Chapter IV

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THE MODEL

Standards of human behavior in relation to the exercise of individual rights are necessary in any legal system. Their function is to correlate legal provisions with individual activities and to provide uniform criteria for their evaluation. In legal systems closer to our world, these standards are personified under such concepts as "average prudent man" or "bonus pater familias" (Articles 450 and 1374 of the Civil Code of France). In addition to providing a yardstick for the evaluation of human actions, these concepts serve also in the elaboration of legal rules to assure desired social goals. In other words, the legislative technique in our mass society is that the legal rule addresses itself not to a number of real individualities but to a standard model, i.e., to a hypothetical member of human society.¹

The more realistic this model is and the closer its approximation to what people and individual members of a polity actually are, the greater will be the chances that the legal rule will command "natural" obedience. Contrariwise, the more removed from reality or the less average the model to whom the law appeals, the fewer are the chances of success of the legal order.

As with everything else which pertains to social order, the proper correlation of a legal command to the model human being to which it is addressed is only one of the reasons for the success of the rule of law. A highly reformist legal order which operates with an idealistic model type may still be successful, if social regimentation, either by force or in combination with ideological doctrines, is adequate. On

¹ Savatier, Métamorphoses économiques et sociales du droit civil d'aujourd'hui, 6–7 (ser. 3, 1959).
the other hand, a legal order conservatively conceived will be outdated and its institutions will have to be adapted to new conditions, if owing to social change a new type emerges, widely differing from the model envisaged by the legal order.

It seems, therefore, that a prescription for a legal order, which will fulfill its role of providing standards for human behavior with economy of force, must depend upon a keen understanding of actual social conditions and a feeling for the future. The model type of the member of a society to whom the legal rule is addressed is one of those characteristic features of the social order which determines its character.

Examples of unrealistic concepts of the model type are quite numerous. Among the most significant of such legislative errors were the provisions of the French Civil Code which took no account of the Frenchman’s inclination to form associations. This mistake was corrected by later legislation, including the Code de Commerce. Of even greater significance was the general attitude of the legislators of the nineteenth century toward workers’ associations. A most characteristic statement of the hostility toward workers and professional associations in the name of individual liberty was the French decree of March 2-17, 1791, which instituted a prohibition of workers’ and employers’ associations for the purpose of exposing fully industrial relations to the impact of the forces of the market. These laws were followed by a long list of prohibitions against forming associations and were reinforced by penal provisions for violations of their rules. They were gradually reversed by a series of laws beginning with the decree of February 25-29, 1848, and ending with the law of July 24, 1867. The latter re-established the freedom of professional associations.

Other countries of Europe have undergone similar experiences. Thus, Great Britain authorized workers’ association in 1824; whereas, in Germany, the recognition of workers’ rights to form associations had to await the passage of the law of June 21, 1861.2

While the French Civil Code was predicated upon a single concept, i.e., of a hypothetical Frenchman, and purported to implement the postulates of equality and liberty by determining the rights of

all members of the French society in a single act, no modern legal system may operate on the basis of a single standard of behavior and a single model type. One may say that the progress of modern societies is characterized by the emergence of an ever-growing number of social types to whom various legal rules address their commands, without prejudice to their universality. These rules take into account special obligations, as well as professional functions and qualifications. Doctors, lawyers, soldiers, businessmen, journalists, members of the trade unions, etc. are called upon to adhere to higher standards of behavior than other members of the social order. Their privileged position, a position of trust, is thought to be counterbalanced by higher obligations. Enforcement of these standards is often guaranteed by special provisions of the criminal law, prescribing responsibility for negligence or failure to act when another person would escape responsibility. Or enforcement may be occasioned by special charters of professional associations, which thus become universal laws to the same extent as provisions of the criminal law providing for qualified penal sanctions.

In the forty years of Soviet legal order, it is possible to distinguish at least three model types, i.e., the average Soviet man, to whom Soviet law has addressed it commands.

In the legal theory of Pashukanis, the citizen of the revolutionary state was an economic man who differed little from a member of capitalist society. This was because the capitalist institutions of law and barter, as means of regulating human relations, continued to function in the Soviet economic order. The emergence of the new man was predicated upon the fulfillment of the new economic order in which economic relations would no longer be regulated by law, but by administrative arrangements and planning. Then homo sovieticus would cease to be a legal concept. It would become rather a social category, as the law was to disappear together with the laws of value and the market.

This concept of Soviet citizen was replaced by that of an integrated man whose duty and instinct was discipline. The new man

was the product of a re-evaluation of the political and social situation in Russia. It was accepted as axiomatic that the victory of socialism was a concrete fact and not relegated to an unknown future, and that a classless society had been created as a result of the reforms initiated by the regime. By the same token, the law governing the Soviet Union was promoted to the rank of the socialist law.  

Socialist law was thought to be inspired by the postulate of subordination of individual rights to the collective interests of society: Not Roman law based on private property...but the public law principle provides a foundation of...Soviet socialist civil law. This principle found its expression in our code of civil procedure (of 1923) which in Article 2 stated the right of the procurator, both to initiate proceedings or to enter the case, irrespective of the wishes or motions of the parties, in any phase of the proceedings, if...this is required by the interests of the state or of the working masses.

The Stalinist concept of the Soviet man was the result of an evolution of ideas in Soviet psychology, connected with the decision to reshape through a series of economic plans the economic potential of the Soviet Union, and later, of the satellite countries. The concept of the individual in a socialist society (or rather in a society which builds socialism) has been formulated in terms emphasizing its ideological importance. It is thought to have a political and social meaning. Its appearance was the result of the victory of that tendency in the Communist Party of the Soviet Union which favored active implementation of the rules of history. These rules were said to lead toward the communist society. A plan was preferred to spontaneity. Determinism was played down, and emphasis was placed on the consciousness of the members of the socialist society. The individual was considered capable of response to social incentives, able to train and reform himself. The influence of the individual on his environment was stressed. While social institutions were tightly integrated into the mechanism of the state's undertaking of the task of social economic reconstruction, demands and opportunities for the individual increased.

4 Vyshinskii, Osnovnye zadatchi nauki sovetskogo sotsialisticheskogo prava 38 (1938).
5 Vyshinskii, supra note 4, at 54.
As a Soviet author explained, the chief characteristic of the Soviet citizen is his ability to identify his interests with those of his nation and with its ideology:

The harmony of the national and individual interests in the socialist community finds expression in the identity of two great forces, the people and communism.\textsuperscript{7}

Employment in governmental enterprises and institutions represents the most important form of individual participation in the social and economic activity of the socialist order. In consequence, work determines individual status irrespective of all other criteria of social status. A Soviet jurist who wrote on the development of Soviet labor law (1949) thus described the legal position of the Soviet worker under Stalin's regime:

In the socialist society there is no difference in principle and quality between draftee labor and labor performed by voluntarily entering into labor relations by taking employment. When we say that in the socialist society the principle of voluntary labor is recognized, we are not speaking of some kind of abstract principle of free labor and trade in a liberal and bourgeois sense, a principle which would be treated as a value per se.

Under the conditions of socialist society... it is impossible to secure the principle "from each according to his ability" without pressure by the state and law regarding the universal duty of work.\textsuperscript{8}

The collapse of Stalin's regime initiated a new attitude toward labor. For quite some time changes in production methods, refinements of modern industrial equipment, the need for higher skills in the labor force, and individualization of human contribution in the processes of production militated against the militaristic approach to the discipline of labor. It thus became necessary to adopt new methods of control and to base the participation of the Soviet citizen on a higher degree of voluntary support for the regime and its policy. The Draft of Basic Principles of Labor Legislation of the USSR and of the Union Republics defined the new policy as follows:

Soviet social order established all conditions for stimulating and developing among the working people a new socialist attitude to labor. In

\textsuperscript{7} Aleksandrov, O moralnom oblike sovetskogo cheloveka 30 (1948).

\textsuperscript{8} Dogadov, "Istoria razvitia sovetskogo trudovogo prava," Uchonye Zapiski, Leningradskogo Universiteta 163, 168 (No. 2, 1949).
socialist society an increasing role belongs to moral incentives to labor for the good of the society. One of the manifestations of the new attitude to labor is demonstrated by the active participation of the working people in industrial management and general all-national socialist competition which aims at raising the productivity of labor, and continued raising of social welfare.

Communist forms of labor are on the increase. Simultaneously with the gradual disappearance of the fundamental difference between intellectual and physical forms of labor... are created conditions for the transformation of work into a primary necessity of life for all members of society. A major role in the education of workers in the communist attitude to labor and the realization of the workers' participation in industrial management, increasing their material welfare and level of culture belongs to the trade unions.⁹

Thus, the discipline of regimentation has been replaced by the discipline of voluntary involvement in the affairs of the state and social organizations. Soviet society and homo sovieticus have arrived, according to this view, at that point in the general progress of the techniques of social ordering where it is possible to realize the highest ideal of social discipline. At the same time the highest degree of freedom is possible, since the ultimate attainment of social discipline will be followed by the disappearance of all forms of state coercion. This moment will arrive, Lenin predicted:

[W]hen all will learn to govern, and will really manage social production themselves, they will themselves be in charge of accounting and control... then avoiding this, all-national accounting and control shall become so extremely difficult and exceptional, and will be followed indeed by such quick and serious penal repression... that the necessity to abide by simple, fundamental rules of social life shall become a habit.⁹ᵃ

A draft of the law regarding the increased role of society in the struggle with violations of Soviet legality and rules of socialist coexistence provided in Article 1:

Each Soviet citizen has a duty not only to obey the laws, conform to the discipline of labor, protect and strengthen the state and social property, follow the rules of socialist coexistence, but also to insist on the same from other citizens and actively to struggle with all anti-social doings.¹⁰

⁹ SGP 3-4 (No. 10, 1959).
⁹ᵃ Lenin, The State and Revolution, 33 Soch. 155.
The law thus proposes to establish a new relationship between the governmental mechanism of law enforcement and the functioning of social structures. They share the same role with the state, and the individual citizen is drawn directly into the processes of government and enforcement of the rules of social behavior, which consist of formal commands of the law and rules of socialist coexistence.

Thus, the state aims at encompassing in the domain of public control that area of life which hitherto has been beyond the reach of legal rule. A higher stage of social development, in the opinion of the Soviet leaders, calls for the control of personal relations between the citizens of the soviet polity. While the province of *laissez faire* was shrinking in the realm of contract and property, the province of personal relations remained the last bastion of freedom.11

A high degree of regimentation of individual life in Soviet society is a necessity. This follows from the need for new types and methods of social action in the achievement of social goals unrealizable through normal methods of ordering and coercion. Some of the difficulties in this connection may be gauged from the decisions of the Polish Supreme Court, which has proved hesitant to enforce full control of private affairs. In one case, an employee, dismissed from service for refusal to participate in “social action,” sued for damages. The Court stated:

The duty of social work is one of the principles of socialist coexistence in the People's State. It is independent of the fact whether a citizen is employed by a socialist enterprise . . . and violation of a duty of social

11 In the words of Scrutton L.J. in the Court of Appeal: “[I]t is quite possible for the parties to come to an agreement by accepting a proposal with the result that the agreement concluded does not give rise to legal relations. The reason of this is that the parties do not intend that their agreement shall give rise to legal relations. This intention may be implied from the subject matter of the agreement, but it may also be expressed by the parties. In social and family relations such an intention is readily implied. . . .” [1923] 2 K.B. 261 at 288.

In the case of Balfour v. Balfour, Lord Atkin observed: “[I]t is necessary to remember that there are agreements between parties which do not result in contracts within the meaning of that term in the law. The ordinary example is where two parties agree to take a walk together or where there is an offer and acceptance of hospitality. Nobody would suggest in ordinary circumstances that those agreements result in what we know as contract. . . .” [1919] 2 K.B. 571 at 578.
work cannot be considered per se a violation of duties resulting from the contract of employment, and as such may not be used as a reason for the dissolution of the contract of work. On the other hand it cannot be ruled out that, in some circumstances a drastic non-compliance with the duty of social work may justify a loss of confidence in the employee so that continued employment even for a short period of time is no longer possible. This may, however, apply to exceptional circumstances, which would indicate such a hostility toward the institution in which the employee works, that leaving him there would jeopardize the work of the institution.12

The high standards of conformity by the Soviet masses has been achieved by propaganda and by the monopoly of all forms of political and social advancement. The new tasks, however, call for a much broader and deeper degree of conformity and for the rise of labor productivity. In particular, the improved situation in the supply of durable consumer goods has opened new channels for effecting further the total conformity of homo sovieticus, not only in political and social ideals, but also in the style of “socialist coexistence.” As an editorial in the leading Soviet legal periodical pointed out:

Until recent times, the problem of meeting the property interests of the citizens was linked in the civilistic literature with the question of the transfer of objects of material value into personal ownership. In the present conditions of the developed communist construction, as never before, arises the necessity to develop legal provisions concerning such relations of the citizens with the socialist organizations, which would make available the use of various objects of material value without making them personal property.18

This new development represents the single most important step in the reconstruction of the attitude of the Soviet citizen toward his social duties. The fact that social organizations shall control the means of adding meaningfully to individual existence, either through the control of recreation or travel opportunities, or ownership of car pools, or other means of recreation, while sharing with the state an interest in individual performance at the place of work and in various forms of social actions, will strengthen general discipline at work, in the streets, in public meetings, and even at home.

