CRIMINALIZATION AND DECRIMINALIZATION IN SOVIET CRIMINAL POLICY, 1917-1941

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In the early and mid-1920's Soviet courts were overwhelmed with new criminal business, prompting Bolshevik leaders to transfer most cases of petty crime away from the courts either to administrative proceedings or to lay bodies (comrades' courts and village social courts). This article examines the Bolshevik experiment in decriminalization and diversion—its causes, its politics, and its consequences both for the courts and for the alternatives to them. The crisis of congestion in early Soviet courts resulted neither from a growth in actual criminal behavior nor from prosecution of new crimes devised by the Bolsheviks. It owed its origin to the elimination after the Revolution of various extrajudicial mechanisms used by the Tsars for handling infractions, thereby producing a criminalization of traditional misdeeds. The subsequent adoption by Soviet leaders of a policy of decriminalization followed careful study, and despite the turbulent times bore the mark of rational decision making. And the policy was implemented; a large number of cases were shifted first to administrative processing by police officials and then to lay tribunals, especially to the village social courts, which proved more viable than the comrades' courts which were established in factories. But the waves of diversion did not relieve court congestion, as in each instance new sorts of cases replaced those moved away. The experience tended to confirm the thesis that the amount of crime prosecuted in a society is a function of the capacity of its criminal justice institutions.

How political revolutions affect the choice of acts which governments treat as criminal is an intriguing but understudied subject. Some attention has been paid to the effects of revolutionary goals and ideals upon legal definitions of crime (Radzinowicz, 1966: Ch. 1; Berman, 1963: Ch. 1), but there has been little account of the impact on the criminal law of institutional changes brought about by revolution. This omission is particularly glaring if, as Herbert Packer (1968: 251-260) has argued, the limits of the criminal sanction are determined by the availability of alternative ways of coping

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with misdeeds. Packer's argument suggests that when revolutions reduce the alternatives to the courts, the reach of the criminal law tends to grow and that when revolutions expand the alternatives, that reach narrows. Another implication of Packer's thesis is that the development and success of alternatives to the criminal justice system depend upon its capacity to deal with the demands placed upon it. When a revolution adds significantly to the work of the courts, the time may be ripe for experimentation with other ways of punishing infractions and resolving disputes.

The experience of the Soviet Union after its Revolution lends support to these propositions. In their formative years Soviet courts were overwhelmed with new business, not because of new offenses (such as speculation) which the Bolsheviks chose to stigmatize and not because of a significant rise in the crimes that had been handled by Tsarist courts, but rather because of the disappearance of extrajudicial procedures for handling misdeeds. The resulting crisis of congestion and delay in the courts (not to speak of the prisons) led in turn to the adoption by the Soviets of a policy of decriminalization unusually massive in its scope. The most common petty crimes, including theft, hooliganism, home distilling, and timber poaching were transferred (or in modern language "diverted") from the courts to administrative procedure and to newly created lay bodies—comrades' courts and village mediation centers.

This paper examines the initial criminalization which took place after the Revolution, the decriminalization and diversion which followed in its stead, the operation of the two kinds of alternatives to the courts (administrative procedure and lay courts), and the decline of these alternatives. In so doing, the paper breaks new ground; for none of these topics has been treated in any depth by Western scholars.[1] Moreover, these subjects are of more than intrinsic interest. Their investigation can reward the legal and social historian with new perspectives on the growth of Soviet justice. At the same time, it can offer persons interested in the potential for diversionary experiments today insight into a dramatic historical example.[2]

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[1] The only topic to receive any attention is the comrades' courts, whose revival under Khrushchev attracted some Western scholars to examine their earlier history. The most extensive treatment is found in Berman and Spindler (1963: 849-853).

[2] This audience might include Soviet scholars for whom the subject of decriminalization and diversion has an immediate relevance, because of the current Soviet adoption of these practices. See for example, Iakovlev (1980) and Galperin (1980).

Since the story of the diversion of petty crime from the courts takes us well into the 1930's, it overlaps in time with another wave of criminalization, that produced by the new political crimes associated with collectivization. That important subject, however, is best left for another occasion.

I. CRIMINALIZATION AFTER THE REVOLUTION

During the Civil War and the first years of the NEP, Soviet people's courts had to deal with large categories of criminal cases which their Tsarist predecessors had not faced. The source of these new cases was not changes in the substantive criminal law. To be sure, the Soviets added to the law such new crimes as speculation and hooliganism, but at the same time they removed from criminal jurisdiction abortion, some sexual offenses, and most crimes by juveniles (Ugolovnyi Kodeks RSFSR, 1953: 116-143; Ulozhenie o nakazaniiakh, 1911; Ustav o nakazaniiakh, 1911). In particular, the establishment of commissions to handle juvenile cases seems to have compensated for any additional court load generated by the new crime of speculation and the use of hooliganism to replace more specific charges like fighting in public and disturbance of the peace.[3] The new business which confronted the people's courts in the early 1920's represented familiar petty offenses which the Tsars had handled outside of the criminal court—either through administrative procedures or by lay courts.

The legal system of Tsarist Russia before the Revolution, which had been created by the Judicial Reform of 1864, had no monopoly over the processing of petty crimes. While its lowest rung, the *mirovye sudy* (sometimes translated as justices of the peace) had jurisdiction over all sorts of petty crime, other institutions existed to share the burden. Recognizing that the *mirovye sudy*, which were located mainly in *uezd* centers, acted as county courts (like the old English Courts of Quarter Session), were not accessible to most peasant villages, and could not handle their disputes and infractions, the reformers

[3] In the early 1920's, neither speculation nor hooliganism represented a significant part of the work of Soviet courts. Economic crimes as a category filled one-third of the criminal caseload in 1924, but over 90 percent of these cases involved home distilling. Crimes against the person, which included hooliganism, represented only 13 percent of the total, probably not much higher than it had been under the Tsars (Brandenburgskii, 1925).

The decriminalization of abortion had little effect on the courts, which had convicted only 83 persons for this crime in 1910; and one expects that the same held true for sexual offenses. Crimes by juveniles, on the other hand, represented nearly 10 percent of the work of Tsarist courts as World War I came to a close, and the surge of homeless children in the early Soviet period would surely have increased that share (Ravich, 1936; Ostroumov, 1960: 199).

sanctioned the creation of lay peasant courts. Located in the *volost* centers (a *volost* was a district with some five to ten villages), the *volost* courts were empowered to handle cases of insults, fights, petty theft, and violations of hunting and fishing regulations, as well as civil property disputes (Polozheniie o selskom, 1911: 253-262). Made up of elected peasant judges, who were often illiterate, the *volost* courts applied customary peasant law more often than the sections of the criminal law placed by Tsarist legislators under their aegis (Leroy-Beaulieu, 1894: 270-291; Yaney, 1973: 360-364).

