

**AT THE
MOSCOW TRIAL**

BY D. N. PRITT, K.C., M. P.

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Author of "The Russian Legal System" (*Twelve Studies in Soviet Russia*, edited for New Fabian Research Bureau by Margaret Cole)

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By D. N. PRITT

The trial of Zinoviev, Kamenev, Yefdokimov, Bakaief, and twelve other persons accused of participation in terrorist conspiracies against the Government of the Soviet Union, which was held in Moscow in the latter part of August 1936, resulting in all the accused being sentenced to death and executed, has given rise to a good deal of criticism in Great Britain. Some of this criticism was frankly unscrupulous, and a great deal of it was based on unjustified assumptions that the Soviet authorities had been guilty of any and every abuse; but much of it was made in good faith. It seems clear, too, that some criticisms were unfortunately brought about in whole or in part by inaccuracies in or misunderstanding of the reports which reached this country. Indeed, the more I study the whole of the available material, with the advantage both of my professional training and of having been present at the hearing, and compare it with the very condensed reports which were all that was before most of the critics when they wrote at any rate their earlier criticisms, the more forgiving I feel even towards some of the critics whose conclusions have to my mind been most unsound. The criticism comes, of course, by no means solely from those observers of whom it is right to say that all they have ever either reported or prophesied about the Soviet Union has been wrong; the critics include both newspapers and individuals of very high reputation for fairness. It should be realized at the outset, of course, that the critics who refuse to believe that Zinoviev or Kamenev could possibly have conspired to murder Kirov, Stalin, Voroshilov, and others, even when they say themselves that they did, are in a grave logical difficulty. For, if they thus dismiss the whole case for the prosecution as a "frame-up," it follows inescapably that Stalin and a substantial number of

other high officials, including presumably the judges and the prosecutor, were themselves guilty of a foul conspiracy to procure the judicial murder of Zinoviev, Kamenev, and a fair number of other persons. Of course, the less scrupulous critics will be delighted to support that theory; they would always prefer to blacken the rulers of a Socialist country rather than people who confess to having sought to assassinate those rulers; but some of us with memories will find their sudden affection and admiration for Zinoviev and all the "Old Guard" a little comic.

Turning now to the criticisms, it is of course important that whatever their source they should be answered fully and fairly. We are not merely living in an epoch in which one country after another is in danger of economic collapse or Fascist barbarism, or both, if it cannot achieve Socialist government; but in narrower and more immediate politics it is of tremendous importance to peace and progress that no misunderstandings, particularly no manufactured or engineered misunderstandings, should arise between U.S.S.R. and the Western democracies. As I have had the advantage of having studied Soviet legal procedure pretty thoroughly for some years past, and also of having attended the trial in question, I would like to state and answer as briefly and as clearly as I can the main criticisms that have been made in Great Britain.

Probably the most general and important criticism that has been made is the simple one that it is incredible that men should confess openly and fully to crimes of the gravity of those in question here. Associated with this criticism there comes the suggestion that the confessions must have been extracted by "third degree" or other improper means. I can deal with these two points more or less together, starting with the more general one.

The critics seem to accept almost as a proof that there must be something ungentle about the prosecution, the fact that the accused (with minor exceptions which I will discuss later) pleaded guilty, and admitted their misdeeds fully and frankly; and, however difficult one may find it to follow the logic of this, it would be wrong to ignore the fact that the apparent abjectness and

eagerness of the confessions make curious reading to the student more accustomed to English procedure. This latter point is, I think, sufficiently explained when one bears in mind the very great differences in form and style that naturally exist between one race and another. If one asked an educated Frenchman, an educated Englishman, and an educated German, to state in his own way, and as briefly or as fully as he thought convenient, any simple concept, or even any set of concrete facts, the three results would be very different indeed in length, form, style, and even content. The more important point, and the one to which I wish to give a good deal of care, whether I concede it any logical strength or not, is the point that in the circumstances the pleas of guilty themselves suggest that there is something wrong or fictitious in the prosecution. Now, it will surely be conceded that in all countries, even in those most fully supplied with able and ingenious defense lawyers, prisoners do sometimes plead guilty to charges, even to serious charges, when they see that the evidence against them is overwhelming. My friends in U.S.S.R. tell me that this is more common in their country than in some others, and they speak with not too tolerant contempt of systems under which accused persons who are obviously guilty will consume precious time and energy in wriggling and putting up technical defenses; and I am bound to say, as some confirmation of this assertion, that in conversations I have held in Soviet prisons with accused persons awaiting trial on substantial charges, I have not infrequently been struck by the readiness with which they have stated to me in the presence of warders that they are guilty and cannot complain if they are punished. (And, of course, we often hear, even in England, of prisoners being congratulated on having pleaded guilty, and sometimes treated more leniently because they have not taken up time putting forward unsubstantial defenses.) Soviet procedure gives the accused ample opportunity to see what the strength of the prosecution's case is, as does the English, although the two systems are somewhat different in respect of the preliminary proceedings. In England and the countries which derive their system from England, the evidence in cases of any

importance is, so to speak, rehearsed in open court before the magistrates in the proceedings prior to committal for trial. In very many countries, however, including U.S.S.R. and, I think, every other European country that has a regular procedure, there is no proceeding in open court before the trial, but the evidence is prepared and developed privately in preliminary proceedings by way of investigation, which generally includes a detailed examination of the accused. From the course of this investigation, and in particular from a study of the dossier or record and of the indictment, which he has a right to see after the preliminary proceedings have been closed, the accused or his advocate has full opportunity to gauge the strength of the prosecution's case. Both these systems of procedure have their advantages and their disadvantages from the point of view of the prisoner's prospects of acquittal and from that of the efficient administration of justice in the public interest; opinions differ as to their respective merits, and to discuss the point in detail would be a long task, but the responsible critic will guard himself against the assumption that there must be some serious defects in any procedure which does not follow closely the lines of the English system which he has been brought up to revere with the same unquestioning loyalty that his father or his grandfather devoted to the blind acceptance of the efficiency of the British Navy. Indeed, I do not gather that the critics of the present trial complain as a matter of principle that there is anything wrong in the Soviet courts employing substantially the system of other Continental countries instead of that of the English jurisdictions—it may well be, of course, that many of them do not know anything about the two procedures or the differences between them—and for our present point it is enough to say that the two systems are alike in giving the accused full opportunity to see clearly the strength of the case against him and to make up his mind whether he will plead guilty or not.

