

AMNESTY

personal freedom

in the marxist-leninist countries

report of conference

june 16th 1962



AMNESTY

**An international movement for freedom
of opinion and religion**

The Amnesty movement is composed of peoples of all nationalities, politics, religions and social views who are determined to work together in defence of freedom of the mind.

The spread of dictatorship, the tensions that have resulted from the Cold War, and the increasing cleavage between races of different colour, have combined to make state persecution of the individual the gravest social problem of the 1960's.

The principal object of Amnesty is to mobilize public opinion in defence of those men and women who are imprisoned because their ideas are unacceptable to their governments. It has been formed so that there should be some central, international organization capable of concentrating efforts to secure the release of these "Prisoners of Conscience". Essentially an impartial organization as regards religion and politics, it aims at uniting groups in different countries working towards the same end—the freedom and dignity of the human mind.

FOREWORD

by F. ELWYN JONES, Q.C., M.P.

Amnesty's concern is with freedom of opinion and freedom of religion. Its members are of differing political and religious views but are united by Voltaire's dictum: "I detest your views, but am prepared to die for your right to express them." *Amnesty's* interventions have been made on both sides of the great political divide on behalf of "Prisoners of Conscience", wherever they may be. Some of them are among the finest of our contemporaries.

The process of imprisonment is one of the sanctions of a country's criminal law and an outcome of the working of its legal procedure. These are in turn the product of that country's political and social system.

Amnesty, since its inception, has been trying to find the facts about these matters all over the world. It is not easy. One of the significant things about Governments which do incarcerate numbers of "Prisoners of Conscience" is that they are most reluctant to lift the veil which hides them.

Amnesty has accordingly embarked on a series of conferences to study the state of personal freedom in different parts of the world. The first, held in January, 1962, was on "Personal Freedom in the Emergent Countries". The third, which will be held in London in November, 1962, will be on "Personal Freedom in Western Europe". The second Conference, held in London on June 16th, 1962, was concerned

with Personal Freedom in Countries which, for want of a better generalization, have been called Marxist-Leninist Countries. They contain a third of the world's population, about a thousand million people.

Broadly their basic approach to law is that it is created to serve the over-riding needs of the community. The Common Law approach on the other hand, which prevails in much of the western world, is that each person is entitled to the widest range of personal liberty of action, subject only to his not injuring the community or his neighbours.

It was hoped that lawyers and writers brought up in both systems of law would attend the second conference. Unhappily, although lawyers and writers were invited from each of the "Marxist-Leninist" countries, none attended.

In these circumstances the Conference, the proceedings of which are reported here, drew upon the two symposia which were prepared by Dr. John Keep, an authority in this field of study, from over twenty working papers supplied by specialists in this subject. Their content is critical, but without malice.

Mr. Leslie Hale, M.P., said in the House of Commons recently: "If music is the international language of the heart, the concept of justice is the international currency of the mind." It is in the spirit of these words that this book is published.

PERSONAL FREEDOM IN THE MARXIST-LENINIST COUNTRIES

Opening the Conference, the Chairman, F. Elwyn Jones, Q.C., M.P., said that an appeal had just come to *Amnesty* from Madrid and Barcelona where writers, intellectuals and politicians who went to the Munich Conference of the European Movement advocating Democracy in Spain had been imprisoned and were now awaiting trial. They were mostly Christian democrats and monarchists. *Amnesty* had arranged to send a leading figure in the Catholic world to Madrid to make enquiries.

Explaining the object of the Conference, Mr. Elwyn Jones said that *Amnesty* is intended to be a bridge across the frontiers of nations, ideologies and creeds. We wished to consider as fairly and dispassionately as possible how far the countries under discussion gave effect to Articles 18 and 19 of the Universal Declaration of Human Rights.

We had hoped that people from the communist countries would come, but, despite assurances that this conference was not an attempt to attack their way of life, unhappily no one had responded. We had invited writers, lawyers and embassies from Poland, Yugoslavia, Bulgaria, Albania, East Germany, Russia and Cuba (and a few more), but the response had been nil. We greatly regretted that these invitations had not been accepted. We had tried to remedy this by seeking the assistance

of experts on the countries under discussion, and they had helped us in preparing papers on personal freedom and the legal codes. These had been collated by Dr. Keep.

The Chairman then introduced Mr. Elvin, Chairman of *Amnesty's* Policy Committee, and a former representative at UNESCO and the debates on human rights at the United Nations.

Mr. Elvin said that "the concern of *Amnesty* is expression of freedom and those men and women who are persecuted because of having opinions which run counter to those of their government. I shall not concern myself with hostile criticism of any regime, because we in *Amnesty* differ in our religions and politics. We wish to rouse public opinion by non-violent pressure".

Within Marxist-Lenin philosophy there is a real, though no doubt limited room for manoeuvre. Even the most repressive regime, if it wants other people to have a friendly image of it, must in some ways be tolerant and open to change. There are differences of degree of expression allowed in Marxist countries and differences in any given country over a period of time. There is more freedom of expression in Poland than in the U.S.S.R. It is realized by Poles that they might risk an explosion of the Hungarian type if they did not allow freedom of expression to a certain extent. The fact that there is comparison between Marxist countries shows there is room for manoeuvre. These

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variations are important not only for themselves but because they demand discussion, even disagreement on right and wrong methods. Within the frame of Marxist ideology change is not just brushed aside as bourgeois criticism. An outside opinion can have some effect. In the 1920's some American officials found themselves in Moscow. They were amazed to hear the Russian crowd chanting a word which sounded like "moon". In answer to their question it was explained that the Russians were calling for the release of Tom Mooney, an American trade unionist who had recently been arrested during the time of the "Red" scare. Those American officials were undoubtedly impressed.

"I am certain that we must resist the temptation to be silent just because we seem to anger these governments. So many governments rely on the public to forget that people are in gaol for their beliefs. The long term effects of our protests are likely to do more good for the victims than silence."

"Why has there been a thaw in Russia in recent years? Some people would say it is because the Russians acknowledge that they cannot now be attacked. I think that repression from fear must have been very greatly modified in the U.S.S.R. because of their increased military strength. But I suggest that there is a simpler explanation; that the Russians have decided that life under a leader intent on the personality cult is a bad way of life. One important factor is the spread of education which, though slow, is a tremendous social solvent in the long run. One cannot be educated without asking questions. The important thing about machines is that they change men's minds and the way they look at things. The present policy is somewhat like the liberalism of Trotsky. The links with the West are growing and the Russians do want a friendly picture of themselves in our eyes now that there is more interchange between the two countries."

"We are not sentimental in thinking Marxists will change to our way of thinking overnight. Marx wanted greater freedom for the masses

of the people. Marxism was to lead to the withering away of the state. We shall have a friendlier picture of these countries if the withering of the state is hurried up."

* * *

In the discussion that followed Professor Peter Hilton, of Birmingham, spoke about the importance of maintaining contacts between Marxist countries and the West. He compared his own experiences while travelling in different parts of Eastern Europe. He said a considerable number of people in Poland were allowed passports to travel to the West each year; and an invitation received by a Pole to come to a Western conference was considered as "a feather in his cap". On the other hand, in Roumania such an invitation was regarded with suspicion and might get the recipient into trouble. He believed that it was most important that Marxist governments should be encouraged to allow their citizens to travel freely abroad. In this connection, he thought it vital that Western institutions should not take advantage of visiting mathematicians and scientists to make them tempting financial offers to stay in the West. Quite humanly, these offers were sometimes accepted. But the reaction of suspicion on the part of the Marxist government concerned was equally human. He believed that if Western institutions wanted to offer jobs to Eastern scientists, they should make it a matter of honour to convey the invitation openly before the scientist reached the West, or alternatively, after he had returned home.

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Opening the second session the Chairman introduced Mr. Leonard Schapiro, Reader in Russian Government and Politics, University of London.

To start with, Mr. Schapiro said he thought it important to define the three essential safeguards which every society should provide within its legal system. First, there should be provision to prevent people being unfairly accused on false evidence or through malice. Second, there should be guarantees, if a man

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is accused and brought to court, that he should be allowed freedom to present his side of the case. Thirdly, there must be at all times vigilance by the public, the press, and officials in order to ensure that the first two safeguards are maintained. The wording of the constitution which might offer all sorts of rights for the citizen was no substitute for the personal vigilance which was required.

Applying those principles to those countries on the other side of the Iron Curtain, Mr. Schapiro said he thought it reasonable to bear in mind that all the Governments had come to power following a revolutionary situation or in the wake of Soviet armies. To this extent it was not possible to compare the situation prevailing in the earlier period in the history of those countries with that of Western European countries of the same epoch. During the first years of the establishment of these regimes law was inevitably a nuisance—it was something which got in the way of the revolutionary changes the new government wished to make.

During the years which followed the pressure of revolutionary change diminished, but as it became progressively possible for the Governments to remove the pressure of administrative control, so there developed a danger of a popular explosion from below. *"There is no potential situation so dangerous", he said, "as when a bad regime starts to reform."* The examples of this could be seen in the events of the Autumn of 1956 in Hungary and Poland.

Considering in turn the three essential safeguards, Mr. Schapiro observed that there was now much less unfair and malicious accusation than there had been in a period prior to 1955. The preliminary investigation of accusations had been put under the control of the Procurators instead of, as formerly, the security forces. It was now known that in Stalin's time these security forces had their secret instructions to use torture when the occasion required. The qualification of the present system was that all Procurators had to be members of the Communist party and were subjected to the instructions of the party. If the party decided to obtain

a result by illegal methods, it was in a position to order the Procurator to bend the law.

Another improvement was that Counsel for the Defence were now allowed to enter the proceedings at an earlier stage. At the present time in the Soviet Union the Defending Counsel were allowed access to their clients and the documents at the conclusion of the investigation. Since 1957 there had been pressure that Defending Counsel should be allowed to take part in the investigatory process, which was something especially desirable because at least a quarter of the investigators had no legal training at all.

Low Status of the Bar

Turning to the position of Defending Counsel and the latitude allowed to them, Mr. Schapiro remarked that the status of the legal Bar in Russia was extremely low. In Tzarist days the bar had enjoyed a fine tradition in independence, but now barristers were subjected to all the controls of a system in which they had to operate within legal collectives. They were badly paid, and the evidence showed that among law students there was no ambition to take up the role of barrister. Law students went into Government service or became Procurators or judges; only as a last resort did they become barristers. In the exercise of their profession at the Bar they had only limited independence. One example was the case of a Defending Counsel who had defended his client on the grounds that he had been arrested not by the police or under warrant but by an officious passer-by. Because the client was charged with "hooliganism", this technical defence was badly received by the court and the press, with the result that the lawyer was reprimanded.

It was in the field of public vigilance that the situation showed least improvement. Mr. Schapiro commented very critically on the standard of reporting of law cases in the Soviet press. He said that the choice of cases published was arbitrary and irregular. Even when a case was reported the standard of journalism was disgraceful. The whole report was almost always

slanted to bring out a political moral, and even though it was right that the guilt of the accused person should be reported, there was no excuse for not publishing the outlines of his defence. Worse still was the practise of passing comment in the report, not based on any evidence, that the accused was a depraved and pernicious character.

The public's opportunity to enforce the civil rights granted by the constitution could only be done through the Procurators. On occasions the Procurators did take up public complaints. Indeed there was some evidence, he said, that Procurators often wanted to assuage their known sense of guilt for the part that they had played during Stalin's regime. After all, they had been there in office—many of them—during all the years when these now openly admitted illegalities took place.

