

## THE SELF-ACTUALIZING FUNCTION OF LAW IN THE SOVIET CONTEXT

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*Whoso would undertake to give institutions to a People must work with full consciousness that he has set himself to change, as it were, the very stuff of human nature; to transform each individual who, in isolation, is a complete but solitary whole, into a part of something greater than himself, from which, in a sense, he derives his life and his being; to substitute a communal and moral existence for the purely physical and independent life with which we are all of us endowed by nature.<sup>1</sup>*

### I. INTRODUCTION

Traditionally, law and legal systems have been viewed as performing three major roles or functions in society: (1) the institutional role, which includes allocation of authority or power and provides for ascertaining rules of accepted interhuman behavior and the delimiting of sociolegal relationships; (2) the conflict resolution role, which provides for the orderly application of the legal rules; and (3) the interpretational role, which includes the provision for sociolegal change and the redefining of social relationships. But our analysis need not stop here since sociological and behavioralistic studies of and approaches to legal analysis may provide even greater insights into the synergistic or *interactional* aspects of law within a functioning and ongoing legal system, including such phenomena as the reciprocal nature of social control within a legal system, the relatively positive attributes of some forms of social deviance, the social function of reason, and the means for and the effects of progressive sociolegal change.<sup>2</sup> As Professor Robert Merton has stated:

Sociology need not make men wise or even prudent. But, through its successive uncovering of latent social problems,

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1. Rousseau, *The Social Contract*, in *SOCIAL CONTRACT: ESSAYS BY LOCKE, HUME AND ROUSSEAU* 205 (G. Hopkins transl. 1962).

2. The major problem in the area of legal sociology continues to be the lack of a

sociological inquiry does make men increasingly accountable for the outcome of their collective and institutionalized actions.<sup>3</sup>

For the most part the theories of sociological jurisprudence to date have treated law as a passive rather than an active agent in social change. From this perspective, law is viewed merely as responding to new circumstances and social pressures; it is not seen in its heuristic, educational, and opinion-creating roles. Obviously, this same feeling pervades the other schools of jurisprudential thought to an even greater degree. But such a view is becoming increasingly less tenable, especially in recent years, as the great social effects of legal change within the legal systems throughout the world have become too obvious to be ignored. The question is no longer whether law is a significant vehicle of social change; rather the questions are how it so *functions*, what the special problems are that arise, and how society can plan for optimal systemic legal change. In a sense, laws and legal change constitute an important social reality.<sup>4</sup>

Today there is a need for a new synthesis springing from an interdisciplinary analysis of the sociology of law and for a new typology of the basic functions of a legal system. It may be useful, therefore, in understanding the sociological obligations inherent in a legal system, to expand the traditional view of the role and functions of law to include those functions of social change and social conformity which are made evident by viewing law and the legal system from a new sociological and human interactional perspective.

As a starting point for this new typology of legal functions we might posit an operational (and in large part Weberian) definition of law—namely, law is a set of ought ideas which are held in the minds of

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comprehensive integration of jurisprudence and social research. One commentator has noted:

Unless jurisprudential issues of the nature and functions of law, the relations of law and morals, the foundations of legality and fairness, and the role of social knowledge in law are addressed by modern investigators, the sociology of law can have only a peripheral intellectual importance.

Selznick, *The Sociology of Law*, in 9 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 50, 58 (D. Sills ed. 1968).

3. Merton, *Social Problems and Sociological Theory*, in CONTEMPORARY SOCIAL PROBLEMS 697, 710 (R. Merton & R. Nisbet eds. 1961). Similarly, the problems which are brought before the legal profession involve "questions of economics, politics, and social policy which legal training cannot solve unless law includes all social knowledge." M. COHEN, REASON AND LAW 83-84 (1950).

4. "Reality, then, in this distinctively human world, is not a hard immutable thing but is fragile and adjudicated—a thing to be debated, compromised, and legislated." G. MCCALL & J. SIMMONS, IDENTITIES AND INTERACTIONS 42 (1966).

a specific group of people, the effectiveness of which is increased by the existence of an enforcement staff of specialists. In terms of social system function, legal order can be defined as that sub-system within any total social system characterized by a high degree of sub-system differentiation, which has as its primary function the maintenance of total system integration or equilibration. However, it should be stressed that what I am suggesting is not a static equilibrium theory, but rather social system equilibrium in an *historical* and *evolutionary* context. Law must integrate the past with the present while making provision for the future.

For the purposes of this discussion, the sociological functions of law and the legal system can be grouped under the following nine headings: (1) *coercive role*, which can be divided into the proscriptive function of law—that is, law as a statement of what not to do—and the prescriptive function—that is, law as a statement of how to act “rationally” within the constructs of accepted communal behavior; (2) *distributive function*—that is, law as a means for defining and delimiting sociolegal relationships; (3) *integrative function*—that is, law as a means for conflict resolution and the settlement of interpersonal and intergroup disputes; (4) *psychological function*—that is, law as a means for creating and maintaining the psychological and behavioral mentality or frame of reference necessary for the continuance of the particular sociolegal system; (5) *legitimizing function*—that is, law as a means for “legalizing” both the existing sociolegal system and planned future systemic change; (6) *homeostatic function*—that is, law as a means for pattern maintenance and for equilibrating dysfunctional fluctuations caused by systemic change; (7) *educational and “parental” function*—that is, law as a means for channelling and rechannelling societal interests and values as well as a means for guiding social behavior; (8) *heuristic function*—that is, law as a force for creating and stimulating opinion; and (9) *self-actualizing function*—that is, law as a means for the positive creation of a statement of rules for orderly sociolegal change and as a means for goal attainment within the context of planned or programmed change.

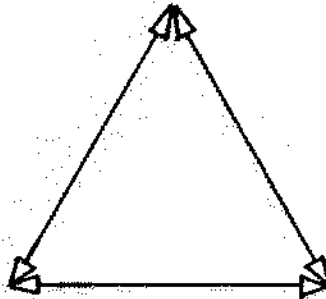
As shown in Figure 1 below, these nine sociolegal functions can be divided into groups of three under the general headings of present-perspective, past-retentive, and future-directive, or, similarly, pragmatic, static, and dynamic. It is submitted that, when relatively balanced, these three groupings of the social functions of law can and do maintain the social system equilibrium in an historical and evolutionary context, as discussed above.

FIGURE 1

*Tentative Typology for an Interactional Theory of Law*

A. Present-Perspective  
(Pragmatic Aspect)

1. Coercive Role
  - a. Proscriptive Function
  - b. Prescriptive Function
2. Distributive Function
3. Integrative Function



B. Past-Retentive  
(Static Aspect)

1. Psychological Function
2. Legitimizing Function
3. Homeostatic Function

C. Future-Directive  
(Dynamic Aspect)

1. Educational and  
"Parental" Function
2. Heuristic Function
3. Self-Actualizing  
Function

Obviously, within an ongoing sociolegal system these nine functions overlap one another as well as interact within the general typology presented here. Although these nine sociolegal functions are inherent in almost any legal system, it should be apparent that the form and content of the particular governing political structure may have the effect, directly or indirectly, purposely or inadvertently, of placing greater emphasis on some of these functions while limiting or deemphasizing others. Furthermore, it should be remembered that the sociolegal system as a whole is greater, in the *Gestalt* sense, than the sum of its component parts.

In another article, I have discussed at length the "parental" and

heuristic functions of law in the Soviet Union.<sup>5</sup> However, before discussing the self-actualizing function of law in the Soviet context, it may be useful to make a few brief statements concerning the "parental" and heuristic functions, not only for an understanding of the Soviet legal system, but also for an increased awareness of the role and functions of law within any dynamic social system.

The *heuristic function of law* is that aspect of a legal system by which individual or collective opinions concerning social and legal relationships are created or stimulated through the interaction that takes place between the law and social behavior. It might also be called the "propagandistic" function—in the positive as well as negative sense of the word. The ideology and avowed political philosophy of a social system, as well as its practiced variations, can affect to a large measure the heuristic function of law within that system.<sup>6</sup> The extent to which the heuristic function is emphasized in a sociolegal system depends upon the effect of ideological, cultural, and traditional constructs upon the "content" of the law within the general societal framework.

In comparison, the notion of the *educational and "parental" function of law* focuses on the role of law as a guiding teacher and parent. The "parental" aspect of Soviet law and the Soviet legal system has been described by Professor Harold J. Berman as follows:

Implicit in the Soviet legal system is a new conception of the role of law in society and of the nature of the person who is the subject of law. The Soviet legislator, administrator, or judge plays the part of a parent or guardian or teacher; the

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5. Hildebrand, *The Sociology of Soviet Law: The Heuristic and "Parental" Functions*, 22 CASE W. RES. L. REV. 157-229 (1971).

6. For an excellent discussion of the ideological differences of perspective that juristic political scientists bring to bear upon their teaching, research, and writing, see Schubert, *Academic Ideology and the Study of Adjudication*, 61 AM. POL. SCI. REV. 106 (1967). See also Mendelson, *The Neo-Behavioral Approach to the Judicial Process: A Critique*, 57 AM. POL. SCI. REV. 595 (1963); Miller, *On the Interdependence of Law and the Behavioral Sciences*, 43 TEXAS L. REV. 1094 (1965).

With respect to the *self-actualizing function*, political ideology can also have a conservative effect on the systemic behavior of the sociolegal system; for example, the idealized tenets of a pluralistic democracy may create dilemmas in effectuating "legal" foreign policies as well as ideologically compatible domestic policies. See J. HILDEBRAND, *SOVIET INTERNATIONAL LAW: AN EXEMPLAR FOR OPTIMAL DECISION THEORY ANALYSIS* chs. iv & viii (1969); C. LINDBLOOM, *THE INTELLIGENCE OF DEMOCRACY* (1965); Q. WRIGHT, *PROBLEMS OF STABILITY AND PROGRESS IN INTERNATIONAL RELATIONS* 275 n.6 (1954). For an analysis of the tendency of "legalistic thought" to assume, promote, and enforce an ideology of consensus and agreed-upon rules, see J. SHKLAR, *LEGALISM* (1964). See also Carlin & Howard, *Legal Representation and Class Justice*, 12 U.C.L.A. L. REV. 381 (1965); Erickson & Erickson, *Ideological Aspects of the Legal Profession*, 9 J. LEGAL ED. 290 (1957); Grossman, *Social Backgrounds and Judicial Decision-Making*, 79 HARV. L. REV. 1551 (1966); Swett, *Cultural Bias in the American Legal System*, 4 LAW & SOC'Y REV. 79 (1969).

individual before the law, 'legal man,' is treated as a child or youth to be guided and trained and made to behave. I have called this the 'parental' aspect of Soviet law, though it should be understood at the outset that the concept of parentalism does not necessarily imply benevolence.<sup>7</sup>

Professor Berman's analysis of the "parental" nature of Soviet law provides an excellent—and to date unsurpassed—sociological description of that particular sociolegal function. The "parental" or educational function of law is generally conceived in the various analyses of the Soviet legal system, as well as in related analyses of most other legal systems, in terms of its unidirectional and institutional aspect—that is, the state being a parent or guiding teacher to the citizen:

To speak of 'parental law' is . . . not so much to describe the state which proclaims and applies the law as to describe the assumptions which are made regarding the nature of the citizen and his relationship to the state. To say that under Soviet law the state has extended the range of its interests and its powers is not enough. The state has sought in law a means of training people to fulfill the responsibilities now imposed on them—and it has made this function of law central to the whole legal system.<sup>8</sup>

However, the concept of the "parental" and educational function of law need not be limited to the unidirectional and institutional concept of "parental law." As shown in Figure 2 below, the "parental" or educational function can be viewed as either *unidirectional*, as it is generally conceived in the Soviet Union and in most other legal systems, or as *interactional* within the general societal system. It is submitted that the interactional perspective more closely approximates reality in almost any given legal system—the child is often father (or parent) to the man (or the state).

