The Schneiderman Case–Its Political Aspects

N. S. Timasheff

Fordham University

Follow this and additional works at: https://ir.lawnet.fordham.edu/flr

Part of the Law Commons

Recommended Citation


Available at: https://ir.lawnet.fordham.edu/flr/vol12/iss3/1

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.
THE SCHNEIDERMAN CASE — ITS POLITICAL ASPECTS

N. S. TIMASHEFF†

I

IS IT, or is it not possible, to be a loyal member of the Communist Party and, at the same time, to be attached to the principles of the American Constitution? In United States v. Schneiderman, the Supreme Court decided that it is possible. The contention of this paper is that it is not.

The Workers Party of America, the legal superstructure over the underground Communist Party of America, gives a strict definition of the conditions of membership. According to this definition, only he is a member of the Party who accepts the principles and tactics of the Party, agrees to submit to Party discipline and is willing to engage actively in its work. It is well known that the Party discipline is rigidly enforced to the purpose of securing, among the Party members, complete identity of views on short and long range problems.¹

The program of the Party is merely a restatement of the well known Communist doctrine, first formulated by Marx and Engels in the Communist Manifesto (1847) and, later on, expanded and interpreted by the two authors and their disciples among whom Lenin and Stalin have gained prominence. In the writings of these authors a limited number of statements have gained high and indisputable recognition on the part of the Communists; in their totality, these statements form a kind of Communist creed.

This creed consists of a substantive and a procedural part. The former formulates the end to be achieved and is therefore a blueprint

† Assistant Professor of Sociology, Fordham University.

This article is limited to a consideration of the political aspects of United States v. Schneiderman, —— U. S. ——, 63 Sup. Ct. 1333 (1943).

¹ There is, in this respect, striking similarity between the Communist Party and the German General Staff, where, since Moltke's time, the idea prevailed that the identity of views among the officers was more important than the individual talents of each of them.
of the social order to be realized if the Communists are given a chance to mold society according to their ideal. The latter announces the ways and means through which power can and must be gained and used to embody the blueprint.

The Communist blueprint is well known. Its central part is the abolition of private property of the means of production and, thereby, the creation of a classless society and the achievement of social and economic equality. The state being, in Communist doctrine, merely the organization of class dominance in class society, the transition to classless society means the beginning of the withering away of the state with all its attributes: no standing army, no bureaucracy, no courts of justice or prisons are expected to exist in the society of the future. However, for a transitional period, a specific political order called “the dictatorship of the proletariat” is foreseen. Together with the state, such “bourgeois” institutions as the Church and the family must go: in the society of the future, men will be free of “religious prejudice” and of the rigid bonds of bourgeois marriage, molded, as the Communists hold, on the image of property.  

Nobody could deny that this blueprint widely departs from the American way of life and that at least part of it could not be realized without change in the Constitution. This is, however, an insufficient reason for the assertion that he who shares this ideal cannot be attached to the principles of the American Constitution. The possibility is given to formulate the Communist ideal in a series of Constitutional amendments and to conduct a campaign for their acceptance. If success crowns this campaign, in other words, if the majority of the American people is convinced of the excellency of the blueprint, then, according to the very principles of the Constitution, the people cannot be prevented from realizing it.

It must be emphasized that, relating to the ultimate end, there is no substantial difference between Communism and Socialism: contemporary Socialism is to the same extent a child of Marx and Engels as Communism is. The Socialists entirely accept the idea of the collectivization of the means of production and, with some qualifications, share the ideas of the Communists on the state, religion and the family. Both also accept Marx’ idea that it is the providential role of the proletariat to give rise to the new social order. Where the ideas of the Socialists and the Communists divide, is the problem of the ways and means to be 

---

2. About the Marxist “Utopia”, see Gurian, Bolshevism: Theory and Practice (1932) and MacFadden, The Philosophy of Communism (1939).
used by the Labor class when endeavoring to achieve its providential role. The Socialists accept the democratic idea of government by the consent of the governed and do not dream of imposing on anybody their blueprint; the people must be gradually persuaded of its excellence; and since this cannot be achieved *ex abrupto*, a series of consecutive steps is considered necessary aiming at the ultimate goal. Today, the Socialist International does not demand anything more than the nationalization of heavy industry, the basic means of communication and of banking, leaving the residue to private initiative.\(^3\)

The Communists, however, do not share the democratic creed of the Socialists. They consider that this creed is one of the delusions imposed on men by the dominating class of the bourgeois society and hold that it is treason against the labor class to advocate peaceful means of transition from capitalist to socialist society. In their conviction, this transition is not possible through constitutional means, without violence.\(^4\) However, they do not think that violence could and should be used indiscriminately, at any time and in all conditions. In this regard, they differ from the Anarchists and the "Blanquists\(^5\) whom they combat with the same strength as they assail the Socialists.

In a preliminary way, the following propositions can be formulated: (1) he who accepts the Socialist-Communist blueprint of future society and holds that it may and should be achieved through democratic procedure, is a Socialist; (2) he who accepts the blueprint, but holds that it can be achieved only through violence, to be displayed under strictly determined conditions, is a Communist; (3) he who accepts the Socialist-

\(^3\) In 1934, the Second International endorsed the famous *Plan du travail* elaborated by the Belgian Socialist H. de-Man. The plan foresees the reforms mentioned in the text; it has been obviously inspired by Russia's social order under the New Economic Policy (1921-29).