If, then, it may be taken to be normal, in U.S.S.R. or anywhere else, for accused persons who know in their own minds that they are guilty to consider whether they will admit their guilt, and in some cases at any rate to decide to admit it when they see that

the prosecution can prove it quite clearly if they do not, and we proceed to consider the present case in the light of this fact, we arrive at several somewhat interesting conclusions. The first is this, that if one studies the matter revealed in the indictment itself, the questions put to the accused by Vyshinsky (the public prosecutor), and their answers, the long uninterrupted narrative statements made by most of the accused in their examination by Vyshinsky, and still more the occasionally vigorous contradictions of one accused by another when some point was being thrashed out by the men concerned in the course of these examinations (which occupied practically three out of the five days of the hearing), one forms the view (for a reason which I will state in a moment, I deliberately use this apparent understatement), that the evidence available against each of the accused, including in that evidence, as every European jurisdiction would without hesitation include, the testimony of others of the accused, was evidence of real strength and substance. When I use the moderate phrase, "one forms the view," I do so because it is of crucial importance, when attempting to criticize or to appraise this case in general or the actual strength of the prosecution's evidence in particular, to bear in mind that, as all the accused pleaded guilty to the whole charge (with definite but minor reservations on the part of two of them, Smirnoff and Holzman), there was no necessity either for the prosecution to adduce in open court all the available evidence going to establish the whole case, or for the court to consider and weigh the evidence against the other fourteen of the accused for the purpose of deciding their guilt. All that was done, and all that was attempted, was to develop the facts and evidence before the court merely to the extent necessary to enable the judges to decide the exact degree of legal guilt of the two men in question and to form a view of the moral guilt of all the sixteen accused, in order to decide properly on the penalty. When a critic from whom one is entitled to expect both clarity of judgment and fairness of criticism tells his readers that the trial was wholly unconvincing and that the evidence consisted solely of confessions, one realizes how easy it is for less well-

informed critics, and for the thousands of readers who justifiably look to critics for some guidance in forming their conclusions, to form a view that there was no real proof of the case at all; but the truth is that over nearly the whole area of the case the available proof did not require to be brought forward. One can well imagine that the Soviet Government, so far as concerns the point of view of properly informing foreign criticism, would much have preferred that all or most of the accused should have pleaded not guilty and contested the case. The full strength of the case would then have been seen and appraised; the hearing would, of course, have been longer, the criticisms perhaps shorter. So far as concerns evidence that did emerge at the hearing, it is not easy to give briefly an idea of the matters corroborative of the guilt of the accused, and it is, of course, not possible even to know (save in so far as they appear in the indictment) what further facts there were in the record that were not adduced at all. But it would be useful just to indicate one or two examples of the sort of corroboration that did appear. Let us start by having our minds clear as to what a confession is. One must not be misled by the use of the word "confession," or its association with forced and groundless admissions of crime, nor judge any confession without weighing the exact nature and effect of the words used. Bare admissions of guilt may vary very much in their cogency, not merely in relation to the circumstances in which they are given but also according to the attitude of mind of the critic; but where an accused person gives a long and detailed account of his movements and conversations which is found to fit in with accounts given by other accused of related movements and some or all of the same conversations, two things must almost of necessity follow. The first is that the confession becomes very much more convincing as against the party making it, and the second is that each such confession, if maintained in open court, becomes, if it should be needed, direct evidence implicating the other persons whose movements and conversations are thus being described by the "confessor" in the capacity of a witness against them as well as in that of a man pleading guilty

for himself. In this manner, in the present case, there proves on careful study to be corroboration of considerable weight in the statements of various of the accused. To give an example, it was part of the prosecution's case that two of the accused had had a conversation in which a highly incriminating phrase was used; the two accused in question, by no means friendly to one another, each admitted that such a conversation had taken place and that the incriminating words were used, but each of them said that the other was the actual author of the phrase. It does not require much experience in the weighing of evidence to realize that such a circumstance as that offers considerable evidence of the guilt, and considerable reënforcement to the plea of guilty, of either or both of the accused in question.

Thus, this most important part of the study of the criticisms, in respect of which I do not think I need apologize for writing at some length, has now been carried to this point, that the evidence was pretty strong, that the accused when confronted with it, having the opportunity to consider it and to make up their minds, elected to plead guilty. They were experienced, intelligent, and educated men, and they said that they were guilty; that might well be the end of the matter. But for many of the critics it seems rather to be the beginning; for the confessions, they suggest, may have been extorted by brutality, by threats, or by promises. We are asked to assume this, apparently; assuming what one desires to prove is one of the oldest of the unconscious tricks of criticism, and certainly saves a good deal of trouble. We know, of course, that the obtaining of confessions by such methods is only too common in too many countries; some of us have had to study in detail, for example, the statutory provisions relating to the criminal procedure in British India, designed to thwart such methods, and the success or failure of such provisions; but what iota of evidence is there that anything of the sort actually happened in this case? I do not pause to state or to examine in detail the tributes to Soviet procedure that have been paid in the past by persons who, having personally experienced investigations by the police or judicial officials of the Soviet Union, and

