ZIMBABWE·LAW·REVIEW

Volume 3 1985

Faculty of Law
University of Zimbabwe
P.O. Box MP 167
Mount Pleasant
Harare
Zimbabwe

Zimbabwe Law Review Volume 3 1985 No. 1 & 2

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A COMPARATIVE STUDY OF COMRADES' COURTS UNDER SOCIALIST LEGAL SYSTEMS AND ZIMBABWE'S VILLAGE COURTS

K. MAKAMURE*

1. INTRODUCTION

There appear to be a number of reasons why a study suggested by the heading of this article is both an attractive and useful field of enquiry. To start with, the national liberators of Zimbabwe could not have simply taken over the settler state system without altering its oppressive structures and institutions. Thus, instinctive in the minds of the people of Zimbabwe and their leaders at independence was the desire to change the system of colonial oppression embodied in the colonial state and its institutions. Towards the last days of the liberation struggle it had become clear also that the natural course for Zimbabwe to take was towards socialism guided by the science of Marxism-Leninism or Scientific Socialism. Both the liberation movements constituting the Patriotic Front, namely, ZANU (PF) and ZAPU asserted that they were committed to Scientific Socialism. Further, it has also become noticeable that in the last ten years of the struggle the national liberation struggle, especially its armed wing, had begun to develop a Marxist revolutionary content, sometimes expressed in intra-party contradictions between the old traditional nationalists and the new Marxist-oriented fighting cadres who developed new perspectives about our struggle for emancipation.

Further afield, we observe that since the October Bolshevik Socialist Revolution of October 25th, 1917, there have emerged on the world scene, as an inevitable process of social development, socialist states in Europe, Africa, America and Asia with a new socialist jurisprudence which draws upon decades of revolutionary socialist legal experience from all socialist countries and by reference to which the more enterprising scholars of Zimbabwe can contrast the effort of Zimbabwean leaders to change the inherited colonial legal system along socialist lines. This automatically brings into focus the utility of the comparative method and its particular advantages in the study of law and legal phenomena by African scholars. Colonialism and the phenomenon of the neo-colonialism dominant at the present moment on the African continent means that important legal developments in African states are often derived from developments in the imperialist countries. It may be observed that such carbon-copying by the leaders of African states leads to the reproduction of neo-colonial forms in the development of African economic and legal systems. The study of socialist legal systems in their revolutionary and creative context would, therefore, inject in to African scholarship a qualitatively new source of thinking and legal experience, thus, resulting in regeneration of African scholarship in a new direction and towards new depths.

The task undertaken by this article is to try and examine from a comparative basis the village courts in Zimbabwe - a new legal

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institution that has been introduced by the national democratic government of independent Zimbabwe. The reason for comparative study arises from the fact that the village courts were born at first as people's revolutionary tribunals during the revolutionary situation that preceded the conquest of political power by the national liberation forces in Zimbabwe. Some of the ideas which had begun to inspire the Zimbabwe national liberation forces were Marxist-Leninist. Already in the areas liberated by ZANLA forces, revolutionary people's tribunals had been set up by the political commissars to implement the socialist concept of popular justice. After independence, the new state of Zimbabwe appeared to have adapted war-time people's tribunals into the new village courts and to have regularised them by so doing. But is the village court system an embryonic socialist institution as some people would argue, or, is it simply a new judicial institution dictated by the exigencies of the political situation in Zimbabwe after independence? This article sets out to examine and answer this question in greater detail.

2. A FEW WORDS ON THE COMPARATIVE METHOD

The comparative methods universally considered has important merits and in the domain of legal science takes two forms. One is the familiar descriptive level when law students study Roman Law, or the English legal systmes, for example. The second form of the comparative study undertakes a deeper level of enquiry. It utilises comparison in all its dimensions as a means to a fresh scientific comprehension of legal transformation. The comparative method thereby becomes a more or less scientific technique of description and analysis. Butler(1) commends the general utility of the comparative method and its potential uses when he observes:

> "Its is deemed applicable to almost any kind of legal research academic or professional, performed by the legal historian, jurisprude, law teacher, legal sociologist, practitioner or judge. It reaches across all branches of laws and all disciplines. It can offer empirical insights on any enquiry into the particular or provide a broad background against which both the law and its national systems may be viewed, either in the past or the present. It also may offer, though this must be undertaken with low expectations and circumspection, a means of testing the efficiency of legal solutions to problems in various societies."

In this article it is considered that any exposition on comrades' courts in socialist countries will fail if it does not consider them within the totality of the meaning of socialist revolution in the Marxist-Leninist understanding of it. It is to this question that we now turn out attention in order to consider the question of Zimbabwe's village courts and socialist comrades' courts.

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1. W.E. Butler, "International Law and The The Comparative Method" in Vol 30 1977, Current Legal Problems, Faculty of Laws, University College.

3. THE MARXIST-LENINIST CONCEPTION OF STATE AND SOCIALIST REVOLUTION

To many people in the western capitalist world, and in many third world countries under capitalist or bourgeois ideological domination, the communist takeover of state powers is often little understood in its historical significance. The image often presented of a communist is that of an uncouth, mad and raving agitator, or he is often seen as a mischievous and devious plotter behind every strike or civil unrest. In fact, it is often totally forgotten that communist philosophy, founded by Karl Marx and Frederick Engels, represents one of the most profoundly deep philosophies of our time with highly accredited scientific (i.e. objective) foundations. The reason why communist philosophy has met with hostility from the existing bourgeois societies is that the conclusions Marx and Engels arrived at led them inevitably to propose radical political solutions to the perennial problems of social inequality and injustices that have hitherto characterised such socio-economic formations as slavery, feudalism and capitalism. Especially unsettling to the established bourgeois society is the concluding paragraph of the Communist Manifesto(2) where Marx and Engels declared:

> "The communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a communist revolution. The proletarians have nothing to lose but their chains. They have a world to win. WORKING MEN OF ALL COUNTRIES UNITE!"

There is yet another side to communist philosophy for it represents an all embracing understanding of all phenomena. To communists, everything in nature is reciprocally interconnected and is in a state of continuous change and development. The change and development is a product of inherent contradictions that exist in all phenomena. Thus, the question of motion in matter is central. Development is a result of the struggle between the old and the new with the new eventually succeeding to the old. However, no sooner does the new establish itself than it generates new contradictions within itself and, thus, turns itself into the old. This explains the never-ending spiral of appearance and disappearance in all processes of natural phenomena. Further, development of all natural phenomena takes the form of motion in which small unnoticed quantitative changes accumulate to a point where quantity transforms itself into quality. Thus, for example, unnoticeably a child grows into a new quality which we call a "line". This method of explanation in Marxism is called dialectical materialism.

In its materialistic explanation of man's cosmic world, Marxist philosophy goes further. It recognises matter as primary and concludes that the process of knowing (cognition) and conceptionalisation arises out of man's sensual experience, so that the starting point is not the

2. "The Communist Manifesto" is a programmatic document written in 1848 jointly by Marx and Engels. It has been translated into many different languages all over the world and it gives a precise definition of basic principles of scientific socialism as opposed to bourgeois or utopian concepts of socialism.

"idea" but material reality which the brain of man (representing in itself highly developed matter) interprets and turns into ideas.