\(^4\) The situation is somewhat confused because, in Marx' terminology, endorsed by Lenin and Stalin, Socialism and Communism designate the first and the second stages of evolution after the victorious social revolution. In the Socialist stage, men are paid according to their services, and in the Communist according to their needs. The Communist rulers of Russia acknowledge that contemporary Russia has reached the Socialist, but not yet the Communist stage. But Marx' ideas about the two stages are common property of Socialists and Communists, so that, on this basis, no difference between the two groups exists.

\(^5\) Louis Auguste Blanqui (1805-81) was a French revolutionist who advocated the use of violence under all conditions. Lenin had to combat Blanquism because, in Russia, the socialist foes of Marxism, the Narodniki, later on the Socialist Revolutionists, professed similar ideas. They had recourse to political terrorism, killing members of the Imperial Family, ministers, governors of provinces, policemen, etc. The Socialist-Democrats strongly opposed these tactics which they considered futile.
Communist blueprint, or some similar social ideal, and holds that it can and should be achieved through indiscriminate violence, is an Anarchist or a Blanquist.

II

It is noteworthy that, advocating their respective ideas about the ways and means of achieving the Socialist-Communist ideal, both the Socialists and the Communists invoke the writings of their common masters, Marx and Engels. A short survey of their works, insofar as they are relevant for the problem under study, gives the following result:

It is undeniable that the basic document, The Communist Manifesto, is explicitly revolutionary. The famous paragraph appearing toward the end is unequivocal: "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." It may, however, be asserted, and this is actually done by Justice Murphy, that this document "... was proclaimed in autocratic Europe engaged in suppressing the abortive liberal revolutions of that year." Consequently, the violence of the language may be ascribed to the specified situation in which the document was issued. This argument would have been conclusive if, in later years, Marx and Engels displayed any attitude of recantation. But did they?

Throughout their lifetime, they continued to carefully observe, and comment on, the revolutionary movements of the epoch. Very soon after the publication of the Communist Manifesto, the revolution of 1848 took place and ended in the defeat of those "advanced" elements whom Marx and Engels expected to realize their ideas. The authors recognized their error insofar as concrete judgments were involved: in 1848, society was not yet mature for social revolution. But their retreat went just so far: neither their belief in the ultimate end was shaken, nor their belief that a violent revolution was a necessary premise of its realization. But this revolution was to be patiently prepared and, in preparing it, the institutions of bourgeois society could be used. Among other things, if the Constitution of a country was liberal enough to grant general franchise, workers and their intellectual leaders could use them to improve

6. Marx, COMMUNIST MANIFESTO (1932) 44.
7. United States v. Schneiderman, 63 Sup. Ct. 1333, 1351 (1943). Hereafter all citations to the Schneiderman case will refer to the pages of the Supreme Court Reporter.
8. In the Preface to a new edition of the COMMUNIST MANIFESTO published in 1872, Marx and Engels asserted that the events of the past 25 years had confirmed the soundness of the basic principles of their work.
the position of the Labor class. "General franchise," said Marx, "confronts the representatives of the different classes and thus develops class struggle; when it has fulfilled its function, it may be abolished, through revolution or reaction."\(^9\)

In 1871, the Paris Commune offered Marx and Engels another opportunity to submit to analysis the social process in general and the conditions of the final victory of the proletariat in special, tantamount to the emergence of the Socialist-Communist society. They did not blame the members of the Commune for their attempt to create a new order on the basis of minority rule; they rather blamed them for having been too mild in respect of the bourgeoisie. Events have shown, said Marx, that "the working class could not simply lay hold of ready made State machinery and wield it for its own purpose." What the Labor needed, was "a working not a parliamentary body, executive and legislative at the same time."\(^10\)

In later years Marx had the opportunity to criticize the program of the Social-Democratic Party of Germany. Doing so, he opposed the democratic tendency of the program, the implicit hope to achieve Socialism-Communism through consecutive reforms in the framework of democracy. In the transitional period between capitalism and Communism, he said, the state could not be anything but the revolutionary dictatorship of the proletariat.\(^11\) In a letter written about the same time he formulated the proposition that the Labor class had not to transmit the existing political machinery from one hand to another, but simply to break it up.\(^12\)

Since the fathers of Socialism-Communism have both formulated theoretical propositions and applied them to the study and interpretation of changing situations, from their writings somewhat contradictory statements can be excerpted, especially if the interpreter separates the quotations from the context. On this basis, two schools of Marxism have evolved.

The first school collects all the statements of the masters pointing to the use of the democratic procedure and derives from them the basic proposition that Socialism-Communism will be achieved through peaceful evolution. This evolution may be accelerated by intelligent inter-

\(^9\) Marx, Die, Klassenkämpfe in Frankreich (1850) (trans. by author) 36-37, 105.
\(^10\) Marx, Die, Bürgerkried in Frankreich (1871) (trans. by author) Preface.
\(^12\) 20 Neue Zeit (1901-2) 709.
ference of the Labor class, but, in the framework of democracy, there is no reason to apply violence. A time will come when the majority of society will consist of proletarians. According to one of the basic theorems of Marxism, the consciousness of every person is determined by his position in the class struggle; therefore, for proletarians, the acceptance of Marxism is almost unavoidable. Thus, a time will come when a Parliament, freely elected on the basis of general franchise, will take the measures meaning a gradual and peaceful shift to socialism. This interpretation which may be called the evolutionary one gained the upper hand among the German Socialists.

