

PRINCIPLES OF SOVIET CRIMINAL LAW*

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I

SOVIET criminal law reflects the reconciliation which Soviet Russia has effected in the last ten years between Revolutionary social-economic values and orthodox legal principles. Both in criminal legal theory¹ and in substantive criminal law² an answer has been found to the challenge uttered by Stalin in 1936:³ "We need stability of laws now more than ever." In the drive for stability, new meaning has been given both to the Revolution and to Law—and this has found expression in doctrines of crime and punishment.

Prior to 1936 Soviet jurisprudence was committed to the theory that all law originated with the market-place and the exchange of commodities, and that with the gradual disappearance under Socialism (the first phase of Communism) of an economy centered around money and trade, law would begin to "wither away."⁴ Criminal law, which had developed its basic characteristics of retribution and compensation from commodity exchange and the principle of equivalence, would

* Practically nothing has hitherto been published in English on the substantive criminal law of Soviet Russia, though articles have appeared on Soviet criminal procedure, the political trials, treatment of criminals, and criminal theory. The present article deals primarily with substantive doctrines of crime and punishment, and is based largely on two volumes published in Moscow in 1943, as an official textbook, by the All-Union Institute of Juridical Science—CRIMINAL LAW, GENERAL PART and CRIMINAL LAW, SPECIAL PART (both in Russian).

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1. See Hazard, *Reforming Soviet Criminal Law*, 29 J. CRIM. L. & CRIMINOLOGY 157 (1938); SCHLESINGER, SOVIET LEGAL THEORY 236 *et seq.* (1945).

2. Worthwhile collateral readings, though not directed primarily to substantive criminal law, are: ZELITCH, SOVIET ADMINISTRATION OF CRIMINAL LAW (1931), which gives an introduction to the system of courts and trials prior to the Judicature Act of 1938, described in Kent, *The Court System in the Soviet Union*, 2 COMPARATIVE LAW SERIES 130 (U. S. Dep't Commerce 1939); Hazard, *Soviet Criminal Procedure*, 15 TULANE L. REV. 220 (1941).

3. STALIN, REPORT ON THE DRAFT CONSTITUTION, delivered at the Eighth Extraordinary Conference of the V.K.P.(b) 39 (1936) (in Russian).

4. See PASHUKANIS, GENERAL THEORY OF LAW AND MARXISM 104 (3d ed. 1927) (in Russian), where the doctrine of "the withering away of the law in general, that is, the gradual disappearance of the juridical element from human relations" is expounded. "The withering away of the categories of bourgeois law (exactly the categories, and not this or that particular rule) can under no circumstances mean their replacement by some new categories of proletarian law." *Id.* at 22. Pashukanis was the Director of the Soviet Institute of Law of the Academy of Science, and editor of the leading journal SOVIET STATE AND LAW, prior to the renunciation of his doctrines in 1936 and 1937. For the source of the doctrine of the withering away of law under Communism, see ENGELS, ANTI-DUEHRING 308 (Eng. ed. 1934). Cf. LENIN, STATE AND REVOLUTION (2d ed. 1918).

yield to administrative disposition of those few delinquents who challenged the harmony of a classless society.⁶

In anticipation of these apocalyptic events, the juridical categories of crime, punishment, and guilt were replaced in early Soviet criminal legislation by sociological categories. The phrases "socially dangerous act" and "measure of social defense" were substituted for the words "crime" and "punishment."⁶ Fault was declared to be a bourgeois criterion: "measures of social defense" should be meted out in accordance with the best interests of the "Workers'-and-Peasants' State," as determined by the "revolutionary legal conscience" of the judges.⁷ The doctrine of *nullum crimen, nulla poena sine lege* was assailed, and in its stead the principle of analogy was introduced: if an act or omission was considered socially dangerous, although no specific statute prohibited it, the judge could apply a statute prohibiting an analogous act or omission.⁸

Some of this philosophy of criminal law seems to have stemmed from the sociological school of jurisprudence of the 19th and early 20th century.⁹ A good deal, however, was simply the product of the revolutionary emergency. In the period of War Communism (1917-1920), criminal law was almost entirely in the hands of semi-judicial and non-judicial bodies.¹⁰ The "Red Terror"¹¹ was an explicit part of the

5. The emphasis—in theory, at least—was almost entirely on the rehabilitation of the socially dangerous person through corrective institutions. By 1930 it was expected by high officials of the People's Commissariat of Justice that criminal prosecutions would cease altogether within six or seven years at the most. See Pritt, *The Russian Legal System*, in TWELVE STUDIES ON SOVIET RUSSIA (Cole ed. 1933).

6. See CRIMINAL CODE, RUSSIAN SOVIET FEDERATED SOCIALIST REPUBLIC, Art. 1: "The criminal legislation of the R.S.F.S.R. has as its aim the protection of the Socialist State of the Workers and Peasants, and the legal order established therein, from socially dangerous acts (crimes) by means of application to persons who have committed them of the measures of social defense indicated in the present Code."

7. The Law of Nov. 30, 1918 "On the People's Courts" (COLL. LAWS, R.S.F.S.R., 1918, No. 85, Art. 889), Art. 22, required the People's Judges to decide all questions on the basis of written Soviet laws, and, in case such written law did not cover a question, on the basis of "revolutionary legal conscience".

8. See note 37 *infra*.

9. The claim that Soviet jurists were greatly influenced by Enrico Ferri, the leader of the sociological school—a claim made by Ferri himself—was vigorously denied by the Russians. See PIONTKOVSKY, MARXISM AND CRIMINAL LAW 111 *et seq.* (1929) (in Russian).

10. With the abolition of all hitherto existing courts by the First Decree on Courts, Nov. 24, 1917 (COLL. LAWS, 1917, No. 4, Art. 50), a double system of local courts and revolutionary tribunals was established. But central and local organizations sprang up to assume the functions of the local courts. KRYLENKO, THE JUDICIARY OF THE R.S.F.S.R. 322 (1923) (in Russian). These organizations were gradually absorbed by central and local Chekas (Extraordinary Commissions for the Struggle Against Counter-Revolutionary Sabotage). Thus, despite the provision for local courts in the First Decree on Courts, in fact from 1917 to 1922 the law was administered by the revolutionary tribunals which were

official policy of combatting counter-revolution from within and intervention from without. Even with the establishment of a judicial system of criminal law administration in 1923,¹² it was made clear that, as Lenin wrote,¹³ "the courts should not do away with terror—to promise that would be to deceive ourselves and others—but should give it foundation and legality, clearly, honestly, without embellishments." But Soviet jurists who were called upon to interpret the wide use of analogy, the subordination of culpability to political interest, and the replacement of the supremacy of law by revolutionary legal conscience, saw in them not merely a response to a perilous emergency situation, but also a prelude to the complete disappearance of criminal law from the Soviet social order.

With the announcement in 1936 that Socialism had been achieved,¹⁴ law, far from withering away, underwent a restoration on a large scale.¹⁵ In criminal law particularly, "commodity exchange" theories have been renounced. Not equivalency of injury for injury, but rather "the self-defense of society against all violations of the conditions of its existence,"¹⁶ is now thought to have been the basis for early forms of retribution and composition. Criminal law is thus not simply a bour-

established by the same Decree (and by the Chekas, in so far as the Chekas may be said to have administered law). The revolutionary tribunals were set up to try cases dealing with such crimes as organized insurrections, sabotage against the government, and wilful destruction of necessities. They were supposed to be open, public courts, with both prosecution and defense participating in the trial. See ZELITCH, *SOVIET ADMINISTRATION OF CRIMINAL LAW* 35 *et seq.* (1931). But especially after the assassination of Uritsky and the attempt on Lenin's life (August 30, 1918), they abandoned formalities. Krylenko, prosecutor in the outstanding cases and later Commissar of Justice, said subsequently: "In the jurisdiction of the tribunals a complete liberty of repression was advocated, while shooting was a matter of everyday practice and the value of a tribunal or its president was judged by the extent to which they justified their designation as an instrument of repression." KRYLENKO, *op. cit. supra* note 10, at 209.

11. Resolution of Council of People's Commissars of Sept. 5, 1918 (COLL. LAWS, R.S.F.S.R., 1917-1918, No. 710), "On the Red Terror," announcing in broad terms the necessity of confining or shooting the enemies of the revolutionary regime. See also the editorial entitled "Red Terrorism" in *Izvestia*, Sept. 5, 1918.

12. The first CRIMINAL CODE and CODE OF CRIMINAL PROCEDURE OF THE R.S.F.S.R. were written in 1922 and went into effect Jan. 1, 1923.

13. Letter to Kurskii, People's Commissar of Justice, regarding the drafting of the Criminal Code of 1922. 27 LENIN, *COLLECTED WORKS* 296 (3d ed. 1932) (in Russian); *cf.* KRYLENKO, *LENIN ON COURTS* 111 (1927) (in Russian).

14. "The complete victory of the Socialist system in all spheres of the national economy is now a fact." STALIN, *REPORT ON THE DRAFT CONSTITUTION* (1936) (in Russian).

15. See Berman, *Soviet Family Law in the Light of Russian History and Marxist Theory* 56 *YALE L. J.* 26, 37-8 (1946).

16. This is Marx's definition of criminal sanctions in general. See Krylenko, *Morc on the Criticism of the Recent Past*, 16 *SOVIET JUSTICE* 6 (1937) (in Russian). (It is here that Krylenko makes his repudiation of Pashukanis, though it availed him nothing, since he was subsequently declared an enemy of the people.)

geois institution but has existed in all societies, and will continue to exist under Socialism. Furthermore, failure to see positive value in the juridical approach to crime, punishment, and guilt,¹⁷ and lack of interest in correct legal procedure and the rights of the defendant, are taken to indicate a desire to undermine Soviet Socialist law and justice.¹⁸

But the recognition of the necessity and value of juridical categories does not mean a return to "formal-logical conceptions" or a rejection of social and economic implications of law. On the contrary, the social-economic approach is considered as necessary as the juridical. They are two sides of the same medal. The science of criminal law, it is now said,¹⁹ is a social science, the function of which is to "develop juridical doctrines of the various institutes of criminal law in connection with their social-economic content and their historical conditioning."²⁰

II. THE CRIMINAL STATUTES ²¹

Legislation is considered the sole source of Soviet criminal law.²²

17. The traditional legal vocabulary has been restored. The 1943 textbook on Criminal Law begins with the following definition, in italics: "Soviet Socialist Criminal Law is the combination of norms promulgated by the Socialist state defining what actions are crimes and what punishments may be applied for their commission." ALL-UNION INSTITUTE OF JURIDICAL SCIENCE, CRIMINAL LAW, GENERAL PART 3 (1943) (in Russian).

18. See VYSHINSKY, THE SOVIET COURT AND THE SOCIALIST ADMINISTRATION OF JUSTICE 4 (1938) (in Russian).

19. ALL-UNION INSTITUTE *etc.*, *op. cit. supra* note 17, at 7.

20. The new attitude toward law is closely connected with a new approach to history, and especially to the Russian past. The heroes of Russian history have been restored, and great events such as the introduction of Christianity in the 10th century and the achievements of Ivan the Terrible and Peter the Great are seen as forward steps in the evolution of the Russian people. See LASERSON, RUSSIA AND THE WESTERN WORLD c. 5 (1945); *cf.* Aleksandrov, *On Certain Tasks of the Social Sciences in Contemporary Conditions*, 14 *BOLSHEVIK* 12 (1945) (in Russian). At the same time the history of the U.S.S.R. is treated as the history of all the Soviet peoples and not simply of the Russians. See YUSHKOV, HISTORY OF STATE AND LAW IN THE U.S.S.R. (1940) (in Russian). The new historiography is reflected in the study of the history of criminal law in Soviet law schools. On the one hand, the general Marxist periodization and interpretation is retained so far as criminal law outside the U.S.S.R. is concerned; but the history of criminal law of the peoples of the U.S.S.R. is treated separately, with the Russian history presented alongside that of the other nationalities. Also, the development since the Revolution is divided into two main periods: the period of the struggle to overthrow and keep down the exploiting classes within, and the period of internal stability in the face of danger from without. It is at the beginning of the second period, in which the earlier negative jurisprudence was overthrown, that Soviet criminal law is shown to have made its greatest forward strides. ALL-UNION INSTITUTE OF JURIDICAL SCIENCE, CRIMINAL LAW, GENERAL PART 10-74, esp. at 53 (1943) (in Russian).

