

"The American Corporation in Underdeveloped Areas," "The Private and Public Corporation in Great Britain," and "Industrial Enterprise in Russia." The latter essay is a particularly stimulating study illustrating the problems faced by corporate managers in a planned society; the essay serves to emphasize the fortunate position of American corporate enterprise.

This book does have several weaknesses. One is inherent in any collection of essays — it lacks the unity of thought and style which mark the work of any one of the contributors. Furthermore, only academicians are represented. In a discussion of the most basic problems of the corporate world, this seems unfortunate. Finally, there are several obvious gaps in the volume as a total view of large corporations. Professor Mason mentions one of these in his foreword — there is no discussion of the standards used in the choosing of corporate executives. An equally serious omission is the lack of any empirical analysis of the effect of our tax provisions on the corporate decision-making process. One volume could not, however, cover all phases of "The Corporation in Modern Society." I concur in Professor Berle's statement that this book is "the best body of material on the American corporate system yet offered." (p. xv)

THOMAS EHRLICH*

SETTLING DISPUTES IN SOVIET SOCIETY: THE FORMATIVE YEARS OF LEGAL INSTITUTIONS. By John N. Hazard.¹ New York: Columbia University Press. 1960. Pp. xiv, 534. \$9.50.

Until recently writers on Soviet law tended to treat it largely as one big "current event" or — at best — as a discontinuous series of current events patched together in what one hoped made up a connected story. The primary data were scant, inaccessible, and unreliable. The monographic literature inside and to some extent outside the Soviet Union had in many cases been contributed by men who were, in the older as well as the contemporary sense of the term, interested; it was often hard to hear the voice of reason over the harsh rasp of axes being ground to a dull edge. The current events were sometimes assimilated, or contrasted, to pre-Soviet Russian law, but legal developments of the early period of Soviet power were relatively neglected. They seemed to have been isolated from the recent past by the Great Purges, the War, and the late-Stalinist Terror.

In the past few years the study of the Soviet legal scene in the twenties has come into more favor. Simple lapse of time may lend enchantment, if not perspective. Besides, within the Soviet Union the legal reformers venturing out in the thaw of 1955-57 sought support and legitimate ancestry in evoking "the noble, mythical past when the Revolu-

* Member of the Wisconsin Bar.

¹ Professor of Public Law and Government and member of the staff of the Russian Institute, Columbia University.

tion was young, the party was virtuous, life was simple, and laws were just."² Comparative attention also has been drawn to the Soviet twenties by the roughly analogous events of the late forties and early fifties in the "people's democracies."³

Professor Hazard's book examines the growth of legal institutions and procedures as they affected "disputes between citizens" in the interval from the second 1917 Revolution to — roughly — 1925. Substantive law, except for that which is necessarily secreted in the interstices of procedure, is not treated directly. By the end of the period covered in the book, most of the characteristic legal institutions of Soviet authority had made their appearance; most of the important codes had been enacted; many of the future tenets of Soviet legal theory had been stated or foreshadowed; the curve of the New Economic Policy had passed its peak; and Stalin had begun to win out over his political opponents by a number of weapons, among them ideological and theoretical arguments which he was later to abandon in favor of those supported by his victims.

About a third of the text (chapters 1-5, pages 1-175) is devoted to a chronological account of developments down to 1922. The sequel is handled topically under the heads of court structure, the public prosecutor, the bar, criminal procedure, and civil procedure. The chronological treatment in the early chapters is partly divided into institutional topics, and the topical treatment in the latter part is organized in vaguely chronological sequence, but there is a difference in emphasis. The topical treatment seemed to this reviewer to be more successful than the straight narrative, which perhaps unavoidably appears to string too few points along lines that are but dimly made out.⁴

Within this general pattern, the author proceeds for the most part case by case, decree by decree, and article by article, providing connective tissue but scrupulously restricting his own interpretative departures from the data. His standpoint is located just over the shoulder of the Soviet public administrator. Under Professor Hazard's sympathetic but critical eye the administrator copes with the demands of official dogma, the stresses of Party politics, the shortages of qualified officials, the primitiveness of communication, the pressures of internal security, and — sometimes last and least — the needs of justice.