In his "Theses on Feuerbach"[3] Karl Marx noted:

> "The questions whether objective truth can be attributed to human thinking is not a question of theory but is a practical question. In practice man must prove the truth, that is the reality and power, the this - worldliness of his thinking in practice. The dispute over the reality or non-reality of thinking which is that isolated from practice is a purely scholastic question."

Thus, ideas about religion and God do not stem from outside of man's sensual experience but merely represent man's crude and fanciful and speculative or unimaginary idealism. This aspect of Marxist theory is known as the "Theory of Knowledge."

The third pillar on which Marxist philosophy is anchored and the one which is of most relevance to social science, is what has been called "historical materialism". It is the application of the method of dialectical materialism to the understanding of human society as part of natural phenomena. The key point of historical materialism is that society develops according to certain historical laws. These laws express a necessary, stable and recurrent connection between social phenomena and processes. For example, some of these laws can be identified. These include the laws of the determining role of the social being in relation to social consciousness; the determining role of the mode of production in relation to the societal superstructure and the dependence of the social nature of the individual on the sum total of social relations. The following passages of Marx explain these points:[4]

> "The fact is therefore that definite individuals who are productively active in a definite way enter into definite social and political relations. Empirical observation must in each separate instance bring out empirically and without any mystification and speculation, the connection of the social and political structure with production. The social structure and the state are continually evolving out of the life-process of definite individuals, but of individuals, not as they may appear in their own or other people's imagination but as they really are: i.e. as they operate, produce materially and hence as they work under definite material limits, presuppositions and conditions independent of their will."

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3. K. Marx and F. Engels on "Feuerbach" (above). Section 4, entitled "The Essence of the Materialist Conception of History, Social Being and Social Consciousness, pp. 30 - 32.

4. K. Marx and F. Engels on "Feuerbach" (above) Section 4, entitled "The Essence of the Materialist Conception of History, Social Being and Social Consciousness, pp.30-32.

"The production of ideas, of conceptions, of consciousness, is at first directly interwoven with the material activity and the material intercourse of men, the language of real life. Conceiving, thinking, the mental intercourse of men appear at this stage as the direct efflux of their material behaviour. The same applies to the mental production as expressed in the language of politics, laws, morality, religion, metaphysics etc., of a people. Men are the producers of their conceptions, ideas etc. - real, active men, as they are conditioned by a definite development of their productive forces and of the intercourse corresponding to these up to its furthest forms. Consciousness can never be anything else than conscious existence and the existence of men is their actual life-process. If in all ideology men and their circumstances appear upside down as in a camera-obscura, this phenomena arises just as much from their historical life-process as the inversion of objects on the retina does from their physical life-process."

".....we do not set out from what men say, imagine, conceive, nor from men as narrated, thought of, imagined, conceived, in order to arrive at men in the flesh. We set out from real, active men, and on the basis of their real life-process we demonstrate the development of the ideological reflexes and echoes of this life-process. The phantoms formed in the human brain are also necessarily sublimates of their material life-process which is empirically verifiable and bound to material premises. Morality, religion, metaphysics, all the rest of ideology and their corresponding forms of consciousness, thus no longer retain the semblance of independence. They have no history, no development; but men, developing their material production and their material intercourse, alter along with this their real existence, their thinking and the products of their thinking. Life is not determined by consciousness, but consciousness by life.

Where speculation ends in real life - there, real, positive science begins: the representation of practical activity of the practical process of development of men. Empty talk about consciousness ceases, and real knowledge has to take its place. When reality is depicted, philosophy as an independent branch of knowledge loses its medium of existence. At the best its place can only be taken by summing-up of the most general results, abstracts which arise from the observation of the historical development of men. Viewed apart from real history, these abstractions have in themselves no value whatsoever. They can only serve to facilitate the arrangement of historical material, to indicate the sequence of its separate strata."

This extensive quotation from Marx is necessary for, very often, people deliberately ignore the method of Marx in order to distort him and represent his conclusions as the stupid rantings of a psycophantic revolutionary. Thus, the method of the materialist conception of history

reaches the conclusion that the system of all societal relations decisively depends on the "mode of production of material life". This mode of production is characterised by the forces of production and relations of production. The productive forces are the forces by which society influences nature and changes or transforms it. Productive forces comprise of two different elements: means of production created by society and nature, the instruments of labour, and the people who put them into operation.

Men, in order to produce the material means of their existence, enter into various relations with one another. These relations may be either production (technical) or social. The social relations of production are characterised by the distribution of means of production in the society, in other words, by the ownership of the basic means of production. These production relations include not only the relations in the process of such production of material goods but also the relations of exchange of goods, services, etc.

The productive forces and the relations of production are two inseparable aspects of social production and they constantly interact. This interaction establishes the historical law of the correspondence of the relations of production to the character and level of development of the forces of production. Because the laws governing society are developmental, at certain stages in the development of society the evolution of the forces of production makes the existing relations of production more and more inadequate and this relative lack of equilibrium between them can only be resolved through a social revolution that becomes inevitable in order to change the inadequate relations of production and create new relations of production and so make them correspond to the changed character and level of the productive forces. The revolutionary change in the relations of production (which constitutes the economic foundation of the entire immense social and political superstructure) then leads more or less rapidly to a drastic change in the whole superstructure. The result is a new socio-economic formation which emerges. In all this man plays a dynamic role.

Each socio-economic formation, therefore, is a specific "social-organisation" which distinguishes itself from another socio-economic formation by the character and level of productive forces and by the nature of the relations of production, in other words, by the economic structure of society. For example, on this basis one can distinguish between feudalism and capitalism as two different and successive social organisms. Each socio-economic formation has its specific superstructure distinct from the superstructures of other socio-economic formations or social organisms. Looked at in perspective, therefore, the history of society is the development and changes of socio-economic formations and Marxist-Leninist science has identified a number of socio-economic formations in man's past history, namely: the primitive communal, slave, feudal and present day capitalism. The motive force in the development of the slave, feudal and capitalist societies has been the law of class struggle. This is because these socio-economic formations reproduce different classes, with antagonistic and irreconcilable class objectives. The relations of production in these social organisms (socio-economic formations) are characterised by various regimes of the private ownership of the means of production which result in gross class inequalities and the exploitation of man by

man. Marxist doctrine (unlike the utopian moralist philosophies that protested against the inhuman conditions such as those created by the capitalist society) does not dream about wishful solutions to the problems of exploitation and the inhumanity of man to man by, for example, promoting principles of charity, goodwill among men, and the abstinence from man's acts of "selfish greed". Instead, the scientific socialist theory explains that the condition for the liberation of man from exploitation lies in man's active role in radically doing away with the relations of production that create the exploitation of man by man. In the case of capitalism, it is the abolition of the institution of private property in the sense of the private ownership of the means of production. This is not a mere wish but a realisation that capitalist society, because it does not do away with the private ownership of the means of production, contains the seeds of its own destruction. Capitalism reproduces two antagonistic classes - the bourgeoisie and the proletariat, whose relations are characterised by perpetual class warfare. At the same time, the liberation of the proletarian masses is impossible without the elimination of capitalism itself. The proletarian masses must, therefore, overthrow capitalist relations of production which are based on social production but private appropriation of the social product and must substitute in their place, socialist relations of production based on the social ownership of the means of production. Socialist society will, in turn, be transformed into communist society which is the highest form of socialist society by further developing the forces of production on the basis of social ownership of the means of production. Thus, in Marxist theory, the development of human society has been on the whole a progressive one.