21. There are two words for law in Russian—*pravo* and *zakon*. *Pravo* means Law with a capital "L", Law in the large sense, connoting Right, Justice (*cf.* the Latin *jus*, the German *Recht*, the French *droit*); *zakon* means a law (*lex*, *Gesetz*, *loi*), a particular piece of legislation. I have translated *zakon* here as "statute".

22. ALL-UNION INSTITUTE *etc.*, *op. cit. supra* note 20, at 75 *et seq.*

Under the Constitution,²³ the courts, in determining the criminality of an act and in selecting punishment, are subject only to law (*i.e.*, legislated law). But while statutes are the final authority, their correct interpretation may often depend upon the rules of "Socialist common life." Thus, for example, in cases involving criminal libel, courts must determine what words or actions are defamatory or insulting according to these unwritten but generally accepted rules.²⁴

Relationship between criminal legislation of the U.S.S.R. and that of the Union Republics. Federal and republican criminal legislation form in principle a single body of laws. However, the 1924 constitution of the U.S.S.R.,²⁵ while authorizing the federal government "to establish the foundations of the civil and criminal legislation of the Union,"²⁶

23. CONSTITUTION OF THE U.S.S.R. ART. 112.

24. Note 22 *supra*. "Revolutionary legal consciousness" and "Revolutionary legality" are not mentioned here as a source of Soviet Criminal Law. This is a striking omission, though the word "revolutionary" in these phrases was reduced in the thirties to a term of art synonymous with "Socialist", which in turn merely described whatever was characteristic of the Soviet Union. In short, "Revolutionary legality" no longer implied flexibility, but rather stability—"the correct application of the law in the sense intended by the revolutionary state and . . . by the revolutionary legislator." See SCHLESINGER, *SOVIET LEGAL THEORY* 201 (1945).

25. CONSTITUTION OF THE U.S.S.R., 1924 ART. 1(o).

26. Present all-union criminal legislation of a general and normative character consists of the following legislative acts:

1) Fundamental Principles of the Criminal Legislation of the U.S.S.R. and Constituent Republics (COLL. LAWS, U.S.S.R., 1924, No. 24). The "Fundamental Principles" defines the boundaries of criminal legislation and contains criminal law norms referring to the General Part of the criminal codes of the various republics.

2) Regulations on State Crime, adopted by the Central Executive Committee of the U.S.S.R. on Feb. 25, 1927 and incorporated into the criminal codes of the constituent republics.

3) The Law of August 7, 1932 "On the Protection of the Property of State Enterprises, Collective Farms and Cooperatives, and the Strengthening of Public (Socialist) Ownership." This law has not been included in the criminal codes of the constituent republics, but prevails and is applied as an independent act in the whole territory of the U.S.S.R.

4) Regulation on Military Crimes, first edition 1924, second edition 1927. This is included in the criminal codes of the constituent republics as separate chapters.

Separate legislative acts of a criminal law character have been issued under Art. 3 of the "Fundamental Principles", giving the Presidium of the Central Executive Committee of the U.S.S.R. the right in necessary instances to instruct the constituent republics as to various forms and kinds of crimes, regarding which the federal government considers it necessary to introduce a single definite judicial policy. These have generally gone into the criminal codes of the constituent republics. An example of this type is the criminal law articles of the Law of June 27, 1936 "On the Prohibition of Abortions".

Certain criminal statutes of the U.S.S.R. and of constituent republics have been enacted in accordance with international conventions into which the U.S.S.R. has entered. Thus Articles 176 and 184 of the R.S.F.S.R. Criminal Code stem from the Brussels Convention of Sept. 10, 1910 on conflict of laws and on refusing aid and rescue at sea; Art. 80 of the R.S.F.S.R. Criminal Code is based on the Paris Convention of March 14, 1884, on

nevertheless left to the union republics the promulgation of civil and criminal codes.²⁷ The 1936 constitution,²⁸ however, provided for greater uniformity. The federal government was authorized both to legislate on the judicial system and to promulgate civil and criminal codes. Since adoption of this constitution, an all-union "Law on the Structure of the Judiciary"²⁹ has been passed, and several all-union draft codes have been prepared, though none has yet been adopted.

The criminal codes of the various republics are each divided into a General and a Special Part. The General Part sets forth general principles and norms regarding crime, culpability, attempt, complicity, exemption from liability, forms of punishment, and so forth. The Special Part consists of "dispositions" and "sanctions." A disposition contains the definition of a particular crime; a sanction prescribes the punishment for that crime.

In general, the law applied to a crime is that in force at the moment

the protection of undersea telegraph cables. These conventions were recognized as having force in the U.S.S.R. by an Act of Feb. 2, 1926. Articles 94 and 183 of the R.S.F.S.R. Criminal Code (on the illegal use of the Red Cross and Red Crescent symbols), and 193(30) and 193(31) stem from the Geneva Convention of July 6, 1906 and the Hague Convention of Oct. 18, 1907 on the improvement of the lot of the wounded and sick in time of war. These conventions were recognized as having force in the U.S.S.R. by an Act of June 16, 1925. The Law of Oct. 17, 1935 on liability for the preparation and possession of pornographic objects and the trade in them (CRIMINAL CODE, R.S.F.S.R. ART. 182-1) was issued in accordance with an international convention of May 4, 1910.

Articles of international treaties which assign criminal responsibility for certain acts are not, of course, criminal statutes, but they possess in certain instances substantial significance for the correct understanding and interpretation of criminal statutes issued in accordance with international treaties. Thus, for example, for the understanding of Art. 182(1) prohibiting the spread of pornographic literature, the list of punishable acts given in the convention may have substantial significance. For the definition of the conception of foreign exchange, the counterfeit of which is punished under Art. 8 of the Regulation on State Crimes, it is necessary to refer to Art. 3 of the Geneva Convention of April 20, 1929 on the counterfeit of money (COLL. LAWS, U.S.S.R., 1932, II, No. 6).

27. The criminal legislation of the constituent republics consists of criminal codes and separate criminal statutes.

The R.S.F.S.R. Criminal Code of 1926, which went into effect on Jan. 1, 1927, is valid also for the territory of the Kazakh and Kirgiz constituent republics, which were, prior to the 1936 Constitution, autonomous republics within the R.S.F.S.R., and for the Karelo-Finnish Soviet Socialist Republic. Under the Edict of the Presidium of the Supreme Soviet of the U.S.S.R. of Nov. 6, 1940, the R.S.F.S.R. Criminal Code is temporarily, pending promulgation of an All-Union Criminal Code, valid for the Lithuanian, Latvian and Estonian Constituent Republics.

The Criminal Code of the Russian Republic, which is by far the largest republic (comprising 92.8 per cent of the area of the U.S.S.R. and some 68 per cent of the population as of Jan. 1, 1939), is the most important and has been in fact the basis for the codes of the other republics.

28. CONSTITUTION OF THE U.S.S.R. ART. 14(u).

29. Law of Aug. 16, 1938, JOURNAL OF THE SUPREME SOVIET, No. 11, Sept. 1938 (in Russian).

of the crime's commission. However, laws abolishing punishment for a given act, or mitigating it, do have retroactive force;³⁰ and "[I]n very rare instances, as an exception, Soviet legislation gives retroactive force to a criminal statute which establishes a more severe penalty for a criminal act. Such exceptions are specially indicated each time in the statute. Thus, retroactive force was given by the Law of Oct. 19, 1922 . . . which established more severe penalties for bribery of officials."³¹

Where a crime has been committed in one republic and the trial is in another, the law of the place of the crime is applied.³²

Interpretation and the doctrine of analogy. A statute may be officially interpreted on three different levels:³³ by legislative bodies, and ultimately by the Presidium of the Supreme Soviet of the U.S.S.R.;³⁴ by the courts in particular cases, and by the Plenum of the Supreme Court of the U.S.S.R. generally;³⁵ by law professors, law schools and institutes, and especially the All-Union Institute of Juridical Science of the Ministry of Justice of the U.S.S.R. While interpretations on the

30. CODE OF CRIMINAL PROCEDURE, R.S.F.S.R. ART. 2.

31. ALL-UNION INSTITUTE etc., *op. cit. supra* note 20, at 87.

32. FUNDAMENTAL PRINCIPLES etc., *op. cit. supra* note 26, Art. 1.

33. ALL-UNION INSTITUTE etc., *op. cit. supra* note 20, at 94 *et seq.*

34. The doctrine of "separation of powers" is not accepted. In practice there is a division of labor between legislative, judicial, and executive branches, but a great deal of not most legislation is enacted by the Central Executive Committee together with the Council of Ministers. Such legislation is termed subsidiary, consisting of Orders issued on the basis of prevailing statutes as enacted by the Supreme Soviet. See CONSTITUTION OF THE U.S.S.R., 1936 ARTS. 35, 59, 67, 81, 91. The Presidium of the Supreme Soviet of the U.S.S.R. consists of 42 members elected by the Supreme Soviet as the chief executive body. Besides the performance of its executive duties (e.g. appointment of diplomats, declaration of war), the Presidium has the exclusive privilege of interpreting laws and issuing edicts.

35. There is no doctrine of judicial precedent, in the Anglo-American sense of *stare decisis*. However, the decisions of the Supreme Court of the U.S.S.R., as the court of final jurisdiction, are a guide for all other courts, and the Plenum of the Supreme Court issues instructions containing interpretations of laws, and these are binding. There is a hierarchy of courts within each constituent republic, ascending from the People's Courts through Regional Courts to the Supreme Court of the republic; the Supreme Court of the U.S.S.R. is the only federal court, hearing appeals from the Supreme Courts of the republics and sitting as a court of original jurisdiction in a few very important cases.

The People's Courts are at the bottom of the Soviet hierarchy of courts. They have jurisdiction over crimes generally (though certain important criminal cases are reserved by statute for the higher courts) and over civil disputes between private parties, between collective farms, and disputes between holders of a concession or a foreign firm and governmental agencies involving up to 10,000 rubles. A People's Court consists of a People's Judge, formerly elected for one year, now elected for three years, and two People's Assessors, who correspond to our jurors in the method of their selection but who sit as judges on equal terms with the People's Judge. People's Judges are nominated by social, party and professional organizations and are elected by the people of the county (*raion*) over which the court has jurisdiction. VYSHINSKY, SOVIET PUBLIC LAW 453-460 (1938) (in Russian).

third level are not binding, they have considerable influence on the practical work both of the courts and of the Procuracy.³⁶

Criminal punishment for an act not expressly prohibited by statute, but analogous to an act so prohibited, is permitted under the criminal codes of all the union republics.³⁷ Although this doctrine of analogy is distinguished from amplification of a law by interpretation,³⁸ the limitations placed upon it in recent years³⁹ have been so severe as virtually to nullify this distinction. Thus analogy may not be used for the purpose of increasing the punishment for an act directly prohibited by a particular law.⁴⁰ Further, there must be a similarity both in kind and

36. The Procuracy supervises the observance of laws by the courts and by administrative institutions, and also exercises the functions of state prosecution in criminal cases. The Procurator of the U.S.S.R. is appointed by the Supreme Soviet for a term of seven years, and he appoints Procurators for the constituent republics, territories, and autonomous republics, who in turn appoint district, regional and city procurators. The Procurator may authorize the records of any case to be sent to the Supreme Court from any court at any stage of the proceedings for a review "by way of supervision", *i.e.*, without any motion by the parties.

37. See CRIMINAL CODE, R.S.F.S.R., ART. 16: "If a socially dangerous act is not directly provided for by the present code, the foundations and limits of liability for it shall be determined according to those articles of the code which provide for those crimes most similar to it in kind."