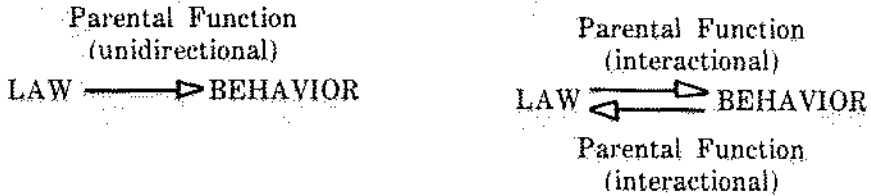
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7. H. BERMAN, JUSTICE IN THE U.S.S.R.: AN INTERPRETATION OF SOVIET LAW 6 (rev. ed. 1963). See generally *id.* at 277-384. The "parental" aspect of Soviet law has also been discussed under the heading of "paternalism." See Campbell, *The Legal Scene: Proceduralists and Paternalists*, SURVEY: A JOURNAL OF SOVIET AND EAST EUROPEAN STUDIES, No. 57, Oct. 1965, at 56-66.

8. H. BERMAN, *supra* note 7, at 284.

FIGURE 2

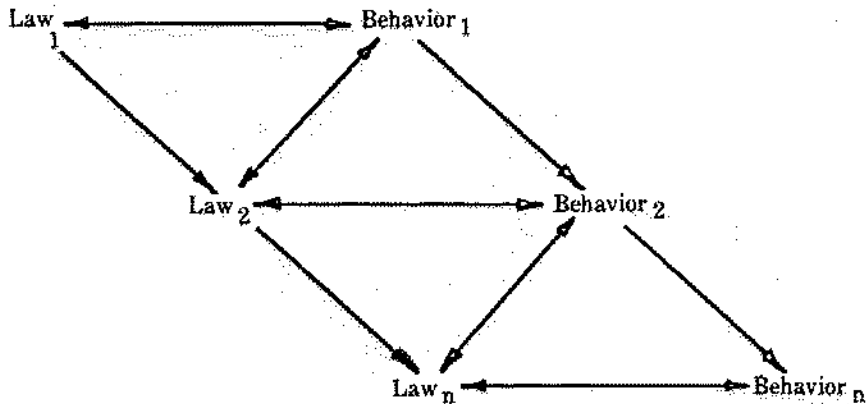
*The Unidirectional and Interactional Perspectives*



When modeled on a time-scale, the interactional perspective of the sociolegal system assumes an ever-increasing synthesis and integration as shown in Figure 3 below. This effect is representative of sociolegal systemic change, or what Alfred Korzybski has referred to as man's *time-binding capacity*.<sup>9</sup>

FIGURE 3

*Paradigm for Time-Scale Representation of the Interactional Perspective*



9. See A. KORZYBSKI, *MANHOOD OF HUMANITY* 91-92 (1921).

Admittedly, the time-scale representation in Figure 3 lacks the general systems theory concept of goal-changing feedback, which Professor Kari W. Deutsch has defined as including "feedback readjustments . . . of those internal arrangements which implied [the system's] . . . original goal, so that the net will change its goal, or set itself new goals which it will now have to reach if its internal disequilibrium is to be lessened." Deutsch, *Some Notes on Research on the Role of Models in the Natural and Social Sciences*, 7 *SYNTHESE* 506, 515 (1948-1949). See also J. HILDEBRAND, *supra* note 6, at 102-103, 121-28; Maruyama, *The Second Cybernetics: Deviation-Amplifying Mutual Causal Processes*, 51 *AM. SCIENTIST* 164 (1963). Figure 3 could be modified to represent a simple systems analysis, however, by drawing feedback loops from Law<sub>n</sub> to Law<sub>2</sub>, Law<sub>1</sub>, and Behavior<sub>1</sub>, and from Behavior<sub>n</sub> to Behavior<sub>2</sub>, Behavior<sub>1</sub>, and Law<sub>1</sub> as follows:

This increasing synthesis and integration, which is also the social function of reason, should not be limited in its goal to the technocratic slogan of "prediction and control," but ought to include reasoned moral choice which, in the area of sociolegal change, further accentuates the interactional perspective. The Soviet legal system, like most Western legal systems, does not expressly recognize this social function of reason, but rather stresses (in the unidirectional sense) the role of "socialist law" in implementing preestablished ideological constructs.

The Soviet legal system can be characterized not only by the unique emphasis placed on the "parental" and heuristic functions of law, but also by the emphasis placed on the *self-actualizing function of law*—that is, the role of law as a means for the positive creation of a statement of rules for orderly sociolegal change and as a means for goal attainment within the context of planned or programmed systemic change. The ideology and political philosophy of Soviet-Marxism are based on a relative concept of the perfectibility of man, and in part it is through the operation of the interim or transitional legal system of socialist law that the goal of true communism and public self-government is hoped to be attained in the Soviet Union. Socialist law is conceived as having an important role to play in implementing preestablished ideological constructs within the Soviet Union.

The self-actualizing function of law in the Soviet context will be discussed in this article under the general headings of (1) the perfectibility of man, (2) the ideology of law, (3) the resulting habituation, and (4) dysfunctionality.

## II. THE PERFECTIBILITY OF MAN

The perfectibility of man is an optimistic idea which is pervasive in the writings of Hegel and Marx. While this idea is common to other social theorists, Hegel's and Marx's respective versions of it are among the most elaborate and the most suggestive. As Professor John Plamenatz has stated:

It is the idea of *perfectibility* which receives at their hands dimensions unknown in the eighteenth century because Hegel penetrates more deeply into the human mind and Marx into the social processes affecting that mind. Though their versions of this idea may be open to criticism on other grounds, they are hardly touched by most of the criticisms levelled at the Hegelian and Marxian social philosophies. It would be a pity if this idea, so largely and rightly associated with them, were lost in the general condemnation of their systems. It is an idea which deserves to be extracted from those systems and to be considered on its own merits.<sup>10</sup>

10. J. PLAMENATZ, MAN AND SOCIETY: POLITICAL AND SOCIAL THEORY, BENTHAM THROUGH MARX 403 (1963).



Stated briefly, the concept of the perfectibility of man views man in the historical and inevitable process of coming to understand himself as a self-conscious creature aware of himself and his fellow humans as living in a relatively coherent society which can be rationally explained and thus coming to acquire in progressive stages a set of values which are more adequate to his nature and condition than any set of values previously developed. This ideal is not just another elucidation of the old Stoic and Christian idea of an eternally valid moral law, a higher law of reason, a supposedly self-evident law which anyone capable of understanding and defining human nature can see applies to any human being in his dealings with other such beings. In contrast (although not necessarily mutually exclusive), the perfectibility of man is based on the humanistic belief that man can rationally determine not only the validity of his present and past value systems but can also direct his future sociocultural development. Even if we hold with the position of Hume and many other contemporary philosophers that moral rules differ from factual statements as well as from mathematical and logical propositions, and even if we agree that an "ought" cannot be derived logically from an "is," we need not categorically reject the perfectibility concept of Hegel and Marx.<sup>11</sup>

Regardless of what we may personally believe to be the correct explanation of moral rules and value judgments, we need not be precluded from agreeing with Marx and Hegel that men gradually acquire rules and values adequate to their present nature and social condition, a process which is not only accretive over many generations but may also modify its end-goal objectives. (Our increased consciousness is altered not only by quantitative leaps in information and understanding but also by the actual processes of our reaching each new level of consciousness.) To paraphrase Professor Plamenatz, rules and values are at least minimally *adequate* to human nature and the human condition whenever men are so placed, psychologically and socially, that their desires and ambitions are in keeping with one another and with the rules and values they mutually or reciprocally accept, and when the functional means are not lacking to realize these values and rules.<sup>12</sup>

Rousseau firmly believed in the "natural rights" of the individual. He saw man's usual condition in society to be such that there arise passions incompatible with one another and with the rules and values man is taught to accept. Therefore, man only half accepts these rules and value judgments, he is by no means free of their influence, and yet he cannot live by them in practice because of his natural passions. For Rousseau

11. See *ibid.* at 403-04.

12. *Id.* at 404.

the fundamental political problem was "to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself above, and remain free as before."<sup>13</sup> In order to attain this goal, each individual must by a social contract sacrifice all his natural rights to the community as a whole. However, this does not necessarily mean a resulting loss in liberty: "Each man, in giving himself to all, gives himself to nobody; and as there is no associate over whom he does not acquire the same right as he yields others over himself, he gains an equivalent for everything he loses, and increase of force for the preservation of what he has."<sup>14</sup> Not only the passions, but also the values are social products; they are human products and result from man's social condition. According to Rousseau, man's passions and values are such that he cannot live a satisfying life, a life in which his passions and his values are in harmony and he has the means to get what he most strongly desires. Rousseau condemned nearly all human societies because they make it impossible for man to live a satisfying life, or, as he put it, "a life according to nature."<sup>15</sup>

Rousseau imagined an ideal society which would be free of the defects of actual society. He did not believe, however, that the development of this ideal society was inevitable or that knowledge was the panacea for all man's social ills. It is in this regard that Hegel and Marx differ most substantially from Rousseau. Both Hegel and Marx imagined a long process of social, intellectual and moral evolution which would lead man steadily and inevitably to that level of consciousness where he would comprehensively understand himself and the world, and where his passions would be in harmony with his values and his ambitions could be realized with the means at his disposal. Man would no longer be *alienated* from his society, but rather he would be "whole" and secure in the social world which would be both the product and the sphere of his activities.<sup>16</sup>

If we deny—and most critics of Marxism do deny it—that there is any such steady and inevitable process, we are not bound in logic also to deny that there is a set of rules and values, a moral system, which all men would accept if they understood the nature and social condition of man, a system in keeping with the passions and ambitions which would be strongest in them if they and other men had that understanding. We may admit this possibility, even though we

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13. ROUSSEAU, *THE SOCIAL CONTRACT*, bk. 1, ch. vi(G. Cole transl. 1913).

