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Cases and Materials on Soviet Law

Max Rheinstein

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Cases and Materials on Soviet Law. By John N. Hazard and Morris L. Weisberg. New York: Mimeograph, 1950. Pp. iv, 431. \$5.00.

In another issue of this Law Review, Professor Hazard has reported on the recent growth of interest in this country in foreign and comparative law.¹ Under this trend and in connection with the general interest in the Soviet Union, Soviet law has met with attention. To the books by Schlesinger,² Gsovski³ and Berman,⁴ the English translation of the treatise by Vyshinski⁵ and a large number of articles in periodicals,⁶ there has now been added this collection of source materials by two one-time students of comparative law at the University of Chicago Law School, John N. Hazard, Professor of Public Law at Columbia University, and Morris L. Weisberg, Gowen Teaching Fellow at the University of Pennsylvania Law School. The book has been designed for class room purposes and has been used in actual teaching by its authors. As a well designed and rich presentation of decisions of Soviet courts and other documents of actual legal life, the book should be made more easily accessible to the general reader, for whom it is certain to be instructive.

The book illustrates how effectively legal materials may be used to provide an access not only to a foreign country's legal system but to its general culture and patterns of life. Toward a visualization of "Inside Russia," our book may be a better guide than many a travelogue. The cases represent the daily lives of the Soviet people and the daily activities of the Soviet administration. They are taken from all parts of the U.S.S.R., from the Pukhovicheskii District, Byelorussian S.S.R., to Sakhalin, and from Arkhangelsk in the North to Ashkabad or Tbilisi in the South. Cases of Gosarbitrazh illustrate dealings between the production, transportation and distribution units of the economy; there are disputes between management and worker, the quarrels between tenants of a crowded building, the universal problems of marriage, divorce and non-support. There are human interest stories, like that of the tragic love between the daughter of the aristocrat, here the poor peasant, and the son of the outcast, the kulak; of the troubles of a state sheep farm in Kazolkistan, where bookkeeping is sloppy, the management in the hands of prisoners, and sheep are killed by the wolves of the steppe; of the tribulations of the faithful bookkeeper at the Moscow food store, who informs the authorities of his fellow workers' speculations, only to find himself accused along with them, but emerging triumphant in the end; of the manager of the lonely trading post in Sakhalin who cannot resist the temptation to use for himself the one piano that has reached his store and to sell for his own benefit the gramophone records.

¹ Comparative Law in Legal Education, 18 Univ. Chi. L. Rev. 264 (1951).

² Soviet Legal Theory: Its Social Background and Development (1945).

³ Soviet Civil Law (1948).

⁴ Justice in Russia: An Interpretation of Soviet Law (1950).

⁵ The Law of the Soviet State (Babb trans., 1948).

⁶ The list in Hazard and Weisberg's book is seven pages long.

What emerges from the book is a colorful picture of human life both in its universal aspects and its peculiar setting. What also emerges is an impressive picture of a sustained and consistent effort on the part of the higher courts to protect the individual citizen against the arbitrariness or ineptitude of plant managers, local authorities and lower courts.

Of particular interest in this respect is the role of the public prosecutor as the protector of the law, not only against, but also for, the individual. How seriously this task is taken is shown by the large number of cases, criminal, civil and administrative, in which an oppressive act, an unjust conviction or a wrong decision is remedied upon the initiative of the prosecutor. There also emerges a picture of the Supreme Court, waging a consistent and apparently successful struggle to aid the government in its effort to re-establish a stable system of law after the chaotic days of early revolutionary justice. In case after case we can watch the Court insist on observance of procedural forms and strict compliance with their rules of evidence. Convictions or civil judgments based upon insufficient evidence seem to have little chance to survive the scrutiny of the higher echelons in the prosecutor's office or in the higher courts.

But, do these cases present the total picture?