Above all, according to the author, the Soviet leaders of what was not yet a legal system had to resolve conflicting groups of aspirations. On the one hand were the hopes for simplicity of organization, simplicity and informality of procedure, singularity of courts, local autonomy, and closeness to the people; on the other were the hopes for uniformity of

² Lipson, *The New Face of "Socialist Legality,"* 7 PROBLEMS OF COMMUNISM No. 4, p. 22, 23 (1958).

³ The most comprehensive treatment is to be found in GOVERNMENT, LAW AND COURTS IN THE SOVIET UNION AND EASTERN EUROPE (Gsovski & Grzybowski ed. 1959).

⁴ For an illustration of what can be done with a case study in depth, where the data permit it as they did not in Professor Hazard's case, see FAINSOD, SMOLENSK UNDER SOVIET RULE (1958).

law and its application, for a professional bar with high standards of training and ethics, and for discipline secured by centralized authority. Each group of ideas had its champions; but many of the leaders cherished all the aspirations in simultaneous antinomy.

The knife of political repression, forged in the fires of civil war and intervention, cut across this conflict. Centralization of authority, for example, might promote the regularity and predictability that are sometimes said to be necessary (and more seldom said even to be sufficient) conditions of justice. Yet centralization might also make the legal system a more pliable instrument of repression, and was for this reason independently favored or opposed. In this triangular debate, simplicity seemed opposed to complexity which seemed opposed to justice which seemed opposed to simplicity. Later, as Professor Hazard intimates, (pp. 231, 385-86) the tragedy of the Terror was made more poignant by irony, as many old Bolsheviks who had upheld the rightness of lawlessness for the sake of the Revolution watched the corrupted Revolution persecute them with the help of corrupted law. The storm that was coming is heralded in the book by a premonitory puff from Andrei Vyshinsky, that "ill wind"; (pp. 377-78) but it had been brewing for many years.

One of the striking features of the period at least to our hindsight is the degree to which, in Professor Hazard's apt term, it appears truly "formative." In the early twenties the problem of the public prosecutor's role vis-à-vis local soviets had already arisen. So had the question whether the preliminary investigator, whose report in a criminal case was to guide subsequent proceedings so influentially in the continental style, ought to be under the supervision of the public prosecutor. So had the question of the respective functions of the police inquiry and the investigator's inquiry. So had the problems of "parasitic elements," and the possibilities of using extra-judicial machinery to dispose of them expeditiously.⁵ So had the difficulties created for the Soviet elite, as for earlier Russian elites, by the exasperating intractability of the toiling masses. Some of the functions of today's appellate courts, in turn, are made more understandable by the fact that those courts themselves in large part grew out of an administrative bureau, the department of supreme court control in the early Commissariat of Justice.

Professor Hazard weaves these themes with unhurried skill, concentrating mainly on the Russian Republic but now and then showing the Ukrainian obligato. At various points he alludes to foreign, especially continental, similarities, but he has not essayed a comparative treatise, and even the connections with prerevolutionary Russian law, though often mentioned, are not systematically exhibited.

Part of the book's charm lies in the blandness of its style. The voice is soft, gentle, and low, an excellent thing in Soviet studies. Once the

⁵ For a discussion of the anti-parasite tribunals that have been established in several Soviet republics since 1957, see Hazard, *Laws and Men in Soviet Society*, 36 FOREIGN AFFAIRS 267, 274-75 (1958); for other types of "non-courts," see Lipson, Book Review, 2 JOURNAL OF THE INTERNATIONAL COMMISSION OF JURISTS No. 2, pp. 215, 219-20 (1960).

ear is properly attuned it can catch undertones, as when the author observes that "once a republic had adopted the Russian pattern, it kept pace with the changes made by the Russians"; (p. 205) or that, before the creation of a federal People's Commissariat of Justice in 1936, coordination of the administration of justice within the republics of the Soviet Union "seems . . . to have been provided by the less formal means of sharing of experience through Communist party channels"; (p. 300) or that the "politicians on the Central Executive Committee" in 1924, in voting to exclude the secret police from the operation of the general rules of the Code of Criminal Procedure, "seemed to be drawing a distinction between murder, rape, and bodily injury on the one hand and political intrigue on the other." (p. 385) Sometimes the note is even more muted; for instance, in commenting on the periodic congresses of "persons engaged in the administration of justice" in the early twenties, the author states:

The Commissariat of Justice had shown itself ready in the past to follow the suggestions of the first four congresses, so much so that to an outsider it cannot but seem that the delegates used their advance knowledge of what the Commissariat was planning to prepare their resolutions. (p. 436)