12 Nowe Prawo (No. 4, 1955).
13 “XXI sjezd KPSS i zadatchi pravovoi nauki,” SGP 7 (No. 2, 1959).
RE-EDUCATION

In spite of the abolition of capitalist forms of economy, ideologies and habits rooted in capitalist forms of production have survived into the new social and economic order. Crimes, common weaknesses, and various shortcomings of human nature, which according to Marxist doctrines were a reflection of the old order of the society, have also failed to disappear, and human nature continues to be out of tune with the new shape of things. As late as 1936, which was the year of the Stalin Constitution and its announcement of the liquidation of the classes, Pravda reported with a good deal of exasperation: "Egotism, indifference, laziness and cowardice, will survive the abolition of the subdivision of the society into classes by which they were produced." 14

Direct concern with the moral and ethical convictions of the socialist citizen was also caused by another phenomenon. As Soviet leadership and society have discovered, this called for an educational campaign since laws and regulations were unable to provide an efficient remedy. As stated in a Polish periodical:

A dissatisfied guest in a tourist hotel, a passenger whose bus is late, a client poorly served by the water department, etc., have no legal powers against the institutions which are obliged to serve their needs. The only remedy, writing complaints to the authorities, brings no results. This state of affairs is accepted as a necessary evil which will disappear in some indefinite future. . . . We remain powerless before the ill will and lack of courtesy shown by various people in various state-run enterprises. We still have the legal code of the capitalist system which simply did not envisage situations which occur today. In the capitalist system, incompetence was restricted by free competition. Today we are ready to accept the principle of priority of national interests, and the resulting hierarchy of public needs, but this does not mean that we can tolerate the lack of legal equality in cases when we can afford certain services. . . . If for national reasons we cannot afford all types of public services as yet, we must nevertheless be assured that in the services we do have, we are equal partners and the law defends both sides. 15

Quite early, therefore, the general education of the public into the ways of the new social reality had to accomplish two goals. One

14 Pravda, editorial, April 7, 1936.
consisted of eradicating the remnants of capitalism in the minds of the people. The second was to make the Soviet citizen conform to the new reality under socialism, and later communism. For the time being, the Soviet citizen, although not hostile to the regime, was found unable to participate spontaneously in the great task of socialist reconstruction without proper direction and control and a simultaneous process of re-education in the course of law enforcement. Many of the communist leaders were convinced, upon observing the state of the collective and individual mind in Soviet society, that the achievement of the final goal would depend upon the total reconstruction of the Soviet man. 

From the very beginning, the courts were considered the most important instrument for the inculcation of the new attitudes. Vyshinskii, the standard bearer of the idea of the legal offensive in the struggle for more perfect forms of social life, was convinced that:

The Soviet court participates directly in the historic venture of the construction of the Communist society. Punishing pitilessly plunderers of the socialist property, thieves, swindlers, speculators, hooligans, do-nothings, and absentees from work, our courts burn out the familiar stigma of capitalism which have still survived in Soviet life. Our Courts struggle against these survivals in the human conscience, ... educating the bearers of such survivals.

The Soviet Supreme Court, in its directives issued by its Plenary Session, required the judges

... to bear in mind when rendering judgments their most important role as acts of socialist justice which demand from the judge a particular consciousness of his responsibility for their correct political content....

The 1926 Judiciary Act, which first formulated the educational role of the Soviet courts, defined their tasks to include, among others (Article 1c): “To strengthen social and labor discipline and the solidarity of the toilers and to educate them in law.” The 1933 Act used a somewhat broader formula:

By all its activities, the court shall educate the citizens of the USSR in the spirit of devotion to the country and the cause of socialism, in

17 Vyshinskii, Teoria sudebnikh dokazatelstv v sovetskom prave 25 (1950).
18 Karev, Sovetskoe sudoutstroistvo 23 (1951).
the Spirit of precise and unswerving execution of the Soviet laws, of watchful attitude toward socialist property, of labor discipline, of an honest attitude toward governmental and public duties, and of respect for the rules of socialist community life.

The educational role of the Soviet courts was restated in the various legislative acts which followed the end of the Stalinist regime and initiated the reform of the legal system in Russia.\(^\text{19}\)

In Eastern Europe, which became a part of the Soviet bloc, the educational functions of the socialist courts and of the socialist law were fully recognized. So, for instance, Article 40 of the Hungarian Constitution of 1949, stated that “courts of the Hungarian People’s Republic shall . . . educate the workers to respect the rules of socialist communal life.” A Czech textbook, commenting on Section 4 of the Czechoslovak law on the judiciary (1952) which contains a provision similar to that of the Hungarian Constitution, stated that it is a duty of the Czechoslovak court to educate backward citizens who have violated the laws of the country “under the influence of the survivals of capitalism in their minds.” \(^\text{20}\)

19 Article 20 of the General Principles of Criminal Legislation of the Soviet Union and of the Union Republics stated: “A penalty . . . aims at reforming and re-educating the convicted person in the spirit of an honest attitude toward labor, of strict execution of laws, of respect for the rules of a socialist community . . . .”

A similar formula insisting on the education of citizens in the spirit of strict observance of Soviet laws and of respect for the rules of everyday life in a socialist community is contained in the general principles of criminal procedure (art. 2) and in the general principles of legislation on judiciary which defines the duties of the Soviet courts as follows:

“By all its activities the court shall educate the citizens of the USSR in the spirit of devotion to their country and the cause of communism, the spirit of precise and unswerving execution of Soviet laws, a solicitous attitude towards socialist property; observance of labor discipline; an honest attitude toward governmental and public duties; and respect for the rights, honor and dignity of the citizens and for the rules of socialist community life.”

The Draft of the General Principles of Civil Procedure was less specific and mentioned that the educational goal of the Soviet civil law courts was to instill into the minds of Soviet citizens a “solicitous attitude toward socialist property, observance of labor discipline and respect for the rules of life in a socialist society.”

20 Trestni Pravo (general part) 13 (1955); cf. also Hungarian Judiciary Act, Law II, 1954 TV.; cf. Albanian Law No. 1284 of June 9, 1951,
In the process of re-education, remnants of the capitalist order were to be eradicated and replaced by obedience to socialist laws and adherence to the "rules of life in the socialist community." In this connection, the term "rules of life" seems to indicate a certain style of life under socialism. But this concept is also used with reference to more concrete tasks within the legal system. Thus, "rules of life in the socialist community" are held to constitute an additional source of rules for guiding judicial action when more specific rules are lacking. They also provide a general guide for the validity of individual legal transactions. The "rules of life in a socialist com-

on the Judiciary (G.Z., Law No. 1284, No. 20, 1951). According to the Albanian Law on Government Attorneys (G.Z., Law No. 274, No. 86, 1946) the duty of the government attorneys is to educate private citizens in the understanding of the law of communist order. The Polish judiciary act of 1950 (art. 3) calls upon the courts "to exert all their efforts to educate citizens in a spirit of loyalty to the People's Poland, so that they will observe principles of the People's legality, the discipline of labor, and will have a solicitous attitude to socialist property."

22 Cf. supra at 104–5.

Sec. 9 of the Bulgarian Law on Contracts stated: "Parties have the right to determine freely the content of the contract as long as it is not contrary to law, to the national economic plan and to the rules of life in a socialist community."

Article 58 of the Civil Code of the RSFSR permits the use of one's property within the limits determined by the law. Polish law on the General Principles of the Civil Legislation (art. 3) stated:

"Law shall be applied and construed in accordance with the principles of the order and the aims of the people's state. Nobody shall use his rights in a manner contrary to the principles of social life in the people's state. Any legal transaction contrary to the law or rules of social life shall be invalid. Any declaration of will shall be interpreted in accordance with the principles of social life in the people's state" (DU 34/1950).

The Czechoslovak Civil Code of 1950 expressed the same principle in somewhat different terms: "The Social order of the People's Republic and its socialist construction guaranteed by the constitution are the foundation of private rights" (sec. 1). "Nobody shall abuse his private rights to the prejudice of the society" (sec. 3).

The Hungarian Civil Code of 1959 contains the most developed system of provisions dealing with the effect of social and political conditions in a socialist state on the private rights: (sec. 4) (1) "In exercising civil rights and performing civil obligations the parties shall show such conduct as to ensure that the enforcement of their interests be in conformity with the interests of society."
"rules of life" thus appear in a double role. In the first place, they provide a general ethical and moral code of behavior for a member of socialist society to guide him in areas of life which are not easily regulated by the formal provisions of the law. In the second place, they provide a central concept in the legislative techniques peculiar to Soviet lawmaking, which must resort to vague and broad formulas in order to meet constant fluctuations of policy. As conditions of life change, it becomes possible to force upon the Soviet citizen new, stricter, and more exacting standards of behavior. Thus, "rules of life" acquire new meaning tending toward ever higher individual involvement in the affairs of the socialist community.

Soviet laws are deeply concerned with the enforcement of the new mode of life, which, however, seems to take root with great difficulty. Hence, the resort is made to extralegal concepts which constitute the rationale both of the legal order and of individual behavior.

The common characteristic of the two orders, that established by the law in force and the other by the rules of life in a socialist community, is that they both contain identical commands vis-à-vis

(2) "In civil law relations everybody shall act by mutual cooperation and in accordance with the demands of socialist coexistence. Cooperation shall be achieved by strictly performing all obligations and by exercising all rights in conformity with the function of such rights."

(sec. 5) (1) "Misuse of rights is prohibited by this Act."

(2) "The exercise of a right shall be deemed to be the misuse thereof if such exercise aims at an object incompatible with the social function of the rights, particularly where such exercise might result in damaging national economy, in interfering vexatiously with the citizens, in prejudicing their rights and lawful interests, or in producing undue advantages."

Polish Supreme Court, in one of the rare cases which involved the analysis of art. 3 of the General Principles of Civil Legislation, stated as follows:

"Article 3 of the General Principles... determines general principles of individual rights, stating that the use of individual rights is permitted inasmuch only as it is not contrary to the principles of life in a people's state.... Consequently... article 3 constitutes a valid defense against a claim addressed to the defendant, but it may not serve as a basis for independent claims to the creditor, in particular a claim for the reduction of the debt or any other modification of his liabilities or obligations. Such a claim would have to be based on a concrete legal provision permitting for the reform of the legal relationship between the parties." Decision of April 25, 1955, in PiP 529 (1955).
the socialist citizen in the form of two institutions: the economic plan and labor discipline. Both are absolute. Human transactions contrary to the plan are not valid. Commands of the discipline of labor are equally absolute. As a Soviet treatise stated:

Socialist labor relations can by no means be reduced to the rights and obligations of the parties. The social position of the citizen as a member of the socialist enterprise cannot be defined in terms of rights and duties.

With reference to these two institutions of the Soviet social and economic order, commands and prohibitions are formulated in much the same manner as are good morals in civil codes, i.e., as determinative of the proper attitude of the individual to problems of collective life. But their striking feature, directly pertaining to the task of remaking the Soviet man, is the diversity of legal provisions concerned

23 Cf. supra at 94–95.

As the Polish Supreme Court stated: "One of the functions of the state is the management of the national economy. Consequently, a violation of socio-economic interests of the state must be considered as the violation of public order...." Decision of May 28, 1949, ZOIC 13 (1950).

This statement must be read with reference to the basic assumptions of the Soviet legal and social order. By itself a statement of this type means nothing novel, as economic life determines the content of human relations and conditions of individual life. According to the traditional view, a legal system operates independently of the economic laws, while socialist planners claim that the economic plan, which is a legal enactment, has subordinated the laws of economy to human will. Economic planning integrated laws of economy into the positive legal system. Cf. supra.

"Such a phrase as laws of political economy, laws of history, laws of statistics has no dependence whatever on any conception of a tribunal or a lawgiver, or of doing justice. It signified only the normal results, as collected by observation or deduced by reasoning, of conditions, and (where human action is concerned) habits and motives, assumed to exist and to have effect. Whether we like these results or not, whether and to what extent these conditions are within the control of deliberate human action, and in what direction, if at all, we shall endeavor to modify the conditions or counteract the results,—may be matters deserving to be most carefully weighed; but they belong to a different order of consideration." Pollock, First Book of Jurisprudence for Students of Common Law 20 (1903).

24 Aleksandrov & Pasherstnik, Sovetskoe trudovoe pravo 120 (1952).
with the effect of legal transactions contrary to the economic plan or the consequences of the breach of labor discipline. Sanctions in civil laws applicable to breaches of rules of life in a socialist community are combined with criminal provisions in the penal laws. A proper labor record is not only a matter of the individual's economic position. It is also a matter of social status and is rewarded in many intangible forms, determinative of ethical level and progressive attitudes. The draft of the law on increasing the role of society in the struggle with violations of Soviet legality and the rules of socialist coexistence makes it quite clear that the main problem is the question of proper technique in achieving the basic target, i.e., the reformation of practical human ethics:

Soviet citizens work nobly in all sectors of communist construction, honor strictly their social obligations, follow Soviet laws, and respect the rules of socialist life. However, there are still people who live an ignominious life, commit criminal offenses and other anti-social acts. By their behavior they make it difficult for other Soviet people to live quietly and work, and cause damage to the society. It is necessary to struggle decisively with such violators of Soviet legality and rules of the socialist coexistence. However, not in all circumstances is it necessary to apply to them measures of administrative coercion, or penal repression. In a number of cases such people may be reformed under the influence of the collective.  