> "The history of mankind, despite its contradictions, temporary periods of stagnation and regression, is ultimately an ascent, a movement from the old to the new, from the simple to the complex. As it develops mankind creates more powerful productive forces, a more effective economy, more perfect forms of political administration expanding in varying degrees the limits of man's opportunities and freedom."(5)

Attacking the utopian and idealist conceptions of change and progress Marx wrote:(6)

> "We shall, of course, not take the trouble to enlighten our wise philosophers by explaining to them that "liberation" of "man" is not advanced a single step by reducing philosophy, theology substance and all the trash to "self-consciousness" and by liberating man from the domination of these phrases, which have never held him in thrall. Nor will we explain to them that it is only possible to achieve real liberation in the real world and by employing real means, that slavery cannot be abolished

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5. "The Fundamentals of Marxist-Leninist Philosophy", Progress Publishers, Moscow, 1974, p.281.

6. K. Marx and F. Engels on "Feuerbach" (above). Section on "Preconditions of the Real Liberation of Man", p.33.

> "without the steam-engine and the mule and the spinning-jenny , serfdom cannot be abolished without improved agriculture, and that, in general, people cannot be liberated as long as they are unable to obtain food and drink, housing and clothing in adequate quality and quantity. "Liberation" is a historical and not a mental act and it is brought about by historical conditions, the development of industry, commerce, agriculture, the conditions of intercourse ..... then subsequently in accordance with the different stages of their development, they make up the nonsense of substance, subject, self-consciousness and pure criticism, as well as religious and theological nonsense, and later, remove it again when they have advanced far enough in their development."

For the revolutionary transition from capitalism to socialism, Marx and Engels envisaged the following measures which modern communist revolutionaries have and do in various forms adopt. The first step is to "raise the proletariat to the position of the ruling class, to win the battle of democracy".(7) After this, the proletariat then uses its political supremacy to "arrest by degrees, all capital from the bourgeoisie, to centralise all instruments of production in the hands of the state, i.e. of the proletariat organised as the ruling class and to increase the total of productive forces as rapidly as possible." Marx and Engels then set the following ten-point general plan to revolutionalise and transform capitalist relations of production in order to bring about socialist relations and clear the road to the development of communist society:

1. Abolition of property in land and application of all rents of land to public purposes.

2. A heavy progressive or graduated income tax.

3. Abolition of all right of inheritance.

4. Confiscation of the property of all emigrants and rebels.

5. Centralisation of credit in the hands of the state by means of a national bank with state capital and an exclusive monopoly.

6. Centralisation of the means of communication and transport in the hands of the state.

7. Extension of factories and instruments of production owned by the state: the bringing into cultivation of waste-lands, and

8. Equal liability of all to labour. Establishment of industrial armies, especially for agriculture.

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7. K. Marx and F. Engels in "The Communist Manifesto" in Marx and Engels Collected Works, Vol. 1, Moscow, 1977, pp.126-127.

9. Combination of agriculture with manufacturing industries; gradual abolition of the distinction between town and country by a more equable distribution of the population over the country.

10. Free education for all children in public schools. Abolition of child factory labour in its present form. A combination of education with industrial production, etc.

The above ten points relate purely to the material conditions necessary to institute the development of a socialist society. But this revolution is not limited to this alone - the socialist revolution is a thorough and total one involving consequential radical changes in all institutions of the capitalist society, and its legal institutions are not excepted.

4. MARXIST-LENINIST THEORY OF LAW

Law in communist theory is not seen simply as an aggregate of rules of conduct, but as an institution of class society. Rules of conduct per se are indispensable for any human society, whereas law is not. Professor Tunkin (a leading Soviet jurist) formulated a general definition of law which is generally accepted in the socialist world as follows:(8)

> "Law is an aggregate of rules of conduct which have a class character; they express above all the will of the economically and politically dominant class of the society and defend primarily the interests of this class. With the elimination of private property and classes the class character of law will gradually diminish and in the end disappear. Rules of law will be transformed into rules of conduct which will not be a class institution but will express the will and equally defend the interests of all members of the community."

In scientific socialist theory, therefore, law and the state are not independent categories but always bear a class character. Both of them were not present in the original primitive human society. But they arose simultaneously and consequently as a result of the breaking-up of the primitive communal society into class society. Law and the state invariably are tools of the ruling class in all class societies. This was so in the slave-owning society and in feudal society. Today, this is the case in capitalist society which is politically nothing but a dictatorship of the bourgeoisie and the same also applies to socialist society which is, however, qualitatively the opposite of capitalist society, in that socialist society epitomises the class victory of the working people (the proletariat) over the exploiters - the capitalist class. The dictatorship of the proletariat is at once the antithesis of the dictatorship of the bourgeoisie in the sense that proletarian dictatorship represents the rule of the majority over the minority,

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8. Prof. Tunkin "The Contemporary Theory of Soviet International Law" in "Current Legal Problems", University College London, Vol 31, 1978, p 180.

whilst so called "Western democracies" are masked democracies which, in reality, are simply bourgeois dictatorships, that is, the rule of a minority of rich "money-bags" or corporation over the majority members of society - the proletariat and other working people.

A socialist revolution in the field of law therefore entails:

(a) the taking over of state power by the working class organised in the communist party or a party of the working class;

(b) the smashing of the bourgeois state and its institutions;

(c) the creation of a new proletarian state with its new and corresponding institutions;

(d) the development of a new proletarian jurisprudence - socialist legality, to serve the class aims of the proletariat.

Erich Honecker, the Secretary General of the Socialist Unity Party of Germany - the Communist Party of the German Democratic Republic, stated in his report to the 10th Party Congress of the S.E.D. that:(9)

> "Socialist law protects the achievement of the working people of the G.D.R. against all onslaughts of the class enemy. At the same time, law and legality are closely connected with creating truly socialist relations between people and solving economic problems ..... Great importance is placed on the strict adherence to those laws which concern the protection of national property and the activity of enterprises, combines and state economic agencies responsible for effective economic management directed towards performance."

Notwithstanding the fetish faith of bourgeois jurisprudence in the existence of socially or politically pure 'justice' vacuumated, and, existing eternally and independently, 'justice' in all class societies is always class justice. In capitalist society bourgeois class justice inevitably serves the interests of the ruling class of capitalist exploiters. The law courts and the public prosecutors oppress the progressive endeavours and the rights of workers chiefly through judicial frustration of these rights in the courts. In other instances, for example in South Africa and the U.S.A., bourgeois class justice is characterised by openly reactionary conservative laws. A correspondingly brutalised police and judicial system is often used, as it was in colonial Zimbabwe, to protect the system of bourgeois power and capitalist poverty.