being free to speak without having any motive to misrepresent the facts, have asserted that nothing in the nature of "third degree" was applied to them, nor do I ask that any particular weight should be given to the personal tribute that I feel it my duty to pay to the great sense of public duty and the high character that I thought I found in personal conversation with and study of various officials under whose control such investigations of accused persons are held. It is sufficient, I think, in this instance to confine oneself to considering the circumstances of the present case. It seems plain to me, on a number of different grounds, that anything in the nature of forced confessions is intrinsically impossible. In respect of most of the accused, it must be remembered that we are considering the case of stubborn and infinitely experienced revolutionaries, men who knew from the best of all sources, that of personal contact, most kinds of prisons and most kinds of investigations, and who were also fully acquainted above all with the mentality and outlook of the authorities who were dealing with this case. If it were the practice of the People's Commissariat for Home Affairs, which has taken over the staff and the functions of the G.P.U., to extract confessions by false promises of lenient treatment (which I do not know and do not believe, but which others who equally do not know are at liberty to believe), surely no one would be better able to estimate the complete worthlessness of such a promise under the circumstances of this case than the experienced revolutionaries whom I saw in the dock. If, again, it were the practice of this department to attempt to extract confessions by violence (which I do not think any competent observer believes) no one would be better able than these men to support the violence and subsequently to expose it before the world in the sure hope of discrediting their enemies and gaining sympathy for themselves. If any trickery or deceit, simple or complicated, were employed in an effort to trap any of these men into confession, surely they would be better fitted than any one else on earth to detect and circumvent the plot.

It was, moreover, obvious to any one who watched the proceed-

ings in court that the confessions as made orally in court could not possibly have been concocted or rehearsed. Such a farce would doubtless not be beyond the mental powers of normal men to stage in the case of a small set of well-defined facts, which could be memorized by one or two people and parroted without any basis of truth. But in the present case sixteen men were involved, and dozens of conversations and incidents spread over years and over thousands of miles, now one, now another, or two or three or more of the accused being involved. I doubt whether, even if they had to deal with the relatively slow tempo of an English trial, more than one or two of the accused could successfully master their rôle in such a farce without betraying the whole thing; certainly sixteen could not hope to do so. But, in fact, the proceedings before a Soviet court move with great rapidity, due partly to the lack of formality, partly to the judges not having to take long notes, and partly to the absence of a jury; and the proceedings in this case were no exception to the rule. And in the middle of the examination of one of the accused, when he said something that implicated another or denied something to which another had previously testified, that other would come to his feet spontaneously or would be called upon by the prosecutor, and then and there the point would be fought out with a quick cross-fire of question and answer, assertion and counter-assertion. Months of rehearsal by the most competent actors could not have enabled false participants in such a contest to last ten minutes without disclosing the falsity; nor indeed would any stage manager risk a breakdown by allowing the farce to play so quickly. The employment of this procedure (normal, of course, in the Soviet Union), without the keenest critic finding a false note, is a most convincing demonstration of the genuineness of the case. (I observe in one eminent newspaper the statement that the accused seemed to be repeating a well-learned lesson as if hypnotized; but I am unable to understand how any correspondent, however far away he was from the court-room, can have obtained such an impression. I am more impressed by the Moscow correspondent of a Conservative Sunday paper, who

reported: "It is futile to think the trial was staged and the charges trumped up. The Government's case against the defendants is genuine.")

Another point of some substance in favor of the genuineness of the confessions is the complete absence of that very usual feature of proceedings in most countries (including England) in which it is common to allege that confessions have been improperly obtained: to wit, the attempt by the accused at some stage of the trial to withdraw all or part of his confession. One may repeat that if either intelligence or courage were needed for such withdrawal, the accused in this case possessed both. If experience or common sense were needed to make clear to the accused that, so long as their confessions stood unwithdrawn and unchallenged, the chances of, at any rate, most of them escaping the death penalty were infinitesimal, they, above all, possessed it. And it is worth while realizing the number of opportunities they had to make such a withdrawal. They could have done so after the indictment was read. If they chose to let that pass, they were each of them separately examined during the first three days, and could have made any withdrawal then. Moreover, throughout those examinations, each of the accused was allowed to come to his feet and address the court almost whenever he liked and for as long as he liked, whilst one of the other accused was really under examination, to explain, or contradict, or amplify, or modify. Further, when these examinations were over, and before the prosecutor's final speech, each of the sixteen defendants was called upon, in accordance with the usual procedure, to state his defense. Naturally and reasonably enough, as they were not in the strict sense making a defense at all, and as the universal rule of Soviet procedure gives accused persons always the right to the last word, they preferred not to say anything at that stage, when the prosecutor would have the full opportunity to answer anything they put forward, but to reserve what they wanted to say until their "last word" should come. And, finally, when the prosecutor had made his final speech, vigorous in substance, however quiet and well-controlled in form, each one of the sixteen had the right of

the last word, the right to address the court freely and at any length he desired. They exercised this right, of course. Some of them spoke briefly, some at length; some addressed themselves to the court, as it was their duty to do; some turned quite frankly away from the court and addressed the public in the body of the hall, without being called to order for doing so; interruptions of these speeches by the court or the prosecutor certainly did not take up one-tenth of one per cent of the time. If, with all these successive opportunities, these resourceful and experienced, and, however criminal, brave men did not even suggest (except to the extent that Holzman at the outset stated that he, like Smirnoff, denied direct complicity in terrorist acts, although during the investigation he had admitted it) that they desired to withdraw any part of their confessions, or that anything improper had gone to their procuring (and let it be remembered that if the old-fashioned trick of getting A to confess by telling him that B has already confessed were employed, and were not detected at the time, it would inevitably be detected at the hearing); and if, above all, this attitude of making no withdrawal continued at the end of the case, when the prosecutor had very emphatically asked for the death sentence as to all the accused, and the whole nature of the case made it impossible, save perhaps for one or two of them, to cherish the slightest hope of leniency, surely the inference is inevitable that they confessed because they were guilty, and without threats or promises, or third degree. Where is there any justification for the assertion of one well-known critic that the confessions were "worthless in the circumstances"? It is, above all, the circumstances that demonstrate how they must be genuine. Why are we not to assume, of such men as these, that if they said nothing against the Government and against the investigators, and nothing in favor of themselves, it was because there was nothing to be said? And where, we may ask still more cogently, is there any ground for the categorical assertion that comes from one very distinguished quarter, that the "confessions were extracted by means which have not yet been properly disclosed"? I understand how it is conclusively assumed, without proof, that the con-

fessions were "extracted," because experience has taught me how oddly even intelligent people will reason; but what is this complaint of non-disclosure? The accused, of course, might have disclosed how they came to confess; indeed, they did in effect disclose that they confessed because they were guilty and could not hope to escape conviction. But apparently this critic demands that the means of investigation employed should be published to the world. Is it part of the duty of the judicial authorities to publish reports showing exactly how they have conducted preliminary investigations of which the persons who are at once most interested and best informed, viz. the accused, make no complaint? Can he tell us of any case in any country where this has been done, or even demanded? He is far too experienced and intelligent to make observations that have no meaning; but I have great difficulty in understanding what is the real meaning of this one.

