

**FOR THE RULE
OF LAW**

**Bulletin
of the
International
Commission
of Jurists**

*“That every State and every citizen
shall be free under the Rule of Law”*

No. 3

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Act of Athens

We free jurists from forty-eight countries, assembled in Athens at the invitation of the International Commission of Jurists, being devoted to the Rule of Law which springs from the rights of the individual developed through history in the age-old struggle of mankind for freedom; which rights include freedom of speech, press, worship, assembly and association and the right to free elections to the end that laws are enacted by the duly elected representatives of the people and afford equal protection to all.

Being concerned by the disregard of the Rule of Law in various parts of the world, and being convinced that the maintenance of the fundamental principles of justice is essential to a lasting peace throughout the world.

Do solemnly Declare that:

1. The State is subject to the law.
2. Governments should respect the rights of the individual under the Rule of Law and provide effective means for their enforcement.
3. Judges should be guided by the Rule of Law, protect and enforce it without fear or favor and resist any encroachments by governments or political parties on their independence as judges.
4. Lawyers of the world should preserve the independence of their profession, assert the rights of the individual under the Rule of Law and insist that every accused is accorded a fair trial.

And we call upon all judges and lawyers to observe these principles and

Request the International Commission of Jurists to dedicate itself to the universal acceptance of these principles and expose and denounce all violations of the Rule of Law.

Done at Athens this 18th day of June, 1955.

The Congress of Athens

The recollections of the International Congress of Jurists, held under the auspices of the International Commission of Jurists from 13 to 20 June 1955, are interwoven with the proud and graceful silhouette of the Acropolis, the fascinating interpretation of Aeschylus's *Oresteia* on the Pnyx, and the memory-evoking hill of the Areopagus.

The *Act of Athens*, in which the fundamental principles constituting the pillars of the Rule of Law were once again formulated for the contemporary jurists and the modern world, radiates in its style the spirit represented by the mighty ruins of the cradle of Western civilization.

This was indeed as the International Commission intended it to be. If the Berlin Congress of 1952, in the course of which the Commission was established, was characterized by a unique and inimitable atmosphere of the tension between the East and the West, then the Athens Congress of 1955 was characterized by the confrontation of the aims and purposes of the International Commission with the oldest achievements in the history of civilization.

The inspiring power of the immediate vicinity of the historic places, where the principles of law and freedom — principles which serve as a guide to the work of the Commission — were first formulated and expressed, was apparent in numerous reports delivered at the Congress.

Nevertheless, our eyes should not be closed to the fact that on some, fortunately few, occasions at the Congress, national political passions of the moment predominated over the realization of the high juridical values which were the questions at issue at the Congress and which were symbolized by the historical monuments of Athens. These diversions

illustrated clearly that an intensification of the feeling for justice and reality in the consciousness of the jurists of the free world is necessary if the struggle for the rudimentary legal values of our civilization is not to be lost in futile controversy for the sake of smaller national interests.

* * *

The great importance of the Athens Congress of Jurists lies in the fact that it contributed so greatly to the fortification of this idea of legality and unity among the jurists of the world. What distinguished this Congress from the numerous international scientific, political and professional meetings which come the way of every successful jurist, especially since the end of the second World War, was its fundamental, and therefore general, character. The International Congress of Jurists in Athens did not bring together professional colleagues, or supporters of a certain political vision or of a certain aspect of legal science. Notwithstanding the diversity of social position, political or religious conviction, origin, and race, jurists from forty eight countries with the most divergent careers and political conceptions — high justices, professors, prominent lawyers, statemen and diplomats — gave evidence of their mutual and firm belief in the principles of justice, which embody the protection of the freedoms of the citizen.

* * *

The extremely high level and representative character of the participants and observers from every country and environment gave a special importance to the work of the Congress and the resolutions reported out of the Committees.

The President of the Commission, the Honourable Joseph T. Thorson, President of the Exchequer Court of Canada, presided over the Congress. Keynote addresses, giving the Congress its scientific-systematic design, were given by Professor Charles J. Hamson, of Cambridge University, and Professor Vladimir Gsovski, of Georgetown University, on

the themes "The Essence of the Rule of Law" and "The Essence of the Totalitarian State", respectively. The opening addresses served as the theoretical foundations for the subsequent discussion in the four Committees into which the Congress was organized: Public Law, Penal Law, Civil and Economic Law, and Labour Law.

The Committees were presided over by Professor G. Eustathiadis (Greece), Professor J. Graven (Switzerland), Professor W. Belbez (Turkey), and Professor H. C. Nipperdey (Germany), respectively. In the Committee on Public Law, the introductory reports were given by Professor R. Maurach (University of Munich) and Professor George Daskalakis (Athens); in the Committee on Penal Law, by Professor J. Graven (Geneva - Addis Abeba); in the Committee on Civil and Economic Law, by Navroz B. Vakil (Bombay), lawyer and Professor Extraordinarius at the University of Bombay; in the Committee on Labour Law, by Professors George Kassimatis (Athens) and Alfred Braunthal (Brussels).

On the basis of a comprehensive volume of documentation, "Justice Enslaved", published on the occasion of the Congress by the International Commission, the various Committees occupied themselves with determining the areas of the systematic violation of justice. The legal malpractices in the various fields of law mentioned above, and especially in the totalitarian communist states, were condemned in a number of extensive resolutions. Positive principles, which ensue from the recognition of the idea of the Rule of Law, were formulated in the separate fields of Law.

The last two days of the Plenary Sessions of the Congress were devoted to finding juridical means and methods by which the conditions brought about by the rule of systematic injustice could be rectified. In partial answer to these perplexing problems, Professor Per Ekelöf (University of Upsala) spoke on "The Force of Education and Propaganda in Destroying

the Consciousness of Freedom Under Law"; Professor B. V. A. Röling (University of Groningen) came to the conclusion, after a scholarly discourse on "The Responsibility According to International Penal Law of the Legislative, Executive, and Judicial Organs of the State", that after the trials at Nuremberg and Tokyo, the individual responsibility of the State organs for crimes of the State certainly does exist. Dr. van Dal (The Hague), in his report, "The Position of the Lawyer Indicative of Legal Conditions", outlined the tasks of the International Commission of Jurists and especially of those national groups which support the work of the Commission, emphasizing particularly the relapse of the idea of legality and freedom in the present day world. Dr. Theo Friedenau (Berlin) spoke on "The Defence of Fundamental Principles of Justice — A Task for All Lawyers."

