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## THE CRISIS IN THE MARXIAN THEORY OF LAW

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IN CONTRAST to the democratic countries, in the present day dictatorships, and particularly in the Communist dictatorship, only one definite doctrine can exist at any given time on any social problem, and this holds true also as regards the problem of what is and what should be law. Such a condition is but the application of the principle of officially managed culture based on "official truth."<sup>1</sup>

If at any given time in communist society there can be only *one* basic theory of law, it does not at all mean that the *same* theory of law is adhered to in the communist regime through the entire course of its historical existence. On the contrary, the official theory of law in communist society shows considerable fluctuations which are parallel to the changes in the nature itself of this society and to the changes in the tendencies of its development.

How can the possibility of fluctuations be explained? Communist society, which is being created in Russia, is an attempt to transmute the Marxian doctrine into reality. This doctrine had been developed into a system long before the beginning of the

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<sup>1</sup>On the principle of official truth see my article *Die offizielle Wahrheit in ARCHIV FÜR RECHTS-UND WIRTSCHAFTS-PHILOSOPHIE*, 18 (1925). J. N. Hazard, *Cleansing Soviet International Law of anti-Marxist Theories*, *AM. J. INTER. LAW*, April 2, 1938, referring to Korovine's views (KOROVINE 49, *HARV. L. REV.*), says: "No theory in this field can be termed an official one, for each represents only the opinion of a single legal theoretician or his school." However, if one takes into consideration (1) that no work can appear in the press of the communist state except in official publications controlled by Party men, (2) that no one can teach in Soviet institutions of higher education otherwise than following a program approved by the administration which is composed of similar Party men, (3) that the principle of unity in thought is adhered to in the Communist Party as rigidly as it had been in the past in the German General Staff—it becomes clear that only those opinions can be *expressed* which are in accord with the official doctrine. Korovine's testimony is therefore deprived of any convincing force.

experiment, and it would seem that its application could give but one definite and invariable result.

Actually, however, the application of the Marxian doctrine to the social reconstruction of Russia assumed various forms—the dosage, the pace, the ways and practical methods changed; periods of advance alternated with periods of retreat. The present day sociology of knowledge believes that each doctrine is determined by the social situation in which it was created. This principle can be reversed: each social situation is necessarily expressed in corresponding doctrines. Therefore, to changes in the social structure of Russia in the various phases of the communist experiment there had to correspond changes in the doctrine, in particular a changing theory of law.

These changes could take place without a breaking away from the basic doctrine of Marxism due to two circumstances. The first is the extreme contradiction of Marx's and Engels' statements regarding law and the state, which is vividly brought out in the excellent work of P. I. Novgorodtsev.<sup>2</sup> This contradiction makes it possible to substantiate the evolutionary-historical and revolutionary-utopian interpretations of Marx and Engels by an equal number of equivalent quotations. The second circumstance is the exegetic nature of the official doctrine of law: it is completely reduced to an authoritative (official) interpretation of principles laid down in the "Holy Writ of Communism". Historical study shows that exegetics are always apt to lead to fluctuations and controversies; it will suffice to recall the variety in interpretation of the Bible by the different Christian denominations.

There were four basic periods in the development of the communist society:

- (1) the period of war communism
- (2) the period of the New Economic Policy
- (3) the period of the "second Socialist offensive"
- (4) the period of seeking a compromise with the national-historic culture.

To each of these periods there corresponds its own shaping of legal theory. But, of course, it is impossible to expect the changes in the social structure to become *immediately* reflected in the theory of law. The phenomenon of "cultural lag" is well known to contem-

<sup>2</sup>ON SOCIAL IDEAL (in Russian), (5th ed.) Berlin, 1922.

porary sociology. The lag was, of course, greater during the transition from the first to the second, and from the third to the fourth periods than during the change from the second to the third. The second and fourth periods represent retreats in the communist experiment, and for many orthodox communists the adoption of corresponding ideologies proved to be extremely difficult.