On the next page the reader is given some help in interpreting this by a reference to the Commissariat's "practice of following the wishes, if not even inspiring the wishes, of the delegates to the congresses . . ." (p. 437)

Occasionally the prevailing sobriety is relieved by a light flick of humor on such unlikely themes as the attitudes of lay judges in the months after the Revolution toward theft,⁶ the efficiency of clerical workers in the Commissariat of Justice,⁷ and the ethical duty of counsel receiving a private confession of guilt from his client.⁸

In a thoughtful review of this book Harold Berman expresses the hope, which I share, that Professor Hazard will treat it "as the first of

⁶ "Property crimes, especially theft and robbery from the gardens of landlords, were looked upon more leniently [than were moonshining and bribe-taking] by the lay judges, who thought that the thieves should not be punished under the articles of the Imperial Code since they showed, although in very crude form, the undercurrents of revolutionary sentiments." (p. 21)

⁷ "To assure uniformity through centralized control all appeals were ordered . . . to be in two copies, one of which was to be forwarded immediately by the provincial council of people's judges which received it to the court control department of the Commissariat of Justice. When an opinion had been rendered, the provincial council of people's judges was ordered to forward to the same department a copy of its opinion . . . containing a statement of the date on which the copy of the appeal had been forwarded, perhaps so that the file clerk could put the two documents together, or perhaps as a reminder that the first document should have been filed previously." (p. 103)

⁸ In 1927 a Soviet commentator on legal ethics referred with qualified approval to an English view, dating from 1915, that if counsel received a confession of guilt from a client before the defense was undertaken, he should propose to the client that he approach another lawyer. In a discussion among Soviet jurists in 1926 it had been urged in opposition to this "that it might result in a whole series of rejections if the accused confessed to each new lawyer in turn. The commentator believed that . . . [this objection] might be avoided if the accused did not repeat his confession. Apparently, the commentator thought that a perceptive person would not repeat the same mistake twice if he wanted to obtain counsel." (p. 295)

a multivolume series on the history of the Soviet system of administration of justice"⁹ Professor Hazard has already warned us that "disclosing the detailed progress of the ensuing years will be more difficult than discovering the facts of the formative years, for the materials indicating conflicts of ideas and sometimes even the statutes themselves have not all been published." (p. 486) We all shall be the gainers if the author has the time, inclination, and opportunity to surmount those difficulties.

LEON LIPSON*

CONFLICT OF INTEREST AND FEDERAL SERVICE. By the Special Committee on the Federal Conflict of Interest Laws, The Association of the Bar of the City of New York. Cambridge: Harvard University Press. 1960. Pp. xii, 336. \$5.50.

In the spring of 1961 it is hardly possible to read the day's newspaper without seeing some reference to conflict of interest in connection with some governmental activity. The year had just begun when the Supreme Court decided the famous Dixon-Yates case,¹ which it said "has a far-reaching significance in the area of public employment and involves fundamental questions relating to the standards of conduct which should govern those who represent the Government in its business dealings."² Shortly thereafter the incoming President of the United States and his appointees to high federal office had to face a number of thorny problems; one of the most highly publicized was resolved when the president of the Ford Motor Company, appointed Secretary of Defense, severed all connection with that company at a personal financial loss estimated in millions of dollars.

The volume under review was prepared for the very purpose of suggesting a comprehensive set of solutions to such problems as they arise below the level of the President and Vice-President in the executive branch of the federal government. It is in the form of a committee report accompanied by a draft statute with commentary. The chairman of the committee was Roswell B. Perkins, of the New York bar, formerly Assistant Secretary of Health, Education and Welfare and formerly counsel to Governor Rockefeller of New York; the other members represent an impressive variety of experience in the federal service, and include members of leading law firms in Boston, Cleveland, and Washington, D.C., as well as New York. Several members have Harvard connections; the staff director was Professor Bayless Manning of the Yale Law School, and the Associate Staff Director was Professor Marver H. Bernstein of the Princeton Department of Politics. The work began with a study by Alexander C. Hoagland, Jr.,

⁹ Berman, Book Review, 70 YALE L.J. 685, 689 (1961).

* Professor of Law, Yale University.

¹ United States v. Mississippi Valley Generating Co., 364 U.S. 520 (1961).

² *Id.* at 523.