The other school of thought has, on the contrary, collected in Marx-Engels all statements pointing in the other direction. Being Marxists, the protagonists of this school agree that a necessary evolution is going on in the capitalist society preparing for Socialism-Communism. But, they assert, this evolution makes a social revolution only possible, not necessary. Without violent action on the part of a resolute minority guided by determined leaders, this revolution will never materialize. The task of these leaders is, first of all, to prepare the striking group for the decisive moment and, secondly, to correctly determine this moment. What this moment was, in Marx' formula remained rather unclear. The basic statement was that there had to be an obvious discrepancy between the development of economic forces and the legal order, the latter becoming a hindrance for the further development of the former. It is considered by the Communists as one of Lenin's great contributions to Marxism that he gave a much more precise shape to the time element: the discrepancy between the economic forces and the legal order, giving rise to a "revolutionary situation", must be manifested in a crisis within the dominant class, such as produced by military defeat. On this basis, he formulated the famous theorem of the transformation of "imperialistic wars" into "civil wars" conducive to the social revolution. This revolutionary interpretation of Marxism was rather favorably accepted by quite a few Marxists in the Latin countries.

III

There was a country where the conflict between the evolutionary and the revolutionary interpretations of Marxism became one of the major points at issue in the political game. This country was Russia. Despite

13. First formulated in an article in NEUE RHEINISCHE ZEITUNG (November, 1850).
14. LENIN AND ZINOVYEV, SOCIALISM AND WAR (1915).
the fact that Socialist groups were not granted legal recognition, the discussion of the main theorems of Marxism and of their divergent interpretations was vigorously conducted by the Russian intellectuals. The Russian socialists were divided into a Marxist (Social-Democratic) and a non-Marxist (Social Revolutionary) group. The two held different views on the ways and means of the social revolution, and, in addition to this, around 1900, this problem became acute among the Social-Democrats. Whereas the majority of the older leaders shared the evolutionary point of view, young Lenin violently attacked them and asserted that violence was unavoidable. This dissent was the very reason of the famous split of the Russian Social-Democrats into the moderate Mensheviks and the radical Bolsheviks which took place during the London conference in 1903. Officially, the point at issue was somewhat different: Lenin wanted the Party to be organized according to the very unusual pattern of a private army, whereas his antagonists had in view a party organized as political parties are accustomed to function in democratic countries. But the problem of organization had no intrinsic value; in it, different approaches to the problem of the ways and means of the social revolution were reflected.

Despite many attempts at reconciliation, the split of 1903 proved to be a durable one: after the Communist revolution in Russia, the Mensheviks denounced violence used by the Bolsheviks when gaining power, and remained within the framework of the Second, or Socialist, International; whereas the Bolsheviks, after having changed their name to that of Communists, organized a new, Third, or Communist, International. Up to 1935, the feud between the two Internationals remained

15. Prior to the Constitutional reform of 1905-6, the mere fact of participation in a Socialist group was considered as evidence of conspiracy against the existing social and political order and was treated accordingly. After the reform, the indiscriminate persecution of Socialism was mitigated, but the Socialist parties never were registered by the courts, as required by the electoral law. Nevertheless, members of these parties were elected to the Douma and formed there a Social-Democratic and a Social Revolutionary faction.

16. On the conflict between the two groups see Hacker, Russian Sociology (1915).

17. The conference gathered in London because of the situation described supra, note 15.

18. In one of his latest works, Lenin gave a very clear account of the reasons of his dispute with the Mensheviks. The work is significantly entitled On the History of the Problem of Dictatorship, 23 Lenin, Collected Works (2d Russian ed. 1926-1932) 422 et seq.

19. In 1935, the tactics of the “Popular Front” were inaugurated and coalition not only with “social traitors”, but also with radical bourgeois parties was recommended by the leaders of the Third International.
in the forefront of the political life within the Labor class. The Communists of the Third International were never tired of calling names to the Socialists of the Second International, such as—social traitors, lackeys of the bourgeoisie and social fascists. And without variation the point at issue was precisely this one: The Socialists of the Second International believed in peaceful evolution and acted accordingly, whereas the Communists of the Third International asserted that violence was the only way conducive to salvation.

Throughout the period, the words of Lenin, alive or dead, have been decisive for the Communists. To what an extent this took place, may be seen from the following statement of Zinovyev, then the President of the Third International: “If there was some dissent in the Party, this did not make any trouble; for everybody knew that there was one man entitled to speak in the name of the Party, his words representing the Party’s opinion; this man was Lenin.” Consequently, a study of Lenin’s teaching is of highest importance.

The general problem of violence as the necessary premise for victory of the socialist idea has been studied by Lenin in his well known book The State and the Revolution. Throughout this work, Lenin unequivocally maintains that upheaval, violence, civil war and oppression of the defeated bourgeoisie is the only way to the felicity of Communism.

“Democracy is of great importance for the working class in its struggle for freedom against the capitalists. But democracy is by no means a boundary that must not be overstepped. . . . In capitalist society we have a democracy which is curtailed, wretched, false; a democracy only for the rich, for the minority. . . . Democracy for the vast majority of the people, and suppression by force, i.e. exclusion from the democracy, of the exploiters and oppressors of the people—this is the change democracy undergoes during the transition from capitalism to Communism. The dictatorship of the proletariat . . . will, for the first time, create democracy for the people, for the majority, in addition to the necessary suppression of the minority. . . . [The bourgeois state] cannot be superseded by the proletarian state (the dictatorship of the proletariat) in the process of the ‘withering away’; as a general rule, this can happen only by means of a violent revolution. The panegyric Engels sang in its honor, and which fully corresponds to Marx’
repeated declarations, is by no means a mere impulse, a mere declamation or a polemic sally. . . . The necessity of systematically imbuing the masses with this and precisely this view of violent revolution lies at the root of the whole of Marx' and Engels' doctrine. The betrayal of their doctrine by the now predominant social-chauvinist Kautskyan trends is brought out in striking relief by the neglect of such propaganda and agitation by both of these trends."