14. *Id.*

15. See J. PLAMENATZ, *supra* note 10, at 404-05.

16. *Id.* at 405.

are at pains to insist, against the Stoics and against Rousseau, that there is no eternally valid moral law in the sense of a set of moral rules which can be derived logically from a true description of human nature or of the divine purpose for man. We can also hold, quite consistently, both that there is a moral code which men, having reached the condition, social and intellectual, enabling them to conceive of it, can see is the most fully adequate to their nature and condition, and that all other moral codes, though each is received while social conditions are propitious to it, are inadequate in the sense that men, in those conditions, acquire passions and ambitions difficult or impossible to satisfy and not in keeping with the moral code they accept. In other words, we can, without logical inconsistency, accept both the moral relativism of Marx and his belief that there is a morality more adequate than the others because it is what men are moved to accept when they have come to understand themselves and the world, when they have taken their own measure and have cheerfully assented to it: a morality they are unlikely to abandon because the understanding which brings it in its train also educates their passions and ambitions to conform with it.<sup>17</sup>

There may have been (indeed there may still be) primitive communities where men's passions and values were so much in harmony that what Marxists call *alienation* did not exist. In such communities, if they have ever existed, the moral and socio-cultural values were again "adequate" to human nature and man's social condition. Hegel and Marx both assumed that most men would be rational and moral if placed in the right social environment, and that the causes of alienation were mostly social and would eventually disappear.

Recognizing the obvious alienation which exists in all civilized countries today, at least four simplistic theories of social change and cultural development might be posited. First, optimistically and despite intermittent regressive periods, man is manifestly destined to progress to ever higher levels of understanding and social adequacy wherein his moral and cultural values will attain greater equilibrium with his nature and social condition. Second, man has already attained his highest level of socio-cultural progress, and therefore he should attempt to maintain (or reclaim) in the future those respective levels of perfection which have been achieved in the past. Third, man is passing ceaselessly through a cycle of change and disequilibrium. Fourth, regardless of whether man has actually attained any true heights of socio-cultural perfection, he is destined by his inherent nature to reach increasingly lower levels of socio-cultural decay.

In the following two paragraphs Professor Plamenatz has succinctly

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17. *Id.*

summarized Rousseau's, Hegel's and Marx's respective approaches to social change and cultural development:

Rousseau and Hegel both suggest that men, when their passions and values are not in keeping with one another, are profoundly unhappy; they are, as the common phrase has it, 'untrue to themselves,' or, as Rousseau put it, 'outside themselves,' or as Hegel says, *alienated*. They are in a painful condition possible only to rational creatures, and only reason can find a remedy for it. As Hegel sees it, men, when they reflect on this condition, strongly desire to change it; they strive, at first confusedly but more deliberately and hopefully as their understanding grows, to set themselves and society in order. They make their way slowly to a condition where their passions and values are in harmony with one another, where their ambitions are within their powers, where self-respect is possible, where life, though strenuous, seems worth all the effort it calls for, where men need look for nothing outside themselves and the societies they have created to console them for being alive. Rousseau describes the evil but suggests no practicable remedy for it; Hegel has more to say than Rousseau about its social and historical causes and makes bold to predict an inevitable remedy. Rousseau's pessimism is excessive, being as much an effect of temperament as supported by cogent argument, and Hegel's optimism is not better grounded. But it is, or may be, more useful; it is encouraging and perhaps also, to some extent, a guide to action. Though we do not believe that what Hegel predicts must come true, we may, insofar as we find it good, sharing his idea of freedom, strive to make it come true.

Marx, like Hegel, is an optimist, but in at least one respect, he is more plausible than Hegel. He foretells great social and political changes before what he thinks desirable can come to be, before there can be a morality adequate to man's nature and his social condition. Man is still *alienated*; he is still so situated, socially and culturally, that he is impelled to strive for what does not satisfy him, that he lives, not as he would live if he knew how, but as the market requires. He may not accept wholeheartedly the values of bourgeois society but, unless he is consciously a revolutionary, he does not reject them either; and if he is revolutionary, he cannot live by the values he accepts, for society will not let him. Man in bourgeois society, as Marx depicts him, is still short of the knowledge and self-knowledge [true consciousness] needed to put an end to *alienation*; he has still to make great changes in society and to be himself greatly changed before his condition is such that what he strives for is within his reach and seems to him fully worth while, before he sees himself and his situation as they really are and wants what he can get and what will satisfy him. Though Marx says too little about the society of equals to make it clear just how he conceives of the freedom which is (so he thinks) the condition of men's living truly satisfying lives,

he does not find his ideal, as Hegel does, fully realized in the nation-state of his own century. He is, in this, both truer to the ideal which he shares with Hegel and more realistic. For their ideal is also, at bottom, the ideal of Rousseau and Kant: that no man should be the mere instrument of other men, and that all men should be able to live in accordance with principles they inwardly accept. They differ from Rousseau in being altogether free from parochialism and obscurantism, and from Kant in the interest they take in the cultural and social conditions of freedom. Marx is truer . . . to this ideal than Hegel, not in giving a clearer account of it, not in speaking more profoundly about freedom and equality and how they stand to one another, but in refusing to admit that it could be achieved in the kind of social and political order which satisfied Hegel. There existed in Hegel's time and in Marx's, as there still exists today, a widespread desire for greater freedom and greater equality, a wide-spread striving after an ideal which was deeply attractive though not clearly defined; and there was also a strong belief that freedom could not be much enlarged unless there were greater equality. Though Hegel spoke more eloquently and even perceptively of freedom than ever Marx did, it is not too much to claim that Marx held the more firmly of the two to the common ideal.<sup>18</sup>

It would be absurd to argue that the Hegelian and Marxian concept of the perfectibility of man is beyond criticism. But regardless of whether we reject their accounts of social evolution, or accept it, or be strongly attracted to it, we must also conclude, as rational beings, that the *ideal*, though perhaps never to be realized completely, is indeed worth striving for.

### III. THE IDEOLOGY OF LAW

For the purpose of this discussion, an *ideology* can be defined essentially as an action-related system of ideas. An effective ideology must contain a program and a strategy for its realization, and a major purpose of an ideology is to unite organizations which are built around it.<sup>19</sup>

18. *Id.* at 406-07.

19. See Friedrich & Brzezinski, *Totalitarian Ideology*, in *POLITICAL THEORY AND IDEOLOGY* 123 (J. Shklar ed. 1966). For a discussion of the motivational role of Soviet Ideology, see Fleron & Kelly, *Personality, Behavior and Communist Ideology*, 21 *SOVIET STUDIES* 297 (1970). See also Bell, *Ten Theories in Search of Reality: The Prediction of Soviet Behavior*, 10 *WORLD POLITICS* 327 (1958); Chambre, *Soviet Ideology*, 18 *SOVIET STUDIES* 14 (1967); Daniels, *The Ideological Vector*, 18 *SOVIET STUDIES* 71 (1966); Joravsky, *Soviet Ideology*, 18 *SOVIET STUDIES* 2 (1966); Meyer, *The Functions of Ideology in the Soviet Political System: A Speculative Essay Designed to Provoke Discussion*, 17 *SOVIET STUDIES* 273 (1966); Redaway, *Aspects of Ideological Belief in the Soviet Union: Comments on Professor Meyer's Essay*, 17 *SOVIET STUDIES* 473 (1966); Wesson, *Soviet Ideology: The Necessity of Marxism*, 21 *SOVIET STUDIES* 64 (1969); Wesson, *The Soviet State, Ideology and Patterns of Autocracy*, 20 *SOVIET STUDIES* 179 (1968).

The Soviet jurists and social theorists currently stress two aspects concerning the relationship between the Marxist concept of law and ideology. The first is that ideology exercises an influence on law. Since law is created by men, it stands to reason, state the Soviet-Marxists, that law is necessarily "an expression of definite ideological motives, or in other words, the rules of law are laid down by the state authorities in accordance with the ideology of the classes wielding the power."<sup>20</sup> The second aspect is that law also exercises an important influence on social and individual consciousness:

Just as socioeconomic, political and other factors must pass through the consciousness of the law-maker, and take the form of ideological motives to find expression in law, so legal rules do not influence social relations automatically, but by exercising an influence on the consciousness and behaviour of men. In this context, law plays an important ideological, or as it is sometimes called, educational role in society. By making definite ideas, principles and rules of behaviour mandatory for all, encouraging their observance and holding out the prospect of punishment in the event of non-observance, the law promotes the elaboration of definite views, principles, motives of behaviour, etc.<sup>21</sup>

The treatment of the problems of social structure and social change by Soviet jurists and social theorists remains immaculately doctrinal, despite some current efforts by Soviet sociologists to bring into the doctrinal framework a certain awareness of actual social realities. For those Marxists who operate on an intellectual level of gross oversimplification, law is a class phenomenon and it is indissolubly bound up with the state; law and coercive legal institutions will wither away in the future classless and stateless communist society. The state of true communism will be accompanied by a great material abundance and society will be ruled by the principle "from each according to his abilities, to each according to his needs," thus making superfluous the substantial premise of law on the need to exercise control over the measure of consumption.<sup>22</sup> "In virtue of its social wealth and very high level of consciousness of its citizens there will be no need either for the authorities to impose any special bans or sanctions. Human relations will no longer require such legal regulation as protection of one person

20. THE SOVIET STATE AND LAW 196-97 (V. Chkhikvadze ed. 1969). Professor V. M. Chkhikvadze is head of the U.S.S.R. Academy of Sciences' Institute of State and Law.

21. *Id.* at 197.

