

Legal Education and the Role of the Lawyer in the Soviet Union and the Countries of Eastern Europe[†]

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I

INTRODUCTION

ALL SYSTEMS of law present similarities and differences. The problem is to establish how significant these similarities and differences are. Scholars who have devoted their lives to comparative law studies have repeatedly said that such studies require not only knowledge and industry but, even more, critical spirit and objectivity.¹ Comparatists and sociologists have insisted upon a complete and exact documentation as a first prerequisite, since no legal institution and no legal proposition has meaning out of context or in isolation from the total legal system of which it is a part. Despite such authoritative warnings, however, one often sees many an observer "induced into the mistake of not recognizing similarities where they actually exist" or "of unwarranted identification of elements of a foreign legal system with elements of his own."² An examination of the problem of legal education and of the role played by members of the legal profession in the Western and Soviet worlds is an appropriate occasion for detecting many of the pitfalls scattered along the way of any exploration into the laws and institutions of other countries.

The United States is a common-law country like England. Yet in America we do not know the British distinction between barristers and solicitors, which is similar to that between the *avoués* and *avocats* or the *avvocato* and *procuratore* of France and Italy, both of which are civil-law countries. But in Germany, another civil-law country, the *Rechtsanwalt* is very close to the American attorney. The differences among these four countries may be of interest for a study of the various forms of organization of the legal profession in the West and of the historical circumstances and practices which have determined the specific features of each of them. They would

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¹ I ARMINJON, NOLDE & WOLFF, *TRAITÉ DE DROIT COMPARÉ* 10 (1950).

² Timasheff, *Soviet Law*, 38 VA. L. REV. 871 (1952).

not, however, warrant any conclusions concerning the distinguishing characteristics of the legal families to which the above-mentioned countries belong. The "language" of the British solicitor and, generally, his methods of approaching a case are those of the American attorney, whatever variances may exist in the scope of their professional activities, and are quite foreign to those of the French *avoué*, who, like the German *Rechtsanwalt*, is a civilian.³ On the other hand, beyond any differences concerning the legal techniques used or the specific organization of the profession, civil and common-law countries share a common conception about both the lawyer and the Bar. In a recent monograph published by the Lawyers' International Union on the Bar in different countries of the world, the General Reporter, Werner Kalsbach, sums up the descriptions and definitions offered by the various national reports of both civil and common-law countries as follows:

In his work the lawyer endeavours to achieve the legal objectives pursued by his client. His true and genuine mission is to obtain the best possible result in a specific legal situation. This mission cannot be achieved but in a free Bar. The lawyer's freedom and independence are the indispensable requirements of success for his work. This is the reason why the lawyer cannot be subjected to any other imperative but that of the law. The essence of the profession is the defense of the law . . . The profession must be independent. Courage, energy and devotion in the service of the law are not possible without freedom and autonomous responsibility. The lawyer's freedom cannot be limited but by his voluntary submission to the rules of law and to the principles of his profession, whose scrupulous observance is indispensable to the achievement of equitable results and to the good functioning of Justice. The Bar, on his behalf, and on behalf of each one of its members, submits itself to the law and to professional obligations, freely accepted, in order to incorporate itself in the legal order as a free and independent profession.⁴

The role played by legal education has often been stressed as an explanation, at least in part, of the characteristics of a system of law. Dean Pound calls the common law a "taught tradition."⁵ Professors Rheinstein⁶ and David⁷ have identified the European universities as the place where the common language of all civilians was born before the 19th century.⁸ Scandinavian law owes its ties with the continental systems to the students who

³ For a comparison of the civil-law and common-law systems see Razi, *Around the World's Legal Systems*, 5 How. L.J. 1, 11-15 (1959).

⁴ UNION INTERNATIONALE DES AVOCATS, *LES BARREAUX DANS LE MONDE* 2, 4 (1959).

⁵ POUND, *THE FUTURE OF THE COMMON LAW* 8 (1937).

⁶ Rheinstein, *Law Faculties and Law Schools. A Comparison of Legal Education in the United States and Germany*, 1938 WIS. L. REV. 5.

⁷ *TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL COMPARÉ* 233 (1950). See also DAVID & DE VRIES, *THE FRENCH LEGAL SYSTEM* 24-28 (1958).

⁸ See Razi, *Around the World's Legal Systems*, 5 How. L.J. 1, 11, 40 (1959).

went to study law in Germany in the 17th and 18th centuries. Scottish law has not been absorbed by English law for the simple reason that for a long time Scotsmen refused to go to study law in England and went instead to the universities of the continent.⁹ The Romano-Dutch law of South Africa has lost part of its originality because at a given moment law students from that country began going to England to continue their studies.¹⁰

Practically all aspects of legal education in a common-law country like the United States and a civil-law country like France are very much apart. One can hardly find a law course bearing the same name and when one does it usually has different meanings.¹¹ The case method is unknown in France. The professor lectures to classes where attendance is not mandatory. For a French student the idea that on the occasion of a transfer from one law school to another he could not get credit for all the courses he took because the first school did not belong to a particular association¹² or was not approved by another would seem a hoax, since in his country the system of notation and the curriculum are uniform, as are also the requirements for entrance into law school. On the other hand, a young Frenchman just having received his law degree or even an experienced and brilliant French lawyer could not become a law professor. Only doctors of laws, who pursue their studies for at least one more year and obtain an additional diploma, can present themselves at the *concours d'agrégation*, a very severe contest on a national basis which, if passed, opens the way to a professorship. In France, according to the European humanistic tradition, the stress is on theoretical teaching, while "in the United States," it has been said, "legal education is dominated . . . by the professional school . . . and . . . is basically training in trade."¹³

And still, these very wide differences in legal education have no bearing on the overall conception French and American lawyers—or laymen, for that matter—have about law, its finality or its place in the life of the community. For Frenchmen, Americans and civil-law and common-law countries generally the rule of law means the same thing; it is the same thing. By the supremacy of the rule of law it is essentially understood, first, that the state and its subdivisions are subject to law on the same basis as individuals and, second, that individuals have rights which are prior and superior to those of the state and which must be respected by the state.¹⁴

⁹ See Smith, *English Influences on the Law of Scotland*, 3 AM. J. COMP. L. 522, 524 (1954).

¹⁰ Cf. DAVID & DE VRIES, *op. cit. supra* note 7, at 310; 3 ARMINJON, NOLDE & WOLFF, *op. cit. supra* note 1, at 217.

¹¹ See Razi, *Guided Tour in a Civil Law Library*, 56 MICH. L. REV. 375 (1958); Razi, Book Review, 6 AM. J. COMP. L. 383 (1957).

¹² See HARNO, *LEGAL EDUCATION IN THE UNITED STATES* 88-118 (1953); CAVERS, *LEGAL EDUCATION IN THE UNITED STATES* 27-28 (1960).

¹³ Yntema, *Comparative Legal Research*, 54 MICH. L. REV. 899, 911 (1956).

¹⁴ Cf. Hamson, *La Notion de Legalité dans les Pays Occidentaux*, 10 REVUE INTERNATION-

In discussing legal education and the role of the lawyer in the Soviet world, Western lawyers and scholars have summed up their impressions by distinguishing the "familiar" from the "unfamiliar" aspects of Soviet law and legal institutions. Professor John Hazard, for instance, in his article "Law Practice in Russia" writes in conclusion:

[In the Soviet Union, the American lawyer] . . . will find that a Ministry rather than a court controls the Bar. . . . [H]e will find some close similarities between the rules for the soviet lawyer's consultation points and those which the larger law firms in the United States adopt for the conduct of their own affairs. He will find provision for clerkships before admission, as was the case quite generally in the United States until recent years. He will find a procedure for disbarment which bears closer relation to the Government than is the case in the states of the United States, but which has many familiar features in that the hearings are conducted by the lawyers themselves. He will find no distinction between solicitors and barristers as in England or as in most countries of the Continent. . . .

A good many Soviet lawyers . . . will be engaged in institutional or corporate practice in the legal departments of a ministry or a government corporation. They would feel themselves in familiar surroundings in the Solicitor's office of the United States Department of Commerce or on the legal staff of the TVA. A great many of the Soviet lawyers will be appearing in cases involving apartment leases or suits for alimony, or defending a person accused of crime, or will be drafting wills or affidavits. Their work for the rank and file of the citizens would not present many surprises to the American criminal lawyer or the small town attorney who long for but never obtain a corporation practice.¹⁵

Under the title "A Look at Russian Law,"¹⁶ a member of the Ohio Bar, Mr. Myron S. Stanford, speaks of his recent visit to the People's Court of the 19th District in Moscow. He found the Court "clean and roomy" resembling "a courtroom in Cleveland, before the time when courthouse furnishings were made out of plywood and formica."¹⁷ He says that "the law of the country is codified, and, unlike that of most European countries, does not follow the Code Napoléon. No oath is administered, but before each case is tried, it is explained that a witness who testifies to a falsehood will be punished."¹⁸ About lawyers, Mr. Stanford writes: "To become a lawyer, one has to study in a law institute and get a diploma from the institute. There are no further bar examinations. . . . Although there is no law pro-

ALE DE DROIT COMPARÉ 1 (1958); Letourneur and Drago, *The Rule of Law as Understood in France*, 7 AM. J. COMP. L. 147 (1958).

¹⁵ Hazard, *Law Practice in Russia: The Organized Bar in the U.S.S.R.*, 35 A.B.A.J. 177, 269-70 (1949).

¹⁶ Stanford, *A Look at Russian Law*, Case & Com., Mar.-Apr. 1960, p. 3.