But the reasons for rejecting these criticisms have not even now been wholly stated. There remains an answer which requires a little care to state it and to understand it, but which, when that care is taken, is perhaps as convincing as any that has yet been stated. That answer is to be found in a study of the more or less immediate past history of four of the accused, Zinoviev, Kamenev, Yefdokimov, and Bakaief. The circumstances of this history demonstrate that these four men possessed, and exercised in very important circumstances, the tactical wisdom, when confronted with evidence which clearly implicated them, to confess exactly what they could not evade, and no more, however much more they might in fact have done.

In the present case, of course, confronted with the evidence, they all confessed to being directly implicated in the murder of Kirov at Leningrad in December 1934; but it is important to follow the history of the discovery of their guilt, and of their confession of it, stage by stage. The first judicial proceeding in respect of Kirov's death was instituted by an indictment presented on the 25th December, 1934, against the actual murderer and some thirteen other persons directly implicated; in that indict-

ment none of these four persons was included (although investigations into their activities were being pursued), since evidence implicating them was not forthcoming.

The more extreme critics might perhaps pause at this stage to consider the weight of these facts. If the views which they put forward so readily, although without any apparent ground, about Soviet procedure were correct, if Stalin and his associates were the sort of persons who would readily engage in a conspiracy to procure the judicial murder of their old rivals, and if confessions were as easily obtained as the critics suggest, surely a little thing like the absence of evidence would not have deterred the prosecuting authorities at that stage. They suspected the four men; their confession, conviction, and punishment at that time would have been of the greatest possible value from the point of view of prestige and propaganda; and the moment was psychologically the most favorable imaginable for unscrupulous men to engineer the elimination of opposition. Such men as the critics suggest that Stalin is, would not have hesitated for a moment; they would have procured a confession, a simple enough task. It only involved a promise of leniency; or some simple trick like telling each of them that the other has confessed; or a dose of the famous drug invented by one of the more unscrupulous of the slanderers at the time of the Metro-Vickers' trial, which compels men to tell the truth, or to tell a lie, or anyhow to tell something; a little hypnotism, or a little torture; or a simple fabrication of evidence. It would seem, indeed, that nothing but a desire to administer justice fairly and properly could have hindered them. Nevertheless, in sober fact, the Soviet authorities, just as if they were civilized people, having no evidence against the four men, did not then indict them; and, as there was no evidence with which to confront them, the four did not of course confess. (Zinoviev, indeed, sent to *Pravda* a somewhat fulsome obituary on the man in whose murder he was later to admit direct complicity, but it was not printed.) Soon after the trial of the fourteen persons, however, the investigating authorities discovered further facts, and on the 13th January, 1935, the four men, with others, were

indicted for the crime involved in their membership of the "Moscow center" of a terrorist organization, in touch with the "Leningrad center" which had been responsible for the murder of Kirov. There was still nothing to show that any of them had consented to or given instructions for the murder; and, confronted with what evidence there was then available, the four men deliberately, and no doubt very wisely, confessed to what could be proved—to far less, of course, than was subsequently discovered. Zinoviev in his confession stigmatized the persons who were then already implicated in the Kirov murder as degenerate miscreants, and Kamenev called them a gang of bandits, thus carefully circumscribing their confessions. They were not even then sentenced to death, as they might have been, but to imprisonment; so far as Zinoviev and Kamenev were concerned, it is not unfair to attribute this leniency to respect for their great services to the revolution, but it is to be remembered that this and many other instances of leniency towards these two men and their associates is inconsistent with the suggestion that excuses were being sought to destroy them. They were probably never of less weight as a serious political opposition, whatever their danger as inciters to individual assassination, than they were in 1936. There seems no reason to doubt either the truth of the confessions of January 1935 or the propriety of the investigations which led to them; and if that is so it is difficult to see why such doubts should be entertained about the confessions of 1936, or the methods of obtaining them. They seem but a consistent following, by clear and cool-headed men, of a prudent course; let the investigators show them what can be proved, and they will confess that and no more.

I am nearly at the end of my discussion of the first main criticism; but before I part with it I should add a point which is largely one of personal impression, although it need not for that reason be wholly unimportant. At the hearing I studied over long periods the demeanor of the defendants. They were an interestingly varied group. One looked like a German watch-maker, one like a book-keeper, one like an intelligent German prince, one like an English cavalry officer, one like a pugilist, one like a popular

actor, one like an alert business man. But all of them, at every stage, save two, of the five long days of the hearing showed a complete absence of fear, or embarrassment. The haggard face, the twitching hand, the dazed expression, the bandaged head, normal ornaments of the prisoners' dock in too many modern jurisdictions, were all alike absent. As soon as one entered the court, one was struck by their apparent ease. Treated with courtesy and patience equally by the court, the prosecutor, the guards, (even strolling out of court for a few moments when they wished), they spoke up freely when they wanted to, disputed minor and major points of difference with one another with vigor if not violence of speech, and displayed no signs of pressure or repression. The two stages at which, as I have mentioned, this was not wholly the case were natural enough, the one coming during the strong final speech of the prosecutor, and the other during the accused's own last words. In the first of these, always a depressing period for the accused in any criminal case, four or five of the accused sat with their eyes closed or their heads in their hands, not fidgeting but rather drearily motionless. The journalists present varied in their views as to whether they were sleeping, or merely bored, or greatly affected. For my part, as a lawyer, I was satisfied that they were undergoing the experience of many accused persons; however clearly they might have thought before that they realized the strength of the case against them and the peril of their position, the final speech of the prosecutor was bound to make that realization more clear and more depressing. In the other stage, the final speeches of the defendants, it was natural enough to find that some of them, but some only, were somewhat affected by emotion.

