

REVIEW

Solzhenitsyn's View of Soviet Law in *The First Circle*

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Recently published excerpts from *The Gulag Archipelago*¹ dramatically indicate the importance of Soviet legal institutions in the work of Alexander Solzhenitsyn. While detailed commentary on this courageous work must await its full publication and circulation in the West, an understanding of the Soviet legal system and its role in Solzhenitsyn's earlier writing is likely to contribute to an appreciation of *Gulag* and forthcoming books.

In his three major works set in Soviet Russia,² Solzhenitsyn expresses his disillusionment with the progress of the socialist regime by a direct attack on one particular institution: the Soviet legal system. Especially in *The First Circle*, there is a pervasive narrative fascination for the law. A rudimentary understanding of the system that has abused so many of the novel's characters is almost a necessity for an appreciation of the work as a whole. Moreover, an analysis of the legal thematic may result in a more complete understanding of both Solzhenitsyn's quality as a writer and his overall critique of Soviet society.³

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¹ N.Y. Times, Dec. 29, 1973, at 1, col. 1; *id.*, Dec. 30, 1973, § 1, at 1; *id.*, Dec. 31, 1973, at 1, col. 1. Some later excerpts are particularly relevant to this review. See N.Y. Times, Feb. 13, 1974, at 12, col. 4. The work has appeared in Russian in a Paris edition, and publication of an English translation is scheduled for May, 1974.

² *THE FIRST CIRCLE* (1968); *CANCER WARD* (1968); *ONE DAY IN THE LIFE OF IVAN DENISOVICH* (1963).

³ Although Solzhenitsyn's place in history as a courageous individual is now assured, it is fair to question the more hyperbolic responses to him as a writer. Simon Karlinsky's observation that Solzhenitsyn is the "foremost living Russian writer" may not be as "self-evident" as he thinks. Karlinsky, N.Y. Times, September 10, 1972, § 7 (Book Review), at 1. A considerable argument can be made for the artistic supremacy of Sholokhov's *The Quiet Don*, for example, and critics like Chaix-Ruy are certainly overly enthusiastic in placing Solzhenitsyn in the company of Rabelais, Gogol, Flaubert, Dostoyevski, and Cervantes. See J. CHAIX-RUY, *SOLZHENITSYN OU LA DESCENTE AUX ENFERS* 68(1970). For helpful additional analyses, see G. LUKACS, *SOLZHENITSYN* (trans. 1971) and *SOLZHENITSYN; A DOCUMENTARY RECORD* (1973).

I. ARTICLE 58⁴ AND SOLZHENITSYN'S CHARACTERS

In *One Day in the Life of Ivan Denisovich*, article 58 of the Soviet Criminal Code is briefly mentioned as the law under which Ivan Denisovich has been sentenced to hard labor.⁵ Many of the characters in *The First Circle* have run afoul of article 58; all of the major figures in the Mavrino prison camp have been arrested under some provision of article 58. Ruska Doronin is serving 25 years for violating paragraph 1A and the frequently mentioned article 19;⁶ Nerzhin and Rubin were arrested under article 58(10). No fewer than nine less important characters are also "58-ers." In the crucial mock trial scene,⁷ paragraphs 1B, 6, 9, and 11, in addition to article 268 of the Code of Criminal Procedure,⁸ are invoked by the sham special prosecutor, in a bitterly effective parody of Soviet justice.

Jules Chaix-Ruy has compared the legal setting of these characters to that of Kafka's K. in *The Trial*,⁹ but the analogy is not quite accurate. K. did not receive a specific indictment and was made to feel guilty of some vast, unknown crime; Solzhenitsyn's figures know precisely why they have been arrested and under specifically which law. Each prisoner has been informed of the code provision applicable to his case, and each frequently rehearses the facts of his case, both privately and with the other "zeks."¹⁰ Indeed, some of the legal histories are sufficiently detailed to provide a miniature casebook of the Stalinist criminal law;

⁴ The full text of Article 58 is presented in the Appendix to this review.

⁵ A. SOLZHENITSYN, *ONE DAY IN THE LIFE OF IVAN DENISOVICH* 50(1963).

⁶ Article 19 of the 1927 code reads:

When an attempt has been made to commit a crime and acts preparatory to a crime have been done which manifest themselves in seeking out or adapting weapons or means or in bringing about conditions for the commission of the crime, criminal proceedings shall be taken as though a crime had been committed. . . .

If a crime has not been carried to a conclusion because the person who intended to commit it voluntarily refused to commit it, the court shall fix the appropriate measure of social defense in respect of such acts as were in fact done by the person who attempted to commit the crime or made preparations for it.

R.S.F.S.R. 1927 UGOL. KOD. (Criminal Code) § 19. The following annotation was made by a Directive of the People's Commissariat of Justice, R.S.F.S.R. and of the Supreme Court of the R.S.F.S.R.:

Preparation and attempt incur equally the application of measures of social defense, since the social danger of a person is manifested in them; however, it must be emphasized that application of a social defense to the preparation to commit a crime is permissible only in those cases when preparatory acts have manifested in a definite concrete form the bases for believing that criminal intent existed and are, therefore, socially dangerous.

⁷ Pp. 348-56 (all citations to *The First Circle* are to the Bantam Paperback edition).

⁸ Article 268 provides that where defendants or their attorneys are not present, the case is to be continued. See text at notes 39-40 *infra*.

⁹ J. CHAIX-RUY, *supra* note 3, at 29.

¹⁰ Soviet slang for special prisoners.

they also provide an organizing principle in following the portrayals of the characters throughout the work.

*Case of Khorobov.*¹¹ A laboratory worker from Vyatka, he scribbled treasonous remarks about Stalin on the back of his ballot in the first post-war election. After a detailed investigation involving examination of every other ballot cast in the district, handwriting experts identified the remarks as his. He was sentenced to hard labor under article 58(10) (propaganda or agitation).

*Case of Potapov.*¹² An engineer, he was captured by the Germans during the war and drew for them part of a plan to a hydroelectric station. His knowledge that the station had already been blown up and that the diagram had been published was held irrelevant. After confessing, he was sentenced under article 58(6) (espionage) to ten years hard labor, to be followed by loss of personal rights for five years.

*Case of Adamson.*¹³ As a young party member, he said some regrettable things. He refused to retract them and chose exile from 1929 to 1934. He was allowed temporary freedom, but was resentenced to consecutive ten-year terms on the basis of a single interrogation establishing his prior exile.

*Case of Sologdin.*¹⁴ An engineer, he was first arrested near the end of the war, under article 58, in a "general round-up" of potential transmitters of state secrets. He received an indeterminate second term, largely due to the jealousy of a security officer, who had been interested in a nurse who favored the prisoner. He is an example of a prisoner who was arrested under the elastic provisions of article 58(10), but who has "never had anything to do with politics."