A ruling for the guidance of Hungarian courts issued by the Supreme Court provides an illustration of the extent of the mental reorientation required from a member of a socialist society. The Supreme Court stated that the so-called stabilization clause provided for in private contracts was invalid because

...at the time of the stabilization, it was the court's duty toward our people to regard the value of the forint with realistic optimism, faith and confidence, and this is still our duty. A covenant lacking these characteristics may not be enforced by the courts.

The ruling was issued despite the fact that an express provision of an act issued during the interwar period definitely permitted such

25 Cf. supra 115.
26 Biber, "Reevaluation of Money Claims in Hungary," 2 Highlights 228 (1954); Leading Decision of the Hungarian Supreme Court of March 1, 1950, Pkt 5837/1949.
stabilization clauses in private contracts. An act of prudence permissible under the law, an act of foresight calculated to minimize the effect of economic instability, was declared incompatible with the duties of citizens toward society. The new social order required that a contract between private citizens be inspired by confidence toward the new state. Under the new order, the success of the individual depends far more upon the success of the whole than upon his perspicacity and the arrangements which he can personally make. The competitive spirit of the capitalist economic system is replaced by the paramount interests of the whole.

The need for the re-education of the new man is carried down to family relations. Divorce and guardianship cases are a mine of information on the struggle for the reshaping of the legal convictions of the citizenry at large. Thus, the Polish Supreme Court issued a ruling for the guidance of lower courts amounting to a real privilegium Paulinum:

Conflicting ideologies on political and social questions, especially if one of the spouses represents a progressive conception of life, and the other, on the contrary, a backward one, justify divorce.27

The reshaping of the national economy and the ideological reconstruction of society have given a new meaning to problems of guardianship and arrangements substituting for parental care. Thus, the East German Supreme Court ruled (April 27, 1951) that, in general, antiquated notions such as raising a child in a family home was healthier and better than any other arrangement were no longer valid. It asserted that sometimes it is salubrious for the spiritual and physical welfare of the child to separate him completely from the influence of the parents. The court remarked that

...in the new socialist order the weakened influence of the parents, particularly in divorced families, is fully compensated by the influence of the ideological youth organizations.28


28 1 OGDDR 136 (1951).
In the same spirit, the District Court of Moravska Ostrava (Czechoslovakia) ruled (January 28, 1953):

When deciding the question whether guardianship of a child should be left to its mother or to a social welfare institution, the probation of the mother during work is to be taken into consideration. If the mother is a shock worker, or a member of the Communist Party, the child can be left to her, as her moral and political qualifications guarantee honorable education.  

In another case, the same court removed a son from the care of his parents and placed him under the guardianship of a social welfare institution. The court cited the son’s nonaccomplishment of the shift in the mines, the parents obviously having failed “to educate their son in the proper attitude toward his working duties.”

29 Socialisticka Zakonnost 20 (No. 1, 1953).
30 Ibid.

A Soviet manual for the people’s assessors explained that “Soviet law plays an important and progressive role in strengthening and perfecting the productive relations of the socialist society. While fulfilling this function, Soviet law supports the development of productive forces of our society. Technical development, improvement of work habits... constitute indispensable conditions for a gradual transition to communism.” Posobie dla narodnykh zasedatelej 9 (1955).

An important tool in the implementation of the moral reconstruction program in the Soviet Union was created in the form of a network of boarding schools following a recommendation of the Twentieth Congress of the Party. It expanded with great rapidity and has had a marked success. It is said that parents have swamped the new schools with requests for admissions. Schools are credited with important achievements concerning the development among their students of these moral virtues which should characterize good members of the socialist society. An article in Pravda by the director of the new school system listed these achievements in the terminology which is familiar to those who are conversant with those aspects of Soviet laws which describe the life in a socialist order: devotion to and love of work; ability to provide for their own needs; and students have become more polite, full of consideration for the collectivity in which they live. In order to improve the performance of the schools the director asked for better cooperation of the Komsomol (Organization of Communist Youth) in selecting leaders for the organization of Pioneers, an organization of Communist children. Kozmin, “Two Years of Boarding Schools,” Pravda Oct. 9, 1958. Cf. Hazard, “Le droit soviétique et le dépérissement de l’Etat,” in 8 Travaux et conférences, Université Libre de Bruxelles 91 (1960).
The educational quality of the Soviet legal system is due primarily to the fact that rules of law are identical with rules of the moral code:

Communist morals include observance of Soviet socialist laws, with the idea that this is the most important social duty.... Socialist law formulates the same principles as do socialist morals. There is not, and cannot be, a division between them.... Socialist law is an instrument adapted to the realization of the same goals as socialist morals. Socialist law does not know any other goals than to aid the destruction of the capitalist world and to build a new communist society.

The unity of content of legal and moral command is, as a Soviet jurist has observed, a result of the fact of their common origin, i.e., from the economic conditions in a socialist society:

Morals, as other forms of social consciousness—law, science, and politics—depend on social existence and on the economic conditions of the development of the society.

Soviet morals support all those values, and only those values, which support the march of humanity toward communist forms of life. The most important is the abolition of contradictions between the individual and social interests:

Liquidation of private property as regards means of production, has liquidated the contradictions between the individual and society. Socialist property, the economic basis of the new social ties between humans, is also the basis for new morals.31

31 Aleksandrov, O moralnom oblike sovetskogo cheloveka 4–5, 30 (1948); cf. also Kareva, Pravo i nrastvennost v sotsialisticheskom obschestve 11–13 (1952); in a special audition, “Morals of yesterday and today” (May 12, 1961), Polish Radio complained of a discrepancy between public opinion and the courts as to what constitutes a criminal offense: “When criminal offenses in the classical sense are tried,” the commentator stated, “public opinion and courts are in agreement. When, however, crimes against the state are prosecuted, not only public opinion sides with the offenders, but their fellow workers defend them, and witnesses are reluctant to incriminate them.... All that which is connected with traditional morals is properly understood by the public. However, offenses directed against new forms of life, resulting from socialist transformations, escape social censure.” Reported by the FEC News from Poland, May 22, 1961.
Thus, the Soviet man has no need for an *echelle de valeurs* which would motivate his behavior as an independent factor of social life. The identification of morals with legal commands suggests that normal legal techniques are not sufficient to meet the needs for social regulation in the Soviet order. And, indeed, the commands addressed to citizens to improve their work habits, their sense of obligation toward society, and the sense of sacrifice and to see the welfare of their children in terms of their ability to serve the community are beyond the range of legal rule. Identification of the law with morals tends to formalize moral sanction and provide for effective channels for its enforcement in a manner highly resembling and indeed sometimes identical with the enforcement of the law.82

The Polish Supreme Court drew the attention of the lower courts to the impact which the new morals have had on the problems of criminal law:

Homicide under the stress of emotion... may mean something else in the capitalist state, and something else in our society in view of the basic difference between bourgeois and socialist morals.

A most classic example of the crime committed under the impulse of strong emotion is... homicide motivated by jealousy. At the basis... of the judicial practice in capitalist states lay morals qualitatively different from socialist morals. In People's Poland, vengeance and jealousy arising from craving for power of man over man are considered as base emotions and contrary to the foundations of her order, and in the process of liquidation through the raising level of culture. An offender guilty of the crime from such motives cannot invoke a state of strong emotion.83

A different use of the force of morals is represented by the technique which makes criminal trials in courts also trials by public opinion. This is expressed in the conviction that the interpretation of criminal law is a political interpretation.34 The administration of

33 PiP 895 (1952).
34 "Any interpretation of criminal law is primarily a political interpretation. This fact is camouflaged by the bourgeois jurists who think that by acknowledging political interpretation of criminal laws they admit thereby the reactionary content of the bourgeois laws. Soviet science of criminal law declares openly that interpretation of criminal laws is essentially a political interpretation. The only correct and truly scholarly
justice in the socialist states emphasizes the need for direct involve­
ment of public condemnation in the process of sentencing by the
court. In order to arouse the public, to involve the masses in the
eradication of social errors, trials are held on the spot. Contrary to all
precepts of orderly judicial procedure, journalistic campaigns are
conducted demanding imposition of harsh punishments, making an
example of the criminals, etc. A directive of the Soviet minister of
justice instructed Soviet judges (1947) to concentrate on the propa-
ganda aspects of the case:

The judge must know how to conduct court proceedings and how to
write the decision...to show with the utmost clarity the political signifi-
cance of the case, so that the defendant and those present in the court
could see clearly the policy of government in the court action.85

It is not surprising, in view of the growing involvement of social
organizations in governmental functions, that the new tendency is to
identify punishment with social censure. The new methods not only
dispense with the legalistic mechanics of the judicial process but also
with the institution of courts. The administration of justice, includ­
ing the imposition of severe punishments, is partly transferred into
the hands of the public. Since the Twenty-first Congress of the Party,
which was followed by a series of legislative measures seeking to
draw social organizations into the process of enforcing the rules of
life in socialist society, there is no longer a hard and fast distinction
between the realm of judicial action and that of moral condemnation,
between the technique of public censure and judicial process, be­
tween the correctional measures provided by the law and adminis­
tered by courts and those applied without the guidance of the law by
social organizations.86

CRIMES OF OFFICIALS
A high degree of integration of individual life into the general
scope of the activities of the state has blurred the line dividing what

interpretation of criminal law is interpretation permeated by com­
munist partisanship.‖ Chkhikvadze, Sovetskoe uholovnoe pravo, obsh­
chaia chast 115–16 (1952).
35 Sots. zak. 5 (No. 2, 1947).
36 Cf. infra at 249 ff.
is private and accountable only in terms of personal responsibility from what is public and therefore subject to stricter criteria of accountability. The extent of change in the position of the individual in socialist polity is intimately connected with changes which legislation and court practice have introduced regarding the criminal responsibility of public officials for violations of laws while in office.

The principles governing the criminal responsibility of officials, as formulated in modern European criminal laws, are readily evidenced in the Polish Criminal Code of 1932, which may be taken as an expression of modern standards in the field of criminal legislation. The Code, still in force, has a separate chapter dealing with offenses of officials. This covers various specific offenses such as abuse of power (Article 286), disclosure of official secrets (Article 289), receiving material or personal advantage (Article 290), etc. The Code also provides that, in addition to those offenses directly connected with the exercise of public duties, for any offense committed by an official in the performance of his duty or in connection therewith, the court may impose a penalty higher by one-half than the highest penalty fixed for such an offense in the relevant statutes (Article 291). Public officials are defined as not only those in the service of the central or local government but also as persons charged with duties connected with the affairs of the central or local government and employees of any public institution (Article 292).

As soon as the Code went into operation, controversy arose as to the meaning of the concept of "public official" and as to the definition of his offense. Polish courts tended toward a restrictive interpretation of these two concepts. The Supreme Court considered as public officials only those who in some manner were connected with the functions charged to public administration. The mere fact that a person was employed by the government was not enough. He had to be responsible for public functions involving what was known in European jurisprudence as "imperium," which might be rendered as "exercise of sovereign power." Persons employed in government economic enterprises, e.g., members of the administration of national

forests, farms, or state railways, were not held to be public officials unless they exercised governmental functions based upon legislative authorization. For instance, a guard protecting game against poachers was under the protection of the law and was responsible for crimes committed in the exercise of his duties in this connection as a public official.

After 1945, the continued expansion of government control over various fields of the national economy, i.e., the nationalization of trade and industry and the collectivization of trades, agriculture, and the professions, created a new situation. The administration of economic resources and the management of enterprises became functions of the government. This, in fact, was reflected in a great number of laws providing for penal sanctions in connection with the responsibilities and duties of the officials employed in new areas of government activity. These new laws reflected a new attitude toward the two concepts which were restrictively interpreted before the war, namely, who was a government official and what constituted a crime in office. The Small Penal Code of 1946, which contained most of the regulations adapting the criminal law of Poland to new conditions, provided that employees of central or local government enterprises, or enterprises in which the government had financial interest or which were under its administration, as well as employees of organizations in charge of functions delegated to them by the central or local government, should be considered as officials. In addition, managers and employees of cooperatives and audit unions came under the penal legislation applicable to officials.