In this short introduction, a fair summary cannot be given of all the addresses and reports. They are being prepared for publication by the Commission and are immediately available in mimeographed form in the office of the Commission.

* * *

The Athens Congress, with jurists from forty eight countries in attendance, aimed at uniting the jurists from all parts of the free world in fighting the dangers, both from within and without, which threaten our legal systems and which are more acute than most jurists today realize or care to admit. That the Congress had its desired impact is evident from the numerous responses and comments that followed its conclusion. The mobilization of all jurists to continue the work initiated at the Congress — and the Athens Congress was only a start — in the form of national groups or through other local organizations is not only desirable but a life and death necessity in this age when the fundamental principles of justice, embodied in the concept of the Rule of Law, are threatened at every turn.

Resolutions of the Athens Congress

Following up the work carried out by the various Working Committees during the International Congress of Jurists in Athens, the participants, assembled in a Plenary Session, wished to recall and reaffirm solemnly the fundamental principles of the rule of law. To this end, they adopted the *Act of Athens*, the text of which can be found at the beginning of this bulletin.

The various Working Committees undertook the task of developing in detail the principles contained in the *Act of Athens*. These Committees, four in number — Public Law, Penal Law, Civil and Economic Law, and Labour Law — fulfilled this task by outlining, each in its own domain, a sort of chart of fundamental freedoms which conformed to the provisions of the Universal Declaration of Human Rights. In this way were defined "the minimum conditions of a juridical system in which the fundamental rights and human dignity are respected." Some will resent the fact that the general resolutions of the various Working Committees were often limited to reproducing the provisions of the Universal Declaration of Human Rights. It should be remembered, however, that these resolutions, which were adopted after a study of the collection of documents entitled "Justice Enslaved", constitute, as it were, the expression of the reaction of jurists from forty eight countries to the juridical system of the states which have fallen under communist domination. The findings which the participants of the Athens Congress arrived at, while studying the documents submitted by the International Commission of Jurists, induced them to propose in the resolutions rules which would enable the prevention of the repetition of the violations brought to light at the Athens Congress. Such is the aim of the resolutions, a short summary of which is given below.

PUBLIC LAW

In its first resolution the Public Law Committee, after having expressed the wish that the United Nations will bring about the adoption of the Covenant on Human Rights, requested the International Commission of Jurists to appoint a "special committee to study the question of determining practical means to prevent the violations of human rights." Such a study is certainly necessary if one ascertains, as did the Public Law Committee, that "human rights are systematically and on a broad scale being violated."

Another resolution declared, first, that discrimination based on race and colour "is contrary to Justice, the Charter of the United Nations and the Universal Declaration of Human Rights." It requested the International Commission of Jurists to "proceed to an extensive investigation" of the juridical situation of certain groups of discriminated population in South Africa. This resolution, which was adopted after statements made by Mr. Purshottam Trikamdass, Indian participant at the Congress, is linked to a considerable extent, to the considerations of the United Nations.

In a general resolution, the Public Law Committee established first of all that "In the captive countries of Central and Eastern Europe, as well as in the Soviet Zone of Germany, there are effectively violated the material, moral, and economic liberties of man as well as his fundamental rights, including particularly the right to participate in the public life of the country." This starting-point led the Committee to the reaffirmation of fundamental rights as stipulated in the Universal Declaration of Human Rights, whilst adding certain details which proved to be necessary after the study of the documentation submitted by the International Commission of Jurists. One can therefore read under Point I: "No one can be compelled against his will by threats, pressure, or other measures to spy on the political or intellectual attitudes of his fellow citizens. All generalized systems of denunciation for the purpose of persecuting any political opposition are prohibited." And, under Point II: "No one can be forced to express

an opinion contrary to conviction." Point III declares inadmissible the systematic interference with radio broadcasts. Point IV states: "No one must be persecuted for opinions expressed in correspondence." Such additions appeared to be necessary, if it is true — and the Athens Congress amply demonstrated this — that the violations of fundamental rights and liberties taking place at the moment assume forms which were difficult to imagine but a few years ago.

CRIMINAL LAW

It is natural that the Criminal Law Committee had the task of developing and ascertaining the desirable requirements in matters of penal procedure and defence of the accused, the principles of which were outlined by the Public Law Committee in its general resolution. After having tried to formulate a single resolution based on two texts, of which the principal one stemmed from conditions of procedure of the continental type, and the other, presented as an amendment, from conditions of procedure of the Anglo-Saxon type, the Committee, at the suggestion of its President, Professor Jean Graven, decided unanimously to adopt two complementary, non-contradictory texts at the same time, adapted to the forms of procedure — inquisitory and accusatory — since uniform regulations could not be applied owing to their essential variations in structure, namely, those concerning preventive detention and the "Habeas Corpus", preliminary instruction and reference to the court. These two texts do not imply a division of criminologists according to principles but, on the contrary, represent a double effort with a view to strengthening the principles and adapting them for the good of each procedure. The Congress approved them in this way. This manner of work certainly has many possibilities for the future since these texts, without sacrificing their accuracy in order to find an impossible compromise, do not run counter to the traditions of different states. It is impossible to summarize these two resolutions, which are extremely rich, for fear of deforming them and readers must therefore be referred to their texts.

CIVIL AND ECONOMIC LAW

As the resolution declared, the work of the Committee on Civil and Economic Law "was primarily concerned with the property relations and rights of the individual citizen with regard to State, State-owned and State-directed enterprises". In the introduction to the resolution, the Committee insisted "that a democratic State, no matter how far its planning and socialization extends, should ensure that it does not put itself above the law". This latter idea constituted, in a sense, the guiding line of the work of the Congress, and one should not be surprised to find it again in a lapidary and clear form in the *Act of Athens*: "The State is subject to the law".