22. Assuming first the "great material abundance" and second an effective distribution system so as to make operationally possible the tenet "from each according to his abilities, to each according to his needs," there still remains the inescapable problem of how to determine what constitutes an individual need. Clearly what someone may "want" may not be what he "needs." Furthermore, should some persons be entitled to greater needs? A

against another through the courts and measures of state compulsion." <sup>23</sup>

The Soviet social theorists are quick to point out, however, that the withering away of law does not mean that there will be no rules of appropriate behavior in communist society at all. "No society is possible without definite rules of community life, and a highly organized society is inconceivable without distinct and generally accepted social rules." <sup>24</sup> The Soviet-Marxists further argue that it is incorrect to assume that the theory of the withering away of the state and law implies either a negative attitude or a Marxist hostility for law. "The Marxist proposition about the withering away of law under communism," state the Soviet jurists and social theorists, "is merely a statement about its future, and should not be taken as an assessment of its past or present role." <sup>25</sup>

Of course, the Soviet-Marxists continue to maintain that the state and law will wither away in time—that is, will be dissolved in public self-government and in the rules of communist community living. However, they also now state that this process "will take a rather long historical period, during which study of the urgent problems of the state and law constitutes one of the chief requirements of scientific management of the very process of withering away of the political-legal superstructure." <sup>26</sup> Nevertheless, they maintain that "there is every reason to assume that the theory of socialist law, the theory of the socialist state, will develop in the future into the theory of public self-government, into the science of the rules of human behavior, into a

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very frank statement recognizing this problem was made by S. G. Strumilin at the conference of the Economics Institute in June 1950:

Before speaking about distribution according to needs, the needs being referred to must be clearly defined. The needs of the members of the communist society are the needs of educated, cultured people who do not abuse their opportunities of obtaining consumers' goods. A science of consumption is already being created now. An Institute of Nutrition, which studies rational norms of nourishment, exists in the U.S.S.R. People's requirements under communism will be extremely diverse and individual, but on an average there must be a gravitation toward fixed norms which would completely satisfy the needs of socially developed people. *Reports and Discussions: On the Means for the Gradual Transition from Socialism to Communism*, *Voprosy ekonomiki*, No. 10, 1950, at 99, translated in 3 *CURRENT DIGEST OF THE SOVIET PRESS*, No. 2, Feb. 24, 1951, at 7.

See also Sherman, *The Economics of Pure Communism*, 21 *SOVIET STUDIES* 24 (1970); Wiles, *A Comment But Not a Rejoinder*, 21 *SOVIET STUDIES* 37 (1970).

23. *THE SOVIET STATE AND LAW*, *supra* note 20, at 198-99.

24. *Id.* at 199.

25. *Id.* at 200.

26. *Ideology, Science, Life: The Science of Law in the Conditions of Communist Construction*, *Kommunist*, No. 16, 1963, at 26, translated in 15 *CURRENT DIGEST OF THE SOVIET PRESS*, No. 49, Jan. 1, 1964, at 19, 23.

most important part of the complex of sciences of guiding the development of the communist socioeconomic formation."<sup>27</sup>

Is there any likelihood of breaches of social rules under communism? The Soviet jurists and social theorists currently answer this question as follows:

Of one thing we may be sure: not on the old scale. However, even such a highly organized society as communism cannot be immune from possible departures from the generally accepted rules of community life, which may result from pathological emotions; there may be breaches of official duty or accidental clashes between men, etc. But the point is not whether these are possible or not, but whether, because of the highly conscious and active attitude of the people around, they will be immediately cut short without the participation of any special state bodies. Lenin spoke of the need to suppress various excesses under communism as well, and emphasized that this would not require any special machinery of suppression, because the people would do it themselves 'as simply and readily as any crowd of civilized people, even in modern society, interferes to put a stop to a scuffle or to prevent a woman from being assaulted.' These swift social reactions will spring from a sense of collectivism, and the assurance that any person engaged in suppressing an excess will immediately find public support. A deeply ingrained sense of collectivism, as man's second nature, is a condition for the withering away of the law.<sup>28</sup>

From the perspective that it is the *social being* of men—that is, their practical activity and its social conditions that are the basis on which their consciousness develops—the Soviet social theorists view law as having an important *ideological* task to perform. This ideological role of law tends generally to increase, especially in epochs of great social change. "Legal acts give explicit expression to principles and ideas behind the new social system, thereby becoming mandatory for all."<sup>29</sup> Thus law becomes an important self-actualizing means for social transformation and systemic change, demonstrating new models of social relations:

Law determines the behavior of men and regulates their most important relations, thereby exercising a substantial influence on the course of social development as a whole. Once it has arisen, it acquires a relative independence in respect of the socioeconomic system, and may either go along with social (including economic) development or run against it . . . .

At any rate, law is never passive in respect of the

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27. *Id.*

28. THE SOVIET STATE AND LAW, *supra* note 20, at 199 (footnote omitted).

29. *Id.* at 197.



socioeconomic system and always operates as an important factor in consolidating the social relations which have taken shape, in some cases actively promoting the establishment of new relations, whenever the necessary material conditions are there. Law also exercises a palpable influence on the economy, and the more complex the economic mechanism of a society organized as a state, the stronger is the influence it exerts in many concrete directions.<sup>30</sup>

While the role of socialist law in effecting social transformation and systemic change is admittedly great, the Soviets frequently complain that Western commentators often distort the Marxist thesis concerning the ideological role of law:

Because the rules of law are specific in that their execution may be ensured through state coercion, some authors draw the conclusion that Marxism regards the educational role of law as boiling down to the influence exercised on men's consciousness and mentality by methods of coercion and repression. Naturally, this portrayal of the educational role of law turns out to be incompatible with the rights and freedoms of citizens, so that criminal law becomes the main instrument of education.<sup>31</sup>

According to the Soviet social theorists, as the Soviet Union evolves into a true communist society a "new Soviet man" will concurrently be fashioned. Of course, this objective must be considered in light of the tremendous social changes which are now taking place throughout the world, both in communist and non-communist countries. The general collapse of traditional social frameworks and ways of life in face of the techno-cultural revolution may be bringing about the emergence of a new mass breed of man all over the face of the earth. But the unique feature of the "new Soviet man" is that his sociocultural development is to be planned and guided.<sup>32</sup>

Although the presence of a conscious and centrally planned strategy for social change has historic parallels in Russia's own history under Peter the Great, as well as in Meiji Japan, and in Ataturk's Turkey, in the Soviet case

we have the distinctive combination of planned social change instituted from above, centrally directed and executed by a body whose occupational role is that of effecting change, backed by the power and all the economic and political force which a totalitarian regime can muster, guided by a central

30. *Id.* at 190-91.

31. *Id.* at 197-98.

32. The 1961 U.S.S.R. Communist Party Program set forth in detail the blueprint for the creation of the "new Soviet man." See *The New Program of the Communist Party of the Soviet Union*, in *ESSENTIAL WORKS OF MARXISM* 371-486 (A. Mendell ed. 1961).

theory or ideology, carried out at a relatively unprecedented rate, and extending into every dimension of social life.<sup>33</sup>

In 1960 an authoritative Soviet work entitled *The Foundations of Communist Education*, compiled jointly by the Academy of Social Sciences attached to the Party Central Committee and the R.S.F.S.R. Academy of Pedagogical Sciences, stated in a chapter entitled "Construction of Communism and the Education of the New Man":

One of the most important aspects of the radical reorganization of society during the transition from capitalism to socialism, and subsequently its further development from socialism to communism, is the education of the new man. This is an inseparable, organic part of the struggle for socialism and communism, without which the victory of the new order is altogether impossible. Socialism and communism cannot be consolidated without a fundamental change in the consciousness of people, their views, *mores* and habits.<sup>34</sup>

The goal of creating the "new Soviet man" is based on the Marxian concept of the perfectibility of man, as discussed above. The Soviet social theorists see a vital connection between the material and technical base and the emergence of the "new man." Since people's vices are conditioned by the nature of the social order, it has been argued by many utopian social theorists that a new society must be created before maximum human potential can be realized. However, before you can create a new society you must create a new people. Scientific socialism found a way out of this apparent dilemma by claiming that both human beings and their social conditions can be changed *simultaneously*. Man transforms his social environment, which at the same time transforms him. Thus, the creation of the new Soviet man, "the splendid man of the communist future," is an absolute necessity for the Soviet social theorists. Without the "new Soviet man" there can be no "material and technical base," without the "material and technical base" there can be no "new man," and without one or the other there can be no true communist state.

What, then, is the new Soviet man to be like? Continued Party pronouncements and statements by leading Soviet social theorists indicate that the "new man" will have the following six main distinguishing features: (1) a wholly scientific approach to the world; (2) a new attitude towards labor; (3) a new communist morality; (4) proletarian internationalism combined with socialist patriotism; (5) no mental survivals of bourgeois capitalism (which includes a new attitude

33. A. INKELES, *SOCIAL CHANGE IN SOVIET RUSSIA* 4 (1968).

34. OSNOVY KOMMUNISTICHESKOGO VOSPITANIYA [THE FOUNDATIONS OF COMMUNIST EDUCATION] 5 (Moscow ed. 1960), translated in Pismenny, *The "New Man,"* 4 STUDIES ON THE SOVIET UNION, No. 1, 1964, at 49.

towards property); and (6) immunity to the influence of bourgeois Western ideology. All of these characteristics can be related to the cardinal communist virtue of a boundless zest for work, with additional emphasis on the time-honored virtues of honesty and diligence. Thus, acquisition of a wholly scientific approach to the world does not signify only an accumulation of knowledge, but "occurs . . . above all in the process of socially productive and political activity."<sup>35</sup> Communist morality means not only "utter devotion to the cause of communism" but "is expressed in concrete deeds: in honest labor for the good of the people, in the preservation and multiplication of social wealth."<sup>36</sup> Socialist patriotism means not only to serve one's motherland but also "to be a frontline fighter everywhere and in everything—in the factory, in the fields, in the ranks of our glorious armed forces . . . in science and technology."<sup>37</sup> Even proletarian internationalism is rooted in labor, in the production of economic and cultural wealth and values to serve as models for the socialist nations.

To quote the 1960 Soviet treatise on *The Foundations of Communist Education* again: "The most important thing in a communist education is the development of a communist attitude towards labor. Among the multifarious qualities of a man in a communist society, first place must be assigned to the ability to work for society . . . and concern for raising labor productivity."<sup>38</sup> Under communism, labor is to be transformed into a voluntarily accepted obligation to society.

In comparison, the 1970 antiparasite and "refusal to work" law promulgated in the Russian Republic reflects a more coercive approach to the Soviet masses' voluntary obligation to work according to its capabilities.<sup>39</sup> Under this law a person accused of living a "parasitic way of life" shall be given a warning by the police stating that he should find suitable work. If the individual does not find such work within 15 days, the local government is compelled to assign him a job in the general region where he lives. If he then "maliciously refuses" to work, he is liable to criminal charges and could face up to a year's deprivation of freedom or corrective tasks for the same period.

35. *Kommunist*, No. 5, 1964, at 53, translated in *Pismenny*, *supra* note 34, at 50.

36. *Id.* at 59, translated at 51. See also Glezerman, *Society, the Collective and the Individual*, *Pravda*, Oct. 31, 1966, at 3, translated in 18 *CURRENT DIGEST OF THE SOVIET PRESS*, No. 44, Nov. 23, 1966, at 15; Chkhikvadze, *The Individual and the State: Mutual Responsibility*, *Sovetskoe gosudarstvo i pravo*, No. 1, 1971, at 19, translated in 23 *CURRENT DIGEST OF THE SOVIET PRESS*, No. 9, Mar. 30, 1971, at 1.

37. N. KHRUSHCHEV, *O KOMMUNISTICHESKOM VOSPITANII* [ON COMMUNIST UPBRINGING] 174 (Moscow ed. 1962), translated in *Pismenny*, *supra* note 34, at 51.

