresses, better sugar for her table, and she has heard all about the law, its necessity and purpose, in her factory or other place of work.

That acquaintance with the laws, that knowledge of the principle involved, makes it possible for an offender to do a pretty good job as his own attorney, unless he be one of the illiterate peasants. In that case, if he has no counsel, he can be rather sure of the court's interest in finding out the facts and in interpreting them correctly. It is to the state's interest to see that the accused person has every opportunity to be treated fairly, and the court is only the organ of the state in carrying out such a policy.

As has already been said, the people seem in most cases to agree with the verdict of the court and that is worth something as an indication of justice. They are encouraged to follow the case and to understand the

application of the law. After hearing their discussion at a trial, one would know of their intense interest. It seems to be an added cloak of protection for the defendant in case a judge did exceed fair play. It would be felt in the appeal!

In the event of a verdict of guilty the convicted one now has his right of complaint so that his case will be reviewed by the cassational division of the higher court, the Regional or the Supreme Court, or to the latter even from the first. Herein is his last chance of life or liberty. Already we have talked of cases where the decision of the lower courts was reversed. That happens in about ten per cent. of the cases. So a man has a slim one-chance-in-ten hope of getting off from his punishment.

Perhaps the reader has, in this enumeration of rights, been impressed with the absence of one held dear in the United States—the right of a person to trial by a jury of his "peers." But the system existent in the Soviet Union bears a resemblance in effect, although they repudiate the idea of our jury system both for political expedience and because they think the practice unsound from a judicial point of view. However, the two persons who sit with the judge do actually provide some check on his judgment and authority.

In the Soviet system the two jurors, or co-judges, may decide independently of the judge in all cases. They are selected with a view to their having some ability to serve, and most of them seem to be people of intelligence who take an active part in the trial. While they are without doubt subject at times to influence from the judge in deliberating on the verdict, there seems also ground for suspecting that because of their nearness to the workers there would be a strong

tendency to reflect the opinion of such a group in a verdict they would render. They cannot be regarded as party tools, since a large majority are not party members as against the large majority of judges who are. However, there is a class feeling. The court, as said before, is an organ for carrying out the policy of the state, and decisions will naturally consider the dangerous character of the person on trial. The class nature of the procedure is apparent and is acknowledged, but it is held to be legitimate, a necessity. The jurors could not be expected to aid in a decision, or render one on their own account, which would go against this policy. Thus it would seem that the jurors might have effect in trials not of a class nature, might actually constitute an additional safeguard to the rights of the defendant. There are cases on record where they have gone against the judgment of the court, and rendered their own verdict, thus proving that they are not always a rubber stamp.

CHAPTER X

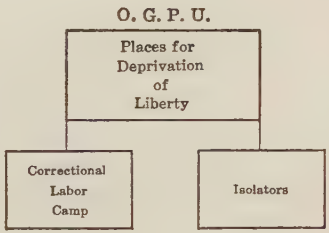
CORRECTIVE LABOR

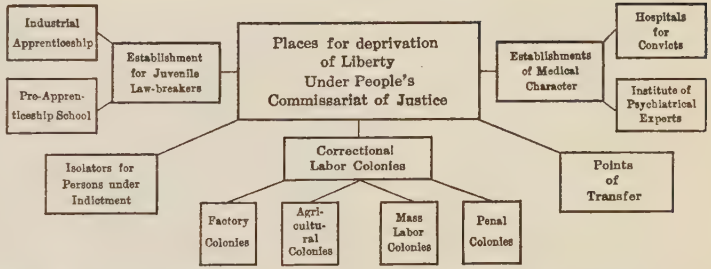
The title of this chapter defines the attitude of the Soviet government toward those persons whom it sets apart from society for a time. It is almost necessary to see what they have done in this line to understand it properly. The institutions in which the policy is carried out have moved many people to warm praise. M. Herriot of France, on visiting the Kharkov Labor Commune exclaimed, "I am not a Communist. I am an old man," then launched into exuberant appreciation of the system in use there.

For the discussion of the system in all its details of work and education, one should read the volume, already referred to, *From Prisons to Educational Institutions,* edited by Assistant Attorney General A. J. Vishinsky. Each separate article is written by a specialist in his particular field and each presents in minuteness some phase of the system which the Russians use. They have known what they wanted to do in the direction of reformation even back in the days of 1917, but for so many years the idea lay, like others did, obscured by catastrophe. Terror and necessity caused severity to prevail for a long time. Punishment was the mainstay of defense from foe within in order to withstand a little better the ones then pressing from without.

But the idea was there in the minds of those who

SYSTEM OF PLACES FOR DEPRIVATION OF LIBERTY





Corrective Labor Camps
Persons sentenced to deprivation of Liberty for a term of from 3 - 10 years.

Isolators, O. G. P. U.
Indicted persons held by O. G. P. U.

Isolators for Indicted Persons
For persons held under investigation.

Points of Transfer
Convicted and indicted persons preceeding from one place of detention to another.

Factory Colonies
Persons convicted for a term of up to 3 years from among factory and office workers.

Agricultural Colonies
For persons sentenced for term of up to 3 years from among collective farmers and poor and middle peasants.

Mass Labor Colonies
Persons sentenced for period of up to 3 years from among hostile class elements and workers considered particularly dangerous from the class point of view.

Industrial Apprenticeship Schools
For juvenile law-breakers of 15 - 18 years of age.

Pre-Apprenticeship Schools
Minors of from 15 - 18 years of age prior to being placed in industrial apprenticeship schools.

Convict Hospitals
Persons fallen sick while serving term of Liberty deprivation.

Institutes of Psychiatrical Experts
For persons sent up from places of Liberty deprivation for examination of psychic conditions.

were to define the penal policy and the Code of 1922, and set down the principle that punishment was not for the purpose of revenge and might not have for its purpose the infliction of physical pain. With this beginning there was a steady progress toward the removing of those indignities that tend to degrade a man, until the Correctional Labor Code of 1933 completed the process. In the meantime various amendments have prohibited torture, the use of handcuffs, solitary confinement, deprivation of food, or any other measure that would have the effect of degradation or do physical harm to the person.

There has been a steady effort to remove what they term the "prison spirit." There is, they tell you, no such thing as a "captive" or "prisoner." The idea is to keep the person deprived of his liberty from feeling in any measure isolated. He is given work to do such as he would have outside and he is always conscious of its useful nature. There are instructors for the various trades, machinery, carpentry, etc., who see that each man is educated for his job.

There are two main types of places for deprivation of liberty, those located in cities in close quarters, and those out in the country where there is space and greater freedom. In chapters just following some of these typical ones will be described, but they are mentioned here so that references may be clearer.

Before describing the characteristics of the institutions used for corrective labor, we shall need to define the policy that goes into the system. The articles on which the materials for this chapter are mainly based are those by B. Utievsky on *Prison Regime,* and another entitled *Work in Correctional Labor Institutions* by M. Kessler and B. Oleinin, both of which are in-

cluded in the volume edited by Vishinsky, already referred to.

We note again in connection with this work the class character of criminal legislation. One of the basic principles is the assumption that peasants and workers deprived of their liberty are not premeditated enemies of the Soviet order, and under these circumstances it is natural to suppose that treatment for them would be milder than for the anti-proletarians, and the privileges enjoyed by them would be greater. However, this assumption does not prevent the use of the same policy and the same methods in the prison treatment of the so-called class enemies. While the main purpose in placing the political prisoner and others whose crime is chiefly against the state in outlying places was to isolate them from society and prevent their continued danger, there was still a desire to restore them as useful citizens by means of education and labor. The principle expressed in the Code that "maintenance in correctional labor institutions shall be reasonable, and shall not have for its purpose the infliction of physical pain or the degradation of human dignity" is carried out, they say, in the places where political prisoners are kept just as in others. The main difference is that these prisoners have less freedom, less liberty for contact with society. The aim, however, uppermost in their treatment is to organize a collective life for them, and by the education which is provided to cause these people to fit into that life.

An example of constructive use of these prisoners from the anti-proletarian class is the building of the White Sea-Baltic Canal. It is interesting just here to give a quotation from Maxim Gorki, which illustrates their own point of view as to the value of this policy.

"How did the kulaks work? Here is an instance. The Podlipinsky brigade of the first section in which there were 32 kulaks in the last ten days has set a record of 25 per cent. fulfillment of their quota. But the brigade would not quit its job even when the next shift came to take their place. The brigade had to be taken off by direct order of the chief of the section.

"The order Number One brigade consisted chiefly of kulaks. It was on rock work in the sixth section. It has fulfilled 130-150 per cent. of its quota. Their exemplary work was rewarded and entered into the Red Labor Book."

While this may be propaganda, the fact remains that there are those operating the locks in this canal who have been discharged as prisoners, but who continue loyally at the post. We are assured by another author that "thousands of convicts from anti-Soviet elements redeemed themselves, and showed great devotion to Soviet construction. Many gained their freedom; a great many were accorded all kinds of privileges, and a few awarded the highest order of merit."

As we come to consider the program for those prisoners from among their own masses we get on safer grounds, at least as to practice. The policy follows much the same lines. We have mentioned before the change in terminology from jails or prisons to "places for deprivation of liberty." It has also been mentioned that the change does not appear to be limited to terminology, but that the actual purpose to carry out some definite measure by which a man may be rendered fit for a useful place in society seems well observed.

Here, perhaps, would be a good place to say that the program of the Communist Party in regard to treatment of those who break the law calls for eventual correctional labor without deprivation of liberty. Their

ultimate goal, both expressed in policy and now being put into practice in a limited way, is that persons shall be sent to labor under supervision where training is provided. This practice will have to go slowly and proceed as their educational program prepares the way for it. At the present time there is usually no sentence of deprivation of liberty for less than one year. Any penalty of compulsory labor given for less than that minimum permits the offender to retain his liberty. In such cases the unemployed among these persons is farmed out to factory or to agricultural work with supervision and training provided. He is given a place to live near to his work, but he is free to go and come as he wishes. It is the aim of the higher judicial organs to abolish the use of deprivation of liberty as rapidly as possible, and to use it only for cases who do not respond to other measures of social defense. The Superior Court has likewise given instructions to the lower tribunals to use deprivation of liberty only as other measures have failed. The employed who are sentenced to labor without deprivation of liberty remain on the job on which they are at work and a certain per cent. of the salary received is deducted each month. With both of these classes there is a possibility of early discharge for good work and because of the practice used in all their penal institutions of counting two working days equal to three days of the sentence.

Up to 1929 there were still in existence isolated places of detention but since that time the policy prevalent has been to change all of these into the favored educational establishments. At the present time all persons sentenced are taken care of in the various types of labor colonies (industrial, agricultural, road building, land improvement, etc.) or in the semi-free

labor camps where guards are maintained, usually selected from among the inmates themselves, but where there are no locked rooms or prison walls.

The régime, then, of these institutions, according to Utievsky, has three basic influences: (1) Socially useful, productive labor, (2) political educational influences, and (3) the development of public activity among the convicts.

Let us now see how these three methods of influence are carried out in the institutions themselves. The purpose of labor on the part of the convicts is to provide organized collective work in a society where collective living in all its phases is a predominant note. It is essential to successful readjustment. The Kulak, with his individualistic tendencies, is re-educated in this political philosophy. While he is at this labor, the convict works under the same conditions, and with the same protections that he would enjoy in outside labor. His hours are seven or eight a day, depending upon the nature of his work, and he is permitted a weekly rest of a continuous 42-hour period. Special protection is given to the juvenile laborer, but this will be mentioned again in the chapter concerning juvenile delinquency.

There is no night work for women, just as there would not be in outside labor, and minors under eighteen are not to be employed in injurious trades. Maternity vacations of eight weeks for physical labor, and six weeks for mental work, both before and after childbirth are prescribed for women. There also exist regulations of various sorts for sanitation and safety. The whole idea is that the person deprived of his liberty may be made to feel that he labors on a par with workers outside; that he may feel useful in the eco-

nomic plan of the nation; and, through the pay given him, continue support to his family.

In addition to the general consideration mentioned above, there are some special rules of importance. For example, women who are in the fifth month of pregnancy may not be sent to any work outside the institution of which they are inmates, without their consent.

In all labor in the Soviet Union there are a certain number of days of work (five is the general rule) and one day of rest. This is likewise true of convict labor, and on the eve of the rest day all work and school study must be suspended from dinner time (which is at midday). Another privilege of importance is that each person keeps his own work book with a record of hours, wages due, and deductions made, properly entered. In this way he does not have to take the word of any official as to the correctness of the count, but is able to see for himself and complain if an error has been made.

In the matter of food there is a provision for increase in accordance with the expenditure of energy in the work assigned. One doing heavy physical labor would, for example, be given food in larger quantities than one using less strength. In accordance with the principle that a prisoner may not be degraded, the administrative office of these institutions is not permitted to make use of the personal services of the convicts.

It was mentioned in the beginning that one type of institution provided for the carrying on of all activities in small areas. These are of the nature of penitentiaries, but even for the type of convict in these prisons there are large works of a variety of kinds organized outside the city limits. Among these would be brick-work, bridge building colonies, house building, dairy farms and truck gardens. One of the most constructive things

about this labor, in whatever line, is that it forms a part of the five-year plan, and is thus put on the same basis as other forms. The industry carried on must, first of all, satisfy the needs of the institution itself, but goods in excess of this amount are placed on the home market. Export of prison-made goods is forbidden except in the case of the sports goods made at Bolshevo Labor Commune. The latter are noted for their excellent quality and are exported to various countries.

One of the grave prison problems in this country is the question of payment of wages to persons serving sentences in penal institutions. In the Soviet system there is no unpaid labor. The amount may not be less than 25 per cent. of the existing scale, nor more than 50 per cent. The cost of maintenance is, of course, not deducted from this amount. In establishing the schedule the prison administration must have the agreement of the Commissar of Labor, and the fact of the profit or loss of the enterprise does not enter into the calculations.

The convict is not restricted in the spending of his earnings. He may purchase extra foodstuffs, clothing, or he may send his income to his family for support. He may be given advice in the matter, but there is no compulsion.

One point in connection with this system is that labor is not compulsory. A convict may work or not as he wishes, and still receive maintenance. But in refusing to work, he loses most of the privileges which he would otherwise enjoy. Practically none do refuse, it is said. On the other hand, there is a great increase in those joining the shock brigade, the group doing excellent work, sometimes even for additional hours. In 1933 in the Moscow region, this figure reached 51.3 per

cent. of the total number in these institutions. The number fluctuates usually between 54 and 78 per cent. As a result quotas of production are usually more than fulfilled.

The second basic influence in the program of this institution is political education. A system is established in each place of deprivation of liberty, and the official in charge is the assistant warden. Practically all education carried on has a strong political influence. However, one of the aims involved is the elimination of illiteracy. Every effort is being made in the Soviet Union to give to each citizen at least an elementary education, whether he be in prison or out. To that end there is established in every state institution schools providing for the first seven years of work. There are also other penal institution courses for the semi-illiterates and those of a sufficiently advanced nature for the more educated. There are in addition some evening and university classes for those wishing to take advantage of them.

In addition to the regular school work which is carried on both by teachers from the outside and some selected from qualified inmates, there is a system of lectures covering specialized subjects. These are designed to give information of a social-political nature and educate the individual in the use of sanitation and hygiene. There are others of a general educational character embracing material of interest to the group. These lectures are given by specialists in the various fields, who are invited by prison administrators, and by any one among the convicts who might be qualified to talk on a particular subject. Admission, of course, is open to all without restriction.

In connection with the education work, there are

libraries and reading rooms. There is a library located in each place of deprivation of liberty, and there are also circulating ones, and in neither are there restrictions as to the use of books. In most cases some work of this nature is obligatory, but beyond that every convict is not only permitted to use the facilities, but is encouraged to take advantage of the privileges.

