

nevertheless hopes for its widest possible influence. That this may not be immediately realized is hardly a reflection on the book. The longing is rather a recognition of unusual merit. As to this book, such longing is most highly justified.

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**McCarthy and His Enemies.** By William F. Buckley, Jr., and L. Brent Bozell. Chicago: Henry Regnery Company, 1954. Pp. 413. \$5.00.

This volume is the development of a theme expressed by Christopher Fry's mayor in *The Lady's Not for Burning*:<sup>1</sup>

"That's enough!  
Terrible frivolity, terrible blasphemy,  
Awful unorthodoxy. I can't understand  
Anything that's being said. Fetch a constable.  
The woman's tongue clearly knows the flavour  
Of *spiritu maligno*. The man must be  
Drummed out of this town."

Buckley wrote another book which Regnery published.<sup>2</sup> This is more of the same.

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**Law and Social Change in the U.S.S.R.** By John N. Hazard. Published under the auspices of the London Institute of World Affairs. Toronto: The Carswell Company, Ltd., 1953. Pp. xxiv, 310. \$4.50.

**Soviet Law in Action.** By Boris A. Konstantinovsky. Cambridge: Harvard University Press, 1953. Pp. x, 77. Paper, \$1.50.

In all questions relating to the Soviet Union there are two preliminary questions: have you got information and how accurate is it? Direct information as to the policy of a law is always most difficult to come by in all autocratic governments, and of these not least in the Soviet Union. It has to be inferred from textbook statements of legal doctrine, from legislation and from the reports of decided cases. The peculiar difficulty with the Soviet Union lies in three circumstances: first, even such relatively innocuous information as that concerning law, even private law, is kept as far as possible from the outside world, and the interval before release seems to be increasing; secondly, some legislation is kept secret until it needs to be applied; and thirdly, the coverage of law reports is

<sup>1</sup> Page 26 (Oxford U. Press, 2d ed., rev., 1950).

<sup>2</sup> See Kurland, Book Review, 47 Nw. U. L. Rev. 408 (1952).

slight, very slight if compared to the United States, slight even if compared to England or other Western European countries. There is the further difficulty that there are always doubts whether the information is accurate.

On the whole one need have few qualms on this last score. In so far as cases are reported they must, to be of any use, represent to the Russian lawyer, if not what has actually occurred, at least what the authorities think should have occurred—which discloses the policy they favor. Moreover, the textbooks, which are at least semi-official, must be made to give to the Russian lawyer the law he is to apply. One could not over the length and breadth of a country like the U.S.S.R. administer justice substantially by means of secret instructions, not only to the judges but also to practising lawyers. All of this material is not written or published to deceive foreigners but to instruct Soviet lawyers, though apparently in books on International Law pains are taken to stake a claim with the outside world in favor of doctrines believed to be beneficial to the Soviet Union.

Thus the quality of the information—secret instructions to Communist party members apart—is probably not worse for foreign than for Soviet lawyers. It is of course less easily understood, but this is where Professor Hazard's special experience comes in, for he was the last foreigner to be admitted as a student to the Moscow Law School. On all relatively permanent but imponderable characteristics of Soviet law and justice he is a sure guide; and these imponderables do not change rapidly enough for his experience to be out of date.

The real question is whether we are getting information on enough points to prevent its being misunderstood; and here there is doubt. Certainly it is harder than formerly to get books out of Russia, and this probably applies more particularly to law reports, which give the best indication of what is actually going on. But there are many countries from which it is even harder to get information than from Russia, just because it is not to be had in fact by anyone. On the whole we seem to have enough, especially when interpreted by Professor Hazard, to give us a sound impression of Soviet law; and of this Professor Hazard gives us ample specimens for a general understanding.

I suppose the question relating to Soviet law that most interests western academic lawyers is its relation to western law. How far is it an original system? The question is complicated by the presence of an ideology which has not prevailed in the West, though it is not Russian but western in origin. However Russian the Soviet leaders may be they are in the Russian sense of the term westerners and not easterners of the Pan-Slavic school drawing inspiration from the glorious Russian past. Yet some western observers are inclined to mark off Soviet law from western law precisely because of this prevailing Marxist ideology, which they say transforms the whole system. I doubt the accuracy of this diagnosis, and so I think does Professor Hazard.

The elements are the same but the blend is different, and there is exaggeration. Everything can be explained in terms of a war economy directed by a definite

social policy and seemingly permanent in character. For war, once you have got beyond the stage of private war, involves nationalization, at least of the armed forces, and it also involves planning, which becomes more totalitarian as war becomes more total.

Nor are Soviet nationalization or planning complete, for private property is allowed in consumer goods and there is little control over their use. It is left to the private citizen to decide whether he shall bring an action in tort. All economies are mixed economies and the Soviet economy is no exception. It is only the mixture that is different.

Is the scheme of management different? It is hard to say. We have learned in the present quarter century that it is natural for a concern to fall under the control of its management and the management will try to perpetuate its control. Americans know this better than Englishmen, but that is only because American phenomena come more into the limelight. Probably in Russia no more than in America or England can a governing clique afford to keep the best brains outside provided they are willing to conform. Willingness to go out of power for a time argues great political maturity and a belief in the good faith of the opposing party. Sometimes it seems to be an almost exclusively British characteristic. Even in Britain there have been many struggles to retain or regain power.

Certainly there is in the Soviet Union an altogether exaggerated belief in the use of power. But although we may not approve of the purposes for which it is used, we must admit that in a sense the harnessing of power to a purpose ennobles it. Sometimes, however, one wonders whether the Soviets are really interested now in much more than power.

