To Professor Gari Ledyard
with warmest regards
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Ideology and Criminal Law in North Korea

Lenin's oft-quoted phrase, "a law is a political measure, it is politics,"[1] is also frequently quoted in North Korean legal publications. The premier of the Democratic People's Republic of Korea (DPRK) and the chairman of the Workers' Party of Korea (the communist party of North Korea), Kim Ilsong, says: "Law does not hang in an empty space. Law is a political expression and therefore it must obey politics and cannot be separated from politics."[2] This statement of the North Korean leader provides the ideological perspective which is essential to an understanding of the North Korean legal system.

I. Abortive Attempt at Liberalization

As a product of Marxism-Leninism, the North Korean legal theory had followed the Soviet model very closely until the Soviet mentor began to change course subsequent to Khrushchev's attack on Stalin at the 20th Congress of the Communist Party of the Soviet Union in February 1956. Until this time the North Korean legal system was almost an exact replica of the Soviet system. One could convincingly argue that the North Korean codes of criminal law and criminal procedure, for instance, were the Korean language translations of the Soviet codes. But from this time on the North Korean theory failed to keep pace with Soviet developments.

Not yet fully recovered from the ravages of war, North Korea was in 1956 still very much dependent on the Soviet Union for ideological direction and military and economic aid. Therefore, when de-Staliniza-

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It seems appropriate here to clarify the sources of information on which the writer has relied in conducting research for this paper. The English language material on North Korean law is indeed very scarce. Only one journal article on the subject may be cited. (Ilpyong J. Kim, "The Judicial and Administrative Structure in North Korea," *China Quarterly*, No. 14 (1963) 94-104. The article is also found in *North Korea Today*, ed. R. A. Scalapino (1963) 94-104.) Therefore, primary reliance has been placed on the Korean language publications available at the Far Eastern Law Division of the Library of Congress in Washington, D. C. The publications are mostly from North Korean publishing agencies. The Constitution of the DPRK, the Court Organization Law and the Codes of Criminal Law and Criminal Procedure were all readily available in official editions. The 1955 editions of these statutes were the latest available, although there seem to have been no major revisions in the meantime. Other publications will be cited in the footnotes wherever relevant.

[1] Cited in J. N. Hazard and I. Shapiro, 1 *The Soviet Legal System*, p. 3 (1962).

[2] Kim Ilsong Sŏnjip (*Selected Works of Kim Ilsong, 1960*) Vol. 5, 451-452.

tion began in Russia, some degree of confusion and tribulation was inevitable. As in the past, some took the new development in Russia as a cue for their own shift in the policy direction. But their leader had no intention of following the new Soviet leadership. In view of their legal training received under the Japanese, the lawyers were naturally more familiar with the "revisionist" doctrines from their "bourgeois" days. It will be useful for us to recapitulate briefly the story of the abortive attempt at liberalization as a background for our analysis of the North Korean criminal law theory.[3]

There were many aspects of North Korean government against which reformist criticisms were directed. In the area of politics the cult of personality practiced by Kim Ilsong came under attack. General decentralization and strengthening of the powers of the Supreme People's Assembly vis-à-vis the Party was advocated. But it was in the field of law and its administration that the "anti-Party, factionalist, modern revisionist reactionaries" found many targets for reform.

The first item was the independence of the judiciary. The revisionists argued that the judges had to be genuinely free from any outside interference in their performance of judicial duties. It was argued that the judge had to obey only the law. In order for the judge to be impartial and fair in his judgment, he had to be freed from interference by the Party. This argument was based on Article 88 of the DPRK Constitution, which provides, "The judge is independent in the performance of his duties and obeys only the law."[4]

It was against these arguments that Kim Ilsong lashed out in the remarks quoted above. Kim argued that judges can never be unfair or partial when they follow the Party line and directives. Kim's rebuttal was taken up and further amplified by his followers. One Party-liner jurist goes so far as to argue that the judges have the "constitutional" duty to obey the policies of the Party and the government and to

[3] The details and the extent of the arguments advanced by the reformist group are not available in any systematic way. Their arguments have to be pieced together from various official publications which mention some of the arguments in order to denounce them as absurd and reactionary. A few arguments are mentioned by Kim Ilsong in his speech made to the court and prosecution personnel on April 29, 1958, which is available in its entirety in the fifth volume of his *Selected Works*. The most detailed denunciation of the reformist arguments for the judicial independence appears in an article written by Lee Chaedo, an associate professor of law, who wrote on the subject of "Complete implementation of the Party line in establishing evidence in criminal proceedings." This article appears in *Minju Sabop* (Democratic Judicature), No. 6, 1959, pp. 24-46. This journal proved most useful in preparing this paper. It was a Ministry of Justice publication. Since the Ministry was abolished in 1959, it is not clear whether the journal is still being published. Numbers from 5 to 10, all published in 1959, are available in the Library of Congress.