Pre-revolutionary Russian courts were also helped by administrative processing of some common misdemeanors. Particularly important were the procedures for handling persons caught poaching timber or violating the laws regulating the distilling and sale of alcoholic beverages. Instances of timber poaching were both discovered and processed by a forest guard service. Upon uncovering a violation, the forest guard would compile a protocol describing it and the particulars of the offenders and witnesses. His administrative superior would then issue an edict levying a penalty (normally a fine) upon the guilty party. If the offender accepted the edict within two weeks, the case was over; it went to court only when the offender chose to contest it (Ustav o nakazaniiakh, 1911: Ch. 13). Offenses relating to the production and sale of alcohol were the responsibility of the officials of the excise tax agency, whose main concern was that the private producers who operated alongside the government distilleries paid their taxes and observed the complex regulations on standards, packaging, and distribution. Upon discovering offenses, excise officials used a procedure identical to that at the disposal of the forest guards (Svod ustavov, 1911: 2484-2486; Glavnoe upravleniia, 1900). Since many of their charges were brought against merchants producing alcohol for sale, excise officials could usually collect their fines and avoid court cases.[4]

The sharing of responsibility for petty crimes by Tsarist courts with other bodies and agencies was symptomatic of the underdevelopment of the Russian legal system and of the more general lack of penetration by the government into the

[4] As a result, cases of illegal trafficking in spirits during the immediate pre-war period constituted no more than one percent of criminal cases heard before the courts. This figure is my calculation based upon the data on criminal caseloads for the *mirovoi* courts, for the *okrug* courts, and for sessions of *uezd* members of *okrug* courts reported in Ministerstvo iustitsii (1915: 58-63) and on the data on cases of trafficking in spirits reported in Powell (1981: Ch. 1, 41).

countryside. In Western Europe the development of national court systems accompanied the transition from feudalism to mercantile capitalism, and during the transition period courts did not assume total jurisdiction. Thus, in England of the 16th century, separate forest courts and the Ecclesiastical Courts handled some of the offenses which *volost* courts and the forestry officials processed in late 19th-century Russia (Thompson, 1975: 33-38; Houlbrooke, 1979).[5] What was special to Russia was not the pre-modern fragmentation of responsibility for dispute resolution and social control, but the suddenness of the transition to a unified court system. In England the decline of forest and Ecclesiastical courts was gradual and the enlargement of the jurisdiction of justices of the peace and quarter sessions incremental (Webb and Webb, 1906). But in Russia the Revolution swept away the institutions which had shared these duties with the courts. Soviet legislators abolished the *volost* courts and the excise tax agency, and although they maintained a reduced forestry guard, they did not give it responsibility for processing timber offenses.

I do not know whether Soviet leaders consciously decided to so enlarge the responsibilities of the courts, or whether that enlargement was the cumulative, perhaps unintended result of a series of separate choices. Either interpretation is plausible. The liquidation of the *volost* courts and of the excise agency were logical consequences of the goals upon which the new Soviet system was based. The *volost* courts with their reputation for venality and corruption represented to most intelligentsia, including the Bolsheviks, the dark forces of the Russian past. To the Bolsheviks they were also class courts, feudal relics which were antithetical to the goal of a classless society (Nekhamkin, 1927; Brandenburgskii, 1927). The excise tax agency had a *raison d'etre* only as long as private commercial production of alcohol, tobacco, and other dutiable products lasted. That agency's role in policing violations of regulations governing the production and distribution of alcohol ended abruptly in 1914 when the Tsarist government decided to prohibit the consumption of spirits and to stop their

[5] The particular form of alternatives to the courts seems to vary with national tradition. The administrative procedure used by Tsarist excise and timber officials so resembles the modern German and Austrian procedure for police fines (*ordnungs-widrigkeiter*) that one suspects that its origin was Austrian. *Volost* courts, however, would appear to have been an expression of the characteristically Russian peasant tradition of collective responsibility (see Felstiner and Drew, 1979: 23-26).

manufacture.[6] The excise tax agency disappeared entirely when the Bolsheviks nationalized the production of the remaining dutiable products and established a state monopoly over their production, a monopoly which they extended to the manufacture of alcoholic beverages in the early 1920's. Although each of these decisions had its own logic, one also senses among the leaders of the new Commissariat of Justice (*Narkomiust*) an aspiration to found a modern national legal system. It was time, they believed, to do away with the complexity, idiosyncrasy, and backwardness of the old institutions and to replace them with a new, single and simple Soviet court (Hazard, 1960: 1-63).

Whatever the actual reason, the new Soviet people's courts did not have the help of administrative procedures or lay courts; and once the Revolutionary Tribunals of the Civil War were abolished, the courts were on their own. The resulting influx of cases of petty infractions would have been hard to handle even if the frequency of their committal and the intensity of their enforcement had remained constant. But Soviet judges were not that fortunate. One of the offenses newly added to their jurisdiction—private distilling of liquor—became extraordinarily widespread at the beginning of NEP and many times more common than it had been under the Tsars. Before the Revolution strong alcoholic beverages, made either by the state or by gentry-owned private firms had been inexpensive and readily available. Peasants had been allowed to brew their own beer, but were expected to buy the commercially produced hard liquor on which excise tax was collected. Violation of these rules had merited stiff fines, but there was actually little incentive for violation, other than for peasants living in remote areas. After the revolution, however, there was an extreme shortage of hard liquor available for sale. Until 1921 the Bolsheviks continued the old regime's wartime policy of prohibition; after that they reluctantly reintroduced the production of increasingly stronger varieties of alcoholic beverages, culminating in 1926 with full-strength vodka.[7] But it proved difficult to revive the spirit industry quickly (production in 1926 stood at only 40 percent of the 1914 level). The price of vodka was much higher than it had been under the Tsars, and the distribution of state-produced alcohol in rural areas was

[6] On the events leading to Prohibition in Tsarist Russia, see Gertsenzon (1966: 111-122) and Powell (1981: Ch. 1, 66-84).

[7] On the Bolshevik debates over and decisions on reestablishing the production and taxing of spirits, see Carr (1954: 43n-44n; 1958: 495-498).

haphazard. As a result, peasants had every incentive to distill liquor, for their own use and for the market, and they were further helped by improvements in the equipment for distilling available to them (Iurazh, 1929; Statisticheskoe obozrenie, 1929; Reingold, 1931: 193).

In Civil War legislation and again in the 1922 Criminal Code, Soviet politicians had shown their disdain for private commercial distilling, which they treated as illegal business akin to speculation (Goliakov, 1953: items 77 and 154, Article 140; Hazard, 1960: 21,97,151). But, at the end of 1922, they went further. Right after the first good harvest and at a time of widespread unemployment, they made distilling for personal use a crime as well, and this action set off a massive police campaign against peasant distillers. Whereas before 1923 the police had sometimes used local ordinances to fine peasants who distilled for their own use, in 1923 the police began arresting them and detaining them in prison to await court trial (Goliakov, 1953: item 172; Skliar, 1923; Gurvich, 1924).

The effect upon the courts of their new responsibility for petty crimes and of the expansion in cases of home distilling was dramatic. Already in 1921-1922 Soviet courts were convicting 10 to 15 percent more persons than had the Tsarist courts in 1913,[8] but in 1923 Soviet judges were swamped with new business (the number of new cases more than doubled in the third quarter, as compared to the first), and they quickly fell behind, as each quarter they processed only half the cases set before them (*ESIu*, 1924). In 1924 Soviet judges worked harder and raised their conviction rates by another 15 percent, but they faced a crisis of criminalization all the same. Of the total convictions by RSFSR courts in 1924, 29.7 percent were for home brewing and 24 percent for timber poaching (Gertsenzon, 1928: 18, 21). The cases previously heard by the *volost* courts had not yet made their impact, but, as we shall see below, after home brewing and timber poaching were moved out of the courts, petty property disputes and charges by personal accusation (insults, bodily blows) rose to fill the dockets.

II. THE POLITICS OF DECRIMINALIZATION

Twice during the 1920's Soviet leaders chose to move whole categories of petty crime out of the purview of the criminal courts, in the first instance to administrative procedure and in

[8] My estimate is based upon data from Tarnovskii (1921: 1-13) and Gertsenzon (1928: 18).

the second to newly created lay courts. Each of these decisions resulted from an investigation of congestion in the courts and crowding in the prisons by leading party activists associated with the party's Central Control Commission and the Commissariat of Worker-Peasant Inspectorate (NKRKI) (Ikonnikov, 1971: 269-273).

The first investigation began in the summer of 1923 after local procurators had complained about the havoc which the new stream of home brewing cases was creating in the courts and prisons. Under the leadership of the feisty old Bolshevik Aron Solts, a man with great personal authority, and the equally ascerbic Moscow procurator Shmuel Fainblit, a commission went to work in the Moscow prisons reviewing the cases of inmates charged with home brewing, both those already convicted and serving sentences and those held awaiting trial. The investigators were shocked to discover that a large proportion of the inmates were poor peasants who had made their brews out of need. A sizeable proportion were women, and nearly half were being detained while awaiting a trial already long delayed by the congestion in the courts (Fainblit, 1923; Solts, 1923; Solts and Fainblit, 1925). Using its powers to the hilt, Solts's (1923) commission proceeded to release on amnesty large numbers of the prisoners, and similar commissions established in other urban centers did the same (Goliakov, 1953: items 183, 184). In addition, Solts and Fainblit were personally responsible for the extension of a broad amnesty to most persons convicted or detained for timber poaching and for the removal in early 1924 of imprisonment from the list of penalties applicable to persons convicted of distilling for personal use (Goliakov, 1953: items 186, 188).