*Case of Kondrashev-Ivanov.*¹⁵ As an artist, he participated in a decadent, bourgeois literary gathering.¹⁶ At one of these meetings he witnessed a public reading of a counter-revolutionary novel that, because of the efficiency of the state-controlled publishing houses, was never published. He, and all those listening with him, were sentenced under article 58(10) to twenty-five years at corrective labor.

*Case of Kagan.*¹⁷ Not previously known for political leanings, he was a stockroom hand of "cosmopolitan" belief.¹⁸ When his services were

¹¹ Pp. 62-64.

¹² P. 182.

¹³ Pp. 192, 357-60.

¹⁴ Pp. 150, 202, 469.

¹⁵ P. 294.

¹⁶ These adjectives are typical of those used in *Pravda* reviews of doctrinally unacceptable literature or scholarship.

¹⁷ P. 342.

¹⁸ "Cosmopolitan" is a common Soviet shorthand for Jew, as in the following passage

requested by the state as an aide to the state prosecutor, or "informer" in counter-revolutionary circles, he refused to cooperate. Although some people in his stockroom were convicted under article 58(10) of "agitation" to "undermine or weaken" the State, Kagan's guilt was under article 58(12) for failure "to report any counter-revolutionary crime."

*Case of Spiridon.*¹⁹ A distinguished fighter in the Civil War, he was made Commissar for Collectivization with the duty of encouraging peasants to join collective farms and to contribute their property. His drinking problem soon made him ineffective, and his negligence allowed peasants to destroy their property before joining the collective farms. He was convicted under article 58(7) and sentenced to ten years at hard labor. On retrial, however, the charge was altered from "economic counter-revolution" to "abuse of authority;" he was therefore recategorized from "socially hostile" to "socially friendly" and made a prison guard.

The importance of article 58 in the novel makes necessary a summary of its historical background and application.²⁰ The provision is part of the 205-article Criminal Code of the Russian Socialist Federal Soviet Republic, which became effective on June 6, 1927.²¹ This code endured, with some amendments, until a complete revision in October, 1960,²² thus encompassing the historical period of Solzhenitsyn's three "Soviet" novels. Indeed, this longevity is mentioned in the novel, when State Prosecutor Makarygin refers to the "hopelessly antiquated,

from a *Pravda* critique of a book about law: "[Writing] as an orthodox cosmopolitan," the author errs by not analyzing the prosecutor's "role in connection with economic and political tasks posed by the Party and government at this or that stage of the development of Soviet society." Mokichev, *A Faulty Book*, in 1 CURRENT DIGEST OF THE SOVIET PRESS, No. 22, at 64 (1949).

¹⁹ P. 456.

²⁰ A full understanding of any statutory material requires some information about its background. This generalization may be particularly valid regarding Soviet law; Lenin himself stated that a "law is a political measure, it is politics." J. HAZARD, I. SHAPIRO & P. MAGGS, *THE SOVIET LEGAL SYSTEM* 5 (1969). See also Ancel, *Introduction to LA RÉFORME PÉNALE SOVIÉTIQUE* lxviii (1962). That this theory still prevails is illustrated by the typical view that the prosecutor plays an economic and political role as much as a legal one in the Soviet system. See note 18 *supra*.

²¹ H. BERMAN, *SOVIET CRIMINAL LAW AND PROCEDURE, THE RSFSR CODES 27-64* (1966).

²² Some parts of article 58 are preserved in the 1960 code. Paragraph 1 is now in article 64 (treason); paragraph 2 is now in articles 64, 66, and 77 (banditry); paragraph 6 is now in article 65 (espionage); paragraph 7 is now in article 69 (undermining the cooperative system); paragraph 8 is now in article 66 (terrorism); paragraph 9 is now in article 68 (sabotage); paragraph 10 is now in article 70 (anti-Soviet propaganda); paragraph 11 is now in article 71 (organizing for counter-revolutionary purposes); paragraph 12 is now in article 88-1 (failure to inform, now only applying to treason, espionage, terrorism, conspiracy, and banditry).

though still valid, 1926 code of criminal law."²³ At first glance, the Czarist precedents for parts of article 58 may be surprising.²⁴ It is rare, however, for any nation—even France in 1804 with the Napoleonic Civil Code or Germany in 1900 with its new code—to abandon completely its antecedent legal principles. Indeed, early Soviet criminal codes occasionally returned to norms that had been struck down by the Czarist reforms of 1864.²⁵

When article 58 was introduced in 1926, subtitled "counter-revolutionary crimes," it received little special notice in Soviet legal journals, perhaps because of its similarity to prior law. The *Ezedel'nik Sov'etskoi Iustitsii* merely observed that "counter-revolutionary crimes are given under one number (58), each of these carrying its own ordinal number."²⁶ Later Soviet commentators, however, have provided more insight into the "legislative history" of the provision. A Russian criminal law handbook observes:

After the opening phases of socialism had been established (1917–1926) . . . foreign powers (such as England, Germany and China) established on Soviet soil instruments of anti-revolutionary, bourgeois intelligence. Investigations established that the workers of these counterrevolutionary organizations were engaged over a number of years in vicious [zlostnom] sabotage and secret disruptive measures, which meant to impair the very means of production of the Soviet state, establishing foreign "white-guard" centers for this sabotage and terror.

[Viewing these acts as a part of the bourgeois reaction to socialism], I.V. Stalin gave his attention to the importance of the application to the criminals of severe measures of repression. . . . 1927 brought about the efficacious period to deal with political crimes (counterrevolutionary and those deemed generally dangerous crimes against the order of the State).²⁷

A specific example of what may have provided this supposed impetus for article 58 is presented by a celebrated case, of which the Soviets were sufficiently proud to issue a complete English transcript.²⁸ The

²³ P. 422.

²⁴ For example, John Hazard has pointed out the similarities of article 58(5), prohibiting "inducing a foreign government . . . to declare war on" the Soviet Union to the pre-Revolutionary provisions against treason. Hazard & Stern, "Exterior Treason", 6 U. CHI. L. REV. 77, 83 (1938).

²⁵ H. BERMAN, *supra* note 21, at 75. See also Ancel, *supra* note 20, at ix, x.

²⁶ 36 EZEDEL'NIK SOV'ETSKOI IUSTITSII 1058 (Sept. 12, 1926).

²⁷ SOV'ETSKOE UGOLOVNOE PRAVO OSOB'ENAYA CHAST' 63–66 (1952).

²⁸ REPORT OF COURT PROCEEDINGS IN THE CASE OF THE ANTI-SOVIET TROTSKYITE CENTRE (People's Commissariat of Justice of the U.S.S.R. 1937) [hereinafter cited as TROTSKYITE COURT PROCEEDINGS].

defendants, accused Trotskyites,—one of the defendants in absentia was Trotsky himself—were allegedly in league with “German and Japanese capital” to create “important capitalist interests on Soviet territory.”²⁹ The indictment also alleged preparation for terrorist actions against Molotov and others and generally “restoring capitalism and the rule of the bourgeoisie in the Soviet Union.”³⁰ Seventeen men were accused of violating article 58, paragraphs 1A, 8, 9, and 11.