Three points ought to be stressed in these declarations: (1) the necessity of a violent revolution is professed after Russia had overthrown the autocracy of the Czars and was ruled by democrats preparing democratic elections to a Constituent Assembly; in other words, violence against democracy is advocated; (2) as if foreseeing what could be said in order to minimize the significance of such statements, Lenin emphasizes that his masters and himself meant business when speaking of violent revolution; (3) not only in the course of the violent struggle for power, but after having gained victory, the Communists must "suppress" a whole class of the population, excluding them from democracy.

After victory had been gained, Lenin submitted "The October Revolution" to an analysis in the style of that of Marx and Engels relating to the Revolution of 1848 and the Paris Commune. His findings were published under the title "The Elections to the Constituent Assembly and the Dictatorship of the Proletariat." This work is highly illuminating.

It is well known that, at the elections to the Constituent Assembly (November 1917), the Bolsheviks received only 25% of the votes, and that Lenin disbanded that Assembly after the first meeting. Were Lenin a disciple of "consistent democracy" (he always uses this term in quotation marks), his situation would have been very embarrassing. But he never was one, and therefore had no trouble when explaining the events. Only 25% of the population voted for the Bolsheviks, but, he says, they received the majority of votes on three decisive fronts: (1) in the metropolitan areas of Petrograd and Moscow; (2) among the front soldiers and (3) among the industrial proletariat. "To have an overwhelming superiority of forces at the decisive moment and at the decisive point is a law not only of military, but also of political, success. . . . We

25. Id. at 20.
26. In Russia, the Communist Revolution is known as the "October Revolution" since, according to the Old Calendar then in force, it took place on October 25, 1917.
27. 24 LENIN 639 et seq.
fought for the capitals in October and November 1917 with certainty of success.\textsuperscript{28}

But it was won against the explicit will of the nation, as the elections to the Assembly had unambiguously proved. This did not matter. The proletarians must first organize a striking group, sufficiently strong, both politically and militarily; using it, they must overthrow the bourgeoisie and seize political power; then, having the apparatus of coercion at their disposal, they must utilize it in the class interest of the toilers. Then Lenin compares this program with that of the "social traitors", the Russian Mensheviks and Social Revolutionists, and the leaders of the Second International. They teach that the proletariat must first gain the majority with the help of universal suffrage; then, it must take over the power of the State; and finally on the basis of this "consistent democracy", it must proceed to organize socialism. This is, he says, sheer nonsense: even in the freest democratic states the proletariat never will gain the majority of votes, since the state apparatus and the means of forming public opinion (such as the newspapers) are in the hands of the bourgeoisie. The victory of the proletariat is possible only through civil war.

About the same time, Lenin published a work where he applied the results of his analysis of the successful revolution in Russia to the situation in countries where the social revolution was still ahead.\textsuperscript{29} He formulated his program in the following four points:

(1) The Communists must carry on their propaganda and agitation from the point of view of revolution as opposed to reform;

(2) Under no circumstances should the Communists refrain from utilizing parliamentarism and all the liberties of the bourgeois democracy, but they have to regard them only as a by-product of the revolutionary class struggle of the proletariat;

(3) The Communists must combine legal and illegal work;

(4) Unswerving and ruthless war must be waged for the complete expulsion from the Labor movement of all the opportunist leaders who in words are hostile to imperialism, but in deeds fail to wage a revolutionary war for the overthrow of their own bourgeoisie.

From these ideas, Lenin never departed. A few quotations from his last works (1919-1922) suffice.

"The most democratic bourgeois republic could not be but a tool for the

\textsuperscript{28} Ibid.
\textsuperscript{29} The Tasks of the Third International, (1919) 24 Lenin 393 et seq.
oppression of the toilers. . . 30 Only those can believe in bourgeois democracy who accept the slavery of capitalism. . . 31 The proletariat can use the democratic machinery only for the purpose of preparing its forces to the overthrow of capitalism. . . 32 [But] . . . it is impossible to find a way out of the hell of capitalism otherwise than through merciless struggle and revolution. . . 33 The Mensheviks and the leaders of the Second International have committed treason against the proletariat when they vindicated 'the defense of the fatherland', which actually means defense of their predatory bourgeoisie. . . 34 We shall detain mensheviks and social revolutionists in prisons. 325

Later on, he even accentuated this threat:

"For public manifestations of menshevism our judges must condemn the culprits to death. . . 36 To believe in the dictatorship of the proletariat means to explain to the masses that their Soviets must seize full power, and that their vanguard, the Communist party, must lead in the struggle." 337

IV

The theory of violence was consistently professed by the leaders of the Third International from 1919, the year of its creation, through the "critical period" of the Schneiderman case (1922-27). The Proclamation calling the First Congress of the New International (1919) reads as follows:

"The aim of the proletarian must now be immediate conquest of power. To conquer power means to destroy the governmental apparatus and to organize a governmental apparatus of the proletariat. The new political apparatus will be the dictatorship of the proletariat. No false bourgeois democracy, that treacherous form of the power of financial oligarchy, with its mere external equality, but a true proletarian democracy. The Soviet state is the adequate expression of the idea." 338

The First Congress had resolved:

"The actual solution of the problem never takes place in parliament, but always in the street. . . The parliament and the newspapers must be blown up.

