

THE SOVIET CONCEPT OF LEGAL INSTITUTIONS

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President Truman in 1948 had asked me to preside over a small committee which was to study and report on the workings of the CIA which had been created in 1947 by the law which unified the Armed Services in the Department of Defense. A couple of years later General Bedell Smith, then Director of Central Intelligence, asked me to come down to Washington to help put into effect the recommendations of our committee. I could hardly refuse to do this, particularly as General Smith is a very persuasive man. He said it would only take a few months. I am still on the same job.

Naturally, it is intelligence with respect to the Communist dominated areas of the world which is our highest priority in the Central Intelligence Agency. That does not mean merely information as to the day by day happenings in the countries behind the Iron and Bamboo Curtains. A great deal of information of a more basic type is necessary. It is important to know why the Communist countries act or react as they do, what motivates them in approaching the decision which they take. In fact, we need to get at the philosophical, temperamental and even the legalistic bases of action.

Many mistakes in judging the Soviet Union and its Communist Allies stem from the fact that we assume they would react as would we; that they judge as we would judge them and even give the same meaning to words as we give to them.

Here, I propose to consider some legal factors as they bear on Soviet actions which particularly affect our relations with them. It is all too easy to be beguiled by the idea that the Soviet have turned over a new leaf and that, overnight, we can find a satisfactory basis for what is popularly called "coexistence." Let us hope that this will come.

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EDITOR'S NOTE: *This article is an address delivered by Mr. Dulles at the Eighth Annual Law Day of the Walter F. George School of Law, Mercer University. In his introductory remarks, Mr. Dulles noted that he has had the opportunity of serving the Government under every President from Wilson to Eisenhower. Mr. Dulles also mentioned that many people have tried to commiserate with him at what they call the sacrifice of serving one's government. Said Mr. Dulles: "I take no stock in this. True, there is a financial sacrifice. Personally, I have found that serving the government is a high privilege and I have sought no sympathy. The rewards of such service far exceed the financial and other sacrifices which may be involved."*

But before it can come, it seems to me that there must be certain rather basic changes in the underlying philosophy of Soviet conduct in government. This involves issues of interest to those of us who are in the legal profession.

Every lawyer in the Soviet Union is an agent of the State. His salary is paid by the State. If a lawyer is appointed to defend a man brought by some police agency before a Soviet court, the defense lawyer as well as the prosecutor are both paid by the State. You could almost say that the defense lawyer is paid by the prosecutor. Such a situation may be difficult for us to imagine. This may give you some idea of the profound differences that divide a legal philosophy of a dictatorship from a democracy.

Andrei Vyshinski was one of the leading Soviet jurists and his works on Soviet law furnish an interesting guide to Soviet legal thinking and point up some basic differences between our system and theirs. Put in a few words, the most significant difference is that law in the Soviet Union is an arm of the State, not a shield for the people. Each decision as it affects an individual is framed to protect what a small group in the Kremlin deem to be best for the Communist State. The rights of the individual are wholly subordinated.

In effect, where the State is concerned, the Soviet individual has no inherent rights; only the State has rights. This is a lawyer's way of saying that under Communism, the citizen lives to serve the state while in Western Democracy, the State is created to serve the citizen.

Here is the way Vyshinski put it, writing about a decade ago:

"Neither court nor criminal procedure is or could be outside of politics . . . the contents and form of judicial activities cannot avoid being subordinated to political class aims and strivings. . . . The judge must know how to conduct the court proceedings and how to write the judgment in a manner which shows with clarity the political significance of the case so that the defendant and those present in the courtroom sees clearly the policy of the government in court action."

In legal cases where a loyal citizen of the Socialist State has been involved against anyone not in this category, there is political significance. The Communist state, claiming that it derives its power from the proletariat, supports the members of the proletariat in the courts as a concept of justice.

We can find many cases in which a Soviet court has ruled in behalf of a toiler in these words:

"From the record it is apparent that the accused was a toiler . . . and that he was not a class enemy."

In Murmansk, during the war, a number of American service-

men were embroiled with the Soviet law, and brought to trial. In every case known to an American officer who was present, servicemen, after the formalities of a trial, were found guilty.

Ultimately, the American officer asked the Soviet prosecutor if it might not be possible that one of the American offenders might in some case, be found innocent. The prosecutor replied, "No." He explained that the Americans had been arrested by the Soviet militia and the testimony of the militia was of course accepted by the Soviet court as the truth about the circumstances. Ergo: the Americans were found guilty.

In addition to this basic difference between our views and those of the Communist world as to the role of the state and the rights of individuals, a second difficulty arises from the fact that when we speak to each other the very words we use have totally different meanings. Due to long tradition stemming both from the Roman Law and from our Anglo-Saxon common law concepts, language in the Western world at least has come to have a precise meaning. But in our dealings with the Soviet Union, our words and theirs, though they seem alike on paper, are "like ships that pass in the night."