The resolution itself was presented as the findings of the Committee from the documentation, "Justice Enslaved", submitted by the International Commission of Jurists. In it the Committee condemned the discrimination against private property in favour of State property in the countries of the Soviet orbit and formulated the necessary measures in order that private property may not become a word without meaning. Marriage and family also came under the attention of the Committee, which, after having condemned "vast and unjust encroachments" by the communist states, declared that "political, racial and class considerations" should not be taken into account in matters of marriage, divorce, and education of children.

LABOUR LAW

The resolution of the Labour Law Committee constituted primarily a vigorous, clear and precise denunciation of the working conditions and the juridical situation of the worker in the countries behind the Iron Curtain. The absence of free and independent trade-unions, the existence of so-called trade-unions which are subordinated to the interests of the State, the absence of the right to strike, the recruiting by compulsion of manpower, all forms of exploitation of the worker — such as the fixing of high work norms, the so-called socialist competition and self-obligations and "labour

discipline" — serve as proof for the Committee that Articles 13, 23, 24, 25 and 26 of the Universal Declaration of Human Rights had been violated. This led the Committee to formulate the following guarantees which "should be guaranteed in all countries of the world where they do not as yet exist":

- "1. All workers should have the possibility to form free trade unions which ought to be independent of the government and employers.
- "2. The possibility should exist of determining wages and other working conditions by collective agreements. The right to strike should be guaranteed and all workers should be free to choose their occupation and place of work."

FINAL RESOLUTIONS

The *Act of Athens* which is reproduced *in extenso* at the beginning of this bulletin, has already been mentioned. During the final plenary session, the Congress adopted two other resolutions. In the first, the Congress, after having stressed the necessity for a state to apply "the Rule of Law internationally as well as internally" asks the International Commission of Jurists "to formulate a statement of the principles of justice under law, and to endeavour to secure their recognition by international codification and international agreement".

The second final resolution, which is of the utmost importance for the work of the International Commission of Jurists, stated that "the Congress recognizes with profound appreciation the scholarly nature of the labours of the International Commission of Jurists in compiling the illuminating selection of documents which the Congress has studied during its meeting in Athens in June 1955" and "urges the Commission to continue its efforts to illustrate the meaning of freedom and human dignity by legal materials of contrasting

nature drawn dispassionately from the records of systematic violation of laws wherever found . . ." This resolution formed the final proof for the International Commission of Jurists that its efforts with regard to defending Justice wherever it is endangered have met with a favourable echo from the eminent jurists assembled at Athens. It requested the Commission at the same time to pursue its work, the usefulness of which, after the Athens Congress, does not have to be proved.

Dr. Edouard Zellweger:

DICTATORSHIP OF THE
PROLETARIAT

by

DR. EDOUARD ZELLWEGER

Preface

International politics of today are the politics of the smile, of the well-filled cocktail- and vodka-glass, of mutual friendship visits. There is an exchange of culture, there is even perhaps, here and there, superficially, an exchange of points of view on doctrine.

The International Commission of Jurists hails all this with great satisfaction. The smile makes life warmer and brighter and the exchange of ideas can only bring enrichment. But the smile and friendliness demand alertness of mind and keenness of eye. They demand a deep self-knowledge and a deep knowledge of others.

The Commission is fearful for the legal values of our civilization. In spite of the smile and the vodka-glass, we may never forget that behind the façade the political reality in the Soviet bloc is incompatible with our convictions of justice and freedom.

The essay on the dictatorship of the proletariat in the political system of the Soviet countries offered below may bring into focus for the free jurist the fact that there remain irreconcilable contrasts which cannot be glossed over.

The consequences of the system of the dictatorship of the proletariat go further than the field of politics. Hans Kelsen recently pointed out these consequences in one sentence, in which he says:

“If science is considered to be an instrument of politics, then it is a punishable crime to advocate the wrong theory; and then a theory is wrong if it is a deviation from the orthodox doctrine, the orthodox doctrine being the one established by the political party in power.” *

* Hans Kelsen, *The Communist Theory of Law* (London: Stevens & Sons. Ltd.; New York: Frederick Praeger Inc.: 1955), p. 127.

In 1936, the leaders of German National Socialism organized in Berlin an Olympiad which, by its grandiose design and planning and numerous friendship-manifestations in the form of receptions, dinners, and balls, diverted the attention of many from the lack of justice prevailing at that time in Germany. The world should never again permit itself to be lulled to sleep by richly laden tables or the cheering of the throng.

Exchanges of views are always welcome, with great pleasure, but the jurist especially should be conscious of the reality behind those exchanges.

* * *

Dr. Zellweger was born in Luino (Italy) in 1901. He passed his doctoral examination at the University of Berne and his bar-examination before the Court of Appeal at the Canton of Berne. From 1924 to 1930 he was the director of the Secretariate for Swiss Abroad of the New Helvetian Society. He practised as a lawyer in Zurich from 1930 to 1945. During the last five years of that period he was a member of the Court of Appeal of the Canton of Zurich and from 1943 to 1945 he served as a member of the Swiss National Council (Parliament). In 1945, he became the Swiss Minister to Yugoslavia. After completing his appointment in 1950, Dr. Zellweger sojourned in New York for the purpose of pursuing studies at the Faculty of Political Science and the Russian Institute at Columbia University. Since 1951, he has been practising as a lawyer in Zurich and is a Private Lecturer at the University of Zurich. He is a member of the International Commission of Jurists and its Executive Committee.

The Dictatorship of the Proletariat

The manner in which the legal institutions of Communist one-party States work in actual practice reveal characteristics and tendencies which, if one applies the criterion of our own processes of legal thought, can be not unfairly summed up in the two words "Systematic Injustice".