The first and second periods have already completely passed into history, while the present day crisis in the Marxian theory of law is accompanying the transition from the third to the fourth period. The discussion of the two first periods, therefore, can be limited to a few words whereas the third and fourth periods should be discussed in greater detail.

During the period of war communism, 1917-1921, a complete negation of legal form was actually dominant. In 1920, Bukharin, in *The Economics of the Transitional Period*, advanced a theory which is now declared "harmful and anti-Marxian", although it can be formulated in direct quotations from Marx—it is the theory of the withering away of the proletarian law and state. Reisner, Goikhbarg and Stuchka, the pillars of the juridical thought of that period, published their basic works during the NEP (New Economic Policy), but the ideas which they contain had been expressed by them earlier. These ideas, in their substance, amount to the negation of the possibility and necessity of the existence of law within the framework of communist society. According to Goikhbarg, "law, even more (than religion), is a poisoning, stupefying opium for the people". Reisner says: "we still do not know whether we (the communists) need law." According to Stuchka's conviction, the relations between individuals in socialist society will be regulated not by coercion (even if it be legal), but by conscious goodwill of the workers.

The period of the NEP, 1921-1928, which was characterized by a partial restoration of private-capitalistic relationships in production and exchange, was at the same time a period of great development of Soviet law; codes were published, attempts were made to revive scientific legal literature. Under such conditions complete negation of law became impossible. According to Stuchka, a partial restoration of bourgeois law was taking place, while at the same time the socialist law regulating the relations between the links of socialist economy was recognized; this was a law for

which the conception of planned contract was characteristic. According to Reisner, Soviet law was becoming complicated: to the socialist law of the working class there was added the peasant class law and the bourgeois class law, and in many instances the Soviet regime retained the forms of the bourgeois individual law.<sup>3</sup>

Then the NEP was replaced by the second socialist offensive, 1928-1934, which proceeded under the sign of "Five Year Plans". It was officially proclaimed that the primary aim was the building of a classless society, then—that this aim was almost attained—that classes no longer existed, although some individuals with hostile class consciousness still remained. Once more the revolutionary-utopian version of the Marxian doctrine of law and state was applied to Soviet actuality, and the assertion was made that the existence of law in the new society had lost all sense. This viewpoint found a talented and consistent supporter in the person of E. Pashukanis, who, in 1930, at the congress of Marxian political scientists, was proclaimed the foremost representative of Marxian jurisprudence.

According to the teachings of Pashukanis, law and morals are not eternal abstract categories of human community life, but merely forms of existence in bourgeois society. No law existed in primary communist society; in feudal society it was only in an embryonic state; in the early socialist society it must at once begin to wither away as a body foreign to it; in the fully developed communist society there will be no law.

Why is this so? Because the process of juridization of human relations is parallel to the process of development of the commodity-monetary economy. The subject of rights is in fact the commodity-owner, and he alone. The logic of juridical relations corresponds to the logic of social relations in commodity producing society. The form of value, under conditions of a developed commodity economy, becomes universal. But in order that products of labor could be related to each other as values, individuals, in their relations to each other, must be independent and equal persons. On the contrary, the logic of relations between rulers and subjects is only partly compatible with the system of juridical conceptions. The state, as an organization of class domination, does not require legal interpretation and essentially does not allow

<sup>3</sup>LAW, OUR LAW, LAW OF OTHERS, GENERAL LAW, Moscow, 1925, 244.

it. The greatest intensity of juridization is reached in criminal law. In bourgeois society crime is regarded as a special form of transaction in which the exchange relationship is established *post factum*, after the arbitrary act of one of the parties (the criminal). The characteristic ratio between crime and retribution is nothing else but an exchange ratio.