The reading room may be visited at any free hour. Here are found recent newspapers, magazines and other periodicals. Newspapers are also distributed in the rooms, and convicts may subscribe to their own outside these limits if they wish.

The radio with which each room is usually equipped also constitutes an important instrument of education. Lectures, music, and other information or entertainment of an educational and cultural nature may be listened to by the inmates.

One of the most interesting phases in the development of this program in these institutions is the art work. The convicts are trained in dramatic performance and also enjoy in this connection entertainment by outside companies. There are concerts and moving pictures given, in almost every one of these places, and convicts attend not less than once a week. But the interesting side of it to an observer is the work the inmates do themselves in the matter of writing and producing their own stage performances. The convicts are free to attend and there is, of course, no charge for admission. A theater or auditorium is a part of the equipment of every institution of this nature.

The sanitary education carried on is in line with the program of other education of this nature, distributing such information to the masses of people. There is an opportunity here for teaching individuals in an effec-

tive way, and for seeing that certain fundamentals are put into actual practice. There is a bureau of sanitary education in each institution, composed of the house physician, representatives from the department of political education, and delegates elected by the convicts themselves, devoting itself to this phase of work.

The purpose of these institutions is seen in its most complete fulfillment in the vocational training which each gives. There are courses in schools of all the various trade groups, providing both theoretical and practical training in skilled trades. The unskilled laborer is here transformed into a man with specialized information in some particular line, which will both render him useful in industry and give him happiness in his work. In 1931, 7,700 convicts attended such courses in the Soviet Union, and 6,500 workers were in that year turned out trained for some particular trade. In 1933 the plan was for giving such preparation to 24,000. Salvation for society and for the individual, they hold, lies in this direction and every man and woman sentenced for law-breaking must be so fitted to earning a livelihood that he will not transgress again.

It should be mentioned before passing to the next point that both cultural and legal work is carried on by means of mass meetings through the organization of such groups as law clubs, and by means of evening forums, lectures and talks. There is also a legal bureau composed of representatives of the department of political education, and two members elected from the convicts, which gives legal aid or advice to the inmates whenever it is needed.

The third basic influence in correctional labor—the development of public activities among the convicts—accounts for some of the most valuable rehabilitating

work done in these places, in the author's opinion. The aim here is to strengthen, or develop where they have been lacking, the social habits of the individual; to turn him into a conscious and active member of society. The basic forms of social activity in these institutions take several directions. There is first the general meeting on various occasions for a variety of purposes. This may be for the formation of social organizations, for the conducting of a campaign for the election of some representative, or perhaps for a celebration of some revolutionary event. The convicts establish their own rules of procedure and make whatever proposals are appropriate. These general meetings take care of whatever concerns are common to the entire population, and leave to the more specialized groups whatever is of narrower interest.

In the production conferences, held by convicts in the same manner as those used by free-workers in industrial enterprises, an active part is taken in settling whatever questions arise in relation to production. They discuss industrial plans for improvement, financial methods, quota fulfillment, or any question that would logically come within their jurisdiction.

One of the most outstanding achievements in the line of self-activities among the convicts is the development of the comradely courts. Through this tribunal those disciplinary problems referred to it are transferred from the administration to the convicts themselves. This court is responsible for the maintenance of order and for seeing that a high quality of educational work prevails, for administering disciplinary measures in the case of shirking work or lessons, of spoiling the equipment of the shops, of laxity in observance of regulations of sanitation and health, of the use of indecent

language, of damage done to any book or periodical, of inciting ill treatment of one convict by another.

The court is composed of a chairman, and two jurors elected at one of the general meetings referred to above. The penalties which they may impose on one who breaks the rules, or fails to live up to the standard set, are as follows:

(1) Reprimand.
(2) Censure.
(3) Censure with strict warning.
(4) Censure with publication in local newspapers.
(5) Limitation of visits by friends from outside for a period of not more than one month.
(6) Application to supervisory committee for transfer to another prison with a stricter régime.
(7) Application for withholding vacation.
(8) Application for either partial or complete non-discounting of working days.
(9) Application for withholding all probation, and early release during a certain period of not more than one month after maturing.
(10) Restitution of damage done.

In case of undue severity on the part of this court, the warden may alter the penalty to a milder form.

We have already referred in the paragraphs dealing with education to cultural committees. These are elected at a general mass meeting to put into action the plans for political education work or to devote themselves to other problems of a cultural nature.

Every place of deprivation of liberty has its wall newspaper, changed about every week or ten days and carrying news of various sorts of a political or educational nature, as well as items of interest to prison life.

The editorial boards of these papers are likewise elected at the general meetings. Prison administrators as well as other authorities on penal policy in the Soviet Union are of the opinion that the development of public activities among the prisoners has yielded splendid results of a social nature. They point to the success of the "book soobotnik" (one day's salary given for books) which netted 100,000 rubles. It is stated that the gifts were entirely voluntary without pressure from any source. Another incident showing a desirable spirit was the collection among the convicts of 31,818 rubles for an aeroplane which was presented to the fleet. There have been other acts of the same kind.

Now we turn to the régime found in these institutions, the express purpose of which is to develop free will, initiative and self-activity. All privileges possible are permitted to the man deprived of his liberty, and his freedom as little restricted as the nature of the person himself permits. Following out the principle that no condition designed to degrade the convict or make him feel inferior may be permitted, penal authorities proceeded legislatively to remove whatever might exist in this line. The corrective labor code of 1933, for example, completely severed all connection with the progressive system of progressive classification of prisoners. The theory is that in this educational-labor program no man is to be treated with greater privilege than another unless he himself makes some deprivation necessary. Even then there are limits. A recalcitrant member of the penal population may be deprived for a period not longer than one month of such privileges as writing letters, or receiving visitors, but no corporal punishment may be inflicted nor may he be locked in solitary confinement.

It is worth noting here that the solitary cells left from the Tzarist days may at times be used for tenants, but the door of the cell may not be locked.

The convicts have privileges as great as can be accorded. From the day of their entrance they may walk about anywhere they wish at any time they are free from work. In those institutions located in the country, this may take the character of quite a good walk, while in those of the penitentiary type located in cities, it naturally is limited to the prison yard.

Visitors may come as often as twice in five days and may consist not only of relatives but of friends and acquaintances as well. There is no red tape in making arrangements for a visit so that no difficulty of this sort prevents contact between the convict and those outside. There may be as many as three persons at one time, and they may bring with them, if they wish, gifts of food, tobacco, etc. There is no restriction in the use of tobacco except that there are some particular places where the convict is requested not to smoke. Outside of this he may have as many cigarettes as he wishes or can obtain.

Neither is there restriction in the number of letters which he may write or receive. In the matter of either letters or gifts the administration reserves the right of inspection, but in the majority of cases, unless there is some suspicion attached to the person, this right is not utilized.

There is an interesting development in the matter of leaves. For the man who has proved himself a good worker and who is not suspected of any intention of escape, a leave of fourteen days in the year is granted. He may go where he likes on this vacation, and use it as he pleases. He is placed entirely on his honor and no

guard is in attendance at any time. In addition to this a convict may obtain a leave at any time because of an emergency such as an illness or death in his family.

Still more liberal terms are granted to the peasant or collective farmer. In the event that he is needed for field labor, he is given a leave for the full three-month period of the season, and if he breaks no law during this leave, the time counts on his sentence.

In addition to this leave and vacation, there is always the possibility of release after a short part of the original sentence has been served. If the person is judged fit to be restored to his place in society, and thought to be no longer a menace, he may be released after serving a minimum of one-third of his sentence. There is also the practice, as already mentioned, of counting two productive working days as three days of the sentence.

Before passing from the chapter describing the policy and character of corrective labor work, some mention ought to be made of the administration. Who exactly is responsible in the USSR for seeing that this policy is translated into action? At the very head are the Commissariats of Justice of the various republics.[1] There is a certain amount of independence in these relationships. The Collective Labor Code of 1933 of the RSFSR made a considerable advance in the direction of autonomous supervision on the part of the administration of corrective labor organization in these republics. Those institutions located in the territory of these

[1] A Law of October 24, 1934, transferred the administration of all places of deprivation of liberty to the newly created Commissariat of Home Affairs of the USSR. The organization described is now within this Department, but the author had the information too late to incorporate in the body of the book.

various republics are administered and managed by local commissars of justice.

Within this organization there are local administrative bodies known as observation committees. One of these exists in connection with each institution and is directly responsible for administration and management. In direct charge is the superintendent or warden, and his staff of assistants.

There is especially close relation between the agency of supervision and the prisoners which enables the Observation Commission to know with a high degree of accuracy as to when release is advisable.

Previous to 1926 there had been two commissions participating in the distribution and release of prisoners—the Distributory Commission and the Observation Commission. The Observation Commission, however, while making recommendations to the Distributory Commission in matters of dismissal and release, played a minor rôle, since its viewpoint was in no way binding on the other.

The Corrective Labor Code of 1924 provided for an Observation Commission to be established at every place of deprivation of liberty as a part of the staff of the place. On this commission was the people's judge, and a representative of the local bureau of trade unions. This extension in the scope of the work of these commissions was made in an effort both to raise the level of work being done at the prisons and also to establish a closer contact between commission and prisoners. The result hoped for, however, was not realized as the judge was entirely, by nature of his position, separated from his work, and the representatives of the bureau took little interest in the matter. By the same Act the powers of the Distributory Commission were

widened, and the Act of April 21, 1926, went further still, giving to this body authority to assign the long-term prisoners to places of agricultural work.

There still was the gap between the work of the commission of release and the correctional labor institutions. The Observation Commission which was on the ground could make recommendations but they were not always accepted by the Distributory Commission which handled dismissals and releases. Many mistakes resulted and the desire of the authorities to establish intimate contact between commission and prisoners was being thwarted. Thus the Sixth Congress of Jurists proposed the liquidation of the Distributory Commissions and the reorganization of the Observation Commissions. By the reformation of 1929 new opportunities for constructive work were opened to these commissions, and the contact between them and the prisoners of the institution was finally made close and real.

The Corrective Labor Code of 1933 made several important changes in the composition and work of these commissions of the RSFSR. There is now a Central Commission and under it trade union observation committees on which are the head of the correctional labor institution and two representatives from the general organization which are installed in each of the large corrective labor units and in all field production. Every effort has been made to see that there is close contact of these commissions with the institutions, that the policy of the central administration is carried out, that the work follows the lines it should, and results in fitting the inmates of the institutions for life as it is supposed to do. The Commissar of Justice is, in the last analysis, responsible for the work of these commissions, but by Act of February 10, 1933, he has placed

that responsibility squarely on one man, the chairman of the Corrective Labor Commission, whose duty it now is to see that the policy and plans of the commissariat are carried out. This chairman is a member of the Central Observation Commission, but not the chairman of it.

Prosecutors who were supposed to be attending the open session of these meetings and were actually present at them to the extent of 78 per cent., were found to be merely sitting quietly and taking no active part in solving problems and working out plans. By the same Act of February 10, 1933, the Commissar of Justice ordered them not only to be present but to participate actively in all meetings. There are no figures on actual participation but the percentage of attendance jumped from 78 to 82 and it is stated that practically all those present take an active part in discussions.

There is no lack of effort to see that this commission inquires into, and knows, what is going on, is acquainted with the prisoners, and never for a moment forgets what it is set up to do. For the accomplishment of an organic union between the Observation Commission and the corrective labor institution, the All-Russian Central Executive Committee has demanded that the members of this commission participate actively in the creative and labor life of the institution as well as in its political education. To effect this there are many special meetings, besides the open ones, devoted to the problems of various industries.

Let us see for a moment what organizations are represented on these commissions and how often the respective members attend the meetings.[2]

[2] Vishinsky, *op. cit.* pp. 406-407.

Name of organization	*No. of meetings attended (in per cent.)*
Corrective Labor Institutions	68
Court	82
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This table was for the last nine months of 1932. It represents not a particularly bad showing but it was in 1933 that the All-Union Central Executive Committee decided that this was not sufficient and that there must be even better attendance. It aimed its order this time at the social members and demanded that they give active aid in inculcating social form of labor into correctional labor institutions. There is no thought of sending a man away to prison to get him out of the community then forgetting all about him. He will be returning in an average time of a year and a half and the community through its representative is responsible to see that he shall return in good order. It is thus made directly everybody's problem.

It has been said elsewhere in this book that the Observation Commission is the authority for handling release and dismissal. Appeal may be taken from all of its decisions and a good percentage are reversed. Its mistakes, it is said, are largely because of a one-sided attack of the case in which its members were able only

to see the seriousness of the crime, or perhaps only the social status of the convict, or maybe only his industrial activity at the place of his imprisonment. The Corrective Labor Code of 1933 takes a broader approach to the problem and demands that those responsible do the same. Each individual case must be treated from a differentiated viewpoint, with a survey of all angles involved.

The following table is given to show what types of disposal is used in the Soviet Union, and the relative importance of each.[3]

Cases Examined in 1928	*Per cent.*
Early release of those serving in correctional labor work	22.8
Early release of prisoners	0.5
Transfer to correctional labor work	10.2
Amnesty	7.3
Release from imprisonment under guard	1.0
Installment of labor days[4]	28.4
Removal of strict isolation	3.8
Transfer to other classification	2.2
Assignment of type of place of detention	10.8
Miscellaneous	13.0

In addition to the duties already mentioned the Observation Commission has charge of the distribution of prisoners to the proper places for the serving of the sentence imposed and for their transferal from one place to another when it becomes necessary. In order to place a convict so that the best results may be se-

[3] Vishinsky, *op. cit.* Article by N. Durmanov, entitled "Observation Commissions," p. 396.

[4] It has been mentioned elsewhere that sentences are shortened by counting two productive work days as three of the sentence.

cured, a close case study is made, an analysis of his personality, characteristics, ability, social status, and other pertinent information, but if an error is made after all, then he is transferred when better acquaintance shows where he belongs.

CHAPTER XI

SOKOLNIKI

Sokolniki is a prison, call it by whatever name one will. It is true that the national policy relating to corrective labor and discipline modify its physiognomy, but it still presents the atmosphere of a penitentiary. This statement is not meant as any criticism of either it or its administration, since one can hardly see how that aspect of it could be otherwise as long as criminals do exist who need restraining—and some of such there are bound to be. The fact of its sterner nature is emphasized in the beginning so that the impression will not be given that a place like Bolshevo Labor Commune, described in later pages, would fulfill the requirements for all the elements found among the criminals in the Soviet Union.

Standing outside the wall, just as cold and gray as the usual for penitentiaries, and looking up at the towers at the corners where sentinels armed with rifles keep watch, one has all the feeling of a sinking heart that comes with such a sight. People are shut away there and possibly forgotten by the citizenry from whom they have been separated, perhaps, since it is the customary thing for ignorance to prevail as to prisons and penal methods. One thinks, standing there, wondering about men behind that wall, of a description written in verse by one prisoner some quarter of a

century ago. It is sentimental, belonging to an age when emotion was expressed a little more freely than our practice of restraint permits now, but one suspects men still suffer as he did in a good many prison cells such as this writer has seen. Lines of the poem, especially descriptive and appropriate to this subject, speak of "where tongues are mute, and men arise to new-born wrong," and "where men must fawn or walk with scars." [1]

One doesn't need to tell people who know anything of the penal situation in the United States that conditions make it possible to write lines like that. Of all of our social endeavor, the treatment of men convicted of crime seems the place where we have most signally failed in constructive results. Constructive treatment is, of course, a rare exception rather than a rule. But it seems to this writer that the implications of the verse have a less favorable chance of being true of Soviet prisons.