The trial that followed is probably typical of Soviet political trials. All of the available defendants had confessed and pleaded guilty to the indictments; all but four waived the right to counsel. Nevertheless, public questioning took place, and the testimony of defendants, witnesses, and experts fills 400 pages. At the close of the trial, State Prosecutor Vyshinsky—perhaps the prototype of Solzhenitsyn’s portrayal of Makarygin—concluded his case with a masterpiece of rhetoric:

Another specific feature of this trial is that it, like a searchlight, illuminates the most remote recesses, the secret by-ways, the disgusting hidden corners of the Trotskyite underground. . . . The stupid obstinacy, the reptile cold-bloodedness, the cool calculation of professional criminals This is the abyss of degradation! This is the limit, the last boundary of moral and political decay! This is the diabolical infinitude of crime!³¹

Vyshinsky attacked the defendants as precisely those enemies of the state against whom the 1927 law was directed; the defendants’ alleged association with fascist powers made this justification of the law an emotionally effective one for western consumption. After a lengthy summary Vyshinsky demanded the supreme penalty, death by shooting.

Most of the defendants waived their right to a final statement, but more bizarre than this reticence in the face of death were the remarks of the defense attorneys. One attorney spoke of how difficult it was as a “citizen of the great Soviet Union” to justify his “client’s” behavior.³² Another said that at “first glance it may appear strange that I, Arnold’s defending counsel, should admit these facts. But, Comrade Judges, to pass something over in silence is the worst method of defense.”³³ Defendant Arnold blamed his degradation on having “received as a heritage from tsarist Russia the shameful brand of being an ‘illegitimate

²⁹ *Id.* at 5.

³⁰ *Id.* at 17–18.

³¹ *Id.* at 462–63.

³² *Id.* at 517.

³³ *Id.* at 525.

child' ”³⁴ and proclaimed that, as a result of the trial, “I have never felt my biography to be as clear as it is now.”³⁵ Turok, also a defendant, said:

[T]he prosecutor in his speech has called me a bandit, comparing me and my companions in the dock and in crime with those who lurk on the highway with bludgeon and dagger—moreover, this description was not the result of a chance phrase chosen by the prosecutor, but was the result of those criminal acts which I have committed.³⁶

Thirteen of the defendants were then sentenced to death by shooting. All personal property of the condemned was confiscated. Sokolnikov, Radek, and the relatively outspoken Arnold received ten years and Stroilov got eight years at hard labor; these four were thereafter “deprived of political rights for a period of five years each.”³⁷

This case has been widely discussed,³⁸ and the literary qualities of the full transcript are clear. Solzhenitsyn alludes to this proceeding in *The First Circle*'s memorable mock trial scene; Lev Rubin, who entertains the other Mavrino prisoners on their free Sundays, observes that “the office of prosecutor has always aroused very special feelings in me,” and conceives a novel holiday distraction. He leads his friends in a mock trial of Prince Igor of Kiev, a twelfth century Russian folk hero, for violation of article 58, paragraphs 1B, 6, 9, and 11. The “trial record” presents perhaps the most far-reaching critique of the Soviet criminal law and procedure in Solzhenitsyn's works to date. The mixture of literary themes with legal terminology is representative of the structure of *The First Circle*, where the effective use of the law to enhance an aesthetic message is the converse of Vyshinsky's use of literary language to enhance the effect of a legal message aimed at a Western audience.

Rubin plays the role of prosecutor with the histrionics of a Vyshinsky. He presents the indictment of Prince Igor under article 58 and immediately calls for closing arguments; the procedural protections af-

³⁴ Present Soviet law has substantially eliminated the Czarist stigma of illegitimacy. See J. HAZARD, I. SHAPIRO & P. MAGGS, *supra* note 20, at 530.

³⁵ TROTSKYITE COURT PROCEEDINGS, *supra* note 28, at 566.

³⁶ *Id.* at 570.

³⁷ *Id.* at 580. Solzhenitsyn's prisoners sardonically refer to this penalty as “five years on the horns.”

³⁸ E.g., R. CONQUEST, *THE GREAT TERROR: STALIN'S PURGE OF THE THIRTIES* 496-573 (1968); TUCKER, *Introduction to THE GREAT PURGE TRIAL* ix (R. Tucker & S. Cohen eds. 1968).

forded by Section 268 of the Criminal Procedural Code³⁹ are dispensed with because "of the absence of the accused and of the inconvenience of questioning the witnesses."⁴⁰ The humor of this remark is limited by the reality exposed by the Trotskyite trial; certain procedural guarantees are overlooked in actual political trials. The prisoners' bitterness is brought out by Nerzhin's statement, while playing the role of the Court: "Of course . . . we are always for the prosecution and against the defense, and we are ready to permit any violation of judicial rules."⁴¹ The further irony of convicting a Russian hero of treason underscores the basic contention of the novel that Soviet laws about political "crimes" have punished the citizens who might have best contributed to the cause of socialism. For this purpose, loyal communist Lev Rubin is the ideal spokesman, perhaps indicative of the deepest feelings of the enduringly socialistic Solzhenitsyn.⁴²

The breach of procedural rights in the novel, both at the mock trial and the incarceration of Innokenty Volodin,⁴³ requires further analysis. In the 1927 code, and even in the modified later codes,⁴⁴ a strong distinction is maintained between "private" and "public" crimes, the latter considered transgressions against the very fabric of the new state. Article 58 lists activities that are outlawed to protect the unsteady condition of an embryonic state. Such acts are often outlawed by post-revolutionary or wartime governments, as shown by the Alien and Sedition Acts in the United States. In the Soviet Union, however, this principle often reached procedural rules in addition to substantive law. For example, in ordinary cases the accused is allowed the benefit of counsel from the time the indictment is received. In cases that involve crimes that threaten the state, however, the accused may be denied counsel entirely.⁴⁵ This variance in procedural protections has often been criticized.⁴⁶

The basic theory of Soviet criminal law is that the motives for crime derive solely from the private ownership system of property; ultimately all crime will therefore vanish in a socialist state.⁴⁷ Until then, the sys-

³⁹ See note 8 *supra*.

⁴⁰ P. 352.

⁴¹ P. 354.

⁴² See J. CHAIX-RUY, *supra* note 3, at 19.

⁴³ Pp. 604-43.

⁴⁴ For a discussion of the progression from code to code, see H. BERMAN, *supra* note 21, at 65-99.

⁴⁵ See Hazard, *Soviet Criminal Procedure*, 15 TUL. L. REV. 220 (1941).