But the party investigators did not stop their campaign there. In the spring of 1924, with the help of the newly formed Juridical Department of NKRKI, they organized a second commission to review the whole gamut of cases heard in the Moscow courts. From the work of the second Solts commission came recommendations for the wholesale decriminalization of major categories of petty crime, and most of these proposals were passed quickly into law in October 1924 (Solts and Fainblit, 1925; Ikonnikov, 1971). Beginning in 1925, police and local government officials became responsible for processing all cases of home brewing for personal use, of poaching small amounts of timber for personal use, and of hooliganism committed for the first time, and in so doing, they were to apply local regulations rather than the criminal code. In addition,

petty thefts in factories of materials up to fifty rubles in value were to be handled administratively in the factories themselves, either by management or by the conciliation commissions used for labor disputes (Goliakov, 1953: item 197). Comrade Solts had also suggested that cases involving personal accusations (especially of insults) be removed from the courts, but this suggestion was not adopted at the time (Solts and Fainblit, 1925: 124).

This massive transfer of cases out of the courts did reduce court loads initially. In 1925 the number of criminal convictions by courts went down by 40 percent compared with 1924, while the number of penalties levied administratively more than doubled. Despite a minor campaign against embezzlement and a substantial increase in civil cases heard by people's courts, the average number of cases handled by a people's court judge declined from 795 in 1924 to 523 in 1925 (Gertsenzon, 1928: 18; Tarnovskii, 1926). Yet by the spring of 1927 crowding had returned to the courts, and congestion again reached crisis proportions. The reason was that the court time freed by the transfers of petty crimes to administrative procedure was taken up with new work generated by the dramatic growth in cases resulting from personal disputes and hooliganism. Criminal charges of insult and bodily blows brought by contestants to disputes had already doubled in number between 1924 and 1925 and would nearly double again by 1927, coming to represent one third of all criminal cases (Stroev, 1929).[9] Between 1925 and 1926, the number of hooliganism cases heard in court increased to seven and a half times the 1925 level (with no drop in the number processed administratively), in large measure due to the police campaign of that year (Gertsenzon, 1928: 36, 41-44). And there was an increase in civil disputes among peasants, who sued each other for a bewildering variety of reasons. In fact, the average criminal caseload of Russian judges in 1926 (there were great regional disparities) was still below the 1924 level, but with the concomitant rise in civil cases (representing in 1926 nearly 60 percent of all court cases in the RSFSR, as opposed to 17 percent in 1921), the courts once again became congested (Gertsenzon, 1928: 18; Kozhevnikov, 1957: 137, 202).

The situation in the courts and the equally difficult dilemma with punishments, which I have discussed elsewhere (Solomon, 1980: 195-217), prompted the Juridical Department of

[9] In the first half of 1927, more than 100,000 cases of insults, slander, and blows not causing injuries went through the RSFSR courts (Osipovich, 1928a).

NKRKI to launch a new investigation, this time on a national scale, of the operation of the lower levels of the courts, procuracy, and prisons. Under the leadership of party activist V.A. Radus-Zenkovich—like Solts, a sharp-tongued, ambitious politician—and with the help of such able scholars as the young A.A. Gertsenzon, RKI's Juridical Department devoted the first nine months of 1927 to the study of more than 7,000 cases from a number of jurisdictions. The analysis was extraordinarily perceptive and led to long lists of proposals for dealing with the prison crisis and problems of punishment, for improving the operations of the various agencies, and for the handling of petty cases, both criminal and civil, which were once again invading the courts (Ikonnikov, 1971: 271-272; Zenkovich, 1927a; 1927b). Radus-Zenkovich's remedy for the latter problem was the creation of new lay courts. He urged the establishment of mediation centers (*primiritelnye kamery*) attached to the village soviets and the revival of comrades' courts in industrial enterprises. Both types of lay courts were to consist of judges elected by and from the citizenry (local peasants or factory workers), were to operate without formal rules of procedure, and were to have limited jurisdictions and only minor penalties at their disposal (warnings, small fines, and small doses of corrective work).

In Radus-Zenkovich's initial proposal the rationale for the lay courts was never in doubt. Their main function was to relieve the people's courts of criminal and civil cases arising out of personal disputes; a secondary purpose of the mediation centers was to provide a mechanism for the resolution of disputes which would be accessible to the peasants. Radus-Zenkovich explained these points in some detail. City courts, he found, were especially burdened with cases of insults; he found, to his surprise, that almost any word, not necessarily an obscenity, could lead to a charge of insult (for example, citizens went to court when called "grammophone horn," "bandura" [the instrument], "red haired," and "smarty"). Often the aspersions were cast when the parties were drunk, and one or both failed to appear at trial. As a result, Radus-Zenkovich concluded, "the court has become a plaything, a toy in the hands of the complainants." Courts serving rural areas were burdened not only with such criminal cases but also with petty peasant suits. Typically, these cases dragged on for months, with frequent remands, often because of the late delivery of notices (the court did not have its own couriers and relied on village soviets to pass the notices on to the parties). When the

cases were finally heard, one or both parties was often absent. In the countryside there was an excuse; the average distance to the nearest people's court was 20 miles, a long way for peasants who had to walk or at best ride a horse, especially in winter or spring. The inaccessibility of the people's courts to many peasants not only complicated the processing of cases launched by them but also prevented many peasant disputes from reaching court at all. By dealing with some of these disputes, the proposed village mediation centers could fill a gap in the existing legal system, as well as relieve the courts (Zenkovich, 1927a; 1927b).

Radus-Zenkovich did not idealize lay courts, and he did not make a fetish out of mass participation. Occasionally, a commentator on the proposal would mention the lay courts' potential for moral education or for bringing "even poor people into administrative work," but these considerations were never of primary importance (Osipovich, 1928a). In the late 1920's comrades' courts and mediation centers were universally regarded as supplements to the legal system and not as an embodiment of participatory ideals.

The idea of lay courts was not novel for Soviet jurists. To begin with, they had not forgotten the *volost* courts of pre-revolutionary times, which the proposed village mediation centers resembled (Nekhamkin, 1927). Nor had they forgotten the prehistory of the comrades' courts. Beginning in late 1919, disciplinary comrades' courts had been established in some factories, especially in and around Moscow, to help management deal with labor discipline. Organized by the trade unions, the early comrades' courts dealt mainly with absenteeism (half of their cases) and with petty theft, violations of factory rules, and poor work attitudes. Despite effective performance in 1921, the disciplinary comrades' courts were closed with the onset of NEP, allegedly because, once much of industry returned to private hands, trade union officials were anxious to give up responsibility for discipline (Goliakov, 1953: item 71; Gertsenzon, 1933; Ob utverzhdenii perechen, 1923; Iodkovskii, 1968: 391). Moreover, there were other lay bodies handling petty infractions in the late 1920's, including the disciplinary courts for office workers (formed in 1923 and disbanded in 1928), the conflict commissions for labor disputes operated by the trade unions, and the commissions for housing disputes established in 1927 (Vilenskii, 1926; Iodkovskii, 1928; Levenstern, 1924; Kramer-Ageev, 1929).