¹⁷ *Ibid.*

¹⁸ *Id.* at 5.

hibiting private law practice, there are no private practitioners. All lawyers work in the offices of a collegium of advocates, which operates somewhat like a partnership."¹⁹ "The law, in the Soviet Union," concludes Mr. Stanford, "as in the United States, is something fairly stable but needs changing from time to time to meet new situations and to reflect the thinking of those whose job it is to administer it."²⁰

For other recent visitors to the Soviet Union, this "familiar-unfamiliar" classification seems rather insufficient. Dean Stason of Michigan University School of Law writes:

Behind the Iron Curtain, law practice is highly regimented. . . . When I was in the Soviet Union, I found myself in a decidedly alien legal environment; and as a lawyer adjusted to the refinements of the American legal system, I could not feel too comfortable in the primitive jungle of Soviet law . . . where the courts and the lawyers are merely tools of administration . . .²¹

Mr. David F. Maxwell, former President of the American Bar Association, writes:

In the Soviet Republics, the lawyers . . . have been stripped of every vestige of independent thought and action and have become for all practical purposes tools of the state.

All of them are required to be members of a union and of a union not even confined to lawyers. In Moscow it is known as the Installation of Government Workers of whom the lawyers comprise only a small fraction of the membership.²²

While most of the information contained in the above quoted accounts is correct, their overall meaning is contradictory. The first two writers seem to say that despite differences existing here and there the practice of law is basically the same in the Soviet Union and the United States, while the other two writers tend to show that only "the words are the same but the view point is different,"²³ the practice of law in the Soviet Union being "a far cry from that of the United States."²⁴

In order to find an explanation for such contradictions this article will examine the situation of legal education and the legal profession in the Soviet Union within its proper Soviet setting, avoiding the method of comparing every element with what we have in the United States. After all, any reasoning by analogy requires a fundamental identity of structure of the

¹⁹ *Id.* at 4.

²⁰ *Id.* at 7.

²¹ Stason, *Law and Administration of Justice in the Soviet Union*, 43 J. AM. JUD. Soc'y 150, 154 (1960).

²² Maxwell, *A Contrast in Viewpoint: Lawyers in the United States and Russia*, 43 A.B.A.J. 219, 222 (1957).

²³ *Ibid.*

²⁴ Stason, *supra* note 21.

realities being compared, and the American and Soviet legal systems are not identical but completely dissimilar. Legal education will be examined in the light of Soviet conceptions about education and the role of the lawyer in the Soviet world within the Soviet legal system itself.

II

LEGAL EDUCATION

A. General Premises of Soviet Education

Like everything else in the Soviet Union, education is centrally planned. After the Central Committee of the Communist Party has reached a decision, the Government issues laws and decrees establishing "plans" of education to the most minute detail. When the directives of the plans have been executed, be it for the writing of certain textbooks or for the admission of an additional number of students to a particular school, the expression used is the same that a factory might employ to announce that it has produced its allotment of so many thousands of pairs of shoes: "the plan has been fulfilled."

In the Soviet Union education has enjoyed a high priority, since, as it has been remarked, the new type of men called for by a Communist society could not be created without an indoctrination in the new social patterns.²⁵ Education is provided to meet the needs of the Government,²⁶ science itself being conceived as a means for the advancement of the social, economic, political and military interests of the nation.²⁷ Regimentation is, therefore, a natural characteristic of the Soviet system. When needed, people are taken from occupations and positions they have in production²⁸ and given

²⁵ Cf. HAZARD, *LAW AND SOCIAL CHANGE IN THE USSR* 187 (1953).

²⁶ Hazard, *Legal Education in the Soviet Union*, 1938 WIS. L. REV. 562.

²⁷ Berman, *The "Right to Knowledge" in the Soviet Union*, 54 COLUM. L. REV. 749 (1954).

²⁸ In other countries of Eastern Europe under Soviet domination the same principles have been adopted. See, for example, the Rumanian law (decree No. 370 of October 6, 1952 as modified by decree 556/1953 of January 14, 1954) creating, after the Soviet model, special law schools of two years' duration for the training of judges and prosecutors:

Art. 1: Under the Ministry of Justice shall be organized two law schools for the training of judges and prosecutors. The duration of studies will be of two years.

Art. 2: The two-year law schools shall be boarding schools and will function at Bucharest and Cluj.

Art. 3: The students of the two-year schools shall be recruited among the workers of industrial enterprises and from enterprises of transportation as well as among collectivist peasants, agricultural workers, peasant workers, of between twenty-four and thirty-four years of age and having an education of at least four years of elementary school.

Art. 4: During schooling, students will be taken out of production and will receive maintenance in Boarding School, school materials and the courses published by the Department of Justice. Students will also receive the following monthly compensation, established on the basis of the monthly average income:

One-hundred per cent for those married with children;

special training, usually after having been screened for admittance. Students receive a stipend during their period of study. "Having been taught and paid by the government during their training, they are subject to the government's call when they complete their courses. Graduates assigned to a post are required by law to remain for a period of five years. . . . Criminal prosecution awaits them if they violate their contract."²⁹

Finally, all branches of Soviet education are based on the official philosophy of the Soviet state. The textbooks on Marxism-Leninism, political economy and dialectical materialism are the work of individuals but are officially approved by the State. As a matter of fact, no author in any field would think of departing from the official line of Soviet philosophy, since such heresy would not be without danger.³⁰ It is in this sense that it has been remarked that another major premise of Soviet education is that "the basic truths of human life, of nature and universe, and of social, political and economic reality have been discovered and proclaimed and are beyond debate, so that the task of the teacher or scholar is to demonstrate and apply those truths rather than to question them and seek alternative truths."³¹ This explains the abundance of quotations from Marx, Engels, Lenin, Stalin and, currently, Khrushchev. In legal writings of all kinds (textbooks, magazine articles and book reviews) and in all areas (*e.g.*, theory of state and law, civil law and procedure) the authors quote the words of the teachers of the official philosophy of the Soviet State as often as possible to prove that they expound the subject matter according to the orthodox views of Marxism-Leninism and that reality fits into theory, so as to obtain the imprimatur of the authorities. It is not unusual in the countries

Seventy-five per cent for those married, without children . . . ;

Fifty per cent for all others.

The average monthly income for the students coming from the field of salaried work will be established according to article 135 of the Labor Code. This income, according to which are established the above mentioned quotas cannot be greater than 600 lei or smaller than 300 lei. Boarding, payment of compensation as well as expenses for transportation will be supported by the Ministry of Justice . . .

Art. 5: The graduates will receive a certificate entitling them to occupy positions as judges and prosecutors.

Art. 6: The number of students . . . will be determined by the State Plan for every year of schooling.

Art. 7: The plan for education and the curricula will be established in collaboration with the Committee for Higher Education. All other measures necessary to the functioning of the Schools . . . will be established by the decisions of the Ministry of Justice.

(The two-year law schools in the People's Republic of Rumania seem to have ended their activities following decree No. 259 published in Monitorul Oficial No. 15, June 15, 1957.)

²⁹ Hazard, *supra* note 26. In the last four years, however, it seems that criminal prosecution no longer applies.

³⁰ 1 DAVID & HAZARD, *LE DROIT SOVIÉTIQUE* 85 (1954).

³¹ Berman, *supra* note 27.

of Eastern Europe to see treatises dedicated to the reviewers of the Ministry of Education who "perfected the scientific accuracy of the work."

Despite this ritualistic reference to the only accepted authorities, admonitions against dogmatism are constantly made. "Marxism," says the Soviet magazine *Bolshevik*, "condemns dogmatism, talnuidism and formalism. Science must be alive, up to date and full of actual content. It must develop under the sign of liberty of opinion, of scientific discussion, of criticism and auto-criticism which helps eliminate the rust and set off the precious metal, the steel."³² The contradiction is obvious. Any opinion deviating from the dogma of Marxism-Leninism is heresy but dogmatism is condemned. The truth is that Soviet science is planned in a utilitarian spirit, "that is, the test of its success, if not its truth, is the extent to which it serves the interests of the Soviet Union as defined by the Party."³³ Despite the stress on ideology, Soviet affairs on all levels are treated pragmatically from the point of view of the interests of the Soviet Union as defined by the Party. Pragmatism and tactics are the immediate approach to any problem.³⁴ It is only after the solution corresponding to the changing interests of the Soviet Union, as viewed by the Party, has been found that explanations in the light of the Marxist doctrine are given. The story of legal education in the Soviet Union has been no exception to this rule.

B. Changing Views on Legal Education

The Soviet views on legal education have been dependent upon the Soviet attitude towards law, which has been far from consistent. One of the first acts of the Revolution (decree of November 24, 1917) was the abolishment of the whole pre-revolutionary legal system. For the following twenty years, however, the Soviet regime was not able to formulate its own conception of law. During the "War Communism" period from 1917 through 1921 the Revolutionary Tribunals and Cheka, the dominant organs for the administration of justice, were practically free from any limitations, the guiding legal principles being "the revolutionary conscience and the revolutionary concept of justice." The situation was reversed during the years 1922 through 1928, known as the period of the New Economic Policy (NEP), when a Judiciary Act was enacted and several codes, adapted to West European models, made their appearance.

Despite this return to "bourgeois" law, which was taught in the law schools together with the few innovations inserted in the Soviet versions

³² FIVE YEARS SINCE THE DECISION OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF THE USSR REGARDING THE EXPANSION AND IMPROVEMENT OF LEGAL EDUCATION (1951).

³³ Berman, *supra* note 27. For the difference between Western and Soviet concepts of law, see Razi, *Around the World's Legal Systems: The Soviet System*, 6 How. L.J. 1 (1960).