Mr. Schapiro thought it might be instructive to consider the extent to which Procurators to-day uphold the law in circumstances where the Government had a fixed policy which it wished to enforce regardless of the law. Everyone was aware of the tremendous wave of speculation which had been taking place in the Soviet Union, and of the recent reimposition of the death penalty. He quoted a newspaper report of the case of a man who was sentenced to 15 years' imprisonment on June 15th, 1961, under a law which had not been passed at the time when his offence had been committed. Shortly after this, on July 1st, the death penalty was introduced. The Procurator then applied to a higher court on the ground that the penalty imposed was insufficient. In due course the Supreme court sentenced the man to be executed and he was duly shot. By bringing the prosecution of the appeal under retro-active laws the Procurator was violating Article 8 of the law of December 20th, 1958. This Article states that no man shall suffer a penalty which has been introduced retrospectively. How much confidence, Mr. Shapiro asked, could one have in a system of invigilation where the invigilators, the Procurators themselves, deliberately broke the law?

In a system where there was a lack of official vigilance there was bound to be an occasional trumped up case. He did not want to go into particulars of any example, such as that of the well known case against Madame Ivinskaya, but he did want to mention a more dangerous development. This was that where it suited the Government, men and women were brought before the courts on insufficient evidence and convicted as a part of Government policy. This had happened frequently as a part of the recent anti-religious campaigns. Priests, rabbis, mothers, had all been convicted and their cases blazoned throughout the Soviet press as a warning to others. Another Government campaign was against the so-called "parasites". There was no exact definition in the law as to what was a "parasite". *Dr. Krep's paper had brought out that all through the Marxist-Leninist countries this lack of definition of offences was a most disturbing feature of the administration of justice.* Those charged with being "parasites" were brought before a so-called "Comrades Court" which had considerable powers of punishment. These gatherings of party members were entitled to deport a "parasite" for a period of up to five years and a required part of this period had to be spent in a labour camp. Though called "courts" these bodies were really administrative. Their actions against "parasites" were in breach of the law of December 20th, 1958, which laid down that nobody should be sentenced except after a judicial hearing.

A duty to criticize

Mr. Schapiro concluded his address by making three final observations. First, he observed, Marxist countries always insisted on their right to criticize the administration of justice in the West, and so they should. But when the West started to criticize what went on in the courts of their country they resented any breath of criticism and suggested that it was all part of the Cold War. However much the cry of Cold War was raised, he thought there was a duty to criticize, the more particularly since the Russian public was denied that right.

Secondly, the system with its present defects had nothing to do with Marx. Both Marx and Engels had detested injustice, and their writings resounded with denunciations of the injustices suffered by the working class. Similarly he knew nothing in the doctrines of Socialism which justified arbitrary imprisonment. He knew that at the height of the revolution, Lenin was quoted as saying, "it is better that ten innocent men should be convicted than that one guilty man escape." But those words were spoken during extraordinary times—Lenin himself was not a blood-thirsty man. The speaker believed that the reason for the defects to which he had alluded was the insecurity which these regimes felt, not from outside invasion, but from internal dissatisfaction.

Lastly, he said that speaking as a social scientist who had once practised as a lawyer, he believed that the Soviet Government would be wise, in its own interests, to allow the law to take its course without interference. He instanced the present epidemic of black marketeering in Russia as an example of what happens in a country where the law falls into contempt; where the people feel, he said, that the law is their enemy they will turn to extra-legal activities.

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A number of questions were put to Mr. Schapiro.

Q. Does the accused appeal against sentence or does the Procurator have responsibility for appealing?

A. Both; the accused has the right to appeal, and the Procurator also.

Q. Do you associate the vast quantity of economic crimes with food shortages in Russia?

A. I think shortages are always connected, e.g. Black Market in this country during the war, but I do not think it is the only factor. I have two explanations. (a) To a large extent the regime depends on illegality to run at all. (b) I think the effect on the regimes of this type is to some extent to turn this kind of thing into a form of protest, but this is only my theory.

Q. Is there legal aid in the U.S.S.R.?

A. The services of an advocate are allotted extensively; money is no problem.

Q. What do you know about the people not brought to trial?

A. I do not know what happens in practice, but I have been told by Russians to whom I have talked, that Procurators are now increasingly reliable and will not sign warrants for preventative detention without trial.

Q. Are the Procurators still finding people who were illegally sentenced during the Stalin period?

A. Procurators do rehabilitate people in camps, and widows are reinstated.

Q. How is news of trials kept out of the press?

A. It is a most elaborate organization. There is a part of the central committee with four secretaries who deal with nothing else and have officials in every newspaper office. There are definite instructions which go out at regular intervals. You can even keep an earthquake out of the newspapers if it is thought undesirable to put it in.

Q. How are judges appointed?

A. The judges are elected; their election is controlled by the Party as with the Trade Unions. They are not all Party members, but they are Party approved; they sit with assessors who represent the public. There has been some talk that the assessors should be increased and should attend separately from the Judges, like the jury here; they should judge the facts and the Judges should judge on points of law. This is still being advocated, so there obviously is feeling among lawyers that this would be a good thing.

Q. Could you say something more about the Comrades Courts, and abolishing the role of judge altogether?

A. These are not courts in any ordinary sense but are the voice of the people and are controlled by the Party. They are in most cases unanimous. The danger of them is that as they are Party controlled they can be used as an administrative weapon; they sometimes are, but may not be. I fear them because they are so liable to abuse;

in themselves they appear to be all right, but it is how they can be abused that is a cause for disquiet.

Q. To what extent has the operation of the process of persuasion conditioned people to accept the present system as just?

A. I think there is a lot in that. I think there is a strong sense of lack of law, a feeling that lawyers are rubbish. Khrushchev said: "Why wait for the police to catch someone, catch them yourselves", or words to that effect.

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Mr. Ralph Kabes, of the International Commission of Jurists spoke about the evidence of the class-character of penal treatment in the

Marxist-Leninist countries. He gave examples of the way in which men from bourgeois backgrounds were given lengthy terms of imprisonment, while those from working-class backgrounds, guilty of the same sort of offences, were either excused, as being misled, or else given light sentences.

Mr. Peter Benenson, joint Hon. Secretary of *Amnesty*, concluded the discussion by describing the activities of the movement, particularly with reference to the difficult task of compiling lists of names of those in prison in Marxist countries. Wherever possible, he explained, *Amnesty* endeavoured to secure the adoption of these prisoners by local groups, who then became responsible for keeping their name before the public and their hope alive.

PERSONAL FREEDOM IN WESTERN EUROPE

Amnesty's third conference in the series on 'Personal Freedom in Contemporary Society' will be held in London on

SATURDAY, NOVEMBER 17th, 1962

Maurice Cranston will be one of the speakers

Norman Marsh will take the Chair

FREEDOM OF EXPRESSION

By DR. JOHN KEEP

Lecturer in Russian History, University of London

(This and the following paper on Legal Rights were compiled with the help of contributions from experts on the different Marxist-Leninist countries)

The dictum of Friedrich Engels that "freedom is the consciousness of necessity" has long since been part of official doctrine in the Soviet Union and other communist countries. To quote the authoritative Soviet *Political Dictionary*:

*"Freedom consists not in any supposed independence of man from natural and social laws, but in the possibility of understanding and utilizing these laws . . . In the conditions of an antagonistic society the elemental character of social development does not give man the chance to develop his activity freely, but makes him the slave of necessity. Only communist society implies the transition of man from the realm of necessity to the realm of freedom."*¹

On innumerable occasions Communist leaders and ideological spokesmen have made it plain that in their view the law determining the present phase of human evolution is that of "transition from capitalism to socialism", and within the socialist countries the construction of a fully communist society under the leadership of the Party, as the self-styled "vanguard of the people". True freedom therefore consists in identifying oneself as closely as possible with this irreversible historical process. It is the "moral-political duty" of every citizen in a communist country to participate with enthusiasm in the national effort to resolve the tasks posed by the Party: to raise the material and cultural level of

society, to inculcate "proletarian internationalism", respect for labour and other socialist virtues, and to help strengthen the might of the State and its organizations. The official Marxist-Leninist doctrine postulates that the Communist Party is, automatically and at all times, the sole genuine representative of the interest of the popular masses. Hence slackness in implementing its directives is interpreted as evidence of political immaturity or backsliding, if not of actual hostile class tendencies, which it is the duty of the Party and of the citizens in general to overcome, by persuasion—or, if that fails, by coercion. The ideal is a fully collectivist society in which the individual, voluntarily and from deep ideological conviction, "harmonizes" his individual interests with those of society as a whole.

This outlook leaves no room for individual freedom in the Western sense of the term. Communists acknowledge that "bourgeois" democratic political and civil liberties played a positive role in the rise of capitalism. But they are not deemed to have an intrinsic value in themselves, and the degree of their implementation depends on the current exigencies of the class struggle. At present, the argument runs, where such liberties exist in the "imperialist" world they serve merely as an instrument in the hands of the exploiting class to dupe the masses

into accepting its rule. Only under socialism do the people enjoy real liberty, of a superior quality than "bourgeois" freedom, for the constitutions of the socialist states assures the citizens basic liberties (of speech, press, assembly, conscience, etc.), and also gives them the material means to exercise their rights, since meeting halls, printing presses, and the like are placed exclusively "at the disposal of the working people and their organizations." But these rights are qualified: they are granted "in accordance with the interests of the working people and with the aim of strengthening the socialist order"²—and according to Marxist-Leninist philosophy the "interests" of the working people are determined solely by the Party.

It follows that the constitutional liberties granted to the citizens of communist countries are fictitious. There exists no mechanism whereby the individual may lawfully defend his "fundamental rights" against infringement by Party organs, or State agencies acting at the Party's behest, since the judicial system is itself part of the government apparatus. Moreover, all "public organizations" (see below), and all communications media are closely controlled by the Party, which ensures that no expression of political opinion, in word or deed, takes place without its sanction. Liberty therefore exists only to the extent that the Party may find it expedient to tolerate it, which may vary considerably from time to time and place to place, in accordance with changes in the power of the Party *vis-à-vis* the population. Where its authority is at a low ebb, its policy may be one of temporary relaxation until such time as it judges the moment ripe for a further advance towards the realization of its goals.

A full picture of the current position with regard to liberty in the communist world would necessitate an examination of the general internal situation within each country and its ruling party, and an assessment of the degree of success or failure attained by each party in implementing its various policies. Such a task is clearly beyond the scope of this report, which is

confined to some of the more illuminating aspects of the East European scene as it has developed over the last few years.

FREEDOM TO CRITICIZE

In all communist countries the leadership is concerned to prevent excessive bureaucratic rigidity and to forestall the crystallization of vested interests within the ruling apparatus which could hinder the execution of Party policy. This aim is served by the practice officially known as "criticism and self-criticism", which is defined as

*"the basic method of ascertaining and overcoming mistakes in the work of Marxist parties and other organizations of the working people."*³

Members of such bodies are not only permitted, but actively encouraged, to criticize, at meetings or in letters to the press, etc., details concerning the application of Party policy, or the work of individual executives of that policy—subject to the all-important proviso that they do not bring into question the Party's "general line", specific Government measures, or the activities of the top leaders. Criticism must be "constructive" and "business-like", i.e., designed to assist the Party in strengthening the socialist order. The decision whether such criticism is to be regarded as "constructive" or "destructive" rests with higher authority, so that the system acts as a means of control. Subordinates are continually liable to censure either for "covering up one another's faults if they do not go far enough in their criticism, or with "lack of ideological firmness" if they go too far.

Wider Opportunity for Criticism

The limits of such permitted criticism are everywhere narrow, but they have been somewhat widened in recent years. In the SOVIET UNION, for example, several "nation-wide discussions" have been staged by the authorities since 1957, with the object of stimulating public interest in, and approval of, Party policies. These have affected a wider audience than was

customary hitherto, although they do not represent any basically new departure in Soviet politics. The result of this, together with changes in the police system, has been a modest increase in freedom of expression, and the political atmosphere is now less constrained than it was in Stalin's day. This relaxation is most apparent in fields that are relatively remote from current policies, e.g., in the arts and sciences. In the Party itself and in economic collectives (factories, farms, planning bodies, etc.), the ideological controls are as tight as ever. Thus in 1956 action was quickly taken, in the Soviet Union and in most other communist countries, to prevent the discussions on the "liquidation of the personality cult" from getting out of hand (as happened in Poland and Hungary), and to maintain the fiction of monolithic conformity to the Party line. It is still too early to analyze the consequences of the 22nd Congress of the C.P.S.U., which doubtless shocked many people into questioning the correctness and consistency of Party policy. But so far the dissenters have been obliged to keep their thoughts to themselves: little evidence has yet come to light of political discussions within the Parties exceeding the permitted bounds. This does not mean that the degree of licence permitted, or the tone of the debates, necessarily meets with approval outside the country concerned: on the contrary, the development of "polycentrism" within the Soviet bloc has shown quite clearly that serious divergencies of opinion exist between the leaders of some national communist parties.