Unlike the earlier initiative to transfer petty crimes to administrative procedure, the proposal to establish lay courts was controversial and aroused public debate. Trade union leaders vehemently opposed the comrades' courts on the grounds that "unions must defend the workers, not judge them." Their opposition began the moment the idea of reviving the comrades' courts was first mentioned in the spring of 1927 by the head of the Moscow provincial court, and it continued throughout the debate over Radus-Zenkovich's proposals (Zenkovich, 1927a: 982). Even in February, 1928, when the discussion had proceeded to the relative merits of particular draft laws on comrades' courts, union leaders still termed the idea of their creation "wild" (*dikii*), warned against "turning trade-unions into police stations," and called for the discarding of all the drafts (Kumykin, 1930). The opposition to the village mediation centers stemmed mainly from judges and from some officials in Narkomiust (Brandenburgskii, 1927; Nekhamkin, 1927). These jurists argued that mediation centers run by illiterate peasants who were ignorant of the law would be of lower quality than the people's court; that they would be hard to supervise and might not follow a class policy; and that, like the old *volost* courts, they might prove corrupt. Some critics of the proposed centers also objected to the return to a court for one social class; and in the view of one critic the mediation centers would not even achieve their goal of relieving the people's courts, because the latter would be swamped with appeals from the centers' decisions (Nekhamkin, 1927).

The opposition to the proposals did not lead to a prolonged bitter dispute of the sort which characterized penal policy in the late 1920's (Solomon, 1980), or prevent their smooth passage through the legislative process. In March, 1928 the RSFSR government authorized the establishment of mediation centers in some districts as an experiment, and that summer it decreed the formation of comrades' courts in some factories. The centers were to be supervised by the local people's court judges, while the comrades' courts were to be nurtured by the factory trade unions and overseen by the nearby judges. Although, as we shall see, the first lay courts were not uniformly successful, the government's dedication to them stuck, and within two years it was legislating the establishment of "village social courts" in every village and of "production-comrades' courts" in all factories of reasonable size (Kozhevnikov, 1957: 209-219). The changes in nomenclature reflected the latest political controversies over the lay courts.

Among the officials who planned the extension of the mediation centers to all villages there were sharp divisions over the form, jurisdiction, and name the centers should take. Similar bodies which had been established in Belorussia and in the Caucasus were called "village courts," and there was considerable sentiment for using this name for the RSFSR's mediation centers also (Shaliupa, 1929; Pomerants, 1930). But in deference to a vocal minority of Narkomiust officials who insisted upon a name which evoked the lay quality of the centers (lest anyone confuse them with *real* courts), the village mediation centers of the RSFSR were dubbed "village social courts" (*selskie obshchestvennye sudy*). The change from comrades' court to "production-comrades' court," effected in 1931, reflected a change in that body's profile which had taken place in 1930 and which proved necessary to elicit the minimal support from trade union officials needed to establish the courts. The politics of these events will be discussed later.[10]

III. THE EFFECTIVENESS OF THE ALTERNATIVES TO THE COURTS

The decisions of the Soviet government in 1924 and 1928 to transfer large numbers of petty criminal cases first to administrative proceedings and then to lay courts called for a major experiment in diversion. To be sure, most of the offenses being diverted had been handled outside the courts before the Revolution. But the implementation of the transfer still presented a challenge to the authorities, since the institutions which had been responsible for the infractions in earlier days were gone. Administrative processing no longer meant handling by the forest guard or the excise tax agency; now it became the responsibility of local government and especially of its police. And new lay courts had to be established in place of the former *volost* courts and in factories.

It is important to determine how well this experiment worked. In particular, I would like to find out whether the alternatives to the courts succeeded in relieving their congestion, and at what cost. Was there a decline in the quality of justice extended to petty offenders? Was there any increase in the occurrence of the violations transferred from the courts? Before answering these questions, it is necessary to establish

[10] Comrades' courts were also established in some housing offices in 1929, and this experiment was approved for expansion in 1931. But these bodies never became very widespread, and they are not discussed here. For information, see Shliapochnikov (1934: 208-220).

to what extent and in what ways the new procedures and institutions were implemented. Implementing decisions made in the center was often difficult for the Soviet government in its early years, in part because the understaffed local government and enterprises shouldered more responsibilities than they could fulfill at one time.

Administrative Procedure

At the beginning of 1925, when local governments and their police in the RSFSR took over responsibility for nearly half the offenses previously tried in criminal courts, they did not have to establish new procedures. During the previous few years they had already developed ways of enforcing and processing violations of local ordinances (*obiazatelnye postanovleniia*) and they simply added the new set of offenses to the old. The ordinances issued by local *ispolkomy* dealt with standards of housing, sanitation, and fire protection, with trade and industry, with tax obligations and registration rules, and also with public order and distilling (A.G., 1923; Gurvich, 1924). Although the actual processing of these violations varied from district to district, there was a model procedure which most jurisdictions were expected to follow. The official who encountered a violation (policeman, member of a village soviet, forest guard) was expected to compile a protocol describing the offense and recording the names of the parties and witnesses. All protocols were to be forwarded to the chief of police for review and consideration of sentence. The actual punishment was to be fixed or confirmed by the appropriate soviet, and to be enforced by the police.[11]

The quality of justice administered by local governments in the USSR (from the *guberniia* down to the village) left much to be desired even before the addition of responsibility for most petty crimes. The *ispolkomy* were wont to issue countless ordinances, sometimes legally but often extending beyond the authority which the center had delegated to them. Moreover, the various local authorities often enforced ordinances which were not theirs to enforce and imposed fines which far exceeded the limits set for their particular level of government or for the offense in question (Dmitrev, 1926). The most important reason for this orgy of rule making and enforcement was the poverty of the *ispolkomy*, especially at the *volost* and village levels, which had only meager sources of revenue for

[11] For a 1924 version of the standard procedure for processing violations of local ordinances, see *Ezhenedelnik sovetskoi iustitsii* (1924: 923).

much of the decade (Dmitrev, 1926; Carr, 1958: 482-494). Local authorities quickly discovered that fines collected from violators of local ordinances were an important additional source of income, and they took advantage of the situation to issue ordinances and collect whatever fines the peasants would pay. Even though the average collection rate for fines did not exceed 40 percent, the fines brought in revenue—in 1923 alone more than five and a half million rubles (Gurvich, 1924; Gertsenzon, 1928: 94-97). Other factors also contributed to the irregularities in the issuing and enforcement of local ordinances. All too frequently local officials had never seen, let alone read, the centrally issued laws and regulations governing their rule making (Mokeev, 1927). The quality of the district and regional police who enforced the ordinances was poor; meagerly paid and overworked, the police included drifters and persons close to the criminal world (Bardulin, 1930). Most villages had no police at all and relied upon local activists (members of village soviets) to enforce the rules (A.Z., 1928). Moreover, in some villages there was a tradition of self-regulation, which included the "spontaneous" imposition of fines by the village assembly (*skhod*). In the mid-1920's *skhody* were reportedly levying fines, totally without legal authority, for offenses like working on Sunday, entering a public grazing area before hours, and allowing geese and cattle to roam unsupervised (Makarov, 1925). Central authorities were not unaware of the disorder, the illegality, and the "budgetary deviation" indulged in by local officials (Lagovier, 1927). Throughout the decade the Commissariat of Internal Affairs (*Narkomvnudel*) tried to impose order upon local governments, by issuing new edicts and statutes defining and redefining the jurisdiction of the various levels of government and the penalties which they could by right impose.[12]

The addition of masses of cases of home brewing, timber poaching, and hooliganism to the violations of local ordinances already processed by local police and officials did nothing to improve the practice of administrative justice. The burden of processing these cases now fell upon the local police chiefs and their assistants, and it took some time before they adjusted to

[12] The trend in these regulations was toward extending the prerogatives of the lowest officials, thereby bringing the law into accord with dominant local practices, while simultaneously trying to curb excesses (see Turubiner, 1926; Zolotarevskii, 1928). Central officials also proposed further measures to rationalize local ordinances, including the promulgation of an administrative code, the fashioning of model ordinances, and the publication of local collections of ordinances, but little was accomplished along these lines (see Koniaev, 1927; Zheleznov, 1927; Sukhoplinev, 1927).

it. Thus, in 1925 huge backups and delays were observed in the administrative processing of petty crimes, sometimes worse than previously in the courts. And, not unexpectedly, there were many instances of misapplication of the laws. In the hands of local officials fines for hooliganism were imposed on a man who cursed his wife and ejected her from the house and upon a man driving in a carriage who offered a ride to a woman. Fines were issued to peasants distilling alcohol for personal use, not only by the *guberniia* and *uezd* police who had the right, but also by the *volost* police and village officials who did not. Moreover, virtually any case of home brewing was handled administratively, not just distilling for personal use; after all, as one official explained, "everyone says that the apparatus is for his own use" (Mokeev, 1927; Lagovier, 1927; N.N., 1925). Improper administration of punishment was also common. Although the average level of fines declined during the mid-1920's (as local officials came to realize that only reasonable fines stood a chance of collection), cases were reported of fines of 100 to 150 rubles applied to peasants who would have had trouble paying five (Kozhevnikov, 1925; Gertsenzon, 1928; Iakubson, 1930). Some local officials improvised. The members of one *volost* soviet seized the land of hooligans and banished them "to Sakhalin" (Mokeev, 1927: 760).