⁴⁶ See, e.g., Hazard, *supra* note 45; Mann, *Totalitarian Justice: Trial of Bukharin, Rykov, Yagoda, et al.*, 24 A.B.A.J. 970 (1938).

⁴⁷ A helpful statement of this theory is presented in J. HAZARD, I. SHAPIRO & P. MAGGS, *supra* note 20.

tem aims to "reeducate" criminals to become viable members of the increasingly perfect society. On the other hand, all people who work against the social establishment's goal of ending crime forever⁴⁸ are treated with exceptional harshness.

This theory of the Soviet criminal law, reflected by the prisoners in *The First Circle*, has often been discussed by Soviet observers. V.R. Libschitz, writing in the same year that the novel takes place, observed that in "the judicial sphere, there is no foundation for underestimating the importance of procedure. On the contrary, the legal guarantees of the State toward the individual citizen are totally guaranteed [by] the most democratic judicial system in the world."⁴⁹ N.N. Polyanski similarly asserted that there was a gap in the "bourgeois" states between the theory and the practice of the presumption of innocence in criminal procedure, but that, in Soviet law, the presumption is of "axiomatic significance . . . tightly connected with the principle of law that sentencing takes place only when proof is well-founded and unsusceptible of doubt."⁵⁰

Polyanski's argument sheds some light on the case histories presented in *The First Circle*. He admits that the presumption of innocence is not explicitly stated in the criminal code, but hastens to note that the presumption exists in other civil law systems, such as the French, where it is "well recognized as a fundamental concept." The Soviet commentator also observes that the presumption is usually most important before trial, when the prosecutor decides whether to continue an investigation.⁵¹ This admission points up the immense independent powers of the prosecutor, who may occasionally even pass sentence without a trial. Such procedures are probably instrumental in the fates of many of Solzhenitsyn's characters; the procedures were authorized by the Decree of the Central Executive Committee and Council of People's Commissars of the U.S.S.R. of November 5, 1934, in which the powers to impose exile, banishment, and imprisonment at hard labor on "persons who are recognized as being socially dangerous" are granted to the

⁴⁸ Or, as it is sometimes said, those people who would "weaken the fundamental economic, political and national conquests of the proletarian revolution." Margolin, *The Soviet Penal and Civil Codes*, 12 B.U.L. REV. 1 (1932).

⁴⁹ Libschitz, in SOV'ETSKOE GOSUDARSTVO I PRAVO, No. 11, at 56 (1949).

⁵⁰ Polyanski, SOV'ETSKOE GOSUDARSTVO I PRAVO, No. 9, at 57-64 (1949). The article is summarized in English in 2 CURRENT DIGEST OF THE SOVIET PRESS, No. 8, at 11 (1950); translations in the text are my own. This dialectic is also present in other articles in SGP in 1949. See Strogovitch, *To Eradicate Bourgeois Distortions of the Soviet Science of Criminal Procedure*, SOV'ETSKOE GOSUDARSTVO I PRAVO, No. 5, at 3.

⁵¹ Polyanski, *supra* note 50, at 58.

prosecutorial authorities.⁵² It is a necessary conclusion that, for "public criminals" of the type presented in *The First Circle*, there is only a limited right to the presumption of innocence.

The impression given by the mock trial scene, that the decision in such cases actually precedes the trial, has been previously noted by some Western analysts. Walter Duranty claimed that "the fact that [a person] is brought to trial is prima facie evidence of his guilt. The purpose of the trial is firstly to determine the degree of culpability and secondly to inflict the appropriate penalty."⁵³

To the American reader, the apparently arbitrary political sentencing under article 58 seems to result from excessive consideration of the defendant's personality in assessing criminal guilt. This consideration, however, must be analyzed in the context of more similar Romanist systems⁵⁴ and even more ancient concepts; Duranty suggested that the Soviet view tends toward "the Oriental ideal" of "settling the disputes of the people fairly but despotically" by "deciding each case on its merits," compared to Western systems that adhere to precedent and "the letter of the law."⁵⁵ Ironically, this "consideration of the character of the criminal and not only the crime"⁵⁶ occasionally results in what appears from a fact-oriented, American point of view, to be an unusually lenient decision.⁵⁷ The Soviets have now rebuked the excesses of the Stalinist code, labeling the period including 1949 as one of the "cult of the personality."⁵⁸

These excesses are satirized in the mock trial scene in the discussion of Prince Igor's punishment under article 58. Article 58(2) is explicit

⁵² See J. HAZARD & M. WEISBERG, *CASES AND READINGS ON SOVIET LAW* 35 (1950).

⁵³ Duranty, *Soviet Criminal Jurisprudence*, 34 DICK. L. REV. 114, 115-16 (1929).

⁵⁴ See C. SZLADITS, *EUROPEAN LEGAL SYSTEMS* 354 (1972).

⁵⁵ Duranty, *supra* note 53, at 115.

⁵⁶ Hazard, *Soviet Law: An Introduction*, 36 COLUM. L. REV. 1236, 1250 (1936).

⁵⁷ In one prosecution under article 58, the accused was acquitted when the court looked beyond the facts to his "whole personality." Since his allegedly treasonous remarks were "not evoked by any orientation against Soviet authority, which is an indispensable condition for finding them counter-revolutionary," the defendant was released. J. HAZARD, *MATERIALS ON SOVIET LAW* 4 (1947). Perhaps because of instances like this case, some western penologists have urged a more personal approach to criminal law in western countries. Such an approach has been alleged to be "indispensable" for American "adolescents up to the age of 25 convicted of felonies and misdemeanors [and for] habitual criminals." Tsheltrow-Bebutow, 19 J. AMER. INST. CRIM. L. 408 (1938).

⁵⁸ Interestingly, the same phrase has been applied to literature produced in the Stalinist era. One critic, Chalmayev, regretted "the baneful and sterilizing influence of the atmosphere of the personality cult [affecting] . . . everything that lived and breathed with such beautiful life both in the Russian classics as well as in the best works of Soviet literature . . ." *Izvestia*, Feb. 20, 1965, at 4, translated in 17 CURRENT DIGEST OF THE SOVIET PRESS, No. 8, at 35 (1965).

about the possible penalties:⁵⁹ exile to or banishment from a specific place, deprivation of liberty, loss of personal property,⁶⁰ and subsequent and concurrent loss of certain civil rights. The "supreme measure of social defense"—death by shooting—theoretically did not exist in 1949. Despite this fact, Rubin exclaims, "I demand in the name of humanity that the son-of-a-bitch be hanged! But since capital punishment has been abolished, let him stew for twenty-five and give him five more on the horns!"⁶¹ Prince Igor's "counsel," Isaak Kagan, begins the defense with words reminiscent of the Trötskyite trial:⁶² "Comrade Judges! As an honorable government lawyer I concur without reservation in all the conclusions of the state prosecutor."⁶³ He then berates the prosecutor for having suggested so small a penalty. The scene that follows bears reproduction in full:

"After all, there is a punishment far more dreadful than twenty-five years of hard labor."