That there can be such injustice at all is due in great measure to the existence of the doctrine of the "dictatorship of the proletariat", which has moulded the governmental structures of Communist one-party states. The author endeavours in this study of the situation to throw light on the characteristic features of this kind of state organisation.

Introducing his comments to the present Soviet Constitution in a speech delivered on November 25, 1936, at the Extraordinary Eighth Congress of the Soviets of the USSR, Stalin praised the draft for the manner in which it "logically and without deviation maintained the democratic line". That, however, did not prevent him from declaring in another passage:

"I must admit that the Draft of the new Constitution does preserve the regime of the dictatorship of the working class, just as it also preserves unchanged the present leading position of the Communist Party of the USSR. (Loud applause.) If the esteemed critics regard this as a flaw in the Draft Constitution, that is only to be regretted. We Bolsheviks regard it as a merit of the Draft Constitution (Loud applause.)"¹

¹ J. Stalin, "On the Draft Constitution of the USSR", in J. Stalin *Problems of Leninism* (Moscow: Foreign Language Publishing House, 1954), p. 699.

In an article on the Stalin Constitution of 1936 Vyshinski made the following observation on the relationship between "maintaining the democratic line logically and without deviation" and the dictatorship of the proletariat.

"All those who think that the principle of proletarian democracy as set forth in the new constitution in any way restricts the dictatorship of the proletariat are making a fundamental error." ²

The doctrine of the dictatorship of the proletariat is the basic doctrine of the Soviet-Russian theory of Public Law. Though Marx mentioned it but little, this doctrine has been developed by Lenin and Stalin and today it is the most prominent feature of the completely new type of state developed by the Soviet Union and its satellite states.

Lenin used a simile to describe the dictatorship of the proletariat; he spoke of the leading force, transmission belts and levers. The trade unions, soviets (the elected legislative and executive organs of government who constitute "the government" in the traditional sense), co-operatives and communist youth organization represent the levers and the transmission belts; the Communist Party is the leading force. It is curious that the soviets, that is, the organs of government according to the written constitution, are only placed second on this list. In the language usually adopted by the Party, soviets, trade unions, co-operatives, etc. are covered by the general descriptive title of "extra-party organisations". Stalin described the functions of the Party under the dictatorship of the proletariat as follow:

"The Party exercises the dictatorship of the proletariat. 'The Party is the direct governing vanguard of the proletariat; it is the leader' (Lenin). In this sense the Party takes power, the Party governs the country. But this must not be understood in the sense that the Party exercises the dictatorship of the proletariat

² As quoted in V. Gsovski, "The Soviet Concept of Law", 7 Fordham Law Review 2 (1938), p. 42.

separately from the state power, without the state power; that the Party governs the country separately from the Soviets, not through the Soviets. This does not mean that the Party can be identified with the Soviets, with the state power. The Party is the core of this power, but it is not and cannot be identified with the state power.”³

One must not draw the conclusion — which would be totally wrong — from the last sentence in the quotation just given, that the soviets, that is to say, the whole apparatus of government as it is usually understood, are to a certain extent independent of the Party, or, in other words, that they have a role to play apart from the Party. The decision of the Twelfth Party Congress regarding the relationship of Party and State still applies:

“Particularly dangerous and pernicious to the historical mission of our Party are those deviations which oppose the Soviet government to the working class and Party. The contraposition of the Soviet government . . . to the dictatorship of the Party is now the most important agitational weapon of all enemies of our Party and assumes in their hands a clearly counterrevolutionary character . . . For this reason the XIIth Congress particularly emphasizes the necessity, and henceforth strongly, to stick to tactics which will . . . ensure to the Party the actual guidance of all soviets, and in particular economic, apparatuses of the Soviet republic.”⁴

³ J. Stalin “Concerning Questions of Leninism”, in J. Stalin, *Works* (Moscow: Foreign Languages Publishing House, 1954), Vol. 8, p. 43.

⁴ “Dvenadtsatiy sezd RKP (b)” (Twelfth Congress of Russian Communist Party (bolsheviks)), in *KPSS v resolyutsiyakh i resheniyakh; syezdov, konferentsii i plenumov Tsk* (The Communist Party of the Soviet Union in Resolutions and Decisions; Congresses, Conferences, and Plenums of the Central Committee) (7th edition; Moscow, 1954), Vol. I, pp. 685—686.

The sources just cited prove what is confirmed by actual experience, namely, that the dictatorship of the proletariat means and is identical with the dictatorship of the Party, while the Party itself is so organised that its claim to lead, which is nowhere disputed, means leadership by the management and hierarchy of the Party, and which in turn means leadership by the small group of men within the Party who wield the real power.

It is unnecessary to describe here the modifications to the general doctrine of the dictatorship of the proletariat which had to be introduced to suit it to the autocratic rule of Stalin. This deviation from the principle of collective leadership has ceased with Stalin's death, at least for the time being. We quote, however, the comment of Boris Meissner which sums up the main features of Stalin's rule:

"The Party remained, true to the totalitarian character of the Stalin regime, the only effective dynamic force in the immovable dictatorship, but primarily only as the tool of the apex of the hierarchy. The apex had largely split off from the hierarchy and become an institution in its own right, an autocratic government. This change was particularly noticeable in Second World War, when within the general framework of government the Committee of State Defence (GKO) ruled.

"Although this war cabinet consisted of members of the Politbureau and was in fact a committee of the Politbureau, it was a part of state machinery and not of the Party machinery. On the dissolution of the GKO after the end of the war its functions were partly handed back to the Politbureau and partly handed over to a committee of deputy prime ministers, the "inner cabinet", that is to say, to a part of the Soviet machine. It would be a waste of time to speculate at length on the constitutional differences involved, as the members of the two bodies are largely the same persons. Within the general framework of government the two bodies con-

stitute different aspects of the same autocratic apex of the state hierarchy which derives its existence solely from the uncontrolled will of the leader." ⁵

In what forms does the Party give effect to its claim to leadership of the State? What are the methods by which the Party actually directs the body of officials who constitutionally are the state authorities? How is the domination of the Party machine over the State apparatus ensured?