There is no doubt that transfer of petty crimes from the courts to administrative procedure resulted in a deterioration of standards. Another question is whether the diversion also weakened the deterrent effect of the laws prohibiting the behaviors. Judgments about deterrence must be made tentatively, especially when the quality of statistical compilation is rudimentary. The available evidence does indicate that both timber poaching and home brewing grew dramatically during the second half of the 1920's, that is after they had been transferred from the courts. According to the new rules, timber poachers remained out of court as long as they did not fell trees for commercial purposes. So many peasants were found to have poached timber repeatedly (eight to ten times a year), undeterred by the imposition of fines which they often failed to pay, that a 1928 law was issued making repeated timber poaching subject to criminal prosecution. All the same, the data for 1927 to 1929 show a steady rise in timber violations, and it is hard to attribute this trend to enforcement practices at a time when police attention was focused elsewhere—first on hooliganism and later on crimes against collectivization (Bazhanova, 1928; Goliakov, 1953:

item 292; Iakubson, 1930). The administrative effort to curb home distilling also failed, but the laws changed so often that it is hard to judge their effects. In 1926 law enforcement authorities realized that the police had assumed responsibility for punishing even commercial distilling under the umbrella of their jurisdiction over personal brewing. To undercut this improper expansion of the police's role and to return commercial distilling to the courts, the officials convinced the law makers to do away with the administrative offense of distilling for personal use. If personal brewing were legal, it was assumed, cases of commercial distilling would be directed to the courts. But the new law backfired when local police took it as a cue to cease prosecuting home brewing altogether. In 1927 neither commercial nor personal distilling was prosecuted, either judicially or administratively (Smirnov, 1927: 480). Having learned their lesson, Soviet lawmakers restored administrative responsibility for personal distilling (in January 1928), and they did so with a flourish, making a radio announcement of the change a provision of the law (Goliakov, 1953: item 276). Meanwhile, home brewing flourished. Careful survey research of peasant distilling practices (recorded independently of prosecution) revealed that the peasants in Belorussia and the RSFSR were distilling at staggering levels. As of 1927-1928 an estimated 34.6 percent of peasant households in the RSFSR produced for their own use, and more than half of all households in Belorussia did the same. The Belorussian study revealed a doubling in the quantity of home brew produced between 1926 and 1928, despite the recovery during this same period of state production of alcohol to its pre-war level (state production grew four-fold between 1925 and 1928) (Rodin, 1929; Slupskii, 1929).

In short, administrative processing of petty criminal offenses after the 1925 transfer had its costs. It produced a form of justice which was cruder and less predictable than that provided in the courts (despite their inadequacies), and it may have reduced the deterrence value of these offenses as well. Nonetheless, it did accomplish its primary mission. Despite all the shortcomings, the particular petty infractions transferred to administrative procedure in 1925 did not reappear in the criminal courts until the late 1930's when virtually all petty crime was channelled back to them. Even hooliganism, which from 1926 on occupied much attention on the part of the courts, remained to a considerable extent decriminalized. At least through the early 1930's the majority of hooligans were

processed administratively by the police and local soviets (Bulatov, 1933; Iakubson, 1930). The diversion of cases to administrative procedure did relieve the courts temporarily; that their vacant capacity was quickly refilled with other kinds of cases should not be blamed upon the alternative to the courts which initially relieved them.

Administrative processing of petty crimes and of violations of local ordinances continued during the early 1930's, and its quality appears to have declined even further. Caught up in the excesses which characterized this period, local officials became excessive in their policing as well. Thus, surveys by local procurators in 1931-1932 in Northern and Central Russia found that village soviets were fining peasants "for everything"—for any misdeed regardless of whether a regulation issued by their own or a higher level of government allowed it. The misdeeds included, in addition to the traditional offenses, non-fulfillment of obligations in the agricultural campaign, leaving the region without permission, and killing cattle. Many fines were levied against *kulaks* (former landowners), often much higher fines than those applied to representatives of other social groups; and, as usual, less than half of the fines levied were collected. To one procurator from the town the situation was nothing less than "administrative arbitrariness" (*administrativnyi proizvol*) (Morshnev, 1932; Rabota organov prokuratury, 1932). In 1933, when *kolkhoz* (collective farm) chairmen were authorized to fine members for failing to execute assigned tasks, they too fined wildly, handing out penalties for all sorts of reasons, including petty crimes like hooliganism and theft, and in amounts far exceeding the norm (100-150 workdays instead of the five allowed). And there were no consistent patterns; each *kolkhoz* chairman followed his own policy (Slavchev, 1934). According to another procuracy investigation conducted in 1935, the situation had not improved. In Kiubyshev *krai*, the city of Moscow, and Moscow *oblast*, the investigator found signs of the same arbitrariness and chaos or, as he vividly described it, of "a mania for fines" (*shtrafomania*). Fines were imposed by persons who had no right to levy them, with more regard for local custom than for law and often without the most elementary documents; protocols, if compiled at all, often did not explain the charges. Examples of abuses included the case of an MTS chairman who fined the chairman of a *kolkhoz* for not sending his brigadiers to a meeting on the struggle against wreckers and another of a village soviet fining citizens for

leaving the village without permission, for sitting home singing songs, and for smoking in the street (Zaitsev, 1935).

The fragmentary evidence available to us yields an unambiguous conclusion. In the early 1930's the quality of administrative justice in Russia declined from its already low level. By the mid-1930's it was so capricious and undisciplined that the later shifts of petty crimes back to the courts represented a genuine step toward strengthening legality and not just an increase in repression.

The Lay Courts

It is always a challenge to make lay courts work, if only because of their dependence upon the services of persons already employed full-time. How much more difficult to establish such bodies in a country undergoing turbulent social change, as was the USSR during the first five-year plan. When the villages were torn by class warfare and the factories were teeming with new arrivals and plagued by a shifting work force, responsible officials and active citizens alike had duties more pressing than the nurturing of lay courts. Nonetheless, despite the obstacles, one of the new lay courts established in 1929—the village mediation centers or social courts—did achieve moderate success. The comrades' courts in the factories, in contrast, never became viable institutions.