Isaak paused, so as to make as big an impression as possible.

"What is it, Isaak?" they shouted at him impatiently. And unhurriedly, with mock innocence, he replied: "Section 20-Z, Paragraph a."

Of all those present, for all their great prison experience, no one had ever heard of such a section. How did this legalist know a thing like that?

"And what does it say?" They screamed indecent suggestions at him from all sides: "Castrate him?"

"Almost, almost," Isaak confirmed imperturbably. "It is, in fact, spiritual castration. Section 20-Z, Paragraph a, provides that one is declared an enemy of the workers and expelled from the boundaries of the U.S.S.R.! He can die in the West as far as we are concerned. I have nothing more to say."

Modestly, with his head to one side, small and shaggy, he went back to his bunk.

An explosion of laughter shook the room.⁶⁴

⁵⁹ These penalties were also present in Czarist law. See J. HAZARD, I. SHAPIRO & P. MAGGS, *supra* note 20, at 140.

⁶⁰ Although the concept of private (*chastnaya*) property has been phased out of the Soviet system, a form of personal (*lichnaya*) property still exists. See *id.* at 384.

⁶¹ P. 353. See text and note at note 37 *supra*.

⁶² See note 28 *supra*.

⁶³ P. 355.

⁶⁴ Pp. 355-56. The apparently fictitious section 20-Z is probably a reference to section 20(a) of the 1927 Code:

The measures of social defense of a legal correctional character are:

(a) Proclamation as an enemy of the workers with deprivation of citizenship in the Union Republic, and consequent loss of citizenship in the U.S.S.R., and with obligatory banishment from its boundaries.

R.S.F.S.R. 1927 UGOL. KOD. (Criminal Code) § 20(a). This section is used in the context

After the tragicomic trial, Rubin is ashamed of the role he has played.

The mock trial scene and Innokenty's incarceration constitute the dramatic climax of Solzhenitsyn's literary use of Soviet law, but there are many other references to the law throughout the novel. For example, the abolition of capital punishment in 1947, commented upon in the mock trial, is mentioned several times. Indeed, the references to this topic in the novel typify Solzhenitsyn's skill in satirizing Soviet law through art. Thus, an outburst by the obsequious, and real life, Minister of State Security Victor Abakumov in a conversation with Stalin emphasizes the author's position, since it comes from a negative character.

[H]ow our hands are tied by the abolition of the death penalty! We've been beating our heads against that wall for two and a half years. Now there is no legal way of processing the people we are going to shoot. It means the sentence has to be written out in two different versions. And then when we pay the executioners—there's no way to clear their fees through our accounting department, and the accounts get messed up. Then there's nothing to scare them with in the camps. How we need capital punishment! *Give us back capital punishment, Iosif Vissarionovich!*⁶⁵

Similarly, security officer Shikin, who has just been confronted with evidence implicating Ruska Doronin as a double agent in Mavrino, proclaims:

"You bastard! Selling us out! Say good-bye to life, Judas! We'll shoot you like a dog! We'll shoot you in the cellar."

It had been two and a half years since the Most Humane of Statesmen had abolished capital punishment for all eternity. But neither the major nor his former informer had any illusions: what could be done with an objectionable person except to shoot him?⁶⁶

Such fictional statements do not establish, however, that the abolition of capital punishment did not reach "political" criminals. The

of the mock trial to emphasize the grotesque injustice of a system that exiles its heroes. The slightly erroneous citation may be intended to add to this exaggerated sense of unreality in the law; the use of the last letter of the alphabet may imply that the real section is endless, subject to additions at the whim of the Presidium or the prosecutor; the error may indicate that Isaak Kagan is not completely clear about the law; or, least likely of all, the error may represent a lacuna in Solzhenitsyn's otherwise considerable knowledge of the Code.

⁶⁵ P. 128.

⁶⁶ P. 569. The death penalty was abolished in a decree of May 26, 1947, replacing the extreme penalty with a twenty-five-year stay in a penal colony. See Ancel, *supra* note 20, at xvii.

foreign reader, who is generally inclined to accept the thrust of the writer's satire, must weigh the artistic statement against the legal reality, and in this instance the Soviet government has supplied an answer. On January 12, 1950, two weeks after the end of the fictional events in *The First Circle*, the Presidium of the U.S.S.R. Supreme Court ruled that "the death penalty, as the highest form of punishment, may apply to traitors to the motherland, spies and subversive diversionists, as an exception to the May 26, 1947 decree of the Presidium . . . on the abolition of capital punishment."⁶⁷

Another interesting aspect of Soviet law considered in the novel is the concept of guilt for intent to commit treason. This borderline area of the law closely approximates the Kafka-esque situation in which a passive agent is caused to feel morally and legally guilty and is here used for its maximum dramatic effect. Minister of State Security Abakumov again is the character chosen to articulate this phenomenon during a conversation with Stalin:

"Listen," [Stalin] asked, "what about it? Are there still instances of terrorism?" . . .

"But, Iosif Vissarionovich, we don't let those cases reach the state of actual preparation. We catch them at the moment of inception, of intention, using Section 19."⁶⁸

The operation of article 19⁶⁹ is indicated by the case of Gerasimovich.⁷⁰ An engineer, he was arrested at the age of 19 for sabotage, but was released after three years for lack of definitive evidence. Before the war, he tried unsuccessfully to gain permanent employment in the east; he returned to Leningrad when the war began and took a job as a gravedigger. He was arrested for intent to betray his country and sentenced under articles 19 and 58(1A) to 10 years at correctional labor. Gerasimovich's fictional case is a general indictment of article 19 since there was no evidence of any kind showing treasonous intent. The language of the Soviet statute is remarkably similar to American conspiracy statutes used in recent "political" trials.⁷¹

⁶⁷ 2 CURRENT DIGEST OF THE SOVIET PRESS, No. 3, at 8 (1950). Capital punishment today applies solely to intentional homicides that are committed under aggravating circumstances enumerated in the code.

⁶⁸ P. 126. This comment illustrates the truth behind Polyanski's statement that the presumption of innocence has primary importance before trial. See text at note 51 *supra*.

⁶⁹ See note 6 *supra*.

⁷⁰ Pp. 260-61.

⁷¹ An example of these statutes is the so-called Rap Brown Act, which prohibited interstate travel with intent to incite a riot. 18 U.S.C. § 2101 (1970). This statute was recently held constitutional. *United States v. Dellinger*, 472 F.2d 340 (7th Cir. 1972).