This diversity also has had the indirect consequence of increasing the opportunities for freedom of expression available to non-Communists in certain more favoured countries. The most repressive conditions would appear to exist in China, Albania and East Germany. Mao Tse-tung is unlikely to attempt a repetition on any serious scale of the abortive "rectification" experiment of 1957, when intellectuals responded all too eagerly to the invitation to "let a hundred flowers bloom". In EAST GERMANY political controls have been tightened appre-

ciably since the scaling-off of West Berlin, which intensified popular opposition to the Ulbricht regime. The tenor of life is illustrated by the following incidents reported in the East German press:

On January 23rd, 1962, 3 schoolboys from Mecklenburg were sentenced to 5 and 3½ years' imprisonment with hard labour for staging a protest in their classroom against the conscription law; 5 schoolmasters who had taught them were summarily dismissed.

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On October 31st, 1961, the Potsdam "Bauernecho" reported that a farmer living near Cottbus was sent to jail for 2 years for "saying that the Farmers' Party advocated the suppression of the farmers instead of promoting the welfare of the village population" and "agitating against the Soviet Union".

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On September 12th, 1961, the Dresden "Sächsische Zeitung" reported that on August 14th, a local youth was sentenced to 2½ years' imprisonment for "agitating against the G.D.R." He had said: "why are they putting tanks in position if we are for peace?"

In CZECHOSLOVAKIA, RUMANIA and BULGARIA there seems to have been little change in recent years, although here as elsewhere in eastern Europe there exists an unofficial "communications system" which serves as an independent source of information among the population at large. In HUNGARY, where controls are as tight as they were prior to the revolution, an observer notes that "the weapon of irony is extremely sharp: witty and malicious jokes against the regime circulate freely by word of mouth and assume the character of folklore"—but they cannot of course be published.

Greater Freedom in Poland

Of all the communist countries POLAND has the best reputation so far as freedom of speech is concerned. This situation has no basis in law: the 1952 constitution contains provisions worded in much the same form as in the constitutions of the other "people's democracies".⁴ But the Party leadership appreciates the strength of non-communist opinion in the country and finds it expedient to allow it to be ventilated within limits that, for eastern European standards, are relatively wide. In Warsaw there existed until recently a well-known literary and social club where patrons were able to engage in fairly uninhibited discussion. In March, 1962, it suspended operations under official pressure. There are, however, other café-clubs, run by the socialist youth organization, where discussion continues, even if under closer supervision, and it appears that the authorities are not at present opposed to the existence of these forums of public opinion. On the other hand, a law passed by the Sejm on March 30th, 1962, against the opposition of the Catholic deputies, tightens up the existing regulations governing assemblies and public processions. Its provisions are in many instances vaguely worded, especially in so far as church gatherings are concerned. Critics of the bill have been assured by communist spokesmen that their fears are exaggerated. It remains to be seen how the law will be applied in practice.

In YUGOSLAVIA there appears to be greater freedom of expression than in any country of the Soviet bloc (except, perhaps, Poland). Here as elsewhere criticism may be directed only against the details of government policy, not its substance. On the other hand, in introducing the draft of the new constitution, M. Kardelj recently stated that the decentralization of the administrative system was to continue in the near future, and that this would ensure all citizens a wide measure of civil liberty. Personal rights, he explained, had to be limited so long as the danger of "reaction" existed, but only to the extent necessary to prevent acts of violence against the socialist order. It may be thought

that the prospects for a limited freedom of expression are brighter in Yugoslavia than in any country within the Soviet orbit, where the ideal of the "withering away of the state" is still an empty slogan rather than a clearly formulated goal. But it is still much too early to be dogmatic on this point.

FREEDOM OF THE PRESS AND INTELLECTUAL OPINION

It is much harder for a communist regime to tolerate freedom of the written than of the spoken word. Marxist-Leninists have always regarded the press as a mighty weapon in the struggle for men's minds. The same holds true of literature generally, since they do not recognize the conventional Western distinction between belles-lettres and "mere" journalism. As Ilyichov, the chief Soviet ideologist, declared at a conference of Party workers in December, 1961, the task of the Press "is to fight to implement the programme for the construction of communism". Similarly, in an address to Soviet writers and artists published last May, M. Khrushchev proclaimed once again that their task was

*"to educate the people in the spirit of communist ideals, that will awaken in them a sense of admiration for all that is beautiful in our socialist reality and inspire men to devote all their strength, knowledge and aptitudes to selfless service to their people . . . and to make them implacable foes of all anti-social and negative elements in life."*⁵

For this reason all publishing houses, periodicals, and other outlets for expression are controlled by Party or State organs, or bodies under Party control (e.g., writers' associations, youth organizations, etc.).⁶ A high proportion of those permitted to voice their opinions in print are normally Party members. This is not an essential pre-requisite, but the distinction between Party and non-Party is to some extent illusory, since the latter are also required to profess the Party's philosophy and to accept its

control over what they write. In the speech quoted above M. Khrushchev also said:

"Soviet writers, composers, artists and film and theatre workers find an inexhaustible source of creative inspiration in the Party's policy and ideology. They accept the Party's ideas as their own."

"Partynost" in the Arts

This principle of "Party-mindedness" (*partynost*), in literature and the arts requires that all works should reflect the Party's political and moral values. Writers are expected to concentrate on current issues (more precisely, on the achievements and goals of the masses under Party leadership). Any undue emphasis on the "negative features" of contemporary "socialist reality" is regarded as evidence of political unreliability. It renders the artist liable to pressure and, in an extreme case, to penalties such as exclusion from cultural organizations and denial of the right to publish his works. Expulsion entails loss of one's livelihood and the privileged status in society which writers and artists normally enjoy, thus putting a high premium on conformity. Today, ideological error does not normally involve the severe penal sanctions imposed in Stalin's day, since the Party now relies on subtler methods of coercion. But the treatment of Pasternak and Mme. Ivinskaya shows that the ultimate weapons remain in reserve for use as needed.

In some eastern European countries (Poland, Hungary), the situation is slightly more favourable so far as the expression of unorthodox views is concerned. One useful barometer to the state of the intellectual climate is provided by the satirical journals. Though rather flat by Western standards, the Polish *Szpilki* and the Hungarian *Ludas Matyi* frequently go quite far in their criticism of domestic shortcomings. In Bulgaria, by way of contrast, the editor of the humorous weekly *Sturssel* was dismissed in March, 1961, for allowing the permitted limits to be exceeded. (The reason may have been that one of his employees had written, apropos of an

official campaign for increased attention to advertising, the couplet:

*"How can you advertise
When there is no merchandise?"*⁷

Where the "thaw" has penetrated less deeply the range of taboo subjects is wider and satirists are required to direct a larger proportion of their fire against the "imperialist" enemy. It stands to reason that they, like all other journalists, are at the Party's service, and the abuses which they expose are those that impede realization of its policies.

The degree of intellectual liberty allowed is determined, not by law or decree, but by the judgement of the Party leaders, who make their will known through official directives and informal contacts. Experienced writers and artists can often sense changes in the atmosphere by a kind of intuition. In communist countries censorship is not simply a matter of submitting publications to some official who excises what is objectionable. The system is rather one of "self-censorship" by the writers and artists themselves, who are trained and pledged to observe Party discipline. In each collective (editorial board, stage company, etc.), the Party members and other "politically alert" elements exercise ideological supervision over their comrades. This supplements the normal administrative control exercised by the Ministry of Culture (or similar body), acting on instructions from a department of the Central Committee. The details of the administrative arrangements may vary: in CZECHOSLOVAKIA, for example, each publishing house, editorial office, or printing shop has a permanent overseer who is an official of the Main Administration of Press Supervision in the Ministry of The Interior. His decision is irrevocable. Appeals are theoretically possible through Party channels, but there are no known instances of this right having been exercised. In the SOVIET UNION the situation may be gauged from a model decree on the basic duties of publishing workers approved by the Ministry of Culture on May 13th, 1955, which contains the following articles:

I/1. *The director [of the publishing house] is responsible for the ideological, scientific and artistic content of published works, for the fulfilment of the plan, and for the economic and financial results of the plan. He organizes the publication of printed works . . . being guided by the decisions of the Party and Government, his superior organizations and the requests of the working people.*

II/1. *The chief editor . . . takes full responsibility for the ideological-scientific and literary quality of the books published . . .*

[4. decides questions of the approval or rejection of manuscripts.

III/3. *The editorial manager receives the MS. from the author, acquaints himself with its contents . . . and also prepares a decision on the acceptance or rejection of the MS. in accordance with the terms of the contract and the existing rules.*⁸

From this it is clear that a work must undergo an involved series of controls before it sees the light of day.

Another medium of supervision is inherent in the planning system itself, which enables the political authorities to keep themselves informed of forthcoming works, and to direct the quantity of book output in various fields. The supply of newsprint for periodicals may also be used as a means of denying organizations of which the Party disapproves (in practice, religious) bodies, from publishing their journals in an edition as large as potential sales would justify. (Such sanctions, which were widely applied in the "people's democracies" during the period of initial sovietization (1945-49), were recently applied in Poland against the well-known Catholic weekly *Tysgodnik Powsiechny*, the circulation of which was arbitrarily reduced from 50,000 to 40,000 copies.)

"The Quest for Truth"

Despite these controls works still appear which are subsequently criticized for lack of ideological rectitude. According to an authoritative Soviet commentator:

"At the 22nd Party Congress the products of recent years were evaluated highly, in that they reflected socialist actuality correctly and brightly. But of course this evaluation does not mean that everything now on the bookshelves, the theatrical stage and cinema screens satisfies the increased cultural and aesthetic requirements of the people . . . By no means all writers and artists are drawing inspiration from the well-springs of life; there are still grey faceless works, and not infrequently cases when, instead of creative competition with the best in progressive foreign art, there is imitation of "fashionable" modern bourgeois works which claim to be in the van of progress and full of innovations . . ."

These shortcomings may be explained by two main factors. One is the need for the literary authorities to permit a measure of individuality if they are to maintain reasonably high artistic standards and to retain the interests of a discriminating public. The other factor is the subtle resourcefulness shown by many sincere and talented artists in conveying the truth as they see it despite the restrictions imposed upon them. In the Soviet Union and elsewhere in eastern Europe the cultural "thaw" has encouraged many writers to demonstrate their allegiance to human and universal values, and in the process to create works of high artistic merit. This "quest for truth", particularly evident among the younger generation of writers, has found a warm response among those tired and sceptical of easy propagandist slogans and anxious to work out for themselves their own individual attitude to life. This movement is more complex than is often supposed: it is closely bound up with a desire, born out of grim experience, to reduce the all-embracing power of the state and to expand the range of individual and group freedom, but usually presupposes some kind of socialist or collectivist framework. It need not in itself be consciously anti-communist, although the realization of its programmatic ideas might well prove fatal to the communist system as it exists today. Nor can it be regarded automatically as a pro-Western move-

ment, although one of its characteristics is a demand for a freer exchange of ideas between East and West.