In a recent book of Soviet public law, published in 1948 by the Law Institute of the Academy of Science in Moscow, it is stated:

"A Party directive has the force of a practical decision, the force of a law. From this, however, it does not follow that a Party directive is a law or directive in a juridical sense. A Party directive by itself does not create law but only forms its basis, direction, clearness of purpose. Party directives form only the nucleus of law, just as the Party is the nucleus of the government authority." ⁶

The words just quoted convey the meaning that at any rate the more important legal enactments must first be drafted, considered and agreed to by the body within the Party machine competent to deal with such matters, if not in their final text at least as to their material content.

It is only after this has been done that the competent bodies of the Soviet apparatus, that is to say, of the State machinery created for this purpose by the written constitution, can concern themselves with the matter and, employing the legislative procedure laid down by the written constitution, resolve that the laws and ordinances agreed to by the Party shall be law. Consequently, the procedure for creating laws laid down in the written constitution must be preceded by a law-creating

⁵ Boris Meissner, *Russland im Umbruch* (Russia in Transition) (Frankfurt, 1951), p. 7.

⁶ A. A. Askerov, et. al., *Sovetskoe gosudarstvennoe pravo* (Soviet Public Law) (Moscow, 1948), p. 286.

stage in the hands of the Party. The decisions of the Party which determine the law-making of the State apparatus are in fact given the widest publicity in order to impress on the consciousness of the people that it is the Party which is the leader. In the exchange of communications between the Central Committee of the Communist Party of Yugoslavia and the Central Committee of the Communist Party of the Soviet Union, which preceded the outbreak of the conflict within the Cominform, the latter's complaint was that the Yugoslav Central Committee were ignoring the rules for making law which have just been described. The Yugoslav Central Committee in its answer implicitly recognised the existence of these rules by observing, in justification of its actions, that . . .

“All important decisions in social or constitutional matters taken by the Government are either decisions of the Party or they have come into existence thanks to the initiative of the Party; and the people accepts them as such. We regard it for this reason as quite unnecessary to make a special point about a decision being a decision of this or that Party conference.”⁷

The usual process of law-making in the Soviet Union is that the Party defines the material content of a law in a resolution and the bodies within the State apparatus whose competence derives from the constitution enact the relative law. A directive of the Party is an order to the law-making bodies within the State machine, which is invariably complied with. But it does happen that a decree of the Central Committee of the Party creates a law directly, that is to say, without its passing through the processes requisite for law-making as laid down by the written constitution, and if that happens the decrees are recognised and obeyed as legal enactments; no objection is taken to them. For instance, the first two Five-Year Plans took effect after the Central Committee of the Party had considered and approved them. Their sub-

⁷ *The Soviet-Yugoslav Dispute* (London: Royal Institute of International Affairs, 1948), p. 27.

sequent acceptance by the Supreme Soviet was a mere formality. When the now repealed 7-hour working day was introduced, it became law solely by virtue of a decision of the Party. The legal position and responsibilities of directors of State industrial undertakings were regulated in 1929 by a decree of the Central Committee of the Party. Numerous decrees and ordinances have been published in the official gazette of the Soviet Union as joint legislation of the Council of Ministers and of the Central Committee of the Party. For instance, on February 28, 1949, a decree was issued lowering by 10—30 percent the retail prices of articles produced for mass consumption and sold in State shops; this decree was signed by Stalin for the Council of Ministers and by Malenkov for the Central Committee.

The examples just given should suffice to make clear the predominant influence of the Party on the making of laws. No less effective is the Party's control over the executive. A particularly remarkable feature of this is the power of the Party to give instructions to the public prosecutor's office. It is definitely stated in various works on Soviet public law that it is the duty of the chief public prosecutor to carry out the tasks conferred on him by the Party or by the Government.⁸ This relationship between the Party and office of the public prosecutor provided the basis for the assignment of the public prosecutor's office to carry out purges of Party members. The Party itself does not exercise penal powers. But it can, by means of its power, give instructions to the public prosecutor to operate the levers of the state penal machine, if it decides to carry out a purge of Party members. — The Party's control over the Ministry of the Interior is a particularly important feature, because the Party has no coercive machinery of its own. The extreme importance of this control is made very clear in the exchange of communications, already mentioned, between the Central Committee of the Communist Party of Yugoslavia and the Central Committee of the Com-

⁸ See Julian Towster, *Political Power in the USSR, 1917—1947* (New York: 1948), p. 309, fn. 38.

munist Party of the Soviet Union. In a communication dated March 27, 1948, the Central Committee of the Communist Party of the Soviet Union complained to its Yugoslav counterpart

“ . . . that the Personnel Secretary of the Party is also the Minister of State Security. In other words, the Party cadres are under the supervision of the Minister of State Security. According to the theory of Marxism, the Party should control all the State organs, while in Yugoslavia we have just the opposite: the Ministry of State Security actually controlling the Party. This probably explains the fact that the initiative of the Party masses in Yugoslavia is not on the required level.”⁹

The Central Committee of the Communist Party of Yugoslavia in reply to this reproach retorted on April 13, 1948, that

“The fact that the Organization Secretary in the CPY is also Minister of State Security in no case interferes with the self-initiative of Party organizations. The Party is not placed under the control of UDBa; this control is exercised through the CC of the CPY of which the Minister of State Security is a member.”¹⁰

The courts, also, are, as Vyshinski put it, ‘agencies of the dictatorship of the Proletariat’.¹¹ In the massive report prepared by a specially appointed committee of the United Nations in 1953 on forced labour there will be found very instructive data and material concerning the position and tasks of courts of law in the light of the Soviet-Russian theory of law. This theory lays it down that it is not the task of the judge to apply statutory law in a manner that satisfies the requirements of “bourgeois” logic; on the contrary it is his duty to apply the statute unhesitatingly as expressing the

⁹ *The Soviet-Yugoslav Dispute, op. cit.*, p. 15.

¹⁰ *Ibid.*, p. 25.