³⁴ Cf. 1 GSOVSKI & GRZYBOWSKI, GOVERNMENT, LAW AND COURTS IN THE SOVIET UNION AND EASTERN EUROPE 1 (1959).

of the capitalist codes,³⁵ the spokesmen in the field of law maintained the orthodox theory formulated by Marx and Engels. According to this theory, law was merely part of the superstructure of society, its content and purpose being determined by the economic basis of society. For Marx and Engels law was an instrument by which the ruling class kept itself in power. The triumph of socialism would have achieved a classless society in which, together with the State, law itself would have withered and disappeared, since by the elimination of divided and antagonistic classes neither the State nor the law, its instrument of oppression, would any longer have a *raison d'etre*. What was sought was not replacement of bourgeois law by Socialist law but substitution of law by a new social order based on administration. Stuchka, Chairman of the Supreme Court, said in 1927: "Communism means not the victory of Socialist laws but the victory of Socialism over any law, since, with the abolition of classes with their economic interests, law will disappear altogether."³⁶

When the disappearance of law was heralded as near, legal education naturally enjoyed no priority. During the NEP the curriculum included the study of all the new codes, but soon civil law was dropped. For Stuchka the Soviet Civil Code was bourgeois law whose validity could not outlive the NEP. For Pashukanis, Ginsberg and Detsenko the law of the socialist sector was economic and not civil law. Shreter stressed the incompatibility between civil law—as the law of the relationship of exchanges—and the socialist organization of the economy. He predicted that with the achievement of socialism civil law would disappear and be replaced by mere administrative forms.³⁷

These views, however, were gradually reversed after the NEP with the coming of the era of forced collectivization and industrialization of the 1930's. With the beginning of the quinquennial plans, the Party realized that law could be used for protecting and strengthening its economic programs, as a weapon for the achievement of political objectives and also as a device for indoctrination and propaganda in favor of the regime. Pashukanis and others were disgraced and their theories denounced as a "nihilist attitude towards law." The Stalinist Constitution of 1936 was presented as a victory of the people, of which each Soviet citizen should be proud and which he should love as he loves his socialist fatherland. The idea of the "withering away of the law" was put aside and replaced by that of the need

³⁵ In civil law, for instance, it was provided that any legal transaction "directed to the obvious prejudice of the State" should be invalid and that any consequent profits should be forfeited to the State as "unjust enrichment." In criminal law the doctrines of "analogy" and "social danger" were devised.

³⁶ 3 ENCYCLOPEDIA OF STATE AND LAW (in Russian 1925-1927) 1593, quoted in GSOVSKI, SOVIET CIVIL LAW 170 (1948).

³⁷ Cf. NEGRU, CURS DE DREPT CIVIL 19 (4th ed. 1958).

for stability of law, which "fortifies the stamina of the political regime and the span of government discipline."³⁸ Civil law was reintroduced in the curriculum. In 1938 Soviet jurists called to a general convention in Moscow heard the new interpretation of the Marxist theory on law, *i.e.*, that "under socialism . . . law is raised to the highest level of development."

This new trend towards legal respectability naturally had an impact upon legal education. To be sure, the formation of cadres of jurists at the highest level seems to have never been neglected. Law professors and high officials prepared laws in research institutes. The All-Union Law Academy in Moscow offered one and two-year courses for large groups of officials of the Commissariat of Justice. But the education of the rank and file "workers in the legal field," judges, prosecutors and lawyers was certainly at a discount. In the whole country in 1937 there were only eight juridical institutes—at Moscow, Leningrad, Saratov, Kazan, Sverdlovsk, Karkhov, Minsk and Tasliken— and three law faculties—at Tiflis, Erivan and Baku. The total number of students permitted to matriculate in all these institutions providing a four-year course was set by law at 1,490 in 1935.³⁹ Besides these institutions of higher education, there were special law schools established by the Ministries of Justice with courses of short duration for the training of judges and prosecutors, whose professional knowledge and regard for the law was very low. The Supreme Court had continuously pointed out violations of elementary rules of procedure. In 1934, for instance, the plenary session of the Supreme Court remarked that in the sentences of the lower courts:

Concrete and objective exposition of the findings of the courts is replaced by declaration and abstract reasoning on general political subjects; no evidence is mentioned which would prove that the defendant committed the crime of which he is accused; the crimes themselves are indicated in general legal terms without concrete explanations of when and where the acts, and what kind of acts, were committed . . .⁴⁰

In *For the Improvement of the Work of the Court and the Prokuratura*, published in 1934, I. A. Akulov and A. Vyshinsky (then Deputy Minister of Justice) said:

Unfortunately, it often happens in the practice of our courts that the court holds the hearing of ten to twenty cases at the same time, then withdraws to the conference room and announces simultaneously the ten to twenty sentences pertaining to all the cases: John gets five years, Peter ten years, Theodore three years. What for and why? The court has no time to answer such questions: Moreover, in certain instances, the court confuses the names and the punishments. This happens unfortunately, quite often.⁴¹

³⁸ Vyshinsky, cited in GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 34, at 51.

³⁹ See Hazard, *supra* note 26, at 565.

⁴⁰ Cited in GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 34, at 518.

⁴¹ AKULOV & VYSHINSKY, *FOR THE IMPROVEMENT OF THE WORK OF THE COURT AND THE PROKURATURA* 35 (1934).

The 1938 Convention stressed the importance of legal education as a remedy for this state of affairs and as a result a greater number of young people began to be enrolled in law schools.⁴² Nothing more was done, however, until after World War II when, in October 1946, the Central Committee of the Communist Party came out with its well known resolution on the development and improvement of legal education in the Soviet Union.

C. The 1946 Resolution on Legal Education

The Central Committee noted that there were insufficient cadres of jurists for the various needs of the State—*Prokuratura*, courts, administration and international relations—and deplored the fact that because scientific discussions had been neglected and textbooks had been insufficient, the existing cadres were not adequately prepared. Emphasizing the importance that the Soviet theory of law should have as a formative discipline from an ideological point of view, the Central Committee decided that the course "The Foundations of State and Law" should be introduced in the curriculum of the faculties of economics, history, pedagogy, philosophy and that the teaching of law (Soviet Constitution) in secondary schools should be improved and good manuals should be published as a means to this end. As to legal education proper, the Central Committee decided to (a) increase the number of law faculties, juridical institutes, and special law schools; (b) increase the number of students, 2,500 students to be admitted to law faculties and 3,000 students to juridical institutes annually; (c) establish new "plans" with specialized sections for the last year of instruction; (d) increase the number of aspirants in juridical sciences (150 in 1947–1948, 200 in 1948–1949); (e) improve teaching and attendance in the special law schools of the Ministries of Justice; and (f) to recruit in such special schools "better" elements, twenty-three years of age with experience in the organizational work of the Party and in public organizations. In its resolution the Central Committee also directed the Institute of Juridical Sciences of the Academy of Sciences of the USSR and the All-Union Institute of the Ministry of Justice of the USSR to take the necessary measures for the writing and publishing of textbooks, especially in the subjects of theory of state and law, law of the state, history of the state and law in the Soviet Union, international law, and the publishing of special works such as monographs in all branches of law, but mainly in the theory of state and law and international law. All teachers and researchers were directed to theorize and value the rich experience of the agencies of Soviet justice and administration.

⁴² Gercenzon, *The Moscow Law Institute's 185th Anniversary of the Law Faculty*, *Sovetskoe Gosudarstvo i Pravo*, 1940, p. 133, indicates that in 1940 67.6% of the law students were younger than twenty-three years old as compared with 29.9% of the same age in 1934. Cited in Lande, *The Russian Attorney at Law*, 14 J.D.C.B.A. 307, 312 (1947).

After the 1946 resolution of the Central Committee, a great number of textbooks were published in all branches, *e.g.*, theory of state and law (Karev), international law (Kozhevnikov, Korovin, Krylov), civil law (Vendictov, Bratus, Fleishitz), penal law (Trainin, Shargorodski, Kirichenko), labor law (Alexandrov), *kolkhoz* law (Kazantzev), and administrative law (Studenikin, Lunev). A great number of magazine articles were devoted to the importance of legal education⁴³ and to methods of teaching.⁴⁴ The number of institutions of higher legal education was increased. In September 1947, Malenkov, at the communist international gathering held in Poland said: "At the present moment, in the work of the state organs, priority must be given to . . . the strengthening of Soviet legality, the struggle against conceptions connected with private ownership, the struggle for the continuous strengthening of Socialist ownership and of State discipline. . . ."⁴⁵ Insisting upon the role jurists could play in the organizational and propaganda work of the State, Vyshinsky said, in 1948: "The better legal education will be, the more efficient will be the action for organization of the State. Our country has as great a need of lawyers as it has of engineers, physicians and educators."⁴⁶ In 1950, the magazine *Bolshevik* wrote: "The Central Committee of the Party gives a great importance to socialist legality. Under the leadership of the Party, Lenin, and of Comrade Stalin, the law has become a force of organization, mobilization, and transformation in Soviet society." In the same article, *Bolshevik* announced that in comparison with 1940 the number of law students in 1950 had tripled.

D. Two Levels of Legal Education

There are two levels of legal education completely distinct from each other and conducted in different types of institutions. *Intermediate* (secondary) legal education consists of two years of study in special law schools of the Ministries of Justice of the different Soviet Republics. To be admitted students must be twenty-three years of age⁴⁷ and have completed seven years of elementary school. This last requirement, however, is not always observed. These special schools prepare judges for people's courts and prosecutors at the district echelons. To the same *intermediate* level belong courses by correspondence. *Higher* legal education is offered in the

⁴³ See Shivilikadze, *Let's Raise the Level of Soviet Legal Science*, Sovetskoe Gosudarstvo i Pravo, 1948, No. 10, p. 26.

⁴⁴ See Peretersky, *About Lectures at the Faculties of Juridical Sciences*, Sovetskoe Gosudarstvo i Pravo, 1948, No. 10; Trainin, *Before the New Schooling Year*, Justitsia Noua, 1951, No. 1, p. 64, in Oancea, *Invatamantul Juridic in URSS*, Justitsia Noua, 1952, p. 301.

⁴⁵ GOSPOLITIZDAT 24 (1947).

⁴⁶ *Let's Carry On, with Boldness*, Legal Science (1948), cited in Oancea, *supra* note 44, at 306.