[4] Article 8 of the Court Organization Law of DPRK provides the same in identical words. It may be noted that these provisions are in fact Korean language translations of similar provisions in the Soviet Constitution (Arts. 112, 116, RSFSR Constitution) and the Law on Court Organization (RSFSR Law on Court Organization, Art. 7). See Ivo Lapenna, *State and Law: Soviet and Yugoslav Theory* (1964) 93; H. J. Berman, *Soviet Criminal Law and Procedure* (1966) 430.

implement them unconditionally. And he continues to argue that politics should not be relegated to behind-the-scene roles but it must be realized through decisions of concrete cases before the judges.[5] It is not at all clear on what provision of the constitution he bases his argument. Nevertheless, this line of argument is repeated in every single essay on the subject of law. On this subject Kim Ilsong has another line of potent argument. He says that inasmuch as most of the judges are members of the Party, they have the duty as Party members to follow the Party line faithfully and to endeavor to implement its policies. This duty of the Party-member judge is said to flow from the organizational principle of the Party that demands from every member the duty to obey the Party hierarchy.[6]

The second area in need of reform was insufficient respect for the "human rights" of the citizens. Here again an important corollary was the need for an equal and impartial application of the law. What we can gather from the furious reactions of Kim and his followers is that the revisionists seem to have argued for a general tempering of harshness and severity against the so-called class enemies—landlords and counterrevolutionary elements. The reformers argued for what we may term greater "due process" in the prosecution of political crimes. They advocated less emphasis on the class background of the defendant. In insisting on greater respect for the rights of the defendant in criminal proceedings, the reformists focused their attack on the "doctrine of analogy" embodied in Article 9 of the DPRK Criminal Code.[7] The arguments of the reformists on this particular point are reported in relative detail.[8]

The revisionists maintained that the application of the doctrine of analogy should be limited to a certain stage of socialist development. This stage is characterized by the violent bitterness of the enemy's opposition. In this stage, the specific forms of the enemy's hostility

[5] Song Kukhwang, "Chaep'an Hwaltong e taehan Chaep'ansang Kamdokkwa Sabop Haengjongsang T'ongje Kinung ŭi Kanghwa nŭn Chaep'an Saop Chilcheko ŭi Chungyohan Chokon itda (Strengthening of Judicial and Judicial-Administrative Control over Adjudicatory Activities Constitute an Essential Condition for Improving the Quality of the Judicial Work)" *Minju Sabop*, No. 6 (1959) 9-13.

[6] Kim Ilsong Sonjip *op. cit. supra* n. 2 at 453.

[7] Art. 9 provides: "In the case of a criminal act for which there is no specific provision in this Code, the basis for, and the extent of, the criminal responsibility and the punishment for such a criminal act may be determined on the basis of a provision dealing with a criminal offense that is most similar in its gravity and kind to the criminal act under consideration."

In the Soviet Union Art. 7 of the 1958 Fundamental Principles of Criminal Law abolished the analogy doctrine embodied in Art. 16 of the RSFSR Criminal Code of 1926.

[8] Han Lakkyu, *Proletariat Tokchae rŭl Kanghwa hagiwihan Mugirosoŏi Konghwaguk Hyongpop* (Criminal Law of the Republic as the Weapon to Strengthen the Dictatorship of the Proletariat); *Konghwaguk Pop ŭn Sahwaechŭi Konsol ŭi Kangryokhan Mugi* (The Law of the Republic is a Potent Weapon of Socialist Construction) (1964) pp. 79-109. This publication is a collection of legal essays in a book form. It will be referred to hereinafter as *A Potent Weapon*.

were not well known; the legislative skill and technique were weak and not sophisticated, causing gaps in criminal legislation. But this is no longer true. North Korea has now passed beyond such a stage. The doctrine of analogy is pernicious because it violates the concept of legality and democratic freedom. It encourages the courts to be arbitrary.

The reformists objected, moreover, to the predominance of penal sanction in the North Korean legal system. They are said to have urged the abolition of several crimes.[9] The presumption of innocence in criminal prosecution was also advocated. The burden of proof in criminal proceeding was to rest upon the prosecution. When the proof of guilt resulted in a "one-to-one" situation—that is, when the burden of proof was not successfully carried by the prosecution resulting in equal weight of evidence running in both directions, the defendant was to be declared not guilty.[10]

Jurists loyal to Kim Ilsong countered that the revisionists were trying to give rights and freedoms back to the counterrevolutionary elements. Presumption of innocence is not in fact possible. It is only found in bourgeois textbooks. If a man is innocent, there is no need to prosecute him. The prosecution of an innocent person is highly improper. All the zealous investigator can do is to do his utmost to uncover evidence that tends to prove both the accused's innocence and guilt. By denying the essential nature of law as a weapon of the dictatorship of the proletariat, the revisionists advocate some kind of a "supra-class norm" called "the law of the whole people."[11] The revisionists commit a fatal error in attempting to construct a theory of the so-called socialist legality which is not supported by the coercive power of the state.[12]

The reformists are said to have been in error on another account. They argued for the equality before the law. This empty slogan mouthed by the bourgeoisie coincides with the reality of neither the bourgeois states nor of the socialist North Korea, a loyal jurist contends. The provisions of the DPRK Criminal Code that stipulate punishment for counterrevolutionary crimes or for a larceny of state property cannot be considered applicable to the loyal working people. The

[9] The argument was also carried into the field of civil law. The revisionists argued for the elimination of "class elements" in civil litigations. Their argument was for more equal justice in civil suits. They wanted to see the son of a landlord given an equal treatment in a civil suit against the son of a workman. Song Kukhwang, *op. cit. supra* note 5.