The deductions that Pashukanis made from these theoretical principles brought him into disgrace. If law is merely a form of bourgeois relationships, it is incapable of being socialist in substance. Therefore, as soon as socialism begins to be realized, law begins to wither away. Law, in his opinion, began to wither away in the Soviet state, and the state itself with it, since 1917. After a delay caused by the NEP this withering away proceeded rapidly. The term "socialist law" is fundamentally contradictory, and the Soviet jurists are called to bury law and replace it by other forms of regulation of human relations. Criminal law in particular, deprived of its judicial form, must turn into a system of expedient measures of defense.<sup>4</sup>

Numerous Soviet jurists endeavored to develop and supplement Pashukanis' basic doctrine and the practical deductions derived from it.<sup>5</sup> According to Aleshin, "the withering away of the state and the law—these problems are put now in a concrete way, in practice. These problems are transformed from those of pure theory to those of actual immediate and political significance."<sup>6</sup> Kareva, in the journal *Sovetskoe Gosudarstvo*, convincingly demonstrated the contrast between the dictatorship of the proletariat and democracy—a regime based on law. Venedictov declared that

<sup>4</sup>These ideas were already developed by Pashukanis in his book *THE GENERAL THEORY OF LAW AND MARXISM*, published in 1926, which went through many editions, and in a series of supplementary works of which the most important is *THE PROLETARIAN STATE AND THE BUILDING OF A CLASSLESS SOCIETY*, 1932. Pashukanis' ideas gained authority about the year 1930. For a more detailed expression of Pashukanis' theories see J. N. Hazard, *Housecleaning in Soviet Law*, *AMERICAN QUARTERLY ON THE SOVIET UNION*, 1 (1938), 1-12. The presentation suffers from being under the influence of the recent official criticism of Pashukanis.

<sup>5</sup>The following works serve as chief targets of attack for the majority of present day critics: VENEDIKTOV, *CONTRACTUAL DISCIPLINE IN INDUSTRY*, (Leningrad, 1934); VOITINSKII, *THE PROGRAM OF THE LABOR LAW*, (Moscow, 1934); GRISHIN, *THE SOVIET LABOR LAW*, (Moscow, 1936); VOLKOV, *TEXTBOOK OF CRIMINAL LAW*, (Kharkov, 1930); ESTRIN, *THE SOVIET CRIMINAL LAW*, (Moscow, 1935); BERMAN, *THE DICTATORSHIP OF THE PROLETARIAT IN THE SECOND FIVE YEAR PLAN*, (Moscow, 1932); PASHUKANIS, DOTSSENKO AND ASHFARIAN, *THE DOCTRINE OF THE STATE AND THE LAW*, (Moscow, 1932).

<sup>6</sup>THE SOVIET LAW AND THE BUILDING OF SOCIALISM (in Russian), *SOVETSKOE GOSUDARSTVO*, 1932, # 5-6, 56.

the vertical line relationships in the trusts were not legal, but technical ones. Askanazii contrasted the plan to civil law. Stuchka, who displayed a great versatility in theoretical deductions, maintained that buying and selling, being a bourgeois institution, will never be socialistic.<sup>7</sup>

In the labor law the theory of the withering away of the legal form led to the viewpoint that this law did not concern collective farming (Aleksandrov, Voitinskii and Grishin). The opposite opinion was defined as Trotskism! In criminal law Pashukanis' doctrine led to the famous draft of Krylenko (1930) based on the principle of "approximate definitions of criminal offenses" and on the rejection of the traditional dosage of punishment.<sup>8</sup> As a consequence, such conceptions as imputability or intention were declared to be "juridical junk" (Bulatov). The same author considered as absurd the belief "that the rejection of such conceptions would be more difficult than the creation of socialized funds in the kolkhoses." According to Volkov, the rejection of the conception of guilt and the reorganization of repression on the principle of planning were ripe for introduction. In criminal procedure the existence of independent and contesting parties was declared to be a reflection of market relationships (Estrin); on the other hand, Krylenko brought forth the idea of "two forms of procedure" for different categories of criminals (depending on whether suppression or correction was called for).