In the first place there is no prison sentence longer than ten years, and few offenders serve that long. The authorities figure that a maximum ten-year constructive program will fit anybody for proper living unless he is irredeemable. There will be some cases, of course, where there is failure, but the idea is to fit the régime to the majority. Right here there will be the question always forthcoming as to what they would do with our own gangster type. Give them a ten-year sentence? Not at all. They have few of them and for armed robbery one may be sentenced to death. No arguments are listed here for or against punishment by death, but in order to understand the absence of a long prison sentence it is necessary to be informed as to what happens

[1] Stell and Null, *Convict Verse,* Ft. Madison, Iowa, 1908.

to those who would ordinarily be the recipients of such a term. The fellow who murders in a jealous rage or great anger may find himself in for a long treatment in a place for mental abnormals, or he may, if judged sane, be given a sentence of ten years or less. They do not consider this type of murderer to be, usually, a further social menace.

With those disposed of the formulators of the policy believe that a longer sentence for others is not needed. They see no aid anywhere in having one languish in prison beyond that point where a sentence ceases to have the possibility of being constructive and begins to dull the senses and perspective of the prisoner so that he is worthless anywhere. Some of our penologists have said that it is better to keep a man either a brief period or for his life because after a certain time it is practically impossible for him to fit into a society of which he has no knowledge.

The Soviet system provides measures for keeping a man in touch with society so that he may not feel that entire isolation even though ten years is the maximum of incarceration. In the first place, as we have seen, only those whose term is short or whose character makes it necessary are put in the closed institutions; in the next even those who are there are given vacations of leave if it is thought that they can be trusted not to escape. And in case that has to be denied to an inmate, he still has opportunity for contacts with associates within and friends and relatives without in open, wholesome manner.

Tongues are not mute, either. Prisoners gather where they like, walk together, work together, play together. Nor do they "fawn or walk with scars." The stated policy is to encourage them to approach and con-

duct themselves with dignity and no guard may inflict physical punishment on any prisoner. One might say that such a policy is likely not carried out. There may be isolated instances of violation, and one feels sure there are, but the attitude of the men toward the attendants and guards seem to indicate that such regulations are regarded.

Sokolniki is a prison for men who have been sentenced, supposedly, from one to three years. Article 28 of the Criminal Code says, "Imprisonment for a period under three years is served in common prisons. Imprisonment for periods of three years and more is served in corrective-labour camps.

"In exceptional cases, when the court recognizes that the person condemned to three or more years' imprisonment is obviously unfit for physical labour or owing to the degree of his social danger need not be sent to the corrective-labour camp, the court has the right to substitute a common prison for a camp by specially decreeing so in its sentence." (May 20, 1930.[2])

There are therefore a number serving sentences of longer periods than the three years who, because of physical condition, can not be sent to the labor camp to which they should be assigned, or because they need the restraint, perhaps, of these stronger walls. At the time of the writer's visit there were a few more than eleven hundred prisoners in Sokolniki. The prison's capacity is said to be something more than that, but it seemed then to be more crowded than was good for adequate treatment. However, one must remember that the housing situation in all of the USSR is acute and especially is that true of the cities where industrialization has required the assembling of more per-

[2] Collection of Acts, 1930, No. 26, Article 344.

sons than can comfortably be housed. It is to be expected that prisons might share in this shortage.

The Soviet system uses the collective dormitory system rather than the single room standard. This is in keeping with their idea of community living and we were told at the women's prison that it is preferred by the prisoners themselves who like being with others and have no wish to be shut off. They use it also in student dormitories where beds are placed eight or ten to a large room. That, however, they wish to remedy. Their aim is a room for every worker and every student but that will require much more building.

Because Sokolniki is a well-known prison it will perhaps be interesting to set down a detailed description of it. The Soviet picture, *The Road to Life,* shown in this country, was made there, we were told.

In arriving at Sokolniki, which is not far outside the city limits of Moscow, one comes to a closed door in the stone wall, some fifteen feet high, already mentioned. There must, of course, be an appointment just as there must be for entering a penitentiary in our own country. There is a bell and after it is rung the door is opened by an armed guard. The visitor is then in a small entrance room where there are other guards and which leads into a large court back of and around which the prison buildings form a square. There are other guards scattered in places about the court and near a large gate through which automobiles and trucks enter when they have business there.

As we went through the court to the first building we were to see, about a hundred feet away, two men sat at the door of a side building, peeling potatoes. They were talking and laughing as they worked, evidently enjoying themselves. This was the first glimpse

of the informal atmosphere that prevailed throughout, and which caused us to look in some amazement at occasional scenes such as that encountered as we entered the auditorium where a good pianist was playing and other men stood beside him or leaned on the piano, at ease and absorbed in the music.

We had now left all the armed guards behind and there were no others in evidence until we came to depart. There were attendants, supervisors of work, etc., but there were no weapons among them. We went through shops and factories, observing the men at work. They wore any sort of clothes that they happened to own, mostly of the poor peasant type, since prisoners in Russia are never put in uniform.

The spinning and weaving shops were interesting. They were well lighted, had good ventilation except in one room where neither was very adequate. As we went by the men talked to each other in a normal conversational manner, watched us, both amused and curious. Also, we talked to them as we wished. Others, not then at work for some reason (we were told that every man in the prison works, but it was late in the day when we went and some had ended their shift), followed us about good naturedly, enjoying our curiosity.

A prosecuting attorney was our guide and he stopped to talk to various ones among them. Also as we went along men occasionally stopped him with requests, some with complaints, and he noted them on paper. At times he good naturedly refused what was asked, but any came who wanted to, informally, and without permission from any source.

The attitude of the convicts toward labor may be explained by several things which have already been mentioned. There is no feeling of punishment about

the work since the prison factories are placed on the same basis as others in the country. They have an eight-hour day, they receive pay (from 20 to 50 rubles per month) which they are permitted to spend as they like and which often goes to the support of a family at home, and they have the knowledge that the work they do is counted in the regular plan so that even while they serve their sentence they are actively helping in the nation's economic life. At any rate, these men did not appear depressed as they worked, nor in bad spirits. We watched an older inmate pleasantly talking to a young fellow beside him while he manipulated a loom, apparently telling some interesting story for he used his hands occasionally in quick gestures, but he kept his eyes on his work, and he seemed to take pride in his job.

From the shops we went to the dormitories and saw not one room only, but a number of them. As has already been intimated these rooms were too crowded. The cots were quite close together, even using the center of the room, and there was not enough space left for walking about. However, the men are not in a great deal of time. They go outside as they wish, walk when they care to, read in the library, exercise on the outside gymnasium apparatus, and are in the work shops at other times. Also, as already said, the problem of space is one that is occupying Soviet authorities extensively at present and they will require time to remedy the situation.

We were asked to enter the room and sit down on the cots. The prosecuting attorney with us led the way. We were somewhat slow in following and one of the men, sitting on his cot in the center of the room, said, "Come on in. The beds are clean." His invitation was

accompanied by a smile and we quickly entered. By this time our presence had become known about the place and a great number had gathered in the corridor outside the room we were visiting, talking volubly. We were told to speak to any one we wished, to ask any question. We did so freely and were answered frankly. One prisoner told us that he was displeased with his sentence, that it was his first offense, that he had stolen a hat, and had been given a five-year term. "Impossible," exclaimed the prosecutor, and promptly sent a messenger to the office to get the papers in the case. Some time later, when we were in the auditorium the records came and the man was sent for. He was a little chagrined but not greatly disturbed when his record showed robbery, not once but several times, with even the use of firearms. "Well," he said nonchalantly, not too much put out that he hadn't got away with his story, "it was too much anyway."

After we had visited a number of the dormitories we went to the yard. Several hundred prisoners were with us then. In the center of a bunch of them, we remembered again that here were some of the worst criminals in the country. They gathered all around to ask us about prisons in the United States or any other questions they could think of. One particularly intelligent man talked freely of conditions in Sokolniki, of his own sentence, and of his outlook on life. He had been a teacher before he had been caught in some sort of speculation, but he was teaching in the prison as well as doing some shop work. We continued questioning, now in French, now in German, more often through the Russian interpreter. The attendants were among them, talking also. There seemed to be no feeling of restraint in their presence, but on the contrary an exist-

ence of comradeship showed, especially on one occasion when one of the men had been asked a question he could not answer and turned to a guard for information. Such an attitude was apparent often, particularly as we went to the auditorium. As we were leaving the yard an incident happened that impressed us greatly. From the flower garden, one of the men came with an arm full of flowers that he wished to present to a member of the party who had passed some cigarettes around. He did it with the air of one who brings a bouquet from a prized garden of his own.

We stopped to look at the dining room next. It was an ordinary room of almost square dimensions with long tables, seating two hundred and fifty at a time, and immaculately clean. From there we went through a small hall and upstairs to the auditorium where we were told to ask any questions on points of either policy or practice about which we still would like information. We were not sparing but every query was answered with great patience and detail. Then, as we were about to go, the prosecutor suggested to the superintendent who had been with us that we might like to hear the orchestra play. A messenger was sent and eventually a few musicians were rounded up but as there were not enough to give a very good account of themselves, they tried the drama and dancing group with better luck. These hastily summoned the stage director, the curtains to the stage were drawn, a splendid pianist among their number who had discontinued some piece he was playing as we went in, now entertained us while preparations went on. In the meantime both men and attendants were crowding into the auditorium, messengers from among the prisoners were darting in and out with stringed musical instruments,

and an informal atmosphere prevailed that it would be hard to give an impression of. The men talked in low excited tones, the music continued, the prosecutor and the prison director leaned against the piano. An attendant near to us carried on an excited conversation with a group of prisoners with him. It was difficult to believe that this was indeed a prison of a more serious type. It had all the earmarks just then of a community affair of local talent about to start.

The program was given with zest and enjoyment. It lasted an hour and consisted of dances, singing, a reading, most of which they had written and produced themselves under the direction of the specialists who are in charge of that type of work in the prison. The results they got with the scant attention they gave to costuming was interesting. They used only a kind of high-throated long white tunic over whatever trousers they happened to have on, because they had no time for further preparation, but there was a uniform effect which was appropriate to the selections they gave. We were reluctant to have the entertainment end but we had undoubtedly kept them from their supper for the time, and their graciousness reminded us that we too must be considerate. We thanked them, said goodbye, and went upstairs for a visit to the library.

Here was a long light room with bookshelves across the farther end and with reading tables and chairs nearer the door. At the side as we entered was the atheist corner, so-called, which is found in nearly all the institutions and which is devoted mostly to evolution. A large picture of Darwin was prominently placed among the exhibits. There were also pictorial illustrations of the lower stages through which man has come and such other things as one would expect to find in a

geological or anthropological display. Science, in their new culture, is designed to replace religion in so far as state recognition is concerned.

Out again in the yard some of the prisoners demonstrated their athletic ability and performed gymnastic feats on bars. We noted their carefree attitude, the interested passive participation of their comrades, but the wall was there again just across from us reminding that after all there was restriction—deprivation of liberty. And that, after all, is the chiefest of punishment. On top of the towers at the corners of the wall the men with long rifles looked down at us. No matter what the correctional labor policy, how designed to be constructive of character, certain men have to be restricted and the program forced on them. But it is to be doubted whether there is often achievement of a spirit like that in the prisons of many other countries and even in case it does exist, it is likely to be in some isolated place where an exceptional warden has been able to achieve it, possibly in a lesser place, one suspects, and not a major penitentiary.

CHAPTER XII

A WOMEN'S PRISON

The full name of this institution is Moscow Novinsky Women's Isolator. There is another such prison at Orenburg, and these are the only two in the RSFSR. There were many things about this place that compared unfavorably with Sokolniki, chief of which was a lesser liberty of action. That was explained to us as being necessary because fifty per cent. of the population are there awaiting trial, which means that they stay only for a brief time. This makes a constructive program more difficult, since it is not possible to undertake for a yet unconvicted person the same type of treatment as would be accorded one actually sentenced. They must be kept separately, and with the small outdoor space available it is quite a problem to handle the question of freedom and recreation.

The capacity of the place is 375, but at the time of our visit it had only 360 in both classes; that is, those sentenced by the court and those awaiting trial. There are more problems connected with a women's prison than with one for men. Children must be thought of, both those about to be born and small ones who depend on the mother and for whom there is no other care. There is a small hospital for ordinary cases in this prison, but a pregnant woman is taken out to a proper place for the birth of her child. It is emphasized that

she is entitled to the same treatment as any other mother in the land, and that by virtue of her being a prisoner, she is not to be deprived of the best medical aid.

One comes up to this prison suddenly, without warning. Around a corner from a wide avenue and up a cobbled street for a block and the building is there before you. One enters the prison straight from the street into a small hallway, such as is found dividing the two front rooms of a residence. All the guards are women and they stand with guns to which are attached bayonets. They seemed much more severe than the men guards at other prisons, but perhaps that is because one is not accustomed to seeing them. Others wearing revolvers were about in the hallway and at other points in this entrance building. Their uniform consists of white blouse and dark skirt, with the gun belt acting in the place of a normal one, and military-looking caps. They are businesslike and, one feels sure, equal to an emergency. However, we were assured that none arises. The action of the comradely court takes care of the majority of whatever disciplinary problems there might be.

Our first pause was in the office where we were received by the director and told some few points about the prison. However, we were reminded that a tour of it would be worth more than a lecture, and since that seemed a logical statement to us, we started out. Across the hall from the office in which we had been sitting was the visiting room. Every six days each prisoner may see visitors. There is no screen through which they must talk; the contact is direct; but there is a long counter behind which the prisoners sit. A guard is present in the room at all times, but takes care not to listen

to the conversation. That is regarded as the person's private affair. Mail may be censored but mere words are not restricted, so we were told.

Passing through this room, we found ourselves in a court around which the buildings form a hollow square. This institution was a prison in Tzarist days, and a gloomy spot it must have been according to descriptions. Now, there are many windows which are large and admit plenty of light and air. We visited next the wing used as a dormitory and found there somewhat more space than in Sokolniki. One room was particularly large, about fifty feet long. Beds are fairly well spaced; there is a small cabinet for each woman, and the ventilation is good. A girl with a guitar was furnishing entertainment for others who sat on their respective cots and listened. She stopped playing loudly as we entered but continued to strum. We were told here, as at all other places we visited, to talk to any whom we wished, to ask any question we would. The superintendent seemed eager to emphasize that we were free to see or know anything. She had heard the prevalent story that in Russia one never sees things. She begged us to feel free to look and to question. No one would listen to what we said to the prisoner nor she to us. We talked to an old woman who wore the headdress of a peasant. She sat aloof on her cot and we were moved by her lonely appearance. What had she done? She stole bread, she told us, and for that she had a ten-year sentence. The same prosecutor who was with us at Sokolniki was listening at this moment. His face was full of sympathy. A person, whatever he might have on his conscience, could scarcely find him forbidding to talk to. He began to question and discovered that this was no ordinary theft of bread but a wide-

spread attempt to defraud the state. A written note went into his pocket before he turned away and one wonders whether the ten-year sentence which might possibly not be served anyway, would be reduced.

We talked next with a pretty black-haired girl whose eyes sparkled with mischief. No one was near to listen. For robbery, she told us frankly, she had been sent for five years of deprivation of liberty. One hopes that not even a prison can dim that gayness which seemed to cause her to bubble over. Was she getting along all right, she was asked? Fine! She laughed with us, talked animatedly for several minutes. Did she feel resentful? No, because she was learning there and she shouldn't have stolen anyway. How will she get a job when she gets out? There were more jobs than people she told us as if she had learned a lesson. Was she sure? we asked. All the people who leave here get work at once. She knew that to be true. Why shouldn't they? They were good workmen, she added. We left them to visit other rooms, and down the hall past two or three we came to one with spreads on the beds, with white covers on the tables, with a framed picture here and there and other personal belongings in place. It was the room occupied by the shock-brigaders. Russia honors its *Udarnicks,* whether in prison or out, for their efforts are such as send the nation bounding on its way. In this room, the honor spot of the dormitories, a young woman, perhaps twenty-one, sat at a desk with her back to us. She is the chairman of the comradely court, we were told, and she smiles at us with great pride. It is evidently an achievement which carries satisfaction.