On the other hand, Marxist-Leninist science unmasks the hypocrisy and cant of bourgeois jurisprudence and reveals the truth that the state and law are class based categories and thereby recognises the need for a working class state as an essential instrument in the complete abolition of the bourgeois society and the construction of socialism. Marxist

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9. Erich Honecker in "Political Report to the 10th Party Congress of the Socialist Unity Party of Germany" Dresden, p 155.

jurisprudence reveals the fate of state and law as inevitably and inextricably bound up with that of classes and class society. This means that with mankind's advance to classless communist society the state and law will cease to be necessary. This scientifically based prognostication is well stated by F. Engels, as follows:(10)

> "The proletariat seizes political power and turns the means of production in the first instance into state property. But in doing this, it abolishes itself as a proletariat, abolishes all class antagonisms, abolishes also the state as a state. Society thus far based upon class antagonisms had need of the state, that is of an organisation of the particular class which was pro tempore the exploiting class, for the maintenance of its external conditions of production and therefore, especially, for the purpose of forcibly keeping the exploited classes in the condition of oppression corresponding with the given mode of production (slavery, serfdom, wage labour). The state was the official representative of society as a whole; the gathering of it together into a visible embodiment. But it was this only in so far as it was the state of that class which itself represented, for the time being, society as a whole: in ancient times, the state of slave-owning citizens; in the middle ages, the feudal lords; in our time, the bourgeoisie.
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> When at last it becomes the real representative of the whole society it renders itself unnecessary. As soon as there is no longer any social class to be held in subjection, as soon as class rule, and the individual struggle for existence based upon our present anarchy in production with the collisions and excesses arising from these are removed, nothing more remains to be repressed and a special repressive force, a state, is no longer necessary. The first act by virtue of which the state really constitutes itself the representative of the whole society - the taking into possession of the means of production in the name of society, this is at the same time, its last independent act as a state. State interference in social relations becomes in one domain after another superfluous and then dies out of itself; the government of persons is replaced by the administration of things and by the conduct of processes of production. The state is not "abolished". It dies out. This gives the measure of the value of the phrase "a free state" both as to its justifiable use at times by agitators and as to its ultimate scientific insufficiency, and also of the demands of the so-called anarchists for the abolition of the state out of hand."

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10. Fredrick Engels: "Socialism: Utopian and Scientific" in "K. Marx, F. Engels and V. Lenin in "Historical Materialism", Progress Publishers, Moscow, 1976 pp 193-94.

In communist society, laws will cease to have their coercive character but will be observed by the whole society as obligatory moral norms or rules.

5. THE EMERGENCE OF COMRADES COURTS IN THE SOVIET UNION

In the field of administration of justice, a proletarian socialist revolution is characterised, therefore, by a democratisation of the judicial process, by the unity of the working class and other toiling masses with the law and its administration. It is as part of this democratisation process that comrades' courts came into being in the first proletarian state in the world, established by Lenin and the Bolshevik communists on October 25th, 1917. Comrades' courts were established by victorious Bolsheviks as early as December 1917, less than two months after the October Revolution. They were at first formed in some units of the Petrograd military district. Half a year later, they were extended to the entire Red Army to deal with minor infractions of military discipline and untoward conduct. By 1919, disciplinary comrades' courts had been organised in local sections of trade unions in enterprises to punish violations of labour discipline. They had fairly broad sentencing powers, including the right to imprison the guilty. In 1921, their jurisdiction was broadened to embrace hooliganism, indecent conduct, and other minor offences.*

At the time of the vicious class struggles against the Kulaks and for the establishment of socialist relations of production in the U.S.S.R. in the late 1920's and the 1930's, the jurisdiction of these comrades' courts was further broadened and their formation was authorised not only in plants and other state and social institutions where they were designated Industrial Comrades' Courts, but also in residential housing units and in rural areas (where they were known as Rural Social Courts). In 1938, some 45,000 comrades' courts existed in the Russian Soviet Federal Socialist Republic (R.S.F.S.R.) alone.(11)

The development of comradely justice was further developed in 1951 by the enactment of an All-Union Statute on comrades' courts in enterprises and institutions. The comrades' courts, through the provisions of the new statute, were given jurisdiction over certain labour violations and cases could be heard only upon the recommendation of the director of the enterprise or the institution. The comrades' courts were given the power to impose such penalties as social censure, social reprimand and a recommendation of demotion or dismissal, or such other similar social or economic penalty. Further statutes making further changes to the comrades' courts could be formed at enterprises, institutions, organisations, higher and specialised secondary education institutions, collective firms, certain residential housing units, rural population centres or settlements or collectives numbering at least fifty persons. Members of the court were to be elected by open ballot for a two year term at a general meeting of the relevant collective.

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* For a fuller discussion of Comrades Courts and their history by a western scholar see W.E. Butler's article "Comradely Justice in Eastern Europe" Current Legal Problems Vol 25, University College London 1972 pp 200ff.

11. Butler (ibid) p.202.

The provisions of the 1961 statute remain basically the same today although there were amendments in 1962 and in 1965.(12)

In the statute as amended, the role of the comrades' courts in socialist society and in the transition to communism is contained in Article 1 which states:(13)

> "Art I: Comrades' courts are elected public organs charged with actively contributing to the rearing of citizens in the spirit of communist attitude to work, toward socialist property, toward the preservation of rules of socialist society, toward the development in soviet people of a sense of collectivism and comradely mutual assistance, toward respect for the dignity and honour of citizens. Of primary importance in the work of comrades' courts is the prevention of violations of law and of misdemeanours detrimental to society, rearing of people through conviction and social influence, creating conditions of intolerance to any anti-social acts. Comrades' courts are invested with the trust of the collective, express its will and are responsible to it."

The jurisdiction of the Soviet Comrades' Courts is outlined in Article 5 of the statute. The comrades' courts are competent to deal with the following matters:

- violations of labour discipline which involves such behaviour as absence from work without valid reason; tardiness in arriving at work, or early leaving and poor quality work, or idling as the result of an unconscientious attitude of the worker to his duties.

- unauthorised use for personal reasons of means of transport, agricultural instruments, machine tools, instruments, raw materials or other property belonging to a state enterprise, co-operative or public organisation where such use did not cause substantial harm.

- petty theft of state, or public property, including first time commission of petty rowdyism, petty speculation and first theft of consumer goods and personal possessions of small value belonging to fellow collective members.

- appearance in an intoxicated condition or other unworthy conduct in public places or at work; distillation of moonshine-liquor and other strong alcoholic drinks when committed the first time and without the intention of sale and in a small quantity.

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12. Butler, Hazard and Maggs in "The Soviet Legal System:, Oceana, 1978, p.22.

13. Butler (ibid) Hazard and Maggs, p.22.

- unworthy behaviour towards women, failure to perform duties related to the rearing of children, unworthy behaviour towards parents.

- abusive language, circulating slander against members of the collective, beatings, light bodily injury not causing an upset to health where these are done for the first time, and foul language.

- the damaging of trees and other greenery;

- the damaging of dwelling and non-dwelling premises and other equipment of a service character where no notable damage has been caused; also, failure to observe the fire-safety rules.

- violations of regulations for communal living within apartments and dormitories.

- property disputes between citizens for amounts up to 50 rubles where parties submit the dispute to a comrades' court.

- anti-social acts not entailing criminal responsibility.

- administrative violations where the agencies or responsible officials with the right of exacting penalties without a court hearing, refer the case to a comrades' court.

- taking the law into one's own hands, failure to give aid to a sick person, illegal medical treatment, acquisition of property by clearly criminal means and other criminal activities if they do not represent great social danger and where the organs of the militia (i.e. the police), the procurator or the court think it necessary to transfer the case for hearing to a comrades' court.