The village mediation centers succeeded both in establishing regular operations in many villages and in relieving the people's courts of some cases which would otherwise have gone to them. The plan for the village mediation centers called for their establishment in experimental areas in the first part of 1929, to be followed by a gradual expansion, but the centers were so well received in the villages that they spread many times faster than Narkomiust had planned. By the end of 1929, more than 9,000 were in operation, hearing five to six cases per month, of which one-third concerned criminal matters (Sedov, 1929). A larger expansion of the centers took place after the September 1930 law authorized their establishment in all villages. As of late 1931, the RSFSR had about 40,000 village social courts (as they were now called)—that is, approximately two courts for every three villages (Shliapochnikov, 1933: 14-15).[13] The average

[13] The ratio of two village social courts per three villages is my own calculation. It is based upon data stating that there were over four thousand enlarged *volosti* and *raiony* in the RSFSR in the late 1920's (see Koniaev, 1927) and upon the assumption that the average *volost* encompassed 15 villages.

village court of 1932 heard one to two cases per month rather than the five to six of its counterpart in 1930—a drop in caseload due in part to the loss of some civil property disputes made obsolete by partial collectivization (field damage and land cases) and in part to the inclusion in the figures of some weaker units (Shliapochnikov, 1933). All the same, the village social courts were keeping cases away from the people's courts. Narkomiust officials claimed that over a quarter of the cases heard by village courts in 1929 had been transferred from the people's courts. If one assumes that this same proportion of the village courts' caseload of 1931-1932 would otherwise have reached people's courts, then the average people's court was spared 130 cases per year.[14] Professional judges did not feel the effects of this diversion, because the reduction in people's court business occasioned by the village courts' assumption of petty disputes was more than offset by a new burden of political cases related to collectivization and by a further rise in civil disputes (Shirvindt, 1930; Vitbaum, 1934). But this was no reflection upon the village courts.

Why did the village social courts take root, at least in some areas, despite the obstacles? To begin with, the village courts had a genuine function. As their designers had predicted, the village courts did provide a way for peasants to resolve disputes which they would have taken to people's court with difficulty, if at all. Second, the village courts also served the interests of village officialdom. Like the administrative processing of local ordinances discussed above, the village courts provided local authorities with revenue. When levying penalties, the village courts stressed fines, and used the income to supplement their budgets (Zvenev, 1930; Kiulaots, 1930). Thus, one active village court in 1931 garnered 490 rubles for general budgetary use, more than the average village soviet budget a few years earlier (Zhukovskii, 1931). Budgetary incentives to fine were so strong that some village courts even fined witnesses who failed to appear (Zvenev, 1930: 14). A third reason for the success of the village courts was that they were, for better or worse, peasant courts, bodies with which peasants

[14] I have calculated this figure as follows. Assuming that there were about 100 village social courts per *uezd* (40,000 village courts for 400 *uezdy*) and 16 cases per year per village court, one finds that the village courts of the average *uezd* were hearing 1,600 cases. If one quarter of these cases would otherwise have been heard in people's court, the judges in this average *uezd* were saved 400 cases. If each *uezd* contained three people's courts with one judge each (Kozhevnikov [1925: 134] claimed that there was one judge for every few *volosti*, and there were about ten *volosti* per *uezd*), each judge would be saved around 130 cases per year.

could feel comfortable and which dispensed traditional peasant justice.

In practice, the village courts did not meet the standards of the urban jurists who had designed them. Although not captured by *kulaks*, the village courts were in the hands of village notables, sometimes the village soviet chairman himself. The members of the courts who heard cases tended to be ignorant of the laws and regulations governing their work and were also frequently illiterate. It is not surprising, therefore, that the village courts often took on cases outside of their jurisdiction and handed out penalties exceeding their legal competence. Ignorance of the law did not stop peasant judges from playing at it. Often they imitated judicial procedures as they understood them (despite their mandate to keep court sessions informal), and they were known to announce their decisions "In the name of the RSFSR. . . ." Some village courts also resembled people's courts in developing delays and backlogs of cases, and paperwork even of the simplest kind confounded some village courts (Pomerants, 1929; Merkulov, 1929; Pozniakov, 1929). Nonetheless, as peasant courts, the village social courts provided a setting for peasants to resolve disputes and to police themselves, according to custom and common sense if not to law (Volodarskii, 1931).

Further insight into the success of the village social court can be derived from comparing its record with that of its competitor in the countryside, the *kolkhoz* comrades' court. During the collectivization campaign of winter, 1930, the government authorized the establishment of comrades' courts on collective farms (*kolkhozy*), which some observers thought would supplant the village courts. But the reversal of collectivization that spring set back the development of *kolkhoz* courts. Narkomiust reserved the draft statute it had prepared, and a debate emerged over which kind of court—*kolkhoz* comrades' or village social—was appropriate for regions which had achieved full collectivization. In the absence of consensus it was decided that each region could go its own way (Kozhevnikov, 1957; Sedov, 1932; Ermeev, 1931). Even so, the record of comrades' courts on *kolkhozy* was not one of outright failure. In 1932 there was one *kolkhoz* comrades' court for every four village social courts in the RSFSR, and in the fully collectivized North Caucasus the number of the former almost equalled that of the latter (*SIu*, 1933: 14, Sedov, 1932: 18). However, a division of labor between the two bodies emerged which bode ill for the *kolkhoz* comrades' court. Like their

industrial brethren, the comrades' courts on *kolkhozy* heard mainly production-related, labor discipline cases, and left personal disputes and petty crime to the village courts (Sedov, 1932; Bagrov, 1931; N., 1935: 12). The problem was that there was no need for a lay court to discipline *kolkhozniki* in the workplace. *Kolkhoz* and MTS authorities preferred to impose sanctions unilaterally without the delay or complication of a hearing, and politicians paid heed to their preferences. In the spring of 1933, *kolkhoz* chairmen were granted the legal right to deal with labor discipline infractions unilaterally (which they had been doing all along without legal authority), and in 1935, when the new *kolkhoz* charter further enhanced the chairmen's power, the comrades' courts in *kolkhozy* were abolished (Slavchev, 1934: 4; Rozenberg, 1935; Kozhevnikov, 1957: 215). In contrast, there was no simple alternative to the village social courts which could deal with petty crime in the villages or resolve personal disputes among the peasantry, especially when these included non-*kolkhoz* members. In continuing to fill the void left by the people's courts and in doing so without posing a threat to the authority of the new local potentate, the *kolkhoz* chairman, the village social courts went on working into the late 1930's.

In contrast to the village courts, the comrades' courts in factories were never securely established and did little to relieve the people's court judge of criminal cases. Only during 1929 did the comrades' courts deal with petty disputes and misdeeds, and strong resistance from trade unions that year stifled their development. By the end of 1929, there were only 1,427 comrades' courts (less than one-fifth the number of village social courts at that time), and most of these had heard only a few cases (D.R.-rg, 1930; Zvenev, 1930: 14). The total number of cases heard by the comrades' courts in any particular city was far too few to have any effect on caseloads in people's courts. During the early 1930's, as we shall see, trade union resistance to the courts lessened and their number expanded, but these changes occurred only at great cost. The grudging acceptance of comrades' courts by at least some union officials came only after they had shifted their attention from everyday disputes to labor discipline infractions. This shift of attention eliminated any possibility of the comrades' courts fulfilling their original purpose of relieving the people's courts, for the latter had not been dealing with cases of labor discipline. The change also meant that the comrades' courts had assumed a function for which they were not well suited and which was not uniquely

theirs. These developments would vitiate much of the later effort expended on their behalf.