Let us take a few examples: In the Soviet world, the term "democratic state" means a state which controls every detail in the life of its people, supposedly in the interest of what they call the proletariat. In fact, however, no state is really more reactionary or totalitarian than the Soviet Union.

With us a "democratic state" means, as Lincoln put it, ". . . of the people, by the people, and for the people."

Then they use the term "free elections" in Soviet parlance in an entirely different way than we. With them it means, true enough the right to cast a vote, but to vote only for the candidates nominated by the Communist Party. The Yalta agreements contained adequate promises of free elections and we know what kind of free elections they had in Poland, Rumania and elsewhere. As Stalin pointed out in a speech he made in 1936, and there has been no basic change in this since that time, in a classless society such as the Soviet, there is no ground for the existence of different political parties or for the freedom of those parties since in the USSR only one party can exist.

Again, when we talk about mutual security and non-aggression pacts, we find that our conception and that of the Soviet is totally different. These terms, according to the Soviet themselves, have constantly fluctuating meanings. Foreign Minister Molotov, in a speech on October 1, 1939, just after the outbreak of World War II, pointed out that with "one swift blow to Poland, first by the German army and then

by the Red army, and nothing remained of this ugly offspring of the Versailles Treaty." Poland was then "protected" by a non-aggression pact entered into with Russia in 1932, which was later (May 1934) extended to the end of 1945. Molotov went on in the same speech to point out that in the few preceding months "such concepts as 'aggression' and 'aggressor' have acquired a new concrete connotation, a new meaning." "It will be easily understood," he said, "that we can no longer employ these concepts in the same sense as, say, three or four months ago."

And then in this same speech in referring to "security" agreements with the Baltic States, he said, "The special character of these mutual assistance pacts in no way implies any interference on the part of the Soviet Union in the affairs of Esthonia, Latvia, or Lithuania." We well know how the independence of these states was totally blotted out.

Thus, not only are there instances where words start out with meanings which are totally foreign to us, but in the Soviet world they have flexible and changing meanings as the needs of the state require.

Then there are other basic legal differences between us. In addition to public law and procedure, which is the only law we know, they have in the Soviet Union secret law and secret police to guard the security of the state. The name of the organ through which this law and this police force functions has been changed many times. It began as CHECKKA, later became OGPU, and then MVD. The MVD still exists as a law enforcement agency, but its secret police powers have largely been transferred to a new agency, the KGB. With all the change of name there has been little change in procedure.

Possibly there has been some relaxation since the death of Stalin. We do have some reports that the special administrative Tribunals of the MVD were abolished in September of 1953, but if so, this fact has been kept about as secret as were the proceedings of these extraordinary Tribunals. After all it is not many months ago that we were told of the execution of Beria who was destroyed by the machinery and procedures of which he, himself, had been one of the chief architects.

I do not suggest that Beria did not richly deserve the fate accorded him. Few men have been responsible for as much human misery as he. One may ponder, however, whether Soviet legal procedures have really been liberalized since the sweetness and light campaign following Stalin's death. Here we see the Number Two man in the regime liquidated by secret procedures without any prior public presentation or charges or any opportunity for public defense. During the

purges of the 1930's there was at least the semblance of public trial.

Under Kremlin doctrine, persons may also become "socially dangerous," which means "politically dangerous" for any number of reasons—even reasons which may never be known to the persons themselves. Quite recently a new type of procedure, somewhat extra-legal, has appeared which is applicable not to crimes but to deviations. Self confession under the stress of brain washing techniques or of court procedures has appeared quite frequently in the Soviet and Satellite trials of deviationists. But in the case of deviations of a more subtle or technical character, these self confessions may be imposed on those who have erred slightly from the ideological path or who have failed in their assigned tasks.

We well remember how Malenkov fell from his high estate, though retaining a position in the Politburo, as he confessed his incompetence in dealing with the tasks assigned him. Now Mr. Molotov, on the eve of important negotiations, suffers the humiliation of a public confession of ideological error which even to a confirmed Marxist, I would believe, must seem to be of the most trivial sort. Thus, the state has at its command not only the secret police procedure for the more serious failings of the individual, but a more subtle way of devaluing those high officials who have lost the stamp of absolute correctitude by some state imposed standards.

I cite these examples merely to show the nature of the difficulty in arriving at common understanding between the two worlds. We both may talk of co-existence but yet our basic philosophies are so far apart that the term becomes quite meaningless.

As a lawyer talking to lawyers, I would point out another clear difference between the role of law here and in the Communist world. Lawyers in this country have played an outstanding, even dominant part in developing our system of government since the days of the drafting of the Constitution and to the present time. It is interesting to note that so far as we can ascertain from the records, there has never been a single lawyer in the Politburo, the highest governing body of the Soviet. Andrei Vyshinski came close to it by being an alternate member for a short time.