The following are competent to recommend and bring cases before comrades' courts: trade unions, people's militia, street or apartment house committees, public organisations, assemblies of citizens, individual citizens, executive committees of soviets or other committees or agencies of a soviet, management of enterprises, institutions and collective farms, the court, procurator or investigating organs and the comrades' court itself. A comrades' court is required to hear cases promptly within 15 days at the most. The hearing of the case must be public and must be held during non-working hours before a bench of at least three members of the court. The court has the right to demand presentation of evidence and to compel the appearance of witnesses. The accused has a right to request the removal of a member of the bench who is personally interested in the case and this has to be decided by other members of the court. Observers at the hearing may put questions or make statements, and a record of the proceedings is kept. The accused must be present unless he has failed to respond to two summons and for no good reason. Where this happens in a case brought to the comrades' court by either a procurator, a court, or investigating organ, the case is returned to the appropriate body.

In reaching a decision in any particular case, a comrades' court must be guided by legislation in force, including the comrades' courts

statute, and also by the court's sense of public duty (Article 14).

The comrades' court does not impose punishments in the manner of the higher courts. Instead, the measures the comrades' courts are required to apply to offenders are referred to as "measures of public influence". This is not surprising because the law, the state and coercion are regarded as products of class society. The comrades' courts in the period of the transition to communism are therefore embryonic, communist institutions, so that under the soviet system, comrades' courts are in reality popular moral and social courts.

Article 15 of the statute on comrades' courts stipulates the measures of social influence that may be imposed. Thus, a comrades' court may:

- require the offender to apologise publicly to the victim or the collective;
- announce a comradely warning;
- announce public censure;
- announce a public reprimand with or without publication in the press;
- levy a fine up to 10 rubles if the offence is not related to a violation of labour discipline, 50 rubles on repetition of theft and on petty theft of state or public property, a fine of up to 30 rubles;
- propose to management of an enterprise institution or organisation:
  - (a) the transfer of the offender to a lower-paid job or demotion;
  - (b) dismissal in accordance with established procedures where due to the character of the offences committed by the offender, it is impossible to trust him at this work in future;
  - (c) transfer of offender to unskilled physical labour in the same enterprise for a period of up to 15 days with payment at the rate established for unskilled work, where the person has committed petty rowdyism, petty speculation, petty theft of state or public property, theft of low value items of personal use and enjoyment, assault and light bodily injury;
- raise the question of evicting the offender from his apartment if he is unable to get along with other occupants or if he exhibits a predatory attitude toward the housing facilities;
- require the offender to compensate the victim for losses up to 50 rubles suffered as a result of the illegal act;

- order delivery, in any case involving petty speculation, of the item which was the subject of the speculation to the state treasury. Further, in cases of theft of state or public property a comrades' court must in every case require the offender to make full restitution of the harm caused.

6. COMRADES' COURTS IN THE G.D.R.

The equivalent institution in the German Democratic Republic to the Soviet comrades' court is the Social Court. The social courts in the G.D.R. are of two types: the Dispute Commissions which were first established in enterprises in 1953; and the Neighbourhood Dispute Commissions, sometimes referred to as Arbitration Commissions. The position, tasks, and principles of the methods of work of the Disputes and Arbitration Commissions are regulated by the Law on the Social Courts of 11th June, 1968.(14) Dispute Commissions are set up in nationally-owned enterprises and such other similar enterprises, in enterprises with state participation and in private enterprises, in health, cultural and education institutions (centres), and in state organs and institutions as well as in social organisations. Their elections are organised by trade unions. They deliberate and decide upon lesser criminal offences that are given or referred to them, on labour matters, on misdemeanours, on irregularities (i.e. on breaches of rules), on neglect of compulsory education and on civil matters of a simple nature. Citizens are entitled to turn with their requests to the Disputes Commissions or to the District Court (except in matters involving labour law). The Disputes Commission must then hold public deliberations over the relevant request over the decision by which the case was transferred to a Disputes Commission and decide on:

(a) the claim;

(b) the confirmation of an arrangement;

(c) the violation of the law on definition and control of measures of re-education.

The Disputes Commission is not entitled to inflict criminal punishments. It can, however, make recommendations with appropriate proposals to be submitted to the enterprises' managers, the heads of state organs and institutions, and the executives of social organisations, which relate to the enforcement of order, discipline and security.

The decisions of Disputes Commissions can be appealed against to the District Court.

In contrast to the Disputes Commissions, the Neighbourhood Disputes Commissions are set up in the residential areas of towns and communities and also, if social needs so require, in production co-operatives. They

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14. See Ministry of Justice of G.D.R. publication (in English) entitled "Organs of Jurisdiction of the G.D.R." p.32.

can be established by the District Assembly, the Municipal Assembly in urban districts or the Borough Assembly in towns with boroughs. They deal with the following matters:-

- lesser criminal offences;
- misdemeanours;
- breaches of rules or irregularities;
- neglect of compulsory education;
- work-shy conduct;
- simple civil matters and other minor litigations.

Citizens are entitled to turn with their requests to the Neighbourhood Disputes Commissions or to the District Court. The Neighbourhood Disputes Commissions hold public deliberations and have similar competence to the Disputes Commissions to decide matters before them. Similarly, decisions of the Neighbourhood Disputes Commissions can be appealed against at the District Court. For an individual Disputes or Neighbourhood Disputes Commission, 8 to 15 members are elected by the corresponding representative body.

In the case of Disputes Commissions, the duties of assistance, guidance and training of Commission members lies upon the enterprise manager, the enterprise trade union committee, the district and county executives of the trade unions, the district and county courts and the procurators of the districts and of the counties.

In the case of Neighbourhood Disputes Commissions, the District Court acts as an advisory board. Further, it has the duty to"

(a) see to the further training of the members of the Neighbourhood Disputes Commissions; and

(b) analyse and generalize the activities of the Neighbourhood Disputes Commissions; and

(c) judicially review and enforce the decisions of the Neighbourhood Disputes Commissions.

The County Court also similarly acts as an advisory board to the Neighbourhood Disputes Commissions but it has the duty to ensure the control by the District Courts over the Neighbourhood Disputes Commissions. On the other hand, the municipal and community councils, together with the executive committees of the production co-operatives, must see to the creation of the material conditions for Neighbourhood Disputes Commissions and their work in their relevant territories.*

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* See Organs of Jurisdiction (above) pp. 22-23.

By 1977, 250,000 citizens of the G.D.R. were members of about 23,000 Disputes Commissions and of 5,000 Neighbourhood Disputes Commissions.(15)

In the G.D.R., the social courts have acquired, since their inception in 1953, great respect and a genuine authority among the working people. It is estimated that as far as Disputes Commissions are concerned, they consider and make final decisions, among other matters, in 85% of all labour disputes, in approximately 30% of all criminal matters as well as some 15,000 minor offences, and bring about in between 8,000 and 10,000 simple civil disputes an amicable settlement between the parties or decide the case at their joint request. Only most infrequently has it been found that a citizen will lodge an appeal against the decision of a social court. The effectiveness of the social courts' decisions is also demonstrated by the fact that no more than 0.3% of the offenders who appear before the social courts become recidivists, although the social courts do not impose any punishments but are only entitled to stipulate certain measures of education.(16)

Indeed, the Programme of the socialist Unity Party of Germany, adopted at the 9th Party Congress in Berlin in May 1976, envisages the extension of the rights of the social courts. It states:(17)

> "The work of the judiciary and the security organs will be linked still more closely with public activities to enforce socialist legality and to ensure order and security; and the rights of social courts - arbitration and disputes commissions dealing with minor civil cases - will be expanded."