¹¹ As cited by V. Gsovski, *Soviet Civil Law* (Ann Arbor: University of Michigan, 1948), Vol. I, p. 250.

policies of the Party and of the Government. "We openly demand of our judges that they carry out the policies of the proletarian dictatorship which represent the interest of the socialist people and find their expression in the statutes of a socialist state" (p. 487). The directives of the Party are conveyed to the courts of law, for instance, by the public prosecutor, who, as we have already seen, is bound to accept the instructions not only of the Government, but also of the Party.

Finally the Party guides and supervises the whole legislative and executive machinery of the state through so-called "Party groups" or "Party fractions", which are composed of Communist Party members in the respective State agencies:

"At all congresses, conferences and in the elected organs of soviets, trade unions, cooperatives and other mass organizations in which there are at least three Party members, Party groups are organized, the task of which is to strengthen the influence of the Party in every way and to carry out its policies among non-Party members, to strengthen Party and state discipline, to combat bureaucracy, and to check on fulfilment of Party and Soviet directives. For current work the group elects a secretary.

"The Party groups are subordinate to the appropriate Party organizations (the Central Committee of the Communist Party of the Soviet Union, the Central Committee of the Communist Party of the Union-Republic, of the territory, province, region, city or district).

"In all problems the Party group must be strictly and undeviatingly guided by the decisions of the leading Party organs."¹²

If a person, being a member of the Communist Party and at the same time a State official, were to refuse to carry out

¹² *Ustav Kommunisticheskoi Partii Sovetskovo Souza* (Statute of the Communist Party of the Soviet Union, passed at the XIX Congress of the Party - October 1952) (Moscow: 1953); for an English translation see *Current Digest of Soviet Press*, January 10, 1953, p. 14 f.

in his latter capacity the instructions he received from the competent committee of the Party, he would be guilty of a breach of Party discipline and could expect that his punishment would take the form of expulsion from the Party (Article 3 (f) of the Statutes of 1952). Expulsion from the Party constitutes a *capitis diminutio* in the most literal sense of the term. For a man expelled from the Party "life has lost its flavour" (Prof. John Hazard).

The army, the navy and the transport industry are tied in with the Party machine particularly closely and in a manner that is constitutionally very unusual. The set-up is that the branches of the Party machine which might be described as being "materially competent" (the so-called "departments" of the Central committee of Communist Party of the Soviet Union) are so worked into the ministry to which they belong as to form within it an organic whole, that is to say, the military "department" and the transport "department" of the Central Committee take over the functions of the political branch of the army and the navy and of the political branches of the Ministries for Railroads, for the Mercantile Marine and for Internal Water Transport.

"The function of the military department of the Central Committee operating as the political branch of the army is to ensure that the military efficiency and soldierly virtues of the Russian soldier are maintained at as high a level as possible and its other task is to make the army a convinced supporter of the regime.

"Party work in the Soviet Army and Navy is directed by the Chief Political Administrations of the Soviet Army and Navy of the USSR and in transportation by the political administrations of the USSR Ministries of Railroads, Merchant Marine and Inland Shipping, functioning with the powers of departments of the Central committee of the Communist Party of the Soviet Union.

"Party organizations in the Soviet Army, Navy and in transportation function on the basis of special instructions handed down by the Central Committee."

(Article 64 of the Party Statutes of 1952)

It is nowhere denied that the Party has the power to recall members of a soviet (council) who are also Party members, in other words, to dismiss from office Party members who hold appointments in the State apparatus. The Statutes of 1923 (Article 62) expressly recognised that the Party had this power. The Statutes of 1925 (Article 95) hedged the power with the limitation that its exercise was subject to the provisions of the constitution and to any legal rules under which the particular branch of the Soviet machinery operated. In the Statutes of 1939 dismissal from office was listed as one of the disciplinary punishments which the Party could inflict on its members. There is no corresponding provision in the Statutes of 1952, which are in force to-day. In practice however, the Party continues to deprive its own members of positions in the State apparatus to which they had been appointed. Expulsion from the Party, or even merely from an executive department of the Party regularly involves at the same time recall from the office of State which the expelled person held.

It is possible to liken the Soviet Union, organised on the basis of "soviets" (councils), to the human body. The supreme Party executive would then be the "brain", and the Party groups in the Soviet machinery would be the "nervous system" of the organisation. The description just given of the relationship between Party and State machinery demonstrates that it is the Party which defines its relation to the State apparatus and its position therein, that what is laid down in the Statutes of the Party takes precedence over the written constitution.

A result of the primacy of the Party, which has just been described, is the predominance of the doctrine of the "unity of powers", a doctrine accepted by Russian experts on constitutional and public law. This doctrine is completely at variance with the doctrine of the "separation of powers" which

the free world holds to be the main foundation of the Rule of Law. The mere refusal to admit the validity of the principle of the separation of powers and the substitution therefore of the contrary principle of the unity of powers constitutes a dangerous threat to the Rule of Law. But the subordination of the State machine to the Party must inevitably lead to the total negation of the Rule of Law and to "systematic injustice."

The activities of the State are defined and regulated by legal enactments in the Soviet Union and in its satellite states as well. The executive and the judiciary fulfil their tasks on the basis of statutes, decrees, ordinances, etc. (principle of socialist or democratic legality). But the Party is not bound by these enactments. Stalin remarked:

"The dictatorship of the proletariat necessarily includes the concept of force. There is no dictatorship without the use of force, if dictatorship is to be understood in the strict sense of the word." ¹³

As personification of the dictatorship of the proletariat the Party can consequently, aware that no enactment can restrict its freedom of action in any way, issue instructions running counter to laws which have come into existence in the ordinary way, even to laws which it itself initiated. Thus we get two potentially conflicting concepts, that of law which came into existence in the ordinary way and that of "revolutionary expediency". Should a conflict arise, it must always be settled in favour of the latter concept. ¹⁴ The executive and judiciary must always ignore the existence of a legal rule which in the practical issue under consideration cannot be brought into harmony with revolutionary expediency that is to say, with the interests of the dominant class in the state. Should it happen that nevertheless a judge did issue a decision in such a case which accorded with the requirements of a statute, his decision would not be enforced.