Similar provisions have been enacted in other countries of Eastern Europe. In this field, as in other realms of socialist law, the purpose of the new legislation was to adapt the function of government to new responsibilities which differed profoundly from what was traditionally considered to be the function of government. The purpose of the new laws was to initiate a new attitude on the part of a public servant toward his duties. It was also a method of re-education. As a Soviet jurist wrote:

The causes for the commission of criminal offenses by government officials in the Soviet state have their root not in the socialist social rela-
tions... but in the survival in the minds of the individual Soviet citizens of the remnants of bourgeois psychology and of morals, and views and convictions inherited from the bourgeois feudal apparatus of Tsarist Russia.88

The central problem which the new socialist legislation faced was the necessity of combining governmental functions with business techniques. Soviet legislation endeavored to achieve this by dropping the distinction between those functions involving the exercise of the public power of "imperium" and other duties. Thus, for instance, "abuse of power" involved all departure from the normal operation of government institutions or enterprises which caused financial losses, the violation of the social order or the rights of citizens protected by the law. Departures from the normal operations of the enterprise might include, as a Soviet jurist explained: "nonfulfillment of the plan, improper distribution of manpower or violation of the adopted technical process." 89

In addition, Soviet legislators considered as crimes and violations of official duties bureaucratic modus operandi and attention to formal aspects of official duties as opposed to the business-like management of economic assets. Hence, a group of crimes grew up under the denomination: "careless attitude to official duties" (Article 111 of the RSFSR Criminal Code) and "bureaucratic attitude." Article 99 of the Criminal Code of the Ukraine defines the crime of the bureaucratic attitude as consisting of

...formalistic attitude to official duties, demonstrated in ignoring governmental or social interests or causing delays, or narrow mindedness in solution of problems, ignoring the control of the broad masses, and also careless and insensitive attitude to workers....

Furthermore, criminal liability in such situations was not predicated upon intent. The result was that any type of action or inaction, or simply the inability to make up one's mind, could be considered

as a crime, provided that a causal relation between it and the economic failure of an industrial or business enterprise could be established.

The new Soviet legislation focused the courts' attention upon the objective elements of the crime rather than upon the personality of the offender and his criminal intent. The fact that a government official caused damage to the national economy was considered a sufficient ground of criminal responsibility. In Eastern Europe, where modern legislation emphasized the subjective elements of crime, it was necessary to perform a major operation in order to adapt penal policies to the Soviet pattern. This was accomplished for the most part by the means of directive rulings by the Supreme Court, ordering the lower courts to enforce the old and new criminal statutes with regard to the damage aspect of official actions or inactions.

So, for instance, in Poland the Supreme Court issued a directive ruling concerning criminal liability for crimes of officials committed under the influence of alcohol. In the code of 1932 such crimes were considered misdemeanors. Under the new ruling, however, the Court raised the degree of responsibility for offenses so committed to the responsibility for intentional crimes. On another occasion, the same Supreme Court instructed lower courts to measure their punishments according to the extent of the damage suffered by the public interest. The Court, however, admitted in the directive ruling that such was not the position of the Code itself, as the latter was concerned with the personality of the offender rather than with the extent of material damage. On a still different occasion, the Supreme Court identified this public interest with the fulfillment of the economic plan:

The plan is the fundamental law of the state and everything that delays or hampers the execution of the plan constitutes a violation of public interest which is protected by the law.89a

Under the Code of 1932, the adverse effect of a criminal act upon the success of the plan could be considered punishable only if the offender had this particular effect of his action or omission in mind. Under the new ruling, the personal attitude of the offender—his intent, negligence, or recklessness—was no longer essential.

Another feature of the impact of the Soviet model on the laws

39a Ibid.
of the satellite nations is the considerable extension of the function of the public official. Such followed from the new functions of the state. As the Bulgarian Supreme Courts explained:

The People's democratic state fulfills...the function of organizing the economy and directing the cultural educational activities. This function is unknown to the bourgeois state. The bourgeois theory of the public law differentiates between acts of the state through which it exercises imperium...from the acts through which it develops its economic activity.... Such a theory cannot have currency in the people's democratic law, and the people's democratic state in which the functions of organizing the economy and leading the cultural-educational work are as important as the other function. The People's democratic state exercises its functions through the council of ministers...and the enterprises....

When in 1951 Bulgaria adopted the new criminal code, it defined (Section 333) as a public official...

...anyone who is charged with the performance of service in a government office, cooperative, or other public organization, or who is entrusted with safeguarding public property—employed for a salary or gratuitously, permanently, or temporarily.

The meaning of this provision is clear when it is realized that all employment in industry and trade is government employment. As mere custody (even temporary) of the government property is enough to qualify the custodian as a public official, there is hardly anybody in government employ who could not be subject to stricter liability as a government official.

In its decision No. 37 of June 19, 1952, the Bulgarian Supreme Court declared the manager of a cooperative to be public official because he held a leading position in a cooperative. Similarly, the Court held responsible any person who exercised an official function in the absence of the regular occupant of the governmental position. The same applied, the Court stated, to those who were given the trust of safeguarding public property, even if there was involved only transportation of such property from one place to another. In one case, the Bulgarian Supreme Court held that a person appointed by

the village policeman to guard a piece of agricultural machinery was a public official.\textsuperscript{41}

A full theoretical explanation of the conceptual revision applied to the term "public official" in the socialist order was given by the Polish Supreme Court in its decision of August 22, 1950:

The concept of the official is linked in the pre-war practice in the capitalist order with the exercise of the sovereign power.\ldots Although the term official was popularly used to designate a white collar worker in general\ldots the Criminal Code used this term with reference to state and local government officials.\ldots In the capitalist order where economic activity was in the hands of the private owners, and the bureaucracy, both state and local, served to protect the domination of the exploiters, it had as such no economic functions.\ldots

The other characteristic of the bourgeois bureaucracy was its\ldots elite character which was among the others expressed in the different legal position of the government official.\ldots In the new conditions of the People's Poland the administration of justice must be aware of the change in the meaning of the concept "public official" and of the criteria of his activities.\ldots

Elite position, caste, privileges of the hireling class, separatistic tendencies of the "class of officials" must be replaced by the equalization of all citizens on the basis of common participation in the management of the socialized property and common responsibility for the development and security of the state of the working people.

In view of the liquidation of the exploiting classes, the vast majority of the society is employed by the state, or industrial and agricultural cooperatives.\ldots This fact has broadened the narrow traditional concept of the "official," as a servant of the oppressive apparatus of the exploiting classes and fills it with an altogether new\ldots content. "The economic official" in the people's state is a co-manager of the economic assets, which constitute the national property, and which is under the protection of the people's state.\textsuperscript{42}

This theoretical position led to some extravagant consequences in practice. "All persons," stated the Polish Supreme Court, "employed in a government or government-controlled enterprises and therefore also workers at the workbench, must be considered as government officials."\textsuperscript{43} In another case, the same Court found that

\textsuperscript{41} Sipkov, \textit{supra} note 40, at 275.

\textsuperscript{42} Case No. K. 430, PiP 195 (No. 12, 1950).

\textsuperscript{43} Case No. K. 1290/48, PiP 639 ff. (No. 11, 1952).
a milkmaid on a government farm might be prosecuted under Article 286 of the Criminal Code, since Article 46 of the Small Penal Code of 1946 extended the application of penal provisions applicable to officials to the functionaries of government enterprises.44

According to the resolution passed by the bench of seven justices of the Polish Supreme Court (June 16, 1951), even a barmaid in a government restaurant might qualify as a government official.45 In the Bulgarian practice, managers of cooperatives, storekeepers in cooperatives, cafeteria employees, and cashier-auditors in a cooperative have been declared liable under the Code for crimes of officials.46 Soviet practice also tended to extend criminal punishment for crimes in office to persons engaged in purely technical functions. However, the Supreme Court of the Soviet Union put a limit to this practice and at the plenary session of November 30, 1956, refused to consider a crane operator, who had dropped sixteen bags of sugar into the sea while unloading a ship, as responsible for an offense in office.47

A purely pragmatic attitude defying any restriction of criminal responsibility either by the nature of the criminal act or by the class of persons involved was declared to be the rule in this type of criminal responsibility by the Polish Supreme Court:

All offenses, and in particular those committed by officials, must be considered in connection with the nature, spirit, and direction of the present social and political organization of the State, and the present political reality.

It is impossible therefore to consider offenses by officials from a purely formal or abstract standpoint, in view of the fact that various provisions regulating the scope of their powers, and providing restriction of their interference with the rights of the citizens have lost validity.48

A person performing certain services for a government office or enterprise may be considered as a public official and be punished as such even if he is not employed, occupies no position in a govern-

44 Case No. 1344/49, PiP 639 ff. (No. 11, 1952).
45 ZOIC 4 (1952).
46 Sipkov, supra note 40, at 272–73.
47 Kirichenko, supra note 38, at 276.
48 1 ZOIK 78 (1949).
ment office or enterprise, appears on no payroll, and even when his services are gratuitous and constitute an act of personal courtesy. Thus, a hunter (a private person) who was authorized by the district hunting inspector in Bulgaria to issue hunting licenses to other persons has been declared to be a government official.

It is not essential that rights and authorizations exercised by a person should be officially defined in any manner. A private person, obliged by a contract with a government commercial enterprise in Bulgaria to purchase on its behalf and in its name dried prunes and nuts and to report the amount of money received and the purchases made, was declared by the Bulgarian Supreme Court (decision No. 600 of September 18, 1951) to be a public official:

[A]s the text of Section 333 of the Criminal Code shows, the form of the act, on ground of which the work is assigned to a person or on ground of which he is under duty and obligation to safeguard public property, is of no decisive importance for the solution of the problem whether he is or is not a public official.49

Finally, it is not essential that obligations, rights, or powers should be precisely determined in connection with the economic, administrative, and professional tasks which are to be accomplished. Thus, the Supreme Court of Bulgaria stated that (September 18, 1952):

Each person who is given or entrusted with a labor order, a task or service with salary and compensation in any form whatsoever, or without compensation, and who is authorized to exercise administrative, economic or other functions, adherent to a public official or on the grounds of a given mandate, acts as a public official. Every employed person, no matter how unimportant his function in the entire system of government and socialist economy is, should be considered a public official.50

It is readily discernible that the practice of qualifying practically everybody who enters into some relationship with the government authority in a socialist state as a “public official” has contributed seriously to the harshness of Soviet penal repression. Its purpose is not only to prevent occurrence of crimes. In addition, the practice

49 Sipkov, supra note 40, at 276.
50 Ibid.
seeks to alert society to the need for singular effort and devotion to duty, exceeding a civil servant’s loyalty to his office or function. As the Polish Supreme Court explained:

In order to arrive at a proper understanding of charges brought against a government official occupying an economic post connected with his managerial activity, and in order to determine his responsibility, it is necessary to review his actions and omissions from the point of view of his duties of a good manager. . . . An official in such a post ought to take on his own initiative all measures to prevent loss or destruction of government property under his care, irrespective of whether his superior issued proper regulations. . . . Vigilance of that kind is obligatory in the system of planned economy, in which every public official ought to consider himself as co-manager of public property and to care for it in the same degree as if it were his private property.51

Stricter standards of criminal repression are necessitated in socialist societies by the absence of that criterion of efficiency provided by the market which reacts to mistakes or omissions irrespective of the intent or degree of culpability. Although its mechanisms are the judicial process and moral condemnation of society, penal sanction for the lack of success in the socialist society, nevertheless, had to assume the role of an economic sanction. Again, Polish practice is perhaps the best yardstick for appraising the new methods. So, for instance, the Polish Supreme Court found a captain of a harbor tug guilty of a criminal offense committed in office when he caused a collision with another ship. In describing the facts which in its opinion established the captain’s guilt, the Court stated:

The accused, overestimating the resistance of ice, ordered higher speed than required, with the result that his order to reverse speed came too late.52

Similarly, Soviet courts consistently followed the practice of imposing harsh penalties for shortages caused by the inability to maintain proper accounting procedures. And this was true even though the error was due to illiteracy, or to lack of training and experience. That sentences of this type were still occurring after World War II seems to indicate that competence and qualifications were not

51 ZOI K 19 (1951).
52 PiP 650 (1950).
necessarily the qualities deemed essential for making appointments to official positions.  

In Poland, court practice followed strictly the Soviet pattern. So, for instance, the Supreme Court rejected an appeal from a lower court conviction by a manager of a cooperative whose failure to keep proper books resulted in chaos in the affairs of a cooperative. The defendant claimed that he had no training and no idea of bookkeeping. The Court stated that this fact alone constituted no defense. In 1951, a manager of a cooperative meat factory was found guilty because two other employees of the factory were processing meats from illicit slaughter, although it was proved that the accused had no knowledge of their practices. In another case, the Supreme Court upheld the conviction of a forester who, owing to drunkenness, neglected his duties. His negligence resulted in several thefts in his section of the forest. The accused was, nevertheless, found guilty of abuse of power, a crime which under the Code of 1932 required intent.

A considerable number of criminal cases involving the criminal responsibility of officials result from the conflicting criteria which decide the promotion of communist officialdom to leading positions in the economic or public life of the country. Some cases make it clear that some of the defendants had gained positions as a result of the "social promotion," which is a by-word for political reliability. As progress from capitalism to socialism means growing integration of various aspects of human activity into various forms of collective effort, the expansion of governmental function is also the process of constant re-education of members of the socialist society in the new forms of cooperation. Thus, a Bulgarian jurist explained the ethos of the reform of criminal law in his country, respecting its provisions concerning the responsibility of officials, as aiming at the application of stricter criteria of "criminal responsibility which will make its educational impact upon a greater circle of persons."  