This acknowledgement of the usefulness of social courts is a tribute to their success and it is, among other things, an expression of the G.D.R.'s drive toward increasing the socialisation of socialist jurisdiction in connection with the further shaping of an advanced socialist society and the social courts concomitantly constitute the creation of the fundamental preconditions for the gradual transition to communism.

7. COMRADES' COURTS IN OTHER SOCIALIST COUNTRIES OF EASTERN EUROPE

Contrary to anti-soviet cold war rhetoric which articulates the myth of a pervasive soviet domination of Eastern Europe, socialist

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15. Figures reported in "Law and Legislation in the G.D.R.", published by the Lawyers' Association of the G.D.R., Vol. 1-11, 1977, p.7.

16. Law and Legislation in the G.D.R. (ibid) p.8.

17. See S.E.D. Programme (English Translation), Dresden, 1976.

societies, as Lenin remarked, shall not be "a monotonous grey"* or standardised as is often portrayed by socialism's enemies. We have observed above that the soviet model of the comrades' court shares the same ideological basis with the social courts in the G.D.R. However, there are some differences of both style and methods of operating these courts. Similarly, there have been established and developed comrades' courts in most of the East European socialist states. There are no comrades' courts in Czechoslovakia and the author has no knowledge either of their existence or non existence in Yugoslavia and in Albania. Comrades' courts exist not only in the U.S.S.R. and the G.D.R., but they exist also in Rumania, Hungary, Bulgaria and Poland.

The comrades' courts in some countries are organised on a production and territorial basis and in some countries they are organised solely upon the production basis. Hungary and Rumania have confined such courts to production enterprises. In all these countries, the comrades' courts were established during the 1950's and the 1960's on the basis of statutory authorisation. In most cases, comrades' courts' judges are elected by open or secret ballot for either two or three years. In Rumania, judges are appointed by the trade union with the consent of the management. The qualifications of those eligible to be elected judges vary from a minimum age of twenty-one to twenty-six. Normally, a candidate for judgeship is expected to be a person who has had long experience, has led a model professional and personal life and has no previous convictions. The jurisdiction of the court is limited to simple civil and criminal matters and to those matters of behaviour that are contrary to the development of the socialist man or to communist social consciousness. Thus, avoiding socially useful work or leading a parasitic way of life, sexist and oppressive attitudes to women, stealing or damage to socially owned property or such socially harmful modes of behaviour as drunkeness and rowdiness, constitute the typical kind of issues that are dealt with in comrades' courts.

The sanctions available to comrades' courts are what are often referred to as "measures of social influence". This is done through requiring a public reprimand or a public apology, a monetary fine, correctional tasks, a reduction in salary, a dismissal, compensation to the victim for harm caused, compulsory treatment in the case of alcoholism, or withholding an irresponsible person's portion of his salary for the benefit of his family. All measures taken by comrades' courts are subject to appeal or protest. Above all, it is also observed that comrades' courts proceed upon minimum standard rules to ensure

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* Lenin stated: "All nations will arrive at socialism - this is inevitable, but all will do so in not exactly the same way, each will contribute something of its own to some form of democracy, to some variety of the dictatorship of the proletariat, to the varying rate of socialist transformations in the different aspects of social life. There is nothing more primitive from the view point of theory, or more ridiculous from that of practice, than to paint, 'in the name of historical materialism', this aspect of the future in a monotonous grey." (Lenin, Collected Works, vol. 23, pp.69-70.)

objectivity of judgement. Thus, the comrades' courts may avail themselves of professional legal assistance and in some countries the ordinary courts are required to give them every assistance in this regard. Parties to a dispute in a comrades' court may object to the composition of the court on grounds of bias, familial relationship or personal stake or interest in the cases; and, cases are heard publicly. Every precaution is taken in the operation of these courts to ensure their public social nature without letting them degenerate into blind lynch-mob sessions. In fact, it has been stated in this regard that:(18)

> "A comrades' court is a legally organised form of mass involvement of socialist society in the struggle against anti-social acts and not a bureau for hearing and registering opinions expressed by an unorganised and indefinite collective visiting the session."

Evidence and evaluations of the operations of comrades' courts suggest an impressive success story in the struggle for new and better forms of the administration of justice in the period of transition to communism. Comrades' courts, contrary to bourgeois fears (who interpreted their creation as instruments of mass terror and communist control), have proved themselves to be effective institutions for the education and self-education of the working people in a workers' state.

Gyorgy Gellert, a Hungarian jurist(19), makes and advances interesting evaluations of comrades' courts in Hungary. For example, he says experience shows that the proceedings and decisions of the comrades' courts have exerted a favourable influence on the workers brought before them. The effectiveness of these courts, in fact, was stronger than the deterrent effects of the ordinary courts and the sentences they impose. Practical experience also proved that frequently workers feel greater shame in appearing before a court made up of their fellow workers than before the ordinary courts. As a result, a light measure passed by the comrades' court and indeed, on occasion, the mere hearing itself without judgement or sentence was more educationally effective than a more severe sentence imposed by the ordinary courts. In Hungary, while 30% of the persons found guilty without further appeal by ordinary courts in 1963 had had previous convictions, the percentage was only 0.5% of the persons found guilty by comrades' courts in the same year.

The Hungarian experience also showed the value of the comrades' courts in the choice of cases and during proceedings. The cases selected generally aroused considerable interest among the workers and by this very fact contributed to the education of the whole collective. Members of the court showed great devotion to their tasks: they prepared the hearings and studied the evidence with the greatest of care and collected much information on the work and conduct of the accused. They showed much responsibility in their conduct of the the hearings. The

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18. S. Pavlov quoted in Butler's article (ibid) "Comradely Justice in Eastern Europe", 1972, p.214.

19. Gyorgy Gellert "Comrades' Courts in Hungary" in "Review of Contemporary Law, No.2", 1963, pp.45-57.

measures they took in adjudicating the case in accordance with the law in general proved highly appropriate.

The members of the collective attending the hearings not only helped to educate blameworthy workers, but they themselves received an education and the decisions and the proceedings taken assisted in the development of a consciousness, a spirit of responsibility, a moral judgement and a sense of law and order among the working people.

G. Gellert concludes that the experience of comrades' courts has shown that there are good grounds for this form of social self-administration. It proved that socialist progress had advanced sufficiently to create the conditions for a growing transfer of state tasks to social organisations. The growth of comrades' courts in the countries in which they have been established proved that Gellert's observations are not only restricted to Hungary but are generally true for all the socialist countries which have created these unique institutions.

8 THE ZIMBABWE VILLAGE COURTS

(a) Historical Roots

In 1981, the new national democratic government[20] of the new independent state of Zimbabwe passed a law to, in the words of the preamble to the Act:[21]

> "provide for the application of customary law in the determination of civil cases; to provide for the constitution and jurisdiction of primary courts; to provide for appeals from the decisions of such courts; to provide for a Primary Courts Inspectorate and to specify the powers thereof ....."