Throughout the Soviet orbit there has been an increase during recent years in cultural contacts with the West. The number of Western works selected for translation has grown, and some modern Western plays have been staged by domestic companies. There has been very little trace of unorthodoxy in the press or cultural life in BULGARIA, RUMANIA or CZECHOSLOVAKIA—to say nothing of CHINA, ALBANIA or EAST GERMANY. In the latter country it is rather a question of intensified intellectual controls, evident in the persecution of students and university teachers who have expressed opposition to current Party policies and have sought to maintain scholarly contact with the West. The attempt to impose "socialist reform" on East German universities and colleges has led over 1,600 teachers to flee to the West since 1958. In HUNGARY the situation is somewhat less bleak. Clandestine literary works are passed eagerly from hand to hand, and there have been some instances of writers expressing nonconformist political opinions in articles dealing with ostensibly non-political topics. Surveying the intellectual situation at the end of 1960, the leading literary weekly remarked that it was impossible to overestimate the extent to which "bourgeois ideology, artistic outlook and moral standards" had permeated the consciousness of young writers. But the Kadar regime, aware of its weakness, and anxious not to repeat the measures that led to the explosion of 1956, is acting with a certain discretion in its cultural policy. Some, though not all, of the intellectuals prominent in the revolution have been released, and given a modest opportunity to write. There have also been several instances of literary works coming under heavy criticism after publication without any punitive measures being taken against authors or editors.

In POLAND a greater degree of toleration exists. A cooler wind has been blowing during recent months, but, as one Western observer has remarked, "the terms 'restrictions', 'pressures'

and 'tightening up' all have a specifically Polish flavour and content", and the inconsistencies that occur make it misleading to generalize.¹⁰ Offending publicists are normally obliged to change their jobs instead of being subjected to penal sanctions. The secretary of the Union of Polish Artists recently stated: "we stand for tolerance and respect for artists' opinions. We do not reject the Party spirit but we do not seek to impose our views on anyone against his convictions." This suggests that the ideological struggle is conceived rather as a long-term campaign, fought in the main with the weapons of persuasion.

The censorship acts as a severe obstacle to the publication of original thought by Polish writers, although it is relatively liberal so far as the import of foreign literature is concerned. Comment in the Polish press on international affairs is often more reasonable and balanced than in other communist countries, and journalists are allowed to quote Western sources for news and information. Warsaw is the only capital within the Soviet sphere of influence where several major Western newspapers and journals may be bought (generally on subscription and thus potentially liable to control, but a few copies are available in kiosks and public reading-rooms). A large number of the plays currently staged in the Polish capital are by Western authors. On occasion Polish periodicals have given space to works that could not be published in less "liberal" communist countries. Polish writers have been in the forefront of the "new wave" in eastern Europe. One of the most significant features of the cultural scene is that in recent months discussion has not been confined to writers and artists but has extended to sociologists and political scientists. A series of articles on "socialist humanism" which appeared in 1961 were read attentively by a wide section of the public. The idea that the "dictatorship of the proletariat" is compatible with an expanding area of individual freedom is a revolutionary one that has a considerable appeal for many Poles (and others in eastern Europe) today.

Reins Held Lightly in Yugoslavia

The situation in YUGOSLAVIA is not strictly comparable to that elsewhere in eastern Europe. There is virtually full freedom of expression in the arts: writers are not required to be politically committed, although they are not allowed to engage in direct criticism of the regime or its policies. On the other hand, many leading Party members appear to be critical of the extent to which Yugoslavia has approached the standards of the "bourgeois" world in this respect, and the case of M. Djilas has recently focussed attention on the dangers that threaten those who touch on sensitive political issues. The import of foreign books and newspapers may be authorized by the State Secretary for Internal Affairs, for the individual use of the importer only (usually for a definite period of time and in a specified quantity). Occasionally issues containing material deemed prejudicial to Yugoslav interests are confiscated (e.g., *Daily Telegraph* for February 16th and 17th, 1961). The U.S. periodical *Newsweek* has been completely banned since October, 1961. The legal position as regards control and ownership subsequent to the Press Law of 1960 is as follows: no notification or approval is required before publication; institutions engaged in publishing are autonomous self-administering bodies, governed by a council whose members are partly elected, partly nominated. This mechanism still enables the Party to exercise a decisive influence, but at present the reins are held lightly and the scope of free action permitted is fairly wide. But it must be borne in mind that here as elsewhere these liberties are not inalienable rights, but privileges granted by authority as favours which can be revoked at any time.

FREEDOM OF ASSOCIATION

Independent voluntary associations such as exist in profusion throughout the Western world are unknown in communist countries. All that are permitted are "public organizations". These are defined by a Soviet legal authority as

"those unions of working people referred to in

*para. 126 of the Constitution whose activity is carried on under the guidance of the Communist Party and the Soviet state, which pursue various social, cultural, educational, scholarly, defence, sporting—but not economic—aims."*¹¹

This definition is not very satisfactory, since the Party is formally speaking one such "public organization" and since trade unions, which also constitute one category of these bodies, pursue economic interests. This terminological uncertainty underlines the fact that in a socialist society the main task of trade unions is conceived as educational: to mobilize the efforts of the masses in the realization of the economic plan. Like all other "public organizations", their role is to act as "transmission belts" whereby the will of the Party is conveyed to the masses. Seen in isolation from the Party they are bodies without a spark of life. They can be dissolved at once in the unlikely event of the blood beginning to flow in their veins. Article 18 of the Soviet civil code prescribes that they can be closed down "by compulsion" if they depart from their statutory aims, or if their activity "infringes the interests of the state". They can also be closed down "voluntarily" by a decision of a general assembly of members or their representatives—i.e., of the Party cell acting in this capacity.

Although no pressure is officially put on members to join a trade union or professional association, in practice membership is compulsory in order to take up employment or carry on any cultural, educational or recreational activity, however harmless from the political standpoint. (Party membership is, of course, a privilege which imposes serious obligations. It may be acquired only after extensive screening and completion of a period of probationary membership.)

In Hungary in 1956 the Petöfi Circle, an officially-sponsored association of intellectuals, held several meetings which got out of control of the Party authorities. The eventual result was insurrection and the overthrow of the Stalinist regime. No recent instances have come to light of "public organizations" leaving the rails in

this manner, or requiring dissolution for their ideological unreliability. Party controls have been effective enough to make such drastic action unnecessary. There have, however, been numerous official complaints at lack of enthusiasm among the members of such bodies (especially youth organizations), for the fulfilment of their officially-approved goals, and strenuous efforts have been made to increase their vitality. In this connection it is interesting to note the pressure exerted by the Polish government since 1957 on two genuinely non-political student bodies, the Scouts' Union and the Students' Association, to make them give at least token public support to the official ideology, —which they did in April, 1959, and March, 1960, respectively. There is much evidence to show that the attraction of the overtly political youth organizations, in Poland as elsewhere, lies in the opportunities they offer for travel, entertainment, and subsequent advancement in one's career, rather than in their programmatic aims. The same is true of the trade unions.

Strikes are "Unthinkable"

Under conditions of proletarian dictatorship it is "unthinkable"—according to official theory—for workers to withdraw their labour, since by doing so they would simply be striking against themselves. Here again Poland is something of an exception, for since 1957 a work stoppage of up to 15 minutes' duration has been tacitly recognized as permissible. However, no formal law exists to this effect, and the arrangement has been condemned in Party pronouncements as an "un-socialist practice". There have been a number of strikes in Poland during recent years, some of them publicly reported but most passed over in silence. Cases are also known of strike leaders being arrested and dismissed. There have been occasional indirect reports from other communist countries of labour unrest. Where this occurs it is of course speedily suppressed as a threat to state security, and the officials responsible for such laxity called to account. Normally the Party authorities hear through their information network of any trouble

impending and take appropriate action to avert it. From EAST GERMANY demonstrations have been reported against the new conscription law. Early in February, 1962, at a mass meeting of coal workers at Hoyerswerda, agitators' speeches were interrupted by whistles and cries; the police were called, the meeting broken up, and 14 people arrested. In another incident 5 people were arrested after protests during a cinema performance at Zerndorf.¹² Normally the only demonstrations and protest marches allowed are those sanctioned by the Party for its own political purposes (e.g., the demonstrations outside Western embassies in February, 1961, after the assassination of Prime Minister Lumumba). These are invariably presented as spontaneous outpourings of popular indignation. The workers mobilized on such occasions might perhaps react more positively to them if they were not generally obliged to make up the production lost during the stoppage by "voluntary overtime".

FREEDOM OF CONSCIENCE

The constitutions of all communist states contain a clause modelled on that in the 1936 Soviet constitution providing for freedom of the performance of religious cults and freedom of anti-religious propaganda. But this is not equivalent to freedom of conscience, since in practice religious bodies are under the strictest government control. The constitutions also contain a phrase to the effect that "the manner of organization and functioning of religious cults is regulated by law",¹³ which is capable of the widest interpretation. It will also be noted that the law provides specifically only for the freedom of atheists to convert believers, but not *vice versa*: a juridical right to proselytize, in other words, does not exist. The new (1960), CZECH constitution warns that "religious belief or conviction gives no one grounds for refusing to fulfil the civic duties enjoined upon him by law"; freedom of conscience, explicitly guaranteed by the 1948 constitution ("no one shall suffer prejudice by virtue of his views, philo-

sophy, faith or convictions"), has been eliminated.

The Struggle Between Church and State

The actual position with regard to religious freedom in all the Marxist-Leninist countries is determined by two factors: (a) the Communist Party wields an absolute monopoly of power; (b) it is uncompromisingly hostile to religion, which it sees as a threat to its own claim to the undivided allegiance of the citizens of a socialist state. It is an express aim of communist policy to eliminate religious belief from the minds of all working people. In all countries where communist regimes have been installed there has been extensive persecution of the churches. But the unexpectedly strong resistance offered to this repression has often compelled the Party to modify its policies, and to tolerate more or less prolonged periods of uneasy "coexistence" with organized religion, when the struggle against it has assumed a somewhat less violent form. Ostensibly the policy is to use methods of persuasion only and to avoid "offending the convictions of believers".¹⁴ Measures of persecution are either denied or blamed on an "excess of zeal" on the part of subordinate officials—although their actions are usually carried out in response to pressure from above. The margin between persuasion and coercion is in any case fluid and ill-defined. The various institutes for the dissemination of "scientific knowledge" carry on an energetic activity in the form of publications, lectures, etc., and the press regularly features anti-religious articles. At present the principal aim seems to be to discredit religious belief as a "relic of capitalism" by associating it in the popular mind with crime and immorality (corruption, speculation, drunkenness, etc.). Resistance to this propaganda is treated as an "anti-social act" (crime) and lays the offender open to repression, despite the rights formally granted in the constitution. The anti-religious drive is thus often camouflaged as subsidiary to the campaign against deviant conduct. This suggests that the Party lacks the courage of its convictions, while frequent admis-

sions in the press as to the extent of religious beliefs, even among young people (not excluding members of communist youth organizations), shows that this policy has not yet achieved the results anticipated.

Day-to-day control over the churches is exercised by a department of the Party Central Committee through a government office for ecclesiastical affairs, which generally has the right or power to confirm senior church appointments—and in some cases also those of parish clergy. Agents of this body may be attached where expedient to individual prelates to supervise their activities, while local Party or youth-organization activists may attend church services in order to check sermons, etc., for "hostile" remarks. These can be used in evidence against priests if it is thought necessary to bring them to trial. Normally, services are allowed to be held without physical interruption by hostile demonstrators (as sometimes occurs in periods of intensified repression), but church attendance can be limited by indirect pressure (e.g., holding of political meetings or sporting activities simultaneously with religious services) as well as by direct intimidation. In the schools children are generally subjected to heavy propaganda and other pressure designed to discourage them from accompanying their parents to church. An important and widely-used weapon is the fear that one's religious convictions will be noted in one's police record and will damage one's educational prospects and career.¹⁵ Hence the practice of secret weddings, burials and (especially) baptisms is fairly widespread.

Religion in the Schools

Religious instruction in schools is generally forbidden. A writer in the CZECH paper *Praca* declared that this would be "inappropriate to the syllabus of a socialist school" and urged instead an intensification of atheistic education to counter hostile parental influences.¹⁶ In HUNGARY, on the other hand, it is legally optional upon demand by 10 pupils or more. Pressure is exercised to discourage parents from registering their children for such instruction.