[10] Lee Chaedo, *op. cit. supra* note 3.

[11] Pang Kemun, "Konghwagukpop ŭn Uri Tang Chongch'aek Sirhyon ŭl wihan Kangryokhan Sudan" (The Laws of the Republic are a Potent Means for Implementing the Policies of our Party) in *The Potent Weapon*, pp. 3-30.

[12] Cho Mongu, "Sahwaechuŭi Konsol kwa Konghwaguk Pop ŭi Saeroun Palchon" (Socialist Construction and the New Development of the Law of the Republic) in *The Potent Weapon*, pp. 31-59.

law operates differently on different people. The revisionists' concept of equality and impartiality of law is a sheer nonsense at best and a counterrevolutionary heresy at worst.[13]

Thus, the attempt at liberalization of law in North Korea completely failed. The legal theory remains essentially Stalinist and Vyshinskyite. A writer describes the end of the reform movement as follows:

> Their sinister machinations have been discovered and exposed in time. These anti-Party, counterrevolutionary factionalist elements have been completely destroyed in their organization and ideology. They have been duly punished.[14]

II. Law as a Means of Edification

Professor Harold Berman states that in the Soviet legal system "the educational role of law has from the beginning been made central to the concept of justice itself."[15] The same is true with the North Korean system. The North Korean leader had this to say:

> The method of education and the method of legal sanction must be properly combined in order to solve the problem in a correct manner. Collective edification should be primary while supplementing it with legal sanctions. . . . The question is not so much to make timely arrests (of criminals) as to prevent situations from deteriorating into serious ones and to make sure that there is no one who commits a crime.[16]

The educational role of the court is strenuously emphasized. The court is to educate the masses to respect the "democratic" social order. Lenin's principle that the law is a weapon to educate the members of society is said to be firmly established in North Korea.[17]

From the point of view of the rulers this particular concept of law has an important significance in many respects. The first is the prophylactic function of law. Law is to deter the general populace from breaking legal norms. By strengthening the "socialist legal consciousness," it makes the people law-abiding. Penal sanction is the most potent weapon for deterrence. It reforms the convicted so as to prevent

[13] Han Lakkyu, *op. cit. supra* note 8 at 98-99.

[14] Pang Kemun, *op. cit. supra* note 8 at 18. Kim Ilsong in his speech (cited in note 2 *supra*) denounces by name two former Ministers of Justice and one Chief Judge of the Supreme Court of the DPRK.

[15] H. J. Berman, *Justice in the U.S.S.R.* (1963) p. 283.

[16] Quoted from Kim's speech, "To Defend the Prizes of the Revolution," in Cho Mong-u, *op. cit. supra* note 12 at 50-51.

[17] Economics and Law Research Institute, Academy of Science, DPRK, *Chosen Minshushugi Kyowakoku no Kokka Shakai Taisei* (State and Social System of DPRK) (Tokyo, 1966) pp. 166-167. This is the Japanese language edition. The Korean language original was published in 1963. This book will be hereinafter referred to as *State and Social System.*

him from committing crimes again. By forcefully pointing out the consequences of a criminal offense, it generally prevents people from breaking laws.

This emphasis on the deterrent function of law has important ramifications for the administration of criminal law. The North Korean rulers feel it imperative to "prove" constantly that the incidence of crime is steadily decreasing in North Korea.[18] To do otherwise would be tantamount to admitting the failure of "the judicial policy of the Party." If the law and the court are at all doing their job properly, criminality in North Korea *must* be declining. But this places the rulers in a difficult position in view of the fact that the crimes are not only not becoming extinct but the rulers themselves are also insisting that the dictatorship of the proletariat is being strengthened. They overcome this predicament by calling for a severer punishment for the incorrigible. Moreover, they are compelled to attribute all the crimes to the survival of bourgeois mentality or to counterrevolutionary activities. The logical outcome is to detect political overtones in every crime. A simple theft of state property easily merges into counterrevolutionary crimes, as was the case in the Soviet Union during the Stalinist era.[19] Every North Korean writer on the subject of law does his best to emphasize the interrelatedness of the ordinary and the anti-state crimes. They point out that anti-state crimes are often committed under the guise of ordinary crimes, and in the process of suppressing the latter the former are often uncovered.[20] The prosecution and court personnel are constantly exhorted to look beyond and beneath the visible facts of the case to uncover the more sinister and reprehensible machinations of counterrevolutionary elements.