Similar to the intent crimes are what might be called the Soviet "no-fault" crimes, for which there are no parallels in American law.⁷² In *The First Circle*, the basic "no-fault" crime is being a relative of an article 58 prisoner; this crime is evident in the novel primarily in the stigma placed on several "free" women.⁷³ Although the stigma is not based on a specific law, it derives from an attitude articulated in article 58(1C), one of four paragraphs added to article 58 in 1934. This outrageous provision imposed penalties on families that aided a relative in the military to cross the border illegally, or merely knew of his intent to cross and failed to inform the authorities or, stranger yet, merely lived with or were dependent upon the escaped soldier.

II. AESTHETIC ELABORATION: THE NATURE OF PUNISHMENT AND LAW IN INFERNO

One of Solzhenitsyn's primary purposes in *The First Circle* was to analyze the process of punishment inside Stalinist penal institutions. *One Day in the Life of Ivan Denisovich*, which has been published and praised in the Soviet Union, also dealt with article 58 and the prison system; but *The First Circle's* official unacceptability may be a result of a more detailed and theoretical discussion of that correctional process. This theory gains credibility from the great importance that Soviet jurisprudence has always placed on the "educational" nature of incarceration.⁷⁴ Only the hopelessly uneducable prisoners were to receive the "supreme measure of social defense" (death); all others were to be reoriented to socialist usefulness.

In the relatively comfortable surroundings of the Mavrino correctional labor camp, the theory of Soviet correctional policy is most clearly questioned. While Ivan Denisovich's Siberian nightmare might be placed in the official category of "violations of socialist legality during the cult of the personality,"⁷⁵ Lev Rubin's tendency at Mavrino to defend socialism poses more serious questions for the concept of the "antisocial" criminal.

⁷² The closest analogy is the incarceration of American citizens of Japanese descent in World War II. Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942).

⁷³ The best example is the career problem of Nadya Nerzhin. Pp. 243-50. See also the description of Sologdin's wife. P. 150.

⁷⁴ Article 7 of the 1927 code states that "measures of social defense of a judicial-correctional, medical or medico-educational character shall be applied to persons who have committed socially dangerous acts" R.S.F.S.R. 1927 UGOL. KOD. (Criminal Code) § 7. In the novel, Stalin refers even to capital punishment as "a good educational measure." P. 128.

⁷⁵ J. HAZARD, I. SHAPIRO & P. MAGGS, *supra* note 20, at 139.

A consideration of this paradox reveals much about the aesthetic and the legal natures of *The First Circle*. The Soviets maintain that the two areas cannot be separated; *Pravda* has stated the Party's policy on art as follows:

"The chief line in developing literature and art," states the Party Program, "lies in strengthening ties with the life of the people, in the truthful and highly artistic depiction of the richness and diversity of socialist reality, in inspired and vivid portrayal of all that is new and genuinely communist, and exposure of all that hinders the progress of society."

Our art has established itself as the art of living truth, and hence it is optimistic in its essence.⁷⁶

Although *The First Circle* seeks to expose "all that hinders the progress of society," it is essentially pessimistic because the least appealing characters in the book frequently represent what is "new and genuinely communist." The clearest example of this conflict is the pompous Alexei Lansky, a literary critic, who tells us that plays are always successful in the Soviet Union "because the playwrights and the public share the same vision, both artistically and in their general view of the world."⁷⁷ Applying Lansky's words to Solzhenitsyn's text, *The First Circle* "fails" not because of a diversity of characters, which is traditionally acceptable in Soviet literature, but because its aesthetic thrust rejects the "one vision of the world" concept. These conflicts reach their dialectic zenith in the character of Lev Rubin and the ambiguous situation of the Mavrino camp.

Despite his "criminal" past, Rubin is the most dogmatic communist of the zeks. If his political beliefs had prevailed in the aesthetic context of the novel, it might have been acceptable to the authorities. The controversies present in the rest of the book might have been tolerable if a strong socialist with Rubin's personal appeal had been steadfast and optimistic, but he was not. Further, it is during Rubin's discussions of the law that the breakdown in the Soviet "unified view" is most evident.

Rubin, a not atypical "58-er," was first arrested at the age of 16. His admired cousin asked him to hide some printing type, and he complied out of devotion. He was seen, however, by a neighbor boy, who turned him in. Rubin, who did not then implicate his cousin, was sentenced only to two weeks in solitary because of his young age. He thinks back to that time, remembering the prisoners objecting to the beating of

⁷⁶ 7 CURRENT DIGEST OF THE SOVIET PRESS, No. 2, at 5(1955).

⁷⁷ P. 406.

another prisoner with shouts of "We've another czar on our backs. . . . Long Live Leninism!" and singing revolutionary songs while "the jailers huddled together on the stairs, terrified by the deathless hymn of the proletariat."⁷⁸

For four years after his release, Rubin worked in a tractor factory. Because he was an avid socialist, he was made an editor of the factory newspaper and went through the factory "to inspire the young workers and pump energy into the older ones." The "blot" on his security record from the first arrest then caught up with him.

Rubin was called into the "Party Office" at the factory,⁷⁹ and the old issue of the font of type was raised again. Convinced that "[t]he Party does not punish, it is our conscience," he could not lie to "the Party" and revealed the name of his cousin. This time he received a lengthier sentence at correctional labor. Again he gained release and tried to prove his usefulness to the revolutionary class, this time by attempting to collectivize a village. The conversion of this peasant community to a socialist farm resulted in resistance and deaths, for which Rubin always felt guilty despite his commitment to Party policy; his imprisonment under article 58(10) followed from these events.

Rubin, because of his engineering skills, was assigned to the comfortable Mavrino camp, where he becomes perhaps the essential figure. His leadership at the mock trial emphasizes his ambiguity as a character; basically he feels himself still to be a devout communist and defender of the system. The lengthy discussion with Sologdin⁸⁰ reveals Rubin's desire to defend his own persecutors and even article 58. Although Rubin appears to get the better of Sologdin, the mere mention of article 58 exposes the absurdity of his theoretical dialectic morality. Similarly, Rubin comports himself well in his arguments with Kondrashev-Ivanov, the "bourgeois, decadent" artist, but in those instances also the toadyism⁸¹ of the party-line aestheticians tilts the reader's sympathies in favor of the incarcerated painter.

Lev Rubin remains ambiguous because his arguments do not convince the reader and, perhaps more importantly, because Rubin himself is not convinced, as shown at the close of the mock trial. Rubin's years of imprisonment have not reeducated him to be a successful socialist; if the system has failed with him, it will certainly fail with the

⁷⁸ P. 477.

⁷⁹ Soviet labor law still provides that a Party functionary will oversee work at each factory. See J. HAZARD, I. SHAPIRO & P. MAGGS, *supra* note 20, ch. XVI. Solzhenitsyn satirizes this aspect of the law through the character of Stepanov. Pp. 517-26.

⁸⁰ Pp. 440-47, 466-72.