On the whole, then, examining the two main and, at first blush, most weighty criticisms with all the care and skill that I can command, I confess that I can find no solid ground for either of them.

It is noticeable, of course, that both in their testimony during their examination by Vyshinsky and in their "last words," most if not all of the accused, although speaking naturally, freely and

spontaneously, did make their confessions with an almost abject and exuberant completeness. This strikes English observers, particularly those accustomed to judge any form of procedure by the simple test of its resemblance to or difference from the elaborate and cautious procedure of the English courts, as very curious, indeed, as "un-English"; and they are apt to go on from that to conclude that this very feature constitutes evidence that the confessions were in some way not genuine. But, apart altogether from the extreme danger of judging persons of different temperaments as if they had the good fortune to be English, it has to be realized that all the pretty formidable arguments already advanced to show that the accused were in truth guilty operate with equal strength here; for if they were guilty their confessions were not false, however fulsome. This of itself really eliminates any improbability derived from the fulsome manner in which the confessions were delivered in court. And it must be remembered of Zinoviev and Kamenev, too, that their confessions in 1935, equally genuine, although incomplete, had been equally fulsome. It is, in truth, largely a difference of outlook and temperament, *and I have certainly noticed similar abjectness of confession in ordinary non-political cases of relative unimportance in U.S.S.R.* One notices that the language of self-accusation was more complete and abject in the "last words" than it had been earlier, in the course of the examinations; and this is, I think, natural and consistent. At the time of the examinations, when the demeanor of the accused was noticeably bright and unembarrassed, they still had the interest and stimulus derived from the not unsubstantial conflicts between some of them as to the respective degrees of guilt to be borne by each other, and as to the accuracy of their respective testimonies on points involving two or three or more of them, and the case had not then gone far enough to deprive all of them of all reasonable hope of escaping death. In the latter stage, however, after the emphatic speech of Vyshinsky, and after four long days of hearing, when such disputes as there were had sorted themselves out, and there was little room left for doubt or hope, the natural reaction (in the absence of any reasonable possibility

of putting up a fight on any question either of principle or of detail) would be towards a more complete unburdening of every one's mind. Whatever impression may be made on the purely English mind by this curious psychical attitude, it seems difficult on full consideration to see how it can, in the light of all the circumstances of the present case, convince any observer of the falsity of the confession, of the innocence of the accused, or of the existence of any impropriety in the preliminary examination of the accused.

The next criticism that should be dealt with can be answered more shortly. It takes the form, briefly, that the whole story is simply incredible, and that nobody, least of all old revolutionaries, could possibly have behaved as these men are said to have behaved. There would be some weight in this argument if the men had denied the charge, and the evidence in support of it had proved to be weak; but in the circumstances I hope I shall not be thought flippant if I say that it reminds me of the man who, when first confronted with the Grand Canal at Venice in a beautiful sunset, bluntly said that he did not believe it. The odd thing, moreover, about this criticism is that it comes mainly from people who for years have been saying that both the Government of Soviet Russia and its economic conditions are so bad, and its people in such a state of seething revolt, that only the most ruthless employment of force prevents a revolutionary outbreak at any moment. Such critics should surely receive news of plots to murder the heads of such a Government as the most natural and inevitable thing in the world, instead of offering a blank incredulity which at once insults the Soviet judicial authorities and evidences the critics' real belief in the stability of the Soviet Government. Still, it is well to answer the criticism by reasoning, so far as it is solid enough to admit of such treatment. In the first place, surely the most skeptical examination imaginable of the evidence available, both within the limits of this case and without, must convince any one that Trotskyite and Zinovievite centers or groups of a more or less conspiratorial character have been in existence for some time; and the real question is as to how far

some or all of these centers were prepared to go to achieve their aims. It is, alas, beyond question that some of them were prepared to go, and did go, as far as to arrange for and achieve the murder of Kirov; and if one takes account also of the confessions and of the mass of genuinely corroborative evidence which, as above mentioned, can be deduced from the indictment and from such evidence as was actually brought out in court, there is a good deal to show that the terrorist conspiracy did exist; and one does not need to be a student of psychology to realize how far, over long periods, a frustrated longing for power, or a sense of injustice or defeat, will ultimately demoralize ambitious men. In the absence of confession or proof it would seem *prima facie* unlikely, although not impossible, that such men should go so far in defiance of Marxian doctrine and of common humanity—about as unlikely, perhaps, as it was in 1913 that Carson and Smith and others should apparently be prepared to commit high treason; but confession and corroboration are not absent. The most cogent repudiation of this criticism, however, seems to me to lie in this, that it is surely not merely unlikely but utterly impossible that any intelligent group of persons engaged in the government of a country should let loose all the fears and doubts, the heart-searchings and criticisms, the innumerable misunderstandings and misrepresentations, that must follow in the train of a case such as this, on any ground whatsoever other than that the conspiracy was clearly and definitely shown to exist by the evidence finally forthcoming. It is worth while pausing here to consider for a moment the internal political setting into which the discovery of this conspiracy has intruded (or, to take the extreme critics' point of view, in which the Soviet Government, regardless of morals or common honesty or its own reputation, has staged a ghastly farce, in which one gathers that the sixteen men volunteered to play parts, for the sole or main purpose of destroying the sixteen men). The Soviet Union has recently, and in particular in this present year of 1936, entered upon a new phase not merely of economic but also of political advancement. Economically, its standard of living, still low in comparison to those of several of the more fortunate coun-