Another important aspect of the North Korean criminal law theory stemming from its emphasis on edification and prevention is the great importance attached to the subjective state of mind of the offender. Throughout the whole process of criminal prosecution, a crucial importance is attached to whether or not the accused is repentant. If a man gives himself up or publicly confesses, not only his sentence may be mitigated (Article 48 of the DPRK Criminal Code) but he may also escape prosecution entirely. A judge of a provincial court reports that a manager of an electricity transmission station had embezzled a large sum from state funds. After a public confession and the restoration of the embezzled money, he was not prosecuted.[21] But

[18] *State and Social System,* p. 165. There is no way of verifying this oft-repeated assertion, for no reliable statistical data are available. The Soviets are also claiming that "all the necessary social conditions for the complete eradication of criminality have been created by the Soviet state and people," Leon Lipson, "Execution: Hallmark of 'Socialist Legality' " in *Problems of Communism,* Vol. XI (1962) pp. 21-26, 24.

[19] Berman, *Justice in the U.S.S.R.,* p. 66.

[20] *State and Social System,* pp. 87-88.

[21] *Minju Sabop,* No. 7 (1959) p. 47. Unfortunately, the manager embezzled again for the second time. He was prosecuted and punished for his first embezzlement as well as the second and other assorted offenses.

when an offender not only refuses to confess but continues to act in a hostile manner, all of his background and past deeds would be searchingly scrutinized and he would be punished severely not only for his present offense but also for all of his past wrongs.[22]

The theoretical rationale for this emphasis on repentance is found in the doctrine of "social danger." If an offender repents, then he no longer constitutes a socially dangerous personality. Article 8 of the DPRK Criminal Code provides (somewhat obscurely):

> Although an act may contain all the essential elements to constitute formally a crime as provided in the Special Provisions of this Code, if the act is not socially dangerous because it is clearly not serious and no injury has resulted from it, then the act does not constitute a crime.

If a bookkeeper on a collective farm, who has been a model of efficiency and conscientiousness, gets drunk and mislays a substantial sum of public funds, he should not be criminally prosecuted because his character is not socially dangerous. He needs no education through criminal prosecution to correct his mistake, though he is subject to administrative discipline and civil liabilities.[23]

But the doctrine of social danger can cause a heavier penalty to be applied through the operations of the doctrines of interpretation through analogy and interpretation through extension. If a criminal act is done out of avarice or other sordid motives, or by taking advantage of a relationship of dependence, or with heinous cruelty or through a vile deception, sentence will be made heavier (Article 47 of the DPRK Criminal Code). Now, an interpretation through extension is used when the punishment for specially aggravating forms of an offense is not specifically provided for by the law. This type of interpretation may also be used in connection with anti-state crimes.[24]

[22] Lee Chaedo, "Proletariat Tokchae ŭi Kinŭng ŭl Kanghwa Halte Taehan Uri Tang ŭi Sabop Chongch'aek" (The Judicial Policy of Our Party to Strengthen the Function of the Dictatorship of the Proletariat), *Minju Sabop,* No. 6 (1959) pp. 5-9.

[23] Kang Chumin, "Hyongsa Pomnyong ŭi Chonghwakhan Chogyong ŭl Wihayo" (For the Correct Application of Criminal Laws), *Minju Sabop,* No. 6 (1959) pp. 14-17. The illustrative cases of the bookkeeper and the tobacco drier are taken from this essay.

[24] *Ibid.* An interpretation through extension is said to be properly employed when acts not specifically enumerated in the second clause of Art. 76 of the DPRK Criminal Code are nonetheless included in the clause. Art. 76 provides: Propaganda or agitation appealing for the overthrow, undermining, or weakening of the people's sovereignty by violence or by treasonous acts or inciting the commission of anti-state crimes shall be punished by imprisonment for a term of more than 2 years and total or partial confiscation of property.

The same acts performed in a state of mass excitation or under war conditions or accompanied by the exploitation of national or religious prejudices of the masses shall be punished in accordance with the provisions of Art. 66 of this Code.

Art. 66 provides: Persons who cause foreign powers or social groups in foreign countries to commit military intervention against the Republic and other hostile acts, especially blockade, forcible seizure of the property of the Republic, severance of diplo-

Suppose that a man in charge of heating a drying room for tobacco leaves causes destruction by fire to the drying room and the adjoining storage buildings by not performing his duties properly. There is no criminal law provision for the punishment of a negligent act that causes a large-scale destruction of state and social property. Since such an act cannot go unpunished, analogy would be used to mete out punishment deemed appropriate.[25]

Thus, a distinction seems to be drawn between interpretation through extension and analogy. The former is primarily suited for exceeding the maximum penalty prescribed by the statute in view of the extreme gravity of "social danger" involved. Interpretation through extension presupposes the existence of a specific statutory provision dealing with the kind of offense to be punished. On the other hand, analogy is appropriate where there is no statutory provision specifically aimed at the kind of "socially dangerous" act now being prosecuted. The distinction, however, is by no means fast and clear. It is rather fluid in many cases. In any event, a similar result can be obtained by employing either technique.