53 Kirichenko, supra note 38, at 44.
55 Case No. I.K. 1690/51/1, PiP 568 (1953).
57 Busov, Juridicheska misul 37 (No. 2, 1953); cf. Mead, Soviet Attitude Towards Authority, An Interdisciplinary Approach to Problems of Soviet Character, in particular at 44–51 (1951).
A more recent trend in criminal practice of the Soviet Union, started by the pronouncement of the Twenty-first Congress of the CPSU, to the effect that the Soviet Union has passed over to the period of communist construction, blurs even further the dividing line between government officials and private citizens engaged in work or performance of duties of public significance. One of the distinctions between the two categories of citizens had consisted of special protection to those who discharged public functions. The transition to communist forms of economic and social organization, which called for the cooperation of the people in enforcing the rules of life in a socialist community, also brought the demand that special protection be given those who, endowed with a greater sense of responsibility, took upon themselves the enforcement of the more perfect code of social behavior. As a Soviet jurist proposed:

It would be well to institute certain legal guarantees of the safety of citizens who voluntarily participate in the drive on law violations. The Draft Law on Increasing the Role of the Public in Combating Violations of Soviet Laws and the Rules of Socialist Society stresses that the activity of citizens in upholding public order and combating law violations is under the protection of the law. Supreme Soviets of the Union Republics are charged with establishing criminal liability for insulting, committing violence upon, and threatening reprisals against citizens in connection with the performance by them of their duty in the safeguarding of public order. The draft also formulates the principle of encouragement for citizens' taking an active part in the struggle against public disturbances and crime. Article 17 plainly states that these citizens shall be encouraged by state agencies and public organizations.

LIBEL

The insulation of individual honor against libel represents a minor incident in the emergence of the socialist legal system. The problem of affording such protection is directly related, in the new regime, to the political role of the press. The latter has become one of the most important instruments of social control and official action. Its duty is to inform and exhort and to expose the enemies of the

58 Cf. infra at 249 ff.
59 Denisov, "O sootnoshenii gosudarstva i obshchestva v perekhodnyi ot kapitalizma do kommunizma period," SGP 29-40 (No. 4, 1960).
new order and the shortcomings of governmental and social organizations. It, indeed, leads the official apparatus of both government and society in joint actions.

The growing complexity of the mechanism of the state and the social structure of Soviet society has been accompanied by the increasing importance of the press. In Soviet reality, the criticism and initiative of the press represent the only efficient means of cutting through the tangled web of Soviet agencies and of striking directly at problem spots in the social or economic life of the polity. Consequently, to impede its action in the name of individual interest would be tantamount to raising an obstacle to a social action in which an attack on a person would be only an incident.

In this method of social control, the position of the individual is determined by the principle of self-criticism. It is the duty of the Soviet man to embrace and emulate the criticism by the press and to assist in the elimination of mistakes and shortcomings. The nature of this response is dictated by the fact that press criticism is not solely a matter of objective truth. In addition, there is involved a question of party policy, which uses it as a method of progress. Zhdanov, the Party's expert in matters of philosophy in the days of Stalin, explained the function of criticism and self-criticism as follows:

In the new Soviet society... the struggle between the old and the new, and consequently transition from the lower into the higher takes place... in the form of criticism and self-criticism, which forms the real force of our progress, and a mighty weapon in the hands of our party. Undoubtedly this is a new pattern for progress, new type of development, the new dialectical legality.60

Thus, suits for libel and damages in this context have disappeared from the dockets of the socialist courts.

Inasmuch as the authority of the press as a social censor reflects the authority of the party, the ideological upheaval in Poland in the fall of 1956, resulting from the moral crisis in the Party ranks, has produced a significant change in the attitude of the courts and of those who have suffered from the methods so employed by the press in the process of social control. Protection of individual dignity became, in consequence, an issue of great practical importance, and a number

60 Zhdanov, Voprosy filosofii 270 (No. 1, 1947).
of libel suits against the communist press acquired the significance of political action to restore some of the personal freedom lost in the Stalinist period.

Under Article 255 of the Criminal Code of 1932, the accused was free from liability if the facts were proved to be true. Truth was a good defense. However, if the allegation was made publicly (and through the press), the law required that the accused prove additionally that he acted in defense of a well-founded public or private interest, either of his own or affecting other persons, and libel did not pertain to facts from the private or family life of the injured party.

The revival of the provisions of Article 255 of the Criminal Code has greatly restrained the censorial and educational activities of the press in Poland. As a countermeasure to these undesirable developments, the government has ordered that a draft of a new press law be prepared for enactment by the legislature. The regime hoped, by thus relaxing the strict provisions of the Code regarding criminal responsibility for slander, that some degree of freedom of action might thereby be restored to the government press.

It has been proposed to distinguish between private libel and libel committed by mass communication media. In the first instance, the former provisions of the Code would apply, and private persons would continue to be responsible under the strict rule of responsibility. In the second instance, i.e., libel by mass communication media, good faith would constitute a sufficient defense. Thus, under the proposed regime, defense would be easier in cases in which possible damage to individual honor and dignity was greater, while a private slanderer would have to prove the facts alleged against the injured party.61

In the discussion which followed, partisans of the strict legal protection of individual dignity insisted on continuing the old pattern on the ground that there was no compelling reason for departing from it:

Criticism represents an important force of progress under any, not only a socialist order. However, honest criticism and criticism attacking personal honor are two different things.

They went on to claim that there were no specific reasons why the protection of human dignity should be less important under socialism than under any other social order.\textsuperscript{62}

In opposition to the view stressing the need for the strict protection of human dignity, the apologists for the less strict approach claimed that:

In the socialist order criticism is a vital necessity for social development; its function in our society is basically different from that in a society which is based on the system of exploitation of man by man.

The reason for different standards, they continued, lay in the nature of the interests involved. Although an innocent person might suffer harm, socialist criticism was in the interest of all.\textsuperscript{68}

The proposed solutions are not a novelty in socialist legislative techniques. Indeed, the duality of approach in the legal protection of individual and socialist interests is typical of the criminal law of the Soviet type. Crimes which are not characteristic of the socialist social and economic order, i.e., those which represent an attack on traditional social and ethical values, are prosecuted according to the normal rules of responsibility. In these instances, the type of guilt (intentional and nonintentional) is decisive to determine criminal liability and severity of punishment. Definitions of crimes against the new regime tend to establish absolute criteria of responsibility. Punishment and its measure are determined exclusively by the objective criteria of social danger.\textsuperscript{64}

In all likelihood, the Polish press law will be adopted as proposed by the government; otherwise, its ability for political action would be seriously curtailed. The very fact, however, that public pressure has brought about some limitation on governmental power to initiate political campaigns by means of attacking individual honor is highly significant. It suggests that a degree of the autonomous status of individual existence has survived the process of socialist integration.

In this respect, Poland is not an isolated example. In Hungary, Decree No. 17 of 1959 and the executive order adopted by the

\textsuperscript{63} Merz, "A jednak zgodnie z ustawą," PiZ, Aug. 23, 1953.
\textsuperscript{64} Cf. infra at 185 ff.
Council of Ministers of the same year on the responsibility for press offenses provide a mechanism for the defense of private honor against attack by the press. A journal is under obligation to publish, on the demand of an injured party, a refutation of charges which appeared in its columns. Criminal responsibility has been provided in the following situations: (1) seeking material advantage for publishing or not publishing a press material; (2) press activity without proper license; (3) failure to comply with a duty to publish a refutation; (4) willful publication of false information together with the refutation of earlier charges.65

The new press law of Yugoslavia, enacted in the fall of 1960, followed the Hungarian pattern. It gave the citizen the right to demand equal space and display in the newspapers, magazines, and radio and television programs for the purpose of refuting allegations made by public information media.66

REGIME OF PROPERTY

The theory of absolute rights inhering in the individual has always been little more than a symbol. Indeed, rights have always been subject to limitation by the interests of the collectivity. It is enough to point to the antiquity of the institution of eminent domain in its various forms and to modern developments reflecting on the institution of property and the freedom of contract to see all individual rights qualitatively restricted: a system of relative rather than absolute concepts. Even in the face of these limitations, however, it would be unrealistic to rule out of the legal system the idea of rights as defining the autonomous position of the private individual vis-à-vis the surrounding reality of persons and things.

One of the fundamental bases of the claim by the Soviet legal and social order to an exceptional place in human history lies in its novel approach to the institution of private rights, which are totally subordinated to the interests of society. Section 1 of the Soviet Code of 1922 declared that: “The law protects private rights except as they are exercised in contradiction to their social and economic purpose.”

65 Obzor Wengerskogo Prava (No. 3, 1959).
However, it seems that the heart of the matter is not in the conditional guarantee of private rights, but in the presence of powerful forces of social change which affect the position of the individual in regard to collective existence. Provisions similar to that in the Soviet Code are a common feature of all civil law legislation which endeavors to describe systematically various aspects of human and social relations. Policies of government, either in the form of the nationalization of the means of production or of planned transformation of the economic and social structures, cannot be related to the provisions of the Civil Code in the Soviet order. In this respect there is little difference regarding the function of civil law provisions between the socialist order and the traditional society. The civil law must be regarded as consisting of general statements of principle, the contents of which are shaped by events beyond its scope.

While initially the provisions of the Soviet Civil Code offered some ground for apprehension as to the position of private rights within the civil law of a socialist society, socialist codes enacted in Eastern Europe make it quite clear that they are not intended as instruments of change. Under the Hungarian Code of 1959, the exercise of civil rights and performance of civil obligations must conform to the interests of society. Further, civil law relations must be characterized by mutual cooperation in accordance with the demands of socialist coexistence. And finally: "cooperation shall be effected through strict performance of obligations and by exercising all rights in conformity with the function of such rights."

Section 5 of the Hungarian Civil Code prohibits the misuse of private rights and lists the following instances as constituting typical examples of the violation of this rule: exercise of a right with an objective which is incompatible with the social function of the right; the exercise of a right which might damage the national economy; exercise of a right in a manner interfering vexatiously with citizens; prejudice of their rights and lawful interests, or in procuring undue advantage.


68 Art. 3 of the Polish Law on General Principles of Civil Law of 1950;
These and similar formulations found in the civil codes of Eastern Europe represent a fairly static set of circumstances aimed at maintaining a balance between the exercise of individual rights and the interests of others, and not at creating a mechanism of change. If the latter were so, the mechanism of social change would be administered by the courts and the lawyers. It is easy to see that this is not the function to which either courts or the legal profession of the socialist countries aspire.69

While the civil codes of Eastern Europe do not shape the course of history, they nevertheless bear the marks of social development. In consequence, the institutions of socialist civil legislation offer an important avenue for the exploration of social realities.70 In particular, the provisions of property law in the Soviet Union and other socialist countries in Eastern Europe allow a glimpse of the elements determining the role and the social position of the individual in a society which is involved in a process of rapid transformation. In this connection, three major pieces of civil legislation, the Hungarian Civil Code of 1959, the Draft of the Principles of Civil Law Legislation of the USSR and of the Union Republics of 1960, and the Draft Czechoslovak Civil Code of 1950, secs. 1 and 3; Bulgarian Law on Contracts of 1950, sec. 2.

Art. 47 of the Polish Draft of the Civil Code stated: “Legal acts aiming at the establishment, change or abolition of a legal relationship produces not only those results which are directly aimed at, but also those which are the consequences of a statutory provision or follow from the rules of social coexistence.” Art. 40 (sec. 1) of the same Draft provided that: “...a legal transaction contrary to law, or concluded with a purpose of obviating its provisions or contrary to the principles of social coexistence is null and void.” It further stated in art. 54 (sec. 1) that: “Declaration of will must be construed according to the circumstances of the case, and with reference to the rules of social coexistence.” Finally, art. 309 (sec. 1) exhorts the debtor to “perform in accordance with the terms of his obligations, in conformity with its social purpose, and principles of social coexistence.”

69 Differences in the role of law and of the legal profession in the socialist and open societies in enforcing the policies of social change provide one of the most significant illustrations of the differences between the socialist and traditional techniques of government. In the free societies courts and lawyers are a vehicle of change.

70 Cf. art. 1 of the Soviet Draft of Principles of Civil Legislation of the Soviet Union and Union Republics, and also sec. 1 of the Hungarian Civil Code of 1959.
of the Polish Civil Code of 1960, offer an up-to-date review of the state of civil law institutions in the socialist countries.

Polish and Hungarian provisions regarding property differ from the Soviet Draft in this respect; in neither of the former countries was socialist economic order connected with a nationwide nationalization of landed property, as in Russia. Therefore, although the larger farming estates were liquidated, there remains a considerable amount of private farming in both countries. The law, of course, must take account of this situation.

The Soviet Draft is based on the recognition of two types of property, socialist and personal. The Hungarian Code and the Polish Draft, on the other hand, introduce an additional category of individual (private) property, which includes ownership of means of production (land).