30. The Third International and Its Place in History, (1919) 24. LENIN 251 et seq.
33. 27 LENIN 398.
34. The Infantile Sickness of Leftism in Communism, (1920) 25 LENIN 186.
35. On the Food Tax, (1921) 26 LENIN 348.
38. Izvestya, January 24, 1919.
The state machinery of the bourgeoisie must be broken, annihilated, and, on its ruins, a new state machinery must be created.\textsuperscript{39}

The Second Congress (1920) formulated the conditions of admission to the Communist International. There we read the following statements:

"Under the circumstances which have been created in the whole world, and especially in the most advanced, most powerful, most enlightened, and freest capitalist countries . . . to admit the idea of a voluntary submission of the capitalists to the will of the majority of the exploited, of a peaceful, reformist passage to Socialism, is not only to give proof of an extreme petty bourgeois stupidity, but it is a direct deception of the workmen, a disguise of capitalist wage slavery, a concealment of the truth. . . . Only a violent defeat of the bourgeoisie, the confiscation of its property, the annihilation of the entire bourgeois governmental apparatus, parliamentary, judicial, military, bureaucratic, administrative, municipal, etc., . . . will be able to guarantee the submission of the whole class of exploiters. . . . The bourgeois parliaments . . . cannot be won over by the proletariat any more than can the bourgeois order in general. The task of the proletariat consists in blowing up the whole machinery of the bourgeoisie, in destroying it, and all the parliamentary institutions with it, whether they be republican or constitutional-monarchical.\textsuperscript{40}

The Third Congress (1921) decreed:

"Our general party work must be apportioned in a manner which would insure, even in the pre-revolutionary period, the foundation and consolidation of a fighting organization commensurate with the needs of the revolution. . . . The formation of a regular red army is, as yet, out of the question. We must conquer without a previously organized army, through the masses under the leadership of the Party. The Communist organizers must look upon every member of the Party . . . as a prospective soldier of the future revolutionary army."\textsuperscript{41}

The Fifth Congress (1922) added the following instructions:

"A substantial part of the conquest of power consists of the destruction of the bourgeois monopoly of weapons and of the concentration of arms at the disposal of the proletariat."\textsuperscript{42}

\begin{itemize}
\item \textsuperscript{39} Resolutions of the First Congress of the Communist International (1919, Russian) 139, 146.
\item \textsuperscript{40} Statutes, Theses and Conditions of Admission to the Communist International (1920).
\item \textsuperscript{41} Theses and Resolutions of the Third Congress of the Communist International (1921).
\item \textsuperscript{42} Resolutions of the Fifth Congress of the Communist International (1923, Russian 67).
\end{itemize}
Three years later, addressing the Executive Committee of the Communist International, of which he was the president, Zinovyev epitomized the doctrine in the following words: "This aim is the conquest of the street." In the meanwhile, he had many times unambiguously defined what the dictatorship of the proletariat meant: "We have the monopoly of legality. We do not grant our opponents political freedom. We do not give the possibility of legal existence to those who pretend to compete with us." It could be objected that his statements referred to Russia only. This was very definitely not the case. "Now (in 1923)," he said, "the question of the dictatorship of the proletariat is placed in the order of the day on an international scale, and within Russia it is the fact." In other words, what has happened in Russia, should happen in every country where the proletariat would gain victory.

About the same time Trotzky, then on the very top of his political career, said: "The aim is not that of statistical computation of the strength of social groups behind different trends, but that of giving victory to our tendency..." The Communist Party can seize power not as a result of utilizing the revolutionary movement, standing to one side, but only by direct and immediate political, military and technical guidance of the revolutionary masses both in periods of long preparation and of the very moment of the decisive overthrow." He was also very frank as to the actual meaning of the "dictatorship of the proletariat." He explained that the Communist Party had to rule in accordance with the true interests of the Labor class; if possible, in accordance with its majority, but, if necessary, against it. In other words, the Party knows what the true interests of the Labor class are; if the Labor class correctly recognizes its interests, so much the better, since, in this case, the Party can rule in agreement with the Labor class. But if the class does not correctly recognize its interests, the Party still has to act in accordance with the correct definition of the situation; in this case, the dictatorship of the proletariat becomes dictatorship against the proletariat.

In this regard, Stalin's ideas do not differ from those of his bitter foe.

43. Pravda, April 2, 1922.
44. Pravda, May 12, 1923.
45. Pravda, December 16, 1923.
46. TERRORISM AND COMMUNISM (1920, trans. by author).
47. Pravda, April 23, 1923.
In his greatest "contribution" to the theory of Marxism, Stalin says: "The essential questions of the Labor movement within the capitalist society are settled by force, by open struggle, by general strike, by the insurrection of the proletarian masses." This insurrection must result in the organization of the dictatorship of the proletariat, which "is born not of the bourgeois state of things, but of its destruction after the overthrow of the bourgeoisie." And to justify the use of violence by a minority, he ascribes to Lenin the following reply to the arguments of the opponents: "If a situation is produced in which the proletariat, a minority in the population, is able to group around itself the immense majority of the working masses, why should it not seize power then?" Once more: power must be seized in the expectation that, after the fact the majority of the population would approve it; but by no means has the "vanguard of the proletariat" to expect a mandate of the majority before the fact of insurrection.