The percentage of pupils registered varies greatly: in one Budapest secondary school only 3 out of 700 pupils, but in one village 83 per cent, are registered. In POLAND this question has recently provoked a sharp conflict between the Catholic Church and the State. The settlement reached after October, 1956, allowed religious instruction in primary and secondary schools upon the demand of a majority of the parents. But from 1957 onwards it was prohibited in a growing number of schools, and a law of July, 1961, officially removed it from the curriculum. This was followed in August by a Ministry of Education regulation providing for strict control over the places where the catechism was taught *outside* the schools (e.g., the building had to be "in good repair", and teachers were to sign a contract with the authorities, in return for which they were to receive pay). The Primate issued a pastoral letter warning the clergy not to sign such contracts and to be prepared for "heavy sacrifices" to protect their rights. In the event no action has (as yet) been taken against those who refused to sign, and in November, 1961, a new regulation was issued which, while it did not revoke the earlier one, withdrew some of its most obnoxious clauses.

Training of the Clergy

The number of clergy is generally inadequate to satisfy the needs of the churches—the result, in part, of the restrictions imposed upon the training of young priests. About 150 young priests are ordained each year in the SOVIET UNION, although the number of Orthodox believers can probably be counted in tens of millions. The situation is still more serious for members of other faiths. The position in the more rigidly controlled east European countries is exemplified by that in CZECHOSLOVAKIA, where the "Deployment Commission", as it is called, directs young people to certain types of education and can prevent aspirant clergy from receiving the training they desire. Trainee priests, like other college students, receive compulsory instruction in Marxism-Leninism. Some 12 priests are ordained *per annum*.¹⁷ In

HUNGARY six seminaries are still extant (out of 12 in 1945), with a total of 350 pupils (there are some 6 to 7 million Catholics in Hungary). A certain amount of administrative interference in their work takes place. In 1958, for example, the Budapest seminary was temporarily closed while 70 pupils who had resisted indoctrination were purged. Priests are sometimes ordained in secret. In POLAND the system is freer. Attempts have been made to subject seminaries to visitations by State inspectors, but these now seem to have been suspended—as has the sporadic practice of issuing trainee priests with call-up notices for military service.

There are several other fields where Church and Party come into conflict. In Poland the building of new churches requires an official permit, which since 1957 is no longer given. Attempts by state authorities to demolish a half-built "illegal" church at Toruń in October, 1961, led to a peaceful popular demonstration. Another source of contention is the observance of religious holidays, the number of which the regime is anxious to limit. More important is the imposition of discriminatory taxation upon church organizations, which are now considered "private" instead of "public" as hitherto. The Catholic University of Lublin (one of several institutes of learning run by the Polish Church), has been held liable for over £2 m. arrears in tax. Another recent decree imposes a tax on church collections.

Arrests and Imprisonments

The strength of Catholicism in Hungary and Poland presents the rulers of those countries with a difficult problem. In general their policy has been to subject the church to continued harassment while avoiding a frontal conflict, and to weaken it by encouraging religious groups prepared to collaborate on certain matters with the regime ("Patriotic Priests", etc.). In Hungary the state has continued to pay an annual subsidy to the church, but has refused to confirm in office the bishops nominated by the Vatican; from the government's standpoint the present incumbents thus have no legal status.

The Primate, an involuntary prisoner in the U.S. embassy in Budapest, is unable to exercise his functions. A wave of arrests of clergy and believers, said to involve some 1,200 people, occurred in the spring of 1961. A group of 11, including 4 priests, were tried for counter-revolutionary activities in June, and sentenced to terms of imprisonment ranging from 2½ to 12 years. Some of the others arrested then are believed to have been tried in secret in February, 1962, but many offenders are presumably still awaiting completion of the investigation into their cases. In CZECHOSLOVAKIA the Primate has been under detention since 1949, and according to Vatican sources there are also 9 bishops, over 500 priests and an unknown number of monks held in Czech prisons.¹⁸ In EAST GERMANY the position of the Evangelical Church has become more difficult as a result of the growing internal crisis in that country and the sealing off of West Berlin. Trials of clergy and believers have been reported from various parts of the SOVIET UNION. In July, 1960, the bishop of Kazan was sentenced to 3 years' imprisonment for alleged bribery and immorality. Some of the worst infringements of religious freedom have been reported from CHINA, where as part of the virulent campaign against "Western imperialism" foreign missionaries have been imprisoned and subjected to torture in efforts to extract confessions of espionage activities. Chinese Catholics have been compelled to dissociate themselves from Vatican policies. Church-going, where it is still possible, is apparently fraught with considerable personal risk. The fundamental teachings of Buddhism, the major religion in China, have been amended under political pressure, so that it is now orthodox Buddhist doctrine to kill "counter-revolutionaries", to regard Mao Tse-tung as a Living Buddha, and socialism as the Western Paradise on Earth. Most fundamental of all is the insistence by the Party that Buddhists must seek salvation in material progress. The measures taken against the national religion and culture of the TIBETANS led to an insurrection in that country in 1959 and the wholesale massacre of monks and priests. As a result

China found itself charged with the crime of genocide.

In YUGOSLAVIA, outside the Soviet bloc, the law allows citizens to profess any faith or none, and gives all churches an equal legal status. They may publish and circulate their own literature, subject to the general provisions of the press law. Hindering the performance of church services is a criminal offence punishable with a fine or imprisonment for up to 1 year. Religious tuition may be given privately (but not in schools), at the request of the parents. The authorities have the power to close religious schools or seminaries where a criminal offence is committed. The right to proselytize does not exist. In practice the Orthodox Church enjoys a semi-privileged position roughly comparable to that in the Soviet Union, although it is under close political control, while the Catholic Church is suspect on account of its allegiance to the Vatican.

FREEDOM OF MOVEMENT

This freedom, taken for granted by liberal political philosophers who lived in a more enlightened age than our own, is of prime importance so far as citizens of communist countries are concerned. Under this head we may include freedom to mix with foreigners at home, to travel abroad and within the confines of one's own country, and freedom for the circulation of ideas from abroad (treated above).

Contact Between East and West

The relaxation of the barriers sealing off the communist countries from the West in recent years has enabled many more Westerners to visit the more accessible parts of eastern Europe and the Soviet Union. Many areas are still closed to foreigners for security reasons, but the extent of police surveillance of foreign visitors has been reduced. However, excessive contact with Western visitors by citizens of these countries is still liable to arouse doubts among other members of the collective, to which everyone belongs, as to their political reliability,

if not an actual entry into one's police dossier. For this reason those whose political reputation is not entirely above reproach from the standpoint of the authorities are often reluctant to invite foreigners to their homes. "We all have novels written about us", a BULGARIAN intellectual remarked recently to a Western visitor in this connection, referring to the size of his police dossier and to its fictional quality. Conditions obviously vary so greatly that it is difficult to be specific about such matters, but broadly speaking the same division into hard-frozen and lightly-thawed countries made above holds good in this respect as well.

Tourists and Refugees

The number of SOVIET visitors to the West has also risen, although less spectacularly than the traffic in the reverse direction. Among such visitors there are now ordinary tourists as well as the officially-sponsored delegations who alone were permitted to leave the country in earlier years. It appears that applicants for an exit visa are required to produce a favourable recommendation from their collective, although they need not necessarily be Party members. The system of *internal* passports and labour books necessary for a change of residence or occupation is still in force in the Soviet Union. According to a legal handbook this system of control, which involves the ordinary citizen in a good deal of red tape, "has an important significance for the maintenance of public order and state security."¹⁹ Heavy penalties are imposed on those found living in cities without authorization. Of the east European countries the most liberal in permitting travel to the West by its citizens is POLAND, although the number of exit visas granted has declined sharply since the ½ million issued in 1957 (1958: 78,000; 1959: 65,000), and the price has recently been raised. The lack of foreign exchange is a limiting factor, since the aspiring tourist must satisfy the authorities that he will be maintained abroad by friends or relatives. In the more "frozen" countries applicants for visas must show good reasons for their journey (e.g., compassionate

grounds), as well as proof of political reliability, and on occasion there is an unwritten requirement that they should leave close relatives behind as "hostages" to guard against the defections that do such damage to the prestige of communist countries. In HUNGARY 35,000 persons travelled to the West in the first 9 months of 1960, while in Czechoslovakia the number was only a few thousand, from RUMANIA and BULGARIA only a few hundred.²⁰ In EAST GERMANY car owners are only allowed, by a recent regulation, to visit other communist countries if they travel in convoys of 6 to 9 vehicles, which are carefully escorted to selected places: some 3,600 citizens only will be permitted to take advantage of this arrangement in 1962.²¹ The role played by refugees from eastern Germany in the Berlin crisis needs no emphasis. The number fell from 261,622 in 1957 to 204,902 in 1958 and 143,917 in 1959. It then rose again, as a result of the forced collectivization drive and other factors, to 199,188 in 1960 and to 159,730 in the period January 1st to August 15th, 1961, when the Wall was erected in order to stop the flow. About half the fugitives were young persons under 25 years of age.²²

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- ¹⁹ *Yuridicheskii slovar*, Vol. II, p. 293.
- ²⁰ *Neue Zürcher Zeitung*, March 13th, 1962.
- ²¹ *The Flights from the Soviet Zone* . . . Federal Ministry for All-German Questions, Bonn, 1961, pp. 15 et seq.

FREEDOM OF THE ACCUSED

LEGAL RIGHTS IN THE MARXIST-LENINIST COUNTRIES

The Western concept of the "rule of law" is alien to the Marxist-Leninist philosophy obligatory in all countries where the Communist Party is in power. For the Marxist-Leninist law has no universal binding force, but is simply a means used by the ruling class to assert its hegemony. The Russian revolutionaries hoped to abolish the state and with it the laws that it made and implemented, substituting direct rule by the masses, or "the dictatorship of the proletariat". Lenin defined this dictatorship as

"power won and maintained by the violence of the proletariat against the bourgeoisie, power unlimited by any laws."

As the dream of imminent world revolution paled, the Party leaders came to view law as a provisional necessity in the isolated Soviet socialist state. They saw that it could prove useful in eliminating "class enemies" and consolidating the Party's power. They demanded from the masses absolute obedience to the socialist laws issued by their government, on the grounds that they reflected truly the will and interests of the people. Today socialist law is claimed to be essentially different from, and superior to, "bourgeois" law, since it is

"a weapon for the elimination of exploitation of man by man and the circumstances that have given rise to it. The creative role of socialist law is explained in the first instance by the fact that its norms express the scientifically-based policy of the Communist Party, which is applied by the Soviet government and is the living basis of Soviet society."

Law is thus expressly recognized as a political instrument. Its purpose is to realize the goals of the Party: the building of a socialist, and ultimately a fully communist, society. Similarly, the judicial machinery in a Marxist-Leninist state implements the Party's will in much the same way as any agency of the executive. For Leninist theory dismisses as "bourgeois" the idea of "separation of powers". Instead, authority is concentrated in a single centre which makes its will effective through all the administrative means at its disposal. All judges, lawyers, and other judicial personnel are State functionaries, and are pledged to carry out the policies of the Communist Party, as the self-proclaimed "vanguard of the people".

*"In the activity of investigating organs, the Prosecutor's Office, and the courts—as of all organs of the Soviet state—the directing and guiding role belongs to the C.P.S.U. While obeying the law in all their activity and securing its unwavering observance by all officials and citizens, [they] carry out the policy of the Communist Party as expressed in law."*²³

The same principles underlie the judicial system in other countries with Marxist-Leninist regimes. Hilde Benjamin, the EAST GERMAN Minister of Justice, has recently stated: "In the German Democratic Republic jurists . . . are constantly working under the leadership of the Party to perfect our law, which we regard as a versatile, conscious and readily manageable instrument for the construction of socialism."²³

Article 97 of the new CZECHOSLOVAK constitu-

tion defines it as the primé tasks of the courts "to protect the socialist state". Article 41(i) of the HUNGARIAN constitution specifies that:

"The courts of the Hungarian People's Republic punish the enemies of the working people, protect and secure the state, the economic and social order of people's democracy and its institutions and the rights of working people, and educate the workers in the spirit of observance of the rules of socialist collectivism."

