

The judicial reform of Mr. Zákou, counsellor in the Ministry of Justice

"I'D LIKE TO KNOW WHAT THE OLD MAN IS THINKING UP FOR US this time," Mr. Vohnoutek, the usher of the regional court, said to himself, as he went home from the tavern at eleven o'clock at night and saw the light still burning in the office of the counsellor, Mr. Zákou. The expression "for us" applied not just to the ushers and messengers, but to the whole staff of the regional court, for Mr. Vohnoutek considered himself to be the representative of all the gentlemen who worked under Mr. Zákou, and for that reason he expected from the Old Man only such things as would give all the officials plenty to swear about.

It must be said, however, that in this particular case Mr. Vohnoutek was wrong. The counsellor had in front of him a sheet of paper covered with beautiful writing, but it was not a ukase for the regional court — it was a report, destined for His Excellency the Minister of Justice, which had almost the character of an academic treatise. The fact was that the Minister has issued a circular to all criminal courts, in which he had pointed out that the present state of justice in criminal cases was totally unsatisfactory. The courts, he wrote, continued to be guided by the outdated theory of retribution or, at best, the theory of the deterrent, whereas modern justice must aim principally at the criminal's reform. And it was just in this

direction that the results up to now had proved unsatisfactory, because delinquency was not decreasing. And therefore the Minister asked the judges of all criminal courts to submit to him with the greatest possible haste their proposals for an appropriate reform of the criminal judiciary.

This circular from the Ministry came at such a particularly opportune moment for Mr. Zákou, who had been occupying himself with these questions for many years, that, after having assured himself that no one could hear him, he hissed between his teeth, "At last something sensible for once." Then he sat down and began to write out his proposals, and at the very moment when Mr. Vohnoutek was looking up at his windows he had just completed them. Then he lit another cigar and read through the most important bits of his expert opinion once more:

It is true that criminals, who have been convicted, habitually promise the court that they will reform, but it is also no less true that this promise is very rarely kept. The criminal instinctively feels that the judge tries the case strictly according to the letter of the law, and so he promises to reform only in order to make out a case of alleviating circumstances for himself. But he does not keep his promise, because he regards the judge as merely the representative of a system of justice which is penal and therefore hostile to him. And so he thinks that a broken promise to reform is a permissible and useful stratagem.

I regard it as quite out of the question that a simple assertion by the judge that he is not hostile to him could change a convicted man's opinion. One should therefore rather consider how it might be possible to make a promise of this kind binding in the eyes of the criminal. It would be appropriate to examine the question whether there exists any legal or moral bond which a criminal would consider as so particularly

venerable or sacrosanct that he would keep his promise in all circumstances.

The science of criminology, advancing with the spirit of the times, has paid special attention to the study of the psychology of the criminal, and has reached the conclusion, as the Most Honourable Imperial and Royal Ministry will be well aware, that a criminal in all circumstances keeps his word, when he has given it to another criminal. With the greatest respect the undersigned begs leave to see in this conclusion a possible basis for a judicial reform, which might lead to the noble results, which the Most Honourable Imperial and Royal Ministry wishes to achieve with its circular. The undersigned, again with the greatest respect, does not attempt to conceal that the reform which he proposes is a bold one. But he takes the liberty of mentioning that in his own modest opinion it is a simple one and, if carried out, will also be effective. The proposal involves the appointment as judges of criminals who would be the best-known ones in their circles. If it were to this kind of judge that a criminal were to make a promise that he would improve, then the feeling of solidarity among criminals would make that promise binding on the man who gave it and would bring about the reform of those unfortunates who have violated the law. . . .

With the deepest respect the undersigned does not attempt to conceal that three important objections may be raised against his project. The first might be that the exalted rank of judge should not be open to such doubtful elements. But this difficulty could be removed, if the names of these former criminals were changed and they were appointed exclusively to courts where they had never been convicted. The second objection might be that they would lack the necessary education. This could be alleviated by ensuring that

when criminals, who have been specifically earmarked for duties as judges, have served their final sentence, special lectures could be arranged for them in the field of criminal law and the criminal code. Since these people obviously could not and would not be used in any other sector of the judiciary but the criminal branch, these two subjects will be quite sufficient. The third objection is finally the problem of finance. A young lawyer or a doctor of law, fortified in his knowledge of the laws, tolerates, if with some difficulty at least with a clean conscience, his long years of unremunerated practice. With these new officials one could not presuppose the same moral fibre and it is naturally to be feared that the poverty of such probationers and assistants might drive them back onto the path of crime. For this reason the undersigned, with the greatest respect, takes the liberty of proposing that such officials should be appointed judges forthwith, that is to say to the 9th-allowance grade of public servants. One cannot deny that as a result of this the expense incurred by the salaries of the officials of the criminal courts would involve an increased financial burden, but in compensation for this the expenses for the upkeep of prisons would be cut, since as a result of this reform the number of cases of conviction would be reduced to the smallest proportions.