V

The doctrine of violence and of the dictatorship of the proletariat has been entirely endorsed by the Communist Party of America which is only natural since this party is one of the sections of the Communist International and, as such, subject to strict obedience of the latter's leaders. At this point, an explanation is necessary: there is evidence that Schneiderman was a member of the Workers' Party of America, but, it seems, there is none relating to his membership in the Communist Party of America in the course of the "critical period". But, in actuality, the Workers Party of America was merely the legal superstructure on the solid foundation of the Communist Party of America which was an illegal organization and continued to exist as such after the Workers Party was created, comprising the same membership. Facts are as follows:

The first Congress of the Communist Party of America was held September 1, 1919, at Chicago. The Party which was an underground movement constituted itself as a section of the Third International. The

50. Id. at 11.
51. Id. at 31.
52. The very complicated history of the formation of the Workers Party of America has been reported in Recognition of Russia. Hearings before a Subcommittee of the Committee on Foreign Relations on S. Res. 50, 68th Cong., 1st Sess. (1924). Letter from the Secretary of State transmitting information relating to propaganda carried on in the United States directed from Russia. See infra p. 228.
Third Congress of this International issued instructions to the Communist Party to form an open political body. Since not all among the leaders welcomed this injunction, an internal struggle followed which, as usual, finished with a complete victory for Moscow. The Workers Party was formed on December 23, 1921, and received the following instructions from the Executive Committee of the International:

"The underground organization of the Communist Party of America must not sink to disuse. . . . It must be always remembered that the real revolutionary party, the section of the Third International, is the Communist Party of America and that the legal Party is but an instrument which it uses to carry on its work better among the workers. Only through membership in the Communist Party can American workers become members of the Third International."  

The last statement is of great significance since Schneiderman took part in the Sixth World Congress of the Communist International (1928), he necessarily must have been a member of the Communist Party of America.

Consequently, the following excerpts from a manifesto and a program issued by the Communist Party of America in 1921, are relevant:

"The Communist International alone conducts the struggle of the proletariat for its emancipation. The Communist Party is its American section. . . . The establishment of the dictatorship of the proletariat is indispensable for the attainment of the social revolution. . . . The proletariat must destroy the bourgeois state. By use of force, the proletariat destroys the machinery of the bourgeois state and establishes the proletarian dictatorship based on Soviet power. . . . The revolutionary epoch which the world has now entered forces the proletariat to resort to militant methods—mass action leading to direct collision with the bourgeois state. Mass action culminates in armed insurrection and civil war. The Communist Party of America will keep in the foreground the idea of the necessity of violent revolution for the destruction of the capitalist state and the establishment of the dictatorship of the proletariat. The Communist Party of America will systematically and persistently propagate the idea of the inevitability of violent revolution and will prepare the workers for armed insurrection as the only means of overthrowing the capitalist state. The work of the Communist representatives in parliaments will consist chiefly in making revolutionary propaganda."  

The official organ of the Party, The Communist, published two very

53. Id. at 259.
54. P. 1365.
55. Reprinted, Hearings, supra, note 52, at 251-252.
illuminating articles, one on the meaning of the term "legal" as applied to the Communist Party, and another on the desirability of the naturalization of foreign members of the Party. "A Communist Party never can be 'legal' in the sense of having its purpose harmonize with the purpose of the laws made by the capitalist state or its acts conform with the intent of capitalist law. Hence, to call a Communist Party legal, means that its existence is tolerated by the capitalist state because of circumstances which embarrass the capitalist state's efforts to suppress it. . . . 56

The federations must wage an energetic campaign to have foreign born workers become citizens of the United States, not for patriotic reasons, but in order to draw them more into the political life of the country. 57

It appears from previously quoted statements that this drawing into the political life of the country aims at the abuse of the freedoms granted by democracy in order to prepare its overthrow by armed insurrection.

Finally, the following statement taken from a circular letter of the Workers Party of America, of February 1923, formulates in unambiguous terms the difference between Socialism and Communism, the latter appealing to violence and denying the democratic procedure. "We differ from the Socialists because we do not believe that the capitalist class will allow the workers to gain the political power peacefully, or to establish Socialism through the ballot box." 58

VI

On the basis of the material thus far produced the position of Justice Murphy in the Schneiderman case appears to be untenable, insofar as he asserts that "political writings are often over-exaggerated polemics bearing the imprint of the period and the place in which written" 59 and that "... we cannot say that the Communist Party is so different in this respect that its principles stand forth with perfect clarity, and especially ... with relation to the crucial issue of advocacy of force and violence. ..." 60 On the contrary, the following propositions can be considered as expressing the Communist doctrine on social revolution:

1) Capitalist society is historically the last class society. As every class society, it bears in itself the germs of its destruction. The mechanism of the coming destruction is class struggle between capital and labor.

56. The Communist, No. 9 (July 1921).
57. Id., No. 11, November 1921.
58. Reprinted, Hearings, supra, note 52, at 453.
59. P. 1351.
60. Ibid.
(2) Socialist, i.e., classless society, necessarily will follow capitalist society, in other words, it is its heir apparent.

(3) The transition from capitalist society to socialist society cannot be peaceful. The reason is that, in capitalist society, as in every class society, the dominant class (the bourgeoisie) uses the state apparatus as means of coercion and disposes of all the means of controlling public opinion. Such institutions as the freedoms or general franchise are merely refined means of maintaining the existing order, concealing the basic fact of class oppression, but in no way permitting the oppressed class to liberate itself from oppression and exploitation.