In his description of the legal system of National-Socialist Germany, Ernst Fraenkel coined the term "dual state."⁷ This term would seem to be helpful in the analysis of a type of state which has appeared repeatedly in history, and of which both National-Socialist Germany and the U.S.S.R. have presented contemporary illustrations. Characteristically, the absolute monarchies of the seventeenth and eighteenth centuries established a smoothly-functioning system of courts which faithfully applied an elaborate system of legal rules. These rules provided stability and predictability in the private relations of the citizens, and especially in the fields of criminal law and taxation, in the relations between the citizen and the state. To this extent, the rule of law provided effective guarantees of the individual's life, liberty and property. But they could at any time be swept away by the royal prerogative, which not only existed alongside the sphere of the rule of law but was superior to it in the sense that it could generally determine how far the rule of law should reach and could also intervene in that sphere whenever it was required by *raison d'état*. But it was that very *raison d'état* which required a firm, reliable and predictable administration of justice lest the basic ends of governmental policy be jeopardized. Thus, we had in Tudor England, in France of Louis XIV, in Prussia of Frederick II, or in Austria of Joseph II, side by side the rule of law and the prerogative state. The former found expression in the activities of the courts and the various controls over the field staff of the administration, the latter in those activities of the ruler and his staff in which he did not recognize any rules superior to his will.

This system of the dual state has been resurrected in modern totalitarianism.

⁷ The Dual State (1941).

It would have been wrong to visualize National-Socialist Germany as a country with a completely arbitrary government or lawless courts. As far as the courts had jurisdiction they not only made an impressive attempt to maintain the rule of law but they also put up an often courageous struggle for their independence. But their jurisdiction was increasingly restricted and subjected to arbitrary intervention by the Gestapo and other representatives of the prerogative state, which finally had devised means not only to withhold from the courts jurisdiction in the most important classes of cases but also to remove from them any individual case.

This phenomenon of the dual state seems to be presented again by the Soviet Union. If the central government wishes to enforce its policy of building the new communist society, it must insist on both the faithful execution of its directives through all of its functionaries in the administrative and the economic sphere, and on safeguarding the rights of the individual citizen, without whose basic consent the government would be powerless. In these necessities, we find the gist of that insistence upon law and state power as against earlier Marxist doctrine of the state's withering away, and the real issue of that otherwise unintelligible dispute about the nature of Marxist law, which is illustrated by the materials of the first chapter of our book. Simultaneously, however, the central government must preserve its untrammelled freedom of action outside of the law or, at least seemingly, against the law. But here we encounter the very characteristic of the dual state. The governmental prerogative and the government's power at any time to determine, contract, or expand its scope, is a part, indeed the most essential part, of the law of the dual state. Hence, within that system, no act of the prerogative can be against the law.

Obviously, a book which primarily consists of a collection of judicial decisions, can well illustrate the sphere of the rule of law, but it is less apt to present the activities of the prerogative. One of the most far-reaching bases of these activities is presented by the text of the Decrees on the establishment of a "special board" in the then People's Commissariat of Internal Affairs with power to exile, banish, or intern "persons who are recognized as being socially dangerous." Here we have the basis, or at least one of the bases of the present MVD. The decree itself limits the maximum period of these prerogative measures to five years. How is this limit observed? How are the measures carried out? Are there other decrees permitting or regulating similar measures in a different context? Here the book is silent. Possibly, no answer can be given to these questions. By a careful scrutiny of German newspapers and other reports, Dr. Fraenkel was able to give a fairly accurate picture of the activities of the prerogative state of the National-Socialists. Soviet secrecy has cut us off from first hand observation. Yet, there might be revealing passages in the daily press and even occasional judicial decisions or published administrative rulings which might allow us at least an occasional glance. Some material of

this kind is in the book, but it would be more conspicuous to both the authors and their readers if the contents were re-arranged.