The Polish and Hungarian Codes suggest that state property, cooperative property, and property in ownership of other socialist organizations form one category. However, cooperative property poses certain problems both theoretical and practical since the cooperative movement and cooperative property relations in Poland and Hungary are based on individual ownership of land. As a rule, collective farms are formed by pooling the land owned by individual peasants. And while they join various cooperative organizations, they still continue to own such land as their share in the cooperative venture. It is true that their rights as regards this land are circumscribed by the fact that a member of a collective is unable to dispose of it except by testament and then only to the benefit of other members of the collective, but he is still the owner of his land. Unless there is a different provision in the statute of a collective, only crops and trees become the property of the cooperative. Buildings and other fixtures on the cooperative's land may become cooperative property only if its statutes rule so. Consequently, the inclusion of cooperative property in the category of socialist property is a somewhat dubious operation. This is demonstrated by the fact that in 1956, both in Poland and Hungary, a considerable amount of cultivated land was withdrawn from cooperative farming and, without changing owners, was transferred from the socialist to the private category of property.
Personal ownership serves physical persons and cultural needs only. It includes objects which serve the satisfaction of the "personal and cultural needs of the owner and those living with him in common household." Included are such items as a one-family house, a one-family apartment, household articles, clothing, motor vehicles, etc. Here also belong small means of production which serve to satisfy personal needs.

The scope of personal ownership varies according to the economic situation of the person involved. The dividing line runs between rural and industrial environment, according to the situation of the owner within the social and economic stratification of Soviet society. For example, a member of a collective farm may own things denied to a town dweller. Examples are: buildings, animals, poultry, and other objects necessary to engage in the limited production of food on a garden plot. On the other hand, there are things not available to a member of the agricultural sector which a town dweller may own. A successful city dweller may own a house in the city and a summer home in the country. If he can afford it, he may own an automobile; and there is no reason why he should not own a horse, if he likes horseback riding. Yet, the Soviet farmer is expressly prohibited from owning a horse. In Hungary and Poland, however, peasant-owned horses belong to the category of private property. Thus, it is possible in these two countries for a horse to be a socialist horse if it belongs to a cooperative; a personal horse if his owner rides him for pleasure and is not a farmer; or an individual-property horse if its owner is a farmer. In the Soviet Union, where no individual property is legally permitted, a horse could be either a socialist or a personal horse.

The classification of rights of ownership is tied to the gradation of the protection offered by the law to each of these three classes of property. The property of the state as the foundation of the social and economic order calls for the highest degree of protection. The Polish Draft assures this property a "singular protection." Of the property in private (individual) ownership, only the property of the working peasants and artisans "enjoys the support of the state" or "the protection of the state." Personal property is under what the Polish Draft calls a "full protection."
The system of gradation of legal protection under the law is the result of the contemporary situation in the social and economic order in Poland. It still includes important elements of individual ownership of means of production (land), which is under the protection of the law. This is because the protection of private property is an indispensable condition for the prosperity of agriculture and its contribution to the welfare of the nation. The Polish Supreme Court, in its plenary session of February 27, 1960, issued the following directives for the guidance of the courts:

The interest of the people's state in the increase of agricultural production of food in order to improve a continued rise in the supply of food articles to the growing population, and in order to assure the socialist industry the necessary raw materials, requires to take preventive measures against an excessive atomization of the existing farms at the present stage of development of our economy. It is necessary to maintain the largest possible number of farms, which would provide adequate outlet for the labor of a peasant family, to provide it with a main means of support, and assure a constant technical progress in agriculture.1

In other words, the degree of protection afforded is the result of the actual interests of the state in the existing state of things, and this dictates a conservative approach which would seem to favor viable individual enterprises. However, the Supreme Court also suggested that, once the government deemed it important to change its policies, the restricted disposal of landed property by inheritance or contract would be removed. Thus, when the Supreme Court directed that judicial policy had to preserve agricultural farms of a certain size, it was not concerned with the protection of individual rights but with the preservation of an agricultural organization which would be able to feed the urban population. Protection of individual ownership is an incidental question and represents only a technique.

These policies are not contradicted by the fact that the long-range policy of the regime seeks to limit the types of property relations in socialist society to only those two types which are at present admitted in the Soviet law, and which are typical of the social and economic order in which all means of production belong to the state. Personal property, which results from individual participation in the

socialist processes of production and services, represents a system of incentives to promote the productivity of labor. As such, it has a positive function and deserves effective protection.

The property of the state is the foundation of the regime. In addition, it is an instrument of its policy of social change whereby it seeks to achieve higher forms of social and economic organization, calling for as effective a regime of protection as is feasible. The realm of socialist property may grow, but never diminish. The property relations represent an order of things which must eventually be replaced by the new order of things. It deserves legal protection as long as it has a useful function.

The property regime as outlined in the Soviet Principles of Civil Legislation (1960) also contains, though in less visible form, a germ of the incipient change which will further simplify the property regime in the Soviet Union. The Soviet property regime is based upon two types of property, socialist and personal. Socialist property (Article 18) consists of state property (property of all the people) or collective farm property. The latter category of collective, or cooperative, property is limited to the membership of each collective, or of a cooperative association or of the common ownership by several collective farms or cooperative associations. Similarly, personal property appears in two forms, depending on the environment, i.e., urban or rural.

The reason for this distinction becomes clear with the continuing discussion of the reorganization of the types of legal relations in the period of communist social and economic order. They will be characterized by the complete assimilation of these two population groups as to the types of objects which shall be available for them. The rural population, collectively engaged in agriculture, will have to give up the continued use of garden plots and the management of individual household economies, including animals and poultry, which is permitted under the present regulations.

72 Sec. 91 of the Hungarian Civil Code of 1959 provides: "Such means of production as not declared state property may be capable also of private ownership. The private property of peasants and artisans working individually—as individually acquired property—enjoys the support of the state. . . . The private property must not prejudice public interest."
Another feature of the future regime of property relations will be the gradual concentration of ownership of durable consumer goods (automobiles, private houses, and perhaps major items of sporting equipment) in the hands of social organizations. Thus, cooperative, and therefore socialist ownership, will be extended, and the institution of personal ownership, restricted. This regime may be introduced as preliminary to a system in which the use of such items, or at least some of them, will be made generally available to the membership of the social organizations through the network of their various establishments. It has been suggested that in order to make the first step in the direction of communism, the present owners of automobiles and houses should vest their property rights in a collective consisting of similar owners. In this manner, a collective use of such consumer goods would be established and personal ownership would cease.78

An even greater integration of property relations within the socialist sector would consist of a gradual liquidation of the group ownership of collective farms. One of the modern developments in the Soviet economy is the practice of forming business associations by the collective farms for the purpose of promoting industrial or service (transport) enterprises to serve specific needs of their members. According to the Draft of the Principles of Civil Legislation of the USSR and of the Union Republics (1959), the property of such associations constitutes the property of the collectives. It is, therefore, separate from the property of the state. It was proposed that these interkolkhoz enterprises be classified as state property (property of all the people). Furthermore, it was suggested that the so-called indivisible reserve funds of the collective, which provide means for capital investment for collectivized agriculture, should be put under national administration. The purpose would be twofold: to implement a general agricultural policy and to finance other sectors of national economy as well. As these funds are replenished by yearly appropriations from the net income of the collective farms, such a

move again would amount to a conversion of important items of group ownership into the outright ownership of the state.  

Special protection of socialist property is primarily expressed in the fact that law makes it impossible to transfer objects of socialist ownership to any other ownership. The transfer of property from one socialist juristic person to another has no legal significance, as it always remains in state ownership. Socialist juristic persons "merely exercise right of ownership vested in the state in their name with regard to assets in their management" (Article 122 of the Soviet Draft). Article 19 of the Soviet Draft states tersely:

The state is the sole owner of all state property, regardless of what it is or who manages or uses it. State organizations exercise within the limits established by the law only the rights of possession, use and disposal of state property attached to them in accordance with the aims of their property and the purpose of the property.

According to the Hungarian Code, the state's right to own all property which is not fit for personal ownership is safeguarded by provisions regarding the acquisition of ownership of objects which have no owner (Section 127). Objects which constitute social property, or of which the state or a cooperative have been wrongly dispossessed, can never become the property of another person by prescription. This, however, does not apply to movables capable of personal ownership (Section 121). Article 165 of the Polish Draft of the Civil Code provides that the owner of the land may renounce his property, which then goes to the state. Under the Albanian Code:

Private ownership of land may be terminated by a decision of the competent government agency. Such a decision may be taken either because of an attempted transaction concerning the land, because of neglect in farming it for a period of two years, or if the owner moves to another locality and therefore is unable to cultivate it personally.

Article 201 of the Polish Draft rules that the statute of limitation does not apply to a claim for the surrender of a movable ob-


ject if such a claim is based on "state ownership and is directed against a physical person or a non-state organization." The Soviet Draft rules out all forms of transfer of state property to private citizens unless specifically authorized by the laws in force (Article 20):

State property...is not subject to alienation by citizens, except in the case of housing and other types of property whose sale to citizens is permitted by the USSR and Union Republic legislation.

A dichotomy in civil law regulations in the sphere of property relations reflects the structure of economic controls in a socialist state. The state holds a monopolistic position regarding the ownership of means of production, while the citizen's property rights are restricted to consumer goods. Some variation from this scheme occurs in agriculture—on a considerable scale in the satellites, and less in the Soviet Union itself.

Since there is a conflict between the actual condition of property relations in the socialist societies and the pattern pronounced by the principles of Marxism, there is an internal contradiction within the legal systems of socialist societies. On one hand, in the interest of current reality, the law takes account of the actual situation and extends its protection. On the other hand, it tends to accommodate social change, which is a matter of social and economic policy, toward a uniform system of social and economic relations based on the total control by the public authority of all means of production.

INHERITANCE

The institution of inheritance in the Soviet orbit likewise reflects the impact of governmental policy upon the provisions of the civil law. It has served in the past as an instrument for the reshaping of property relations according to the socialist model. In those provinces of social life where this has been accomplished, its present shape differs little from the provisions of the civil law in traditional societies. In other provinces of life, where a change is still to be effected, inheritance continues to be used as an instrument of governmental control.

A Soviet decree of April 1917 abolished inheritance altogether, in line with the ideological stand of Marxism, according to which inheritance was a pillar of the capitalist system of economy. Later,
in a number of successive laws the institution of inheritance was re-established, and followed, on the whole, the traditional lines of the European Codes.\textsuperscript{76} The Draft of Principles of Civil Legislation of 1960 provides only a partial answer to the question as to what future Soviet law will be, as it leaves important details to be filled in by legislation of the individual republics. However, it continues a tendency to liberalize further the provisions of Soviet inheritance. Thus, it rules that the testator shall have the right to "will all or part of his property to one or several persons either included or not included in the circle of heirs by law...." This would be impossible under the law which is now in force, for he must choose his heirs from the circle of persons included in the three classes of statutory heirs. The Draft also provides for a statutory share of inheritance to certain of the statutory heirs, but its size and to whom it will go is to be determined by the Union Republics.

The Polish Draft of 1960 continues the system of the devolution of estates as enacted by the two decrees of 1946. It is highly reminiscent of the Soviet system of inheritance as devised in the Draft of 1960, but it must be stated at once that under the Polish law which is now in force the power of the testator to select the heir freely by testament was never restricted.

The Hungarian Code of 1959, in an obvious effort to preserve national institutions as far as compatible with the socialist order, differs widely both from the Polish and Soviet pattern. Legislation enacted prior to the Civil Code of 1959 had abolished some medieval institutions, including separate inheritance systems either for certain classes or for certain groups of population, had limited the classes of heirs, and had removed all discrimination between illegitimate and legitimate children.\textsuperscript{77}

However, the 1946 reform maintained a separate system of inheritance for ancestral property. Thus, in absence of descendants and testamentary disposition, property devolving upon the decedent from his ancestor was to be returned to the line of the ancestor whence it came.

The Code provided for a far broader circle of heirs by law

\textsuperscript{76} Id. at 1171–74.
\textsuperscript{77} Id. at 1300–1.
than did either of the two drafts. The first class of heirs consists of children. Where no issue is left, the surviving spouse inherits the entire estate. Where no spouse is left, parents and their issue, then grandparents and their issue, and finally more distant relatives are entitled to inherit. The main feature of Hungarian inheritance is the life interest of the spouse in the entire estate. Children may, however, seek restriction of this right if the needs of the spouse are met by other inherited assets or by the spouse's property and earnings.

Provisions on the inheritance of ancestral property no longer have practical significance, but are still included in the Code.

The Hungarian Code has no restriction on testamentary disposition as to the selection of heir or heirs, or of their shares, except to the extent of the statutory share which obligatorily devolves upon certain statutory heirs.78

The People's Republics in Eastern Europe have never adopted the Soviet pattern regarding the general system of inheritance. In theoretical writings, the shift from the original position of the complete abolition of the institution of inheritance to its re-establishment is explained by the fact that the original abolition was a tactical move in the struggle against the capitalist system. However, once the state became the sole owner of all means of production, there was no need to continue the system. The inheritance of items acquired by the workers of the socialist countries through their own labor promotes thrift and constitutes an added incentive toward raising productivity of labor. In addition, it assists the government program of raising the general standard of living and welfare of the people, increases family cohesion, and strengthens the ties of the socialist community.79

No less important has been the fact that since nationalization in most of the Eastern European satellites never assumed such drastic forms as in Russia, some degree of protection for the property which was still left in private ownership had to be devised.

General relaxation of the rules of inheritance is not a uniform pattern and indeed favors disposal of property within the urban sector of the economy. For other sectors of the economy, particularly for agriculture, far less liberal regimes continue in force.