(4) On the other hand, the transition from capitalist society to socialist society cannot be affected simply on the basis of the desire to do so. Certain indispensable conditions are required; in the first place, the proletariat must be firmly united around its “vanguard”, the Communist Party, and disorder must reign in the ranks of the enemy, based on an irreparable discrepancy between the exigencies of economics and the legal order.

(6) When the conditions just mentioned are present, the labor class can and must overthrow the existing social and political order. This can be done only, if there exists resolute and class conscious leadership. To provide the Labor class with this leadership is the very reason of the existence of the Communist Parties in capitalist society.

(7) The overthrow of the social and political order of capitalist society cannot take place otherwise than through direct action, i.e. struggle on the street, armed insurrection, and civil war.

(8) The immediate effect of victory is the complete annihilation of the political apparatus of the bourgeois state and the creation of a new political order, that of the Soviet state. In the Soviet state, the dictatorship of the proletariat is manifested. The Soviet state aims at oppressing the defeated bourgeoisie and at giving satisfaction to the economic needs of the formerly oppressed classes, in forms dictated by the leadership. Seeing their interests satisfied, the masses will appreciate the Communist leadership, start supporting them and thus will give them the solid foundation of the recognition by the majority.

(9) This recognition by the majority can take place only after the event, never before it.

(10) Before the event, the Communist Party of every country has to propagate the Communist doctrine, especially on the necessity of violence, and to organize a strong military and political group to carry out the social revolution when the situation will be judged favorable by
the supreme leaders. So long as the leaders have not given the signal, the use of violence is not only useless, but directly harmful, since it undermines, by attrition, the forces of the proletariat and permits the bourgeoisie to recognize and reinforce its weak points. From the Communist standpoint, an untimely insurrection is just as foolish as would have been a premature invasion of the Lowlands or of France by the armies of the United Nations. In both cases, the attitude of waiting is not identical with doubt about the possibility, desirability and necessity of the action: just as invasion must and will come, the armed insurrection led by the Communists must and will come, at least, such is their indestructible belief.

(11) Acceptance of these points and conduct in accordance with them is conditio sine qua non of Party membership and, a fortiori, of taking part in the governing agencies of the Party. Any deviation from the program, in words or deeds, is conducive to expulsion from the Party.

VII

Despite overwhelming evidence to the contrary, attempts are time and again made to prove that the Communists consider it possible to achieve the Socialist blueprint without violence. Marx said once, that there were certain countries “such as the United States and England in which the workers may hope to secure their ends by peaceful means.” 61 This is one of the points relating to which Lenin permitted himself to disagree with the great master. The relevant statement in The State and Revolution reads as follows:

“Today, in 1917, in the epoch of the first great imperialist war, this distinction of Marx’ becomes unreal, and England and America, the greatest and last representatives of Anglo-Saxon ‘liberty’, in the sense of the absence of militarism and bureaucracy, have today completely rolled down into the dirty, bloody morass of military-bureaucratic institutions common to all Europe, subordinating all else to themselves. Today, both in England and America, the preliminary condition of any real people’s revolution is the break-up, the shattering of the available ready machinery of the state.” 62

Stalin, an orthodox Marxist-Leninist, endorsed this statement in The Theory and Practice of Leninism, where we read:

“Marx’ limitation with regard to the ‘continent’ has furnished the opportunists and the Mensheviks of every country with a pretext for asserting that

61. Marx, Amsterdam Speech (1872).
Marx admitted the possibility of a peaceful transformation of bourgeois democracy into proletarian democracy, at least in some countries (England and America). Marx did in fact recognize the possibility of this in the England and America of 1860, where monopolist capitalism and imperialism did not yet exist and where militarism and bureaucracy were as yet little developed. But now the situation in these countries is radically different, imperialism has reached its apogee there, and there militarism and bureaucracy are sovereign. In consequence, Marx' restriction no longer applies.63

To disqualify these statements and to provoke the impression that both Lenin and Stalin, at other times, denied violence as an indispensable means of social revolution, Justice Murphy quotes the following statements. "In order to obtain the power of the state, said Lenin, the class conscious workers must win the majority to their side. As long as no violence is used against the masses, there is no other road to power. We are not Blanquists, we are not in favor of the seizure of power by a minority."64 And Stalin continued: "The proposition that the prestige of the Party can be built upon violence ... is absurd and absolutely incompatible with Leninism."65 When taken out of the context of the corresponding works, such sentences seem to prove what Justice Murphy wants them to do. But within the context, their significance is quite different: violence as such, without regard to the social situation, is not conducive to victory. But if the social situation is a revolutionary one, in other words, when a crisis rages in the ranks of the dominating class, and, in addition to this, the Communist Party has gained the majority of the proletariat (not of the population!), then violence must be used, and without violence there is no salvation. All his lifetime Lenin has struggled against any other interpretation of Marxism, and in all his works Stalin has corroborated the doctrine of the founder of the Soviet state. To ascribe to them any other interpretation is to make them into Mensheviks, opportunists, social traitors, whom Lenin and Stalin have consistently opposed in word and deed.