38. ALL-UNION INSTITUTE *etc.*, *op. cit. supra* note 20, at 99. *But see* notes 39-42 *infra*.

39. See Vyshinsky, *On the Situation on the Front of Legal Theory*, 5 SOCIALIST LEGALITY 31, 35 (1937) (in Russian): "Analogy does not free the court or prosecutor from the necessity of applying the statute. . . . On the contrary, the use of analogy is possible only on the basis of existing legislation, is applicable to the existing statutes, on the strict basis of the statute, and, further, of the statute indicated in the Criminal Code." It was proposed by some that analogy be abolished; *cf.* Tavgazov, *The Incompatibility of Analogy with the Constitution of the U.S.S.R. (On the Revision of the Draft Criminal Code of the U.S.S.R.)*, 23-4 SOVIET JUSTICE 7 (1938) (in Russian), where cases are cited of the abuse of Art. 16 by People's Courts, and the conclusion is drawn that "Stability of laws, of which Comrade Stalin spoke in his report on the draft constitution, acquires in this respect an important meaning. The legislators, in revising the final text of the Criminal Code of the U.S.S.R., should provide for all forms of crime. This is a possible and also a necessary task. Every member of society should know not only his duties . . . but also the measures of social influence which can be applied for any breach of the Socialist legal order. Analogy is especially incompatible with Art. 112 of the Constitution, which speaks of the independence of the court and its subjection only to law." Others proposed to limit the doctrine to acts directed against the Soviet system or the legal order which were covered by the Criminal Code but not directly. See *The Concept of Crime. Analogy*, 16 SOVIET JUSTICE 16 (1940) (in Russian). The courts began to accept this and other limitations. See notes 40-42 *infra*. However, during the war the doctrine of analogy was again expanded somewhat to meet emergency situations. See Shargrodskii, *Questions on the General Part of Criminal Law in Time of War*, in GRUDA JURIDICAL FACULTY, ACADEMIC NOTES, Book I 100 (1945) (in Russian).

40. ALL-UNION INSTITUTE, *etc.*, *op. cit. supra* note 20, at 97; *cf.* TRAININ, MENSHAGIN, VYSHINSKAIA, CRIMINAL CODE OF THE R.S.F.S.R., COMMENTARY 22 (1941) (in Russian). The following case is reported in 2 SOVIET JUSTICE 43-4 (1940) (in Russian): The accused, while serving a sentence in a labor camp, had committed "bandit assault"

in importance between the act committed and the act prohibited.⁴¹ And finally, the act committed must be one which is generally prohibited by law, although not specifically included in the Special Part of the criminal code.⁴²

III. THE DOCTRINE OF CRIME

A "socially dangerous act" is defined in the criminal codes of the various Soviet republics as any act directed against the Soviet system or infringing the legal order established by the workers and peasants in the period of transition to Communism.⁴³ Law students of the Soviet Union today, however, are taught that this definition gives only one

with a knife upon two men, seriously injuring one and killing the other. The Judicial Collegium for Criminal Cases of the Supreme Court of the R.S.F.S.R. rendered a verdict of guilty under Art. 137 of the Criminal Code, which prescribes deprivation of liberty for eight years in cases of intentional homicide. This decision was reversed by the Judicial Collegium for Criminal Cases of the Supreme Court of the U.S.S.R., which stated that the accused was a recidivist and a "declassed element", that his crime was committed in a government labor camp, that it was part of a brawl in which several others were involved,—and that therefore, by analogy, Art. 59(3) of the Criminal Code should be applied, under which the death sentence is prescribed for persons who organize or take part in armed bands which commit acts of violence and "banditry" against the administrative order. This decision was in turn reversed by the Plenum of the Supreme Court of the U.S.S.R., on the ground that the act committed was directly provided for in the Criminal Code under Art. 137, and that therefore the doctrine of analogy is not applicable.

41. The CRIMINAL CODE, R.S.F.S.R., ART. 16 speaks only of similarity in kind. See note 37 *supra*. But the Fundamental Principles of 1924, note 26 *supra*, speaks of similarity "in kind and in importance." Text-writers and commentators now emphasize that similarity in both respects is required. ALL-UNION INSTITUTE *etc.*, *op. cit. supra* note 20, at 97; TRAININ, MENSHAGIN, *etc.*, *op. cit. supra* note 39, at 22-3.

42. The kind of case that is cited as a typical instance for the application of the doctrine of analogy is that of a theft performed in the market-place of a collective farm; there is no article in the Criminal Code directly providing for that form of theft, but Art. 162(c), provides for thefts committed in railroad stations, on wharves, on steamboats, in baggage-cars and hotels: since Art. 162(c), obviously deals with thefts committed in crowded places, it should be applied by analogy to a theft performed in the market place of a collective farm. TRAININ, MENSHAGIN, *etc.*, *op. cit. supra* note 39, at 22. For an interesting contrast, compare *McBoyle v. U. S.*, 283 U. S. 25 where the United States Supreme Court refused to apply the National Motor Vehicle Act to the theft of an airplane, although the Act declared that "the term 'motor vehicle' shall include an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle not designed for running on rails; . . ."

See also Avdeeva, *Definition of the Concept of Crime in Socialist Criminal Legislation*, 4 SOVIET STATE AND LAW 97 (1940) (in Russian), where evidence is collected from federal legislation to show that it is incorrect to omit similarity "in importance" as a criterion in the application of analogy, and also to omit that the act punished must fall within the rules of the General Part of the Criminal Code. Thus analogy becomes simply a method of interpreting the Special Part in the light of the General Part, though this is not explicitly stated.

43. CRIMINAL CODE, R.S.F.S.R., ART. 6. To this definition is added the note: "An act is not criminal which, although it formally falls under some article of the Special Part of

of the essential characteristics of crime—the social danger involved. Reference is made to other articles of the criminal code, as well as to other legislative sources, to show that not every socially dangerous act is a crime; that the element of fault (*vina*, fault, guilt) is required; and that the act must be one made punishable by law. All three elements—social danger, culpability (intentional or careless), and statutory sanction⁴⁴—are required. Thus a crime is now defined⁴⁵ as “a socially dangerous, culpable, punishable act or omission.”

In analyzing an act alleged to be criminal, Soviet jurists examine four aspects: the object of the act, the objective side of the act, the subject of the act, and the subjective side of the act.

The object of a crime. In order to determine correctly what specific crime has been committed, Soviet courts look first to the object against which the act was perpetrated, *i.e.*, the interests which were infringed. In the most general sense, every crime is an infringement of the existing social relationships and the requirements of law protecting those relationships. But social relationships in this broad sense are included among the objects of a few crimes only—*e.g.*, counter-revolutionary crimes. The majority of crimes have for their immediate object not social relationships as such, but more specific political, social, or personal interests.

The criminal law is divided according to groups of crimes united by their common objects. Thus the table of contents of the Special Part of the Criminal Code of the Russian Republic contains: “Crimes against the State,” “Crimes against the Administrative Order,” “Official Crimes” (*i.e.*, violations of official duties), “Breach of Regulations concerning the Separation of Church and State,” “Crimes against the Person,” and many others.⁴⁶ Within these general objects of in-

of the present Code, nevertheless, by force of clear insignificance and the absence of harmful consequences, is deprived of the character of social danger.”

44. The strict doctrine of *nulla crimen, nulla poena sine lege* was still not endorsed in 1943. It was treated, however, as having been, in its time, a step forward in the evolution of criminal law. ALL UNION INSTITUTE *etc.*, *op. cit. supra* note 20, at 103. More recently the tendency toward strict legality, in this connection, has received a striking endorsement from the prominent Soviet criminologist, Prof. A. N. Trainin, who, after dealing with causal connection and with fault as necessary elements in criminality, states: “Of course both these factors are well known also in bourgeois criminal law. But in the system of Socialist criminal law they acquire a new significance, a new political and legal quality: here the old formal principle of bourgeois democracy—*nullum crimen, nulla poena sine lege*—is fulfilled by the material principle of Socialist democracy—*nullum crimen, nulla poena sine lege, sine culpa, sine causa*.” Trainin, *System of the General Part of Criminal Law*, 5-6 SOVIET STATE AND LAW 8 (1946) (in Russian).

45. ALL-UNION INSTITUTE *etc.*, *op. cit. supra* note 20, at 101.

46. The complete table of contents of the Special Part of the Criminal Code, R.S.F.S.R., is as follows: Chapter I: State Crimes; Chapter II: Other crimes Against the Administrative Order; Chapter III: Official Crimes; Chapter IV: Breach of Regulations on the Separation of Church from State; Chapter V: Economic Crimes; Chapter

fringement there are immediate objects of infringement. Thus crimes against the person include infringements of life, health, personal freedom, dignity—and by defining these objects, one may classify the crime as, for example, homicide, bodily injury, rape or libel.

Crimes may, of course, involve a simultaneous infringement of more than one object. Thus hooliganism⁴⁷ is a crime against the administrative order as well as an infringement of the rights of the person.

The objective side of a crime. The objective side of a crime is the manner in which it was committed and the circumstances surrounding its commission. Thus the objective side of the crime of *krazha*, or secret taking, includes its secrecy; the objective side of the crime of *grabiozh*, or open taking, includes its open character. The presence or absence of violence in the commission of a crime is an element of the objective side of the crime; a theft is punished more severely if it is committed with violence, though the violence may not have involved any danger to the person against whom the theft was committed; and likewise a murder committed in a manner dangerous to the lives of many persons is a "qualified"⁴⁸—i.e., aggravated—crime. Certain acts are penalized more severely in time of war, or if committed in a public place: in such cases the time or place is an element of the objective side of the crime. Furthermore, the causal connection between the act and its results belongs in this category,⁴⁹ as do circumstances exempting

VI: Crimes Against the Life, Health, Liberty and Dignity of the Person; Chapter VII: Property Crimes; Chapter VIII: Breach of Regulations Protecting the Health of the People, Social Security and Order; Chapter IX: Military Crimes; Chapter X: Crimes Comprising Survival of Tribal Life. See Table of Contents of ALL-UNION INSTITUTE OF JURIDICAL SCIENCE, CRIMINAL LAW, SPECIAL PART (1943) (in Russian) where certain changes are introduced in the order of chapters, and a new section on Crimes in the sphere of Labor Relations added. The 1943 classification will probably prove closer to that of the new All-Union Criminal Code when it appears.

47. Hooliganism is defined, in effect, as public mischief. CRIMINAL CODE, R.S.F.S.R., Art. 74.

48. A "qualified" crime is one committed under aggravating circumstances and hence more severely penalized. A crime committed under mitigating circumstances is termed "less dangerous". A crime committed under ordinary circumstances is a "simple" crime. Formerly, less dangerous crimes were termed "privileged" crimes, but this term has been abandoned as implying a lenient attitude toward such crimes: a "less dangerous" crime is nevertheless a crime and is subject to punishment. ALL-UNION INSTITUTE etc., *op. cit.* *supra* note 20.

49. Soviet statutes do not define causal connection, and hence the question is decided by judicial practice. Since, under the materialist philosophy of Marx and Lenin, cause and result are only isolated factors in the general chain which links together all events of the external world, there must be a causal connection, however remote, between all things. Soviet judges make a distinction, however, between a "necessary" causal connection and an "accidental" one. Thus where there is an intervening independent act, the causal connection may be considered accidental. The juridical problem is complicated, however, by the necessity of determining also the question of foreseeability. The mere fact that an act is a *conditio sine qua non* of the result is thus not a sufficient test either of necessary causality or

the act from liability (e.g., necessary defense, extreme necessity).⁵⁰

The "social danger" involved in an act—formerly considered the sole test of its criminality—is now treated as one of the circumstances under which it was committed. Social danger has been described as the material element, and unlawfulness as the formal element, of the objec-

of liability. The case is cited of one who found another lying in a drunken stupor on the sidewalk, helped him up, and then departed; the drunk staggered into the street and was killed by an automobile. It was held by the Supreme Court of the U.S.S.R. that the causal connection between the act of helping the man up and the consequence of his death was "accidental". ALL-UNION INSTITUTE etc., *op. cit. supra* note 20, at 123.