In a curious way power seems to be the end of the Soviet system, for even though the managers themselves may think that they are exerting power not for its own sake but to achieve certain ends, the principal end is not the happiness or well-being of the proletariat but only the maintenance of power in the proletariat or in persons who regard themselves as its agents. This is as it were a perverse slant given to our pursuit of liberty, for liberty is Power vested in the individual instead of the government.

The form of communism the Soviets profess and practice is certainly not humanitarian, and it is a matter for serious doubt whether the dictatorship of the proletariat, or rather of its self-chosen representatives, is not now an end in itself. Cheerfulness will break in sometimes, because it is not in the Russian nature to keep it out, but masterfulness seems to be an end. The obsession with sovereignty is not transformed, as it is in Hobbes, by an instinctive skepticism, but it is like a Calvinism without the Calvinistic insistence on the sovereignty of God. It is a characteristic Aristotelian perversion.

The methods are startlingly ruthless and efficient because the physical development of power has gone much farther than before; but the elements are all old; the inquisition, the secret police, propaganda. They are what could have been expected of men infected with religious or parareligious fanaticism working in an extremely favorable environment of Caesaropapism in a land where the

theory and practice of toleration had hardly taken root and only a small portion of the people had political experience, but where it would be suicidal not to stimulate technical education.

Incidentally, of course, the Soviets do much for their peoples, but apart from the Marxist power slant, it is not very different from what is done in most peoples of advanced civilization; and they have not been to any extent pioneers. They have drawn on German and British experience and to some extent on the New Deal for most of their ideas, and where, as in family law, they tried to be original, they have eventually become more conservative than many western countries. They leave a much smaller field for the operation of private law, but where it does operate, it is mainly of the usual continental type.

In a sense the whole of Professor Hazard's book is a set of variations on the same theme, the securing of power to the proletariat's self-chosen managers. Thus he takes first property, which in Marxist but now unrealistic fashion is regarded as the prime source of power. He shows how, in so far as property means power, it is monopolized by the state, but that this still leaves the acquisition of consumer goods, and the means to acquire them, as an incentive. The state monopoly of property, considered as power, is of course one reason, though not the only reason, for socialist planning; and this Professor Hazard deals with next, together with the part played by contract within the plan. He then passes on to public law, of which he says, "[p]reservation of a monopoly of political leadership has become the major task of Soviet constitutional law." Criminal law has caused the Soviets much trouble. In one sense they should have foreseen, and probably did foresee, that criminal law would play a greater part in a socialist than in a capitalist economy, for it has always been regarded as implied in socialism that private law should yield place to public law. But on the other hand it seems that they sincerely believed that there would be a lessening of the desire for private gain and that this, together with all-around improvement in the standard of living, would render crime far less common than heretofore. Certainly the criminal law has had to be used far more as a sanction than even in the mixed economies of western Europe, but the Soviets have also found that the old inducements to crime still work as powerfully as before.

Professor Hazard deals successively with the reorganization of landholding, with labor problems, with patents and copyright, with the adjustment of losses through social security, state insurance and the law of tort, with the family, and with international law. All of these are particularly well known from his earlier articles, on which he has drawn heavily for this book. Perhaps the most interesting passages are to be found in his descriptions of the opportunities still left for the individual, by the protection of intellectual property and by the deliberate perpetuation of the law of tort, which has entirely shed its socialistic elements and has departed more and more from the notion of liability without fault, and in his account of the general tightening of the family by making divorce difficult, more difficult indeed than in most western countries.

Of all of this Professor Hazard gives a convincing picture supported by much

authority and illustration. It would wrong the law to say that it is uninteresting, but I come away with the impression that we have little to learn from Soviet law except perhaps that it is a mistake to suppose that the natural tendencies of mankind cannot be thwarted and twisted by a group of resolute men, provided they are willing to pay the price. That the price is heavy there is no doubt, and the general insecurity which is a large part of it affects the leaders perhaps even more than the led.

*Soviet Law in Action* must be taken for what it is said to be in its subtitle, "The Recollected Cases of a Soviet Lawyer." The author was during the greater part of his career a professor of law and legal advisor to the Odessa Bread Trust. He has set down what he remembers of fifty-three cases with most or all of which he came into contact professionally between 1931 and 1941. His book is therefore not at all like an American casebook and his accounts resemble ordinary reports in the popular press; for all he can give is a general description of the facts, the decisions and, in some cases, the subsequent fates of the parties. However Professor Berman has added valuable introductions to the whole book and its various sections, together with explanatory notes to each case.

The book is eminently worth having, but it is interesting not because it adds anything to our knowledge of Soviet law but because it affords a view of the legal and social atmosphere in which Soviet lawyers have to work. This, I have already suggested, is more novel and more important than anything in the law itself.

As a comparative lawyer who has made no special study of Soviet law but has read not only these but other books on it, I am bound to confess that although it is our duty to provide experts on Soviet law, I would rather not be one of them. It seems radically uninteresting and unlikely to shed new light on our legal problems. Nor do I think this should be a matter for surprise, for the initial doctrine of the Soviets was that law was only a makeshift which must wither away in the not very distant future, and when this was announced as a heresy, it was only because they recognized that law was a convenient, and indeed necessary, instrument of absolute power.

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**The Growth of Scandinavian Law.** By Lester Bernhardt Orfield. Philadelphia: Temple University Publications, University of Pennsylvania Press, 1953. Pp. xx, 363. \$8.50.

The western world's legal systems are usually divided into two groups, those of the civil and those of the common law. The former of these is not too well defined and contains within it legal systems which are so different from each other as those of France and Germany, or of the Union of South Africa and Mexico or Switzerland. But even if one defines the concept of civil law so broad-