The retreat from integral communisms to a new compromise formation (since 1934) was not immediately reflected on the legal front, just as had also been the case in the transition from war communism to the NEP. In 1934-1936, a certain confusion and gradual realignment was noticeable on the legal front. At the end of 1936 a frontal attack was launched. Iudin and Ingulov, men quite unknown up to that time, announced the new will of those in power.<sup>9</sup> A torrent of accusatory articles flooded the general and the special press, appearing in force especially in the journals *Sovetskaia Iustitsiia*, *Sovetskoe Stroitelstvo*, *Sotsialisticheskaia Zakonnost* and *Sovetskoe Gosudarstvo*.<sup>10</sup>

<sup>7</sup>EZHENEDLNİK SOVETSKOI IUSTITSII, 1929, # 9-10, 126-7.

<sup>8</sup>On this draft see my article *L'evoluzione del diritto penale sovietico*, RIVISTA ITALIANA DEL DIRITTO PENALE, 1932.

<sup>9</sup>Iudin, *Socialism and the State*, *Bolshevik*, 1936, # 21; Iudin, *Against confusion, banality and revisionism*, PRAVDA, 1937, # 20; Ingulov, *Less confusion, more self-criticism*, *Bolshevik*, 1937, # 8.

<sup>10</sup>The periodical SOVETSKOE GOSUDARSTVO was edited until quite recently by Pashukanis and gave the most responsible formulation of his doctrine.

In 1936, Pashukanis, like many others was requested to disavow his ideas. He did so, but in a form which could not please those holding the power. "The enemies of the Party," he wrote,<sup>11</sup> "are getting hold of the problem of the withering away of law." Here was his chance to renounce his former ideas. But, having posed the question: "if, in the U. S. S. R., the capitalistic elements have been destroyed and a classless society has been built, why does the state still exist?"—he simply forebore from giving any answer, thereby giving to understand that (1) either classless society had not been built in the U. S. S. R., or that (2) the Marxian doctrine to the effect that the law and the state always express class domination was wrong. No further attempts in the same direction were made, and all the ideas of Pashukanis and his followers are now considered as manifestations of counter-revolutionary Trotskism. The most developed criticism of Pashukanis' theory was presented in the article of M. Rappoport, *Wrecking on the Legal Front*.<sup>12</sup> The following are its basic points.

According to Pashukanis, legal form was connected not with class struggle in class society, but with the commodity form of social relations. The Soviet law and the Soviet state were interpreted by him as a variation of the bourgeois law and state. This was wrong, for in Communist society the application of the concept of equality to situations of inequality is reduced to the application to all the working people of the principle—"from everyone according to his abilities, to everyone according to his merits". Therefore, the state and the legal system which had been created by the socialist revolution were from the very outset socialistic. It is inadmissible to build a theory of law and state which would be a system of categories common to the socialist and the bourgeois societies; for instance, it is wrong to combine capitalistic and socialist ownership into one category of ownership. The unity of form means nothing, for, according to Marx's teaching, the form is inseparable from the contents. The Soviet science of law must, therefore, be based on the study of the peculiarities of each type of state and law. The statute, in socialist society, is the expression of the will of the working class, which corresponds to the interests of the wide masses. The sanctity of Soviet statutes is derived from

<sup>11</sup>*Stalin's Constitution and Socialist Legalism*, SOVETSKOE GOSUDARSTVO, 1936, # 4.

<sup>12</sup>SOVSIALISTICHESKAIA ZAKONNOST, 1938, # 1.

the essence itself of the system. This is the reason why the definition of Soviet law as a system of Soviet statutes is adequate to the essence of the situation, whereas, with respect to bourgeois society, the identification of statutes and law would be wrong. This is the reason why the rejection of the possibility itself of the existence of a socialist law and the proclamation of the withering away of law in socialist society from the very moment of its establishment is counter-revolutionary.