tries, is nevertheless almost miraculous in comparison to what it was two decades back, and is almost incredible even in comparison to two years ago. Politically, such an event as the complete and unreserved concession of the franchise to all members of the "deprived" classes, which friendly critics thought and hoped might come about in the next eight or ten years, will almost certainly be accomplished before 1936 is gone. Direct election by secret ballot, right through the whole series of Soviets and other bodies so long elected by the indirect system, is also pretty certain to come this year. Moreover, both in the administrative and in the judicial sphere, concessions have been or are being made which, taken as a whole, amount to a very great surrender of executive power. (One knows that few Governments have ever surrendered willingly any part of their executive power, be it large or be it small, and that almost every Government in the world to-day is seeking to enlarge its executive powers.) Such further points as freedom of speech and assembly, freedom from arrest, and inviolability of correspondence, are also at any rate formally a matter of early concession. These proposals and tendencies, in the existing world-political situation, constitute an almost defiant assertion in the face of the world that the Soviet Union is politically and economically so stable that it no longer needs any exceptional executive power to safeguard itself, the long and stubborn, if circumscribed, heresies of the Trotskyite and Zinovievite fractions having apparently come to an end, the bulk of their leaders, even those involved in grave counter-revolutionary activities, having recanted fully and publicly, and been forgiven and reinstated in the Communist party. A summer sky indeed, one in which no one could want a thunderstorm, in which no one would, above all, attempt to precipitate a thunderstorm. Suddenly, tragically, the storm bursts; the recantations are seen to have been false, and the heretics are shown to have taken advantage of their reinstatement, not merely to continue propaganda for their point of view (thus alas almost forcing the Government to wonder whether lenient treatment of hostile elements was not a mistake after all, and whether it would not be compelled in the interests of public safety

to re-investigate the activities of all known or suspected ex-Trotskyites and ex-Zinovievites at present holding responsible posts in different parts of the country), but also to conspire actively to bring about the assassination of a number of the principal leaders of the country in a fashion likely to produce the maximum of confusion, terror and bloodshed, for the sole purpose of themselves seizing power. Surely even the worst paranoiacs and morphiomaniacs of Central Europe would appear to be mild and sober citizens in comparison to the rulers of a great country who would at such a time announce the discovery of such a conspiracy and proceed to the public trial of the conspirators on any ground other than the overwhelmingly compelling one that the facts were there, the conspiracy proved, and the nettle had to be grasped.

I can now turn to the criticisms that are not unfairly to be implied from the telegram which was sent by the Labor and Socialist International and the International Federation of Trade Unions to the Council of People's Commissaries of U.S.S.R. just before the trial. What these two bodies think right to state on such a matter calls for the most respectful consideration. They begin by expressing their regret that this trial should be held just at the time of the grave struggle in Spain, which the whole Socialist world is watching with such anxiety. In this particular point, they find themselves in some degree of harmony with much criticism from capitalist quarters, which inquires why the trial should be held at this particular moment. I am as capable as most men of thinking out an obscure reason for something, and ignoring the obvious one; but why it should be thought that the prosecution was launched just at the time it was, for any other reason than that the evidence had not been discovered earlier but had been discovered then, I do not know. I presume that, when they sent this telegram, they were not acting on the assumption that the whole charge and trial were bogus; and, if I am right in that, what do they mean by their remarks? Do they mean that, however grave the offense, and however cogent the evidence, the case should not be tried at all, but the potential assassins should be left free whilst ordinary criminals go to prison? Or do they mean that the trial

should be postponed from month to month and even from year to year, whilst the prisoners remain in a remand prison, until there is nothing in the troubled atmosphere of Europe to make a trial inopportune in the eyes of the draftsmen of the telegram? Such a delay would not merely run counter to the incessant efforts of the judicial authorities throughout the Union to insure cases being investigated and brought to trial promptly; it would also excite the indignation of all liberal democracies. Surely either of the two possible meanings of this part of the telegram has little basis in common sense or in law. It can only be additional proof of the genuineness of the case, if additional proof be needed, that the trial does come at the time of Spain's agony. If and only if the charges were in any way staged or fabricated, the stage manager would find it easy to select the production date.

The authors of the telegram then proceed to demand that "judicial guarantees" or "legal guarantees" be given. The implication must be that unless some powerful outside influence is brought to bear, the trial will be an unjudicial and improper proceeding; and, indeed, one of the authors has since stated that the meaning was that the case "ought to be tried in accordance with the ordinary canons of justice and humanity." I confess that I find this request, and the criticism implied in it, very difficult indeed to justify. The Soviet Union is a civilized country, with a developed legal system, and some very fine lawyers and jurists. Its criminal procedure is at least the equal of that of very many other countries. There was not and is not, in my humble opinion, the slightest ground for fearing that, in any public trial (and it was announced from the outset that this trial would be public), it would deviate from civilized procedure. I am aware that provisions exist in its procedure for secret trials, and for the withholding of counsel and witnesses for the defense in secret trials for counter-revolutionary offenses. I regret the existence of such provisions, and have never concealed my regret. Defenders of the Soviet system can, of course, urge in defense that every country in the world provides in greater or less degree for secret trial, and that the practice of depriving a prisoner, arraigned on charges

of high treason or similar offenses, of the right to counsel or witnesses, has prevailed in a great many countries and a great many ages; they could even say that this practice lasted for some centuries in England. But in truth all that is not to the point; for in this public trial there was never any intention of depriving, and I think that there was not even any procedural opportunity to deprive, the accused either of counsel or of the right to make their defense or to call witnesses if they desired. There is now, normally, no difference whatever in the procedure in public trials between political and non-political cases; the right to counsel in public trials is universal, and is a real, not merely a theoretical right, because a prisoner's poverty cannot prevent him having counsel as of right. The independence of judges and advocates is being constantly increased, and already compares favorably with that prevailing in many European countries. There was surely no reason for the authors of the telegram to assume that the defendants would not be given the fullest opportunity to employ counsel, to call witnesses, and to make their defense, exactly as they wished. If the anxiety of the draftsmen of the telegram was not so much on a specific matter of allowing counsel or a defense, but was more in the nature of an appeal to the Council of People's Commissaries (the Executive), to secure a fair trial of the accused by the judiciary, I suggest that it was really a most ill-advised communication. Every foreign critic who has studied the Soviet legal system has reported that, taken as a whole, it is good and fair; every one who studies it at all knows that year by year it progresses steadily towards greater facilities for the prisoner, greater independence of judges and counsel, and greater technical efficiency. Even with the difficulties which must always exist in securing a fair trial in political cases, where the feelings of every one must be deeply engaged (difficulties which are, of course, far smaller when the jury system is not in vogue), why should it, once again, be assumed that everything is being and will be done wrong. Such an attitude from a Press lord suffering from acute Communistophobia, which is the modern equivalent of the horror felt by our respectable grand-

fathers in the 'eighties when they heard of men who voted Radical, would be quite comprehensible; but it is regrettable to find anything like it in Socialist quarters. To put the matter at its lowest, the self-interest of the Soviet Government would surely insure that a public trial at this time on a charge of the greatest gravity, brought against old servants of the revolution, would be held with the fullest possible degree of fairness.