The book starts with an introductory chapter on Soviet legal theory. All following chapters are centered on "protection," first, one chapter on state and society (47 pages), then five chapters on protection of the individual (160 pages), four chapters on protection of property (120 pages), and finally, two chapters on protection of the family (50 pages). This arrangement does not appear to bring out the characteristic features of Soviet law. It appears particularly questionable to bring together in one chapter, entitled "Protection of the Individual—The Commercial Relationship," the rules of contract obtaining both for the small dealings of individual citizens and the gigantic transactions between socialist economic enterprises. These dealings are carried on, indeed, by means of contracts which not only resemble those between capitalistic enterprises in the nonsocialist world, but actually present the same problems, as, for instance, those of offer and acceptance, mistake, fraud, supervening impossibility, defect of title or quality, damages, etc. However, these contracts are made between the socialist enterprises within the framework of and in accordance with the overall economic plan by which production and distribution are determined. This interplay of central plan and implementing particular contracts presents one of the most important and interesting problems of the Soviet system. How does it work? The book contains many cases throwing light upon this central problem, but they are scattered over too many different parts of the book, as are also the cases which illustrate the problem of the means by which the automatic control of the market operates in the socialist economy of the U.S.S.R. There are a considerable number of cases illustrating the use of the criminal law sanction as a weapon in the fight against economic inefficiency; but there is little to present the incentives of promotion, honor, increased income, or the general enthusiasm of building a new society. The decrees instituting the title of Hero of Labor, or a proclamation of an award of individual honors, might well have found a place in a collection of materials on Soviet law.

If, as it is to be hoped, the book will be published in a printed edition, the authors might consider re-arranging their fascinating materials along some such lines as the following. After introductory chapters on Soviet legal theory, the organization of the administration of justice, and a presently not existing but desirable chapter on the constitutional organization of the U.S.S.R. and its constituent parts, there should be three principal parts: (1) the position of the individual within the sphere of law; (2) the position of the individual within the sphere of prerogative; and (3) the legal regulation of the socialist sector of the economy. In this third part, a systematic effort should be made to present the overall organization of the economy, especially the planning and steering agencies; then the organization of the units of production and distribution, their relations to the planning and steering agencies and among each other;

and, finally, the devices of control and guarantee of economic efficiency of those engaged in the managerial and productive activities. It would seem that some such scheme of arrangement would increase the usefulness of the rich materials of the book.

In connection with the strictly legal institutions, an American reader may often wonder at what he may regard as Soviet peculiarities. However, Soviet law qua law does not present many features which might not also be found in other countries, ardent Soviet claims to originality notwithstanding. After all, where law is to reign the problems are by and large the same all the modern world over, and the stock of available solutions is limited. Private, procedural and criminal law of the U.S.S.R. have grown upon the soil of the long tradition of Western civilization and, in view of the close contacts with Western and Central Europe of both Marxism and Russia, it was inevitable for Soviet law to build upon the foundations of the civil law traditions of the nineteenth and twentieth centuries. Obviously, these institutions had to be adapted to the new setting; but even the most conspicuous contribution of Soviet law, the far-reaching role of the prosecutor as the guardian of the law, has its roots in the legal systems of France, Germany and Czarist Russia. These connections of Soviet law with the general stream of Western legal development are hardly, if ever, indicated in our book. However, if the reader is not made aware of these antecedents and parallels, his view may easily be distorted.

As a final wish, one would like to see an index, a translation of the titles of the Soviet publications listed in the Table of Abbreviations and, perhaps, some guide to the pronunciation of all the Russian words and names. There should also be explanations of those numerous abbreviated names of administrative and economic agencies which appear in the text.

MAX RHEINSTEIN*

Power and Society: A Framework for Political Inquiry. By Harold D. Lasswell and Abraham Kaplan. New Haven: Yale University Press, 1950. Pp. xxiv, 295. \$4.00.

Of all political scientists, Harold D. Lasswell has turned most vigorously from the shadows of the cave. Working now alone, then again with extraordinary associates, he has produced a series of remarkable studies over twenty years. The terms "challenging," "exaggerated," and "unusual,"—with a grudging, querulous air about them—have often been applied to his books by illustrious men who ought to know better. When one thinks of that strange com-pote which has been political science—demi-law, quasi-history, semi-morality, and metaphysics, with many seeds of empirical generalization—and then examines Lasswell's works, he must perceive that they deserve the highest admiration and respect. It may be that the science of human relations will be

* Max Pam Professor of Comparative Law, University of Chicago Law School.