In enabling the court to perform the educative function, the so-called on-the-scene trials are said to be the most effective. These trials perform two kinds of functions. The one is a kind of a "show" or a "demonstration." The purpose is to take the law to the people by making them an active audience in a trial that involves a crime that took place in the locality where the trial is to take place. Such a trial serves as a dramatic example to the populace by letting them see that "crime does not pay." It also affords an opportunity for the community to relieve its outraged feelings.[26]

Demonstration trials are said to be an important feature in the Soviet system also.[27] But the North Koreans seem to be making a fetish of it. They say the principle is derived from "Ch'ŏngsanri Spirit." This spirit was produced when Kim Ilsong went to a small village called Ch'ŏngsanri and personally listened to what the people had to say about the practical problems encountered in implementing the plans issued in Pyongyang. He seems to have used the village as a kind of model community. From then on, he has been telling the central planners and bureaucrats to get away from their offices and desks and go to the people.[28] This is said to be an epitome of "demo-

matic relations, or abrogation of treaties concluded by the Republic with foreign states shall be punished by death and confiscation of property.
Under especially extenuating circumstances, they shall be punished by imprisonment for a term of more than 5 years and total confiscation of property.

[25] *Ibid.*

[26] Professor Leon Lipson makes a similar observation with regard to capital punishment in the Soviet Union. Lipson, *op. cit. supra* note 18 at 22.

[27] Berman, *Justice in the U.S.S.R.*, p. 301.

[28] *State and Social System*, p. 167.

cratic centralization" and an example of "the creative adaptation of Marxism-Leninism to the Korean reality."

The other function of demonstration trials is based on Article 209 of the DPRK Code of Criminal Procedure. The article provides that when the court is in need of further evidence during a trial it can move the trial to the scene of crime to facilitate the gathering of further evidence. Inasmuch as a judge has to evaluate the evidence on the basis of his own inner conviction and there are no strict rules of evidence, the judge may have to resort to such a device. It is, however, doubtful that such a trial really helps to produce evidence that is otherwise unobtainable. What these trials in fact may do is to produce the "kangaroo-court effect" that was so evident in the "people's trials" of landlords and other bourgeois elements immediately following the Soviet military occupation. As the judge will be thinking of showing an example, that is, he will be concerned about the demonstration effect of his judgment, sentencing is liable to be unduly harsh.

Still another recurrent theme that is connected with this feature of the North Korean criminal law is the exhortation to draw the masses into the law enforcement machinery. The purpose is to make every citizen a potential informer. In fact a failure to report a political crime or its preparation is a punishable offense under the Criminal Code (Articles 80 and 81). Through the publicity of trials and other educational methods, the regime hopes to deter individuals from committing crimes and to have them watch over one another. The best source of evidence in criminal prosecution is said to be the masses. The suppression of the class enemies is said to have been effectively supported by the high degree of "political enthusiasm and the democratic creativity of the masses."[29]

III. Merger of Law and Morality

One of the major ends of penal sanction is stated to be the re-education of the offender to adjust back to the conditions of free collective life of a democratic people's state. The function of law is to inculcate the people with "collectivist mentality." As the remnants of old, corrupt bourgeois mentality are the causes of criminality in North Korea, the inculcation of socialist mentality assumes important significance. In its "class character" law is said to be the same as the communist morality. Many of the legal norms of the DPRK embody what may be considered moral imperatives that command: "one ought to defend the Fatherland; one ought to strive faithfully; one ought to protect and care for state and social properties;" and so forth.[30]

[29] *Ibid.*, p. 88.

[30] Cho Mongu, *op. cit. supra* note 12 at 52.

North Korean writers see the intense ideological inculcation bringing about "moral unification" among the people, which in turn strengthens the socialist legal consciousness. The socialist legal consciousness fosters respect for socialist legality among the people who observe and respect law on their own. This enables the North Korean law to perform its educative function effectively, resulting in increased political participation and political action "by all the people." This higher level of political consciousness, of course, brings about a higher level of moral unification.[31]

North Korean jurists are proud of the fact that their criminal code contains provisions making a failure to perform certain moral duties a punishable offense. Articles 142 and 143 provide that a guardian or a parent who does not properly look after, or provide support to, his ward or child is to be criminally punished. Articles 133 and 134 make the failure to provide assistance and care to those in need of such assistance and care or otherwise in a helpless state to be punishable criminally. The interpersonal relationship among the DPRK citizens is said to be one of mutual assistance and cooperation. It is also characterized by "political-moral unity" and solidarity. Therefore, it is the moral duty of every DPRK citizen to give assistance and care to those in danger of their lives and when he violates such a duty he will be criminally liable under certain prescribed circumstances.[32]

Under the new socialist morality man's individuality and honor are said to have been fully developed in the DPRK. When a citizen violates his moral duty of respecting another person's honor he is criminally punished (Articles 144, 145 Crim. c.). Whether a criminal insult has been committed or not would be determined in the light of the socialist morality and the norms of communal living recognized in the DPRK. This criminal insult is in addition to criminal defamation to which truth is a complete defense. It is said that a truthful statement though defamatory should serve a socially useful function.[33] A statutory rape may be committed by both man and woman in North Korea. Any sexually mature adult who has a sexual relation with a person who is "sexually immature" is criminally liable (Art. 137 of the DPRK Criminal Code). Sexual maturity is not defined in terms of age. It has to be medically determined in each case.[34] The equality of the sexes here expressed may perhaps be an indication of the new sexual morality in North Korea.