¹³ *Works, op. cit.*, p. 44.

¹⁴ Gsovski, *Soviet Civil Law, op. cit.*, p. 162.

George Jellinek has suggested that in every legal rule there is an implicit promise to the person who is subject to it that the legal rule also binds the state as long as the rule is valid and effectual.

"The order to its organs to apply the law is not pure arbitrariness on the part of the state, as advocates of the opposing theory, if they were to be logical and honest, would have to maintain but the fulfilment of a duty. The state binds itself in relation to its subjects to apply and carry out the law, and does so in the act of creating the law, in whatever way that law may come into existence." ¹⁵

The dictatorship of the proletariat can accept such an obligation only to the extent that its acceptance will not contradict the aim of serving in every case the interests of the ruling class. Alfred Leutwein described it succinctly:

"So-called 'democratic legality' demands that the State machine should regard itself unreservedly bound by the laws made by Stalin and his associates because the purpose of these laws is to benefit the ruling class. But there is a distinct limit to this obligation which is reached when it is clear that the law, if it were applied, would not benefit the ruling class, either because circumstances generally have changed or because due to unforeseen reasons the application would not achieve the original purpose. In no other way can one explain how in Stalin's State it is possible for quite subordinate parts of the State machine to ignore its laws without being punished for violating the laws." ¹⁶

The remarkable thing is that it is just on this matter, i.e., the subordination of the State machine to the Party machine in respect to the rules which govern the action of each that

¹⁵ *Allgemeine Staatslehre* (2nd edition; Berlin, 1905), p. 359 f.

¹⁶ Alfred Leutwein, *Die Ideologie des Unrechts*. (published by the "Untersuchungsausschuss freiheitlicher Juristen" in West-Berlin), p. 19.

the criticism concentrates of those communists on whom the idea dawns that the individual has some rights and liberties. Thus the Yugoslav communist, Djilas, wrote in "Borba", the central paper of the Communist Party of Yugoslavia on December 31, 1953, (and no attack was made on him by the Central Committee of this Party for this expression of his views):

"It is the duty of the State apparatus and particularly of certain parts of it such as the courts, the security service and the militia, to see that the law is obeyed; it is certainly not its duty to exacerbate the class-war. In my view, the courts, the security service and the militia which are really the branches of the State machine most concerned, must do everything they can to make it impossible for the Party to influence them in the sphere of work allotted to them; otherwise they will never be able, however good their intentions may be, to escape becoming undemocratic cogs in the State machine, actuated by the circumstances of the moment, in pursuit of ideological and political mirages and personal or local interests. To their dying gasp, as it were, they must remain organs of the State and of its laws, that is to the say, of the people generally, and not of the private interests or of the dogma of some political group. That is the goal to which those who seek the triumph of legality and democracy must undeviatingly aim."

The Dictatorship of the Party

The class which took political power in its hand did so knowing that it took this power alone. This is contained in the concept dictatorship of the proletariat. This concept has meaning only when a single class knows that it alone is taking political power in its hands and does not deceive itself or others with talk about "popular, elected" government "sanctified by the whole people".

Lenin, "Speech at Transport Workers' Congress" (March 27, 1921), *Selected Works* (New York, 1943), Vol. IX, p. 137.

* * *

This power, the power of one class, can be firmly established and established to the full only by means of a special form of alliance between the class of proletarians and the labouring masses of the petty-bourgeois classes, primarily the labouring masses of the peasantry . . . This special form of alliance consists in that the guiding force of this alliance is the proletariat. This special form of alliance consists in the fact that the leader of the state, the leader in the system of dictatorship of the proletariat is *one party*, the party of the proletariat, the Party of the Communists, which *does not and cannot share leadership* with other parties. (Italics in original — ed.).

Stalin, "Concerning Questions of Leninism" (1926), *Works* (Foreign Languages Publishing House, Moscow, 1954), Vol. 8, pp. 27—28).

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. . . The Leadership passed *wholly and entirely* into the hands of *one party*, into the hands of our Party, which does not share and cannot share the leadership of the state with another party. That is what we call the dictatorship of the proletariat. (Italics in original — ed.).

Stalin, "The Party's Three Fundamental Slogans on the Peasant Question"; *Reply to Yan...sky*, (*Bolshevik*, No. 7—8, April 15, 1927), *Works* (Foreign Language Publishing House, Moscow, 1954), Vol. 9, p. 217.

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The basic forms of the direction of the Soviet State apparatus by our Party are as follows.

A most important significance has the fusion of the "tops" of the Party with the "tops" of the soviets (councils), about which Lenin wrote: "They (the 'tops') are merged together and so they will remain . . ." (*Works*, Vol. XXVI, p. 208).

Further, not one important question is decided without directing instructions of the Party organs, which utilize for this the rich experience of their own work . . .

The Central Committee of the All Union Communist Party (b) and the USSR Council of Ministers issue joint decrees on the most important question of state administration . . .

Members of the Party, however important the State post they occupy, are subject to Party control. This assures the necessary Party and State discipline of all Party members.

The Party supervises the work done by the organs of the State administration, correcting mistakes, eliminating the discovered defects and assisting in the execution of the Party decisions . . .

With the aid of legal norms in general, and in particular,

the administrative-legal norm, the Soviet government realizes the policies of the Bolshevik Party and Soviet administration. The policy of the Bolshevik Party determines both the administrative-legal norms and the system of governmental organs necessary for the solving of political, economic and socio-cultural tasks.

S. S. Studenkin, V. A. Vlasov,
I. I. Evtikhiyev, *Sovetskoe Administrativnoe Pravo* (Soviet Administrative Law) (Moscow 1950), pp. 7—8, 11.

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The work of the Soviet State, which is directed by the Communist Party, is based on the application in the interests of society of the comprehended laws of its development, and of the laws of economic development first and foremost. Basing itself on a knowledge of these laws and mobilizing the creative forces of the people, the Soviet State, under the direction of the Communist Party, is organizing the gradual transition of our country from Socialism to Communism . . .