She had stolen continuously since she was fifteen, her case read, but by means of the approach they use

here they have been able to aid her. The superintendent assured us that her whole character had undergone a change, that she was trusted and valuable to the institution, and supervised with ability the court that was responsible for discipline within the prison. We talked to others, one a middle-aged woman, who did exceptionally good work. She was proud of her ability and the praise she had won.

We went to the nursery. A mother sat in a small room beside it, nursing her child. We noticed the position of her foot, the way she held her baby, and were reminded that some one gave instruction in such points in a way that would meet the best approval. Cribs were lined up along the sides of the nursery and a trained woman, not a prisoner, was in charge. She was assisted with the children by inmates themselves. There were about twenty beds but only a few children. The others had already been taken to the play-yard. We took time to observe before we left that the room was well ventilated and well kept and the woman in charge briskly business-like. As we descended again to the court we passed a small room back of the stairway where women were washing their clothes. Each must do her own, and a room equipped with tubs was provided for the purpose.

The children are kept up to four years of age, then disposed of among the other state institutions for children or dismissed with the mother, or possibly, if she must stay longer, sent to some of her family. In the yard, a grassy spot with shrubbery, the children were having a gay time with all sorts of apparatus and a play-house. Like the children in other Russian centers, they wore no clothes except light cotton trunks.

They looked healthy and well cared for and showed,

it seemed to us, less of physical abnormalities than one usually notices in children of imprisoned women.

We visited the school room and were told that compulsory education is provided up to the seventh year and opportunity given for work beyond, by means of university evening courses. There is at the same time the usual political education, the clubs, and physical education that characterizes all penal places, and a radio in every room for additional education and entertainment.

We came out into the court again to go to the wing containing the shops. Some of the informal attitude which we had noticed at Sokolniki now began to show itself. There were groups who leaned out of their windows and shouted to us, and some of the younger girls talked to us in the court. Three of them begged us to tell them about the prisons in America, much as three children would waylay one and insist on being told tales. We gave them some information, and then tried to answer questions about New York and life in the United States. No, they didn't think they would like America because people did not have jobs there, while here when they got out, they would be assured of work. We asked if they felt certain of that. Of course. The patron factory of this institution gives preference to those released from here. They boldly hailed the prosecutor now, to tell him that they wanted their sentences reduced. The law gives them the right to complain to the prison management, to the Commissar of Justice, or to the prosecuting attorney, but they are not offering a complaint of the sentence. It is only that they are ready to be good and work like faithful citizens. Another note is thrust into the prosecutor's coat pocket. What was done with them we did not know but since

the inmates seemed to expect that procedure it must be a general practice, and the fact that he definitely refused some and made no note seemed to indicate that the others had real significance. We were told that each case so noted would be checked. The approach to official channels is evidently quite easy.

There were no shops in this prison in Tzarist days, and the women did not work. Now the wing which has been newly built is thrust out in such a way that it is long and narrow, with windows on both sides. There is plenty of ventilation and light. The women were cutting and sewing shirts and other garments from the same material we had seen the men making at Sokolniki. There were long tables with good working space and as we walked about various women showed us finished articles with pride. The sewing machines had all the latest equipment, and the operatives worked rapidly. The products of their shops are turned over to the cooperatives and sold where needed.

They, too, work on the same basis as do factory workers of the land, with the exception (as in the case of all prisoners) that because they are supplied with their upkeep they are not paid normal wages. At the time we were there some of them were not at work, due, the directress told us, to a shortage of material. The supervisors are not prisoners but come in from the outside to teach and direct the inmates.

Already in the chapter on "What Crimes Are Committed and Who Commits Them" we referred to the acts committed by women. In this prison the records showed that theft came first and robbery a close second, but in cases with whom we talked, the theft often turned out to be some act involving state property which carried a severe penalty. For that reason one was

surprised at first to find long sentences attached to what appeared to be less serious crimes. But, in view of the provisions of the law of August 7, 1932, such larceny is sternly dealt with, even though the act is committed by a person from among the peasants or toiling class. One stealing from her neighbor would get a much lighter sentence. This is where the class nature of punishment shows up very strongly and unbalances the scales of justice that otherwise seem to work with such fairness. An example of the difference was very clear in two cases. One girl had been in prison nine times for theft and her present sentence was for two years only. Another had committed her first offense by stealing from a collective farm, a tool apparently of some "class enemy," and her sentence was ten years. The "measure of social danger" accounts for the difference, and while it is easy to see that the authorities are confronted by a real problem of deep seriousness, one wonders whether something more of justice [1] might not in the long run make for better feeling as well as a more ethical foundation for their socialist state. It is contradictory to their usual administration of justice among their own masses. One hopes that, as the conflict recedes, "pure justice" in so far as such is possible

[1] This statement by the author has caused Mr. Golunsky of the Commissariat of Justice in Moscow to offer the following explanation. "The word 'justice' in the USSR has another meaning than in the writings of the bourgeois sociologists. Criminal repression is not expiation of the crime. We don't feel it just to shoot a man who has committed a murder only in order to punish him. Instead of one murder that would make two. But we call it just, if by means of shooting such a murderer, we can prevent a score of other murders. The construction of Socialism is our greatest task. Everything that helps the achievement of it is just, everything that hinders it is unjust. That is the point of view in every criminal case and I don't suppose that we shall ever change it. But of course the methods of our fight for Socialism change at every stage of Socialist construction, and today they are other than they were five years ago."

will replace "socially dangerous" measurements now in practice.

Again we were in the court preparing to leave. A girl of some eighteen or nineteen years, with thick golden braids hanging to her waist, was at the window above us shouting laughingly down to the superintendent. One of our party had a camera and she wished her picture made. It was all right, we were told, and the picture was snapped, and she was promised one as soon as it could be developed. Others were calling to us, too, setting up a din, with their comments and questions. Such an informal atmosphere can hardly be described. A group stood about like girls let out of school, talking, watching us curiously, unrestrained by the presence of attendants or directress. One feels that so long as there is no attempt to escape, and no running afoul the comradely court, one can do about as she likes—play volley ball when she pleases, if she is free from work, listen to the radio, read in the library, or gossip with her neighbor. She also has a good atmosphere in which to learn that labor and happiness are pretty close companions.

The parting word from our hostess was, "I wish I might visit a prison in America with the same freedom with which I have shown you this."

What a western observer would feel first in these prisons is a lack of physical equipment such as his own best might boast. There was such criticism expressed. But this is not an adequate standard with which to measure their success. It is true that in these closed prisons of a penitentiary type their equipment, while much better than that in our worst, is not nearly so good as that in our best, but the fact that without this equipment they are able to achieve the attitude and coopera-

tion they do on the part of the prisoners is all the more significant.

There is also the point that the aim of Soviet penal authorities is to remove as rapidly as possible every person whose character will permit into the open or semi-closed correctional labor institutions and discontinue the use of the closed types except for the most incorrigible cases. Because of that, they are devoting all possible attention to the development and improvement of the labor institutions. And one finds different conditions in these places. They would not suffer very much by comparison with our best. A description of Bolshevo Labor Commune, in a later chapter, will indicate that.

In the meantime they create that constructive businesslike atmosphere, among the women as well as the men, that gives genuine hope of equipping these people for a place in social life.

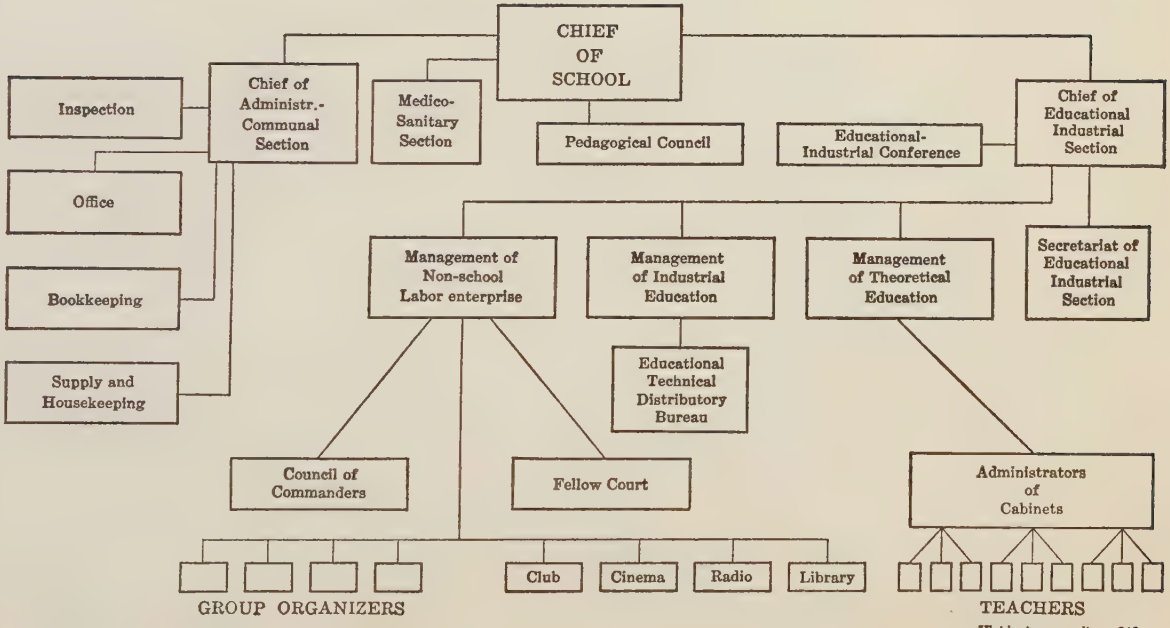
CHAPTER XIII

THE CHILD AND THE LAW

When H. G. Wells was visiting in Moscow the past summer, he is said to have made the following observation to a Russian journalist: "I know, you Moscow people look upon all this with different eyes. You are Robinson Crusoes recreating life upon barren land after a social cataclysm. You are proud that you are manufacturing without the capitalists' air motors, and reoentgen apparatus which the capitalists before you did not manufacture. You are happy to be doing all this. I understand this. And I should have been happy in your place, but of all your productions, excuse me, I am struck only by one thing. You are making people. It is this that I have come here to see and I see it."

If they are making people in this Soviet land, and I think it is pretty well agreed by thoughtful persons that they are, the beginning of the process is found in their treatment of children. So much has been said and written on the care of the child in Russia that no elaboration should be necessary here, and in regard to the delinquent it is no less than that given to the normal child. Their attitude toward the child who breaks the law is not that society must be protected, but that the individual may be given an opportunity for developing his own life. His interest is uppermost and prac-

TYPICAL SCHEME OF ORGANIZATION OF F. Z. U. SCHOOL



Vishinsky, op. cit. p. 346

tically every branch of government co-operates in his protection and training.

The Geneva declaration has been of special interest to the authorities dealing with this problem in the USSR. They believe with the author of the statement that mankind must give the child the best it has. In many of their publications they quote the main points of that declaration, and it seems of interest to set them down in relation to this chapter. They follow:

(1) The child should be given an opportunity of normal development, materially as well as spiritually.
(2) The starved child must be fed, the sick cured, the retarded pushed ahead, the defective trained, and the orphan taken care of.
(3) The child must be helped first of all during public misfortune.
(4) The child must be prepared to earn his bread, and protected from all types of exploitation.
(5) The child must be trained with the understanding that his best powers must be devoted to his brothers.

For them the application of these points is to all children. The problem of the upbringing of the juvenile criminal is not separable from the general question of juvenile training. And whenever it is possible, the child who has broken the law is sent to schools for his training which in no wise differ from those for the non-criminal child.

Russia's fight against juvenile crime has been one of its major problems. It is an old story that the Civil War and the Volga famine in 1921 left hordes of wild children wandering over the land. They crowded in the railway stations, they rode the rods from place to place, they congregated in market places, behind billboards,

in any places they could find, and were so depraved by street life that they became the most hardened of criminals. At this time, too, men released from the army, with no jobs available, turned in great numbers to banditry, and these children became their associates in their illegal enterprise. In history there is perhaps no picture greatly darker so far as children are concerned, and handling such a situation is not the least of Russia's achievements. Today there are still a few scattered remnants of that vast number that one sees in railway stations, but the problem is in hand.

At the moment when this condition reached its worst, the government was dealing with the Civil War at its greatest height, giving its attention and energy to the defense of the proletarian state. But it is to its great credit that it found time even then to concentrate its forces to give care to this growing army of homeless waifs and juvenile delinquents. We have at that moment a proposal on the part of the leader of the *Cheka,* later referred to in detail, which marked the beginning of the system of care given today to young offenders in Russia.

However, there was already machinery in operation for dealing with juvenile criminals or children needing the aid of the state because of some abnormal condition. As early as January 14, 1918, only a little more than two months after the October Revolution, the Council of People's Commissars issued a decree establishing Commissions for Cases of Minors. These commissions, with their powers greatly broadened, exist today, and are the organs charged to look after the interests not only of delinquent children, but of any child who needs the intervention of the law. During the period when children swarmed everywhere, homeless,

starving, some criminal, and others forced by necessity into such an existence, no single force could have been adequate, but these bodies were the official channels through which the cases passed after the GPU or some other agency had first gathered the children in.

The commission is not a children's court, but is a pedagogical and educational organization. Its chief task is in educating the juvenile offender so that he may become a productive member of society, and with that in view the composition provided for the commission is of professions and persons able to make appropriate contributions. The chairman must be a pedagogue of very high qualifications. He must possess not only an adequate education, but he must have had experience either in work of a pedagogical nature or with home children or with juvenile criminals. In addition to the chairman there is a member representing the local department of public education, a physician from the local health department, a judge from the People's Court, an investigation educator, a member of the Komsomol (the youth about to enter the Communist Party), a representative of the Children's Friend's Society, and a representative of the local trade union organization.

The commission sits in closed session, permitting only the attendance of those connected with the cases. This would include parents, relatives or guardians, or a representative of a public or school organization. Its work is under the jurisdiction of the commissariat of education, and is not connected with the commissariat of justice, such as the children's court would be. There are, of course, local commissions which take care of the cases for each city or rural district. The procedure before the commission is entirely informal. When a case

comes up the chairman takes the proper steps to have the juvenile appear, unless for some reason his presence is thought to be unnecessary. Some of the circumstances under which the child would not appear would be: if the child is under eight years of age; when the child is already known to the commission; when the evidence does not substantiate the charge; when there is no reason for the medico-pedagogical measures to be applied; or when it is thought that the appearance of the minor before the commission might do some harm to him in either a physical or mental way. But in case it is thought his appearance is desirable, the investigator is instructed to take charge of the case. The chairman then proceeds to gather the necessary information, evidence, etc., concerning the child and advise him that his case is to come up. If at that time the youth has reached the age of sixteen, his case is turned over to the courts for trial, since minors between the ages of sixteen and eighteen are subject to the jurisdiction of the court.

The commission is competent to deal not only with the cases of all children delinquents between the ages of eight and sixteen (children under eight years of age are never summoned to appear before the commission) but it is also empowered to institute criminal proceedings against any person who is an offender against the child in a manner of demoralization, incitement to crime, or exploitation of minors.

What measures may be taken in the cases of children convicted of some crime before the commission? Here is a list of the more important, although it is not an exhaustive one:

(1) A request for granting assistance, document, certificate, etc., to the child.

(2) Placing out the child in the care of a family.

(3) Placing the child on maintenance and education by public or party organization.

(4) Finding a guardian for the child.

(5) Finding work for the child or apprenticing him.

(6) Sending the child to his birthplace.

(7) Placing the child in an educational institution, school or children's home.

(8) Sending the child to a medical or medico-pedagogical institution.

(9) Helping the child to enroll in a children's club.

(10) Talk and exhortation.