The enforcement of moral duty through criminal law has been a controversial subject of jurisprudence for many centuries. This question has been a subject of heated debate in both the United States and

[31] *State and Social System*, pp. 57 and 119.
[32] *Minju Sabop*, No. 8, 1959, pp. 41-42.
[33] *Ibid.* pp. 46-47.
[34] *Ibid.* p. 45.

Britain in recent years. In Britain the question has been raised and debated for some time in connection with the abolition of such crimes as adultery, homosexuality and prostitution. The famous Wolfenden Report and the subsequent controversy surrounding the conclusions of the Report have caused a lively debate on the desirable connection between law and morality. In the United States the so-called "crimes without victims" have caused some concern with respect to the threat posed against individual liberty by the difficulty of their enforcement. Narcotic addiction, prostitution, gambling, homosexuality and so forth are very difficult to detect, especially when they are carried out in private among consenting adults with little or no injury to the public. These offenses require quite an elaborate machinery of investigation—a whole panoply of informers, stool pigeons, eavesdropping and other forms of invasion of privacy. The whole system of legal and illegal search and seizure is involved. The question of proper relationship between "public morality" and criminal sanctions boils down to finding a proper balance between the interest of the state against that of the individual. The question of confining the power of state and the function of penal law within proper bounds is not an easy one.[35]

Having merged socialist morality with socialist legality, the North Korean legal system cannot escape the consequences of the merger. Paternalism, collectivism and informalism are some of these consequences. But in a society that strives for the merging of the ego into the collectivity the concepts of privacy and personal liberty need to be evaluated in a different light.

The paternal aspect of the North Korean criminal law needs to be examined only briefly. This aspect flows logically from the concept of law primarily as a means for moral edification and political indoctrination. The parental nature of the Soviet law has been given an extensive treatment by Professor Berman. One Soviet jurist is quoted as describing the function of the state as "the fundamental remaking of the conscience of the people."[36] Trials are conducted in a juvenile court atmosphere in which the judges sometimes "upbraid, counsel or admonish" the accused. The court tries to protect the defendant and other parties from their own ignorance. "The emphasis upon criminal law," Professor Berman observes, "is a natural tendency of a parental legal system."[37] These statements are equally apt as a description of the North Korean legal system, except the "parental" nature of the North Korean system is of a stronger and more predominant variety.

[35] M. G. Paulsen and S. H. Kadish, *Criminal Law and Its Processes* (1962) pp. 3-17.
[36] Berman, *Justice in the U.S.S.R.*, p. 307.
[37] *Ibid.* at 368.

The North Korean criminal procedure is wholly inquisitorial. It is repeatedly stressed that the rights of defendant may not be used to obstruct the administration of justice; they are recognized as the essential means for discovering the objective truth, never for obscuring or concealing the truth of the matter under investigation. The rights of defendant are never to be used to protect the rights and freedoms of counterrevolutionaries and criminal elements.[38] To be sure, a defendant is entitled to the services of a lawyer when his adversary is a prosecutor (Article 42, Crim. proc. C.). But the designation of the prosecutor as his "adversary" is a misnomer. Under Article 213 of the Code of Criminal Procedure the prosecutor has a duty to argue for the innocence of the defendant "when it is not possible to establish the guilt of the defendant (whom he has prosecuted) in the course of the trial." The inquisitorial feature of the North Korean criminal process is being further strengthened. It seems otherwise in the Soviet Union.[39]

If a judge takes his educational role at all seriously, he will have to be parental and tutorial in his approach to the parties before him. He is required by law to inform all the parties before him of their respective rights and duties. He leads and controls the entire process of trial with a view to finding the truth of the case. But the parental feature of the North Korean criminal law is not confined to court proceedings. Throughout the process of pre-trial investigation, the prosecutor acts as both an accuser and a protector of the accused. He is a kind of a combination of prosecuting attorney and magistrate in the United States. A pre-trial investigator issues a warrant for arrest or for search and seizure by writing out a "statement of reasons" under the prosecutor's supervision. A copy of the indictment is shown to the accused who may then propose changes. The prosecutor has the duty to insure legality in judicial proceedings of both civil and criminal nature. He may appeal any judgment he considers improper to a higher court. He is a representative of the state whose duty it is to guarantee the uniform enforcement of legality throughout the republic. Although the inquisitorial nature of criminal proceeding is nothing unique to North Korea, it is more pronounced than in either the Soviet Union or other Continental civil-law countries.