Thus, the Act provides a basis upon which customary law (which had not been satisfactorily provided for by the colonial regime) could acquire a new life and a new respect in the new political order. For this purpose, the Act provides for a new system of courts charged mainly with the task of administering customary law. These new courts are designated by the name of "Primary Courts" and they are of two types, namely, the village courts and the community courts. The use of the universalist term "Primary Courts" is meant to designate these courts as the basic units in the judicial organisation of the new state of Zimbabwe. This is an important departure from the colonial system which would have seen these courts as primarily African or tribal courts. The village courts are the lowest level courts of first instance, while the community courts are the next courts up the judicial hierarchy. Appeals

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20. National Democratic in the sense that it was a coalition government mainly of ZANU (PF) and ZAPU while in addition whites were also represented in the government.

21. See the Customary Law and Primary Courts Act, 1981 as amended in 1982.

lie from the community courts to magistrates courts (but only to certain magistrates courts which have been designated by the Minister of Justice as "District Courts"). From the District Court, a litigant may then appeal direct to the Supreme Court of Zimbabwe.

In this study, the village court has been singled out for special study because even in the context of the judicial system in the country the village court is in many ways a unique system. While presiding officers of the country's courts from the community courts upwards are public offices, that of the village court presiding officer is not. In the Act, the presiding officer of the village court is appointed by the Minister of Justice. In practice, the village court judge is elected on a local government or council ward basis. The elections are subject to the confirmation of the Minister f Justice who retains the right to reject any person or persons who, although elected by the people, he finds or regards as undesirable or unsuitable characters. In the conduct of these elections the Ministry of Justice has laid down the following criteria[22] that each presiding officer and assessor:

1. should be knowledgeable in the customs of the place where he lives and where the court will sit;

2. should be not less than 30 years old;

3. should be respectable in society and without a criminal record;

4. should be prepared to work on a part-time basis at a fee to be determined by the Ministry of Justice;

5. the ability to read and write is an advantage though not an essential requirement.

A village court does not sit in a specially designated place, so that it can sit anywhere at a place suitable for the purpose and convenient to the people and the presiding officer. In the rural areas, the village courts sit as in the old traditional ways, under large trees or on some such suitable open ground. In the urban areas, the courts sit normally in municipality halls or in such other similar places. In one reported case[23] in Chegutu, a small town a few miles west of Harare, the presiding officer chose a football stadium to try a case of adultery involving a white man and a black woman because so popular was the hearing that a large part of the town's population turned up and the local municipality hall was too small for the large crowd.

The village courts sit at weekends to enable the working population and the peasants to attend to their respective duties during working weekdays. The court fees are cheap - $5.00(Z) is the current rate. Further, village courts require no formalities in terms of dress, procedure and sitting in the court.

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22. See Justice S.A. Brobby, Inspector of the Primary Courts - Address to the 22nd Meeting of the Citizens' Advice Bureau of Zimbabwe, 2nd December, 1982, Harare, pp.2-3.

23. See the Zimbabwe Herald 1st January, 1982.

The state has prescribed only very rudimentary procedural rules for the village courts.(24) The procedure is largely informal and mass participation in the proceedings is permissible. Any person may, with the permission of the presiding officer, question or cross-examine any litigant, witness, or even the court itself. In fact, these courts produce outstanding lay "advocates" who guide the court and the litigants in matters of both law and procedure.

The Act confers upon the village court only customary law jurisdiction so that the court cannot determine any case which is not governed by customary law. However, even their customary law jurisdiction is limited. Thus, the village courts have no jurisdiction to dissolve a customary law marriage, neither can they entertain claims or make awards exceeding Z$500.00. The village courts do not have, unlike the community courts, criminal jurisdiction.(25) The decisions of the village courts are subject to automatic review by community courts. The village court is not required to keep a formal record of its proceedings and the only record kept is one sheet of paper on which is recorded basic information on the case, such as the names of the parties, the case number, the claim, the judgement and the names of the presiding officer and assessors. Lawyers may not appear on behalf of litigants in the village courts. An appeal from a village to a community court has to be heard anew, i.e. de novo. All in all, the village courts are designed or intended to administer customary law on a popular basis. This is in essence what makes them an attractive proposition for comparative study with comrades' courts in socialist countries.

But what was the origin and what were the conceptions that inspired the formation and institution of these courts? There are different perceptions on this question. The material causes for the formation of the village courts lie in both the immediate and the past history of our people. However, recently the cause of their formation has been subject to some official lawyers' justifications which bear no relationship to reality whatsoever or to the real material causes.

From the point of view of our past history, there is no doubt that the village court is modelled on the traditional court that existed in pre-colonial times and on the chief's court under colonialism. But the similarity can only be ascribed not to all aspects of the village court, but only to aspects of procedure and to the open, participatory nature of the court. The position of the presiding officer of the court bears no relationship to that of the traditional chief who presided not just as a judicial officer but also as the political and feudal lord and leader of the people chosen on a hereditary basis and not on a democratic basis, as is the case with the village court presiding officers. Thus, the traditional court could be, in fact, capable of completely arbitrary decisions as basically the presiding officer was not accountable in the democratic sense of the concept.

From the point of view of our immediate history, the aspects of the village court that distinguish it from the old traditional court are

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24. See Village Court Rules, S.I. 579 of 1981.

25. See Customary Law and Primary Courts Act (above).

derived from the populist and the incipient revolutionary socialist ideas of the national liberation movement and struggle. The people's guerrilla fighters, who were combat units of the Zimbabwean people's war of national liberation from British imperialism and the colonial fascism of the Smith regime, were particularly in the period after 1975 led by political commissars who were (after the Red Army tradition of Lenin, Stalin and Mao Tse Tung) the spiritual leaders of the struggle. Marxism-Leninism was, at the same time, beginning to have a profound influence on the Zimbabwean guerrilla fighters although it must be admitted not on a decisive scale, as the Zimbabwean struggle had historically been a purely nationalist movement of the pan-Africanist type at its most radical. Nationalist populism does not always find itself hostile to Marxism-Leninism. In the late 1970's, the Smith regime lost the initiative in the war and some areas became liberated from the chiefs and the District Commissioners, so that the political commissars stepped in to set up embryonic people's power in these regions. In the areas controlled by the Zimbabwe National Liberation Army (ZANLA)[26], people's village committees were set up to run the affairs of the community. At first, the political commissars themselves administered war-time justice but later on after the cease-fire agreement under the Lancaster House arrangements of 1979, the village committees were transformed into the administrative and judicial organs of the local area in which they operated. The procedures of these courts were aimed at self-criticism, reconciliation and, of course, punishment of the offender in what one would call criminal type cases. These courts at times, for example, ordered strokes or lashing as a form of punishment. The revolutionary nature of the commissars' courts is evidenced by the fact that political morality was emphasized at the expense of customary law. For example, there are reports that men who left their work while their wives slaved in the fields with the children were ordered to be stroked and not to do it again. Young men who impregnated girls but refused to marry them were also similarly given lashes and ordered to marry the girls. Cases of hooliganism and indiscipline were all generally dealt with in the same way. After independence, these people's courts continued to operate in all formerly ZANLA controlled areas. This meant that at that time there were two types of courts existing in the country, namely, the colonial magistrates courts and the people's revolutionary tribunals which were referred to by colonial lawyers or other western-trained Zimbabwean lawyers disapprovingly and contemptuously as "Kangaroo courts". Conflict ensued between the two systems so that when the people's tribunals ordered strokes or lashing as a punishment, the colonial courts (referred to as the "regular courts") convicted their members of assault. This conflict was one of the immediate causes that gave an urgency and impetus to the creation of the primary courts as a way to regularise the administration of justice at this level. From this it is easier, therefore, to understand that it was in the nature of the dialectics of this historical situation that we find the material causes for the formation and institutionalisation of the village courts. However, a legalistic rationalisation has often been offered as the basic