38. *OSNOVY KOMMUNISTICHESKOGO VOSPITANIYA*, *supra* note 34, at 24, translated at 51.

39. For a discussion of the antiparasite and refusal to work laws, see Hildebrand, *supra* note 5, at 206-13.

Recent concrete sociological studies of work attitudes and individual goals provide an interesting commentary on the present status of the Soviet people's attitudes toward work. Some of the most striking findings are those concerning the attitudes of Soviet youth. Even though Soviet-educated, molded by the Komsomol (Young Communist League), and socialized within the Soviet totalitarian system, these young people still think and behave differently from what the leaders of the system would optimally like. Rural youth characteristically leave their villages and emigrate to the large cities at the same time the Party needs workers in the rural areas to fill labor shortages. Very few Soviet youths want to work at the new construction sites in the rural areas where they are most needed. From the data presented in Table 1 below, which has been compiled from local surveys made between 1963 to 1967,<sup>40</sup> it appears that the highest percentage of those who are prepared to go to work is to be found in the Estonian Republic, an area which was not part of the Soviet Union until World War II. The lowest percentage is in nearby Leningrad city and province, an area which has been subject to long-time and strenuous Soviet educational efforts. To paraphrase Professor Zev Katz: in the land of "workers and peasants," very few of the youth want to be workers, and much less peasants; the great majority want to go to college and to be members of the "intelligentsia."<sup>41</sup>

Of course, some of these phenomena, such as the high aspiration to college, are a result of Soviet education and sociocultural development. The Soviet young people are more educated, more demanding, more achievement-oriented in accordance with the Soviet-inculcated value system. But this analysis may circumvent the more obvious explanation.

Although the term "alienation" is not usually applied to the Soviet worker, what is found by some sociological surveys in the Soviet Union often amounts to very much the same thing. Almost all survey research about Soviet youth shows a high incidence of labor turnover, of dissatisfaction with work, transgression of labor discipline, deviant

40. See Z. Katz, *Soviet Sociology—A Half-Way House*, Oct. 1970, at 35 (Russian Research Center, Harvard Univ.), citing V. Vodzinskaia, *Vybor professii kak sotsial' pos' naia problema*, 1968, at 7-8 (dissertation at Leningrad Univ.); Ya. Tkach, in *ZHIZNENNYE PLANY MOLODEZHI* 89-93 (Sverdlovsk ed. 1966); Shubkin, *Youth Enters Life*, *Voprosy filosofii*, No. 5, 1965, at 62; M. Titma, in *MOLODEZH I TRUD* 72 (V. Yadov & V. Dobrynina eds. 1970); Aitov, *Obrazovanie rabochykh i ikh trud*, *Voprosy filosofii*, No. 11, 1966, at 23.

41. Z. Katz, *supra* note 40, at 34. Professor Katz's interesting and suggestive work has been published in slightly different form in *PROBLEMS OF COMMUNISM*, May-June 1971.

For a discussion of the various social "classes" in the Soviet Union, see Labedz, *Sociology and Social Change*, *SURVEY: A JOURNAL OF SOVIET AND EAST EUROPEAN STUDIES*, No. 60, July 1966, at 18.

behavior, and so on. Polls about political socialization show that the Soviet youth are a serious problem. Despite the relatively high impact of ideological motivation, for many young Soviet workers labor has not become the personal need it was suppose to be.<sup>42</sup> This is also indicated by surveys about aspirations and motivations of the young people in the Soviet Union. Whereas in early polls the usual aspirations of young people were set in terms of "helping in building communism," "serving the fatherland," "gaining approval of the collective," etc.,<sup>43</sup> the results of recent studies look quite different. For example, Table 2 below sets forth the results of a survey made in Leningrad in 1966.<sup>44</sup> It would appear that volunteering for work at a new construction site was the least attractive to the respondents, whereas "visiting other countries," "achieving material well-being" and "buying a car" were among the main primary and secondary aspirations. However, as Professor Katz has pointed out, "it is impossible to know how much of the manifest change in aspirations is real and how much of it is due to the changes in phrasing the questions and to the atmosphere of legitimization of such answers in the U.S.S.R."<sup>45</sup>

42. A. ZDRAVOMYSLOV, V. YADOV, CHELOVEK I EGO RABOTA [MAN AND HIS WORK] 292-96 (Moscow ed. 1969), English translation published by the International Arts and Sciences Press (IASP), White Plains, New York. See also Yadov, *Man and His Work: Satisfied and Dissatisfied*, *Izvestia*, Mar. 3, 1970, translated in 22 CURRENT DIGEST OF THE SOVIET PRESS, Mar. 31, 1970; Zdravomyslov & Yadov, *Soviet Worker's Attitude Toward Work: An Empirical Study*, in SOVIET SOCIOLOGY: HISTORICAL ANTECEDENTS AND CURRENT APPRAISALS 347 (A. Simirenko ed. 1966).

43. But cf. J. Glagolev, Methodology of Prognostication of Peace and Disarmament Problems, paper presented at the VII World Congress of Sociology, Varna, 1970. See also Katz, *The VII World Congress of Sociology at Varna: An Encounter Between Two Sociological Cultures*, THE AMERICAN SOCIOLOGIST, May 1971, at 177.

44. See Z. Katz, *supra* note 40, at 38, citing S. IKONNIKOVA & V. LISOVSKY, MOLODEZH O SEBE, O SVEIKH AVEHSTNIKAKH (Leningrad ed. 1969).

45. Z. Katz, *supra* note 40, at 39.

TABLE 1

*Life Plans of High School Graduates*

	Want to study:	Want to work and study:	Want to work:	Don't know, no answer:	Total respondents:
Leningrad (city and province)	88.0%	3.0%	3.0%	9.0%	1872
Sverdlovsk (city and one district)	84.6%	—	14.2%	1.2%	567
Novosibirsk (province)	80.0%	12.0%	8.0%	—	—
Kazan (city)	71.5%	10.2%	7.3%	11.0%	2000
Ufa (city)	65.3%	22.5%	3.7%	8.5%	2500
Estonian Republic	58.5%	12.0%	21.0%	8.5%	2260

In an effort to overcome bourgeois tendencies and to inculcate a new social discipline in the masses, the Soviet social theorists have continued to emphasize the ideological role of certain judicial and quasi-judicial institutions. "Particular attention should be paid to the legal education of [Soviet] young people and to inculcating in them a consciousness of their high responsibility to society and to the state and of a deep respect for all standards and rules of the socialist community."<sup>46</sup>

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46. *The Citizen and the Law*, Izvestia, Sept. 22, 1970, at 1, translated in 22 CURRENT DIGEST OF THE SOVIET PRESS, No. 38, Oct. 20, 1970, at 14.

TABLE 2

*Leningrad Survey (1966):**"What are your aspirations for the near future?"*

(Unlimited number of choices allowed)

	Percentage of 2,204 respondents:	First priority:	Second priority:	Total answers:
(1) To get an interesting and well-liked job	60.6%	89.3%	10.6%	1,339
(2) To get a higher education	59.7%	82.6%	17.3%	1,316
(3) To visit other countries	57.5%	38.8%	61.1%	1,269
(4) To achieve material well being	54.9%	69.8%	30.1%	1,209
(5) To achieve good housing conditions	54.6%	72.7%	27.2%	1,202
(6) To raise (professional) qualifications	43.7%	81.4%	18.5%	965
(7) To find true friends	43.2%	81.1%	11.8%	951
(8) To raise children to be exemplary human beings	41.8%	80.5%	19.4%	921
(9) To meet one's love	41.5%	72.9%	27.0%	916
(10) To marry	32.0%	38.9%	61.0%	705
(11) To buy a car	31.4%	32.7%	67.2%	693
(12) To get a secondary education	22.0%	85.4%	14.5%	487
(13) To go to a new construction site	18.4%	34.5%	65.4%	405
(14) Other plans	6.7%	11.6%	8.3%	148

However, the *self-actualizing function* of law in the Soviet context is not to effect the desired social transformation merely by overt coercion:

Undoubtedly, the prospect of juridical sanctions being applied does exercise an educational influence on the less conscious members of society for whom the observance of generally accepted rules of behaviour is yet to become *habitual*. But that does not at all explain the ideological role of law. When, for instance, Soviet doctrine speaks of the educational role of the socialist law, it implies a broad range of questions constituting the content of the law in force: the principles and rules of behaviour it teaches men; the fact that, being fixed in law, progressive ideas and views acquire especial force, because they operate as the mandatory demands of society; that legal regulation must not merely bind, but mainly convince men

that the prescribed behaviour is right, so that the laws themselves must be observed consciously and voluntarily and not under pain of punishment.<sup>47</sup>

#### IV. THE RESULTING HABITUATION <sup>48</sup>

The Marxist-Soviet social theorists contemplate a process whereby man will become habituated to the observance of his communal social duties. They often speak of the "new Soviet man" becoming "accustomed" or "acquiring habits" appropriate to the developing communist state of public self-government. The socialist law and legal system are viewed as having key roles to play in developing the appropriate social consciousness:

The role of law in the life of society is considerable and takes on a special form in social consciousness which is the consciousness of law, that is a system of views and concepts on law, its social purpose and key institutions. Marxist theory devotes great attention to the problem of consciousness of law but it does not in any sense reduce it to the role of the consciousness of law in the application of law. It is the wider problem of studying their comprehension of law and the attitude taken to it by the broadest masses of the population.<sup>49</sup>

There is little indication that the Soviet social theorists view the resulting habituation as an openly *interactive* process wherein the common man can directly affect (and thereby change or abolish) the institutionalized forces which are establishing the appropriate behavior patterns. Rather, the Soviet social theorists seem to view the habituation process as unidirectional, whereby relatively "distant" forces, such as the professional Party leaders, induce observance of the new social norms through a process of accommodation utilizing certain legal and social organizations. There is no immediate indication that the subservience of the legal system to Party control will be eliminated.

A few Soviet jurists and social theorists have at times discussed the educational use of the legal and legislative processes in terms which seem to imply direct interaction of the educators and the educated.<sup>50</sup>

47. THE SOVIET STATE AND LAW, *supra* note 20, at 198 (emphasis added).

48. Portions of this section are based on D. Funk, Law as Schoolmaster: Rule of Law Implications and Soviet Theory, June 1968, at 30-31, 77-83 (Unpublished M.A. thesis in Ohio State University Library).

49. THE SOVIET STATE AND LAW, *supra* note 20, at 198. "The Marxist-Leninist science of law . . . must actively influence the consciousness of the working people and must propagandize and strengthen the democratic principles of life in Soviet society." Zhogin, *Questions of Soviet Law: Abreast of the Times*, *Izvestia*, Jan. 22, 1964, at 3, translated in 16 CURRENT DIGEST OF THE SOVIET PRESS, No. 3, Feb. 12, 1964, at 24, 25.