Judges and lawyers are required to adopt a political attitude towards their work, and to avoid "bourgeois formalism" (i.e. interpretation of the law in a literal manner, without reference to social-political factors as defined by the Party). The very idea of justice is different from that held outside the Communist world: justice is that which advances the cause of communism. Justice is not an abstract principle, but is conditioned by concrete historical circumstance. A judge is required to take into account not only the facts of the case before him but also the socio-political motivation of the offender and the socio-political consequences of his own judgement.

"Socialist Legality"

Much has been written in the Marxist-Leninist countries during recent years about "socialist legality", a term now favoured in place of the "revolutionary legality" once propagated by Lenin. This expression is vague and self-contradictory (for legality simply means observance of the law, and cannot logically be qualified as "socialist", "bourgeois", etc.), but could perhaps be defined as observance of the law within the limits found expedient by the Party. The Party is in effect above the law. It is not simply that it is impossible to bring a case against the Party in a court of law, but that its role as a source of law is not legally recognized. This explains why it is thought consistent with "socialist legality" for laws to be issued in secret (cf., for example, a Rumanian decree of July 1st, 1960, which prescribed the death penalty for "ex-fascists" caught in possession of

arms, and was not published until December of that year; many other laws are never published at all). Such laws and decrees are seen as instructions by the Party (Government), to guide its agents, rather than as acts of the public power, as in a democratic state. It follows that, although steps have been taken in recent years in most Marxist-Leninist countries with the object of assuring the population increased protection against arbitrary action by the police or other officials, these rights still rest on a most precarious basis. No fundamental change has occurred in the attitude of the Soviet authorities towards law as such. It is still seen as an instrument of policy. The Soviet Union (and the people's democracies also), are as remote as ever from the concept of a *Rechtsstaat* (a state based on the rule of law), which presupposes the existence of some independent institutional check upon those who wield power. No such body exists. Indeed, the very idea of a *Rechtsstaat* is still criticized by most Soviet jurists as "bourgeois" and alien—although the merits of a genuinely constitutional system have been given added point by the Party's own admissions of the gross injustices that occurred during the "era of the personality cult".

Soviet jurists, no doubt sincerely, now condemn Stalin's worst crimes and declare it inconceivable that such "errors" should ever happen again. But the outside observer cannot but recognize that there is nothing at present in the Soviet political system to prevent a repetition of the purges in Russia in the 1930s or the "anti-cosmopolitan" drives in the people's democracies after 1948. (Whether the Party leaders would permit such action to occur is a question for the political scientist, not for the student of the legal system.) From a judicial point of view the Party still occupies the position of supremacy it has always claimed the right to hold; in practice its powers are probably greater today than they were in the Stalin era. To assert, as Soviet spokesmen sometimes do, that effective guarantees against arbitrary infringements of the citizens' personal security are contained in the Constitution is (to put it mildly,) misleading:

as is well known, such guarantees were introduced in 1936, shortly before the worst abuses occurred. Such confidence as Soviet citizens have that the terror is a thing of the past rests solely upon the Party leaders' assurances that they will observe "socialist legality" in future. It may be thought that the omens are none too favourable, since: (a) in the Soviet Union only a fraction of the contraventions of the law perpetuated under Stalin has as yet been acknowledged, and official spokesmen make every effort to minimize the extent of the harm done; (b) in some Marxist-Leninist countries the Party leaders have for political reasons been less ready to dissociate themselves from Stalinist practices than their Soviet colleagues. In all the countries under consideration the Party still reserves to itself the right to determine the degree of self-restraint that it observes in its dealings with the population.

CRIME AND PUNISHMENT

For the Marxist-Leninist a crime committed in a socialist state is not simply a breach of the law but an offence against the whole political and social order. It is the task of all other members of the offender's collective to assist the agencies of the state in subjecting him to such measures of coercion or persuasion as may be necessary to give him a due sense of his responsibilities to the community. Theoretically, crime should not exist in a socialist society that has overcome the exploitation from which it allegedly springs, and it is therefore referred to as a "relic of capitalism"; although it is recognized that, like other such "relics", it will recur (although on a decreasing scale), until the final goal of full communism is attained. This view leads to a blurring of the distinction between crime and any other form of deviant, non-conformist behaviour. One of the bases of modern jurisprudence is the principle that an individual may not be punished unless he has actually broken a law: a desire or intention to do so is not in itself an offence. This crucial distinction is, however, much less clear in

socialist law. The term "crime" is usually replaced by the expression "socially dangerous act", which presupposes the existence of some authority that determines which acts are in fact dangerous to society, and to what extent. That authority is the Communist Party.

Since the Party sees the law as an instrument for the realization of its objectives, it is naturally anxious to prevent its opponents, who are by definition "enemies of the people," from evading justice by taking refuge in legal formalities. For this reason the laws are often left vague, so that those who apply them may have broad discretionary powers (subject of course to the overriding claims of Party discipline). Loose definition of offences (e.g., "acts weakening the Soviet power") enables the law to be stretched to cover any action deemed politically objectionable. The same aim used to be served by the principle of analogy, whereby a man found guilty of some offence not covered by the laws could be sentenced to the penalty prescribed for some similar (analogous), crime. This concept was introduced into Soviet law in the 1920s and after the Second World War adopted in all the eastern European countries (except Poland), when the legal system was adjusted to the Soviet model. Again, judicial tribunals were given wide latitude to deal with persons found guilty of "direct" or "indirect" intent to commit a crime, with the accomplices of an offender, or with those who failed to report impending crimes of which they had foreknowledge. Similarly, the law made punishable retro-actively crimes committed by agents of non-communist regimes on territory that subsequently came under communist control. In the post-war years the main effects of this has naturally been felt in eastern Europe (including the Baltic states, whence countless thousands of persons were deported on account of their role under the previous non-communist regimes).

During the post-Stalin "thaw" many Soviet lawyers began to advocate a stricter interpretation of the concept of crime in order to ensure greater protection for the citizens against arbitrary acts by the authorities. Others con-

tinued to insist on a "dialectical" approach to law, whereby due weight was given to the political objectives it was supposed to fulfil. The fundamental principles of Soviet penal law, published in December, 1958, on the basis of which the various Soviet republics have drawn up their new penal codes, were the result of a compromise between these two tendencies. (A revised penal code came into force in CZECHOSLOVAKIA in November, 1961, and in HUNGARY in February, 1962; it is to be expected that the codes in the other people's democracies will be brought into line in the near future). The Soviet code states that a person can be punished only if he has "either deliberately or by negligence committed a socially dangerous act covered by the criminal law". This comes close to a recognition of the "bourgeois" concept of *nullum crimen nulla poena sine lege*. Soviet spokesmen have stated that Article 7 of the old 1926 code, which allowed punishment of persons considered "a danger to society" has lost its force. The institution of analogy has been repudiated, and the definitions of complicity, intent, and of some crimes have been tightened. However, there is still room for improvement in this respect. The dangers that exist may be illustrated by the case of two Moscow men who were found guilty of speculation in foreign currency, and sentenced in July, 1961, to a term of imprisonment which the Party authorities found too lenient; they were re-tried and executed on the basis of a law passed shortly before, after the commission of the crime, although this law contained no provision as to retro-active effect.

The information available does not allow comprehensive conclusions as to the situation in eastern Europe. Analogy appears to be still recognized in ALBANIA, BULGARIA and RUMANIA, although it is probably little used. The new HUNGARIAN code abolishes it and contains many improved definitions of offences.

"Protection of the State"

Another problem related to the above is the greater scope that exists in Marxist-Leninist

countries for transgressions of the law, particularly as regards anti-State crimes, as a result of the nature of the political and economic system. In the conditions of extreme concentration of political power and a totally planned economy the interests of the State are correspondingly more far-reaching. It is characteristic that the Basic Principles of Penal Legislation of December, 1958, define the prime object of Soviet justice as:

"to protect from infringement: (a) the public and state system of the U.S.S.R., the socialist economy and socialist property."

The protection of the rights and interests of the citizens takes second place. Legal commentators stress that this enumeration of the clauses is deliberate.

Strong pressures operate for mundane offences, which in other countries would not be offences at all, or would at least be treated lightly, to be dealt with as political crimes and to carry disproportionately heavy sentences. Thus non-fulfilment of plan targets, petty thefts of farm produce, negligent care of machinery, sale of goods produced by the labour of others, etc.—offences endemic in countries where social conditions place ample opportunity to commit them in the way of the ordinary citizen—tend to bring him into a confrontation with the full power of the law. During the Stalin era the courts generally inflicted the highest penalties prescribed for such offences, as otherwise they were liable to severe penalties for undue laxity.

The general tendency of the 1958 principles and the subsequent codes has been to mitigate the severity of the penalties inflicted: the normal maximum prison term is now 10 years instead of 25 as hitherto (in the case of especially dangerous crimes, or crimes by recidivists, the new maximum term is 15 years). The death penalty has, however, been retained for a variety of offences. The new Law on Criminal Responsibility for Anti-State Crimes, passed simultaneously with the Basic Principles, replaces the notorious Article 58 of the old

penal code. Although some of the definitions of offences have been made more precise, no reduction has been made in the number of such offences. The death penalty is imposed for treason, wrecking, terrorist acts and banditry (the two last-named offences not being subject to it hitherto)—as well as for murder in aggravated circumstances. The concept of treason is defined widely and includes "defection to the enemy" and "flight abroad or refusal to return from abroad"—by ordinary citizens as well as members of the armed forces or government employees. A legal textbook states that defection:

"is treason to the fatherland irrespective of whether any further concrete activity in the enemy's interests followed on his [the defector's] part. The very fact of defection or flight abroad already constitutes, from the objective point of view, the corpus delicti of treason to the fatherland."

An earlier law making defectors' relatives criminally responsible for such actions has been repealed; they are now only liable if they rendered the fugitive actual assistance. The offence of "anti-State agitation and propaganda" (Article 7), carries penalties ranging from 6 months to 7 years deprivation of liberty. It covers spoken or written communication, the preparation and retention of leaflets, etc., "with the aim of undermining or weakening the Soviet regime".

During the last year the death penalty has been introduced in the Soviet Union for a number of other crimes: misappropriation of State property, counterfeiting, and mutiny by prisoners (May, 1961); serious currency offences (July, 1961); and attempted killing of militiamen, rape and bribe-taking (February, 1962). Some 50 people are known from press reports to have been executed under these provisions, largely as part of the current drive against fraud by officials. Sentences have also been raised for hooliganism, speculation and "parasitic living". This shows that the present trend is once again towards stiffer penalties. It seems

that at present sentences vary between $\frac{1}{2}$ or $\frac{2}{3}$ the maximum penalty and the maximum penalty itself. Many of them seem excessive by Western standards.

In eastern Europe the same tendency can be observed as in the Soviet Union. The death penalty for economic crimes was introduced in BULGARIA in 1954, in RUMANIA and HUNGARY in 1958, and in POLAND in 1960 (but only two Poles are known to have been sentenced to death, and so far as is known neither sentence has been carried out). In CZECHOSLOVAKIA the maximum penalty for such offences is still 20 years' imprisonment. The press reports cases of heavy sentences being passed on persons who "spread hostile propaganda and criticized conditions".

Podochen of April 15th, 1961, cited the case of a worker sentenced to 2 years imprisonment for singing "obscene" songs and songs "praising the Western way of life and slandering the Czech socialist system."

In another case *Svobodne Slovo* of March 7th, 1961, reported that an old-age pensioner from Brno, who collected stamps, was sentenced to 3 years' imprisonment for "speculating" in stamps. In 3 years he had made a profit of about £250. Such "remnants of bourgeois individualism", the paper declared, must be ruthlessly stamped out.