IV. Collectivism and Informalism

Collectivism is an ideal to strive for in North Korea. It manifests itself in the form of striking a balance in favor of the collectivity and against the individual. Perhaps this dichotomy is inappropriate. Personal interest is justified only in terms of its contribution to the

[38] *State and Social System*, p. 164.
[39] Berman, *Justice in the U.S.S.R.*, p. 304.

collective interest. The two merge into a new synthesis which should be viewed in a proper dialectical perspective. In the area of criminal law this perspective is of fundamental importance. The rights of an individual defendant in a criminal proceeding must be understood on the basis of this perspective. The virtues of "democratic centralization" and the "democratic" nature of the dictatorship of the proletariat can be apprehended only in terms of the collectivist perspective. The uniformity of legality and interpretation of law and the single spirit of law that is to prevail throughout the collectivity are the products of this perspective. The system of vertical subordination of the prosecutors who are answerable only to the Prosecutor General of the DPRK is an instance of "creative application" of this perspective. Even the right of self-defense finds its theoretical justification because it gives every citizen the right to defend the state, the society, and the community against counterrevolutionary and criminal elements. The right of self-defense thus contributes to the inculcation of the people with the "collectivist mentality."[40]

But when a crime is committed in a collective manner it is punished more severely (Article 47, Crim. c.). There is to be one collectivity, not many, to which an individual owes his allegiance. A member of the military personnel who flees the country will have his family punished *collectively* for his crime (Article 70, Crim. c.). A failure to report subversive activities is a punishable offense. There is no statute of limitation for antistate offenses and crimes committed in collaboration with the Japanese (Article 60, Crim. c.). Quitting one's job without permission was made a criminal offense by the edict of the Presidium of the Supreme People's Assembly of August 31, 1953.[41]

Collectivism in criminal responsibility had been the tradition in Korea. In old Korea a village, a town or even a province suffered collectively as a result of a crime committed by one of its members. It is interesting to see the same kind of viewpoint still expressed in the Soviet Union. *Pravda Ukrainy* (Kiev) of June 10, 1962 reports: "Hundreds of people come to the meetings to talk about those who shame their city. . . ."[42] The idea implicit in this statement is that the city as a group feels ashamed and somewhat responsible collectively for the misdeeds of its members. Of course, this is not peculiar to North Korea or Russia. An American city in which a president is assassinated might feel the same. But in North Korea such a feeling is supported by the legal theory.

Preoccupation with informality in the North Korean legal system

[40] Han Lakkyu, *op. cit. supra* note 8 at 105.
[41] A similar offense was abolished in the Soviet Union in 1956.
[42] Quoted in *Problems of Communism*, Vol. XI, No. 6 (1962) p. 12.

is closely tied in with its notion of popular justice. The publicity of judicial proceedings in the form of demonstration and on-the-scene trials serve the purpose of taking the law to the people. One of the consequences of popularization is to make every citizen a part of the law enforcement machinery. The provision for the "people's assessors" as the majority members on the bench is an institutionalization of the notion of popular justice. Trials are conducted with one judge and two assessors on the bench. Exceptions are made when provided otherwise by law.[43] Both the judge and the assessors are elected for a term of two years (in the case of city or *kun* court) or three years (in the case of provincial and Supreme Court) by the appropriate people's assembly.

It is theoretically possible for the two assessors to outvote the judge. But this possibility seems to be merely theoretical. A panel of assessors whose number varies from jurisdiction to jurisdiction depending on the case load is elected. An assessor usually serves in court for no more than 14 days in a year. Some assessors may never get a chance to serve on the bench. Sometimes a court may not be able to locate the assessors it needs because some of them might have moved to another locality or been assigned to jobs in faraway districts since their election. Some experimentations seem to be still going on with this institution. Originally, the assessors were to be called on to sit on a trial that involved matters in their line of specialty or expertise. But the situation has recently changed to make the assessors remain on duty for 14 days consecutively and make them sit on cases without regard to their expertise. During this 14-day period the assessors are given a kind of on-the-job training to acquaint them with the workings of the court.[44]

Every citizen who is entitled to vote may be elected as a judge or an assessor. Those who had served as a judge or a prosecutor during the Japanese rule may not be so elected. Since no professional training is required for judgeship, the informality of judicial proceedings is in a sense inevitable. One can detect a strong partiality in favor of nonprofessionalism. Professionalism is denounced as a kind of mysticism.[45] In denouncing a former bureau chief in the Ministry of Justice, Kim Ilsong excoriates him for boasting his law college degree from the Japanese, and calls such a professional training the man's "despi-

[43] The constitutional and statutory provisions dealing with the assessors are found in Articles 82 through 94 of the DPRK Constitution and Articles 13 through 17 of the Statute on Court Organization.

[44] Kim P'ilsik, "Ch'amsimwon tŭl kwa e Saop eso Odŭn Kyonghom" (Experiences Gained through Working with the Assessors) *Minju Sabop,* No. 9 (1959) 22-24.