Possibly the lawyers in the Soviet Union have been fairly smart after all. Of the 48 full members who have been in the Politburo since it was organized in 1917, thirteen were executed, purged, or else disappeared; two were murdered or assassinated; one committed suicide; and eight may have died natural deaths. Eleven are full members still and thirteen others are still extant. Actually the attrition or casualty rate is higher than these statistics suggest. Before 1952, when the Po-

litburo was enlarged for a brief period, the attrition rate, by violence, was about 60 per cent. So membership in this organization, despite the power it gave, has not proved to be a very enviable job.

Today the Soviet Union and its European satellites have again started a vigorous campaign, just as they did in the early 1920's, to lure back behind the Iron Curtain their former citizens who fled to freedom in the West. Amnesty measures have been widely advertised, and all sorts of lures are held out to these people. And they are tempted. At best the lot of the expatriate is a hard one.

But those who are tempted to leave the lands of freedom should remember the fate of returnees who previously have trusted Soviet promises, particularly those who went back after the war's end in 1945. For the most part they have either disappeared from sight or been identified as inmates of Siberian camps. The fate of the few notorious Western defectors to the Soviet Union is also shrouded in mystery. There is no place in the Soviet system for those who have once failed it and they put little trust in those who desert to it.

In the past Soviet jurisprudence has shown no quality of mercy. There has been no forgiveness for those who are classed as sinners against the Soviet state.

Prominent members of the American Bar have taken a leading part in pointing up the gulf which exists between Western legal thought and practice and that of the Communist world. They were among the organizers of an International Commission of Jurists which was formed following a conference of Western lawyers held in Berlin in 1952. This Commission has now collected an impressive documentary record on the workings of Soviet jurisprudence. This they laid before a conference held this last June in Athens. One hundred and forty-eight eminent jurists from 49 free countries, including several leaders of the American Bar, attended.

The Athens conference unanimously adopted a statement of principles now known as the lawyer's Hippocratic oath. This statement, widely publicized in Europe and the United States, eloquently points up the basic difference between law among the free peoples and the legal practices of the Soviet world. The rights of the individual, it points out were developed through history in the age-old struggle of mankind for freedom and declares that the state is subject to the law; that governments should respect the rights of the individual under the rule of law; that judges should resist any encroachment by governments or political parties on their independence as judges and

preserve the independence of their profession.

A whole generation has grown to maturity in the Soviet Union under a political and legal system which denies these principles of the Athens charter.

Here in this country it is possibly somewhat of a national characteristic of ours to be impatient. We hope for change over night. We would like to see the millenium around the corner.

It is well that we should realize that, short of revolution, basic changes in a structure such as that of the Soviet Union can only come slowly. Systems of law and government evolve gradually in any society. Our own concepts of law and of the rights and dignity of the individual have roots centuries old, but they have been developing and changing over these many years. It has taken generations to firmly ground individual rights and to establish these rights as against encroachment of the state.

The men in the Kremlin have great facility for changing their tactics as convenience and circumstance dictate. They need consult no one but themselves. It may be convenient for them to make us believe that since Stalin's death there have been basic fundamental changes. True, there have been some modest changes, but until in the Soviet Union a system is devised for the people's ultimate control over the decisions of the Politburo, we cannot put much faith in their tactical maneuvers.

Of course one would be foolish to reject any moves they might make, under internal and external stresses and strains, which might enlarge the area of the free world. There will, however, be no lasting security and no basis for relaxing our vigilance or our defense as long as the present Soviet system remains, and until the men in the Kremlin become subject to some checks and balances stemming from the Russian people themselves who, we have every reason to believe, are basically a peace loving people.

Is this evolution of the Soviet state—so necessary if world peace is to be preserved—a possibility?

Recently at Columbia University, I had an opportunity to discuss the effect on the Soviet people of the effort they are making to bring education to a great majority of their youth. I predicted that this should bring in its train increased expectations on the part of the educated; that no matter how much the Soviet can condition a man's mind and control his destiny, the state cannot in the end prevent a human being with education and with outlook to a broader world

from exercising a greater critical sense. The Soviet in affording education to its peoples are thus taking a great and calculated risk. This process may bring about an evolution of Soviet law and legal procedures.

We may now be on the threshold of greater contact between the professional, cultural and scientific peoples of the Western World and those of the Soviet Union. This may include meetings between our leading jurists and lawyers from the Communist world. If this takes place, we should not need to do any proselytizing. Let them see the fruits of a society where law is based on the maintenance of human dignity. Let them contrast that with a system where law is the arm of repressive government.

We are fortunate to be living in a country where laws made by the the people's delegates, not dictators, determine our fate.