50. It is the absence of social danger that is considered the criterion of justification. Thus, though an act may be criminal in a formal or external sense, it may not be considered criminal under circumstances of: a) necessary defense, b) extreme necessity, c) consent of the injured, d) practise of socially useful professional functions, e) fulfillment of an obligatory command, f) exercise of the actor's own rights, g) fulfillment of a law. To constitute *necessary defense* there must be an unlawful (though not necessarily criminal) attack. Further, the attack must be actually present (or, where there is a mistake of fact, actually supposed to be present). *Necessary defense* is inapplicable where the attack was not begun, or where it was over. The defense must be performed against the attacker (not against a third person); but it is permissible in the protection of the interests of others as well as of oneself. "With us there is no antagonism between the interests of the person and the interests of the collective. . . . Recognition of the possibility of necessary defense in the interests of the Socialist State has a substantial educational significance. . . . It strengthens the solidarity of the toilers in the struggle for the protection of the Socialist Revolution and influences the uprooting of the petty-bourgeois ideology." ALL-UNION INSTITUTE, etc., *op. cit. supra* note 20, at 165.

The defense must not exceed the limits of necessity. Although statutes give no indication of the lawful limits of defense, a rule has been developed judicially. This combines what is called the "bourgeois" rule, that the intensiveness of the attack, with the "Socialist" rule that there must be also a proportional relationship between the good protected and the good threatened. It is recognized that "the necessary means of defense are defined first of all by the intensiveness of the attack—where it is possible to protect against an attack by relatively light measures, it will be an excess of the limits of defense if heavy bodily injury is inflicted." *Id.* at 166. At the same time, to kill a boy who is trying to break into an apple orchard, even though this were the only means of preventing his unlawful act, would be qualified murder; the argument of necessary defense would not prevail. *Ibid.*

Extreme necessity is the position of a person who may prevent danger to some interest protected by law only by performing an act criminal in its external features yet not an act of defense. It involves the collision of two interests protected by law, where the maintenance of one may be achieved only by the breach of the other. Thus a farmer may break into his neighbor's barn in order to get a pail to aid in extinguishing a fire; a doctor may fail to appear as an expert in court because he is detained by an urgent operation; and a person under threat of assassination may surrender to a bandit not only his own property but that of another entrusted to him. This defense may also be invoked in order to defend collective interests protected by law.

Here similar rules to those of necessary defense are applied. The danger must be present and actual and not avoidable by other means. The defense must be in behalf of an interest protected by law. And, finally, the injury caused must be less than the injury avoided.

"The question of what legal interests are more valuable and what less valuable is decided in each separate instance in terms of the whole concrete setting of events. . . . The

tive side of a crime.⁵¹ The formal illegality of the act is now accorded as much significance as its material anti-social character.

The subject of a crime. The subject of a crime is the person who has committed it. This must be a natural person who has reached a certain age and is "accountable."

saving of one interest at the cost of causing injury value to another interest does not eliminate the social danger of the act performed, *e.g.*, where one's property is saved at the cost of destruction of another's property of equal value, or one's life is saved at the cost of the death of another. In these instances only a mitigation of punishment is possible [*cf.* CRIMINAL CODE, R.S.F.S.R., Art. 51].

"Soviet Criminal Law does not permit the saving of one's own life from danger at the cost of another's death. Such a transfer of danger from oneself to others deeply contradicts Socialist morality. Soviet Law inculcates in the citizens of the U.S.S.R. feelings of solidarity and mutual aid. It encourages personal heroism and fights coarse egoism. Therefore depriving a person of life is murder although it was the only means of saving one's own life." *Id.* at 172.

Since an act in conditions of extreme necessity is lawful, necessary defense is not permitted against it. The justification of extreme necessity is applied relatively seldom in judicial practice. It comes up, however, in the application of the Edict of June 26, 1940 on labor discipline, note 134 *infra*, the courts recognizing an exemption from liability for truancy from work when, for example, a female worker stayed home to take care of her sick child, or a doctor was late for work at the polyclinic because he was summoned to a patient who was seriously ill.

The *consent of the injured* may eliminate the illegality of an act, it is stated, only where a) the consent refers to rights and interests within the free disposition of the consenting person (i.e. only to personal property rights; it is not theft if the owner consented to the taking, even though the object was taken in his absence); b) the consent is given within the limits of the free disposition of the consenting person over his personal and property rights (one cannot consent to the taking of one's own life, since this contradicts the interests of society as a whole, similarly, one cannot consent to the killing of one's pedigreed cattle); c) the consent does not have a socially dangerous purpose (a woman cannot consent to the performance of an unlawful abortion on herself). *Id.* at 174.

The *performance of professional functions* justifies a doctor, for example, in performing what would otherwise be criminal assault.

To exempt one from liability for an *act committed under an order*, the order must be a lawful one, given by a superior, within the limits of his competence; it must not prescribe an act clearly criminal, and must be given with the observance of whatever form the law requires. This exemption refers particularly to military personnel. However, a factory mechanic who carries out the lawful order of a superior and thereby injures another is also exempted from liability under this rule.

Realization of one's own rights. Parents have the right to apply certain compulsory measures to their own children which would be illegal if applied to other persons (or other persons' children). On the other hand, the application of torture to a child is an excess of parental rights and is a crime.

Execution of the law. Carrying out a judicial sentence is lawful, though without the authority of the court it would be criminal.

51. *Id.* at 106, 114; *cf.* Trainin, *Fundamental Principles of Soviet Criminal Law*, 95 L. J. 259 (1945): "Soviet law combines formal definition of crime with material definition of it. Soviet law defines crime as an act of commission (or omission) dangerous to the community, transgressing the foundations of the Soviet System or Socialist law and order (material feature) and entailing punishment by law (formal feature)."

Persons who have committed a crime while suffering from chronic mental disease, temporary insanity or other diseases making them either incapable of realizing the nature of (literally, "giving an account of") their acts or of controlling their conduct, are subject to medical care rather than punishment.⁵² In defining unaccountability, both medical and judicial criteria are used. The medical test involves the establishment of a chronic mental disease, a temporary derangement of mental activity, or other diseased condition. Chronic mental diseases include schizophrenia, progressive paralysis, epilepsy, and others. Temporary insanity includes various forms of so-called "exceptional condition"—e.g. pathological affect, pathological intoxication.⁵³ Whenever the question of the accused's unaccountability arises, the court is obliged to summon a medical (psychiatric) expert to testify.⁵⁴ The conclusions of the expert are not binding, but in case of disagreement the court is obliged to state in detail the reasons upon which its disagreement is based.

The judicial test of unaccountability involves the determination that an accused lacks the capacity to give an account of his acts (intellectual factor) or to control his conduct (volitional factor). A mentally normal person understands both the social danger and illegality of a crime;

52. CRIMINAL CODE, R.S.F.S.R., Art. 11.

53. Intoxication is specifically excluded as a defense under Art. 11. However this does not apply to actual derangement of mental activity which has arisen from a background of intoxication (delirium tremens arising from chronic alcoholism, pathological intoxication from acute alcoholism). It is not settled whether a person who, as a result of intoxication, is unconscious, is criminally liable for acts committed by him in that state. (The Rail-Transport Collegium of the Supreme Court of the U.S.S.R. reversed a conviction of aggravated hooliganism on the ground that the accused was at the moment of the crime in an unconscious state as a consequence of intoxication and was therefore unaccountable. This decision was in turn reversed by the Plenum of the Supreme Court, July 15, 1939, on the ground that the commission of a crime in a condition of intoxication could not in itself exempt the accused from criminal liability, without proof that he was in a condition of unaccountability; that the Rail-Transport Collegium, in asserting that the accused was in such a condition, without basing this assertion on expert testimony, failed to apply Art. 63, note 1, of the Code of Criminal Procedure of the R.S.F.S.R., according to which the summons of an expert is obligatory where there is doubt as to the psychic condition of the accused. ALL-UNION INSTITUTE etc. *op. cit. supra* note 20, at 131.)

54. The use of expert psychiatric testimony is regulated by a special Instruction of Feb. 17, 1940, issued jointly by the People's Commissariat of Justice, the People's Commissariat of Internal Affairs, and the People's Commissariat of Health. This Instruction unified and strengthened the organization of the system of criminal psychiatry throughout the Soviet Union. See Feinberg, *25 Years of Judicial Psychiatry*, in SERBSKY INSTITUTE OF JURIDICAL PSYCHIATRY, PROBLEMS OF JUDICIAL PSYCHIATRY 5, 20 (1944) (in Russian). See note 53 *supra*.

With the new emphasis upon personal responsibility and fault, criminal psychiatry underwent a crisis, resulting especially in a modification of doctrines of "reactive conditions" to allow more room for accountability; cf. Vvedenskii, *Judicial-Psychiatric Evaluation of Reactive Conditions*, in SERBSKY INSTITUTE OF JUDICIAL PSYCHIATRY, PROBLEMS OF JUDICIAL PSYCHIATRY 5 (1938) (in Russian).

inability to give an account of one's acts may be present, therefore, even when the actor understands their factual nature, if at the same time he is incapable of realizing their social danger. Where there is incapacity to give an account of one's acts, there is necessarily incapacity to control one's conduct; but this proposition is not reversible—a person may know what he is doing and may know that it is socially dangerous, but by force of some mental disease (such as addiction to morphine, or some other pathological condition) may be unable to control himself, in which case he may be exempt from criminal liability.

Both the medical and judicial tests must be met. Thus certain chronic ailments—epilepsy, for example—may not reach such an intensity as to justify, from the juridical standpoint, the finding of unaccountability.

In the treatment of juvenile delinquency, Soviet law in the early years of the Revolution made many experiments.⁵⁵ None, however, succeeded in checking the alarming spread of this evil.⁵⁶ In 1935 the method of judicial repression was introduced with thoroughness.⁵⁷ Special juvenile courts were abolished.⁵⁸ Minors from the age of 12 years who committed larceny, bodily injury, mayhem, homicide or attempted homicide were subjected to trial in the regular criminal courts and to all the regular punishments except the death penalty.⁵⁹ And by judicial interpretation the new law was extended to include crimes other than those specifically mentioned, and eventually to include all crimes when committed by minors of 14 years and over.⁶⁰

55. By a decree of Jan. 14, 1918, minors up to the age of 17 were exempted from regular judicial trial and made subject to hearings in juvenile commissions. In 1919 the age limit was extended to 18, but minors between 14 and 18 could be tried in the regular courts if they committed criminal acts "with understanding," i.e., were accountable. In 1920 this was changed to give the juvenile commission discretion as to whether to turn over youths between 14 and 18 to the regular courts. The R.S.F.S.R. Criminal Code of 1922 put the age-limit for the juvenile commissions at the 16th birthday, with discretion in the commissions to give youngsters from 14 to 16 over to regular criminal jurisdiction. The 1926 R.S.F.S.R. Criminal Code required that in sentencing minors of 14 to 16, the courts were to reduce the usual sentence by half, and in the case of minors from 16 to 18 by one-third. And by an Act of Oct. 30, 1929, it was determined that minors under 16 were to be entirely exempt from criminal responsibility. ALL-UNION INSTITUTE etc., *op. cit. supra* note 20, at 134-5.

56. See Hazard, *The Child Under Soviet Law*, 5 U. OF CHI. L. REV. 424 (1938).

57. See Gorvid, *The Struggle Against the Homelessness and Lack of Care of Children in the U.S.S.R.*, 5-6 SOVIET STATE AND LAW 122 (1940) (in Russian); Tadevosian, *The Struggle Against Juvenile Delinquency in the U.S.S.R.*, 4 SOVIET STATE AND LAW 4 (1940) (in Russian).

58. Decree of May 31, 1935, COLL. LAWS, U.S.S.R., 1935, No. 32, Art. 252.

59. Decree of April 7, 1935, COLL. LAWS, U.S.S.R., 1935 No. 19, Art. 155. This law also imposed imprisonment for not less than five years on persons who instigate minors to criminal acts.