I might diverge for a moment here to point out that the statement that the defendants were not allowed counsel appeared in several English newspapers, including the one that was obviously the fairest of all in its attitude, whilst the statement also appeared in reputable papers that they were not allowed to make a defense. These two statements, or rather misstatements (for there is clearly no foundation for them), must plainly be bona fide errors, and I can well imagine that they may have colored the whole feelings and attitude of commentators; so, perhaps, once again in journalistic history, a pure error has led people, acting in the utmost good faith, to a line of criticism which they would never otherwise have adopted. In truth, of course, the accused were at liberty to make any defense they liked; two of them did make or attempt a defense as to part of the charges, as I have already stated, and otherwise they all elected not to do so. They all expressly renounced counsel; and I do not think that counsel, however eminent, could have done more for them than they did for themselves. To put up a defense in the strict sense was hopeless; the only thing that could possibly do any good was to make a strong final speech, and all or almost all of the defendants were men of considerable education and mental alertness, and very fine speakers.

Returning to this not unimportant telegram, we find next a request that the accused shall be allowed counsel who shall be "independent of the Government." We are entitled to assume knowledge in the authors that the accused were entitled to counsel, so that the whole emphasis of the request obviously falls on the point of "being independent of the Government." Counsel in U.S.S.R. are not government servants, but one must obviously

look to substance and not to form, and I take it that the implied or hinted meaning is that, unless some special precautions are taken, any counsel whom the accused might select would, either out of fear of the Government or out of deference to popular feeling, not "pull his weight" for his clients. That suspicion of my much-maligned profession is entertained, I suppose, in every country in every political case, and perhaps in non-political cases too. There is never as much in it as laymen suspect; there is perhaps more in it than honest lawyers believe. Whether there is anything in it in U.S.S.R. or not is, of course, not easy to say; all that I can contribute to its elucidation is that I investigated it with care four years ago and came to the conclusion that a political defendant had as good a chance of getting reliable counsel in U.S.S.R. as anywhere else (see *Twelve Studies in Soviet Russia*, p. 159; and S. and B. Webb's *Soviet Communism*, p. 138). I may, of course, have been wrong, although I do not think I was. If I was right the request in the telegram was unnecessary, and to that extent somewhat insulting. But the more important question arises if one assumes that I was wrong, and that any counsel the accused could find would not in the effective sense be "independent." What is the good of the request in that case? What is the use of asking the executive of the U.S.S.R. to provide from among the available group of lawyers who are in effect afraid of it some one who will not be afraid of it? If after all these years of experience, the skillful, talented and courageous counsel whom I have been honored to meet in Moscow are frightened of the Government, what assurances can the Government possibly give to them or to the accused (or to the authors of the telegram) which will eliminate all their fears? I understand, indeed, that one of the authors of the telegram so far agrees in the existence of this difficulty that he has subsequently stated that what he had in mind was the admission of some foreign counsel. To that, I think, two observations may fairly be made: the first is that I do not know how the recipients of the telegram could possibly be expected to read that meaning into it; and the second, that I do not know where in the world outside

U.S.S.R. one could hope to find a counsel whose grasp of Russian would be perfect enough to enable him to take part in a trial that moved so quickly, and who would be able to understand the atmosphere of the case sufficiently to be of the slightest real use to his clients.

The next request to be found in the telegram is that no death sentences be "promulgated." Doubtless, owing to questions of translation, it is not clear whether the request is that the court should not pronounce the sentence or merely that no such sentence should be carried out. The former request would mean that the executive Government was being asked to interfere with the judiciary and arrange that, in the event of the prisoners pleading guilty or being convicted, the judges should not pass a sentence which it was part of their authority to pass if they thought fit; the latter would be more in the nature of an appeal for leniency. Now, let me say at once that I hate the death penalty. (I thought, indeed, in my simplicity, that every one did, until I had the opportunity of observing the attitude and behavior of a good many Members of Parliament when any suggestion was made for its abolition in England.) But this request is made in a world where most States still retain the death penalty for some offenses; and if there ever were a case in which any State which still kept upon its statute book provision for inflicting such a penalty would be likely to inflict it, it is a case of a treasonable conspiracy to murder the half-dozen principal members of the Government. And the regrettable probability, or virtual certainty, that most States would inflict the penalty in such a case would only be increased by the circumstances that most of the men involved were men who had been forgiven and reinstated in the Party and in important posts once, twice, thrice, after expressing regret for past disloyalty and offering the most sweeping assurances as to their future conduct, intending all the time to use the opportunities thus secured to continue terrorist conspiracies against the State. Most States would, I feel, think this request was in truth a piece of impertinence.