VIII

What Communist doctrine is, is absolutely clear. Two interpretations of Marxism are possible: "One reprehensible and a bar to naturalization and the other permissible."66 However, Justice Murphy is in complete

64. P. 1351.
error when he uses these words in regard to the interpretation of the Communist doctrine on violence. No, relating to the Communist doctrine, only one interpretation is possible, namely that which is "reprehensible and a bar to naturalization." For the Communist Party advocates the overthrow of capitalist governments by revolution to be accomplished by force of arms. This is the interpretation of the Communist doctrine reached by Chief Justice Stone in his dissenting opinion and which would have been absolutely correct if he had not introduced, in the formula above, the words "if need be," between the words "to be accomplished" and "by force of arms." The Communist doctrine foresees no other possibility than the use of arms, and the Party leadership prepares the members for the day when arms shall be used.

Such is the doctrine. But is this doctrine relevant in the Schneiderman case? Since, in this country, where there is no collective responsibility, it is alleged that the Party doctrine cannot be simply imputed to an individual member. Making use of this impossibility, Schneiderman has built up his defense as follows: though the Communist doctrine advocates violence, he, Schneiderman, interpreted it in such a manner that it became compatible with the acceptance of the principles of the American Constitution. In regard to other political parties, such a situation might have obtained, though it would have been rather improbable, and he who would assert its existence would have the burden of proof imposed on him. In regard to the Communist Party, this is sheer impossibility.

The reason is that, for the Communist Party, the term "party" is a misnomer. Every Communist Party, including the Communist Party of America and the Workers Party of America, is organized according to the principles laid down by Lenin in 1903. In actuality, this is an association of men selected on the basis of their desire and ability to carry out a definite set of actions, on the command of the supreme leaders who, up to quite recently, were foreign to this country and resided outside of it. The set of actions is defined by their purpose: destruction of the existing political order, seizure of power, organization of a new political machinery by means unforeseen by the Constitution.

67. Hearings, supra, note 52, at 530 concludes as follows: "It is believed that evidence presented by the Department of State at this hearing has conclusively established . . . the existence of a disciplined party, equipped with a program aiming at the overthrow of the institutions of this country by force and violence."

68. P. 1367.
69. P. 1338.
and use of this machinery for the creation of a new social order which, *ex post facto*, must be accepted by the majority of the people. In view of this purpose, men are selected: only those are accepted who are willing to display "active" membership, and this means participation in propaganda, *i.e.* dissemination of the doctrine; agitation, *i.e.* fostering of class antagonism especially of the feeling that, in a peaceful way, the social order cannot be amended; and organization, *i.e.* binding together the individuals conquered by propaganda and agitation. In regard to those who would not indiscriminately accept the doctrine or would not display readiness to unconditionally obey the leaders, there is the purge.

Under such conditions the assertion that a man who, for years, not only was a member of the Party, but assumed responsible positions in its framework, could have preserved his own views on subjects treated by the doctrine, is contrary to the facts. Among propositions which could not but have been entirely accepted by a man in the position of Schneiderman, was that concerning the ways and means of social revolution: namely, that this revolution which he has desired and probably continues to desire, cannot be effected by democratic means, and can and must be effected by violence organized by the "vanguard of the proletariat", the Communist Party. Not only did he adhere to these ideas, but he acted accordingly: he indoctrinated men in the spirit of the Party doctrine and prepared them for participation in a clandestine army to be used for the forcible overthrow of the Constitution. Very definitely, his conduct during the five crucial years proved that he was not attached to the principles of the American Constitution.\(^7\)

If Schneiderman held the ideas ascribed to him by Justice Murphy, then he was a Socialist and not a Communist. In this case, he has durably and consistently betrayed the Party of which he was an important officer. If he had expressed such ideas during his sojourn in Moscow, where, in 1928, he represented the American Communists, he would have been expelled from the Party and, very probably, in company with many other, rather lesser heretics, he would have been sent, for an indeterminate period, to one of the "centers of isolation."\(^7\) The fact that:

\(^7\) This is the more important since the majority asserted that "... the statutory criterion is not attachment to the Constitution, but behavior for a period of five years as a man attached to its principles and well disposed to the good order and happiness of the United States." (P. 1340.)

\(^7\) *Cf. Ciliga, Au Pays du Grand Mensonge* (1938, trans. by author, 1940). This is the report of a Yugoslav Communist who was confined to such a center for dissent with the leaders relating to the tactics of the Communist International.
during the critical period (1922-27) and later he was not suspected or convicted of any violent act aiming at the overthrow of American institution,72 is immaterial: as a Communist, and not an anarchist or Blanquist, Schneiderman had to prepare himself and his followers, to use violence when "der Tag" will be declared to have come by the leadership of the Communist International. His attachment to the principles of the American Constitution, if any, could have been only that conditional and immaterial recognition of the fact that, under that Constitution and the freedoms guaranteed by the Bill of Rights, the preparation for the great day could be effected easier and with less danger than under an autocratic regime. And his application for citizenship may be well understood as following the directions addressed by the Party leadership to its foreign members.73

A man cannot be endowed with two souls, and actually two souls would be necessary to be simultaneously attached to the principles of the American Constitution and to the doctrine of violence as the necessary means of "progress." Since it is proved, without reasonable doubt, that, in the critical period, Schneiderman was a loyal Communist, i.e. a follower of the doctrine of violence, he cannot have been simultaneously attached to the principles of the American Constitution. Having concealed that he participated in a corporate activity aiming at the overthrow, by violence, of the political and social order of the United States, Schneiderman has committed a fraud through which he has obtained American citizenship. As acquired by means of fraud relating to one of the substantive conditions of naturalization, Schneiderman's naturalization should be cancelled.

72. P. 1337.
73. See supra, p. 224.