The new repressive laws have, however, been considerably mitigated in certain aspects. The failure of subsequent legislation to repeat specifically that minors are to be subjected to "all measures of punishment" has been interpreted to mean that the most severe penalties are not to be applied to them.⁶¹ Furthermore, a law of June 15, 1943, established educational labor colonies for juvenile delinquents from 11 to 16, and special sessions of the People's Courts generally deal with juvenile cases. Lesser crimes are no longer prosecuted even in these special sessions.⁶²

The subjective side of crime. The subjective side of crime refers to the state of mind of the actor. It is now categorically stated by Soviet jurists that without fault there can be no crime.⁶³ Quotations from Engels and Lenin are found as authority for the proposition that freedom of will plays an important part in the Marxist philosophy of historical determinism.⁶⁴ The role of the individual in society, and the role of Socialism in cultivating personal responsibility and initiative, are also emphasized.⁶⁵

60. ALL UNION INSTITUTE etc., *op. cit. supra* note 20, at 136. In partial explanation of the severity of the new laws it is stated that "the age of 16 as the norm for liability for all crimes is undoubtedly too high; in the contemporary conditions of the U.S.S.R. minors begin to take part in social life and to acquire habits much earlier than in pre-revolutionary times." *Ibid.*

61. *Id.* at 137.

62. *Ibid.*

63. *Id.* at 139. For a criticism of decisions in which this principle was not applied, see Basavin, *Fault and Punishment*, 11 SOVIET JUSTICE 26 (1940) (in Russian).

64. "Determinism not only does not presuppose fatalism, on the contrary it gives a basis for intelligent activity." LENIN, 1 WORKS 292 (in Russian). Engels wrote: "Freedom does not consist in an imaginary independence of the laws of nature, but in the recognition of these laws and in the possibility therefore of planfully using them for definite purposes. This is true both of the laws of external nature and of those which regulate the physical and spiritual life of man himself—of the two categories of laws which we may separate from each other, surely, only in idea but not in actuality. . . . Freedom consists in the mastery of oneself and of external nature, based on the recognition of natural necessity. . . . The first people who emerged from the animal kingdom were as unfree in all essentials as the animals themselves; but each step forward on the way to culture was a step towards freedom." MARX AND ENGELS, 14 WORKS 114 (in Russian).

65. With the promulgation of the 1936 Constitution, the rights of the person have come to be stressed more and more in Russia. Stalin's statements on this subject are quoted continually in legal literature, especially the statement that "the irreconcilable contrast between the individual and the collective, the interests of the separate personality and the interests of the collective does not exist, should not be. It should not be, since collectivism, socialism, does not deny individual interests but unites them with the interests of the collective. Socialism cannot withdraw from individual interests. Only socialist society is able to give a more complete affirmation to these personal interests. More than that, the socialist society presents the one guarantee of the protection of the interests of personality. In this sense the irreconcilable contrast between 'individualism and socialism' does not exist." Stalin, *Interview with H. G. Wells*, QUESTIONS OF LENINISM 602 (10th ed.) (in Russian).

Criminal fault may take the form of intent or carelessness. Each of these is further subdivided: intent may be direct or indirect (eventual); carelessness may be foolhardy or negligent.

Direct intent involves a desire to bring about, and foresight of, the consequences of an act. Indirect intent involves absence of desire to bring about a result but foresight that the act committed may do so.⁶⁵ A simple wish or hope is distinguished from foresight; thus one who invites another to go on a dangerous expedition with him, hoping that the other will die as a consequence, is not liable if in fact the other does die.

Foolhardiness (*samonadeiannost'*) consists in a foresight of the consequences of one's acts combined with a frivolous hope of averting them.⁶⁷ The absence of a conscious permission of the occurrence of the foreseen consequences distinguishes foolhardiness from indirect intent; the actor hopes he can avert the consequences.

Negligence consists in failure to foresee consequences which, under the circumstances, one ought to have foreseen—*e.g.*, leaving a fire not completely extinguished in a forest. The absence of foresight distinguishes this from direct or indirect intent and from foolhardy carelessness; the presence of conditions under which the actor ought to have foreseen the consequences distinguishes it from simple chance. The question of whether the actor ought to have foreseen the consequences of his act is treated as a question of fact, which can be decided only after evaluating the whole setting of events both in regard to the subjective qualities of the person and the objective circumstances under which the given result occurred. The standard of foreseeability is that which is required in such instances by the rules of the profession or trade, by customs existing in a given circle of persons, and similar standards, as well as by the knowledge and intelligence of the actor.⁶⁸

A mistake of law has no effect on liability. This doctrine is given foundation in the material conception of crime in Soviet law, *i.e.*, in the view that crime is not only a breach of a legal norm but is also a socially dangerous act. Thus where there is an imaginary crime—*i.e.*, where a person commits an act which he mistakenly believes to be criminal—there is no liability because there is no social danger. Where, on the

66. The following example is given. Ivanov, a lover of fresh air, opens the windows on a damp winter night while Petrov, who lives in the same room with him, is sleeping—knowing that Petrov has a cold and that opening the window may seriously injure him, but not desiring that result. ALL-UNION INSTITUTE *etc.*, *op. cit. supra* note 20, at 147.

67. Ivanov, performing a chemical experiment, foresees the probability of injury to valuable apparatus, but does not take the necessary steps to avoid it, frivolously counting on the sufficiency of what measures he did take. These, however, prove insufficient, and the damage occurs. *Id.* at 150.

68. See Makashvili and Tseretseli, *On Carelessness in Soviet Criminal Law*, 4 PROBLEMS OF SOCIALIST LAW 5 (1939) (in Russian). Apparently the external standard of reasonableness is not applied, and there is no "reasonable man" doctrine. The mental

other hand, there is a crime committed in ignorance of the law, the mistake furnishes no excuse, since awareness or unawareness of social danger is not an element of intent.

A mistake of fact is relevant only as it may show lack of foresight. Since foresight includes both foresight of the factual circumstances pertaining to the objective side of a given crime and foresight of the causal connection between the act and the result, a mistake of fact likewise falls into one or both of those categories. Thus a mistaken supposition of the absence of the objective elements of a crime—*e.g.*, ignorance of the fact that the property stolen was state property—exonerates one from a crime in which intent is required. But a mistaken supposition of the presence of the objective elements of a crime is treated as an attempt. A mistake as to causal connection will excuse only a careless crime, since by definition foresight is an essential element of an intentional crime.

The stages of development of criminal activity. The mere disclosure of intent to commit a crime, without any overt act, does not usually⁶⁹ involve criminal liability. Preparation and attempt, the criminal codes state, shall be punished as the completed crimes; this provision, however, is interpreted to mean simply that the indictment should be made under that article of the Special Part of the criminal code which provides for the given crime in its completed form, and that punishment should be meted out within the limits set in such article.⁷⁰ In practice, a lesser punishment is usually imposed for preparation and attempt

capacity of the accused is one of the circumstances of the case, in the light of which his carelessness must be judged.

The following diagram is given in ALL-UNION INSTITUTE *etc.*, *op. cit. supra* note 20, at 152:

1st Question	1st Answer	2nd Question	2nd Answer
Did the accused foresee the result?	a) Yes, he foresaw it.	How did he respond to what he foresaw?	a) He desired it. (Direct intent). b) He consciously permitted it. (Indirect, or eventual intent). c) He counted on avoiding it. (Carelessness in the form of foolhardiness).
	b) No, he did not foresee it.	Ought he to have foreseen it?	a) Yes, he ought to have. (Negligence). b) No, he ought not to have. (Accident).

69. The disclosure of an intent to commit a counter-revolutionary crime is itself a crime. CRIMINAL CODE, R.S.F.S.R., Art. 59.

70. *Id.* at Art. 19; ALL-UNION INSTITUTE, *etc.*, *op. cit. supra* note 20, at 182.

than for the completed crime. Furthermore, preliminary criminal activity is only prosecuted when it "takes a definite concrete form of the beginning of the realization of the criminal intent and hence is socially dangerous."⁷¹

Complicity. Criminal complicity may take the form of actual joint execution of a crime, or there may be a division of labor between instigators, executors, and abettors.⁷² To establish complicity there must be a causal connection between the act of the accomplice and the crime committed; mere implication—*i.e.*, activity which does not stand in a causal connection with the execution of the crime and is not a condition of its performance, but merely emerged in connection with it (such as concealment, failure to report, failure to hinder)—is not sufficient. Likewise, there cannot be careless complicity, nor can there be intentional complicity in the case of a careless crime.⁷³

The doctrine of complicity is often applied to cases of grievous bodily harm or death resulting from a conscious breach of automobile speed regulations. Not only the driver is held, but also those persons (*e.g.* the owner or passengers) who instigated the driver to break the established speed laws, since here there is intentional participation of two or more persons in the commission of an intentional crime.

Punishment for complicity depends on how socially dangerous the accomplice himself is considered to be (subjective factor), the degree of his participation, and the social danger of the crime committed by the executor (objective factor). In the case of mass disorder, for example, the law prescribes a mitigation of punishment for accomplices considered less socially dangerous than other participants.⁷⁴ On the other hand, where there is a preliminary agreement, as in the case of criminal bands, groups or organizations, punishment may be more severe because of the increased social danger involved.⁷⁵ And in certain cases, if there is a counter-revolutionary intent, the mere fact of the agreement of several persons to commit a criminal act is itself an independent crime.⁷⁶

71. *Ibid.*

72. CRIMINAL CODE, R.S.F.S.R., Art 17. The instigator is the person who induces another (by request, persuasion, bribe, threat) to commit a crime; the executor is the person who commits it; the abettor influences in the execution of a crime by advice, instruction, furnishing means, overcoming obstacles, covering up the traces of the crime or the tracks of the criminal.

73. Thus where Ivanov persuaded Petrov to aim a gun at Zhukov, assuring Petrov that the gun was not loaded and could only frighten Zhukov, when in fact Ivanov knew the gun was loaded, and Petrov shot and killed Zhukov, liability is determined not on the basis of complicity but on a general basis: Ivanov is subject to liability for intentional homicide, and Petrov for careless homicide if the circumstances were such that he should have foreseen the consequences of his act. ALL-UNION INSTITUTE *etc.*, *op. cit. supra* note 20, at 194.

74. A second-degree accomplice may escape punishment altogether. *Id.* at 205.

75. See CRIMINAL CODE, R.S.F.S.R., Art 59(2).

76. Note 69 *supra*.

IV. THE DOCTRINE OF PUNISHMENT

Although punishment had in fact been meted out by Soviet courts ever since 1917, Soviet jurists for a long time avoided the word "punishment" and spoke of legal sanctions as measures of social defense rather than penalties for wrongdoing. This attitude bore resemblance to the doctrine of the sociological school that criminal law should not be concerned with "abstract justice" but with the interests of society; to the positivist position that the state is the sole source of law, the protector of the interest of society, and that hence there is no "natural" law superior to that of the state; to the theory of the anthropological school that crime is essentially a disease which can be corrected only by medical and educational treatment of each individual criminal. Each of these three positions, however, was modified by the Marxist philosophy: the interests of society were identified with the interests of the proletariat; the state was conceived as the source of law only until it should wither away with the achievement of Socialism; and the re-education of criminals was interpreted in the light of the Marxist thesis that the healing character of work is one of the principal factors in re-integrating a socially dangerous person into society. Under sound social and economic conditions, therefore, crime would tend to disappear.

The new jurisprudence of the last decade has emphasized another aspect of the problem. Instead of the protection of society, or the will of the state, or the re-education of the delinquent, it is now the condemnation and disapproval of the crime and the criminal that are stressed. "The mark of punishment which distinguishes it from other measures of political compulsion is that it inevitably causes the criminal *a definite suffering* which is painful to him," it is stated.⁷⁷ "Punishment should correspond in its severity, *i.e.*, in the measure of suffering it causes the criminal, to the degree of his guilt." It is by punishment that the state expresses its "negative evaluation of the crime and the criminal." "Condemnation, disapproval, as a component of punishment acquires special significance in the Socialist state." Hence the chief characteristics of punishment are its compulsory nature, its publicity, its infliction by the court, the suffering it causes the criminal, and the condemnation by the state of both the crime and the criminal.⁷⁸

Punishment is not conceived solely as an instrument of compulsion, however; the element of education in punishment is also stressed.⁷⁹

77. ALL-UNION INSTITUTE etc., *op. cit.* *supra* note 20, at 218.

78. "Punishment is the measure of state compulsion applied publicly by the court to the criminal, causing him suffering and expressing in the name of the state a condemnation of the crime and of the criminal." *Ibid.*

79. "The Soviet Court, in applying measures of criminal punishment, not only penalizes criminals but also has for its purpose the correction and re-education of criminals." Law on the Structure of the Judiciary of Aug. 16, 1938, Art. 3, Part 1.