⁸¹ See L. TROTSKY, *THE REVOLUTION BETRAYED* (1937).

less rigorous Marxists in his circle. His final words, when asked by Nerzhin to "make it up" with the departing Sologdin, seal Rubin's destiny:

Rubin looked at him vacantly. "Do you know," he asked, "why horses live a long time?" After a pause he explained: "Because they never go around clarifying their relationships."⁸²

This ambiguity in a character who is intended to embody "socialist reality" is far more objectionable than a sympathetic portrayal, in the face of Stalinist excesses, of an apolitical character like Ivan Denisovich.

Rubin's ambiguous place in the novel represents the structural significance of Mavrino. Again, at this ultimate level of meaning, literature and law combine. The title of this work and the early allusion to Dante⁸³ make it clear that the prison camp is an allegorical reference point from which Solzhenitsyn makes his most pervasive attack on Soviet law and society. Dante's first circle is devised as a punishment for violation of the following laws, articulated by Vergil:

[T]hey did not sin; but though they have merits it is not enough, for they had not baptism . . . and if they were before Christianity they did not worship God aright, and of these I am one. For such defects, and not for any guilt, we are lost, and only so far afflicted that without hope we live in desire.⁸⁴

The violators of these laws, guilty of an article 58(12)-type omission rather than an overt act, are condemned in Canto Four of *Inferno* to live in a state of "limbo."⁸⁵ In that highest circle of Hell, where theoretically the least virulent of retributions is inflicted, the inhabitants are afforded an excruciating right perhaps more harrowing than the physical agony of the lower circles: the right to desire with no ability to fulfill that desire.

Early in the novel, Solzhenitsyn makes the explicit analogy between Mavrino and Dante's "camp." In response to a newcomer's ecstatic reaction to the comforts of Mavrino, Rubin cautions him that he is still "in hell" and merely has risen to "the first circle;" Rubin then quotes from Canto Four. In addition, there are numerous allusions in the novel to the *spiritual* similarities between the two "first circles."

Descriptions of prisons have always stressed their horrors. Yet isn't it even more appalling when there are no horrors? When the

⁸² P. 659.

⁸³ P. 10.

⁸⁴ DANTE, *INFERNO* 61 (J. Sinclair ed. 1939).

⁸⁵ *Id.*

horror lies in the gray methodology of years? In forgetting that your one and only life on earth has been shattered?⁸⁶

Mavrino's inmates are allowed to walk around and to communicate with each other—as are Socrates and the others in Dante's scheme—and their desires in all matters are constantly stimulated. Yet "58-ers" also live without any realistic hope of regaining full freedom. Ivan Denisovich, who endured far more physical abuse and punishment in Siberia, was a happier man than Lev Rubin because the harsh life there had accustomed him to repress totally any desires beyond those involving mere subsistence.

Ironically, the zeks often consider themselves more free in Mavrino than they would be in Soviet society. Nerzhin remarks to the "guests" at his birthday party that the "happiness we have right now—a free banquet, an exchange of free thoughts without fear, without concealment—we didn't have that in freedom." Adamson responds, "Yes, as a matter of fact, freedom itself was quite often lacking in freedom."⁸⁷

Solzhenitsyn's use of the Dantesque theme thus leads to an utterly blasphemous comparison. One must also consider that every scene outside Mavrino portrays a society full of traitors and sycophants. The elaborate descriptions of the unfortunate fates of Nadya Nerzhin and Innokenty Volodin are offset solely by the superficial gaiety of one outwardly happy evening party; in addition, there is Stalin's pitiful solitary celebration. Even at the party honoring Prosecutor Makarygin, where the critic Lansky shines, the air is tense with suspicion and falsehood.

Could it be that Solzhenitsyn's first circle is the first step *out* of hell?⁸⁸ If so, each progressively harsher punishment is more of an escape. The prisoners who depart for hard labor at the end of the novel do so with a feeling of relief: "They were filled with the fearlessness of those who have lost *everything*, the fearlessness which is not easy to come by but which endures."⁸⁹ They are on their way to Ivan Denisovich's brutally hard "day," a day paradoxically filled with the total satisfaction that is unavailable to "free" Russians. Perhaps the true cosmology of Solzhenitsyn's critique is:

Paradise: Death and Redemption

Purgatorio: Ivan Denisovich's day in Siberia

Limbo: Mavrino and *The First Circle*

⁸⁶ P. 232.

⁸⁷ P. 370.

⁸⁸ Cf. J. CHAIX-RUY, *supra* note 3, at ch. 5.

⁸⁹ P. 673.

Inferno: Soviet Society under Stalinist law

Satan: Stalin

The Dantesque scheme has been reversed in Soviet society; Stalin's law has made an inferno of life itself. Imprisonment is the only way to freedom, and the more severe the punishment the greater the freedom.

No message could be less optimistic.⁹⁰ Indeed, if this interpretation is the true aesthetic message of *The First Circle*, it is not surprising that its publication has been repressed in the Soviet Union. This analysis of Solzhenitsyn's beliefs also suggests why he continued, until his recent expulsion, to risk his life for the cause of literature and a more humane Soviet law.

APPENDIX

The full text of article 58 is as follows:

(1) Any action is considered counter-revolutionary which is directed towards the overthrow, undermining or weakening of the authority of the workers' and Peasants' Soviets, or of the Workers' and Peasants' Government (whether of the U.S.S.R. or of a constituent or autonomous republic), elected by them in accordance with the constitution of the U.S.S.R. or of the constituent republics or towards the undermining or weakening of the external security of the U.S.S.R. or of the fundamental economic, political and national conquests of the proletarian revolution.

In virtue of the international solidarity of the interests of all toilers, such acts are also considered counter-revolutionary if directed against any other toilers' state, even if that state does not form part of the U.S.S.R.

(1A) Treason against the homeland, that is to say acts committed by citizens of the U.S.S.R. jeopardizing the military force of the U.S.S.R., its independence or the inviolability of its territory, such as: espionage, transmittal of military or state secrets, defection to the enemy, flight across the border, is punished by the supreme penalty, death by firing squad, with confiscation of all property, and, in the case of extenuating circumstances: deprivation of liberty for a period of ten years, with confiscation of all property.

(1B) The same crimes committed by military personnel are punished by the supreme penalty, death by shooting, with confiscation of property.

(1C) In the event of escape or flight across the border by a person serving the military forces, the members of his family if they helped him in any way to prepare for or commit treason, or even if they only knew of it but did not inform the authorities, shall be punished by deprivation of liberty for a term of five to ten years with confiscation of all personal property. The other adult members of the traitor's family who were living with him or dependent upon him at the time when he committed the crime shall be deprived of electoral rights and exiled to remote districts of Siberia for a term of five years.