(11) Putting the child in the care of parents or other persons with or without supervision by investigation educator.

(12) Putting the child in the care of an investigating educator.

There is one final measure which it is within the power of the commission to use, but it is never resorted to unless all other efforts have failed. That is that the commission may send the child as a final resort to an industrial school of which we will speak later on in the chapter. The list given above constitutes the medico-pedagogical measures and are applied only to those offenders under sixteen years of age who come within the competency of this commission.

The case of the minor between sixteen and eighteen years of age is approached in a somewhat different manner. Originally under the Criminal Code of 1922, the court was given jurisdiction over minors between fourteen and eighteen years of age, and might at that time sentence them to terms of deprivation of liberty,

but only to industrial homes set apart for them, and never by any manner of means to a place for adults. This, however, has been changed so that the commission referred to takes care of children up to sixteen years of age, and only the cases of those between sixteen and eighteen are referred to courts. Although the cases of juvenile offenders between sixteen and eighteen are tried by the courts, the measures applied are of a medico-pedagogical nature very similar to those used for the younger children. Only when the circumstances of the crime convince the court that these measures will not be adequate may the minor be sentenced to deprivation of liberty. In fixing the terms, the sentence is to be reduced by one third of what would be imposed on an adult in the same situation, and the maximum term under the USSR is not to exceed one half of that imposed on adults. A death sentence may never be given to either child or minor, and no severe measures may be used.

In the case of trial, a copy of the summons as well as the indictment must be sent to the minor's legal representative, as well as to the minor himself. And the Supreme Court has especially instructed the lower courts to see that all juveniles under trial be provided with counsel whenever it may be needed. During the hearing of the case, the minor is accorded all the rights that we have already seen are granted to defendants in the Soviet courts.

That the fight waged by the authorities against juvenile crime is being successful is indicated by the steady drop of the percentage to the total convictions in the Union. We find that, in 1928, 36 per cent. of the total number of persons convicted of crime were juvenile offenders. In 1931, this figure had dropped to 28.2

per cent. Also indicative of the achievement in this direction is, as already mentioned, the fact that this army of vagrant youth no longer wanders about in Russia. There are few of such children remaining.

The Soviet government has practically removed from its system all of the homes and colonies for juveniles which it inherited from the Tzarist régime, and has at the present time in their stead the system of institutions operating in an educational manner. The most constructive work being done is in those owing their initiation to the efforts of an agent that we do not usually connect with such activities.

Back in 1921 when the whole place swarmed with homeless and criminal children, and there was despair over the hopelessness of the condition, the GPU came to the rescue with the establishment of places for wholesale care called "collectors." Children were snatched from the streets, stations, trains, or wherever they were, and were taken to these places where they were bathed, dressed, fed, sorted out, given all sorts of examinations, mental and physical, then turned over to the Commission for the Cases of Minors, and were finally distributed to the various institutions. The institutions, at that time, while educational in nature, were without a definite social goal, and not adequately prepared or equipped to turn a youth into a productive and useful citizen. At the present time the institutions for juvenile offenders are established under the control of the Commissariat of Education, the Commissariat of Justice, and the Commissariat of Home Affairs (formerly the OGPU). In the Commissariat of Education we find a whole network of children's homes, directly leading the child from training into the industrial life of the country in such a manner that there is no gap

through which he can escape into a life of crime. In their early days the task of these homes was simply to house the children, to prevent them from becoming vagrants and criminals, and their program was by no means as constructive as it might have been. But, at present, no effort is spared in delivering the child to society in a state of preparation for his place.

A. Shestakova in her article *Principles of Organization of Correctional Labor Institutions for Children* tells us that in the first days of these homes the children were taught to make shoes and footstools, to bind books, and how to read and write; and slightly how to adjust themselves in life. But she says that the homes were inadequate to attack the basic problems of turning those sent to them into a specifically trained group, sufficiently equipped with industrial knowledge and social culture, prepared to enter a factory or other center in such a manner as to evolve into useful citizens. The misfit was unfortunate in two ways. Not only were the children unprepared as to basic industrial knowledge or other means of adjustment to their new life, but the state itself was deprived, because of this inadequacy, of the services of many young citizens.

A new economic policy had given way to the five-year plan with its tremendous program of industrial development and agricultural collectivization, and there was need for every available trained workman. Because of this urgent need of the country those in charge of juvenile offenders were given an extra instrument for their purpose. With definite ends in view, with specific jobs to fill, training took on an additional purpose. Here was a definite challenge to the places of training of those juvenile offenders to teach them so that they might make their contribution to the eco-

nomic plan, and that they might thereby gain the satisfaction of having work which they could do well.

It was not enough that education be directed only toward keeping the child busy with some elementary task, but that it concern itself with the possibility of active participation in the nation's economic development. To accomplish this task the children's homes were merged with the factory apprenticeship schools which were attached to factories in towns, and to the peasant youth schools connected in like manner with state farms and rural localities, by which merging they now afforded places for training skilled workers.

As now organized the direction of these homes is in the hands of the Commissariat of Education, and children are sent by the Commission of Cases for Minors. They are not limited to the training of delinquents but also have the task of educating the children of workers and peasants from the general population. No coercive methods are used. There are of course no wardens or guards, and their express task is to "combine teaching with productive labor upon such basis that the whole social productive labor of the pupils was to be subordinated to the academic and educational aims of the school."

The inmates of these homes are given preference of admission to the factory apprenticeship schools, and to peasant youth schools next to the children of workers. From this training they move straight into the stream of factory workers and, almost without knowing it, take their place in the productive life of the nation. By the time they have gone through these schools of apprenticeship and the factory, or the state farms, they have forgotten that they ever were attached to a life of crime and are removed from the environment so

effectually that they have no temptation to return. This describes the treatment given to the cases of those children not classified as habitual criminals. Even in this category of the 8-16 group coming under the direction of the Commissariat of Education, there is an occasional child who requires more restrictive treatment, and measures of a severer nature may then be resorted to.

For this type, who have become habitual criminals, or who have committed more serious crimes that require a term of deprivation of liberty, we have a second kind of institution. It is important to note that this set of establishments is connected with the Commissariat of Justice, and not with the Department of Education. There has been a period of evolution of these institutions in which much study has been given to methods to be used, and experiments of a bold nature tried with regard to some of them.

On July 11, 1918, there was published the Order for the First Russian Reformatory where juvenile offenders of this type were to be detained, and there were consequently organized industrial homes for these offenders which were intrusted with the duty of teaching to minors "skilled trades, to widen their mental horizon by means of general and vocational education, and to transform them into active citizens conscious of their rights and obligations, giving them at the same time a physical and health education by means of gymnastics, sports and hygiene."

These institutions, although of the educational type referred to, were inadequate for any serious training. Arts and crafts constituted the principal type of labor, and practically no attention was given to the higher and more skilled trades. We have already spoken of the

demands made by the reconstruction period for more skilled workers, and of the notable inadequacy of places for juvenile offenders to turn out young people who filled such a need. The program needed a decided reformation, and in 1930 the All-Russian Central Executive Committee set up a commission for specific remedy of the situation.

The commission was created for two definitely assigned tasks: the first was to institute an investigation of the work of the fight against juvenile criminals and minors, and of the organization of factory communes and corrective labor organizations, using for this purpose the equipment of the People's Commissariat of Justice. Secondly, it was to work out and to hand to the *presidium* a project of administrative and practical measures, with due attention being given to the experiment of the Izhorsk plant in the North Caucasus. The result of the investigation was that in 1930, the Commissariat of Justice decided to reconstruct these institutions into factory apprenticeship schools for juvenile offenders which were to be attached to large factories and mills. It must be noted here that these schools differed from those just discussed in that they were for offenders only and liberty was restricted, whereas in the first there were no guards of any nature and noncriminal children attended along with the criminal ones.

In these schools they were to create a cultural and social condition conducive to drawing the inmates into social work, and to this end, bars, locks, and prison régime, and all prison atmosphere was to be resolutely banished from them.

The character of the training was educational just as it had been in the others, but in the case of this more

hardened type it was necessary to detain the juvenile forcibly while he was subjected to the program. However, pupils in these schools now enjoy vacations, take part in regular group hikes, and go out to camps in the summer, in the same manner as other pupils do. The term of sentence is from two to three years, and the arrangements as to schedule, life, and discipline, organization and labor, are taken care of by the usual self-government organization. The schedule of the work is arranged in such a manner that the children are never left entirely to their own devices, but are constantly with those who guide and direct them. Four hours of industrial training are followed by four hours of study, and the latter is again followed by three hours devoted to public activity organizations.

In 1931, 4,000 juvenile offenders were trained in these schools and 500 industrial workers were graduated from the industrial establishments. In 1933, the aim was to put all the juvenile offenders into these schools from which it was expected there would be turned out 2,400 highly skilled workers.

It is interesting to notice here what happened to those released from these schools. Figures for the years 1931 and 1932, giving percentages of distribution for those released, show that 63.2 per cent. went into industrial undertakings. This would indicate a high degree of success in the passage of the trained youth from schools to industry. The next largest percentage, 19.7 per cent., found a place in the building trade. The third highest, 9.3 per cent., was released to the parents with supervision on the part of the school. 4.7 per cent. were placed on Soviet farms; 1.2 per cent. found a location in the factory labor and technical communes and 0.6

per cent. were released to parents and relatives but continued under the supervision of the schools.[1]

The most important training given in these schools is for metal work and work on wood. In addition to that the inmates are taught tractor handling, animal husbandry, vegetable garden work, and field work. The health and physical training require that the workers take a month and a half to two months' camp trip in the country. Because of the inconvenience attached to these trips, when the institution is located in a city, the First Moscow School was moved to a small village a short distance out, so that country places would be more accessible for health training.

The chief problems now attached to this education, according to A. Shestakova, are the building up of the physical health, an establishing of self-discipline, and the introduction of these delinquents to methods used in other camps, to a life of such neighboring activities as the collective or state farms. The prize agricultural schools among all of those at present existing in the Soviet Union are Saratov, which now has first place in the contest for these schools; Serpooh, in second place; the First Moscow School in third place; and in the fourth, the First Leningrad School.

We come finally to the third type of establishment. These are incorporated into the system of the organiza- of the GPU, in the Commissariat for Home Affairs. There is something incongruous to most of us in the supervision of children by an agent that is avowedly for terroristic purposes. However, the labor communes, organized by this body for juvenile offenders of the

[1] Article by A. Shestakova, "Principles of Organization of Correctional Labor Institutions for Children," from Vishinsky, *op. cit.* p. 348.

worst type, are one of the outstanding developments in the care of the children in Soviet Russia, and set a standard that few if any institutions in other lands manage to reach.

The inhabitants of these communes are young people with long criminal records, who have been up repeatedly before the Commission for Cases of Minors, before the courts, who have served many terms of deprivation of liberty in various juvenile institutions. The cases seemed hopeless, and the experiment, so bold and unique, was tried in an effort to give a new viewpoint that would induce a complete break with the former criminal type of life. One of these communes, the largest both as to number and scope of development, is described in detail in the next chapter. In this place we only mention the general plan and underlying principles.

The main difference between the apprenticeship school and these labor communes of the OGPU is in method and not in principle. The labor commune is organized around large labor work, where both sexes contribute, while in the apprenticeship schools the emphasis is on education, on the preparation for industrial work. One of the basic principles in the labor commune is complete freedom as to movement, while in the schools restriction of movement is naturally required since the program is compulsory in its nature. In the apprenticeship schools there is also segregation of the sexes in the matter of residence; the boys and girls meet together in theatres, on excursions, in museums, on walks, and other places, but live in separate homes. It seems inconsistent to state that the labor commune is made up of those more habituated to crime, since it enjoys greater freedom, while the schools are composed

of the less criminal; but this is nevertheless true. When one remembers, though, that the commune is the result of a desperate move to save a great number of habitual criminals, whereas the schools are merely for training those of even younger years, the situation is more easily understood.

In the schools the age group is from 15-18 years. The sources from which they come are, (a) those sent on court order, and (b) those sent by the Commission for Cases of Minors, and all other authorities empowered to commit them. If the term is up before the training of the child is completed, the pedagogical commune may retain him, provided the entire term does not exceed three years.[2]

In the communes, the age group, although in the beginning limited to those of 13-17, is now composed of those of 16-24. The satisfaction of the authorities with the achievement of the First Labor Commune (Bolshevo) led to the establishment of others, and at the present time several thousand former criminals, some of them committing the worst sort of crimes, are being trained and educated while they participate in community life.

[2] Section 42 of the Correctional Labor Code of 1933.

CHAPTER XIV

BOLSHEVO LABOR COMMUNE

The following is the official record of the beginning of such places for criminals as the one described in this chapter:

ORDERS

Of the Administrative and Organizational Board, OGPU
No. 185

Moscow, August 18, 1924

#1

Orders issued by Comrade Yagoda, assistant chief of the OGPU:

(1) In order to combat crime among young people between the ages of 13 and 17 years, a Children's Labor Commune for 50 persons is to be organized.

(2) F. G. Melikhov is appointed head of the Children's Labor Commune.

(3) The head of the Children's Labor Commune is to act in all matters under the orders of M. S. Pogrebinsky, who, in turn, will act on the basis of a plan of work confirmed by me.

Such an order, judging from the resulting situation of ten years later, ought to be marked with a monu-

ment, and it is. Just outside of Moscow, on the location of a once lovely estate, there is now a small town of modern buildings replacing the wooden ones of ten years ago.

One does not know what to call this place. To say that it is a penal institution is misleading unless the reader has seen something like it. However, it rates as that in the USSR, and since there are others like it in scattered sections, one comes to the conclusion that it is something unique in this line and accepts it as such. It is easy to be enthusiastic over such things and not to look deeper for some adverse angles, but the author, after as careful examination as she could make in a skeptical manner, could only praise the development.

Two trips were made to this colony, the second to confirm what had first been observed. However, since it was a visit to a similar colony at Kharkov that elicited the warm praise from M. Herriot that has already been quoted, it seemed safe to conclude that it existed as had first been believed. It is impossible to understand how any one could fail to be moved on viewing the place and realizing its tremendous import in the matter of remaking criminals. If the OGPU had committed nothing but the acts of terror it has been credited with, the creation of such spots as these would compensate in a great way for its darker deeds. It is unfortunate that one must try to tell of Bolshevo. The only thing to do is to visit and see for one's self. It is difficult to describe atmosphere, and that is the thing that pervades the place and makes it even more constructive than the physical side could account for.

This commune celebrated its tenth birthday in August of this year (1934). Its population was preparing for it when we were there, building platforms out un-

der the trees, putting finishing touches here and there, and getting ready for speeches, visitors, and other entertainment of various kinds. And these people can tell a good tale of growth and progress, too, for they started with a handful in the initiation of a bold experiment and now their town has a population of three thousand inhabitants. The reader's first deduction will be that a prison growth such as that must indicate some undesirable conclusions. But when one knows that it means that this number has been transferred from other penal institutions with a view to having everyone possible enjoy this freedom and training, then the significance is different.

Reference has already been made to the wandering hordes of children, confirmed in criminal habits, who presented the gravest of problems to the government authorities at the end of the Civil War and Volga famine. It was seen that if headway was to be made against the situation, the whole perspective of life must be changed, and the new one must be attractive enough to make these vagrant criminals want to break with a past that to their imaginative years had a glamour and provided escape from the responsibilities of ordinary living.