Here, as in other people's democracies, there is a constant refrain of sentences on persons who "sabotage the plan" by putting their own interests above those of the State. In BULGARIA 43 people were condemned to death for economic crimes between 1956 and June, 1961. Some of these cases have evident political overtones: e.g., in October, 1961, the Chief Rabbi of Bulgaria was sentenced to 3½ years' imprisonment for alleged currency offences. Political trials have taken place recently in ALBANIA (Admiral Sejko and others), and CZECHOSLOVAKIA (M. Barak, former Minister of the Interior, and some 80 officials, who were

ostensibly accused of embezzlement). In EAST GERMANY the Council of State adopted a declaration in January, 1961, stating that the courts would "mete out harsh punishment to those who threatened the life of our people and the existence of our nation." Harsh sentences were defended on the grounds that they would "ensure the realization of the humanistic aims of socialism . . . and the products of the labour of our industrious citizens."⁵

EXTRA-JUDICIAL PROCEDURE

During most of the time that they have existed Marxist-Leninist regimes have found it necessary to supplement the normal judicial machinery by administrative tribunals composed of officials picked for the political reliability, and to institute special court procedures in which the accused is denied his legal right to defence. The detection and investigation of anti-State offences is the function of the political police. In the SOVIET UNION this body has been known at various times as the Cheka, O.G.P.U. N.K.V.D., M.V.D./M.G.B., and is now called the K.G.B. (Committee for State Security).

Analogous institutions exist in all the people's democracies. During the Stalin era in particular the police exercised a formidable power and perpetrated the grossest abuses in "purging" their countries of anyone deemed hostile or potentially hostile to the regime. The police apparatus was based on a vast network of spies and informers; and since even a careless word could have the most serious consequences, the majority of the population lived in a state of constant fear. Many plots against the security of the State were fabricated for their own purposes by the secret police, acting with the sanction of the Party leaders of the day. The Soviet purges cost the lives of millions of people. They served as a model for those undertaken after the War in eastern Europe. In these actions people were arrested *en masse*, according to lists drawn up by the police, and were sometimes shot outright; in other cases they were detained for long periods awaiting interrogation and then

forced by physical and psychological pressure to confess to real or imaginary crimes. After a secret trial they were sentenced to death or long terms of imprisonment, usually to exile with forced labour in a "corrective labour camp". These camps, often situated in remote and isolated areas, were run by the political police organization itself. The regime in them was harsh in the extreme and a high proportion of those sent there never returned. The total number of prisoners in the Soviet camps when the system reached its maximum extension has been estimated at between 10 and 15 million.

How much of this extra-judicial system survives today? It is difficult to answer this question with assurance, since it is so enshrouded in secrecy. In 1954 the Special Board of the M.V.D. was abolished—though it is not known whether or not it has been replaced by some other such tribunal, nor whether present-day political offenders are dealt with by the ordinary courts in secret session under some form of summary procedure.

Nineteen-fifty-six saw the repeal of two laws dating from the 1930s on the basis of which cases of terrorism or sabotage could be tried in the absence of the defendant, the death penalty being obligatory. Several partial amnesties of offenders have been decreed, and the police brought under closer Party control. The responsibility for the forced labour camps, now re-classified as "colonies" and thus enjoying a less arduous regime, has been transferred from the police to republican ministries of the interior and the local soviets.

However, the practical import of these reforms is far from clear: the new regulations issued in 1958 governing the regime in the camps have not been published. The leading Western authority on the question remarks that it is impossible even to hazard a guess at the present number of persons confined in penal colonies, although it is certainly less than under Stalin.⁶ The post-1953 period saw some relaxations, in the direction of improved material conditions and less inhuman treatment, but of late the situation seems to have worsened again in some

respects (e.g., restrictions on remission of sentence for good behaviour in certain cases). Camps are now graded into three types, with corresponding differences in the harshness of the regime.

In January, 1959, Mr. Khrushchev stated that no one in the Soviet Union was now arrested for a political offence. But the current practice is to label political offenders as ordinary criminals. The existence of political opposition is, of course, strenuously denied, but there can be no doubt that political opponents of the regime are at present confined in camps. The continued existence of the political police remains a powerful instrument in the hands of the Party for controlling the lives and thoughts of the people.

Similar changes have taken place in the police system in eastern Europe. In most countries amnesties have been declared for certain groups of offenders. That in HUNGARY in March, 1960, was said to have led to the liberation of three-quarters of all the political detainees; the number of those still detained for their implication in the 1956 revolution has been put at 900-1,200.⁷ Many of those arrested in the raids of spring, 1961, have not yet been brought to public trial. Forced labourers work in the uranium and lignite mines. An amnesty was announced in CZECHOSLOVAKIA last May for those convicted of less serious political offences (e.g., attempted defection, "slandering the Republic"). In ALBANIA the police are strongly entrenched, and a Special Board exists which is empowered to pass sentences of up to 10 years' hard labour. In BULGARIA the Minister of the Interior has wide discretionary power to confine persons who "threaten public order" to imprisonment in "labour and educational communities" for a 1-year term, which can be extended indefinitely. (Much of the "education" takes the form of stone-quarrying.) In RUMANIA the number of political prisoners has been put at 60,000 to 70,000. They are largely employed in canal-building and other public works in the Danube delta.

The number of political prisoners in EAST

GERMANY was recently put at 14,000.⁸ By March, 1962, some 1,200 people had been jailed since the erection of the Berlin Wall, and 26 trials publicly announced, in which four of the accused had been sentenced to death. In POLAND the power of the police is less obvious than in other people's democracies. A law passed in February, 1962, gives the Supreme Court power to review all verdicts, including those passed by military courts and other administrative tribunals. This appears to be a move towards greater legality. But there still exists a system of "accelerated procedure" in which the accused has only a limited right of defence.

Comrades Courts

While the powers of the political police have in general diminished, a new threat to legality has appeared from a different direction, in the shape of the quasi-judicial "comrades courts". These have been instituted in the SOVIET UNION and CZECHOSLOVAKIA, the two states claiming to be furthest advanced on the road to communism; as yet relatively little has been heard of them elsewhere. Comrades' courts are

*"elected social organs whose aim is to educate citizens actively in the spirit of a Communist attitude to labour, respect for socialist property, observance of the rules of life in a socialist community, development of collective spirit, comradeship, and respect for the dignity and honour of the citizens."*⁹

They are formed in enterprises, apartment blocks, etc., on the initiative of "advanced citizens" (i.e., the Party nucleus), and consist of men without legal training who are elected for one year. Their main emphasis is on the "re-education" of offenders. They are empowered to pass judgement in public, before the whole collective, on minor offences such as drunkenness, indiscipline, hooliganism, "parasitism", etc., and to sentence offenders to loss of their jobs, fines, and (in the case of "parasitism") even banishment for a term of 2 to 5 years. The latter offence is very inadequately defined, and is intended, for example, to apply to collective

farmers who devote an excessive amount of time to work on their own private plots. These tribunals can serve Party officials as a convenient means of settling accounts with those of whose conduct they disapprove, even where they have committed no offence against the law. Such tribunals are contrary to Article 7 of the Basic Principles, where it is stated that no one can be sentenced except by a decision of a court. The possibility that such tribunals might take too lenient a line with offenders is guarded against by their submission to close Party control (e.g., cases are vetted beforehand, and appeals are possible to regular courts). It should be emphasized that the "comrades' courts" are officially seen as the embryo of the future legal order under communism, when the regular court system will have "withered away". It is hoped that by then men will have become so attuned to collective living that any deviant conduct by an individual will at once bring censure by his comrades. Such a system has nothing in common with the traditional Western concept of a legal order, and indeed appears rather as a system of legalized arbitrariness. Whether the ideal is attainable is another matter.

THE JUDICIAL SYSTEM

The formal organizational structure of the court system in Marxist-Leninist countries does not differ substantially from that usual in the rest of continental Europe: there is a hierarchy of instances; cases are normally heard in lower ("people's"), courts and appeals are allowed to higher courts, and ultimately to the Supreme Court. The Ministry of Justice exercises general supervisory functions over the operation of the judiciary (election and training of judges, discipline, etc.). The SOVIET UNION abolished its central Ministry of Justice in 1956, transferring its functions to republican ministries; these are now also in process of dissolution, and it seems likely that much of their power will pass to the various supreme courts. This does not, however, imply any reduction in the degree of political content exercised over the judiciary. The

theoretical justification for this control has been noted above. In a practical sense it is implemented, not by overt direct Party intervention in judicial proceedings, but rather through the fact that judicial personnel are in their overwhelming majority Party members and as such bound by its discipline. Those who are not members are as socialist citizens also obliged to accept the official State philosophy, and are thus effectively prevented from acting in an independent manner. In 1954, 97.4 per cent of all Soviet "people's judges" and 52.9 per cent of all "people's assessors" were Party or Komsomol members. In 1958, Party or Komsomol members accounted for 532 out of 1,125 members of the Moscow collegium of advocates.

Judges

Judges are normally elected, either by the national legislature, in the case of senior appointments, or by the local soviets ("people's committees", etc.), in the case of those of inferior rank. The term of tenure varies: in the SOVIET UNION it is 5 years for senior, 2 for junior judges; in BULGARIA and EAST GERMANY, 5 and 3 years according to rank; in ALBANIA 4 years, and in CZECHOSLOVAKIA 3 years. In HUNGARY, POLAND and RUMANIA judges are appointed by the Ministry of Justice, since although the constitution provides for their election, no law to this effect has yet been adopted. The election of judges serves to give the impression that they are responsible to the people; in practice, as with the election of deputies to the national legislature or local soviet, the election contains no genuine element of choice and bears a purely formal character. Candidates (one to a vacancy), are nominated by the local Party organization. Similarly, they can in practice be summarily dismissed before expiry of their legal term of tenure if some doubt should arise as to their reliability. Formally, their resignation should take place after a demand for their recall by their electors. In practice it would normally suffice for them to be expelled from their local Party organization, since this automatically leads to the loss by the expellee of any public post he

may hold. Normally judges can be expected to "toe the line" from conviction, reinforced by ideological training and the prospect of promotion for those who conform. Political reliability is of course a major criterion in determining advancement in the judicial hierarchy.

The question of the legal training and experience of judges thus play a very different role in the Marxist-Leninist countries than it does elsewhere. In non-Communist countries it is reasonable to assume that, the greater the learning of the judge, the greater the likelihood of justice being done impartially. But under the Marxist-Leninist system legal training and political indoctrination go hand in hand. A well-trained judge will see no contradiction in adapting his sense of justice to suit the political requirements of the Party, since this is an essential principle of "socialist legality". (This is not to say that all judges or jurists necessarily share the same view of how the Party's interests may best be served.)

The early prejudices of the revolutionaries against legal education, as likely to encourage a "bourgeois" formalist attitude to law, has now been overcome, and the aim is to raise the professional qualifications of judges to the highest practicable level. In 1957, 97.4 per cent of Soviet people's judges had some kind of legal training, and between one-third and one-half higher legal training. Some Soviet jurists have suggested that higher legal training should be made obligatory, but their advice has not been followed.

In eastern Europe the percentage of trained judges is as a rule lower, since "bourgeois" judges were dismissed after the Communists took power and have not yet been replaced by fully-trained socialist cadres. In EAST GERMANY, for instance, in 1957 only 8 per cent of the judges had full academic training. Aspiring judges are now required to have completed 4 years' study, in the first year of which 45 out of 57 classes are devoted to "social science" (i.e., Marxism-Leninism and related topics). There are still some "Slansky assessors", as they are familiarly known, whose qualifications are

exclusively political. In YUGOSLAVIA, where political controls are less obtrusive than elsewhere, judges are required to hold a law degree and to have 3 years' practical experience before appointment (10-12 years in the case of supreme court judges).