The enlistment of trade union support for comrades' courts required not only the shift in their functions but also a two-year campaign on the part of Narkomiust and its head, Comrade Ianson. For, having lost the battle over establishing comrades' courts, trade union officials tried to thwart the execution of that decision. According to Ianson, the trade unions displayed during 1929 "colossal resistance . . ., beginning with its head Tomskii and extending down to the little trade union functionaries in factories and districts" (*SIu* 1930: 1-2). The resistance was especially deleterious at the local level (where it was to persist). Even when they did not directly obstruct the comrades' courts, factory union officials often failed to provide released time for their chairmen and a room for meetings, to announce the court's sessions, and to hear reports from their chairmen (Baguev, 1931; Lagovier, 1931). During 1929 when the comrades' courts focused on personal disputes, they were irrelevant if not also anathematic to the unions, whose officials jokingly dubbed them "revolutionary tribunals in the factory." But by the end of that year many factories had become newly burdened with disciplinary infractions, largely the result of new workers who had migrated from the countryside, and they could see a use for comrades' courts. The Moscow trade union council suggested that their jurisdiction be enlarged to include labor discipline, authorization for which was provided early in 1930 (Baguev, 1931: 19). That spring, the Supreme Council of the National Economy (VSNKh) directed the unions to use comrades' courts for this purpose (Fentsov, 1931). By this time a new leadership had taken its place in the Central Trade-Union Council (VTsSPS), which was more pliable and less committed to resisting the comrades' courts. But even the new trade union leaders regarded the existing comrades' courts as Narkomiust's vehicle for relieving the people's courts, and they sought to establish their own production-disciplinary courts separate from, and if need be, parallel to the existing comrades' courts. The Commissar of Justice Ianson fought resolutely against this challenge to one of his commissariat's pet experiments. In September he arranged a meeting of comrades' court chairmen from Moscow, and they joined in condemning the trade union's approach, calling for a single comrades' court to handle both production and ordinary cases. The chairmen in attendance noted, however, that their work

had already shifted toward a "production deviation (*uklon*)" (*SIu*, 1930; D.R.-rg., 1930). Afterwards, Narkomiust and VTsSPS called a truce and drafted a statute for a single "production-comrades' court." Passed into law in 1931, the new statute empowered comrades' courts to recommend firing from the job or loss of union card, as well to apply the usual fines or warnings (*SIu*, 1931b; "O proizvodstvenno-tovarishcheskikh," 1931).

From 1931 through 1933 Narkomiust and the central trade union officials worked jointly to promote and develop the comrades' courts, but Narkomiust remained the major sponsor. Much of the credit for the promotion of the comrades' courts in these years belongs to Fanni Niurina, Narkomiust's senior official in charge of the experiment. Among the initiatives of Narkomiust and Comrade Niurina were the following: an edict issued jointly by Narkomiust and VTsSPS castigating lower trade union officials for not assisting the courts ("Postanovlenie Sekretariata," 1932); a radio broadcast on the comrades' courts which featured appearances by the new Commissar of Justice Krylenko and other top officials (Volodarskii, 1933); an all-union conference of comrades' court chairmen, which heard a speech by the trade union leader Shvernik; a speech which VTsSPS published and widely distributed (Volodarskii, 1933; Shvernik, 1933); the publication of a whole series of brochures directed at the chairmen of comrades' courts in factories and in *kolkhozy* (Niurina, 1933b; Mirabo, 1933; Rausov, 1932); and persistent proselytizing by Niurina, who wrote for the trade union journals, as well as for the legal press (Niurina, 1933a). These efforts came to a halt in 1934, when Niurina became Deputy Procurator-General of the RSFSR, and no other member of Narkomiust's Collegium took personal charge of the comrades' courts.

What were the results of all these efforts? By January 1, 1931, there were reportedly over 4,000 comrades' courts in operation; by July, 1932, 20,648 were on the record books, including more than one in some factories. But as Niurina was quick to concede, at least one fifth of that number consisted of "dead souls," that is barely functioning courts which heard one or two cases a year (*SIu*, 1931a; Niurina, 1933a: 55). The average caseload of comrades' courts was never high; the records showed that all comrades' courts combined heard 93,000 cases in the first half of 1932, with the average court hearing less than one case per month. True to their new name of "production" courts, they dealt in the main with cases of

labor discipline, especially of absenteeism (Shliapochnikov, 1934: 211). But the role played by the comrades' courts in the overall effort to infuse adequate work habits into a labor force dominated by new and restless workers was never significant. That problem was of too great proportion. Most factories had to cope with far too many violations of rules and routines for leisurely processing by a lay court. Thus, the comrades' courts of the large factory "*Krasnyi putilovets*" tackled 250 cases in 1932, including 150 labor discipline infractions, but at the same time the management of the factory administered more than 11,000 penalties unilaterally ("O rabote tovarishcheskikh," 1932)! It is not surprising that neither management nor unions found the comrades' courts of much use. Occasionally managers did send labor discipline problems to the courts, but not always for the best motives. A common practice was for managers to use comrades' courts to shield themselves from blame for unpopular firings (*SIu*, 1931a). The instability of the labor force which made labor discipline too big a job for the comrades' courts also affected the courts themselves. In theory comrades' courts were to be run by the best, most reliable workers, who could teach the newcomers their lessons. But even comrades' court members were not paragons of consistency; in the first half of 1933, 40 percent of them deserted the courts (Deviakova, 1933).

All the same, some of the comrades' courts achieved a modicum of success, and this fact calls for explanation. The more successful courts probably benefited from some minimal support from a local people's court judge who took more seriously than most his responsibility for supervising the comrades' courts. The indispensable ingredient for any functioning comrades' court was volunteers, workers who displayed enough interest in and enthusiasm about judging their peers to motivate them to buck the tide of uncooperative union and management officials. The workers who operated the comrades' courts may well have been attracted by the pleasures of passing judgment and exercising power. The practice of comrades' courts suggests that this was the case, because comrades' courts, like the village social courts, often exceeded their authority, in some instances actually firing workers or depriving them of union membership (instead of making recommendations to management or union). One sentence meted out to two workers found guilty of absenteeism illustrates the pleasures of power comrades' court members might feel. The guilty parties received "five years strict

isolation (i.e. incarceration), but taking into account twenty years continuous working record, to replace this with six months corrective work, and taking into account the victory of the proletariat on all fronts, to consider the sentence conditional" (Shliapochnikov, 1934: 215).[15]

The contrast between the experiences of the village social courts and the comrades' courts is instructive. Both bodies developed in turbulent times and therefore were institutions of secondary importance, but the former was more successful than the latter. The village courts had both a genuine function which they were capable of performing and a constituency which supported them; the comrades' courts lacked both of these ingredients for institutional success. Whereas the village courts filled the void left by a judicial system which could not adequately service the villages, the comrades' courts became an inconvenient and slow way of punishing disciplinary infractions in the factory, of which they could at best handle only a small part. Whereas the village courts appealed both to village officials searching for revenue and to peasants with grievances, the comrades' courts held little attraction for most factory and union officials and for most workers. In short, in replicating a traditional mechanism for resolving disputes in the village, the village courts found a place in the village. The comrades' courts, which stood outside the structure of authority in the factory, did not find a place. Though not incompatible with factory life, they were a luxury, unsuitable for a time of massive social change.

IV. THE DECLINE OF ALTERNATIVES AND RETURN TO THE COURTS

The second half of the 1930's witnessed a decline in the Soviet government's reliance upon lay courts and

[15] The intense commitment of one comrades' court chairman is illustrated by her efforts to gain the cooperation of the *raion* newspaper. The comrades' court headed by one Sorokina convicted a woman of stealing bread from a cafeteria and sentenced her to a warning and to publication of an account of the incident in the local newspaper. But when Sorokina sent an announcement to *Kolkhoznyi put*, its editor dragged his feet. First, he insisted upon payment of a 20-ruble fee for publication; then he wanted five rubles for a shortened version; finally, when the five rubles was offered, he refused to publish the words "convicted for stealing bread" on the grounds that this might "help the *kulaks* who allege that there are hungry people in the USSR." Sorokina appealed to the local procurator for help, but they were both rebuffed when the editor challenged the procurator's authority on the ground that as editor he was subordinate only to the party organs. Then, Sorokina wrote to the people's court judge in her district, who passed her letter up the line all the way to the USSR Supreme Court, which in turn wrote the Ivanovskii *obkom* asking the party authorities to ensure that the editor provided the appropriate cooperation (*Sovestskaia iustitsiia*, 1934).

administrative procedure for handling petty offenses, and the return of such offenses to criminal courts. The change started with the weakening of the lay courts and was completed by the explicit revival of judicial responsibility for petty crime.

The weakening of the lay courts may be traced to two events in 1935. The first was the promulgation of the *kolkhoz* charter. Designed to strengthen the collective farms, this charter gave full disciplinary power to the chairman and stressed his responsibility for economic and social development in the villages. As we have seen, the emphasis on the role of the chairman led quickly to the liquidation of the *kolkhoz* comrades' courts, but it also affected the other lay courts indirectly. Village social courts suffered when much of the attention of central officials responsible for rural institution building shifted from the village soviets to the *kolkhozy*. Likewise, the charter's emphasis upon the *kolkhoz* chairman's unilateral responsibility for discipline might well have suggested to factory managers that there was no longer any political reason to dilute their authority through reliance on comrades' courts.