The counsellor read through his work and an expression of deep satisfaction could be observed on his face. Then he wrote on the envelope the address, sealed the letter carefully, and the next day his expert judgement was on its way to Vienna.

Six months later the counsellor received a reply from the Ministry of Justice. He opened it with a trembling hand. For as long as he could remember the Ministry had never dealt with any question so quickly. What lay concealed in this envelope? Praise or a snub? The counsellor once more repeated under his breath the

whole of his judgement. At first his proposal seemed to him to be nonsense, but then he began to defend it to himself. After a while he recalled that that was really unnecessary. An irrevocable decision on his proposed reform lay before him on the table. He began to count the buttons of his waistcoat — should he open the answer at once or only after lunch. His counting showed that it should be later. Then he remembered that it was really quite immaterial whether he spoiled his lunch or his dinner, so he sat down at the table and energetically cut the envelope. . . . His proposal had been accepted.

If it had been possible for the counsellor to abandon all ideas of the dignity of an official in the 5th class, he would have started dancing, but, as it was, he lit a cigar and looked into the distance. And he saw how, in a short time, he would move to Vienna, perhaps to the Supreme Court or to the Ministry of Justice. And then become President of the Senate or Head of Department. . . . People like that were sometimes given the title of Excellency. . . . The counsellor beamed with delight.

He selected one of the old criminals from Pankrác prison, who was serving a fifteen months' sentence for burglary with violence. He assured himself beforehand that this man understood German, since the authentic text of all laws was in German only, and then "Long Eda" was sent with the permission of the Ministry to the prison of the regional court, of which Mr. Zákou was the head. The latter spent more time in the prisoner's cell than he did in his office. Mr. Vohnoutek shook his head over it. The whole staff of the regional court wondered what it meant. The most famous town gossip affirmed that the mysterious prisoner was the counsellor's natural brother. But the greatest surprise came when the mysterious prisoner finished serving his sentence. Mr. Zákou became President of another regional court and "Long Eda" disappeared with him.

Fourteen days later Mr. Zákou appeared at one of the district courts in his new region for an inspection. Some tatterdemalion had come up before the judge, Mr. Eduard Pablásek, accused of

theft and vagabondage. Mr. Zákou was delighted when he saw the dignity and energy with which the former "Long Eda" set about things. The ragamuffin had not got the nerve to contradict the judge; he only cast furtive glances of amazement at him and wiped his eyes. For a moment it looked as if he wanted to say something, but in the end he did not utter a word. And he accepted without demur the severe sentence of six months' imprisonment.

When they led the convicted man away the counsellor asked, "Did he recognize you?"

"Of course he did."

"You have made a really excellent start, but you forgot to get him to promise that he would never again embark on a career of crime. Moreover that sentence was too severe."

"Just let me carry on, sir. I'm his old comrade. We used to call him 'Smart Joe'. I'll go and see him now in his cell and everything will be all right."

In the afternoon the two old friends met again. "Smart Joe" embraced the man he supposed was only masquerading as a judge and assured him that, compared to him, the Captain of Köpernick was like lemonade to arsenic. Then he wanted to indulge with his old comrade in memories of a merry past. But the new judge interrupted him with the energetic question, "Joe, would you like to be judge or even counsellor? . . ."

In the course of the next two years there was an unheard of change in conditions in Bohemia. The courts occupied themselves at the most with cases of libel or tavern brawls. There were no longer any real criminals. Anyone who had once been one was now a secretary or a counsellor, and, because there was no school of crime, there were no longer any criminals. Mr. Zákou was already Head of Department in the Ministry of Justice, "Long Eda" and "Smart Joe" had already attained "out of turn" the ranks of senior counsellors. Mr. Zákou and his protégés had won. The Minister of Justice now applied his judicial reform over the whole empire and said to him that he had only one fear and that was that the criminal courts, which had up to now had such wonderful moral successes,

would become totally redundant. But should this fear prove to be unfounded, then the Head of Department could look forward to the title of "Excellency".

After some years Mr. Zákon was indeed afraid that he might have gone a little too far in his attempts to wipe out criminality. But no. When he took up the evening paper he read that the police had caught an admirably organized band of young thieves and robbers. What was remarkable about this was that allegedly this whole honourable company was composed of probationary lawyers and those who had graduated in Law. This report should really have given pleasure to Mr. Zákon. It was a proof that in his humane effort he had not gone too far. But he was not pleased. He did not himself know exactly why. He had a kind of inkling that something terrible was going to happen. And this inkling proved to be right.

When the President of the Court of Justice asked the accused lawyers and probationers why they stole and burgled, he received this answer, unanimously, from all of them: "So that they'll make us counsellors too one day."

Mr. Zákon never received the title of "Excellency".