The criticism of Pashukanis' basic theory is carried on by a number of writers (among them by some of his former followers) along a series of small channels corresponding to the branchings of the doctrine.<sup>13</sup> The isolation of the subjects of rights proclaimed by Pashukanis is declared to be "a mockery of Lenin and a slander on Marxism" (Bratus). The civil law conceptions of Pashukanis' school led to a substitution of civil law by an economic policy. This law was dissolved in economic and organizational-structural problems poorly assimilated by jurists, and the result was that the problems of organization and administration of the Soviet economy hid from the minds of the jurists the living individual for whose sake the proletarian revolution was achieved and the building of socialism erected (*ibid.*). The failure to include kolkhoz law in the labor law was declared to be an "anti-Party act", because it destroyed the unity of principles applied to the Soviet enterprises and in the kolkhozes. It was also labeled as juridical cretinism, the author of the words just quoted (Aleksandrov) forgetting to mention that quite recently he was himself guilty of it. In the field of criminal law, the theory of equivalent exchange is now declared heretical; at the same it is proclaimed that "regulation in law of punishment according to the categories of crime . . . is the most important principle of repression under the dictatorship of the proletariat" (Mankovskii). In the field of international law, Pashukanis is accused of having avoided the class contents of

<sup>13</sup>The following are the most important articles: Sakach, *Against revision of Marxism-Leninism in the field of the state and the law*, SOVETSKAIA IUSTITSIIA, 1937, # 5; Aleksandrov, *Against anti-Marxian pseudo-doctrines in the theory of the labor law*, *ibid.*, # 8; Lopukhov, *On Trotskyist contraband in problems of the state and the law*, SOVETSKOE STROITELSTVO, 1937, # 4; Bratus, *On conditions of the theoretical work in Soviet civil law*, SOVETSKOE GOSUDARSTVO, 1937, # 1-2; Rappoport, *Against hostile theories of international law*, *ibid.*; Vyshinskii, *Conditions on the legal theory front*, SOVETSKAIA ZAKONNOST, 1937, # 5; Mankovskii, *Against anti-Marxian theories in criminal law*, *ibid.* # 5 and 6; Borisov, *Conditions on the front of the theory of civil law*, *ibid.*, # 6.



contemporary international law, when he stated that it was becoming interclass. He is also accused of failing to give a correct appraisal of Fascist international law (Lopukhov).<sup>14</sup>

The recantation of former "fallacies" was demanded not only of theorists, but also of practical workers. The following decree of NKIU (Peoples' Commissariat of Justice) regarding the institute of legal psychiatry is characteristic in this respect. "The basic mistake of the leaders of the institute is that, after the exposure of the hostile work of the school of Pashukanis and Krylenko, its leaders failed to make any deductions. The direct consequence was their interpretation of the problem of imputability, which actually coincided with Krylenko's fallacious principles."<sup>15</sup> In another section of the same decree one finds: "residues of legal nihilism, neglect of socialist legality, negation of the socialist nature of our law—are (expressed) in the ignoring of the principle of imputability."

The existence and the text of such a decree clearly show that, contrary to Hazard's opinion, the point here is not a change in private opinion, but a transition from one official doctrine to another. This is precisely the reason why the following proposition sounds so sternly throughout all the accusatory articles: "the theory of the impossibility of building a system of Soviet law is closely related to the Trotskist theory of the impossibility of building socialism in one country."<sup>16</sup>

From behind the scaffold of criticism there gradually begins to emerge a new official theory of the law and the state. This is seen with greatest clearness in the "theses" published in the *Sovetskaia Iustitsiia* in 1937 (No. 8). The following are their contents in brief:

The great proletarian revolution has for the first time in the history of humanity created a socialist state of workmen and peasants. This is the highest type of state—that of the dictatorship of the proletariat. Having emerged victorious, the working class

<sup>14</sup>For a detailed analysis of objections to Pashukanis' views on international law see J. N. Hazard. "Cleaning Soviet International Law."

<sup>15</sup>Decree of NKIU U. S. S. R., April 15, 1938, § 35, SOVETSKAIA IUSTITSIIA, 1938, § 13. 16.

<sup>16</sup>It is, of course, impossible to prove the logical connection of these two propositions. Pashukanis and his followers reject not the possibility of existence of law in a concrete Soviet state, but the possibility of its existence in any, even in a world socialist society.

destroyed the oppressionist bourgeois state machinery and built a new state apparatus of its own. This new form of state, discovered by Lenin, is the Soviet Republic. The task of the workers is the further strengthening of the dictatorship of the proletariat. Only thus can the rule of the working class prepare conditions for the future withering away of the state. But the state of the dictatorship of the proletariat will remain in existence during the entire first phase of communism. Its withering away will begin only in the second, higher phase. Destroying the bourgeois state, the working class creates its own socialist law, which is the expression of the will of the working class. The most important characteristic aspect of the Soviet socialist law is its revolutionary creative force.