But education is now treated as a function of punishment, rather than punishment as a function of education. The educational role of punishment goes to the deterrence of the convicted criminal from future crimes. Deterrence of the public in general from crime is also recognized as a function of punishment.⁸⁰

The following forms of punishment may be administered under the Criminal Code⁸¹ of the Russian Republic: (a) declaration as an enemy of the workers, with deprivation of citizenship and banishment; (b) deprivation of liberty in correctional labor camps; (c) correctional labor tasks without deprivation of liberty; (d) deprivation of political rights and of particular rights of citizenship; (e) expulsion beyond the borders of the U.S.S.R. for a term; (f) expulsion beyond the borders of the republic or of a particular locality with obligatory settlement in another locality or prohibition against living in particular localities; (g) dismissal from service; (h) prohibition against undertaking a certain profession or trade; (i) public censure; (j) confiscation of property, complete or in part; (k) money fine; (l) obligation to compensate for damage done; (m) admonishment.

In addition, outlawry was introduced in 1929⁸² to apply to officials who fled the country to escape the consequences of their crimes. Outlawry involves confiscation of all property and shooting within 24 hours of capture. In 1936, the higher courts were given power to sentence to "deprivation of liberty in the form of imprisonment" for particularly dangerous crimes.⁸³ Death by shooting may be pronounced for especially grievous forms of crime which threaten the foundations of the Soviet regime and the Soviet system,⁸⁴ but minors under 18 at the time of the commission of a crime and pregnant women are not subject to the death penalty.⁸⁵ During the war, death by hanging was introduced for highly malicious treason.⁸⁶

80. *Id.* at Art. 3, Part 2, is seen as formulating the deterrent effect of punishment as regards the public in general, while Part 1 formulates the deterrent role as regards the criminal punished. Art 3, Part 2 states "Through all its activity, the court educates the citizens of the U.S.S.R. in the spirit of devotion to their homeland and to Socialism, in the spirit of exact and unswerving fulfillment of Soviet laws, a prudent attitude toward Socialist property, the discipline of labor, an honorable attitude toward public and social duty, respect for the rules of Socialist common life"; *cf.* ALL-UNION INSTITUTE *etc.*, *op. cit.* *supra* note 20, at 224-5.

81. CRIMINAL CODE, R.S.F.S.R., Art. 20.

82. Decree of Nov. 21, 1929, COLL. LAWS, U.S.S.R., 1929, No. 75, Art. 732.

83. Decree of Sept. 20, 1936, COLL. LAWS, R.S.F.S.R., 1936, No. 20, Art. 131. This is the first mention of imprisonment in Soviet legislation. For the approach to the questions of prisons prior to this law, see VYSHINSKY, FROM PRISONS TO EDUCATIONAL INSTITUTIONS (1929) (in Russian).

84. CRIMINAL CODE, R.S.F.S.R., Art. 21.

85. *Id.* at Art. 22.

86. Edict of April 19, 1943, cited ALL-UNION INSTITUTE *etc.*, *op. cit.*, *supra* note 20, at 228. See p. 825 *infra*.

Deprivation of liberty and correctional labor. Deprivation of liberty is the usual form of punishment for non-political high crimes. In 1922 the maximum limit was set at 10 years but in 1932 this was raised to 25 years for counter-revolutionary crimes. Until the introduction of imprisonment in 1936, all criminals deprived of liberty for three years or more were sent to labor camps.⁸⁷

Correctional labor tasks without deprivation of liberty amount in effect to money fines. Under this type of punishment, the petty criminal usually continues to work at his regular job and pays to the court a percentage of his wages—not exceeding 25 per cent—over a period of time, generally up to one month.⁸⁸ Imposition of money fines, except in this form, is infrequent.

*Deprivation of rights.*⁸⁹ A court may pass sentence depriving the accused of any or all of the following rights: the right to vote, the right to hold an elective office in social organizations (unions, etc.), the right to hold certain or all public offices, the right to hold an honorary title (military or otherwise), parental rights, or the right to social security pensions and benefits. These rights may be taken away for a period up to five years, and judicial practice has established a customary minimum of two years.

*Public censure and admonition.*⁹⁰ Public censure takes the form of a public berating of the accused in court. It may be applied, for example, to a woman who has induced an abortion of her pregnancy, provided it is her first offense.⁹¹ Admonition is not, properly speaking, a punishment, since it is technically applicable only to a person found not guilty. It is a warning by the court of the dangers involved in conduct which is in itself not criminal but which may lead to criminal activity. Public censure and admonition are applied particularly by the Comrades' Courts⁹² of communal enterprises such as housing projects or factories. There may also be publication of censure and admonition in the wall-newspapers of these institutions.

V. PARTICULAR CRIMES AND PUNISHMENTS

The Special Part of the Criminal Code, defining the particular crimes and punishments to which the norms established in the General Part

87. CRIMINAL CODE, R.S.F.S.R., Art. 29; cf. THE LABOUR CORRECTION CODE OF THE R.S.F.S.R., 1933 (translated by HSINWOO CHAO, 1936).

88. ALL-UNION INSTITUTE etc., *op. cit. supra* note 20, at 239.

89. *Id.* at 244.

90. *Id.* at 248-9.

91. CRIMINAL CODE, R.S.F.S.R., Art. 140-b.

92. The Comrades' Courts are outside the regular judicial hierarchy. They are informal bodies elected by the workers of a factory, the residents of a housing unit, the members of a collective farm, and similar projects, to handle minor offenses within the institution. They have power to levy small fines. See CALLCOTT, RUSSIAN JUSTICE 85-6 (1935).

are applied, classifies crimes under ten headings:⁹³ State crimes, crimes against the person, property crimes, official crimes, crimes in the sphere of labor relations, economic crimes, crimes against the administrative order, crimes against the people's health, military crimes, and crimes which are survivals of primitive tribal life.

State Crimes. State crimes are subdivided into counter-revolutionary crimes, crimes against Socialist property, and especially dangerous crimes against the administrative order.

The object of a counter-revolutionary crime is the Revolution itself—particularly, the power of the Councils (Soviets) and Governments of the U.S.S.R. and the constituent republics, the external security of the Soviet Union, and the basic economic, political and national (ethnographic) gains of the Proletarian Revolution.⁹⁴ From the objective side, the crime may consist in treason, espionage, armed rebellion, terroristic acts, infringements of the economic foundations of the U.S.S.R. by diversionist acts and counter-revolutionary sabotage, counter-revolutionary propaganda and agitation, participation in and failure to report counter-revolutionary crimes.

Any person may be the subject of (*i.e.* be guilty of) the crime. From the subjective side, the presence of direct counter-revolutionary intent is required for most such crimes, but for certain ones (espionage, certain types of terroristic acts, participation in or failure to report counter-revolutionary crimes) indirect intent is sufficient (*i.e.*, actual knowledge of the counter-revolutionary consequences of the act though without a direct desire to bring about those consequences).

The penalty of death by shooting, with confiscation of property, may be imposed for the commission of a counter-revolutionary crime; and by a decree of April 19, 1943, death by hanging was ordered for malicious treason, and 15–20 years hard labor for less active complicity with "the German-Fascist scoundrels."

Crimes against Socialist property developed out of a series of laws enacted in the period of collectivization of the land forbidding such acts as the killing of cattle and horses. These laws culminated in the Law of August 7, 1932 "On the Protection of the Property of State Enterprises, Collective Farms and Cooperatives, and Institutions of Socialist Property."⁹⁵ By this law, crimes against state property, rail and water transport, and the property of collective farms and cooperatives were made punishable by death by shooting, with confiscation of all property; or, where there were mitigating circumstances, by deprivation of liberty for not less than 10 years and confiscation of property.

93. See note 46 *supra*.

94. CRIMINAL CODE, R.S.F.S.R., Art. 58(1); ALL-UNION INSTITUTE OF JURIDICAL SCIENCE, CRIMINAL LAW, SPECIAL PART 26 *et seq.* (1943) (in Russian).

95. COLL. LAWS, U.S.S.R., 1932, No. 62, Art. 360.

In judicial practice⁹⁶ this law has been interpreted, on the objective side, to include taking by misappropriation and fraud as well as by larceny or robbery; and also to include the failure of officials to take the necessary steps to protect Socialist property. However, the Law of August 7, 1932 has not replaced the ordinary laws of theft. Its application is "not to individual cases of insignificant squandering and robbery, but to cases of heavy, malicious and organized robbery and squandering."⁹⁷

Although the crime is considered a counter-revolutionary one, the courts have not required an explicit counter-revolutionary purpose. But there must be actual knowledge that the property is state property, and, in most cases, direct intent. Only where the crime is that of damaging (as opposed to stealing or destroying) Socialist property is it sufficient that the accused knowingly permitted, or was indifferent to, the occurrence of the criminal results (indirect intent).

Especially dangerous crimes against the administrative order⁹⁸ include general crimes especially dangerous to the administrative order (mass disorder, armed banditry, sowing discord between the various nationalities of the U.S.S.R.); infringements of the money and credit system (counterfeit of monetary symbols, of documents of money deposits, of postal symbols and railroad and water-transport tickets); infringements of the monopoly of foreign trade (contraband, misappropriation by illegal transfer across the Soviet borders); crimes undermining the transport system (disturbance or injury of railroad or other communications systems, breach of labor discipline in transport, breach of the regulations of international flights); infringements of the defense of the U.S.S.R. (evasion of military service, mobilization, or military taxes in time of war; spreading false rumors which create alarm among the population in time of war; and theft of armaments); and failure to report any of the above crimes.

These crimes differ from counter-revolutionary crimes in that they are not directed explicitly against the principles of the Revolution. For example, the stirring up of animosity against a particular nationality may be a counter-revolutionary crime if there is an actual counter-revolutionary intent. If, however, the intent is merely a survival of pre-revolutionary prejudices,⁹⁹ it will be punished as an "especially dangerous crime against the administrative order."

Direct intent is required for conviction for these crimes in most cases;

96. ALL-UNION INSTITUTE etc., *op. cit. supra* note 94, at 89-90, where cases in point are cited.

97. *Id.* at 90-91, where cases in point are cited.

98. *Id.* at 94 *et seq.*

99. Stalin has said that "survivals of capitalism in the consciousness of people are far more alive in the sphere of the national (ethnographic) question than in any other sphere." Cited *id.* at 103.

only in the case of infringement of the monopoly of foreign trade, evasion of military taxes in time of war, and spreading of false rumors which create alarm among the population in time of war, is indirect intent sufficient.

Mass disorder, armed banditry, the sowing of discord among various nationalities, and breach of labor discipline in the transport system, may, if committed in an aggravated form, be punished by death by shooting, with confiscation of all property. The minimum sentence for these crimes is deprivation of liberty for two years (three years in the case of armed banditry) and at least partial confiscation of property. For the other State crimes punishment is by deprivation of liberty for various terms (infringement of money and credit system, up to three years; infringement of monopoly of foreign trade, up to ten years with total or partial confiscation of property; evasion of military service, up to five years; and others).

Crimes against the Person. For intentional homicide, the standard punishment is deprivation of liberty for a term up to eight years.¹⁰⁰ The maximum limit is raised to ten years when it is committed under aggravated circumstances,¹⁰¹ as where there are mercenary or other base motives;¹⁰² where it is committed in a manner known to be dangerous to the lives of others¹⁰³ or in a manner especially painful to the slain person;¹⁰⁴ where the helpless position of the slain person is exploited;¹⁰⁵ where the purpose of the homicide is to conceal another serious crime, or where the criminal had a duty to care for the slain person.¹⁰⁶ If it is a soldier who commits a crime under these aggravating circumstances, he is liable to the highest measure of punishment (shooting).¹⁰⁷

100. CRIMINAL CODE, R.S.F.S.R., Art. 137.

101. *Id.* at Art. 136.