⁴⁷ Cf. note 28 *supra*.

law faculties of the universities (Moscow, Leningrad, Kiev, Saratov, Kazan, Sverdlovsk, Tashkent, Odessa, Tomsk, Kharkov, Rostov) and in Juridical Institutes (Leningrad, Moscow, Alma-Ata, Kazan, Minsk, Saratov, Sverdlovsk, Tashkent, Kharkov).⁴⁸ Completion of secondary school is required for admission. After 1946 it was intended that all presidents and members of the supreme and regional courts and all prosecutors of republics and regions, as well as other main employees in the judiciary administration and legal advisors of important industrial centers, would receive such education. Things seem to have moved slowly, however, for as late as 1953 there were complaints that only 14.6 percent and 21.8 percent of these groups respectively had acquired the higher or intermediate legal education they were supposed to have had for the positions they held.⁴⁹ In 1954 it was indicated that 37 percent of the people's judges had received higher legal training, while in 1957 97.4 percent had some unspecified legal training.⁵⁰ There have been suggestions that people's judges must have higher or secondary legal training, but such a requirement has not been incorporated into the latest enactment of December 1958.

E. Curricula

Beginning in 1950 the faculties of law have provided five years of study and the Juridical Institutes four years. The "plan" for legal education specifies the subjects of the curriculum, the number of hours per week, seminars, and so forth. There are three distinct groups of subjects. The ideological curriculum comprises Marxism-Leninism (first and second year), political economy (first and second year), dialectical and historical materialism (third and fourth year).⁵¹ Most of the second group of subjects, pertaining to a general cultural and legal background, is also comprised of courses expounding, directly or indirectly, the official philosophy of the Soviet State: general history of state and law, history of Soviet State and law, history of political doctrines, theory of state and law, bourgeois constitutional and private law. This part of the curriculum also provides courses in logic, accounting, Latin and modern languages. It is only the third part of the curriculum, called the special curriculum, which offers proper juridical subjects: administrative law, penal law, civil and criminal procedure, civil law, labor law, banking law, agrarian law, public and pri-

⁴⁸ Law courses are also given at the Legal Military Academy, the Institute of Foreign Trade and the Institute of Foreign Relations.

⁴⁹ Cf. DAVID & HAZARD, *op. cit.* *supra* note 30, at 324.

⁵⁰ BORODIN, *VYBORNOST' I PODOTCHETNOST' NARODNOGO SUDA* (Electivity and Accountability of the People's Court) 13-14 (1957).

⁵¹ Professor David (*supra* note 30) remarks that Marxism-Leninism is to Soviet law what the Christian religion is to Canon law. To study Soviet law without learning Marxism would be as unthinkable as to study Canon law without first knowing what the Christian religion preaches.

vate international law, criminology, psychiatry, and others. In the law faculties, the fifth year of study is consecrated to specialization in one of the five following branches: theory of state and law, civil law, penal law, international law and state and administrative law. After the second year, the plan provides for five weeks of practice, every year, at the *Prokuratura*, courts, and legal departments of the government agencies.

At the end of the four or five years of study, students take the mandatory State examination, which consists of a written part pertaining to the special branch chosen by the student and an oral part on Marxism-Leninism, theory of state and law and the subject of specialty. After passing the examination, the "jurist" goes to work and becomes a "legal worker" in the organs of the courts, *Prokuratura*, the legal departments of state organizations or in *advocatura*. Those graduates admitted to do research become *aspirants* at the Law Institute of the Academy of Sciences of the USSR. The *aspirantura* lasts for three years. The first year is devoted to research, the second and third to research and teaching, including seminars and the grading of papers for the state examination. Every aspirant works with a professor or academician and prepares a dissertation which leads to the title of *candidate* in juridical sciences, granted by the scientific council of the university if it meets "the ideological and scientific standards." A *candidate* may be admitted as *dozent* in the staff of a faculty or may work for the rare title of *doctor*, granted by the Scientific Council of the Soviet Ministry of Education for works already published or ready for publication.

While only about eighty percent of the students are paid a stipend, all *aspirants* and *candidates* receive salaries which compare favorably with the average income in the Soviet Union. Expenses for all publications are supported by the State.

F. Militancy of Law-Teaching in the Soviet Union

The conception permeating legal education in the Soviet Union is reflected not only in the prominent place occupied by ideological courses and the fact that the official philosophy of the Soviet State pervades the whole curriculum but also by the militant character of law-teaching. More than engineers, scientists, physicians or accountants, those who study law must be prepared to promote the objectives and the ideology of the Soviet State. "Jurists," observed the Soviet writer A. Karp after the 1946 Resolution of the Party, "does not mean only judges, prosecutors, investigators, notaries, lawyers, diplomatists, but also the thousands and tens of thousands of activists. Until now, our higher law schools have formed only jurists of the first group but not activists and leaders for the large organizations of masses. But in view of the gigantic constructions of later years, Soviet leaders, as organizers and leaders of Soviet construction, must have a pro-

found and multilateral knowledge in the field of law."⁵² In order to instill in the students the conviction of the superiority of Soviet law, legal education based "on the sure foundation of dialectical materialism, the only theory on which can be developed true science" must be partisan and combative. Bourgeois law is presented and scornfully rejected. Soviet law is exalted. "True science," writes *Bolshevik*, "implies a partisan attitude, the espousing of the position of the class which is ahead and must be defended and assisted and against the opposing class which must be defeated."⁵³ The militancy of Soviet legal education is illustrated in the partisan style of the textbooks and in the oral expositions in the classroom. It is required that the lessons be well prepared and not improvised, conducted with passion, conviction and combativity and built, "like Lenin's speeches," upon a logic of steel.

The Soviet dominated countries of Eastern Europe adopted the Soviet system of legal education soon after the installation of their Communist regimes. What was called the "re-structuration" of legal education was accompanied by magazine articles praising the virtues of the Soviet system. The conclusion of the following article is typical:

The development, the organization and the content of Soviet legal education constitutes for us a rich experience and shows us the place and the role of juridical science in a socialist state. The Soviet state, the first socialist state in the world, has used from the very beginning the statute and the decree on one hand and the courts and their activities on the other as levers of first order in its way for the realization of a socialist society. With every new stage of development, the functions of the state changed and with them the role of the law. According to the Soviet experience, the State must continuously be strengthened. . . . and thus the role of the law becomes more and more important. Law is enjoying a particular importance today when the construction of communism has started. Under these circumstances, legal education has reached a great development and enjoys the appreciation of the Party and of the State. . . . Soviet legal science, based on the Marxist-Leninist conception, emphasizes the active role of the law . . . in the life of the State and the construction of communism in USSR. The cadres of jurists, well prepared from a scientific point of view, must respond to the multiple tasks they must carry for the State, as jurists, leaders of the Soviets, activists, etcetera.

Our country, liberated by the Red Army, has taken a new road. The working class, led by its Party, is taking us towards the achievement of socialism. . . . The jurists have the noble task to build a new juridical science, a new system of law after the Soviet model and in the historical and concrete circumstances of the construction of socialism in our country⁵⁴

⁵² "The Formation of Scientific Cadres at the Institute of Juridical Sciences of the USSR Academy of Sciences," cited in Oancea, *supra* note 44, at 300.

⁵³ *Supra* note 32.

⁵⁴ Oancea, *Invatamantul Juridic in URSS*, *Justitia Noua* 301, 305 (1952).

III

THE ROLE OF THE LAWYER

*A. History of the Soviet Bar*⁵⁵

The Guild of Lawyers was abolished together with all the other judicial institutions of the Russian Empire by the decree of November 27, 1917. The new Soviet regime did not, however, eliminate the institution of counsel for defense despite the insignificant role reserved by the Bolshevik Revolution by both law and the rights of defense. During the short period of War Communism there were no less than five decrees and acts concerning defense counsel. First, the above-mentioned decree of November 27, 1917, provided that "all unstained citizens of both sexes, holders of civic rights, may act as prosecutors and counsels for defense." The decree of February 22, 1918, created collegia of persons "who dedicate themselves to the defense of rights in the capacity of public prosecutors or public defenders." On November 30, 1918, the collegia of counsels, prosecutors and representatives of parties in civil procedure were reorganized and members of these collegia became officials remunerated by wages corresponding to that of judges. They had no right to accept fees from their clients. This system was abandoned by the decree of October 21, 1920, which provided that "all persons capable to act as counsel for the defense" should be drafted. The draftees, however, were reluctant and often unable to fulfill their duties and the great majority of counsels for defense continued to be appointed from the ranks of officials, most of them consultants from the Commissariat of Justice. With the advent of the NEP, there was enacted the Statute of the Legal Profession of May 25, 1922, which created new collegia of counsels attached to *guberniya* (later to *krai* and *oblast'*) courts, not to Soviets or their executive committees as before. The collegia received certain rights of self-administration and private practice was permitted.

With the liquidation of the NEP, the drive for collectivization embraced the legal profession too. Just as peasants had to join collective farms, lawyers had to enter collectives in order to practice their profession. The process of their rounding up was not completed until 1930. Soviet authors admit that the compulsory collectivization was characterized by force, the lawyers who had not joined a "collective" being deprived of any real possibility of appearing in court or otherwise practicing their profession.⁵⁶

The law of July 20, 1930, created a department of legal defense within the People's Commissariat of Justice with the task of guiding the activity

⁵⁵ Cf. Kucherov, *The Legal Profession in Pre- and Post-Revolutionary Russia*, 5 AM. J. COMP. L. 443 (1956); Hazard, *supra* note 15.

⁵⁶ KAREV, *SUDOSTROISTVO* (Judicial System) 290 (1948); PIONTEVSKY & MENSAGIN, *KURS SOVETSKOGO UGOLOVNOGO PRAVA-OSSOBENNAYACHAST'* (A Course of Soviet Criminal Law, Special Section) (1955).

of lawyers and their organizations. A regulation of February 27, 1932, gave legal shape to the new collegia, which were back under control of the administration as tight as that which had existed prior to 1922. After the Stalin Constitution and the Law on the Judiciary of August 16, 1938, the Statute of Advocates, August 16, 1939, established a new organization for the Soviet Bar, under which it has functioned to the present day.