Lastly, we find in the telegram a request that no procedure

should be applied which excludes the right of appeal. This sounds eminently reasonable, but in truth it is not so very reasonable. Soviet legal procedure provides a pretty full range of appeals in criminal cases, more than the majority of countries and certainly more than England or the British Empire generally. There is, I think, only one court in the whole Union from which there is no appeal, apart from a petition for clemency; that is the highest court of all, the Supreme Court of U.S.S.R. Appeals have to stop somewhere; in this case they stop at the top. In some countries it happens that the highest of all the courts has only appellate jurisdiction; in others it has some first-instance jurisdiction as well, and countries of both kinds will no doubt be regarded as equally civilized. The Soviet Union happens to be one of those countries in which the Supreme Court has a certain amount of first-instance jurisdiction; and to that court cases of the type with which we are dealing here are invariably taken at first instance, for the very good reason that it is thought that the most important cases should go to the most highly qualified court. As an incidental result, there is no appeal to another court; and in those circumstances this particular request is made. Did the authors of the telegram know the practice? If they did not, then surely they should not have sent such a telegram, implying an insufficient system of courts, without informing themselves. If they did, then what were they asking the U.S.S.R. Government to do? To erect a new special court of appeal above their existing Supreme Court? Or to arrange that the case should be specially tried in an inferior court, in order that there might then be an opportunity of carrying it at second or later instance to the court to which it should normally go at first instance? Such a request in such circumstances naturally gives ground for the suspicion that something was being asked for which it was known could not be granted, in order to found plausible but unjustified criticism. And such suspicion is all the more likely to be entertained when the United Front movement in England is alarming the right-wing Labor movement almost as much as it is alarming the Press lords.

There remains one criticism coming from a responsible quarter which is at once of considerable importance and to me almost incomprehensible; it is to the effect that it "is puzzling to know why the opposition was brutally crushed" before the bringing into force of the new draft Constitution, which has been (as is usual under the Soviet "dictatorship") the subject of wide public discussion for some months and will presumably be brought into actual force in November next. All that need be said of this Constitution here is that both in its spirit and in its actual provisions it goes a very long way further on the pretty rapid, although necessarily long, journey of the new State along the road to the fuller establishment of that personal freedom and security to which many of us attach very great importance. Now, the critic inquires why the opposition was brutally crushed just at this moment. I have already stated at length the grounds, to my mind overwhelming, for holding that the proceedings can only have been launched for the most genuine and cogent reasons; but I do not understand why the detection and punishment of a conspiracy for multiple assassination should be described as the brutal crushing of the opposition, merely because the conspiracy was opposed to the Government and several of the conspirators had in the past been among the leaders of the opposition. Why are we to assume that men guilty of conspiracy to murder are shot because they are or were in opposition rather than because they are guilty of conspiracy to murder? If three or four Yorkshiremen were hanged for murder, would this critic regard it as an attack on the Three Ridings? It should not be overlooked, either, that if the more important of these men be regarded as "the opposition" which is not unreasonable, they are rather the opposition of the past than of the future. They had been definitely proved to be wrong in the controversy which had made them into an opposition; they had been, instead of being crushed, forgiven over and over again, as if no one wanted to be harsh to them; and as an opposition they were perhaps less to be feared than at any previous time. If, of course, the critic described their execution in this curiously specialized

way because he wants to suggest that the charge was faked, I have dealt with that point already. If he does not suggest that, the only other meaning that I can think of is that he takes the view that leaders of the opposition, because it is the opposition, ought to escape the consequences of their crime, in order that they may continue to function as the opposition. I take it that this cannot seriously be meant, and yet I do not know what other meaning can be attached to it. But I am puzzled in any case as to why the critic should think there must be some connection between the prosecution and the new Constitution. Does he really think that the whole opposition has been murdered in order that an apparently "liberal" Constitution may be introduced by cynical murderers in the certainty that there will never be any opposition to which any one need be liberal? Surely, to put the argument on the lowest plane, he would credit to the experienced men in the Government of U.S.S.R. the knowledge that the murder of part or even all of the leaders of an opposition group is no guarantee that there will never be another opposition, especially in a country which is known to have had, almost all through its nineteen years, continuous and healthy differences in its Government and its Party on substantial questions of policy. For myself, I prefer to see in the present position a much more encouraging feature, namely, that the Soviet Government, undeterred by its knowledge of the conspiracies just unearthed, is going forward unperturbed in the introduction of its new Constitution because it really believes both in the principles of that Constitution, in its own fundamental stability, and in the support of the great mass of the people. I am moved indeed to wonder whether, among all the Governments in this tortured world, there are more than one or two who would not, in these circumstances, have put back the clock of progress a decade or two by announcing that the advances proposed in the draft Constitution towards freedom of speech, freedom of the Press, inviolability of the person and of the home, secrecy of correspondence, secret ballot, direct election and other advantages, are shown by recent events to have been premature and must be postponed, and that the strong arm of the

executive must once again be reënforced rather than weakened, in order to deal effectively with the dangers exemplified by this conspiracy. Historians may yet have occasion to praise the Soviet Union for having held steadfastly on the path to personal freedom at this time.

I should perhaps notice one other suggestion that has been put forward, to the effect that the conspiracy was invented by the Government, and the trial staged, in order to divert the attentions of a supposedly anxious people from the fact that for a period in the hot summer of 1936 the increase of industrial production has been proceeding rather less rapidly than was expected. One could write a long answer to that somewhat fantastic suggestion, but it can perhaps be left to answer itself.

Perhaps I may be forgiven if I say two things in closing. The first is to draw attention to the almost complete absence from the more hostile criticisms of any expression of sympathy or regret at finding the men who have for some years been guiding this tremendous new State through a whole series of great struggles and advances menaced by the assassin's bullet with apparently no better motive than to get the job of government transferred to some one else. The second is to remind readers that, when in 1933 Dimitroff and his friends were about to be tried in Germany on the charge of burning the Reichstag, and certain persons outside Germany, instead of publishing half-informed criticisms on the charge and the procedure, spent some days in London publicly investigating the facts with the assistance of material witnesses, in order that criticism might be well informed, the very people who are now most vigorous and not too well informed in their attacks on the Soviet Union, strongly assailed the holders of the inquiry in London on the ground that they were unjustifiably interfering in the domestic affairs of a foreign country! But now none of these critics seem to think it an unjustifiable interference with the domestic affairs of the Soviet Union to subject it to a storm of often ill-informed and hostile criticism. Is it because it is a Soviet country, and everything possible must be done, honestly or dishonestly, to hinder its progress?

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