It was after the appearance of these theses that Vyshinskii, now the supreme official authority on problems of law, gave the following explanation: "Law is the complex of rules of human behavior established by the state power, that is to say, by the power of the dominant class in society, as well as of customs and rules of social life sanctioned by the state power and put into effect in compulsory order, with the help of the state machinery, for the protection, strengthening and developing of social relationships advantageous and desirable to the dominant class." Law in such a conception is possible also in socialist society: "the dictatorship of the proletariat does not exclude law and legality as one of the forms of legal expression."<sup>17</sup>

Some interesting supplementary interpretations regarding civil law are given by Mikolenko. According to him, the socialist nature of the Soviet civil law "is determined by the socialist nature of those social relationships which it expresses, safeguards and protects . . . Although the principle of equality in exchange is known also to the bourgeois regime, its true application not as an average, but in every separate case takes place only under socialism . . . Planned management represents a guarantee of actual civil freedom."<sup>18</sup>

The appraisal of positions in the controversy between the Soviet scholars in law can be stated very briefly. Pashukanis' theory bears the signs of an "honest" expression of ideas. It is a possible (although not necessary) theory for a jurist who stands

<sup>17</sup>*Problems of law and state in Karl Marx*, SOVETSKOE GOSUDARSTVO, 1938, ¶ 3, 13; *The basic principles of the science of Soviet socialist law*, *ibid.*, ¶ 4.

<sup>18</sup>Ia. Mikolenko, *The socialist nature of Soviet civil law*, SOVETSKAIA IUSTITSIIA, 1938, ¶ 18, 15-17.

on the Marxian position, for it corresponds to the latter's revolutionary-utopian interpretation.

In substance this theory is of course wrong. It is built on an obvious *pars pro toto*: law is identified with one of its branches—private law, and the form of the latter—the correlation of subjects enjoying equal rights—is elevated to the level of the legal form in general.<sup>19</sup> There is no necessity to thus narrow down the conception of law; law is also possible within the relationships of dominance-subordination (public law) and within relationships having for principle the inclusion of part into the whole (social law, according to G. D. Gurvich's terminology).<sup>20</sup> The dominance of private law is characteristic of capitalist society; there was little private law in pre-capitalist society (feudal law was partly public, partly social); it must be almost absent in the socialist society. This by no means signifies that law in general did not exist in pre-capitalist society and cannot exist in socialist society; it is only that in both these cases law of necessity assumes different forms. Thus, for instance, "the relationships of trusts along the vertical line", which were mentioned by Pashukanis' followers, can easily be fitted into the scheme of social law.

The newly developed official theory of law is not only erroneous. It consists of a series of mutually incompatible propositions and, therefore, lacks the fundamental attributes of a scientific theory.<sup>21</sup> In fact, according to this theory, there is nothing in common between bourgeois and socialist law: their contents are opposite, and as, according to Marx, the form is inseparable from the contents, there is nothing in common between the form of socialist and that of bourgeois law. Nevertheless both are law.

Let us examine a specific case. The new theorists claim that it is impossible to obtain by the method of generalization a conception of ownership, which would include both capitalistic and socialistic ownership. But they themselves give evidence of the sentiment

<sup>19</sup>This of course corresponds to the conception of law in the works of Marx. Such a conception readily finds an explanation in the nature of the teaching of law in Germany in the days of Marx's youth—with the center of weight placed on private law in its Roman configuration.

<sup>20</sup>L'IDEE DU DROIT SOCIAL, Paris, 1932.