102. *Id.* at Art. 47(e). The Plenum of the Supreme Court of the U.S.S.R. has declared the killing of a criminal by way of self-help as falling under this class; also homicide in a duel. ALL-UNION INSTITUTE etc., *op. cit. supra* note 94, at 144. Jealousy is classed as a "base motive". *Ibid.*

103. As in arson, or firing into a crowd. *Id.* at 142.

104. As in use of an especially painful poison, or burning. *Ibid.*

105. As where he is sick, wounded, drunk or unconscious. *Ibid.*

106. As in the murder of children by their parents, an infant by its mother, or a patient by a doctor. In the Ukraine, the homicide of a newborn infant by its mother is considered a "less socially dangerous" form of homicide and is punished by deprivation of liberty for a term up to three years. CRIMINAL CODE, Ukrainian S.S.R., Art. 142. This was true also in the R.S.F.S.R. before the movement to strengthen the family in the mid-thirties. By a special instruction of the Supreme Court and Peoples' Commissariat of Justice of the R.S.F.S.R. of Aug. 27, 1935, it was laid down that in the new conditions of life, with the growth of material security and culture, it was incorrect to apply, in cases of infanticide, a suspended sentence or other light measures of punishment on grounds of material need, low cultural level, or attacks and mockery by relatives and acquaintances. ALL-UNION INSTITUTE etc., *op. cit. supra* note 94, at 147.

107. CRIMINAL CODE, R.S.F.S.R., Art. 136, pt. 2. But see note 85 *supra*.

On the other hand, the punishment is lighter for "less dangerous" forms of homicide. These include intentional homicide committed in a condition of strong spiritual agitation, suddenly called forth by violence or grievous insult, which is punishable by deprivation of liberty for a term up to five years or by corrective labor tasks for a term up to one year.¹⁰⁸ "Strong spiritual agitation" is a condition in which the actor, although not losing the capacity to give an account of his acts, yet to an important degree loses control over his conduct. This is a physiological aberration falling short of the pathological. The agitation must immediately create the intent to kill, which must be forthwith put into execution.¹⁰⁹ The courts have held an insult to national (ethnographic) feeling to be sufficiently grievous to reduce homicide to this "less dangerous" form.

An intentional killing in excess of the limits of necessary defense—either because the intensiveness of the defense is disproportionate to the attack, or because the defense is premature—is punished by deprivation of liberty for a term up to three years or by corrective labor tasks for a term up to one year.¹¹⁰ The same limits apply to homicide committed through carelessness—either foolhardy or negligent.¹¹¹

Suicide or attempted suicide is not a crime under Soviet law, since it is considered that one cannot commit a crime against oneself. However, suicide is frowned upon, and for a person to influence another, who is in a position of dependence upon him, to commit or attempt to commit suicide is punishable by deprivation of liberty for a term up to five years.¹¹² The relationship of dependency may be one between master and servant, official and subordinate, husband and wife or parent and child. One element in the objective side of this crime is cruel conduct toward the dependent person. Such cruel conduct may consist in mockery, false accusation, or systematic persecution. Subjectively, the crime may be committed intentionally or carelessly.¹¹³

Instigating the suicide of a person not in a dependent position is also criminal if that person is a minor or an adult known to be incapable of understanding the nature or significance of his acts. The criminal liability is limited, however, to deprivation of liberty up to three

108. CRIMINAL CODE, R.S.F.S.R., Art. 138.

109. ALL-UNION INSTITUTE etc., *op. cit. supra* note 94, at 149.

110. CRIMINAL CODE, R.S.F.S.R., Art. 139.

111. See p. 819 *supra*.

112. CRIMINAL CODE, R.S.F.S.R., Art. 141 pt. 1.

113. In the case of a youth who was treated badly by his step-mother, his father acquiescing, and who grew despondent and committed suicide, the step-mother, a teacher, was sentenced to five years deprivation of liberty and deprived of the right to teach for five years thereafter, and the father, a doctor (a neuropathologist), was sentenced to two years deprivation of liberty, for the crime of bringing a minor to suicide. Case reported in 12 SOVIET JUSTICE 21 (1941) (in Russian).

years¹¹⁴ unless the minor is under 14. In the latter event, the suicide is regarded as a homicide on the part of the instigator.

The Soviet law of bodily injury, acts dangerous to life and health, and infringement of personal freedom and dignity is not markedly different in substance from our own. As in the case of homicide, the penalties are, from the American viewpoint, light.¹¹⁵ For intentional infliction of grievous bodily injury, the maximum sentence is deprivation of liberty for eight years; for intentional light bodily injury or negligent grievous bodily injury the maximum is one year.¹¹⁶ Knowingly to infect another with venereal disease is an independent crime, subject to deprivation of liberty up to three years; and knowingly putting another in danger of infection with venereal disease is punishable by deprivation of liberty or corrective labor up to six months.¹¹⁷

Rape is a comparatively broad offense in the Soviet Union. Rape by deception was construed under the earlier marriage and divorce laws to cover the case of a man who entered into a registered marriage with a woman solely for the purpose of having sexual intercourse with her and then immediately thereafter divorced her.¹¹⁸ It also constitutes rape for one who has economic or official control over a woman to use his position of superiority to compel her to enter into sexual relations with him.¹¹⁹ A husband may be prosecuted for committing rape against his wife.¹²⁰ Except in certain aggravated forms, rape is punishable by deprivation of liberty up to five years—in those aggravated forms, up to eight years.¹²¹ Sex crimes such as incest, bigamy or polygamy, and marriage of a minor are generally prohibited but have in the past been punished only where they are survivals of a tribal order and hence socially dangerous.¹²²

114. CRIMINAL CODE, R.S.F.S.R., Art. 141, pt. 2.

115. The kidnapping of a child, for example, is punished by deprivation of liberty up to three years (CRIMINAL CODE, R.S.F.S.R. Art. 149); the performance of an abortion by a pregnant woman on herself, if it is the first offense, is punished by public censure, and, if it is the second, by a fine up to 300 rubles. (*Id.* at Art. 140-b).

116. CRIMINAL CODE, R.S.F.S.R., Arts. 142-6. Grievous bodily injury is defined as involving loss of sight, hearing or other irreparable mutilation, insanity or other health disorder combined with a significant loss of earning capacity. CRIMINAL CODE, R.S.F.S.R., Art. 142.

117. *Id.* at Art. 150.

118. Interpretation of the Plenum of the Supreme Court of the R.S.F.S.R., Feb. 6, 1928, 4 JUDICIAL PRACTICE 3 (1928) (in Russian).

119. CRIMINAL CODE, R.S.F.S.R., Art. 154.

120. See Berman, *op. cit. supra* note 15, at 49.

121. CRIMINAL CODE, R.S.F.S.R., Arts 153-4.

122. "We do not recognize bigamy as a socially dangerous act except in those cases when bigamy crops up from the soil of economic exploitation. In autonomous national republics we not only forbid bigamy and polygamy in general, but we prosecute it in criminal law. . . . Why do we speak this way? Because we look on bigamy in the national republics as a relic of tribal society, which has as its basis the exploitation of woman's toil." BRANDEN-

Insult—*i.e.*, the lowering of the personal dignity of another by word or deed—is a crime punishable by a fine up to 300 rubles or, in the case of insult by deed, corrective-labor tasks up to two months.¹²³ The publication of an insult is a separate crime,¹²⁴ as is libel—*i.e.*, spreading false information discrediting another person.¹²⁵

Property Crimes. Soviet law recognizes three types of criminal asportation of property: secret taking (*krazha*), open taking (*grabiozh*), and open taking by means of an assault endangering life or health (*razboi*). In all cases, the property must belong to another (another person or the state),¹²⁶ and the intent must be to appropriate it permanently.¹²⁷

Secret taking of personal property when committed for the first time and without aggravating circumstances is punished by deprivation of liberty or corrective-labor tasks for not more than three months in the Russian Republic, while in Azerbaidjan the maximum extends to deprivation of liberty for two years or corrective-labor tasks for one year. Other republics impose different limits. Social Courts of collective farms have jurisdiction over petty thievery, and may impose fines up to ten rubles and compulsory labor up to five days. Where there are aggravating circumstances—as where the thing stolen was necessary to the aggrieved party (clothing, wages, etc.), where it was important to the national economy (horses, cattle); where the theft was accomplished “by technical means” (with weapons, etc.); where it was com-

BURGSKII, COURSE IN FAMILY LAW 56 (1927) (in Russian). Likewise, “entering into a factual marriage with a minor (under 18 years of age) who has reached sexual maturity is not a socially dangerous act, and will not be examined in court proceedings.” Interpretation of the Plenum of the Supreme Court of the R.S.F.S.R., April 15, 1929, 2 JUDICIAL PRACTICE 2 (1929) (in Russian). This does not apply to those localities (autonomous republics and regions) in which Art. 198 of the Criminal Code is effective, Interpretation of the Plenum of the Supreme Court of the R.S.F.S.R., June 6, 1930, 9 JUDICIAL PRACTICE 4 (1930) (in Russian). Incest, although forbidden by the Code of Laws on Marriage, the Family and Guardianship of the R.S.F.S.R., was not included as a crime for similar reasons. See ALL-UNION INSTITUTE OF JUDICIAL SCIENCE, CRIMINAL LAW, SPECIAL PART 229 (1939) (in Russian), where it is stated that “the legislator considered it unnecessary to recognize incest as a crime, because it is not socially dangerous.” In the 1943 edition, this sentence is omitted, and no justification is offered. ALL-UNION INSTITUTE OF JURIDICAL SCIENCE, CRIMINAL LAW, SPECIAL PART 198 (1943) (in Russian).

123. CRIMINAL CODE, R.S.F.S.R., Art. 159.

124. *Id.* at Art. 160.

125. *Id.* at Art. 161.

126. Thefts of state property, even where they do not qualify under the Law of Aug. 16, 1932, are generally punished more severely than thefts of personal property. Thus a decree of the Presidium of the Supreme Soviet of the U.S.S.R. of Aug. 10, 1940 established that “so-called ‘petty-theft’, regardless of the amount stolen, committed on an enterprise or institution, shall be punished by imprisonment for a term of one year, unless it is not subject according to its nature, to more severe punishment.” ALL-UNION INSTITUTE etc., *op. cit. supra* note 94, at 222-3. Cf. CRIMINAL CODE, R.S.F.S.R., Art. 162 (c).

127. *Id.* at Art. 162.

mitted in a public place (railroad station, railroad car, ship, etc.); or where the criminal is a recidivist—the penalties are increased.¹²⁸

Punishment for open taking¹²⁹ consists of deprivation of liberty for a maximum of one year, unless it is committed under aggravating circumstances, in which case the maximum is increased to five years. For open taking with violence, the maximum is three years for the simple form, five years for the qualified form.

For the simple form of *razboi*, the sanction is deprivation of liberty for a maximum of five years; for qualified *razboi*, the maximum is extended to ten years.

Other property crimes¹³⁰ include extortion, defrauding, embezzlement, receiving of stolen goods, usury, damage to property, and infringement of copyright. These are essentially similar in definition to their American counterparts. Under Soviet law, however, a person is generally not held liable for what he did not directly intend and Soviet penalties for private crimes are far less severe than ours.

Official Crimes. An official is subject to a high degree of criminal responsibility in the performance of his official duties. Furthermore, private persons may be held responsible under the law of official crimes if they participate in them.

Among officials are included all who occupy permanent or temporary office in any of the social, political or economic organizations of the state. Thus officials of the federal or local government, managers of collective and state farms, officials of factories and cooperatives, members of factory committees and union officials, are criminally responsible for breach of their duties.

New orders creating new crimes in this sphere are constantly being issued in connection with new government policies. Thus in the drive to improve labor discipline on collective farms in 1933, officials who failed to carry out certain orders were made subject to penalties under a specific edict. With the introduction of a plan to develop cattle-breeding in 1935, it became a specific crime for an official intentionally to conceal cattle or give false information concerning cattle.