78 Id. at 1302.
In the Soviet Union, the basic unit in the regime provided for peasant's estates is the peasant household. This is an association engaged in joint farming operations and consists of those related by blood and of all those who *de facto* belong to it. As the life of the Soviet peasant family centers around the house and the garden plot which household members farm together, by law the share of the deceased member of the family in the community property is not subject to inheritance but automatically devolves upon its surviving members.80

With the exception of Northern Albania, the institution of the peasant household was foreign to the legal tradition of Soviet-controlled Europe. Nevertheless, an institution similar to Soviet peasant inheritance has made its appearance in the satellite countries. In a purely Soviet form, it has been introduced into Rumania and Albania. In other countries, the inheritance of peasant estates is subject to a regime which tends to further the continuation of a household and of the farm as an economic unit,81 thus achieving the same results as the Soviet system of inheritance.

**DAMAGES FOR MORAL WRONGS**

Article 140 of the Civil Code of the RSFSR provides for damages only in the event of material wrong. This, in turn, may consist only of restitution or, when this is not possible, in payment of damages. Soviet authors support the position of the Soviet Code by the argument that monetary damages cannot be a substitute for moral wrong. Criminal repression in the socialist state is thought to represent an adequate guarantee of protection of individual rights, and consequently, criminal punishment declared by the court should represent an equivalent for moral wrong. Furthermore, Soviet jurists

81 "Property and Inheritance Rights of Peasant Members of the Collective Farms in Romania," 2 Highlights 15 (1954). *Cf.* Polish Law of July 3, 1957 (DU 39/172); *cf.* also the Directive of the Polish Supreme Court of Feb. 27, 1960 (1 CO 34/59), which introduced a separate regime for the devolution of peasant estates by setting a minimum size of peasant farms, in order to maintain efficient farming units. Nowe Prawo 570–73 (1960); *cf.* also Gsovski & Grzybowski, *supra* note 75, at 196, 1234, 1300, 1380.
declare, constantly improving conditions of life in the Soviet order represent a higher guarantee and a better means of securing the happiness of the individual and recompensing his sufferings—even those resulting from moral wrongs—than any damages which a court could possibly decree from the defendant. In addition, damages are said to constitute a form of income without work, and therefore are contrary to the socialist prohibition of unearned income. But—what is most important—the idea that health, life, honor, or any other aspect of human existence can be expressed in a sum of money is said to be a purely bourgeois idea and contrary to the high respect of socialist society for the human individual.82

In fact, Soviet solutions may hardly be deemed a highly advanced answer to the new situations arising from the social and economic changes which have exposed human existence to additional hazards. The imperial law of Russia (Article 670 of the Tenth volume of the Code of Laws) had provided no legal basis for the modern concept of damages to compensate for moral wrongs, and the Soviet system followed the old path by adding new argumentation for an old position. In addition, it was realized that in the chaotic conditions of industrial expansion involving a policy of drawing into industrial production vast masses of inexperienced and half-literate peasants, a liberal policy with regard to loss of life, health, or limb by the new workers would place a strain on governmental industries. Thus, Soviet industrialists have maintained the old position because it was cheaper for the state.

Once the Soviet law crossed the western frontiers of the Soviet Union on its civilizing mission of socialism, its position in this respect caused serious doubts. Particularly was this true in a number of Eastern European countries where interwar legislation followed liberal standards evolved in Western Europe.

In the Polish case, the Code of Obligations of 1933 followed the example of the Swiss Code of 1907, which in its Article 40 provided for damages for moral wrongs due both to the victim and to relatives. In the Polish legal system, the Swiss formula was also reflected in a number of special laws which provided for moral

82 Fleishits, Obiazatelstva iz prichinenia vreda i neosnovatelnogo obogashchenia 18, 29, 224 (1951).
wrongs such as dealing with copyright, protection of industrial property, unfair trade practices, press legislation, etc. In this situation, the adaptation of the new legal concepts involved a conflict between the doctrinal viewpoint and well-rooted legislation as to what was right in the public mind. The matter was complicated by the fact that both the public and the legal profession on both sides of the bar were well aware that the institution of damages for moral wrong was intended to favor the economically weaker classes, and therefore constituted a progressive phenomenon.

In the first years of the new regime, Polish courts continued to award damages for moral wrongs. Later, in a series of decisions, the Polish Supreme Court began to seek means of justifying the practice of awarding damages with the principles of new legality. So, for instance, in the decision dated December 5, 1950, the Court found that in principle damages for moral wrongs were not contrary to the ideological principles of the new order. It stated that, as a matter of fact, the new order provided for a possibility of income without work, pointing to monetary awards and prizes to artists, scholars, leaders of labor, etc. In another case shortly thereafter, the Supreme Court pointed out that pensions, leave pay, and other forms of payment, legal in the Socialist order, bore no direct relation to work performed.

In this case the Court of Appeal propounded a thesis which reflected the influence of the Soviet point of view. It stated:

To award damages for moral wrong resulting from physical or moral suffering would in the first place challenge one of the fundamental principles of the socialist order, namely that work is the basic source of income of a citizen, and that awarding such damages would force the Treasury of the State or a government enterprise, whose income goes to the treasury, to make expenditure contrary to the social order of the present day Poland.

The Supreme Court rejected this point of view. Article 165 of the Code of Obligations, the Court stated, also applied to a socialist enterprise. Otherwise, it continued, another principle of the rules of life in a socialist community would be violated, namely, "that

83 PiP 172 (No. 7, 1951).
there must be no conflict between the interests of individual human beings and those of the collective." 84

The first breach in the tradition was made by a decision passed by the bench of seven justices of the Supreme Court which considered the question of damages to the members of the family of the deceased. In this case, the Court stated that awarding damages for moral wrong to the members of the family was "contrary to rules of life in a socialist community." 85

The new line was again reversed after October 1956, when blind imitation of Soviet institutions ceased to be obligatory. The matter of damages for moral wrongs accruing to the members of the surviving family was brought up again and reviewed by the Plenary Session of the Polish Supreme Court on January 1, 1957. The Court admitted that the bench of seven justices had gone too far. It stated that provisions of the Code of Obligations regarding this matter had been kept on the statute book, in spite of the fact that in the meantime a partial reform of the civil law had occurred. In fact, the Supreme Court stated, the Draft of the new Civil Code continued the institution of damages for moral wrongs, thus preserving the traditional Polish attitude. Furthermore, the Court added the following argument from the armory of socialist legality: money is a basic means of the distribution of social product in the socialist economy, and a feeling of satisfaction resulting from the possibility of meeting one's needs in greater measure may follow a monetary award. The Government also thought fit to use the same means on some occasions. 86

At the background of this ideological storm in the juristic teacup stood the fact that provisions of the Swiss Code of 1907 and of the

84 Decision of June 5, 1951, Case No. C 649/50, ZOIC (No. 34, 1952); also PiP 312 (No. 2, 1952).
85 Case No. C 15/51, ZOIC; Case No. 3 (1953); Nowe Prawo 53 (No. 12, 1953).
86 That compensation paid to the members of the immediate family of the deceased admitted by the Code is not contrary to socialist morals is also proved by the well-known fact of payment by the government of certain monies to members of the families of miners who lost their lives in a catastrophe. Decision of Jan. 29, 1957, Case No. 1 CO 37/56, PiP 1141–43 (No. 12, 1957).
Polish Code of 1933 were designed as means of equalization and distribution of the hazards of modern life—favoring the economically weaker in a free enterprise system. Once the state took over the management of the industrial establishment in Poland, some enthusiasts were inclined to the protection of the interests of the new employer on the theory that he represented the interests of all.

In East Germany, the Supreme Court established the principle that the claim to a pension by the surviving spouse, following the accidental death of a wage earner, must be calculated in relation to the economic position of the surviving person. The Court ordered that the property status and actual earnings of the surviving spouse be taken into consideration, as well as his working and earning capacity in case he was not working.\(^87\)

Of the three pieces of civil legislation, only the Polish Draft of 1960 provides for damages for a moral wrong. However, it is restricted to the injured person alone and does not accrue to his family (Article 833, Section 1). Otherwise, restitution of the actual loss may be sought in the form of a periodic payment for the loss of the working ability. Or it may be sought to cover the cost of maintenance due from the deceased to the members of his family, who were a statutory charge on the deceased, and also all those whom the deceased provided voluntarily with means of subsistence.

Under the Hungarian Civil Code of 1959, the only form of damages for personal injury is an annuity due to the injured person or to the members of his family or his kin entitled to claim maintenance from him (Section 357 (2)). Under the Soviet Draft of Principles of Civil Legislation (1960), damages for injury or loss of life are due only where social security benefits do not provide for full compensation, either to him or to the members of his family who were dependent on the deceased or who were entitled to be supported by him (Article 77).

COPYRIGHT

Since the very beginning of the debate regarding the protection of the rights of authors, it has been clear that such could be realized

only in a regime recognizing the social implication of creative activity. A work which is not made accessible to the public brings no fruits of his labors to the author. Publication makes the public a partner in the creative process, and its rights deserve recognition. The reporter to the French Constituante on the draft of the copyright law stated that: "It seems that from the moment an author has put his work into the hands of the public . . . the writer has made the public a partner of his property rights. . . ."

The legislative solutions proposed and adopted by the legislators of the French Revolution defined this partnership and established a pattern which was to persist until our times. The law of January 19, 1791, and the Decree of the Convent of July 19–24, 1793, recognized the exclusive rights of the author to his work during his lifetime and for some time after his death, and the unlimited rights of the public thereafter.

In the Soviet order, authors' rights appeared again in a different dimension. The regime was intensely interested in controlling intellectual activity as a means of political action. The nationalization of printing facilities and of sources of raw materials for dissemination of intellectual works, as well as the institution of economic planning, called for the definition of mutual relations, not only between the author and the public, but between the author and the regime as well. The political significance of copyright regulations is thrown into sharp relief by the fact that the Soviet model of the copyright law was reproduced in the satellite regimes without serious departure from its main characteristics. Whereas in other provinces of legal regulation socialist governments have been inclined to continue local traditions, in regard to copyright the reception of the Soviet model was complete.

The proper provisions of the copyright law are comparatively simple and quite orthodox. The rights of authors to the products of their literary, scientific, and artistic activity were recognized during their lifetime without limitation and for fifteen years after death. Copyright was declared inheritable. 88

The exercise of the copyright and the administration of all related problems were entrusted to a network of social and governmental institutions which participate in the process of planning artistic, literary, and scientific productions, the enforcement of uniform standards of conditions of publishing and production contracts, and in the raising of the new generations of artists, writers, scholars, and scientists. In the socialist society, all of these aspects of intellectual life become a matter of social concern. The purpose of copyright legislation, as the Bulgarian copyright law stated, is to “protect the interests of the authors by harmonizing them with those of the people” (Section 1).

The mechanism which the socialist regimes in Eastern Europe have set up in order to harmonize the rights of authors with those of the society consists of three elements: (1) authors’ unions; (2) special funds administered by government or social agencies to promote creative activity in the arts and literature; (3) the supervisory governmental body which determines general conditions of artistic and literary production and the program and policy of promoting various activities in this field. This high governmental agency is either a ministry of culture or a department or an agency subordinate to it. Sometimes a separate agency is attached to the office of the prime minister, which testifies to the singular importance of cultural life in the socialist society.

Authors’ protective organizations, including the Writers’ Union, exercise wide powers. They have the exclusive right to represent individual authors in their dealings with the publishing houses and other institutions engaged in the production of artistic works and to make publishing and production contracts. They also collect the fees and honorariums, and deduct a fixed percentage from them for the fund to promote artistic activity. Their duty is to initiate legal action to protect authors’ rights and to prevent violation of a copyright.

Funds are designed to promote and foster literary and artistic

activity in the fields of belles lettres, music, plastic arts, and in particular to encourage and recruit newcomers to the professions. Authors' protective organizations also participate in the fixing of rates of honorariums and fees by government decree and in working out the yearly programs of artistic and literary production. These various functions are distributed among three elements of the administration of cultural production according to a pattern which varies from country to country. In Hungary, for instance, such functions as the collection of fees and the contractual relations of authors with publishing institutions, which elsewhere belong to the Writers' Union, are handled by the governmental agency (Office for Copyright Protection). In Poland, the Academy of Science is drawn into the administration of cultural production.

The paramount feature of these social and government operations is the planning of culture. As a recent Soviet treatise explained the functions of the various governmental organizations in this field:

The progressive growth of socialist culture constantly urged the establishment of organizational forms and institutions which would direct the activities of the publishing, cinematographic and other enterprises. . . . The Ministry of Culture of the USSR also directs the activity of the unions of the workers of the creative professions. . . .

The technique of control is primarily a system of economic incentives. According to the Directive of the Council of People's Commissars of June 28, 1934, the purpose of the Fund for the Promotion of Literature is to establish a

. . . cooperation with the members of the Union of Soviet Writers by means of improving their standards of living and their material situation, and to give support to the cadres of the new writers by means of creating for them indispensable conditions for their existence. (Section 2).

In regard to the forms of contractual relations between authors and publishing institutions, socialist copyright laws feature short-term publishing contracts. They also contain a general prohibition

89 Antimonov & Fleishits, Avtorskoe pravo 36 (1957).
of permanent acquisition by a publishing institution of the copyright of an artistic work.