<sup>21</sup>J. N. Hazard seems to take at face value such reproaches addressed to Pashukanis and his followers by the "new" theorists as that their theories were "presented by poorly trained, self-styled Marxists", or that Pashukanis "overlooked the philosophical meaning of a change in form", or that he was "without a philosophical turn of mind".

that both should be termed "ownership"; and in this they are right. Capitalistic and socialistic ownership are contrasting in many respects, but both have in common that they express the maximum dominance permissible to persons over things in a given society. Incidentally, the compilers of the theses of the *Sovetskaia Iustitsiia* inadvertently admitted the truth of such a proposition: the law of the transitional period, they say, like any other law, regulates the inequality in the distribution of commodities natural to economic life. It is doubtful that such a description of all law is correct; but the important point is that in the opinion of the theorists from the *Sovetskaia Iustitsiia* there is something characteristic to all law. After all, if there exists both bourgeois and socialist law, they must have something in common, namely that which belongs to the conception of law, and this common feature must necessarily relate to the form<sup>22</sup> *irrespective of the difference in contents*.

The new Soviet theory of law is in no way a better interpretation of Marxian principles than the one that preceded it. It is not a product of people better versed in philosophy, or of more profound scholarship. It is nothing but the refraction in the theory of law of the new social situation. The new theory of law means the rejection, in the sphere of law, of the revolutionary-utopian interpretation of Marxism and a concealed transition to the evolutionary-historical position of Bebel, Kautsky and other Marxists, whom in the U. S. S. R. it is customary to call "social traitors". Thus, the new shift in the sphere of law is being included in the general policy of the communist power, a characteristic of which is the search for a compromise between history and utopia. The contradictory nature of the assignment is expressed in continuous vacillations of the authorities and in obvious inconsistencies in the writings of theorists who must elevate compromise to the dignity of principle and justify it in a Marxian fashion.

Practical deductions which are drawn from the theory and which are particularly in evidence in the thorough discussion of separate institutions of Soviet law appearing in Soviet juridical periodicals show that the neglected attitude towards law has become disadvantageous for the authorities. The contempt of law by the authorities made itself felt in the disruption of the state machinery

<sup>22</sup>The common feature in the legal form is the fact that every legal relationship is a relationship between, at least, two subjects, which has for object things or acts and is guaranteed by the social organization.

and in the exclusion of the motive of obedience to law from the motives of human conduct. Therefore, the authorities, on whom the development of the doctrine in any sphere of knowledge is dependent, turned the research of jurists in a direction which would allow reinstatement of these motives.

Will it be possible to restore legality within the framework of the dictatorship of the proletariat? The source of the difficulties is of course not in theoretical subtleties, but in the fact that the very possibility of the existence of law under dictatorship is doubtful. It is an essential feature of law to bind everyone who in any way enters into a situation governed by a given norm. The important point is not in the fact that it is expected both of subordinates and of those in power that they abstain from committing murder and violence, or that they obey the rules regulating street traffic. The point is in the fact that of them is expected an indeviating evaluation of every behavior within the framework of operative norms, and behavior corresponding to such an evaluation. This is the minimum restriction of behavior by law; where this minimum is not attained there is no law. In the Soviet state this minimum is rejected: revolutionary or socialist legality differs from ordinary legality in that it retreats before revolutionary expediency.<sup>23</sup> The case of Pashukanis and his disciples is well in point: they had not violated any norms which were in force at the time when they were developing and expressing their theories; but this does not prevent the Soviet authorities to regard their behavior as a breach of norms and to act accordingly.

The regime of "enlightened absolutism" under which autocracy is combined with the principle of legality is historically known. But such regimes are necessarily only temporary and transitional: either the principle of legality overcomes despotism and the entire state machinery is transformed, or despotism takes away the legality which had been granted. Only in such ambiguous form is a prognosis possible of the further development of the situation now manifested in Russia by "the Crisis in the Marxian theory of Law."

<sup>23</sup>Cf. my book, *GRUNDRISS DES SOWJETRUSSISCHEN STAATSRECHTS*, MANNHEIM, 1925. The new development is exceptionally well shown in the article by V. Gsovsky, *The Soviet Concept of Law*, *FORD. L. REV.*, January, 1938.