B. Soviet Concept of Law Reflected in the Lawyer's Status

It has been said that "the progress of the Soviet Bar since the first decree of 1917 presents an unusual case study for persons interested in a wide variety of possible forms of the Bar."⁵⁷ Such a statement seems to assume that the differences which might exist between the Soviet and other bars pertain to problems of organization and form. This is not so. The profound differences existing between the Soviet and Western systems of law in their entirety are reflected in the functions and the role played by all organs and parts of the legal system, the Bar and its members included. Soviet spokesmen have been the first to claim this. They have repeatedly said that "Soviet lawyers have nothing in common with bourgeois lawyers; they differ from them fundamentally and in principle."⁵⁸

The successive forms taken by the Soviet Bar have emphasized the difficulty of finding a status for lawyers in a regime which does not believe in law other than as an expeditious and profitable means of administration for carrying out the political objectives of the Soviet Government and the Communist Party.⁵⁹ In 1923, in his treatise on the judiciary Krylenko, former Commissar of Justice, wrote:

A club is a primitive weapon, a rifle is a more efficient one, the most efficient is the court . . . For us there is no difference between a court of law and summary justice. A court is merely a better organized form which warrants a minimum of possible mistakes and better evidence of the fact of the crime. . . . Our judge is above all a politician, a worker in the political field . . . and therefore he must know what the government wants and guide his work accordingly.⁶⁰

Vyshinsky said: "The dictatorship of the proletariat is a power unrestrained by any laws. But it uses laws, demands observance of laws and punishes violations of laws."⁶¹ In the Soviet world, law is not placed above the Government, but it is recognized that the Government must rule others by means of law in order to promote its ends. For the Soviet rulers law is

⁵⁷ Hazard, *supra* note 15, at 177.

⁵⁸ Kudryavstev, in *Literaturnaya Gazeta*, June 7, 1951, No. 67, p. 2. (Kudryavstev was USSR Deputy Minister of Justice.)

⁵⁹ *Cf.* Razi, *supra* note 33.

⁶⁰ Cited by GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 34, at 561.

⁶¹ *Id.* at 51.

an option. It is used when it is convenient and is discarded when it is not.

From the very beginning of the Soviet State there has functioned side by side with a system of courts an administrative system of justice under several denominations: Cheka, Vecheka, GPU, OGPU, NKVD, KGB. "The OGPU and the Courts represent various forms of the class struggle," says the treatise of Vyshinsky and Undrevitch. "The Party line forms the basis of the entire governmental machinery of the proletarian dictatorship and it also forms the basis of the work of the Soviet court."⁶² The difference between the courts and the administrative agencies of justice has not been the impartiality of the courts, since it is admitted that their objective is political, but the fact that before the courts a special procedure is observed. Golunskii and Karev, in their treatise of 1946, write:

A characteristic feature of a court which makes it distinct from all other agencies applying coercion is the special procedure by which the court applies coercion. The essence of the special procedure consists in the fact that the decision of a court ordering the application of coercion in each case is preceded by a court hearing with the direct participation of the persons concerned.⁶³

The lawyer's activity has never extended to the administrative system of justice, but only to the courts. This limitation, however, is not what distinguishes his status. Professor Hazard writes:

The Soviet jurist does not look upon the prosecutor as the sole representative of the State. He sees in the judge a similar agent, specializing in the settling of disputes and in the punishment of criminals The attorney also serves the state by specializing in the production of evidence favorable to a defendant or in pointing out where a civil right of a plaintiff has been violated.⁶⁴

The same author says: "Lawyers in the USSR are cognizant of their relationship to the State at all times. They are taught that the court and the lawyer are agents of political power and that the interests of the state must always be paramount."⁶⁵

C. The Lawyer as an Agent of the State

In the Soviet Union the role of the lawyer like that of any other "worker in the legal field," *e.g.*, judge or prosecutor, is the promotion of "socialist legality."⁶⁶ All Soviet authors emphasize this. Karev insists upon the pecu-

⁶² *Id.* at 520.

⁶³ GOLUNSKII & KAREV, *SUDOSTROISTVO* 15 (1946).

⁶⁴ Hazard, *supra* note 26, at 562.

⁶⁵ Hazard, *supra* note 15, at 291-92.

⁶⁶ In the other countries of Eastern Europe, the statutes of the Bar provide that the task of lawyers is the strengthening of socialist, or popular, legality. In Rumania, article I of Decree 281 of July 21, 1954, provides: "In the People's Republic of Rumania, the *advocatura* has the task of according legal assistance to the population, the institutions, organizations and enter-

liarity of the Soviet lawyer as a defender of the accused and as a fighter for socialist legality.⁶⁷ Antimonov and Gerzon⁶⁸ remind us that the institution of advocates has been created as an aid to the Soviet court (which is an organ of the government)⁶⁹ and that "the Soviet advocate is a public figure who strengthens socialist legality and helps the Soviet State and Soviet justice." Chel'tsov-Bebutov and Shifman require that lawyers have the same socialist sense of legality as the prosecution.⁷⁰

The organization of the legal profession in collegia⁷¹ under the general

prises for the defense of their legal rights and interests and for the strengthening of popular legality. . . ." In Czechoslovakia, article 1 of Law 114 of 1951 also speaks of the duty "to contribute to strengthening socialist legality." Article 7 of the Charter of the Polish Lawyers' Association of 1950 assigns to the Bar the following tasks: "the mobilization of all Polish lawyers for active and devoted participation in the construction of socialism in Poland; participation in the strengthening of socialist legality . . . indoctrination of lawyers on the basis of scientific socialism; . . . active support in developing the legal ideology . . . the propagation and assimilation by Polish lawyers of Soviet legal doctrines and practices; collaboration with fraternal organizations of the legal profession in the Soviet Union and in the People's democracy countries . . . the propagation and expounding of principles of socialist legality among the working masses." In Bulgaria, the Edict of 1952 requires the lawyer to assist the government "in strengthening the legal order and socialist legality," which is, according to *Sotsialisticheskoe Pravo*, 1954, No. 3, p. 7, "an important instrument for strengthening the dictatorship of the proletariat, for smashing the resistance of the overthrown exploiting classes, for organizing a planned socialist construction, for uniting the toiling masses around the working class and its vanguard, the Bulgarian Communist Party."

The theme of socialist legality is constantly expounded by writers and official pronouncements in all legal writings. (See note 73 *infra*.)

⁶⁷ KAREV, *op. cit. supra* note 56, at 291-92.

⁶⁸ ANTIMONOV & GERZON, *ADVOKAT V SOVETSKOM GRAZHDANSKOM PROTSESSE* (The Advocate in Soviet Civil Procedure) 3-4 (1954).

⁶⁹ See Razi, *supra* note 33, at 7, and references therein.

⁷⁰ CHEL'TSOV-BEBUTOV & SHIFMAN, *ZASHCHITA V UGOLOVNOM PROTSESSE* (Participation of the Defense in Judicial Proceedings) 60 (1948).

⁷¹ All defense lawyers are organized into collegia existing in *oblast'*, *krais*, Autonomous and Union Republics. The collegia are designated as "voluntary public organizations" and are under the general direction of the Ministry of Justice of each Union Republic. Each collegium sets up "consulting points" in the districts and towns in the area served by it. The lawyers give legal advice, draw up statements, defense protests and other documents for individuals or organizations and act as defense counsels in criminal and civil cases. They also provide State enterprises with legal consultations and other services on a contractual basis. A general meeting of all the members of a collegium elects its presidium, which controls the enrollment of new members and the apportionment of fees received as salaries; it also has the right to apply disciplinary measures to members of the collegium, including reprimands, removal from work for up to six months and expulsion. Protests against nonadmission or expulsion can be submitted to the appropriate Republican Ministry of Justice. The Ministers of Justice retain the right to remove persons admitted to the membership of the collegium. They also lay down scales of payment for the different legal services rendered by members of the collegia. For example, the fee for the conduct of the defense in a criminal case in a court of first instance is up to 250 rubles, in a civil case up to 300 rubles. The drawing up of a legal claim costs up to 30 rubles. In cases of complexity increases are permitted and this seems to lead to continuous abuses (see Kucherov, *supra* note 55). All fees are paid to the consulting point, not to the lawyer, and the total income is reassigned by the collegium according to the amount of work done. Some 30% of the total amount of fees are assigned to leave funds, social insurance funds, and so forth.

Members of the collegia must either have higher legal education or have done one year's

direction of the Ministry of Justice of each Soviet Republic and the fact that attorneys practice their profession not individually but in collectives facilitates control by the State. In the area of strictly private disputes over divorces, alimony, apartment leases and so forth, there are, of course, cases where the incidence of "socialist legality" may be remote. But this is a small area indeed in a legal system where conceptual differentiation between public and private interests is in fact nonexistent, where the concept of "social danger" is applied to all actions touching upon wide-ranging state interests and where the legal assessment and the political assessment are deemed inseparable. "In a person who is being tried for misappropriation of State or cooperative funds," wrote a People's Judge in 1950, for instance, "I see not merely a parasite out for an easy life at somebody else's expense,

practical work in the legal field and have completed secondary legal education, or, in the case of those without legal education, have worked for three years as a judge, prosecutor, investigator or legal consultant. Before World War II, there were 127 collegia, with 10,453 lawyers and 478 lawyers-in-training, distributed among 1,461 consultation points. As of January 1, 1947, the number of collegia had increased to 150, the number of lawyers to 13,134 and the number of legal consultation points to 4,613. Women constituted 30% of the membership in the collegia. Among the advocates, only 41.7% had received higher legal education; 20% were graduates of special law schools. The remaining 38.3% had no legal education whatsoever.