Soviet jurists are of the unanimous opinion that under the socialist law the copyright is no longer a property right. The fact that the interests of society in the exploitation of intellectual and artistic production have found an institutional expression has moved Soviet jurists to point to the fact that it is influenced essentially by the government monopoly of publishing and that it is a part of the general process of production. Authors have no right to reproduce and circulate their works except through government channels. On the other hand, government enterprises must obtain agreement to reproduce the works of individual authors.91

As to the nature of the copyright under socialism, two theories have been advanced by Soviet jurists. One school of thought favors the view that a socialist author is a worker entitled to fruits of his labor in a socialist society:

As any other toiler, the author has the right to remuneration in accordance with the quality and quantity of his labor, if the product of his labor is used by society. Here lies the difference in principle of Soviet copyright from the copyright of capitalist countries.92

Others favor a doctrine which views authors' rights as under a separate category, belonging neither to that of property rights nor to the field of labor regulation. They point out that one of the characteristics of Soviet legal solutions in this field is that authors are guaranteed remuneration for their intellectual or artistic labor. Furthermore, they claim that under socialism, authors' rights are not property rights and their works are not commodities. This is because the law opposes a permanent transfer of the copyright and limits the rights of the publisher to a short period of time only, after which

91 Pasherstnik, Teoreticheskie voprosy kodifikatsii obschchesoiuznogo zakonodatelstva o trude 31 (1955); Genkin, "Predmet i sistema sovetskogo trudovogo prava," SGP (No. 2, 1949); Antimonov & Fleishits, "Avtorstvo i trudovoe pravootnoshenie," SGP (No. 5, 1956); Antimonov & Fleishits, supra note 89, at 3, 16–17; 2 Grazhdanskoe pravo 264 (1944).
92 Gordon, "Poniatie sovetskogo avtorskogo prava," 1 Uchonye Zapiski Kharkovskogo Iuridicheskogo Instituta 100 (1939).
the right of reproduction reverts unrestricted to the author himself.93

The Draft of the Principles of the Civil Legislation (1960) seems to favor the second theory. Thus, the provisions dealing with copyright were included in a separate section of the Civil Code, and the treatment is separate from the institutions of property.

THE NEW BALANCE

The position of the individual in the socialist society was affected by two movements: by the expansion of the responsibilities and powers of the state and by the change in the character of the civil law. New legal solutions have removed in effect all differences between various functions of the state, either in its sovereign capacity or as owner of property, lumping them into a single category. Civil law in the traditional sense has little application to relations between the individual and the state. It governs partly the process of acquisition through purchase and sale of consumer goods distributed by the state and loan and credit operations with the government banks. The legal nature of these transactions, however, is seriously in doubt. The supply of goods and credit operations are a matter of public policy; and with the expansion of the concept of public officials, even the very act of purchase and sale over the counter engages public authority. Furthermore, conditions of sale and credit are not determined by the provisions of the civil law, but by the terms of the economic plan.

Otherwise, all relations between the state and the individual, in particular those governed by the labor law or other governmental services which constitute the foundations of individual existence in the socialist order, e.g., social security, are under the rule of law which expresses the public policy of the state.

Moreover, legal transactions which regulate economic activity in the socialist economic system do not engage individual responsibility. They take place exclusively between socialist juristic persons representing various levels of public authority. Individual participa-

93 Fleishits, Lichnye prava v grazhdanskom prave SSSR i kapitalisticheskikh stran 164 (1941); Antimonov & Fleishits, supra note 89, at 59–61.
tion in the economic processes is an act of public or social service. Thus, the very use of civil law terminology in major pieces of legislation, which are called codes of civil law, is more a matter of tradition and convenience than of the nature of their institutions. Except for a few areas of legal regulation such as inheritance or family law, the rest of the civil law belongs to the field of public administration, involving, as in copyright and industrial property legislation, individual participation in the enforcement of public policy.

Individual life was even more profoundly affected by the process of change which transformed mutual relations between the official system of legal regulation of public life in the socialist state and those other sources of social ordering which are characteristic of modern industrial societies. In the traditional system, the law took account of those local habits, customs, and commercial practices which affected the tenor of legal rule to the extent that they were not contrary to public policy. References in the civil laws to general concepts such as good morals, general principles of law, and conditions of trade recognized the autonomous existence of the parallel system of social ordering which formed individual personality and shaped individual existence with reference to standards which were not imposed by the force of the state.

Under socialism, public authority and the rule of the socialist law have permeated all those innumerable forms of human coexistence and social and economic cooperation, with the result that all nonstate sources of social ordering have become carriers of public policy. Rules of life in the socialist community, or rules of social coexistence, as those extra- or para-legal codes or standards of behavior are variously called, are only channels for the integration of all individual and collective life into a single pattern of which the rule enacted by the government is the center. Social organizations, professions, and economic institutions are identified with the state, and the position of the individual members of social and economic institutions is accordingly affected.

The expansion of governmental responsibilities and social change in the West have also affected the perspectives of mutual relations between the individual and collective life. In the mind of the drafters of the Civil Code of France, different criteria of action apply in
these two provinces. The legislator has a duty "to discover for each matter the principles which would favor the common weal...," and the judge has the task of "putting these principles into action to adapt and extend them, by a wise and reasoned application, to private situations..." 94

In modern societies it is no longer possible to see the problems of balance between collective and individual interests in such simple equations. But the axiom that the function of law is to protect individual existence against the encroachment of those who wield power has still remained the important duty of public authority. While the government has assumed new responsibilities in the adjustment of economic and social forces for the purpose of eliminating harmful forms of competition, the restriction or elimination of private initiative is not understood as eliminating the need for the protection of private interests. The question of providing protection has simply moved into another dimension, since the conflict of interests is a fact of life. In new conditions, modern courts and modern legislation have been able to afford protection to individual interests, in their various forms, sometimes merged into the collective form of social cooperation. The response of the socialist state to changed conditions was to assume direct responsibility for the management of social and economic affairs, thus eliminating the need for imposing or affixing liabilities and duties upon individuals. This policy, it is claimed, brings about harmony of the individual and social interests, reducing the problem of legal protection to the problem of managerial responsibility for the efficiency of service.

In opening societies, the function of judicial control has retained its full significance. New powers and responsibilities of public authority call for additional expansion of judicial control, both for government departments and in regard to the action of departmental or private tribunals, which all affect the economic and social position of the individual. 95

The legal protection of individual rights and interests in open

94 Portalis, Discours préliminaire, Projet de Code Civil présenté par la Commission nommée par le Gouvernement, Le 24 Thermidor an 8, at vii.
societies is predicated upon the decentralization of governmental responsibilities, which permits operation of public services under the uniform cloak of law.

In *Tamlin v. Hannaford*, involving the effect of the nationalization of British railways upon private rights, the British Court held that:

In the eyes of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of Government.96

In France, a distinction was made between government-organized private corporations and public corporations having the character of a public agency. Neither of them is free from judicial control. Government interests in the form of private corporations act as private parties, subject to courts of general jurisdiction. In accordance with the doctrine of separation between acts of public authority and those pertaining to the management of governmental proprietary interests, public corporations are controlled either by administrative courts or by courts of general jurisdiction.97

In most general terms, the mechanics of the approach of Western societies to the needs of our times consists of a pragmatic correlation of all methods of social and economic action with the rule of law and available methods of judicial control. To the mechanism of control are added new institutions, frequently representing a combination of the judicial and social element. A legal framework for the complicated mechanism of social and governmental action

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97 "In the welfare state, the private citizen is forever encountering public officials of many kinds: regulators, dispensers of social services, managers of state operated enterprises. It is the task of the rule of law to see to it that these multiplied and diverse encounters are as fair, as just, and as free from arbitrariness as are the familiar encounters of the right-asserting private citizen with the judicial officers of the traditional law." Jones, "The Rule of Law and the Welfare State, 58 Colum. L. Rev. 156 (1958)."
is provided by public and private law alike, and formal justice with judicial action in its traditional form of scholarly interpretation of laws retains its place. The result is individual participation in all levels of social and economic activity.98

The tendency of the modern phase of Soviet law is to continue the policy of subordination of individual interests to the commands

98 This is particularly well illustrated by the variety of forms and devices to fit in the initiative of public authority to provide services or organize an industry into the national economies of the free society. Cf. the following individual contributions to Friedmann ed., The Public Corporation, A Comparative Symposium (1954):

Sawer, "The Public Corporation in Australia," at 10: "In the field of central government, the corporate structure might be followed for two reasons which continue to have importance to the present day. Firstly, the 'Crown' as a legal personality was a most unsatisfactory basis for the organization of any enterprise which might be involved in daily dealing with property and in litigation, owing to the cumbrous procedures connected with Crown property and the strict limitation on Crown liability to legal action. Secondly, an activity identified with the Crown almost inevitably became a political activity, and this might be either bad for the activity or embarrassing for the politicians." Cf. also 38–39 and 38 n. 1, citing "Commonwealth Hostels Ltd. v. Bogle," 26 Aust. L.J. 589 (1952); Argus L.R. 229.

Hodgetts, "The Public Corporation in Canada," at 62, 64, 65–70, and 84–86 these remarks: "Parliament and even the responsible minister must show confidence in the corporation by refraining from breathing down the neck of management. On the other hand, the Canadian system of parliamentary government can impose responsibility only on the ministers of the Crown. Hence the public corporation cannot be used as a means of evading ultimate responsibility. Where to draw the line between the claims of managerial autonomy and the claims of parliamentary responsibility remains for Canada a problem that has been seriously posed rather than solved by contemporary use of the public corporations."

Drago, "The Public Corporation in France," at 108–19, and in particular the following statement at 125: "It ought to be added that in accordance with the principles of the 'gestion privée,' the public corporations can act like private individuals and in that case are subjected to the civil law. As regards the industrial and commercial corporation, the presumption must be reversed; their activities correspond to those of private enterprise and they are therefore governed by private law and subject to the jurisdiction of the civil courts."

Friedmann and Hufnagel, "The Public Corporation in Germany," at 138, and the following at 141–42: "In the first place it is now generally established that the legal relations between the Anstalt and third
and the interests of society, and to eradicate from the psyche of the Soviet citizen the element of assertiveness in regard to the rights of the individual. Social reforms on which communist society is predicated stress coordination, discipline, and conformity. The message of the social order in the Soviet society addressed to the individual is that through collective action the welfare of the individual is to be achieved. The state and public authority appear in the public eye as the benefactors of all.

A report on the Soviet social security system thus described the general meaning of social security in Russia:

Thus, the overwhelming feeling that one gets about the Soviet program is that, like all other aspects of the Soviet society and economy, it is intended to be for the benefit of all persons as a whole rather than to provide for individual needs....

This impression is further strengthened by the fact that the Soviet social security program is non-contributory insofar as the workers covered are governed by public law unless there are clear indications to the contrary. For example, the citizen who acquires a library ticket or who is admitted to a public bath does not enter into a contract but is admitted to certain facilities by virtue of public law concessions granted by the public authority. This does not mean that he is without remedy but in case of any dispute it is the administrative not the civil courts that will decide.” Cf. also, at 144-45: “It goes without saying that the legal status of this form of public enterprise differs radically from the ‘Öffentliche Anstalt.’ They are legal persons of private law. They are, like every other commercial company, fully liable in contract or in tort. Their property transactions are governed by private law, and any legal dispute concerning them comes before the civil and not the administrative courts. The public character of their activities lies in the economic and political field; it is not reflected in its legal form. Again, the internal organization of these enterprises was, of course, that of the commercial company....

“A predominant purpose of the establishment of public enterprises in the form of commercial companies was the emphasis on technical expertise, rather than civil service administration.”

Friedmann, “The Public Corporation in Great Britain,” at 165-66: “Shortly after the nationalization of a number of basic industries by the Labour Government, the present writer suggested a division of the most important public corporations into two types: the industrial or commercial corporation, on the one hand, and the social service corporation on the other. Later a third type, termed a supervisory public corporation was added.” Cf. also at 185.
concerned. The entire cost is met by contributions from the employing enterprises and from the general revenue—a point often repeated in Soviet sources and by Soviet representatives at international meetings. That the workers are in fact “grateful” for this financing basis is indicated by the comment that is so often heard: “The government is providing all these social benefits for us free of charge.”

In fact, the report goes on to say, whatever the financing arrangements of social security in the Soviet Union, in the final analysis its cost comes from the national economy and, strictly speaking, from the workers’ pockets. In terms of controls, this attitude provides an important channel of psychological influence over the mind of the masses.

Another example of integration of the Soviet man with the official apparatus of the government is the Soviet institution of complaints, which is the main means of public defense against the arbitrary action of the governmental authority. Its general usefulness for the regime consists in the check it provides against the irregularities in the operation of the governmental institutions. The control which a complaint initiates is a matter of internal process and is exercised with reference to general provisions regulating governmental action, rather than in response to a demand for the protection of individual rights. Its general form (the absence of the personal involvement of the complaining individual) will tend to de-emphasize the element of individual participation in the action aiming at the preservation of public order.


100 Cf. infra at 235 ff.