(1D) Non-denunciation on the part of a person serving the military forces

⁹⁰ On the Soviet expectation that literature be optimistic, see text at note 76 *supra*.

of the preparation or the accomplishment of treason entails loss of liberty for ten years. Non-denunciation on the part of other citizens (non-military) is treated in conformance with Article 58(12).

(2) Any armed rising, any invasion of Soviet territory by armed bands with counter-revolutionary intent, any seizure of power with such intent at the centre or in any other place and, in particular, with the object of forcibly detaching from the U.S.S.R. or from any individual constituent republic any part of its territory or of breaking any treaty concluded by the U.S.S.R. with any foreign government, entails—

the supreme measure of social defense: death by shooting; or a sentence declaring that the accused is an enemy of the toilers, confiscating his property, depriving him of citizenship of the constituent republic and consequently of citizenship of the U.S.S.R., and banishing him for life from the territory of the U.S.S.R. If, however, there are extenuating circumstances, the sentence may be reduced to deprivation of liberty for not less than three years, with confiscation of the property of the convicted person in whole or in part.

(3) Communications with counter-revolutionary intent with foreign governments or with their individual representatives, or aiding in any manner whatsoever a foreign government which is in a state of war with the U.S.S.R., or is carrying on a struggle with the Union by means of intervention or blockade, entails—

the measures of social defense laid down in Art. 58(2) of the present code.

(4) The rendering of assistance of any kind to that portion of the international bourgeoisie which, not recognising the equal rights of the communist system which is replacing capitalism, or is striving to overthrow that system, or to any social groups or organisations which, under the influence of or indirectly organised by that bourgeoisie, are engaged in hostile activities against the U.S.S.R., entails—

deprivation of liberty for a period of three years or more with confiscation of property in whole or in part, provided that where there are aggravating circumstances of a particularly serious nature the penalty shall be increased to the supreme measure of social defense: death by shooting; or a declaration that the accused is an enemy of the toilers, loss of citizenship of the constituent republic, and consequently of citizenship of the U.S.S.R., banishment for life from the territory of the U.S.S.R., and confiscation of property.

(5) Inducing a foreign government or any social group in it, by communicating with their representatives, by the use of false documents or by any other means, to declare war on or engage in armed interference in the affairs of the Soviet Union, or to engage in any other hostile activity, especially blockade, seizure of state property of the U.S.S.R. or of a constituent republic, rupture of diplomatic relations, or subversion of any treaty concluded with the U.S.S.R., etc., entails—

the measures of social defense laid down in Art. 58(2) of the present code

(6) Espionage, *i.e.*, the transmission, or the stealing or collecting with a view to transmission, to foreign governments, counter-revolutionary

organisations or private persons, of data which are by their nature a specially protected state secret, entails—

deprivation of liberty for a period of not less than three years with confiscation of goods in whole or in part, or—in cases where the espionage has caused or might have caused particularly grave consequences to the interests of the U.S.S.R.—either the supreme measure of social defense, or a declaration that the accused is an enemy of the toilers, loss of citizenship of the constituent republic, and consequently of citizenship of the U.S.S.R., banishment for life from the territory of the U.S.S.R., and confiscation of property.

The transmission, or the stealing or collecting with a view to transmission to the organizations or persons mentioned above, whether for remuneration or without reward, of economic information which, though not by its nature a specially protected state secret, is nevertheless—under a direct prohibition in the law or under orders issued by the chiefs of departments, administrations or enterprises—not allowed to be published, entails—

deprivation of liberty for a period not exceeding three years.

Note 1—The following are deemed to be specially protected state secrets, viz., the kinds of data enumerated in the special schedule confirmed by the Council of People's Commissars of the U.S.S.R. in agreement with the Councils of People's Commissars of the constituent republics and published for general information.

Note 2—Espionage by the persons described in Art. 193(1) of the present code is governed by Art. 193(24) of the present code.

(7) The undermining of state industry, transport, trade, currency, or system of credit, or of the cooperative system, with counter-revolutionary intent, by utilizing the state institutions or enterprises concerned or by working against their normal activities, or the utilization of state institutions or enterprises, or opposition to their activities, in the interests of the former owners or of interested capitalistic organisations, entails—

the measures of social defense prescribed in Art. 58(2) of the present code.

(8) The Commission of acts of terrorism against representatives of the Soviet authority or executive officers of revolutionary workers' and peasants' organisations, or participation in such acts, even by persons who do not belong to counter-revolutionary organisations, entails—

the measures of social defense prescribed in Art. 58(2) of the present code.

(9) The destruction or damaging, with counter-revolutionary intent, by fire or other means, of any railway or other way or means of communication, any national means of communication, any national means of connection (telegraph, telephone, etc.), or any water system, public depôt or other building or state or public property, entails—

the measures of social defense prescribed in Art. 58(2) of the present code.

(10) Propaganda or agitation containing an appeal to overthrow, undermine or weaken the Soviet authority or to commit individual counter-revolutionary crimes (Art. 58(2)–(9) of the present code), or the dissemina-

tion, preparation or possession of literature containing such matter, entails—
deprivation of liberty for a period of not less than six months.

Similar acts, if done during mass disturbances or by utilizing the religious or racial prejudices of the masses, or if done in time of war or in places where martial law has been declared, entail—

the measures of social defense prescribed in Art. 58(2) of the present code.

(11) Any organized activity of any kind which is directed towards the preparation or commission of any of the crimes dealt with in the present chapter, or any participation in any organisation formed for the preparation or the commission of any of the crimes dealt with in the present chapter, entails—

the measures of social defense prescribed in the respective articles of the present chapter.

(12) Any omission, by any person having certain knowledge of the matter, to report any counter-revolutionary crime which is in preparation or has been committed, entails—

deprivation of liberty for a period of not less than six months.

(13) Any act or active struggle against the working class or the revolutionary movement of which any person was guilty while in a responsible or secret post (*i.e.*, as agent) under the czarist régime or with any counter-revolutionary government during the period of the civil war entails—

the measures of social defense prescribed in Art. 58(2) of the present code.

(14) Counter-revolutionary sabotage, *i.e.*, knowingly omitting to discharge a given duty or discharging it with deliberate carelessness, with the specific object of weakening the authority of the Government or the operation of the government machine entails—

deprivation of liberty for a period of not less than one year, and confiscation of property in whole or in part, provided that where there are aggravating circumstances of a particularly serious nature the penalty shall be increased to the supreme measure of social defense: death by shooting with confiscation of property.

R.S.F.S.R. 1927 UGOL. KOD. (Criminal Code) §58 [Article 58 translation from THE PENAL CODE OF THE RUSSIAN SOCIALIST FEDERAL REPUBLIC (London 1934), except for the paragraphs 1(A)–1(D) which are the author's translations]. Articles 58(1A)–(1D) were added on July 20, 1934, and, with that amendment, Article 58 was the law in effect in 1949—the time setting of *The First Circle*.