The deficient education of Soviet lawyers has often been discussed in the Soviet press (see cases reported by Kucherov, *supra* note 55, at 460, e.g., a lawyer making thirty-six mistakes in spelling in ten lines of his application for admittance) and by Soviet authors. In 1941, M. Azimov, in *Sovetskaya Yustitsiya*, 1941, No. 23, p. 15, wrote: "Admission to the legal profession is too easy It very often happens that a person dismissed after three or four years of work as a prosecutor or investigating magistrate because of unreliability is admitted to the legal profession without having any other qualifications for the responsible work of an advocate than a formal qualification, i.e., a certain juridical experience." In 1948, Karev (*op. cit. supra* note 56, at 295) was asking for the improvement of the qualifications of the advocates. In 1951, in a letter to the *Literaturnaya Gazeta*, May 24, 1951, No. 61, p. 2, a member of the Moscow Collegium remarked: "Nobody except a graduate of a medical school may become a physician. But an advocate may be a person without any special education. It is time to rule that nobody has the right to join the legal profession without legal education."

The educational level of the legal profession seems to have improved in recent years judging by the new arguments presented in favor of a change of the rules for admission to the Bar in a recent article of January 1960: "The country now has an ample number of lawyers with higher education. Dozens of young specialists who are graduates of higher law schools, as well as citizens with prosecutor's office agencies, have been applying to the presidiums of the lawyers' collegiums for admission. Many of them, unfortunately, have to be turned down because there are no vacancies. We therefore feel," conclude the authors of this article, Ye. Zheznar, member of the presidium of the Moscow Province Lawyers' Collegium, and N. Sorokin, chairman of the Presidium of the Sverdlovsk Province Lawyers' Collegium, "that there is now no necessity to admit to the legal profession persons with secondary education in the law." (*What the Statute on Lawyers Should Be Like*, *Sovetskaya Yustitsiya*, January 1960, p. 25, reproduced in an English translation in 12 *The Current Digest of the Soviet Press*, 1960, No. 11 at 13-15). The arguments presented by this article are contradicted, however, by other comments published mostly in various Republics deploring the continuous neglect of legal education. See Gsovski, *Reform of Criminal Law in the Soviet Union*, 7 *HIGHLIGHTS OF CURRENT LEGISLATION AND ACTIVITIES IN MID-EUROPE* 3 (1959) [hereinafter cited as *HIGHLIGHTS*].

but an enemy of Soviet society plotting against its economic foundation."⁷² In such circumstances, where the area of offense to the state is vastly enlarged, the lawyer's duty of promoting socialist legality constantly comes in conflict with that of ensuring a full defense of his clients.⁷³ The Soviet lawyer is repeatedly reminded that it is not by justifying, but by condemning crime that he helps in "the education of man's moral qualities." He is

⁷² IVANOV, NOTES OF A PEOPLE'S JUDGE 33-34 (1950).

⁷³ For a discussion of some problems of ethics, see Kucherov, *supra* note 55, at 460-66. Two of the most relevant questions in this respect are, first, whether a counsel has the right to drop the defense during a criminal trial if he becomes convinced of the culpability of the accused, and second, whether counsel should, or should not, divulge secrets entrusted to him by his clients.

Because of the position of the Soviet counsel, who is supposed to take into account the interests of socialist legality at least to the same extent as those of his client, many Soviet authors have supported the view that much the same as the prosecutor has the right "to drop the accusation if he comes to the conclusion that evidence gathered during the trial does not justify the indictment," a counsel has the right to drop the defense during a criminal trial if he becomes convinced of the culpability of his client. This thesis, though, seems to have been losing ground recently. An article published in January 1960, in *Sovetskaya Yustitsia* (see note 71 *supra*) says: "The interests of justice and the right of citizens to protection can be observed in full measure only if the lawyer is forbidden to give up the defense of an accused person that he has undertaken. Such a prohibition is envisaged in art. 23 of the Principles of Criminal Procedure and should unquestionably be written into the [new] Statute of Lawyers."

On the problem whether counsel should, or should not, divulge secrets entrusted to him by his clients, Soviet writers unanimously say that "there is no such thing as an obligation of secrecy for counsel" in political cases where a counterrevolutionary crime, either completed or in preparation, is involved. In such cases "the counsel is obliged, as a Soviet citizen, to transmit the information to corresponding authorities and resign his activity as defense counsel in the case." As to nonpolitical cases, some authors say that the lawyer is obliged to transmit information only in criminal cases in which nondenunciation is punished by article 18 of the RSFSR Criminal Code, while others believe that such obligation extends to all cases, civil and criminal, since the protection of the social and political system of the Soviet Union must prevail over all other interests.

In the other countries of Eastern Europe with Communist regimes the lawyer's right not to, or obligation to, divulge secrets entrusted to him by his clients is regulated by statute. Thus, in *Czechoslovakia*, the law on the Bar of December 20, 1951, provides that "a lawyer must keep matters confided to him secret unless the party relieves him of this obligation. A lawyer cannot invoke his obligation to keep secrets if under the provision of the Criminal Code, sec. 165, subsec. 2, he is bound to inform the authorities of a crime committed . . ." Cf. Kočvara, *The Bar Sovietized*, 4 HIGHLIGHTS 35, 42 (1956). The decree of July 21, 1954 (as modified by the decrees of Nov. 24, 1956, and March 2, 1958) for the organization of *advocatura* in *Rumania* provides that the lawyer is prohibited from divulging information contained in the documents handed to him on the occasion of his professional consultations, but is "obliged to report to the organs of the state all information and all documents when such information and documents pertain to facts which might be harmful to the People's Republic of Rumania security or to the peace." In *Albania*, law No. 1601 of 1953 provides: "Lawyers may keep professional secrets, but they are bound to pass to State Security all information learned in connection with their professional activity concerning crimes against the State, as provided by Articles 64 to 75 and Article 83 of the Criminal Code." Vokopola, *Reorganization of the Bar*, 3 HIGHLIGHTS 169, 171 (1955). For *Bulgaria*, *Poland* and *Hungary*, see Risoff, *The Bar*, 7 HIGHLIGHTS 151 (1959); Siekanowicz, *The Polish Bar at the Crossroads*, 7 HIGHLIGHTS 293 (1959); Le Nard, *The New Bar Statute in Hungary*, 6 HIGHLIGHTS 393 (1958).

warned not to become the accomplice of the accused since "he does have the right to assist the accused in the defense of the latter's illegal interests."⁷⁴ What is called the "bourgeois" conception of the lawyer's relation to his client is rejected:

The Soviet defense lawyer cannot convert himself into the servant of his client, blindly following him in the defense of his interests, even though those interests are not legal and detract from, rather than contribute to, the interests of Socialist justice. In defending the rights and legal interests of his client, the Soviet defense lawyer must stop short at the brink where truth ends and falsehood begins, where the interests of the State and society are damaged by the counterposing to them of the illegal interests of client. The "eternal" problem of bourgeois defense counsel concerning the right of the defense to lie [*sic*] was discarded from the very first in Soviet criminal procedure.⁷⁵

It is not difficult to understand that from such admonitions Soviet lawyers have developed the tendency of leaning backwards and of often defending their clients perfunctorily. Their "conservatism" has sometimes been criticized. Thus, Soviet lawyers have been accused that they "have laid down their arms prematurely and stopped fighting, sometimes causing the condemnation of innocent people," that they frequently "assume the attitude in court of the public prosecutor and virtually become second accusers," that they "behave passively in the examination of evidence and examination of witnesses, considering their main task to be to pronounce a 'brilliant speech'."⁷⁶

⁷⁴ *Sotsialisticheskaya Zakonnost'*, 1958, No. 9, p. 39.

⁷⁵ PERLOV, *SUDEBNOE SLEDSTVIE V SOVETSKOM UGOLOVNOY PROTSESSU* (Court Proceedings in Soviet Criminal Trial) 124-25 (1955).

⁷⁶ *Pravda Vostoka*, July 27, 1956. SHIFMAN, *PRAKTIKUM PO SOVETSKOMU UGOLOVNOY PROTSESSU* (Handbook of Soviet Criminal Procedure) 195 (1953) offers the summations of defense counsels Braude and Kaznachev as models. In the political trial of *Prompartiya* (Industrial Party), Braude said: "The Soviet counsel is primarily a Soviet citizen. He thinks and reasons like the entire working population of the USSR And together with all workers, he is indignant and taken by a feeling of deep inner protest against the horrors which the accused prepared for our country" Kaznachev began a criminal case with these words: "Comrades Judges, it is difficult to add anything to the strong and brilliant words of Comrade Vyshinsky (the prosecutor)" From such models one should not imagine that there are not exceptions where Soviet lawyers put up a better defense for their clients. An Odessa case in KONSTANTINOWSKI, *THE RECOLLECTED CASES OF A SOVIET LAWYER* (Berman ed. 1953) tells of a situation where the judge seemed convinced of the innocence of the defendant but was hesitant to pronounce an acquittal. Before retiring to his chamber with the two people's assessors for consultation, the judge said to defense counsel in a subdued voice: "Comrade legal advisor, how can I acquit this man when I've already acquitted three before him? You know they won't pat me on the head for that. They'll say: 'He's pooped; his class vigilance has weakened. I, too, have a 'plan'." The defense attorney pointed out, however, that the judge's duty was to decide the case according to conscience and not according to "plan." The defendant, one Shargorodskii, was acquitted.