The other event of 1935 which affected the lay courts was the onset of Stalin's campaign to restore legality and to stress "stability of law" in Soviet administrative practice. Stalin's main purpose in promoting law was to achieve social stability and order, which was sorely needed after six years of violent and disruptive change (Berman, 1963: 47-65). Two aspects of the use of law to create order affected the experiments with diversion. First, the heightened concern among central officials with reducing the exercise of arbitrary authority by local government made the whole practice of administrative justice by local police suspect and open to curtailment. Second, Stalin himself sought in a traditional way to use the law to punish and deter sources of disorder which bothered him. Thus, when Stalin became aware of the extent of juvenile crime, he transferred most young offenders out of the care of the juvenile affairs commissions and back to the jurisdiction of the courts (Goliakov, 1953: item 420). This act was but the first affirmation of the court's predominant role in social control (with the exception of political crime) and the first rejection of an alternative to it.

The new emphasis upon the formal legal system, including the people's courts, helped to undermine the remaining lay courts. As the prestige of the people's courts rose, the political significance of the lay courts declined, and with it the attention

of Narkomiust. To be sure Narkomiust officials could not ignore the lay courts as long as supervision of those bodies remained their formal responsibility. But Narkomiust did little more than organize elections to the courts in 1935 and 1937 and promote sporadic investigations of their practices (Antipov, 1935; "O perevyborakh," 1937). The results of the decline in attention from central judicial officials were particularly devastating for the comrades' courts, which were already weak and still lacked trade union support. Without the prodding of Narkomiust, local people's judges stopped attending to the comrades' courts; and according to a 1937 investigation, more and more of the courts were becoming inactive. In some factories comrades' courts had been "quietly liquidated" (M.D., 1938). In 1938 the supervision of the lay courts by Narkomiust and the judges ceased entirely, when the new Law on Court Organization failed to include it among their responsibilities. At once Narkomiust officials claimed that this omission relieved them of their old duty, and to confirm their contention they appealed to the USSR Supreme Court for a ruling. In February, 1940, the Supreme Court ruled in favor of Narkomiust, deciding that the commissariat had no responsibility for comrades' courts on railroads or other transport facilities because they were not mentioned in the law. The ruling was understood by all concerned to apply to comrades' courts everywhere and to the village social courts as well (Kozhevnikov, 1957: 286).

That same law on court organization also was part of the chain of decisions starting with the transfer of juvenile offenses which revived judicial responsibility for petty crime. The law explicitly restored to the people's courts responsibility for petty civil and criminal cases. This law was followed in turn by changes in the criminal law which effectively eliminated the remaining jurisdiction of the lay courts and the possibility of handling most petty offenses administratively. Thus, it was announced at the end of 1938 that all cases of timber poaching were henceforth to be handled in court rather than administratively. When judges resisted taking on these cases, Narkomiust and the Procuracy insisted. Not surprisingly, courts which observed the new rules were soon congested, and Narkomiust was forced to ask the timber agencies not to send to court cases of first offenders who took less than three rubles worth of timber from nonforbidden zones (Morin, 1939; "O rassmotrenii sudami, 1939; *SIu*, 1939). The return of petty cases to the courts was completed in the summer of 1940 when Stalin

made absenteeism a crime subject to imprisonment and ordered prison terms set by courts for petty theft and for hooliganism as well. Judges also resisted this new invasion of petty cases and the increased repression which it entailed, but judges who refused to implement the draconian edicts were themselves threatened with criminal responsibility (Goliakov, 1953: items 467, 473).

By the autumn of 1940, all of the major categories of cases diverted from the courts in 1925 and 1929 had returned to them, and the lay courts had withered away as well. Lay courts would return to the Soviet scene only two decades later when N.S. Khrushchev sponsored the revival of the comrades' courts (Berman and Spindler, 1963; Juviler, 1979). The meting out of fines by local authorities did not disappear, and one wonders how often after World War II such local potentates as the *kolkhoz* chairmen fined petty hooligans and other miscreants. Officially, though, petty hooligans, thieves, and timber poachers remained strictly in the court's purview until the mid-1950's.[16]

Conclusions

Nonserious crime proved a troublesome problem for Soviet authorities after the Revolution. By eliminating the alternatives to the courts which had handled many petty infractions in Tsarist times, the Bolsheviks forced upon their own people's courts near-total responsibility for imposing sanctions. The resulting criminalization of petty offenses so congested the courts that the authorities were forced to reconsider and find alternatives. By stages they decriminalized many petty offenses and transferred them to new variants of the very alternatives to the courts which had been used by the Tsars, administrative procedure, and lay courts. Although the performance of these alternatives varied in quality and effect, each wave of diversion freed the courts of many cases. Yet, each time the unused court capacity was replenished with other kinds of cases. The alternatives to the courts were rejected only later when Stalin sought to use the law to impose new order upon government and society.

The historian of Russia can view this story only with a sense of *deja vu*. He recognizes another example of the Bolshevik (should I say Russian) predilection for telescoping historical development. In Western Europe the fragmentation

[16] The use of administrative proceedings for petty crime was revived in the mid-1950's and further expanded in the late 1970's. For the most recent developments see Juviler (1980).

of responsibility between new national legal systems and older institutions for sanctioning and dispute resolution lasted for centuries, and the transition of the legal system from hegemony to exclusivity was gradual. In Russia, however, where the legal system was barely 50 years old, the Bolsheviks sought to give it near-exclusive responsibility. That this move proved premature is not surprising, because not just legal institutions but government in general had not penetrated far into the life of the Russian village.

The student of diversion is struck by different, but no less familiar themes. For example, whatever court capacity was freed up by the decriminalization of some offenses was soon filled through the expanded enforcement of others. This pattern lends support to the fashionable proposition that law enforcement is an elastic process, the limits of which are set largely by institutional capacity (Erikson, 1966; Connor, 1972). A disturbing corollary of this proposition—namely that diversion tends to increase crime control—also finds confirmation in the Soviet experience. When Soviet courts refilled their dockets, they were adding to the total number of offenses receiving sanctions of one kind or another. And, to the extent that any of the alternatives to the courts took on new cases in addition to those diverted from the courts, they reinforced the result.[17]

Most surprised by this account of how the Soviets grappled with petty crime might be the enthusiasts of lay courts and admirers of the comrades' courts in particular. Would they have expected that Soviet authorities had established lay courts in the late 1920's not because of beliefs about the benefits of lay participation but because lay courts had functions to perform? Probably not, but the design of these lay courts to play a needed role may explain both the victory of their promoters over their opponents and the effectiveness of the bodies in practice. The village social courts (like their pre-revolutionary predecessors, the *volost* courts) worked, because they handled cases no other body could and had both clientele and constituency. The comrades' courts, however, especially after they became labor discipline tribunals, lacked all of these

[17] A clear example of how a supposed alternative to the courts actually acted as a supplement to them which generated its own additional casework is the administrative processing of hooliganism. Before 1925 hooliganism occupied a reasonable but not excessive amount of court time (around 10 percent of cases). After 1925, when the police exercised their new right of administrative prosecution, they dramatically increased the repression of hooliganism, but not with cases diverted from the courts which were also hearing more cases of hooliganism than before (see Bulatov, 1933: 70).

and sputtered. There may be lessons in this experience for the promoters of lay courts today, in both East and West.

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Key to abbreviations of journal titles

ESIu *Ezhenedelnik sovetskoi iustitsii*
SGiP *Sovetskoe gosudarstvo i pravo*
SIu *Sovetskaia iustitsiia*
VS *Vlast sovetov*

A.G. (1923) "O narusheniiakh karaemykh v administrativnom poriadke," 10 *VS* 95.

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