[45] Ch'oe Hakchu, "Kim Ilsong Susang Tongji ŭi Kyosi Silch'on ŭl wihan T'ujaeng Kwajong eso Pyongyangsi Komch'als* ka Odŭn Kyonghom" (Experiences Gained by the City Prosecutor's Office of Pyongyang in the Process of the Struggle to Implement the Teachings of the Comrade Premier Kim Ilsong) *Minju Sabop,* No. 5 (1959) 33-36.

cable past."[46] For Kim, lawyers are archetypical possessors of inflexible minds. He says that during the Korean War when the regime was awarding the title of the "people's hero" to any member of an anti-aircraft sharpshooting platoon who shot down three enemy planes, the lawyers objected on the ground that that would create too many heroes. They pointed out that most nations have only a few national heroes throughout their history. Kim says that the lawyers' arithmetics were wrong, the more heroes, the better.[47]

Having taken the road of popular justice, antiprofessionalism was unavoidable. Informalism was another consequence. North Korean criminal procedure is solidly grounded upon informalism. The North Korean judge is to interpret the law not in a mechanical or formal manner, but on the basis of correct understanding of the judicial policies of the Party and Marxism-Leninism. In evaluating the evidence a judge should not rely on any formal rule of evidence, but base his conviction on all and every piece of available evidence. He is not bound by the formal evidence presented to him at the trial (Article 45 Crim. proc. C.). He may collect new evidence. He must directly handle all the evidence. In determining guilt, the accused's class position, education, occupation, personality, attitude, past merits or demerits and any other information available should be taken into consideration. A judge freely continues or discontinues the trial. He may move the trial somewhere else. When a new evidence is discovered, he may discontinue the trial in progress and start a new proceeding after having a new indictment drawn up.

A man may be acquitted but he may be prosecuted again within five years from the date of the first judgment if new evidence is discovered showing his guilt (Article 271, Crim. proc. C.). A prosecutor who has not participated in a proceeding may nevertheless appeal a judgment he considers improper (Article 243 Crim. proc. C.). A court of appeal in reviewing a case is free to review the entire process of decision of the lower court. Although Article 18 of the Court Organization Law limits a court of appeal to the material in the record and presented by the parties, the court is nonetheless free to go beyond the points raised because it is the duty of the court of appeal to "assure the political contents in the adjudicatory process."[48]

Another informal feature of the North Korean criminal process is the joining of a "private damage suit" of a civil nature to a criminal proceeding. Any victim of a defendant in a criminal proceeding may have his judgment for damages adjudicated along with the determination of guilt of the defendant. The private damage suit may be insti-

[46] In the speech cited in note 2 *supra.*
[47] Kim Ilsong Sonjip, *op. cit. supra* note 2, vol. 6 at 108.
[48] Song Kukhwang, *op. cit. supra* note 5 at 9-10.

tuted at any time between the commencement of the prosecution and the beginning of a trial. If no private suit is instituted, the victim may still sue the defendant civilly. During the pre-trial investigation, the investigator has the duty to inform the victim of his right to institute a private damage suit as a part of the process of prosecution. The investigator may attach or garnish the accused's property or wages to safeguard the interests of the victim-plaintiff. When the private suit is dismissed by the court during the trial, the victim-plaintiff is barred thereafter from instituting civil proceedings against the defendant. If the victim has already lost a civil damage suit arising from the same case, he is barred from a private suit. A final judgment in a civil action on the same case is binding on the subsequent criminal proceeding so far as the factual determinations are concerned. Such a civil judgment, however, has no binding effect on the determination of guilt.[49] The reason for this blending of the civil and the criminal processes is said to be of greater efficiency in judicial administration in terms of time, expense, and energy. The North Korean law certainly pays little heed to formality.

V. Concluding Observations

It is always a risky undertaking to describe the legal system of a political entity in the scope of an essay. In the case of North Korea the risk is infinitely greater, for the information available is scarce and fragmentary at best. But the fact that it has maintained its existence as a "people's democracy" for nearly two decades is of important significance to a student of Asia and communism. Being a lawyer with a somewhat inflexible mentality berated by the North Korean leader and with an interest in such formal categories as personal freedom, judicial independence, equality and impartiality of judges, the present writer may have lacked requisite perspectives necessary for a proper understanding of the theoretical framework of the North Korean criminal law. An attempt has been made, however, to present the views and the perspectives of the North Korean theorists with a minimum of diatribe prompted by his own value preferences.

In evaluating the North Korean legal system, it is safe to observe that its matrix is the Soviet system of the 1930's and early 1940's. The Soviet law reform of the post-Stalin period had a disconcerting effect for a while, but the system remains essentially Stalinist. The fact that North Korea is a divided half of a nation that had maintained unified existence as a homogeneous political unit for over a millenium makes its leaders always conscious of the possibility of eventual reunification with its Southern half in the future. The need

[49] The provisions of the Code of Criminal Procedure relevant to private damage suits are Articles 11 through 15 and 97 and 98.

to prepare for the eventual reunification and to guard against the ever-present danger of subversion (real or fancied) directed from the South has "necessitated" the continuation of the dictatorship of the proletariat for some time to come. Consequently, the North Korean legal system is still characterized by its punitive severity and its subservience to political and ideological expedience.

PETER HAY

Supremacy of Community Law in National Courts

Correction

In our previous issue, Volume 16, no. 4, on page 551, line 10, the words "to refuse" should be added before the words "to hear." The sentence reads correctly as follows: To protect the Court from being flooded with dilatory or meaningless appeals, it might be given the right to refuse to hear an appeal, a notion mistrusted by Europeans but successful in the certiorari practice of the United States Supreme Court and, following a 1963 statutory amendment, in the practice of the German Federal Constitutional Court.