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26. ZANLA was the armed wing of ZANU (PF) while ZIPRA (Zimbabwe People's Revolutionary Army) was the armed wing of ZAPU.

consideration in the formation of the village courts. Mr. Justice Brobby[27], the expatriate Ghanaian Inspector of the primary courts gives the following rationalisations for the formation of the primary courts. He said that the old chiefs' courts and the District Commissioners' courts had the following disadvantages:

1. Not everybody could become a chief. But a judicial office, it was felt, should be open to all.

2. Not everybody could become a District Commissioner. Until recently, District Commissioners were mostly white.

3. Chiefs had outlived their usefulness. During the war there was so much mobility among the people that many Africans left their original traditional homes and it was not easy to decide who was the chief of a particular group of people.

4. In urban areas, the people had no access to tribal leaders or to chiefs' courts to which rural people had access. This was the result of the breakdown of the traditional tribal systems. There were simply no chiefs in urban areas.

5. The old system commanded no respect and was in some cases frowned upon. This was not without reason. The District Commissioners, who were mostly white, invariably did not have sufficient knowledge in or understanding of African customs and traditions. Some of them were reputed to have had no respect for the African customs and traditions which they were expected to administer.

6. The District Commissioners were not judicial officers and yet were administering judicial functions.

7. People were reluctant to take their cases to District Commissioners because they were part of the old racialist government and were actively involved in waging wars in support of the old regime against the blacks. It was too much of an endurance to expect the Africans to take their cases to be tried by the very people with whom they had been at war for many years.

8. The old system reflected an unnecessary dichotomy in the judicial set up. The chiefs' courts, Headmen's courts and District Commissioners' courts were all under the former Ministry of Internal Affairs, now the Ministry of Local Government and Town Planning, while the magistrates courts and the High Court were under the Ministry of Justice.

9. The racial structure in society was further heightened by appeal procedures under which, as stated already, only appeal cases involving customary laws and, therefore, black people were sent to the Tribal Appeal Courts and the Court of Appeal for African Civil Cases.

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27. In his address to the Citizens' Advice Bureau, pp.1-2.

Mr. Justice Brobby then concludes:

> "The Primary Courts were consequently introduced as an answer to the numerous problems created by the old courts and the potentially precarious situation which Kangaroo Courts were brewing."

It is apparent that the latter day rationalisations of Mr. Justice Brobby do not correspond to the revolutionary conceptions of a new judicial order that the commissars had envisaged during the war period. What he does point to, however, is the concern shown by western-oriented lawyers to fashion the new courts upon acceptable western standards. The end result was that we created the village court which compounds the popular nature of the revolutionary people's tribunals of the commissars, traditional informality, and incongruous western judicial standards.

(b) The Workings of the Village Courts

Since the Act creating the village courts was passed in 1981, over three thousand village courts have been set up all over the country, both in the countryside and in the urban areas. For the past two years, law students from the University of Zimbabwe have been assigned projects to study the workings of these courts as part of their customary law examinations. Their findings are still to be put together, but preliminary results of their observations show that the village courts are extremely popular institutions. This is because they are both cheap and politically identifiable with the common worker and peasant. The judicial officers are in this particular context actually chosen by the workers and the peasantry respectively for their areas or wards. Most interesting is the fact that women are also making increasing use of these courts.

The standard of adjudication varies from one presiding officer to another. Most of those elected are respectable people of the area, usually, if not invariably, men. Some are traditionalist and, hence, the proceedings are in those cases stamped with a lot of traditionalism. One presiding officer who is a Christian is reported to start his work with prayers.

It has also been observed that although the procedural aspects of the village court are on a progressive popular basis, the courts are, however, not applying a body of law which is progressive as these courts are in reality administering basically feudal customary law. This fact, of course, is a manifestation of the basic contradiction that exists in the national movement as a whole between forces for a revolutionary people's power and forces of national conservatism. The village courts operate in a manner that is expressive of this contradiction. The same may be said to be the case with the post-independence reformation of many state institutions in Zimbabwe.

9. SOME COMPARATIVE NOTES ON VILLAGE COURTS IN ZIMBABWE AND COMRADES' COURTS UNDER SOCIALISM

A striking difference between the village courts and the comrades' courts is the observable divergence of aims and objectives which give

the particular institutions their peculiar characteristics. In the first place, the comrades' courts have been created as prototype institutions of self-administration in the advance toward the withering away of the state and the building of a communist society when, it is envisaged in general, that society would be based on a highly developed culture and people's self-administration of production and social relations. The village courts are officially seen and conceived of differently. They are seen as a corrective institution to replace colonial injustice. Their popular aspects are seen as administratively "a good thing" as Mr. Justice Drobby[28] is quick to point out:

> "When the idea of Primary Courts was first mooted, the view was largely held in some sections of this country, that they were communist courts aimed at wrecking vengeance in the new independent society. The operations of the courts during the past year have proved that the fears were unfounded. It has been observed that those who opposed the establishment of the village courts and community courts, having seen what these courts stand for, now give us more co-operation and encouragement than even our original supporters. To further allay the fears it my be added that the idea of Primary Courts here is not the first of its kind in the world.
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> In the U.S.A. (some parts of Chicago) similar courts can be found but are described as Neighbourhood Justice Centres. Similar courts can also be found in Australia (New South Wales) but are called Community Justice Courts. The Zambian equivalent is described as Local Justices Courts and Magistrates Classes three and four. There are similar institutions in most Commonwealth countries, such as Tanzania, Botswana and Nigeria, but each country gives its courts different names."

It is further observed that although there may be some similarity between village courts and comrades' courts in some aspects of procedure, there are fundamental differences in the law, the legal ideology and the manner of application of the law. The comrades' courts attack survivals of feudal and bourgeois culture and advance new standards of socialist social relations, while the village courts apply and, in so doing, consolidate feudal law and the emerging bourgeois values of Zimbabwe's capitalist society. Moreover, in the conservative circles of Zimbabwean society the village courts are seen as a convenient way and a cheap manner of organising the administration of civil justice amongst the workers and the peasants. Their future, therefore, will largely be that of cheap courts for African workers and peasants. The system of village courts is so far not envisaged on a broader scale to include all classes of society. The bourgeois and petty bourgeois classes (including Africans) will remain out of this system, and these bourgeois classes, in fact, are contemptuous of village courts. Class instinct tells them that any system of popular justice is not the best system to serve bourgeois interests and administer bourgeois class justice!

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28. Ibid, p.7.

We can draw a few interesting lessons from the above comparative study. First, it is clear that ideology will always stamp the character and substance of any judicial system. Second, it also shows that the nature of the courts is not shaped merely or even critically by "good" legal standards universally applicable, but rather that our conceptions of a good legal system are largely determined by our class interests and class expediency, even if we may not be necessarily conscious of it. Thus, the aims of popular justice in its scientific socialist conception are fundamentally different from the aims under both populist and bourgeois conceptions.