A spectacular case of professional courage in the countries with Communist regimes was

Besides his activity as counsel, the lawyer is expected to serve socialist legality by taking part in the propaganda activities which permeate Communist life and by exulting the excellence of Communist legislation. After a decision is made by the Party, the legal magazines carry articles stressing its importance and outlining the role lawyers and their organizations are expected to play in its implementation.⁷⁷ The collegia or the other legal

the outspoken way the Polish lawyers defended the demonstrators from Poznan. The type of defense witnessed at the Poznan trials was, however, a passing episode which was made possible by a unique and short-lived situation. The coming of Gomulka to power was interpreted in Poland as a sign of change and, in the atmosphere created by the prevailing national ferment and hope, the Polish Bar thought, for a moment, that it could speak up again. The independence of courts and the autonomy of the Bar were made the cornerstone of the personal liberty of the individual and for a while Polish lawyers obtained a certain autonomy by the statute of November 19, 1956. Two years later, however, the regime, dissatisfied with the new trend followed by the Bar, accused the Polish lawyers of manifesting an "unfriendly attitude toward the development of the People's Poland," and reinstated the control and authority of the Minister of Justice by law of November 5, 1958. See Siekanowicz, *The Polish Bar at the Crossroads*, 7 *ПРАВНИК* 293, 305-13 (1959). The Polish Bar which had thought it had become independent was reminded that "one should keep in mind that in the system of the professional organizations of our people's state there is nothing and there cannot be anything . . . that is not connected with the general policy of our people's state. This policy is laid down by the leading Workers' Party It decides about the victory of socialism, it guarantees and secures the conditions of the building of socialism in our country. Against this background, the password of the independence of the legal profession, understood as a separate one, is a harmful anachronism As the independence of the judge is not tantamount to hermetic isolation, since he is subordinated, for instance, to the leading directives of the Party and the Government in the sphere of administration of justice, the same applies to an attorney who, in carrying out his profession, is dependent on the general principles governing the policy of our state and on the tasks to be carried out by all the population The restoration of esteem for the Bar in the People's Poland . . . is based on . . . the most active contribution . . . of the Bar . . . in close cooperation with the people's authority, in raising the ethics and the politico-moral attitude of lawyers, which cannot be separated from the processes of social relations now in progress." *Prawo i Życie*, 1959, No. 7.

⁷⁷ Compare, for instance, Khrushchev's speech to the Twenty-First Party Congress (11 *The Current Digest of the Soviet Press*, 1959, No. 5) with the editorial "Prospects for Development of Soviet Legal Science at the Present Stage" in the January 1960 issue of the leading Soviet magazine, *Sovetskoe Gosudarstvo i Pravo* (reproduced in 12 *The Current Digest of the Soviet Press*, 1960, No. 12, at 11). In the other countries of Eastern Europe, the same methods are followed, as is shown by the following excerpts from a typical editorial of the Rumanian magazine *Legalitatea Populara* (Popular Legality), 1958, No. 11: "The Great Socialist Revolution of October, achieved by the working class of Russia in alliance with the poor peasantry and under the direction of the Communist Party led by V. I. Lenin, has opened a new epoch in the history of mankind, the epoch of the downfall of capitalism and of the triumph of Socialist Order Due to the superiority of the Socialist economy, the Soviet Union has surpassed the major capitalist countries, the United States included . . . , as it has been emphasized in the thesis of the report presented by N.S. Khrushchev to the Twenty-First Congress of the Communist Party At the present moment, one of the most important tasks of our legal literature consists in the study and popularization of the legal problems flowing from the decision of June 9-13, 1958, of the Central Committee of the Rumanian Workers' Party referring to the defense of Socialist ownership, to the strengthening of legality and to the intensification of the increase of the socialist sector in agriculture The jurists of the Rumanian People's Republic have an important role to play in the fight against any infiltration of bourgeois ideology

associations prepare the plan for doing the job required of them, *e.g.*, going to work in the field, giving lectures, making broadcasts, holding meetings and reporting afterwards on what they have done.⁷⁸ As the Soviet author A. Karp remarked, "lawyers, by their specific training, should be the best equipped activists."⁷⁹

D. The Social Position of the Lawyer

Soviet views on lawyers have undergone changes. The 1917 revolutionaries and all other Communist regimes upon seizing power⁸⁰ thought of pre-existing law as an embodiment of the policies of their "class enemies," the landlords and the *bourgeoisie*. Lawyers were considered faithful agents

in the science of the law, in the defense of Marxist-Leninist thesis, by a continuous strengthening of revolutionary vigilance and combativity, by unmasking the opportunist and revisionist theories."

⁷⁸ "The organizations of jurists, spread in all corners of the land, had a fruitful scientific activity . . . and an extensive activity of popularization of the laws of our State in the large masses of the people In the General Assembly of the Bacau organization, there was emphasized the contribution made by our Association to the formation of the jurist of our new epoch in contrast with the jurist of the bourgeois State; today, the professional work of the worker in the legal camp has been integrated in the general policy of the state and the legal worker is profoundly preoccupied by the problems of legal science connected with the practice of construction of Socialism The scientific activity of our Association has been helped by the Central and Local Organizations of the Party." *Justitia Noua*, 1958, No. 2.

⁷⁹ See note 66 *supra* for the duty of lawyers in other countries under Communist rule to stress the socialist legality.

⁸⁰ One of the very first measures taken by the Communist regimes in the countries of Eastern Europe was the purge of the Bars. "The members of the Bar who safely passed the Verification Commission examinations were subjected to political indoctrination in special seminars and in collective law offices. The psychological transformation of the lawyers' minds and their 'social usefulness' was to be proved by so-called 'social work' which included contributions to the activities of the Polish-Soviet Friendship Associations and those of the People's Front; . . . unmasking the criminal activities of American imperialists . . . combating hooliganism and the theft of socialist property; popularizing the law Social work was considered to be a necessary supplement to professional. All this work was performed through collective law offices." Siekanowicz, *The Polish Bar at the Crossroads*, 7 *HIGHLIGHTS* 293, 299 (1959). Mistrust of the lawyers in the countries of Eastern Europe still exists. On March 20, 1958, the Minister of Justice of Hungary said: "Politically, attorneys fell behind not only other groups within the legal profession, but also other strata of intellectuals A considerable number of practicing attorneys are not only unfit to perform their duties, but a portion of them actually impede the successful operation of the courts and other authorities as well as the realization of socialist legality. Largely because of the composition of the bars, attorneys are presently unable fully to accomplish their tasks; therefore . . . the composition of the bar membership must be improved. This means that unsuitable elements must be removed from among the attorneys." Le Nard, *The New Bar Statute in Hungary*, 6 *HIGHLIGHTS* 393 (1958). See also the excerpts from two Communist publications in the United States. In a pamphlet entitled *Professionals in Soviet America*, it is said "There is one group of professionals in America who will be liquidated along with the bourgeois. Lawyers under capitalism are trained as servants of the system of class justice which will soon become obsolete." In the book *Towards Soviet America*, it is said: "The pest of lawyers will be abolished, the courts will be class courts . . ." Reproduced in Maxwell, *A Contrast in Viewpoint: Lawyers in the United States and Russia*, 43 *A.B.A.J.* 219, 222, 282 (1957).

of these enemies and often as the single most dangerous group of people for the new Communist order. Later on, in the thirties, when law began to be viewed as an instrument of policy this attitude toward lawyers became more tolerant since it was thought that lawyers too could do something useful as workers for socialist legality.

During the past three or four years, after Khrushchev's denunciation of Stalin at the Twentieth Party Congress of February 1956, certain new advances have been registered. Open criticism has been leveled not only against some of the most objectionable features of the Soviet Criminal system⁸¹ but also against the very concept Soviet lawyers have of their functions as defense counsels. T. E. Neishtadt, for instance, in a booklet published in 1958 by the Society for the Dissemination of Political and Scientific Knowledge of the RSFSR, entitled *Sovetskii Advokat* (The Soviet Defense Lawyer), quotes a stenographic report of a meeting of the Supreme Soviet of February 5-12, 1957, which says that "There are lawyers who have no right idea about the importance of their functions and are afraid to start a genuine argument with the prosecution. It is necessary to stop this kind of practice and to consider lawyers as true, insistent and bold defenders of truth and justice."⁸² The same author says that when a lawyer cannot deny the guilt of the defendant he must present mitigating circumstances⁸³ since by "attracting the attention of the court to every circumstance mitigating the guilt of the defendant, the lawyer assists the court to punish the committed crime in conformity with its real character."⁸⁴

As a matter of fact, even before Stalin's death Soviet legal magazines had spoken of the importance of the place occupied by lawyers in the Soviet society, pointing to the October 1946 resolution of the Central Committee as evidence of the Party's acknowledgment of such a place. The same publications often say that the jurist, the accountant and the engineer are specialists indispensable to Soviet economic organizations. While some sixty thousand lawyers are employed by such organizations and by different Ministries it cannot be said that as a profession lawyers enjoy social prestige in the Soviet Union or in the other countries with Communist regimes. This is only natural, for the position of the legal profession is dependent, in the last analysis, upon the actual role it can play and the functions it can accomplish in a given society, whatever the attitude of the government or the ruling party might be towards it.

⁸¹ Although the presumption of innocence has not been adopted (being described as a "decrepit dogma of bourgeois law"), article 14 of the new Bases of Criminal Procedure of December 1958, provides that the burden of proof lies with the prosecution. The doctrine of "analogy" seems to have been abandoned. The confession of the accused seems not to constitute per se adequate proof of guilt.

⁸² NEISHTADT, *SOVETSKII ADVOKAT* (The Soviet Defense Lawyer) 5 (1957).

⁸³ *Id.* at 22.

⁸⁴ *Id.* at 18.

In the Soviet society, geared in its entirety to the continuous strengthening of a state which can bring about the world-wide victory of communism, the roads which elsewhere have led the legal profession to positions of eminence are barred. In the West, the Bar has won its place through a centuries-long tradition of independence and self-discipline, of courageous affirmation of the freedom and the rights of the individual against the authority of the state, of defense of "the widow and the orphan," the underprivileged and the nonconformist. Communist dictatorships do not recognize the rights and liberties of the individual except to the extent that they do not come in conflict with the regime. The rights of the individual are not supposed to be defended beyond the boundaries of "socialist legality," that is, beyond the point where the application of the provision of the law would run counter to the interests of the administration, the Party and the state. Even those authors who have recently asked lawyers to become "bold defenders of truth and justice" hasten to say that their premise in advocating such a course is the fact that in the Soviet world any discrepancy between the interests of the state and those of the individual are inconceivable. Neishtadt says, for instance, that "the Soviet lawyer directly and immediately defends the interests of the socialist state because the interests of the individual and those of the Soviet society have been completely harmonized."⁸⁵

In the Communist regimes, moreover, all economic activities are in the hands of the state. There are no norms developed to protect private business, no businessmen seeking in law protection of their affairs, no criticism of unlawful decisions taken against the business or professional interests of the citizens, no private groups exerting pressures upon official decision-makers for adoption of favorable legislation.⁸⁶ Thus, not only are there no roads to eminence for the legal profession, there is not even a need for a large number of lawyers.⁸⁷ Since the economic and political advancement of the Communist state do not depend upon individual initiative and enterprise, the matters in which lawyers deal, such as domestic relations problems, affidavits, wills, inheritance, pensions and defenses in criminal cases, are considered peripheral to the aggrandizement of the state, the central preoccupation of the Soviet regime.