A court normally consists of a judge and two lay ("people's") assessors, who are either elected at general meetings in enterprises, etc., or appointed by local soviets or their equivalent. They serve for a few days in the year without pay. Although linked by origin with the jury system of Western law, they perform a different function: they are members of the court with the same rights and duties as the judge. Questions are decided by majority vote, but cases of assessors overruling the judge either do not occur or are not publicly reported—except in the period of initial socialization, when assessors often serve as an instrument of Party control where politically suspect judges are still in office.

Prosecution

The prosecution of offenders is carried out by functionaries of the Prosecutor's Office, headed by a Prosecutor-General. In the SOVIET UNION the latter is appointed for a term of 7 years by the Supreme Soviet. Prosecutors are required to have legal qualifications, although this condition is not always met. (In HUNGARY, for instance, there are many who have only completed a 1-year course.) Their function is a dual one: to present the State's case against accused persons and to ensure observance of "socialist legality" in the investigation and trial, as part of their broader quasi-constitutional function of supervising the legality of acts of the administration in general. It is clear that these two tasks cannot readily be reconciled, and in practice prosecutors have tended to regard themselves first and foremost (if not exclusively), as watchdogs of the State's interests, and have showed little or no concern for the rights of the individual.

In the Stalin era their powers of control were purely nominal, since the political police permitted no external interference with their

activities. The decline in their power has led to a corresponding revival of the authority of the Procurator-General and his staff. Nevertheless their powers are rather narrowly circumscribed. Prosecutors who show what the Party considers to be excessive leniency towards accused persons render themselves liable to dismissal and prosecution for undermining the interests of the State. A striking instance of such pressure occurred in BULGARIA in May, 1961, when K. Popoff, a senior official of the Ministry of Justice, was sentenced to 20 years' imprisonment for "helping the class enemy": he was said to have assisted former landowners to recover possession of their expropriated property. In POLAND the resignation of the Procurator-General, M. Burda, in the summer of 1961, was attributed to dissatisfaction at interference by the Party in the Kielce embezzlement trial.

In performing their control functions prosecutors cannot question the legality of Party or Government decisions, but only actions of the lower organs of the administration. They are also empowered to receive complaints from citizens about illegal actions by officials, whereupon they investigate the facts and lay them before the Party authorities. It is the latter who decide whether to take up the case. In YUGOSLAVIA the individual citizen has the right, not merely to appeal to the prosecutor, but (if the latter finds no grounds for instituting proceedings), to sue in court the official who has wronged him. However, as a Western authority on Yugoslav law points out,

"it is difficult in the present political conditions to imagine the realization of this right in practice if the prosecuting official who has overstepped his duty acted on the initiative or with the approval of the Party organization. In such a case the victim of persecution is practically powerless in spite of the legal guarantees."

Lawyers

All the Marxist-Leninist countries allow the accused to have the services of a defence lawyer (in cases tried under normal procedure). But

their rights are limited by comparison with those of advocates in the non-Communist world. Free practice is either prohibited or officially frowned upon; the normal system is for lawyers to be enrolled in a "collegium" (chamber of advocates, lawyers' guild). These exist at a national and local level, and function under the supervision of the Ministry of Justice. Control is exercised primarily through the Party nucleus within the collegium. The members elect their own executive body (Presidium), which controls the admission of new members and disciplines those who err (e.g., by criticizing socialist institutions in their court speeches). It also allots briefs among members and distributes the fees collected from clients. These sums are small by Western standards, and the status of the advocate relatively low. Non-advocates without legal training may be admitted to plead in cases of lesser significance. The profession has little appeal for ambitious young men and the ratio of lawyers to the population is inadequate.

In eastern Europe various methods of pressure have been and are being used to force lawyers with private practices to join a collegium. In HUNGARY, for example, there are special lists in the Ministry of Justice of politically reliable lawyers, who are drawn upon in sensitive cases. In POLAND pressures have been intensified of late.

Three lawyers who took a strong line in defending 17 men accused of embezzlement, one of whom was sentenced to death, in a 2-month trial at Kielce, were called before the Lawyers' Guild and admonished. One of them, M. Brojdes, was accused of slandering the prosecutor by comparing his methods with those used by the Nazis in Poland during the war, and was sentenced to 3 months' imprisonment (July, 1961). The lawyer who defended him, Markowicz, also drew political parallels—this time with the Stalinist practices of the early '50s. He was suspended for insulting "friendly socialist countries". Shortly afterwards it was announced that some 60-80 attorneys were under indictment for violations of the penal code. The Minister of Justice, addressing a meeting of the

Guild in December, said that "lawyers may properly demand freedom but this must be consistent with the interests of the nation and the Socialist state". Pressure was put on the Guild to reform itself and to eliminate private legal practice, and after a stormy meeting a resolution to this effect was passed.¹⁰

In YUGOSLAVIA private practice is still allowed, and the individual is free to decide whether or not to undertake a case. Fees are fixed with the client within limits laid down by authority. Half the executives of the advocates' chambers are elected by the members, and half nominated by the republican assembly (parliament). A measure of control is exercised by the Party organization, which can exclude potential members if they are deemed 'unworthy'. The criterion of professional qualification is stricter in Yugoslavia than elsewhere, as it is also in the case of judges: advocates must be graduates of a faculty of law, have passed an advocates' examination, and have practised for a minimum of 3 years.

PROCEDURE

Soviet and east European criminal procedure is based on the continental European system which provides for a preliminary investigation before trial, but with omission of some important safeguards against abuses.

Arrest

In the SOVIET UNION the arrest of a person suspected of a serious offence is normally carried out by the militia (except in political cases, when the K.G.B. intervenes). If the action is not taken on the instructions of the investigator (i.e., an official of the procurator's office), then the latter must be informed within 24 hours, and must confirm the detention within 48 hours or else release the person concerned. A warrant of arrest as such does not exist. In exceptional circumstances apprehension may take place before a charge is preferred, but not more than 10 days may elapse before this is done. Usually a person may not be kept in custody for more

than 2 months before being brought to trial, but this term can be extended by regional and senior procurators to 6 months, and by the Procurator-General to 9 months.

The situation is much the same in other countries. (In HUNGARY, for instance, the normal limit is 1 month, which may be extended by the procurator to 3 months, and by the Procurator-General to 6 months—but in exceptional circumstances for further unlimited periods.) Whether these formalities are observed in practice at the present time it is difficult to say. In YUGOSLAVIA a 9-month limit also applies, but within 24 hours of his apprehension the arrested person must be given a "decision on custody" stating the grounds for the action and informing him of his right to appeal. The investigating judge must interrogate the accused within 24 hours, and if the case is to be pursued must immediately request the public prosecutor to open the investigation. In all countries a citizen who has been wrongly arrested or detained overlong without trial may complain to the procurator, but so far as is known this right is not utilized in practice.

Preliminary Investigation

In all countries considered here the investigation procedure lacks the distinction made in Western Europe between police investigation and pre-trial judicial investigation; the evidence obtained in both is used in the trial. The two authorities work in close co-operation, if indeed they are not in practice identical. Thus, it is the same person who draws up the indictment against the accused and determines his length of detention in custody. The arrested person has the right to present evidence in his defence during the investigation. But in practice it appears that insufficient attention is often paid to his depositions, and that the borderline between a mere suspect and an accused becomes blurred. The very fact that the accusation is proceeded with tends to lead to a presumption of guilt in the minds of the investigator. The accused is not told the details of the charge against him until the investigation is terminated.

Another factor prejudicial to the interest of the accused is that (unless he is a minor or otherwise incapacitated), he is not allowed to see his defence lawyer until the investigation is complete; nor is the lawyer entitled to be present during the preliminary investigation.

POLAND and CZECHOSLOVAKIA are slightly more liberal on this point: lawyers may visit their clients in the presence of the prosecuting official or his agent, though in other respects the system is much the same. IN YUGOSLAVIA the 1954 code aims to give the decisive role in the investigation to the court rather than to the prosecutor, as elsewhere, the latter's part being narrowed down to that of a party to the case. This leads to some important differences:

(a) *The initial inquiry and preliminary investigation are carried out, depending on the circumstances, either by prosecuting organs or court officials. An authority on Yugoslav law states:*

"In practice the public prosecutors send more cases for inquiries to the organs of internal affairs than to the district courts, and the investigating judges widely utilize their right to transfer either the whole investigation or individual actions to the inquiry organs of internal affairs. About 75 per cent of all inquiries are conducted by the police and only 25 per cent by the courts, while the share of participation of the investigating judges and the police in conducting preliminary investigations is approximately equal."

(b) *The accused, as stated above, must be informed of the charge at the beginning, not the end, of the investigation.*

(c) *Although contacts with the defence lawyer during the investigation are prohibited, as in other countries, and counsel may not attend the investigation, the latter right is also denied to the prosecutor as well. Both parties are entitled to attend inquiries at the scene of the crime, and hearing of experts, searches of domicile, etc.*

Trial

In all the countries concerned the trial must be conducted in open court, although excep-

tions are allowed where the interests of the state are affected and in certain other circumstances. This provision has to be seen in the light of the general attitude of the Party towards publication of news about crime and legal proceedings. This is governed by the concept that such information fulfils an "educational" role in stimulating a hostile attitude towards anti-social acts and a willingness among the public to assist the authorities in their struggle against crime. This means that readers of the Soviet press (including specialist journals), have knowledge of only a fraction of the cases that appear before the courts—more precisely, only of those that are considered most "enlightening" by those who control the flow of information. Moreover, in all accounts of trial no mention is ever made of the point of view of the defendant.

The actual proceedings (except where special procedure is applied), seem now to be conducted in such a way as to give the accused a reasonably fair trial. He is allowed to object to investigators or prosecutors; he knows the names of witnesses and the main substance of their evidence before the trial begins; he has the right to question witnesses; he may call (or, to be precise, request the court to call), his own witnesses and submit written evidence at the trial; if he has not chosen a defence lawyer one is assigned to him by the court; and if he is acquitted his legal expenses are paid by the State; he has a right to consult his defence lawyer after the trial and (usually), to appeal; a copy of the judgement is handed to him shortly after sentence is pronounced. One might take exception to the fact that many trials take place in the absence of the prosecutor (whose role then falls to the court), and that the presence of a defence lawyer is obligatory only in more serious cases—but these are relatively minor points.

More important is the question of the weight given by the court to various forms of evidence. Here one may note the repudiation of the exaggerated credence placed by courts in the Stalin era upon confession by the accused—even though such confessions were in many cases extracted by torture. The new Basic Principles

state that confession must be supplemented by other material evidence, and that the onus of proof lies on the prosecution. This is as close as the new Soviet codes come towards recognition of the principle that an accused is innocent until he is proved guilty. During the discussion in the Soviet press prior to the adoption of the 1958 reforms some lawyers pressed for the introduction of the principle of "presumption of innocence", but others condemned it as "bourgeois". The final result is something of a compromise between the two viewpoints, but nevertheless represents a welcome step towards greater legality.

Another important point to be borne in mind is the limited ability of the defence lawyer to plead his client's case. Oratorical flourishes, appeals to the emotions of the jury—all this has no place in a Soviet court. More than this: Communist functionaries seem unable to rid themselves of the suspicion that the defence lawyer's concern for the interests of his client must indicate a lukewarm attitude towards the interests of the State. He is therefore reduced to entering a cautious plea (pointing out extenuating circumstances that favour the accused, etc.). Soviet jurists have publicly lamented the fact that defence lawyers are not bolder in court, but the political risks involved deter them from taking up this challenge.

It should be emphasized, too, that the Communist idea of the nature of a trial differs from that customary elsewhere: it is seen, not as a contest between two parties, each of which presents its own version of the truth, between which the judge and jury have to decide. The task of elucidating the truth is one shared by all the parties involved—judge, assessor, prosecutor, defence lawyer, and the defendant himself. The prosecution and the defence are as much partners as opponents. The scope open to the defence lawyer cannot help but be restricted by the official theory that the pursuit of truth and justice must coincide with the pursuit of the good of the State in its efforts to build communism.

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