In the midst of the perplexity, the groping for some plan, we find Felix Dzerzhinsky, organizer of that terror of terrors, the *Cheka,* and original head of the GPU, offering his far-reaching organ to effect this merciful innovation. Let his own words inform us:

"I wish to apply part of my personal efforts and above all the efforts of the *Cheka* to looking after these homeless waifs. I have come to this conclusion on the basis of two considerations. Firstly, it is a terrible calamity, and when

you look at children, you cannot help thinking everything should be for them. The fruits of the revolution are not for us but for them. But how many of them have been wrecked by struggle and poverty! We must rush to their aid just as if we saw children drowning. The Commissariat of Education alone cannot cope with this matter, the widest help from all Soviet bodies is needed. It is necessary to form under the Central Executive Committee a broad commission containing representatives of all commissariats and all organizations which can be useful in this matter. I have already spoken with people here and there. I want to be at the head of this commission myself. I want to include the apparatus of the *Cheka* practically in this work.

"I am impelled to do this for the second reason. I think that our apparatus is one of those which works most accurately. It has branches everywhere. People reckon with it. They are afraid of it, but even in such a matter as saving and feeding children, it is possible to find laxness and even dishonesty. We are going over more and more to peaceful construction; and I think: why not use our fighting apparatus to combat such a calamity as homelessness among children?"

This proposition was made in 1921. It was in August, 1924, that the GPU of which he was then head, established the Bolshevo Labor Commune, thus launching a new epoch not only in the care of juvenile criminals for whom it was particularly intended, but in the treatment of all the others. It must have given a great thrill to this man who had brought death to so many of the state's enemies to take a part in reconstructing the lives of youths who would, he hoped, be its friends. At least he had the satisfaction of seeing his judgment vindicated, for, from the beginning, the venture proved his rightness.

These men did not jump into the scheme as suddenly

as might seem, nor without consideration. They went into intimate study of the forms of education of children, they applied themselves vigorously to working out an accurate theory, then they formulated what appeared to them three basic rules of procedure. That the GPU, in the midst of their frightening activities, could muster faith enough in anybody to develop such a plan is in itself a phenomenon, but that they could convey such a trust to others, to these young criminals, seems more incredulous still. They were not exactly an agent for inspiring such a feeling. But notice the three basic principles referred to.

First and foremost was that principle of "trust" held like a shining torch before the eyes of incredulous youngsters. It was decided that there must be no compulsion anywhere in the commune. With coercion the order of the day, there was to be none here. Strange contradiction, one of many that has filled the land. Side by side with sternness toward those who oppose the order, one finds this steady development of humane institutions, untouched by the harsher methods used in the other direction. In this colony there was to be only trust. If one wanted to stay, he was to stay, and if he wanted to go, then he was to go. He simply walked away, for there were not to be—and are not today—any guards. There were to be no restrictions of their freedom. They were to realize that they were in an educational institution pure and simple. They were to come of their own volition, because of an expressed desire to join in the program of this commune. These inhabitants were to be persons who had come to realize the futility of a life of crime and who wished therefore to change to another sort.

If the individual was to make this change he would

have to be able to perform some task well, and to that end the second principle was incorporated. The commune was to be devoted to teaching these people how to do some kind of work. Workshops were established and instructors installed, but the responsibility for sustaining a condition under which the trades could be learned was placed on the residents of the Commune. There was no preaching, no lectures, but it was demonstrated that each must be responsible for his share in this life or all would suffer. If machines stopped because of the irregularity of one or two, then the education of others in an industrial line would suffer. And one who brought about this inconvenience must answer to his comrades for his conduct.

The third principle was to make each feel his responsibility for the group, and the reverse, that all were responsible for seeing that each member measured up to his duties. Every member of the Commune was bound to see that a recalcitrant one was brought to account. In this manner any disciplinary problems were taken care of from the beginning. Thus, in the lack of any compulsion the one-time criminal learns to lead a normal life and to discipline himself; in being taught a trade he is prepared to return to a life or perhaps enter it for the first time, in which he earns his way; and by his feeling of responsibility for others, he in conjunction with the group keeps the affairs of the Commune running smoothly and efficiently.

Once the Commune had been set up, the next problem was to get some inhabitants for it. Among the institutions housing juvenile offenders, volunteers were asked for, after explanations of the character of the new place had been given. Pogrebinsky who, it will be re-

called, was one of the organizers, gives a version of this experience that is interesting. He writes:

"When we called for volunteers for the first commune, 15 responded. Very suspiciously they donned their new clothes. They could not believe that henceforth they were free, and they warily eyed the prison guards, trying to guess how many would be sent with them as a convoy.

"But here began something unusual. They were given money with which to buy railway tickets to the Commune, and no guards were sent with them. Only the manager of the Commune was with them. Sure enough, they seemed to be free! Should they run away? No, better wait. There was something hard to understand, and in addition, something very flattering—they were being trusted!

"On arrival at the place, two of the boys were sent with money for supper. Here was something altogether strange! They were sent off with money, and no guard to convoy them. The boys bought some foodstuff, came back and returned the whole change. They were utterly astounded when the manager showed them the house where they were to live and explained to them: Everything that you can see, boys—the clothes, food, tools—is being lent to you by the OGPU, and you will have to pay for it all later on."

One can understand their incredulity, even their staying on through curiosity, if nothing else, to see what would happen next in such a topsy-turvy affair. And day after day the wonder and pleasure in having a home, being free and engaged in making interesting things would grow and hold them steadily.

The managers of the Commune were wary and anxious too, not through fear of escape of their charges, but lest they do the wrong thing and check the growing confidence. In their eagerness not to put pressure of any kind on these young people, they have let the in-

itiative for expansion come from them. In the beginning those who came made shoes, stools, and other things, and were satisfied to watch their own tasks grow under supervision, but as the project became more firmly established there were demands for wider industrial training. The leaders granted the requests with great satisfaction as they developed, their only anxiety being that nothing should ever seem "forced." There was no doubt subtle guidance, but the group was encouraged to undertake its own education. The story is one of continuous growth, both in number and in development of a broader program.

What actually exists now in this place where three thousand work? To begin with there are the paved streets, clean and lined with green shrubbery. The houses beside them are of modern structure, many with flower-filled balconies for each floor, with rows of large windows. There are some small individual houses also, where families live, but it is the lines of those looking from the outside like sunny apartment buildings that gives the place an air of being a town proper.

On inspection one finds small apartments provided for the married couples and dormitory rooms for the single people. A man who is serving a sentence may have his family there with him and so may a married young woman if it is convenient for the husband to come. The apartments that we saw contained two rooms and a bath. One of the rooms was a large kitchen which could also be used for other purposes. One entered into a small hallway which led to the main room, a large combination living-sleeping room. The furniture was good. There were pictures around, a couch, comfortable chairs, the windows were nicely curtained and the appearance altogether homelike. There is a

large community dining room, but in case a family wishes to prepare its own meals it can do so.

In the dormitories we saw, there were rather good-sized rooms, not so large as most of those described in the other prisons, with cot-beds placed in line in the usual way. There seemed to be comfort in these collective places but not, of course, as much space per person as the apartments permitted, nor did they have the homelike appearance of the latter. There was light from several windows and a pleasant outlook, and the two girls present on our visit looked exactly as occupants of a home would appear. As housing goes in crowded Moscow this represented an average standard.

The dining room in the factory-kitchen building was quite large and equipped with small tables, such as one would find in a restaurant. One side was almost an entire window. A few late eaters were sitting at tables and attendants were beginning to clean so that the place had a disorderly after-dinner appearance but one of deeper cleanliness.

One might as well not try to keep remembering, as he goes along the street meeting people, that these are convicts of the most habitual sort. They are going or coming from their work exactly as other people would. There is absolutely no difference. They could run away, of course, and a few have, but in the majority of cases, the reverse is true. They do not wish to leave the Commune at the end of their sentence and so they live on and keep a job in some of the factories.

The school building in this Commune is especially lovely. It was completed about two years ago at a cost of a million and a half rubles. It has all the equipment that a good school would be expected to have—a library, reading rooms, laboratories, an auditorium interestingly

decorated with murals of working men, which is the work of artist inhabitants, spacious halls and class rooms. The teachers are not residents of the Commune but members of their own profession who come in to teach. The man in charge of the school showed us the building with great pride. The first seven years of education are compulsory, after that there are evening classes for the more advanced.

Education, as already indicated, does not stop with formal class-room work but those interested in the arts, in music, or in writing are provided with channels for special training. There are music circles, art classes, drama work, and literary clubs, and the persons making up this artistic group live in their own building, forming a congenial household. A number of the leading ones, the most talented ones, are paid a stipend by the state, and we were told of a number of musicians and writers who had had their first training in this Commune.

The physical education is carried on in a large and splendidly equipped gymnasium, and building up the body is made a major consideration in the training. Setting up exercises are also a part of the daily program.

The school, with its formal teaching of elementary subjects, is one side of the education program; the other is the work done in the shops. In these two places as well as in this whole atmosphere, the "making people," spoken of by H. G. Wells, goes on. One must learn a trade and then he must work at it, not as drudgery, but with free enjoyment of his task. In the shops of the shoe factory, the skate factory, the knitting goods factory, the mechanized laundry, the sports goods factory,

and the factory kitchen, these former thieves and bandits who have barely escaped with their necks, work at their jobs, some still in the ranks of the unskilled, others risen to instructors and supervisors. One looks and remembers again that there is nothing between them and escape, no one to prevent their walking away, and yet they stay and work. When the day is ended they go out in the street and to their rooms or walk, or do any other thing they wish.

One may break a law of the Commune. To meet the exigencies of such occurrences, there is the comradely court and a penalty either mild or more serious according to the act, and if that is not sufficient then the greatest blow of all will fall—the culprit will be sent back whence he came, or if he came directly he will be transferred to a more severe institution. A new member is on probation for a month and he must prove his worth if he is to live with this group who is serious about making life worth while.

The age is 16-24 now, although at its beginning it was 13-17. There are three thousand inhabitants of the Commune, some of whom have finished their terms and have worked on in the factories. These naturally may be older than the maximum age given for those who are sent. The surrounding community was hostile to the idea at the time of the establishment of the Commune among them, as one can imagine any neighborhood might be at having a group of unrestrained criminals, thieves and housebreakers, set down among them, but there is now a general esteem and friendliness felt for those who work in this unique town.

The hospital is perhaps the greatest prize of the place. A large building, set back from the street, with

grass, trees, and shrubs in its front yard, it presents an excellent impression. It is equipped for all the best care of the health of the community. Babies are born, children of the communards attended to, and the whole population served by its staff. It fills not only the rôle of medical care, but an especially educational one as well.

Bolshevo has been described in detail because it is the largest of the labor communes and was the first in construction. But there is another close to Moscow, built second in order, on the site of the former Nikolo-Ugreshsky Monastery. This commune has four factories, making musical instruments, incubators, electrical repairs, and compressed fiber, and in 1934 it is estimated that they will turn out goods to the value of some twenty-three or twenty-four million rubles. Here, too, are modern houses with all equipment in which the workers are housed according to industry, the metal workers in one, wood workers in another, and those making musical instruments in a third. There is a separate house for those communards who are members of artist circles, a separate house for women, and a building where probationers stay until permanently assigned. There are twenty-two hundred members of the commune.

A third is the Dzerzhinsky Labor Commune at Kharkov which follows the same line of development but is smaller than the others. There are only four hundred members.

It is hard to estimate the results of the work done in such centers as these. A tangible evidence of success is pointed to by authorities on the subject in the steady descent of the percentage of juvenile delinquents to the

total number of criminals. This system, spreading year by year to take in all that it may serve, aided by those factory apprenticeship schools that train the 15-18 year old group, ought to do a good deal to depopulate the adult prisons.

CHAPTER XV

CONCLUSION

THE concluding remarks of most books on Russia begin with a discussion of class distinction. In this case it would be further stated that it showed not only in court action but was likewise felt in the fact that while the OGPU as an arresting agent turned the ordinary prisoner over to the courts, it acted in the capacity of a judicial organ for those of the opposition class. A few months ago that would have been true. With the transforming of that agent into the Commissariat of Home Affairs and the stripping from it of all judicial powers, one more step has been made toward the disappearance of class lines in the administration of criminal law.[1]

[1] Again there has been the following comment from an authority on the Administration of Criminal Law in the USSR, in regard to this statement: "The class line in the criminal justice can disappear only when the classes themselves disappear. So long as the classes exist, so long as the struggle between them goes on, it is absolutely impossible to avoid the class character of criminal justice. You may keep silent about that, you may try to disguise it, but you cannot make it disappear. We don't find it necessary to disguise the class character of our courts, as the bourgeois science of law and the bourgeois legislation does, because the class whose interests our courts defend, is the overwhelming majority of all the people. With the bourgeois criminal justice it is quite the opposite. Of course, as I have already stated, the victory we have gained over our class enemies here has enormously changed our policy, but this policy remains a class policy, because it remains the policy of the proletariat struggling for socialism. The first aim of this policy does not change, only the methods of its practical accomplishment. If you build a railway,

However, the distinction does exist. But in this final evaluation of the present situation in regard to crime repression in the USSR the treatment of political prisoners is not considered. While the method as developed is used for both classes it naturally shows to its best advantage in the treatment of the prisoners from among the workers, and it ought to be judged on that score. It is to be hoped that not many years hence class distinctions will disappear to the extent that machinery for justice will furnish equal measures for all.[2] When that happens the treatment of all prisoners will be of the kind that is found so admirably used today in places where discipline and industry are taught to those of the working class.

The Russians claim no Utopia. When on one occasion the writer expressed admiration to Assistant Attorney General Vishinsky for what they had achieved, he quickly and positively responded, "I warn you of its shortcomings." Well, of course, they are there, plenty of them. They can be found in the administration of justice, too.

It seems though that one who wishes to see actually how the matter stands would find it effective to take first the policy of the state, the standards it sets and the

[2] The following explanation is supplied. "By this time criminal justice will become something quite different from what we are accustomed to. It will become a system of medical and pedagogical measures, which will take their place among other radical and educational institutions. Till then criminal justice will serve the interests of the ruling class as it has always done."

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the forms of your work will be different in a plain or in mountains, but the final aim will be the same.

"Our final aim is to build a classless society. When this task will be accomplished, not only the class line in the criminal law will disappear, but the criminal law itself will become useless and will die as well as the criminal courts.

"But so long as those courts do exist, they cannot go on without an open or a hidden class policy."

goal at which it aims, then see not only how fully that aim is achieved, but what progress is made year by year toward the goal.

Take whatever phase of criminal repression one will, and one finds progress and a pretty good practice of policy. Judges in the beginning, one supposes by the Soviet's own records, woefully inadequate at finding out what justice might be in a case, are now much more fully qualified; jurors for a time without any qualifications except as to vote are now selected with more care and given some training for the task before them. How fully adequate are they? It would take a first-hand survey of the nation's tribunals to be able to say, but to judge by a fair sample the author believes them to be fulfilling their duty in a high degree and with more than average competence. Their attendance to work and their conscientious effort to get at the straight of the affair before them is pronounced. They seem in general to feel the responsibility of being the agent for administering justice to their own toiling class.

In the prisons and places of deprivation of liberty one sees more evenness of tone. The personality of those in charge of these places strikes one as indicating fitness for the job. Members of staffs were observed closely by the writer and with one single exception they seemed well selected for handling the work. Vishinsky, in the Introduction of the book edited by him, states that one of the shortcomings of the prison system is the need for more trained persons who will understand what this policy really is and help put it into practice. One would expect that to be true, since it is so universally a fact with regard to prison workers. It would be indeed a Utopia that provided an adequate staff for

penal places. But it seems to the author, by comparison, that he is better off than he thinks he is.

However, the appearance these staffs make may be due in part to the fact of close supervision from above. There is another factor, too, which ought to help. Responsible authorities have a good picture in mind of what a man needs to be in order to fit into their scheme of living. Their society makes definite requirements of its members and training is provided to make the misfits fit. To do that thing which they see clearly they have developed a policy that merely trains a man, both to discipline himself if possible, and do some work that will be of economic benefit both to himself and to the country, while punishment is forgotten. One of their chief tasks is to teach him to prefer the "Life of Labor," and by instilling in him, or encouraging the spark if it is already there, the joy of creation, they manage in most cases to do it—if their statistics on recidivism are anywhere near correct.