50. See, e.g., Golunsky, *The Creative Revolutionary Role of Socialist Law in the Period of the Comprehensive Building of Communism*, *Sovetskoe gosudarstvo i pravo*, No. 10, 1961, translated in 1 SOVIET LAW AND GOVERNMENT, No. 1, Summer 1962, at 13, 22.



Here again, however, the creative participation of the masses is conceived in terms of *collective* participation and not individual disturbance to the existing sociolegal system. This concept is consonant with the idea of socialist democracy, which calls for "the broadest participation of the masses in the administration of society and the state."<sup>51</sup>

The resulting habituation theme appears fairly consistently in Marxist-Soviet writings from Lenin to contemporary times. Lenin, for example, stated in *State and Revolution* that:

very soon the necessity of observing the simple, fundamental rules of everyday social life in common will have become a *habit*. The door will then be wide open for the transition from the first phase of communist society to its higher phase, and along with it to the complete withering away of the state.<sup>52</sup>

In this same work, Lenin further indicated that when the stage of true communism is ultimately reached

there will vanish all need for force, for the *subjection* of one man to another, since people will *grow accustomed* to the observance of the elementary rules of social life that have been known for centuries and repeated for thousands of years in all school books; they will become accustomed to observing them without force, without compulsion, without subordination, without the *special apparatus* for compulsion which is called the state.<sup>53</sup>

And again, Lenin stated that the state will be able to wither away "when people have become accustomed to observe the fundamental rules of social life, and their labour is so productive that they [will] voluntarily work according to their ability."<sup>54</sup> For Lenin it was clear

51. Savitsky, *Democracy, Legality and the Individual*, Izvestia, Feb. 20, 1969, at 2, translated in 21 CURRENT DIGEST OF THE SOVIET PRESS, No. 8, Mar. 12, 1969, at 20.

The tendency of the modern phase of Soviet law is to continue the policy of subordination of individual interests to the commands and the interests of society, and to eradicate from the psyche of the Soviet citizen the element of assertiveness in regard to the rights of the individual. Social reforms on which communist society is predicated stress coordination, discipline, and conformity. The message of the social order in the Soviet society addressed to the individual is that through collective action the welfare of the individual is to be achieved. The state and public authority appear in the public eye as the benefactors of all. K. GRYZBOWSKI, SOVIET LEGAL INSTITUTIONS: DOCTRINES AND SOCIAL FUNCTIONS 169-70 (1962).

52. V. LENIN, *STATE AND REVOLUTION* 84 (Int'l Publishers ed. 1968).

53. *Id.* at 73-74.

54. *Id.* at 79-80. Similarly, one year later, Lenin wrote that "in communist society democracy will gradually change and become a *habit*, and finally *wither away*." V. LENIN, *The Proletarian Revolution and Renegade Kautsky*, 3 SELECTED WORKS 87 (Moscow ed. 1960). See also Engels, *Socialism: Utopian and Scientific*, in BASIC WRITINGS ON POLITICS AND PHILOSOPHY 68, 106-06 (L. Feuer ed. 1959).

that in the true communist state man must attend to his social duties through "habit," that is, having become "accustomed" to the appropriate communal behavior patterns.

During the Stalin era, A. Y. Vyshinski added that in the highest phase of communism, "[a]ll will learn to get along without special rules defining the conduct of people under the threat of punishment and with the aid of constraint."<sup>55</sup> He also stated that people will be "so accustomed to observe the fundamental rules of community life that they will fulfill them without constraint of any sort."<sup>56</sup> It was also about this time that S. A. Golunskii and M. S. Strogovich wrote that in communist society

[t]he rules of life in common will be observed without the restraint exerted by a state mechanism, solely by virtue of the conscious discipline of the communist social order, respect for each other and for their common interests, and established habits which have become part of a mode of living.<sup>57</sup>

Numerous Soviet social theorists have continued to make the point that observance of the norms of communist society will become habitual. For example, G. Shakhnazarov, writing on communist society, has emphasized that the rules of social behavior must become a habit, that there must be a "habitual sense of collectivism" and that one of the most important tasks of communist education is to instill proper behavior patterns in the masses until they become second nature.<sup>58</sup> The Comrades' Courts and the Peoples' Volunteer Militia are viewed as contributing significantly to this task.<sup>59</sup> A. I. Denisov has added that:

From the time when all [the people] are administering social affairs on their own, the observation of the fundamental rules of human society will gradually come to be a universal habit, obviating the need for that apparatus of organized and systematic compulsion called the state."<sup>60</sup>

Similarly, Ye. Klyenov has stated that:

The advance of Soviet society toward communism requires steady intensification of educational work among the people and the creation of conditions that will make the observance of

55. A. VYSHINSKI, *THE LAW OF THE SOVIET STATE* 52 (1948).

56. *Id.*

57. Golunskii & Strogovich, *The Theory of State and Law*, in *SOVIET LEGAL PHILOSOPHY* 351, 399 (H. Babb, transl. 1951).

58. Shakhnazarov, *From the State of Communist Self-Government*, *Politicheskoe samoobrazovanie*, No. 8, 1960, translated in 1 *SOVIET REVIEW*, No. 4, 1960, at 54, 60-61.

59. See Hildebrand, *supra* note 5, at 198-206.

60. Denisov, *On the Relationship of State and Society in the Period of Transition from Capitalism to Communism*, *Sovetskoe gosudarstvo i pravo*, No. 4, 1960, at 29, translated in 12 *CURRENT DIGEST OF THE SOVIET PRESS*, No. 22, June 29, 1960, at 17, 19.

rules and regulations become a human habit, and work a vital human necessity.<sup>61</sup>

In a more extended statement, N. Mironov seems to foresee the replacement of state compulsion by habituation after a process of reeducation:

In socialist society compulsion therefore remains an important means of eradicating crime. Later on, of course every citizen will observe the laws voluntarily, out of deep inner conviction and awareness of moral duty, by force of habit. But until they do, the state must uphold law and order by applying compulsion. It now becomes a matter not of rejecting compulsion but of gradually narrowing the sphere of its application, spearheading punitive measures against imperialist agents, confirmed criminals, dangerous recidivists and others who do not lend themselves to reeducation.<sup>62</sup>

One of the pronouncements of the 1961 New Program of the Communist Party was that in communistic society proper social norms will become a habit for everyone.<sup>63</sup> In a more recent statement, P. S. Romashkin has claimed that "the conscious and voluntary observance of the rules of socialist community—already second nature to most Soviet people—must become a habit with all members of society, making compulsion by the state superfluous," since one of the necessary requisites of the emergence of the conditions necessary for true communism is observing "the rules of the communist way of life as a matter of habit."<sup>64</sup>

Through a process of education, the disciplined, goal-oriented, striving, energetic, optimistic, productive "new Soviet man" will be habituated so that he will conform to proper social norms and values without state compulsion. This educational process is to be effectuated through the use of certain judicial and quasi-judicial institutions (the regular courts, the Comrades' Courts, and the Peoples' Volunteer Militia), thus ultimately enabling man (it is hoped) to live in an organized communist society without alienation and without the coercive institutions of state and law.

Most Soviet social theorists have not concerned themselves with an analysis of the specific type of educational process in which they

61. Klyenov, *Public Participation in Settling Labor Disputes*, *Sovetskoe gosudarstvo i pravo*, No. 1, 1960, translated in 2 *SOVIET REVIEW*, No. 11, 1961, at 34.

62. Mironov, *Persuasion and Compulsion in Combatting Antisocial Acts*, *Kommunist*, No. 3, 1961, translated in 2 *SOVIET REVIEW*, No. 9, 1961, at 54, 61.

63. *The New Program of the Communist Party of the Soviet Union*, *supra* note 32, at 458, 466.

64. Romashkin, *The Soviet State and Law at the Contemporary Stage*, in *FUNDAMENTALS OF SOVIET LAW*, 7, 14 (P. Romashkin ed. & Y. Gdobnikov transl., no date).

propose to utilize certain sociolegal institutions. However, this may sometimes be inferred from their descriptions of the educational process itself. In addition, underlying the whole communist program is the general idea that the Communist Party, as the vanguard of the revolution, must be the decision-making body which will decide how man is to be remade in preparation for the evolving communist state. In general, therefore, the "new Soviet man" is merely subjected to the educational process, and it is not intended that he should directly influence society's ultimate goals by his own individual participation and interaction within the institutionalized sociolegal system.

Recent Soviet literature indicates that the educational process utilizing certain judicial and quasi-judicial institutions can be categorized as *authoritarian*. It is common for Soviet jurists and social theorists in discussing the educational use of legal institutions in changing man to refer to a process of "instilling" or "inculcating" new social attitudes, new labor discipline, and so on. They also refer from time to time to the process of "molding," "shaping," and "refashioning" the new Soviet man. Comrades' Courts are viewed as playing an educational and indoctrinational role.<sup>65</sup> Similarly, the regular court's role as educator and "propagandist of Soviet laws" is said to be fulfilled if the trial is well organized and the sentence is correct.<sup>66</sup> Moreover, the courts are to continue their activity "aimed at influencing people who do not submit to the rules of socialist society and who resist education."<sup>67</sup> These terms and the actual use of certain judicial and quasi-judicial institutions are indicative of an authoritarian bias in the resulting educational process.

For the purposes of this discussion, *authoritarian education* can be defined as that process whereby individuals are guided in developing appropriate attitudinal and behavioral patterns by external influences which do not permit direct individual interactive participation in determining the communal tenets and *mores* to be inculcated. Professor Sydney Hook has described authoritarian education as follows:

We shall . . . call those tendencies in education authoritarian, which, by blocking the roads of inquiry, prevent freedom of intellectual choice; which, by discouraging critical participation in the processes of learning, obstruct individual growth; which, by imposing dogmas of doctrine or program, blind students to relevant alternatives and encourage conformity rather than diversity; which, in short, fail to

65. See Hildebrand, *supra* note 5, at 200-06.

66. See *id.* at 213-21.

67. Rudenko, *Intensifying the Struggle Against Especially Dangerous Crimes*, *Izvestia*, May 7, 1961, at 5, translated in 13 CURRENT DIGEST OF THE SOVIET PRESS, No. 18, May 31, 1961, at 21.

recognize that the supreme and ultimate authority, the final validating source of all other authorities in human experience is the self-critical authority of critical method—or intelligence.<sup>68</sup>

Professor Horace M. Kallen has described the authoritarian element as follows:

In the history of teaching, such words as 'indoctrination,' 'instruction,' 'inculcation' give away the persistent relation of teacher to pupil, of adult to child. It is a relation of superior to inferior power, of hardness to plasticity, of authority to dependence. The primary activities upon which the later meanings of the words are variations, are activities of building in, stamping in, talking in. . . . [C]ommonly the doctrines of the inculcators are presented as self-evident ineluctable truths. But it must be obvious that if they were such, indoctrination would be unnecessary. If indoctrination is necessary, the doctrines can be neither self-evident, nor ineluctable.<sup>69</sup>

Authoritarian education can be contrasted with the pervasive ideal of liberal democratic education which is "to achieve a community of persons who, on the basis of reliable knowledge about themselves and the world in which they live, can develop freely in a free society."<sup>70</sup>

The main attributes of authoritarian education stand out clearly from these discussions. The relation of teacher to pupil, of parent to child, involves external dictation and imposition, formation by a superior from without by means of indoctrination, to mold the pupil to conform to the appropriate model which is in the mind of the guiding teacher. The key factor in this authoritarian educational relationship is that the teacher, as superior, necessarily recognizes no right in the individual being taught to resist the molding process. The process is that of unidirectional habituation, and not mere training or conditioning. As Professor John Dewey remarked with respect to authoritarian education: "[t]he philosophy is eloquent about the duty of the teacher in instructing pupils; it is almost silent regarding the privilege of learning,"<sup>71</sup> or, we may add, of not learning.