In the case of certain types of official crimes, only a minimum punishment is defined by law. Thus where there is an abuse of power or of economic position, the legal sanction is deprivation of liberty "for a

128. ALL-UNION INSTITUTE etc., *op. cit. supra* note 94, at 228 *et seq.* For a criticism of the Soviet law of theft on the grounds that its sanctions are too lenient and that different forms of it are not adequately distinguished, see Aydeeva, *Judicial Practice in Cases of the Taking of Personal Property*, 19-20 SOVIET JUSTICE 9 (1940) (in Russian). ALL-UNION INSTITUTE etc., *op. cit. supra* note 94, at 231. According to a decree of Jan. 22, 1943, theft of food products is punishable, in addition to the regular punishment, by a fine of five times their commercial value.

129. *Id.* at 231 *et seq.*

130. *Id.* at 235 *et seq.*

term not less than six months." ¹³¹ But a neglect to use one's official powers when there is a duty to do so is penalized by a deprivation of liberty for a term up to three years. ¹³²

Certain official crimes are qualified forms of general crimes. These include official embezzlement and official forgery, which are punished by deprivation of liberty up to two years. ¹³³

Crimes against Labor Discipline. In 1940 it was made a crime for workers in state enterprises (factories) and institutions to leave their work voluntarily or to stay away from work without good reason. ¹³⁴ This was explicitly a preparation-for-war measure. ¹³⁵ Although infringements of working conditions in state enterprises and institutions are treated in the Criminal Code under "economic crimes," the importance of labor discipline during the war led to a separate classification of them.

Economic Crimes. As the organizer and director of the economic life of the U.S.S.R., the state ¹³⁶ enforces its policies concerning the production and distribution of goods by means of the criminal law. A special section on economic crimes is included in the Criminal Code, including so-called thriftlessness, production of goods of poor quality, malicious nonfulfillment of contracts, breach of technological discipline, speculation, and many others. ¹³⁷

Thriftlessness includes any act or omission directed—either intentionally or carelessly—against Socialist economy, and resulting in the squandering of property or in irreparable damage. The crime refers particularly to the failure of business enterprises to follow the plans issued by superior economic organs; thus "irreparable damage" signifies losses which an enterprise may not make up for owing to the passage of time or some similar cause. The circle of persons who may be subject to punishment for thriftlessness is limited to the heads (or

131. CRIMINAL CODE, R.S.F.S.R., Art. 109.

132. *Id.* at Art. 111.

133. *Id.* at Arts. 116, 120.

134. Edict of June 27, 1940, COLL. LAWS, U.S.S.R., 1940, No. 72, Art. 117.

135. ALL-UNION INSTITUTE *etc.*, *op. cit. supra* note 94, at 300. By a decree of July 7, 1945 "On amnesty in connection with the victory over Hitlerite Germany" (*Izvestiia*, July 8, 1945, p. 1, col. 3), all those convicted of voluntary departure from enterprises under the decree of Dec. 26, 1941 (which superseded that of June 27, 1940) were released from punishment and their sentences removed from their records. The decree of July 7, 1945 also granted a general amnesty to persons sentenced to deprivation of liberty for less than three years and to soldiers who had committed military crimes under certain sections of the Criminal Code.

136. See CONSTITUTION OF THE U.S.S.R. Art. 11.

137. Other economic crimes include: violation of laws on the nationalization of the land, private distilling of liquor, tax crimes, use of money substitutes, breach of fishing, hunting, and forest regulations, breach of trade regulations. ALL-UNION INSTITUTE *etc.*, *op. cit. supra* note 94, at 322-3.

acting heads) of state business enterprises. The punishment is deprivation of liberty up to two years or corrective labor tasks up to one year.

A special form of thriftlessness was created by a statute of 1937,¹³⁸ which makes the improper use of seed punishable by imprisonment up to one year or by compulsory labor up to two years, and the mixing of grains in elevators and warehouses punishable by imprisonment up to two years or compulsory labor up to three years.

Production of goods that are of poor quality, or incomplete, or that do not conform to standards set by the government, is a crime "equivalent to wrecking," according to a law of July 10, 1940,¹³⁹ which imposed a penalty of five to eight years imprisonment on directors of industrial enterprises, chief engineers, and heads of divisions of technical control, who are found guilty of such conduct. The quality of the goods must be determined by expert witnesses summoned by the court. From the subjective side, this crime may be committed either intentionally or carelessly.

Malicious non-fulfillment of contracts. The criminal sanction against malicious failure to fulfill a contract (involving deprivation of liberty for not less than six months with confiscation of all or part of the accused's property) was designed to support the New Economic Policy of 1921-1928, with its "strategic retreat" to capitalist enterprise. With the liquidation of the N.E.P., the law came to be applied to collective farmers and private persons who maliciously violate contracts made with state economic organs, to specialists in factories who violate work contracts, and to others.¹⁴⁰

The malicious character of the non-fulfillment has to be established by preliminary civil proceedings, *i.e.*, by an action for damages for malicious breach of contract brought by the party injured thereby.

Breach of technological discipline. By an Act of December 8, 1940, directors, chief engineers and chief technologists of factories were made subject to criminal liability for impairing technological discipline through failure to fulfill their obligations as leaders in production. This was not made an independent crime, however, but a qualifying factor in the commission of certain official crimes.¹⁴¹

Speculation. Under the N.E.P., the crime of speculation involved certain forbidden forms of commercial activity (*e.g.*, malicious increasing of prices). With the socialization of the Soviet economy from 1928 on, speculation took on a new meaning. As it is now defined, it is the forestalling and re-sale by private persons, for profit, of agricultural products and other products of mass consumption.¹⁴² Direct intent is

138. Decree of June 29, 1937, COLL. LAWS, U.S.S.R., 1937, No. 40, Art. 168.

139. ALL-UNION INSTITUTE *etc.*, *op. cit. supra* note 94, at 336.

140. *Id.* at 328.

141. *Id.* at 339-40.

142. *Id.* at 350.

required, and there must be a purpose of making profit. Thus workers, or housewives, for example, who sell their personal belongings are not guilty of speculation, nor is every exchange of goods for personal gain a criminal offense.¹⁴³

Speculation is punished by deprivation of liberty for not less than five years with total or partial confiscation of property.

*Crimes Against the Administrative Order.*¹⁴⁴ These are less dangerous forms of the corresponding criminal activity described under state crimes. They range from hooliganism (public mischief) to evasion of military draft laws and include theft or forgery of state documents, threats or violence or insults to state representatives acting in their official capacity, infringements of the activity of the organs of the administration of justice (e.g. obstructing justice, false testimony, escape from arrest), crimes against social order (e.g. self-help, hooliganism, illegal keeping of firearms, breach of the rules of the passport system), breach of the rules of military service (prior to entry into the army), breach of the election laws, breach of regulations on the separation of Church from State.

*Crimes Against the People's Health.*¹⁴⁵ Unauthorized and intentional manufacture, keeping or selling of poisons or drugs, the practice of medicine by those unqualified to do so, and the breach of health regulations issued for the prevention of epidemics, comprise "crimes against the people's health." The illegal practice of medicine and the breach of health regulations are punished by corrective-labor tasks up to six months or a fine up to 500 rubles. Unauthorized traffic in poisons is punished by deprivation of liberty up to five years; in drugs, by corrective labor tasks up to one year.

*Military Crimes.*¹⁴⁶ Military crimes are included in the criminal codes, and the general norms of criminal responsibility are applied to them except that standards of liability may be more strict owing to the nature of military activity (e.g., a sentry who violates an order to remain at his post will not be excused by the fact of "extreme necessity," though that would be a defense in Soviet criminal law generally). While only members of the Soviet Army and Navy are subject to punishment for military crimes,¹⁴⁷ jurisdiction is in the regular courts¹⁴⁸ except in the case of merely disciplinary matters. Where breach of

143. *Id.* at 351, where cases in point are cited.

144. *Id.* at 357 *et seq.*

145. *Id.* at 414 *et seq.*

146. *Id.* at 419 *et seq.*

147. During the war a great many auxiliary services were included in the Army and Navy for this purpose. *Id.* at 423.

148. The Supreme Court of the U.S.S.R. is divided into special collegia, of which the Military Collegium is one. However, the Plenum of the Supreme Court has ultimate judicial authority in military as in other matters.

discipline and military crime overlap, the commanding officer has authority to decide whether merely disciplinary action should be taken or the offender should be tried by a court.¹⁴⁹ The crimes defined in the criminal codes as military are typical of articles of war generally. The sanction generally imposed is deprivation of liberty for a term of years, but for the more serious military crimes death by shooting is prescribed.

*Crimes Comprising Survivals of Kinship Life.*¹⁵⁰ Under pre-revolutionary Russian law, no attempt was made to interfere with the primitive customs of the many diverse tribal groups within the territory of Greater Russia. The Soviet regime from the beginning has tried to uproot these old ways. Thus a special section of Soviet criminal codes is devoted to sanctions against wife-purchase, wife-capture, child marriage, polygamy, and all forms of social life contradictory to the emancipation of women. Also crimes connected with the blood-feud and with primitive forms of self-help are prohibited. The codes of the various republics differ widely in the maximum penalties imposed for such crimes. Generally the punishment is deprivation of liberty for a certain number of years. In the case of refusal to abandon a blood-feud and be reconciled with the murderer and his kin, the Criminal Code of the Russian Republic imposes removal from the locality with or without confiscation of property.

CONCLUSION

What conclusions may be drawn from the foregoing study of Soviet criminal law? Here we are under severe handicaps. We may read the textbooks and journals that Soviet law students read, but we must do so from the distance of another civilization. Is it not fallacious to take a single branch of Soviet law out of its historical and social context? Do the words used have the same meaning for Russians as for Americans—the words “law,” “courts,” “cases,” “crime,” “punishment” and the rest? Moreover, are there not serious gaps in the science of Soviet criminal law as presented—for example, where do forced labor camps and the extra-judicial treatment of political suspects fit into the principles above outlined? Are we not here, as in other matters concerning the Soviet Union, confronted with an “iron curtain” forged not only by Soviet secrecy but by history itself and our own historic inability to comprehend the enigma that is Russia?

Yet glib talk of a mutually impenetrable East and West seems particularly inappropriate to an evaluation of Soviet criminal law. In the early stages of its development there was indeed much to mystify the Western lawyer—talk of the “withering away” of criminal law, and

149. *Id.* at 425.

150. *Id.* at 448 *et seq.*

the replacement of juridical concepts by sociological norms. But with the restoration of legal orthodoxy in the mid-1930's, Soviet criminal law has returned to its source in Roman law, and has thereby rejoined the stream of legal history from which Anglo-American law also flows. There are vast differences in the two systems, but there are also important elements common to them both. Justice Jackson's testimony of his experience in collaborating with Soviet jurists at Nuremberg is evidence that in the field of law there is no insuperable barrier to mutual understanding.¹⁵¹

The restoration of the traditional vocabulary of criminal law, the limitation of the doctrine of analogy, the careful analysis of crime in terms of subject and object, and the emphasis throughout on strict legality all bear witness to what may be called a Struggle for Law, a movement to bring to an end the era of lawlessness that inevitably accompanied the first phases of the Revolution. A formula has been found which, without abandoning the social-economic aspect of Socialist jurisprudence, nevertheless stresses the formal juridical aspect of justice as well. How far the science of criminal law thus developed applies to situations where the Revolutionary system itself is threatened the author has no way of knowing. That it applies to criminal behavior generally, however, and that it applies at least in principle to political crimes generally, is undoubted. But more important than the extent to which the stated principles of Soviet criminal law are actually practised is the fact that they represent the direction in which Soviet society has been moving for the past ten years. They are part of a process of stabilization. Out of the antithesis of Revolution and Law a dialectical synthesis is gradually emerging.

151. In a speech to the New York State Bar Association, Justice Jackson asserted that Soviet Russia is not the "vast anarchy" some Americans think her to be but "has a system of civil and criminal law as elaborate and as mature as our own." *New York Herald-Tribune*, Jan. 25, 1947, p. 7, col. 4. For a discussion of procedural differences in American and Russian criminal law on which compromises were made at Nuremberg, cf. Hazard, *Drafting the Nuremberg Indictment*. *American Review on the Soviet Union*, March, 1947, 16.