Another advantage is that they have one very definite policy and every superintendent of penal places knows what that policy is. It is, as stated in their codes, to educate and to train without doing anything to degrade, to build up a personality, a self-respect, and to do nothing that could hinder such development. With that knowledge in hand it is easier to put the program into practice, and they can develop plans for carrying it out. An understanding of psychological principles enters here, not only in expression of policy as found in the Criminal Code but in the actual practice as one finds it. In doing away with handcuffs, with solitary confinement, with any type of corporal punishment, and with any prison garb, the enunciation of policy does its part, but in the approach of the immediate staff

to the inmates there is seen a wholesomeness that no code could account for.

The attitude of the authorities toward violations on the part of officers is another indication of their sincerity of purpose in this work. In their zeal to put their policy into action they not only provide that the Observation Commission shall be in close touch with all that goes on in the Institution, and impose on them much responsibility for the régime, but they also back them up by providing a penalty for the man who violates the regulations. A guard who strikes a prisoner is in danger of arrest himself, and since there are official records of such cases, one is sure that an attempt is made to put the policy into practice. It must be true that in isolated instances some such things happen and go unpunished, but it is the stated policy of the authorities to discourage in every way possible the committing of these acts.

Central authorities, as we have seen in discussing administration of these prisons, have made repeated efforts year by year to see that the Observation Committee keeps in close touch with all the life of the Institution and thereby effects better parole and release work as well as brings up the level of work done in the place.

Another indication of progress in putting the government's policy into practice is the speed with which they have built open agricultural colonies, institutions of semi-closed type, and labor communes such as Bolshevo so that prisoners might be taken out of the old type of places. Judging from past accomplishment, there should in a very few years be left only those who demand restriction. In addition they are year by year adding to the number of those sentenced to compulsory labor without deprivation of liberty.

Here, then, is a system that deserves to attract the attention of those genuinely interested in a better approach to effective crime repression. It has without doubt made a distinct contribution in this field of social endeavor.

APPENDIX

TRANSLATION OF CRIMINAL CODE

GENERAL SECTION

THE CRIMINAL CODE OF THE RSFSR

GENERAL SECTION

Part I

THE AIMS OF PENAL LEGISLATION OF THE RSFSR

1. The penal legislation of the RSFSR pursues the task of protecting the socialist state of workers and peasants and the régime established therein from socially dangerous acts (crimes) by applying to persons committing them measures of social protection set out in the present code.

Part II

EXTENT OF OPERATION OF THE CRIMINAL CODE

2. The provisions of the present code extend to all citizens of the RSFSR, who have committed socially dangerous acts within the territory of the USSR, as well as beyond the boundaries of the USSR in case they are detained within the territory of the RSFSR.

3. Citizens of other constituent republics are in accordance with the RSFSR laws liable to be prosecuted for crimes committed within the territory of the RSFSR as well as outside the boundaries of the USSR, if they had been detained and subjected to trial or investigation within the RSFSR territory.

For crimes committed within the territory of the Union, citizens of the constituent republics are liable according to the laws of the locality where they committed the crime.

4. For crimes committed within the territory of the USSR foreigners are liable according to the laws of the locality where the crime was committed.

5. The question of the criminal liability of foreign nationals enjoying the right of exterritoriality shall be decided in each individual case by diplomatic means.

Part III

GENERAL PRINCIPLES OF THE PENAL POLICY OF THE RSFSR

6. A socially dangerous act is any act of commission or omission directed against the Soviet régime, or one which violates the order established by the workers' and peasants' government for the period of time pending a transition to a communist régime.

Note: An act, which although formally falling within one of the articles of the special section of the present code is free from socially dangerous characteristics owing to its obvious insignificance or absence of harmful consequences, is not a crime.

7. In regard to persons who commit socially dangerous acts or who are dangerous owing to their connections with criminal circles, measures of social protection of judicial-corrective, medical, or medical-educational nature are applied.

8. In the event of the concrete act, which at the time it was committed was a crime in accordance with Article 6 of the present code, but by the time it was investigated or examined in court lost its socially dangerous character owing to a change in the criminal law, or owing to the mere change in the social-political conditions, or in case the person who committed it cannot, in the opinion of the court be regarded as socially dangerous at the time indicated, then such an act does not entail the application of a measure of social protection to the person who committed it.

9. Measures of social protection are applied for the following purposes:

(a) To prevent the commission of further crimes by persons who have committed them.

(b) To exercise influence over other unstable elements of the community.

(c) To adapt the offender to the conditions of the social life of the state of the toilers.

The measures of social protection cannot have for their purpose the infliction of physical suffering or the degradation of human dignity and they do not pursue the object of retribution or punishment.

10. With regard to persons who have committed socially dangerous acts, methods of social protection of a judicial-corrective nature are applied only in cases when these persons

(a) Acted knowingly, i.e., foresaw the socially dangerous effect of their acts, desired these consequences, or knowingly allowed such effects to take place, or

(b) Acted carelessly, i.e., did not foresee the effects of their acts—although they should have foreseen them—or recklessly hoped to avert the effects of their acts.

11. Measures of social protection of judicial-corrective nature are not to be applied in the case of persons who have committed a crime while suffering from chronic mental diseases, or while temporarily insane, or in general in such a state of deranged health as to be incapable of realizing their acts or of controlling them. Neither are these measures to be applied to persons, who although at the time they committed a crime were in possession of their mental faculties, nevertheless suffered from mental derangement by the time sentenced was pronounced.

Measures of social protection which are applied to these persons are confined to those of a medical nature.

Note: The present article does not apply to persons who have committed a crime in a state of intoxication.

12. The measures of social protection of judicial-corrective nature are not applied in the case of minors up to the age of 16. When regarding the latter, the Commission of Juvenile Offenders finds it possible to confine itself to measures of social protection of a medical and educational nature. Oct. 30, 1929.[1]

13. Measures of social protection are not applied to per-

[1] Collection of Acts, 1929, No. 82, Article 796.

sons who have committed acts foreseen by the penal laws, if the court establishes that these acts were committed by them in a state of necessary defense against attempts at the Soviet rule, or at the body or rights of a person defending himself or another person, provided there was no excess of the limits of self-defense.

Measures of social protection are not applied when the same acts were committed in order to avert a danger, which under the given circumstances were unavertable by any other means, provided the harm thereby caused was less serious than the harm averted. June 6, 1927.[2]

14. Criminal prosecution may not take place

(a) when ten years have elapsed from the time of the commission of the crime, for which the court may inflict a penalty of not more than five years' imprisonment.

(b) when five years have elapsed since the time the crime for which the court may impose a penalty of not more than five years had been committed.

(c) when three years have elapsed since the perpetration of the crime, for which a court may sentence the criminal to not more than one year's imprisonment, or when the law provides a more lenient measure of social protection than imprisonment.

The principle of remoteness is applied when in the course of the corresponding period of time no proceedings were instituted in connection with the given case. The period of remoteness is interrupted when the person who committed a crime within the corresponding period of remoteness commits another similar or not less serious crime, or evades judicial examination or investigation. In such cases the periods of remoteness begin to run from the date of the perpetration of the second offense or from the date of the resumption of the interrupted proceedings. June 6, 1927.[3]

Note 1: In cases of criminal prosecutions for counter-revolutionary crimes the application of the principle of remoteness is left to the discretion of the court in each individual case. However, if the court does not find it possible to apply the principle of remoteness, and sentences a person to be shot for such a crime,

[2] Collection of Acts, 1927, No. 49, Article 330.
[3] Collection of Acts, 1927, No. 49, Article 330.

such sentence must necessarily be commuted to the proclamation that the person accused is an enemy of the toilers coupled with the forfeiture of the citizenship of the USSR, and exile from the confines of the USSR forever or imprisonment for a period of not less than two years. June 6, 1927.[4]

Note 2: In regard to persons criminally prosecuted for active participation in acts, and active struggle against the working class and the revolutionary movement, committed while holding responsible or secret posts under the Tsarist régime, or under counter-revolutionary governments during the civil war, the application of the principle of remoteness and the question of commuting capital punishment by shooting are left to the discretion of the court. June 6, 1927.[5]

Note 3: The periods of remoteness laid down in the present article do not apply to acts prosecuted by way of administrative action according to the present code, and the infliction of punishments for such acts can take place only within one month from the date they were committed. June 6, 1927.[6]

15. A sentence of conviction shall not be carried into effect if it was not carried into effect within ten years from the date of the passing of the sentence.

16. In case a certain socially dangerous act is not directly foreseen by the present code, the grounds and limits of liability for such acts are determined in accordance with those articles of the code which foresee crimes most closely approximating them.

17. The measures of social protection of a judicial-corrective nature are applicable equally to persons who have committed the crime—participants as well as their accomplices —instigators and abettors.

Instigators are persons who induced the commission of the crime.

Abettors are persons who assisted in the carrying out of the crime by means of advice, indications, providing of means and removal of obstacles, or by means of concealing the criminal or the traces of crime.

[4] Collection of Acts, 1927, No. 49, Article 330.
[5] Collection of Acts, 1927, No. 49, Article 330.
[6] Collection of Acts, 1927, No. 49, Article 330.

18. The measures of social protection of judicial-corrective nature are determined for each of the accomplices according to the degree of their participation in the given crime, as well as according to the degree of danger of the crime, and of the person who took part in it.

The failure to report a crime that has been committed, or is being planned, entails the application of the measures of social defense of judicial-corrective nature only in cases specially designated in the present code.

19. An attempt to commit a crime, as well as acts preparatory to a crime, which take the form of finding or adapting weapons and means, and creating conditions favorable for a crime, are prosecuted on the same basis as a crime which has actually been committed. In such cases, the court, when selecting the measures of social protection of a judicial-corrective nature, must be guided by the degree of danger of the person who has committed the crime or the preparatory act. The court must also examine how far the preparations for the crime went, and how near the consequences were to the act as well as the causes owing to which the crime was not completed.

In case the crime was not committed owing to the persons intending to commit it having voluntarily renounced it, the court fixes a corresponding measure of social defense for those acts which were in fact committed by the person who attempted or prepared to commit the crime.

Part IV

ON THE MEASURES OF SOCIAL PROTECTION APPLIED UNDER THE CRIMINAL CODE WITH REGARD TO PERSONS WHO HAVE COMMITTED CRIMES

20. The following are the measures of social protection of a judicial-corrective nature:

(a) The offender is proclaimed enemy of the toilers and is at the same time deprived of the citizenship of the constituent republic and thereby of the citizenship of the USSR and must be necessarily expelled from its confines.

(b) Imprisonment in corrective labor camps in remote localities of the USSR.

(c) Imprisonment in common prisons.

(d) Compulsory labor without confinement.

(e) Forfeiture of political and separate civil rights.

(f) Removal from the confines of the USSR for a certain period.

(g) Removal from the confines of the RSFSR or from the territory of a specified locality with compulsory settlement in other localities or without same, or coupled with the prohibition to reside in definite localities, or without such prohibition.

(h) Dismissal from office coupled with prohibition of occupying a certain post or without any such prohibition.

(i) Prohibition to engage in certain activities or industry.

(j) Public censure.

(k) Confiscation of property—complete or partial.

(l) A fine expressed in money.

(m) Imposition of the duty to make good the damage caused by the culprit.

(n) Warning.[7]

21. Execution by shooting is applied for the purpose of combating the gravest kinds of crimes, threatening the foundations of Soviet rule, and of Soviet régime, pending the abolition of that punishment by the Central Executive Committee of the USSR, in cases specially indicated in the articles of the present Code, as an exceptional measure for the protection of the state of the toilers.

22. Persons who have not reached the age of 18 at the time the crime was committed and women in a state of pregnancy cannot be condemned to shooting.

23. The principal measures of social protection of a judicial-corrective nature applied with regard to persons who have committed crimes, consist in proclaiming them enemies of the toilers with the consequences following such measure, imprisonment, and compulsory labor without confinement.

The other measures of social protection set out in Article 20, except warning and the confiscation of property, may be

[7] May 20, 1930, Collection of Acts, 1930, No. 26, Article 344.

decreed either as independent measures or be combined with the basic ones as supplementary measures. The confiscation of property as a supplementary measure of social protection may be imposed by the court only in cases specified in the articles of the present Code. May 20, 1930.[8]

24. The following are measures of social protection of a medical nature:

(a) Compulsory medical treatment.

(b) Placing a person in a hospital coupled with isolation.

25. The following are measures of social protection of a medical-education kind:

(a) Delivery of a minor into the charge of his parents, adopters, guardians, relatives, provided the aforementioned are able to support him, or to other persons or institutions.

(b) The placing in a special medical-educational institution. December 20, 1927.[9]

26. Measures of social protection of a medical-educational and medical nature may be applied by the court in case it recognizes that the application of measures of social protection of a judicial-corrective kind does not fit the given case; or they may be applied in addition to the latter, if moreover the measures of social protection of a medical-pedagogical and pedagogical kind have not been applied by the competent judicial inquiry organs.

27. The proclamation of a person as enemy of the toilers and expulsion from the confines of the USSR with the forfeiture of the citizenship of a constituent republic, and thereby of the citizenship of the USSR may only be applied for an unlimited period. June 6. 1927.[10]

28. Imprisonment may be imposed for a period of between one and ten years.

Imprisonment for a period under three years is served in common prisons. Imprisonment for periods of three years and more is served in corrective-labor camps.

In exceptional cases, when the court recognizes that the person condemned to three or more years' imprisonment is obviously unfit for physical labor, or owing to the degree of

[8] Collection of Acts, 1930, No. 26, Article 344.
[9] Collection of Acts, 1927, No. 4, Article 38.
[10] Collection of Acts, 1927, No. 49, Article 330.

his social danger need not be sent to the corrective-labor camp, the court has the right to substitute a common prison for a camp by specially decreeing so in its sentence. May 20, 1930.[11]

NOTE 1: Persons who are uninterruptedly serving in the units of the Workers' and Peasants' Red Army, and who are in the cadres either as privates or junior commanders, serving for a definite period, are sentenced in peace time, instead of to imprisonment without forfeiture of rights for two months to one year, to serve for a like period in the military-corrective units of the Workers' and Peasants' Red Army, and instead of imprisonment for a period up to two months, to arrest for a like period, served in a manner prescribed for the disciplinary arrest of persons in military service.

In exceptional cases, by special decree of the court in each individual case, the same measures may be applied to the above-mentioned persons also for common crimes.

Persons in military service of the middle, senior, highest and junior commanding personnel of the Workers' and Peasants' Red Army, who remain in the cadres after serving the required period in the army, and who have been sentenced to imprisonment without forfeiture of rights for a period up to one year, in case of dismissal from the ranks of the Workers' and Peasants' Red Army, serve their term indicated in the sentences by doing compulsory labor according to the general rules. November 30, 1930.[12]

NOTE 2: When the Workers' and Peasants' Red Army passes to the state of war, persons in the military service who are in military-corrective units are dispatched to the active army, and the subsequent serving of the measure of social protection imposed on them is postponed until after the termination of military operations.

A sentence condemning a soldier in time of war to imprisonment without forfeiture of rights may, by decree of the court which passed that sentence, be postponed until after the termination of military operations, on condition that the convicted person joins the active army.

[11] Collection of Acts, 1930, No. 26, Article 344.
[12] Collection of Acts, 1930, No. 61, Article 749.

With regard to persons in military service mentioned in the first and second parts of the above note, who while in the ranks of active army have proved themselves staunch defenders of the USSR, the court which passed the sentence may, on the petition of the competent military authorities, release the convicted person from the measure of social protection formerly imposed on him, or substitute for it a more lenient measure of social protection. October 1, 1928.[13] November 30, 1930.[14]

29. The period of preliminary detention, and also the time spent in confinement from the moment the sentence was passed pending its coming into force must obligatorily be reckoned as part of the period of detention decreed by the court.