If man is to be remade by a process of indoctrination, we may call this educational use of legal institutions "authoritarian." The relationship

68. Hook, *The Danger of Authoritarian Attitudes in Education*, in *ISSUES IN EDUCATION: AN ANTHOLOGY OF CONTROVERSY* 117 (B. Johnson ed. 1964).

69. H. KALLEN, *THE EDUCATION OF FREE MEN: AN ESSAY TOWARD A PHILOSOPHY OF EDUCATION FOR AMERICANS* 149 (1949). Cf. C. LEWIS, *THE ABOLITION OF MAN: OR, REFLECTIONS ON EDUCATION WITH SPECIAL REFERENCE TO THE TEACHING OF ENGLISH IN THE UPPER FORMS OF SCHOOLS* 38-41 (1947).

70. Hook, *supra* note 68, at 117.

71. J. DEWEY, *DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION* 71 (3d ed. 1966).

between educator and the individual being educated here is strictly that of superior to inferior, of parent to child. The individual is subjected to the educational process and changed or educated whether he consents or not.<sup>72</sup> It is not necessarily his "true nature" that is developed by the educational process, nor is he necessarily permitted to affect or change that process in any significant way.

Many persons consider a certain manner of operation to be a necessary requirement for an institution to be called "legal." Since Dicey's classic exposition,<sup>73</sup> operation in accordance with the *rule of law* has often been considered one of these necessary requirements. Actions which are not taken under reasonably specific rules are considered administrative and therefore not legal. Discretionary administration proceeds in an ad hoc fashion without reference to general rules, and it usually appears arbitrary in comparison with the rule of law. However, many actions of ordinary courts are not governed by rules to any significant degree. For example, in the United States there are only very broad rules governing such matters as the equitable division of property of a husband and wife about to be divorced, the selection of a specific criminal penalty (less than the maximum) to "fit the crime," or the attributes of a "reasonable man" throughout the law of negligence and contract. Similar difficulties exist in defining "contributing to the delinquency of a minor," "monopoly and attempts to monopolize," and in the determination of what charitable scheme is "as near as possible" to the one that became impossible to carry out.

Nevertheless, to advocate the use of legal institutions according to the *rule of law* doctrine is to advocate adherence to certain minimal standards of formalized legal procedure and standards of substantive legal content.<sup>74</sup> The rule of law, therefore, provides a standard by which the operation of legal institutions may be judged.

In contrast, if a social reformer is advocating the use of legal institutions for an authoritarian educational purpose (in an effort to change or inculcate certain behavior patterns), he cannot expect the legal institutions to operate strictly in accordance with the rule of law doctrine in order to carry out this educational program. Instead, the legal institutions must necessarily emphasize administrative action and correspondingly decrease the rule of law. (Of course, he may not value the rule of law as highly as the desired change in human nature or his proposed social reform, and if this is the case, then he may not be overly

72. Of course, even if coerced it may still be his will—*coactus tamen voluit*.

73. See A. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION, ch. xii (10th ed. 1959).

74. Concerning the *rule of law* doctrine, see *Symposium on the Rule of Law*, 59 MICH. L. REV. 487-613 (1961). Cf. H. MANNHEIM, CRIMINAL JUSTICE AND SOCIAL RECONSTRUCTION, ch. x (1946); Pound, *The Rule of Law and the Modern Welfare State*, 7 VAND. L. REV. 1 (1953).

concerned with the dysfunctional effects of his proposals on the rule of law.)

Briefly stated, there appears to be a tendency to advocate administrative operation which is contrary to the rule of law when the authoritarian educational use of legal institutions is advocated in the Soviet Union.

There are, of course, Soviet jurists and social theorists (at least since the death of Stalin) who have sought to expand legally protected individual rights. These jurists can be referred to as *proceduralists*,<sup>75</sup> in that they generally emphasize "socialist legality" in the sense of "the prevention, where possible, of wholly arbitrary action."<sup>76</sup> Such proceduralists can be contrasted with what might be referred to as *paternalists* or *parentalists* who emphasize the use of judicial and quasi-judicial institutions as a process of authoritarian education and ultimately the substitution of communal sanctions for judicial process. The debate between these two schools of legal thought has been summarized as follows:

In [the] post-1957 period two overlapping processes were at work; on the one hand, the institutional leeway in terms of codes, statistics, textbooks, and procedural clarification, was being made up; on the other, a new trend towards the substitution of communal sanctions for judicial process was being launched, with the evident approval of the party authorities. The landmarks of the first were the All-Union enactments of December 1958, which included new All-Union Basic Principles of Criminal Law and of Criminal Procedural Law; and after that the derivative Republican Codes of Criminal Law (brought out seriatim in the period May 1959-1961) and of Criminal Procedural Law. The landmarks of the second were the institution in 1958 of the unpaid, voluntary guardians of public law and order or *druzhinniki*, as they later came to be known; the breathing of new life into the comrades' courts (which had existed on and off ever since 1919), and the regularisation in mid-1961 of their status, scope, and functions; and the widespread reintroduction of collective probation (*peredacha na poruki*) which had also fallen into disuse, as well as of other forms of public participation in the discharge of justice ('communal defenders' and 'communal prosecutors,' commissions for the protection of socialist legality, street committees and councils of elders, etc.).

These two trends, which might be called, respectively, the proceduralist and the paternalist, were not, of course, necessarily mutually exclusive nor, for the matter, mutually inimical. The effective resuscitation of communal probation dates from the December 1958 enactments, in addition to

75. See Campbell, *supra* note 7, at 56-58.

76. I. LAFENNA, *STATE AND LAW: SOVIET AND YUGOSLAV THEORY* 51 (1964).

which it has also been the subject of numerous decrees of the U.S.S.R. Supreme Court. Nevertheless, they definitely tend to pursue divergent lines: to take but one specific point, the comrades' courts can deal with actionable offences without being bound by standard judicial procedure.<sup>77</sup>

The proceduralist, in the Soviet Union, argues in terms of procedural rights and sanctions, and the rule of law doctrine; the paternalist, on the other hand, thinks in terms of public censure and communal ostracism, and the "democratizing of justice." The precise demarcation of where socialist law ends and where communal action takes over continues to arouse considerable controversy in the Soviet Union.

The stateless aspect of communism, coupled with the continuing economic administration of society, requires that the "new Soviet man" be educated so as to observe the rules of communist life without overt state coercion. As a functional means for attaining this goal, certain judicial and quasi-judicial institutions are to be utilized in the Soviet Union to educate deviating individuals, as well as the general populace, so that the new normative patterns of behavior will become habitual. It remains to be determined whether this approach, which is advocated by the Soviet "parentalists," carries any dysfunctional implications for the rule of law in the Soviet system during the remaining life of the coercive legal institutions.

#### V. DYSFUNCTIONALITY<sup>78</sup>

We may safely assume, from the perspective of the Soviet "proceduralists" that the rule of law doctrine implies a large number of complex normative rules in order to relate importantly to the complexities of Soviet life prior to the realization of true communism. It would be pointless to assume that such rules could be reduced to a few absurdly simple ones. But if the rules are numerous and complex, so as to relate importantly to the complexities of socialist life, it is safe to assume that satisfactory mastery of them may be beyond the competence of a part-time effort by ordinary citizens of average intelligence. The adjudication process cannot operate under a rule of law unless there is some minimum mastery of the rules and their various possible applications in the numerous situations which most assuredly will arise. As these rules become more numerous and more complex, a judicial profession at some point becomes necessary for their just application. All members of the general public obviously cannot be expected to specialize in this area.

The Comrades' Courts are one legal institution that the Soviet social

77. Campbell, *supra* note 7, at 57-58 (emphasis added).

78. Portions of this section are based on D. Funk, *supra* note 48, at 84-89.



theorists rely on to carry out the educational task of developing the "new Soviet man." These courts have been specifically designed to provide a forum for the adjudication of minor disputes, where the adjudicators are members of the general public (preferably fellow-workers and neighbors) of the person appearing before the court. While this does not necessarily prevent these social "courts" from being considered *legal* institutions even though they are not staffed by professional judges, this does mean that there may be a dysfunctional effect on the rule of law when members of the general public are used as adjudicators instead of professional judges. Indeed, it can hardly be expected that members of the general public can have the same familiarity with the rules of law as a profession of specially selected, trained and experienced judges. The Comrades' Courts must necessarily decide cases on a somewhat ad hoc basis, which is the very essence of discretionary administration, and therefore is categorically opposed to the rule of law. Thus, the Comrades' Courts may be viewed as increasing the role of administration as opposed to the rule of law.

This shift from legal to administrative processes is at least minimally consonant with the basic tenet of Marxist ideology that the state and its legal institutions will be replaced by informal socioeconomic administration. However, our concern here is to indicate that the shift from a system of formalized legal institutions to a system of discretionary administration which stresses a form of authoritarian education may manifest dysfunctional implications for the rule of law.

This tendency appears also when Soviet jurists and social theorists advocate an increased utilization of the more traditional legal institutions in order to further the education of the "new Soviet man" in preparation for communism. Perhaps it is theoretically possible for a judge to play the role of a detached, independent adjudicator, bound by the laws on the one hand, and impartially rendering a decision within the scope permitted by those laws while, on the other hand, lecturing, teaching and attempting generally to influence the person before him (as well as the general public) in an authoritarian and parental manner. However, it seems much more likely that these two roles may be mutually exclusive under most circumstances. When the judge assumes the role of authoritarian parent, he may greatly detract from that impartial independence that is necessary for the rule of law. And, insofar as the judge succeeds as an authoritarian educator of the defendants before him, he may detract from the judicial administration according to the rule of law.