The work of the whole system of government of the state is directed by the highest organ of state authority in the USSR — the Supreme Soviet of the USSR — and by the highest executive and administrative organ of state authority in the Soviet Union — the Council of Ministers of the USSR. Under the direction of the Communist party, the organs of state authority, from the Supreme Soviet of the USSR to the village Soviet of Deputies of the workers, and the organs of state administration carry out tremendous and many sided work on the building of communism in our country, mobilizing and organizing the creative energy of the people and making use of the advantages of the socialistic system of economy . . .

The directing and guiding force of the Soviet State is the Communist party of the Soviet Union, which represents the leading section of the toilers of the USSR in their fight for the consolidation and expansion of the socialistic system, and

is the directing nucleus of all the organisations of the toilers, both communal and state . . .

Extracts from V. V. Nikolaev, *Sovetskoe sotsialisticheskoe gosudarstvo — glavnoe orudie postroptriya kommunizma v SSSR* (The Soviet Socialist State — the Main Implement for Building Communism in the USSR) (Moscow 1955), pp. 3, 5—6, 7.

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Socialist legality is the most important means of realizing the tasks of the dictatorship of the working class in all spheres of the building of Communism.

Prof. P. E. Orlowsky, as quoted in *Neue Justiz* (New Justice) (East Berlin), 5 November 1954, p. 616.

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In our Soviet State the courts are considered a part of the leading political apparatus and care should be taken, by appropriate measures, that the courts actually are instruments of the policy of the Communist Party and the Soviet government.

Prof. Polyansky, "Party Directives and Penal Justice" in *Vestnik Moskovskovo Universiteta*, (Moscow University Bulletin), Vol. XI, 1950.

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. . . The management of the State (i.e., the dictatorship) is entirely in the hands of the Communist Party. In our country the participation of the Agricultural Union in the government is not due to the fact that the Communist Party shares the political leadership with this party, but on the basis of their collaboration with a view to the building of socialism . . . As a further result of socialism, or rather with the

building of socialism, the multiple-party system will cease to exist . . .

Rangel Dimitroff, "The State Forms of the Dictatorship of the Proletariat", in *Sotsialisticheskoe Pravo* (Socialist Law) (Sofia), 1953, Vol. VII, p. 14 ff.

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The Rumanian Workers Party (i.e., Communist Party) is the leading power in all organizations of workers and in the state organs and institutions.

Article 86 of the *Rumanian Constitution* of 24 September 1952.

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Book Review

Hans Kelsen, *The Communist Theory of Law* (New York: Frederick A. Praeger Inc.; London: Stevens & Sons Limited; 1955), 203 pp.

Professor Kelsen's contribution to the growing literature in the field of Soviet law is important and most welcome, especially now, when perhaps undue optimism is wide-spread concerning peace in our time. The optimism in the sphere of international relations is added to by recent developments in the field of Soviet domestic law. The amnesties proclaimed in the Soviet Orbit are welcome signs even if there is a tendency to forget the injustices of the legal system responsible in the first instance for the imprisonment of those amnestied. The promised major revisions in the sphere of Criminal Law in the USSR indicate a liberalization of some significance and, if true, can be regarded as a step towards the introduction of the Rule of Law in the Soviet empire. This, too, is a welcome sign and such action must be encouraged in the hope that these initial changes in the legal sphere, if accomplished, will eventually trickle down to provide an administration of justice which will conform to the concepts of the Rule of Law.

The major concern, however, is that these changes do not remain merely paper changes, never really implemented in practice in important areas, and remain subject constantly to the whims of the Communist Party and its political directives. As Professor Kelsen documents so clearly, legal theory has shifted to conform to those changing whims and concepts of the Party. And it is well-known from history that the Party's leadership and direction are notoriously unstable, changing all too frequently and leaving this or that legal theory, to use an expression coined by Engels, to the "garbage heap of history". Until the Party ceases to be the final determinant of what is justice, law will remain unstable, the judges will remain dependent on the Party, and the legal profession will continue to be an appendage of the prosecution. (The latter practice too has also come in for serious criticism, by no less

a person than the Polish Minister of Justice [see *Nowe Drogi* (New Ways), May 1955, p. 35]. Here too reforms are badly needed).

Is it for this reason that Professor Kelsen's book is so timely, for it goes to the heart of the matter. It goes behind the superstructure of the law codes and amnesties and analyses the attitude of the Party and government towards legal theory and the place of the individual in the scheme of law. In his book Professor Kelsen analyses the interpretations of Lenin, Stuchka, Reisner, Pashukanis, Vyshinski, Golunski and Strogovitch of the summary indications of Marx and Engels on Law. He goes on to make an "internal" criticism, i.e., proceeds from the actual axioms of Marxism in order to make clear the shortcomings of the successive interpretations of Law and State by the communist jurists. The findings of Professor Kelsen are not encouraging for the future of Soviet law, in spite of the minor, fragmentary concessions proclaimed by the Party. The thoughts expressed by Professor Kelsen in his conclusions are important in evaluating the place of these new concessions and changes:

"The ideological character of the Soviet theory of law is the inevitable consequence of the Marxian principle — contrary to the anti-ideological postulate — that social science in general and the science of state and law in particular has to be political, that is to say, that it has to result in formulas which can be used as instruments in the political struggle of one group against another. The deplorable status of Soviet legal theory, degraded to a handmaid of the Soviet government, should be a grim warning to social scientists that true social science is possible only under the condition that it is independent of politics."

Kelsen's analysis of the communist theory of law established irrefutably and definitely that the Marxist postulates cannot be applied to the science of law without making it lose, at the same time, every character of objective science in its conclusions.

The following publications are available on request from the Offices of the Commission, 47 Buitenhof, The Hague

Justice Enslaved

Special Study No. 1: Paul Poom, *The Sovietization of Estonia's Law Courts* (English)

Special Study No. 2: Father André Bonnichon, *Law in Communist China* (English and French).