In case the court applies a measure of social protection of a judicial-corrective kind other than imprisonment, it has the right to take into consideration the period of detention previous to the trial and accordingly mitigate the measure of social protection chosen by it, or to resolve not to apply to the defendant the measure of social protection set out in the sentence.

With regard to persons sentenced to compulsory labor each day of preliminary detention is credited as three days of compulsory labor.

30. Compulsory labor without imprisonment may be imposed for a period ranging from one day to one year.

Note: Compulsory labor without imprisonment is not applied to the middle, senior, highest and junior commanders of the Workers' and Peasants' Red Army, who are in the cadres and have completed their term of service, and also to persons in military service who belong to the cadres of privates and junior commanders of the Workers' and Peasants' Red Army during their appointed period of service. In place of compulsory labor the above-mentioned persons in military service are sentenced to arrest for a period not exceeding two months, which is served in a manner prescribed for persons in military service under disciplinary arrest. November 30, 1930.[15]

[13] Collection of Acts, 1928, No. 127, Article 816.
[14] Collection of Acts, 1930, No. 61, Article 749.
[15] Collection of Acts, 1930, No. 61, Article 749.

31. Forfeiture of political and separate civil rights consists of the deprivation of:

(a) elective franchise both active and passive

(b) the right to occupy elective posts in public organizations

(c) the right to occupy certain specified state offices

(d) the right to the titles of distinction

(e) parental rights

(f) right to pensions paid by way of social insurance and to unemployment relief paid by way of social insurance.

Forfeiture of rights may be prescribed both fully—so as to cover all the above-mentioned rights—and partially, in respect of their separate categories.

Forfeiture of parental rights may be prescribed by the court, only if it has been proven that this right has been abused by the convicted person.

Forfeiture of pension may be prescribed by the courts only in the following cases:

(a) conviction for the commission of state crimes (part I of the Special Section)

(b) conviction for the commission of crimes prompted by greed to imprisonment or to exile with a compulsory residence in other localities (as the basic measure of social protection)

(c) the prescription of the confiscation of the entire property as supplementary measure of social protection

(d) conviction in time of peace for military crimes, falling under articles of 193(3), 193(4), 193(7), 193(9), 193(12), 193(13), 193(17), 193(20)-193(28), of the present Code, and in time of war, for any of the crimes falling under Chapter IX of the Criminal Code (on crimes by persons in military service). June 30, 1930.[16] November 20, 1930.[17]

32. Forfeiture of rights cannot be prescribed for a period exceeding five years.

In case this measure of social protection is prescribed as one supplementary to imprisonment, forfeiture of rights ex-

[16] Collection of Acts, 1930, No. 30, Article 388.
[17] Collection of Acts, 1930, No. 62, Article 763.

tends to the entire period of imprisonment served plus a period determined by the sentence.

33. Forfeiture of rights, foreseen by paragraphs a-c of Article 31 is accompanied by the forfeiture of the orders of the USSR, and of the orders of the RSFSR. In such cases the court is obliged, after the sentence comes into force, to present a petition to that effect to the Presidium of the Central Executive Committee of the USSR or of the All-Russian Central Executive Committee, as the case may be.

Forfeiture of the other marks of distinction and of distinctive titles, is effected by sentence of the court. August 20, 1930.[18]

34. Forfeiture of rights may be decreed by the court both as a supplementary and as an independent measure of social protection.

When imposing a sentence of over one year's imprisonment, the court is obliged to discuss the question of the forfeiture of the convicted person's rights.

Forfeiture of rights cannot be combined with conditional conviction or with public censure. December 6, 1929.[19]

35. Removal from the territory of the RSFSR or from the territory of a specified locality with compulsory settlement or with prohibition to reside in other localities or without these limitations, coupled with compulsory labor or without compulsory labor, may be applied by the court with regard to those convicted persons, who, in the opinion of the court, it would be socially dangerous to leave in the given locality.

The removal from the territory of the RSFSR or from the boundaries of a separate locality with an obligatory residence in other localities is prescribed for a period of three to ten years. This measure, as a supplementary one, can only be prescribed for a period not exceeding five years. The removal from the territory of the RSFSR, or from the territory of a specified locality with compulsory residence in other localities, coupled with compulsory labor, may only be prescribed as a basic measure of social protection. Re-

[18] Collection of Acts, 1930, No. 42, Article 504.
[19] Collection of Acts, 1929, No. 87-88, Article 854.

moval from the territory of the RSFSR, or from the territory of a specified locality with prohibition to reside in certain localities, or without this restrictive provision is prescribed for a period of one to five years.

In case one of these measures is decreed by the court as a supplementary one to imprisonment, the period of this supplementary measure begins to run from the date of the release of the prisoner.

Persons sentenced to the removal from the territory of a specified locality with compulsory settlement in some other locality in order to serve their terms of imprisonment in corrective labor camps, after serving their term of imprisonment, settle in the district of the camp pending the period when they will be allowed a free choice of their residence. Land must be allotted to them, or else they must be provided with paid work.

Removal from the RSFSR territory, as well as removal from any specified locality whatever form it takes, cannot be applied to persons under sixteen. May 20, 1930.[20]

36. Removal from the confines of the USSR or RSFSR for a definite period of time may take place only in a manner specially provided by federal legislation. Removal from the confines of a specified locality with compulsory settlement in other localities may be applied by the court only in cases of conviction for crimes specified by Articles 58(2)-58(14), 59(2), Part I, a, 59(3), 59(302), 59(3-b), 59(7), 59(8), Part I, 59(9), 59(21), 61 Part III, 73(1), 74 Part II, 104, 107, 116 Part II, 117 Part II, 118, 129, 129-a, 136, 140 Part II, 142 Part II, 153 Part II, 155, 162, b, c, d, and e, 164 Part II, 165 Part III, 166, 167, 169, Part II, 173 and 175 Parts II and III.

Places in which compulsory settlement may be prescribed are determined as follows: With regard to persons condemned to exile without compulsory labor by the chief administration of militia at the Council of People's Commissars of the RSFSR, by agreement with the People's Commissariat of Justice of the RSFSR; and with regard to persons condemned to exile with compulsory labor, by the

[20] Collection of Acts, 1930, No. 26, Article 344.

People's Commissariat of Justice of the RSFSR. February 15, 1931.[21] May 30, 1931.[22]

37. Removal from office may be applied in case the court deems it impossible to leave the condemned person at the post he occupied at the time of his conviction, or at the time he committed the crime. It may be accompanied by a prohibition to occupy a certain post, such prohibition not to last over five years.

38. Prohibition to follow a certain activity or industry is applied by the court for a period not to exceed five years in cases where the court shall consider it impossible, owing to the ascertained abuses by the person convicted while he was engaged in his profession or industry, to allow him to continue same further.

In particular, the court has the right to prohibit the person convicted to undertake any responsibilities with regard to furnishing labor and material to State institutions, to enter into contracts with State and public enterprises and institutions, to manage trade or commission enterprises either in his own name or on behalf of other persons.

39. Public censure consists of the public expression of condemnation to the person condemned declared in the name of the court.

40. Confiscation of property is the compulsory and uncompensated alienation in favor of the State of the whole property of a convicted person, or of a proportion thereof exactly defined by the court, such property being either entirely owned by him, or constituting a share in common property.

Articles of domestic use and indispensable to the condemned person and his family, the stock and tools required for small-scale peasant industry or agricultural production, and serving as a means of existence for him and his family, are not subject to confiscation.

Foodstuffs and sums of money left at the disposal of the convicted person and members of his family, may not, according to valuation in their totality, be less than the aver-

[21] Collection of Acts, 1931, No. 9, Article 102.
[22] Collection of Acts, 1931, No. 27, Article 247.

age three-months' wages of a worker or that locality in respect to each member of the family.

The stock of tools indispensable to a convicted person for his professional work may be confiscated only in case the court decrees that he shall be deprived of the right of exercising such profession.

NOTE: In kulak households only the property mentioned in Articles 1-9 of the List of Kinds of Property on which execution may not be levied in respect of arrears of taxes, custom duties, and dues, is not liable to confiscation.[23] November 20, 1930.[24]

41. When property is confiscated, the State shall not answer for the debts and liabilities of the convicted person, if such had been contracted after the taking of steps by the investigation or judicial organs to protect the property, and without the consent of these organs.

In regard to claims subject to gratification out of the confiscated property, the State answers only within the limits of the assets, while in regard to priority of gratification of claims the rules shall be observed that are laid down in Articles 99 and 101 of the Civil Code and 266 of the Code of Civil Procedure of RSFSR published April 10, 1930.

42. A fine is a money penalty imposed by the court within the limits established by separate articles of the present Code, and when applied as an additional measure, the fine shall be imposed at the discretion of the court.

In all cases a fine shall be imposed in conformity to the property status of the convicted.

In determining the fine, the court may decide to substitute, in the event of non-payment, by compulsory work without deprivation of liberty at the rate of one month compulsory labor for 100 rubles fine. No substitution of deprivation of liberty for a fine or vice versa shall be allowed.

Articles of property that are not subject to confiscation may not be taken in payment of a fine.

43. The caution is applied by the court only when a verdict of acquittal is given, if the court considers that the behavior of the acquitted gives ground, nevertheless, to fear that he might commit the crime in the future.

[23] Collection of Acts, 1929, Nos. 89-90, Article 924.
[24] Collection of Acts, 1930, No. 62, Article 763.

44. The obligation to repair the damage is imposed upon the convicted in those cases when the court finds it expedient that the convicted shall eliminate the consequences of the violation of the law committed by him, or of the damage caused by him to the plaintiff.

This measure of social defense, however, may not exceed by its severity the measure of social defense given as the basic penalty in the verdict.

Section V

ON MEASURES OF SOCIAL DEFENSE OF JUDICO-CORRECTIONAL CHARACTER AND THEIR IMPOSITION BY COURT

45. In imposing a measure of social protection of judico-correctional character the court shall be guided by:

(a) the provisions of the general section of the present code

(b) the limits indicated in the article of the Special Section which provides a penalty for a given kind of crime

(c) the Socialist conception of law, taking into consideration the social danger of the crime committed, the circumstances of the case, and the personality of the defendant.

46. The crimes foreseen by the present code are divided into:

(a) Crimes directed against the foundations of the Soviet system established by the authority of Workers and Peasants in the USSR, such crimes being consequently considered the more dangerous, and

(b) All other crimes.

For crimes of the first category the Code lays down the limit below which the court may not go in imposing a measure of social defense of judico-correctional character.

On all other crimes the Code lays down only the maximum limit of penalty to be imposed by the court.

47. The basic question to be settled in each separate case is the question of the social danger of the crime that has been tried.

An aggravating factor in this respect, when determining one or the other measure of social protection foreseen by the Code, is:

(a) Committing a crime in order to restore the rule of the bourgeoisie.

(b) Possibility of causing harm to the interests of the State, of the toilers by committing the crime, although the crime itself was not immediately directed against the interests of the State or of the toilers.

(c) Committing of a crime by a group or a band.

(d) Committing a crime by a person who already committed a crime before, except in cases when a given person is considered as not having been tried before, or when a long time, in a judicial sense, has passed since the committing of the first crime, or since the conviction of it.[25] The court, however, depending on the character of the first crime, may not consider it as an aggravating factor.

(e) Committing a crime for selfish or base motives.

(f) Committing a crime with particular cruelty, violence, slyness, or in regard to persons subordinated to the criminal or materially dependent on him, or particularly helpless on account of age, or other circumstances.

48. Extenuating circumstances in the imposition of one or another measure of social defense or when a crime has been committed:

(a) Although exceeding the limits of self-defense, yet for the protection of Soviet law, revolutionary law, or the personality and right of the party defending himself or another person

(b) For the first time

(c) For motives other than selfishness or base desires

(d) Under the influence of threats, compulsion, or official or material dependence

(e) Under the influence of strong mental agitation

(f) In a state of hunger or distress, or under the influence of severe personal or family conditions

(g) Due to ignorance, lack of consciousness, or an accidental chain of circumstances

[25] Articles 14 and 15.

(h) By a person under age, or by a woman in a state of pregnancy

49. If the crime committed by the defendant contains the symptoms of several crimes, as well as in the case of the defendant having committed several crimes for which he has not been sentenced, the court, having defined the measure of social defense for each crime separately, finally imposes the penalty according to the article which provides for the gravest of the crimes committed by the defendant and the severest measure of social defense.

50. If a minor (16-20 years of age) is sentenced to deprivation of liberty or compulsory labor, the term must be reduced by one-third as compared with the term of an adult sentenced under the same article. At all events the term of the sentence of a minor shall not exceed one-half the maximum laid down by the present Code for a given crime.

51. In the event when, in view of exceptional circumstances of the case, the court finds it necessary to impose a measure of social defense below the lowest limit indicated in a corresponding article of the present Code, or to apply another, less stringent measure of social defense that is not indicated in the article, the court may also depart from the article, but the motives of such departure from the code must be clearly stated in the verdict.

The same rule applies in those cases when the court finds that the defendant at the time of the trial is not socially dangerous and no measure of social defense is imposed on him by the court.

52. The right of either complete or partial release of the condemned person from the application of measures of social defense, under sentences of all judicial organs of RSFSR, except cases foreseen in the present Code, constitutes the exclusive prerogative of the presidium of the All-Russian Central Executive Committee.

Section VI

ON CONDITIONAL SENTENCES AND CONDITIONAL AND EARLY RELEASE

53. If the court finds that the degree of social danger of the defendant does not call either for his isolation, or for the imposition of compulsory labor, it may impose a conditional sentence.

In such cases the court decides not to execute the verdict if within a stated period the convicted person will not commit a fresh crime of equal gravity. This period may not be less than one year and not more than ten years.

Note: If a fine or property requisition is added to deprivation of liberty or compulsory labor, the fine is imposed irrespective of the conditional nature of the basic verdict.

54. In the event of the committing of a crime by the conditionally condemned during the probation period the court has the right either to add the conditioned measure of social defense either fully or in part to the measure of social defense given by the second verdict. In the first case, the total term of deprivation of liberty must not exceed ten years, and the total term of compulsory labor must not exceed one year.

55. The following persons shall be held free from previous convictions:

(a) Persons acquitted by the court

(b) Persons conditionally sentenced, who did not commit a crime of equal gravity during the probation period given by the court

(c) Persons sentenced to deprivation of liberty for terms of not more than three months, or to any other minor measure of social defense, who in the course of three years after serving the first sentence, did not commit a fresh crime, or persons sentenced to deprivation of liberty for a period of more than six months if they committed no fresh crime of equal gravity in the course of six years.

56. If persons sentenced to terms of social defense show reformation, they may be released before the end of the term imposed by the verdict of the court.

Conditional early release consists either in abstaining from further serving of the sentence, or in substituting a milder form of social defense. The manner of application of conditional early release is laid down by the Correctional Labor Code of RSFSR.

In regard to persons serving sentences in correctional labor camps, conditional early release is applied in the form of transferring the convict to free settlement in the district of the given camp for the rest of his sentence.

If the conditionally-released person should commit a fresh crime of equal gravity during the unexpired time of his sentence, the latter is added to the measure of social defense imposed by the court for the new crime, while the total term of deprivation of liberty may not exceed ten years and the total term of compulsory labor may not exceed one year.

57. Persons under age, sentenced to deprivation of liberty and placed in industrial homes for minors, remain there until fully corrected, but not later than reaching the age of 18. If, by the time of reaching this age, the sentence has not yet expired, they may be given early discharge.

Minors, in regard to whom early discharge should be deemed impossible, shall either remain in the same industrial home, or shall be transferred to other industrial homes or colonies on the grounds laid down by the correctional labor code of RSFSR.

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