As of 1958, of the 1,125 members of the Moscow collegium, 481 lawyers were members or candidate members of the Party and 51 were Konisomol

⁸⁵ *Id.* at 15.

⁸⁶ Cf. Lisszryn, *Western and Soviet Perspectives on International Law—A Comparison*, in PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW 29 (1959).

⁸⁷ The last figures reported by Western visitors indicate there are some 13,000 lawyers spread throughout the collegia of the principal centers of the Soviet Union. Stason, *supra* note 21. In the United States there were 241,000 lawyers in 1951. Cf. Maxwell, *supra* note 22, at 222.

members, but this is not an indication that lawyers rise to positions of actual authority and, as a professional group, they certainly exert no influence on official decision-makers. Financially, they do not do very well. It is said that about one-third of the members of a collegium receive up to 500 rubles a month, one-half between 500 and 700 and only two to three percent over 2,500 rubles a month.⁸⁸

At the present moment, it seems that a new statute on lawyers is being discussed to replace the law of 1939. From articles appearing in Soviet legal magazines offering suggestions to be incorporated in the new law, we can expect changes in the present organization of the Bar, such as stricter requirements concerning the legal education necessary for admission to the collegia, apprenticeship training, pay for apprentices, organization of "the work of propagandizing Soviet legislation among the public," and even changes concerning certain aspects of the control exercised by the Ministers of Justice of the Union Republics over the collegia. Such changes when they occur will not, however, affect the status of the Soviet lawyer. Indeed, the above mentioned suggestions insist that whatever changes the new statute might bring it is essential that the "socio-political" duties of the lawyers be stressed and "that the lawyer order his activity in such a way that it is not detrimental to the aims and purposes of socialist justice."⁸⁹

CONCLUSION

The foregoing discussion suggests that comparisons of isolated details in the organization of the Bar or in the system of legal education in the Soviet Union with those of the West are meaningless and can often be misleading. The mere fact that Soviet law schools do not use the case method does not set them apart from American law schools; nor does the fact that the Soviet legal profession ignores the distinction between barristers and solicitors bring it closer to the American Bar. What gives meaning to particular differences or similarities is the total structure of the legal systems being compared. And there, the variances between the Soviet and Western worlds are, no doubt, very profound.

In the West "the political order is not outside of the legal order;"⁹⁰ we do not think of administration as independent of law but require administration to conform to rule and to constitute a process under law. In the Soviet world, as has been discussed at greater length elsewhere,⁹¹ law has

⁸⁸ For converting rubles into dollars the "realistic," not the official, rate of exchange is ten rubles for one dollar. For the years 1953-1954 the average annual income of lawyers in the United States was \$10,218. Cf. NICHOLSON, *THE LAW SCHOOLS OF THE UNITED STATES* 169 (1958). Soviet experts claim that the average income of a skilled worker in the Soviet Union is 500-1,000 rubles a month. Cf. GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 34, at 1453.

⁸⁹ Sovetskaya Yustitsiya, 1958, No. 1, p. 18.

⁹⁰ POUND, *THE FUTURE OF THE COMMON LAW* 17 (1937).

⁹¹ Razi, *Around the World's Legal Systems: The Soviet System*, 6 How. L.J. 1 (1960).

no absolute or independent value. It is an instrument for implementing the policy formulated by the ruling Communist Party.⁹² Consequently, while in the West the idea presiding over legal education is the supremacy of the law, the purpose of Soviet legal education is to train people how to use law to obtain the objectives of the Party and the Government. In the West the independence of the Bar is considered to be the indispensable condition for the exercise of the profession, but in the Soviet world the Bar prides itself in being considered by the Party and the State as a promoter of their objectives, under their control or with their support in both legal and propaganda activities.

What of the future? After the French Revolution the French Bar did not regain its position and achieve complete independence for quite a while.⁹³ Could we not expect a return of the Bar in Russia to the standards of complete independence, which since the 13th century have been "of the essence" of the profession in the West?

Analogies are no less dangerous in time than in space. Here again one should not separate what happened to the legal profession from what happened to the system of law. Portalis, one of the experienced jurists who drafted the Code Napoléon, said, only some ten years after 1789: "It is useful to conserve everything which is not necessary to destroy; the laws must be sparing of habits when the habits are not vices."⁹⁴ His words sum up the concept of moderation which presided at the formulation of post-revolutionary law in France. No signs of moderation are found in the Soviet Union, however, where since 1917 the one consistent claim has been that of a radical and scornful rejection of the past and of anything coming from the non-Marxist world. It is true that after the Twentieth Party Congress of February 1956, the doors of a debate have been opened and that the sweeping charges against bourgeois law⁹⁵ seem, at times, to be no longer mandatory. But even the most conciliatory writings have not ceased to emphasize that "the principle antithesis between Soviet and bourgeois law consists in the class this law subserves."⁹⁶

⁹² "The Soviet state has, from the very beginning, used the statute and the decree, on one hand, the courts and their activities on the other, as levers of first order . . . for the realization of a socialist society. With every new stage of development, the functions of the state changed and, with them, the role of the law. According to the Soviet experience, the State must continuously be strengthened . . . and thus the role of the law becomes more and more important." See Oancea, *supra* note 53.

⁹³ See Stoeber, *Le Barreau Français*, in *LES BARREAUX DANS LE MONDE*, *supra* note 4, at 198.

⁹⁴ See Razi, *Around the World's Legal Systems*, 5 *How. L.J.* 1, 26 (1959) and references therein.

⁹⁵ *E.g.*, "The Soviet jurist expresses in all his activities a feeling of irreconcilability towards all manner of reactionary bourgeois 'theories,' towards despised cosmopolitanism and reverence for things foreign In all exploiting States the activities of the courts are directed in the first place to the suppression, the terrorist intimidation of the exploited masses." KAREV, D. S. *SOVETSKOE SUDOSTROISTVO* (The Soviet Judicial System) 14, 20 (1951).

⁹⁶ SOROK LET SOVETSKOGO PRAVA, 1917-57, Com. 2-PERIOD SOTSIALIZMA (Forty Years of Soviet Law, 1917-57, Vol. 2—The Period of Socialism) 505-06 (Shargorodsky ed. 1957).

Despite the improvement of the political climate in the Soviet Union in recent years it would, therefore, be unrealistic to expect the establishment of any rule of law in the Soviet world in the immediate future. As long as the very definition of law in the Soviet Union continues to emphasize the idea that law is a political instrument of the State and of the ruling class,⁹⁷ political and social expediency will dictate the course taken by Soviet law and by all institutions connected with Soviet justice, the Bar included.⁹⁸

As to the influence of the legal profession in the Communist society, the current debate on the Connolly amendment at the 1960 meeting of the American Bar Association calls to mind a story, told at another Washington meeting by someone personally versed in Soviet affairs.⁹⁹ According to the story, the Government of the USSR convened a large group of Communist lawyers for the purpose of codifying international law. The conference debated seven days and seven nights. At the end of that time it had adopted only one article which read: "All states are sovereign." The conference was then about to adjourn when a second article was suggested. That article read: "Article I applies only to the People's Democracies."

⁹⁷ The Law Institute of the Soviet Academy of Sciences gives the following definition: "Law is a combination of the rules of behavior (norms), established or sanctioned by state authority, reflecting the will of the ruling class—rules of behavior, whose application is assured by the coercive power of the state for the purpose of protecting, strengthening and developing relationships and procedures suitable and beneficial to the ruling class." Quoted in Hazard, *Soviet Socialism and Due Process of Law*, 48 MICH. L. REV. 1061, 1075 (1950).

⁹⁸ Quite recently, an example of the Soviet Government's desire to stress the independent and objective course of Soviet justice was the letter addressed to Francis Powers' father (or at least the Tass version of that message) by Premier N. S. Khrushchev. In the Soviet Union, "the law is the law" said Mr. Khrushchev, intimating that he personally could not do anything to help the American pilot. *Washington Post*, June 12, 1960, p. A10. It is known, however, that some of the sayings of the Soviet Premier should not be taken *à la lettre*. He also invokes God, although, by his very position, he is the patriarch of atheism.

As a matter of fact, the Powers' trial itself provided just another illustration of how politics and propaganda are part of Soviet law. The Soviet Government having decided that the best exploitation of the U-2 incident was to be found in a public trial, the show was put on in a special hall where 1500 guests from all over the world were accommodated and catered rich buffets while Soviet communication media, both in the Soviet Union and abroad, broadcast that: 1) Powers admitted having been bit at an altitude of 68,000 feet; 2) his lawyer defended him as being a victim of the "almighty dollar," as all Americans are; 3) the court, guided by the principles of "socialist humanism" gave him a light sentence. Thus, the trial propagandized the Soviet political and military claims to the fullest and at the same time, by its orderly development, presented to the whole world the "new look" of Soviet justice, meant to erase memories of the famous purge trials of the late thirties.

⁹⁹ Dr. Ivan S. Kerno at the Fifty-Third Annual Meeting of the American Society of International Law. AMERICAN SOC'Y OF INT'L LAW, PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW AT ITS FIFTY-THIRD ANNUAL MEETING 45 (1959).