The selection of a particular sentence to fit a specific defendant is not ordinarily part of the rule of law doctrine. However, in most Western legal systems maximum and minimum limits for sentences are ordinarily prescribed, and within these limits the judge may be free to

select the sentence most appropriate to the particular crime and the specific defendant. Although the selection of a particular sentence for a specific defendant is not part of the rule of law doctrine, the idea that this selection must be based on the criminal acts of the defendant is, indeed, an integral part of the rule of law. When the judge selects the appropriate sentence, not merely with the view to the immediate effect on and appropriateness for the defendant before him but also with concern as to the effect on others present in the courtroom, as well as the general public, another element of discretionary administration is introduced. Perhaps in theory the sentence that is appropriate for the specific defendant may also have the desired educational effect on the audience, but it seems much more likely that, insofar as the judge considers primary the educational effect on the spectators, he may depart from the rule of law and fail to decide the case on those factors over which the particular defendant had control. To this extent, the operation of the legal system according to the rule of law is likely to be diminished and the role of discretionary administration correspondingly increased.

This result is even more obvious with respect to exemplary or demonstration trials by which the Soviet courts attempt to use a particular trial as an "object lesson" for others. Here again, in theory it may be possible for a "trial" to have the same outcome, whether it is intended as an example for others or not. But it seems much more likely that, in serving its avowed positive propagandistic function, this will not be so. Admittedly, the doctrine of *stare decisis* in Western legal theory can be interpreted as viewing the trial procedure as having at least three general functions: (1) the disposition of the particular case under preexisting rules, (2) the extension of these rules to accommodate the special case, and (3) the instruction of others in a similar position on the theory that security and certainty require that accepted and established legal principles, under which rights may accrue, be recognized and followed. Clearly these functions are consistent with the rule of law. In contrast, the specific use of a particular trial to educate others in an authoritarian way implies not just the extension of rules, but rather an overriding emphasis on the educational use of the trial and the resulting decision. If the judge intends the outcome to be used in this way, then this intention will most certainly affect the outcome of the case itself. Stated another way, the outcome of a particular trial may not be based strictly on actions over which the defendant had control, since the judge is likely to be influenced by the educational effect which he intends his decision to have on others. This again increases the element of discretionary administration and correspondingly diminishes the rule of law.

In summary, it can be argued that the use of Soviet legal institutions

for the authoritarian educational purpose of changing and perfecting man in preparation for communism generally tends to increase the role of discretionary administration and to diminish the rule of law. Such quasi-judicial arrangements as the Comrades' Courts and other specialized tribunals may invite the danger of informal action without procedural safeguards. It may, therefore, be misleading to consider such development as an advance toward "popular participation." No attempt has been made herein to measure the extent of this effect, or to document by quantitative sociological studies the actual dysfunctionality caused to the Soviet sociolegal system. There is little evidence that the Soviets have attempted objectively and by means of "concrete sociological research" to determine comprehensively the efficacy of utilizing certain judicial and quasi-judicial institutions for authoritarian educational use. Clearly, if the social reconstruction of the "new Soviet man" is to be optimally guided for the attainment of the communist state of public self-government, then it would seem imperative for the Soviets to develop and explicate their own sociology of law based upon the methodology and ideological constructs of the Soviet social sciences.

#### VI. CONCLUSION

During the transitional period, prior to the complete "withering away" of the state and its coercive legal institutions, the role of socialist law and its attendant sociolegal institutions is conceived in the Soviet Union as educating and directing the masses in behavior patterns appropriate for the future stage of true communism. The "new Soviet man" must be educated and trained to voluntarily observe the norms required for the continuing socialist administration of the economic means of production and for the forthcoming stage of public self-government. As Professor Berman has stated, "the main purpose of official law is to shape, and develop that unofficial law-consciousness, so that people will actually think and feel what the state, through official law, prescribes."<sup>79</sup>

The trend in the Soviet Union to rely on the judicial system not merely for resolution of specific legal disputes but also to serve a more general function as an agent of socialization for the entire citizenry—educating the public to the major values of society and of the legal system—may be paralleled by a similar trend today in the United States, particularly in certain quasi-judicial and administrative settings. Indeed, it is quite possible that this trend is a general feature of legal development in modern industrial societies. "And clearly the

79. H. BERMAN, *supra* note 7, at 282.

potential function of law as a socialization mechanism has important implications for the attempt consciously to use legal form and substance in the promotion of more general social change."<sup>80</sup>

The Soviets contemplate a social "habituation" process whereby the "new Soviet man" will become accustomed to maintaining and carrying out socialist laws, caring for socialist property, maintaining an honorable attitude towards the Soviet state, social duty and labor discipline, and respecting the rules of socialist life together.<sup>81</sup> There is no express avowal by the Soviet social theorists that this habituation process is necessarily *interactive*—it is not intended that the general populace who are acquiring the "habits" of approved socialist behavior should also actively participate in the determination and delineation of exactly what social norms should be politically approved. Indeed this latter process is generally viewed *unidirectionally* within the Soviet system, in that the social directives of the Communist Party, as manifested through the operation of certain judicial and quasi-judicial institutions, is usually determinative of proper socialist behavior. It has been submitted that this indoctrinational use of certain legal institutions can be categorized under the general heading of *authoritarian education* and that this approach to the creation of the "new Soviet man" may have certain dysfunctional implications for the rule of law doctrine in the Soviet Union.

From this perspective the quasi-judicial institutions such as the Comrades' Courts and the Peoples' Volunteer Militia might be viewed as merely subsidiary and advisory organs since they operate fully under the direction of the professional Party and state officials. However, overlooking certain obvious privileges, it must be remembered that the professional members of the Party are also members of the citizenry of the Soviet State (although a rather elite minority of that general citizenry). Nevertheless, the old guard must inevitably wither and die or be replaced. Furthermore, as discussed above, the unidirectional interpretation overlooks the inherent interaction found in any sociolegal system where conflicts of interest and dispute situations invariably arise. Indeed, the Soviet social theorists are quick to acknowledge that "living" and creative communism is the cause of the masses themselves, the result of the creativity of collective millions.

In the area of "creative social development" it is necessary, state the Soviet social theorists, to disclose the existing societal possibilities and then strive for the realization of those options that most closely

80. E. SHUR, LAW AND SOCIETY: A SOCIOLOGICAL VIEW 20-21 (1968).

81. See Fundamental Principles of Legislation on the Judicial Structure of the U.S.S.R., and Union and Autonomous Republics, art. 3, ¶ 1 (1958), translated in H. BERMAN, *supra* note 7, at 305.

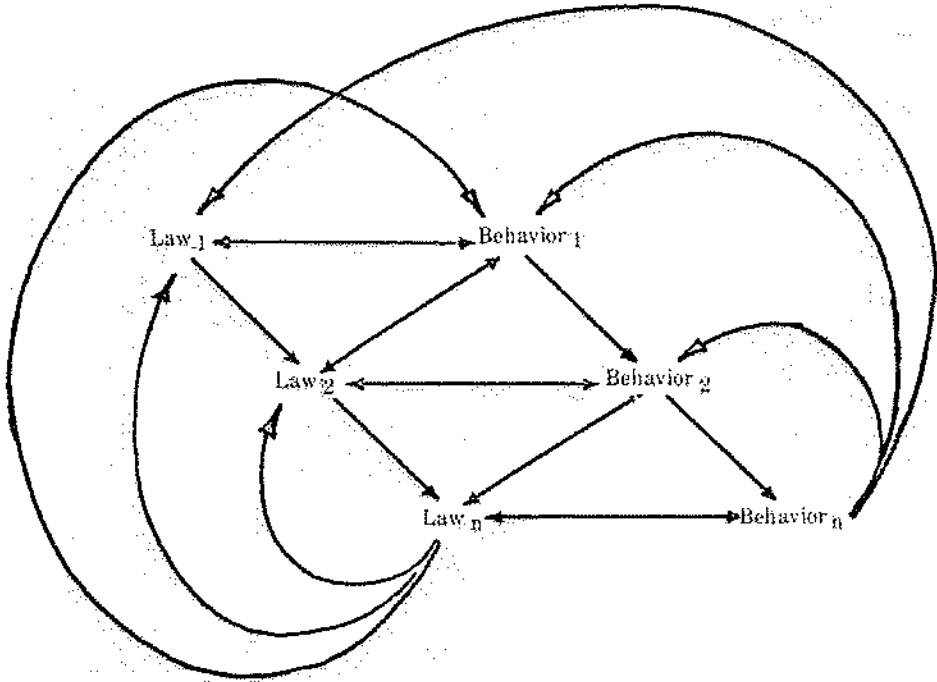
approximate the requirements for the steady and progressive development of the Soviet society. The general direction of this creativity is determined by the leadership of the Communist Party, which in turn must rely on modern scientific social theory. The Soviet social theorists believe that the Marxist-Leninist theory, in reflecting the general laws of social development, makes it possible to use those laws in practice to foresee the basic directions of historical development, and to determine the most appropriate ways and means of building communism. However, in practice this societal construction is always a many faceted and contradictory process that must be under the Party's constant observation so that one may know precisely where and when there appear various difficulties and new contradictions, whether distortions and weak links are arising, and where, on the other hand, progressive "growth points" arise. The Soviet social sciences have the collective obligation of showing the causes of these phenomena, of studying the favorable as well as the negative factors, and of helping to disclose the realization of the activity of the masses which includes those creative potentialities that are inherent in the socialist system.

Legal institutions—such as the courts, certain sociolegal organizations, laws, and implied sanctions—may serve many functions within a complex social system. This article has suggested a sociological typology which tentatively divides these functions into nine categories, which can be used to analyze modern legal systems and to clarify certain interactional aspects of such dynamic ongoing systems. Although the self-actualizing function of law has been discussed in this brief outline as characteristic of the role of law in the Soviet system, it is submitted that this same function exists with varying degrees of emphasis in all other modern legal systems.

Obviously, this article has only brushed the surface of a vast area of sociological jurisprudence where much research and comparative analysis is needed. Thurman Arnold once described the judicial trial in Western society as a "series of object lessons and examples. . . . It is the way in which society is trained in right ways of thought and action, not by compulsion, but by parables which it interprets and follows voluntarily."<sup>82</sup> The extent to which this statement is valid needs to be empirically tested. Future sociolegal research in this general area should include a comprehensive comparative analysis of the effectiveness of the educational and heuristic use of legal institutions in other social systems, and an analysis of the extent to which emphasis placed on the various functions of law within a legal system represent a particular concept of man and of the perfectibility of human nature. To paraphrase Rousseau: Whoso would undertake to give legal institutions

82. T. ARNOLD, *THE SYMBOLS OF GOVERNMENT* 129 (1935).

to a People must work with full consciousness that he has set himself to change, as it were, the very stuff of human nature.<sup>83</sup>



83. See Rousseau, *supra* note 1, at 205.