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Review of *The Judge in a Communist State: A View from Within*

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BOOK REVIEWS

THE JUDGE IN A COMMUNIST STATE: A VIEW FROM WITHIN. By *Otto Ulš*. Athens, Ohio: Ohio University Press. 1972. Pp. xiv, 307. \$8.75.

This is a rare book. It is full of real people and real life episodes. The author's almost incredible memory for the details of scores of cases and other legal incidents in Czechoslovakia in the 1950's makes this a remarkable contribution to the comparative-law literature.

Those who are looking for theoretical controversy will not find it here, for this book is simply a generous slice of life in a communist country, as seen through the eyes of a remarkably perceptive, legally trained viewer. As the author says, it is "neither an indictment nor a glorification" (p. xi). The author is able to put us in the shoes of an average Czech, so that we may see that stupidity is often worse than repression, and poor housing and boredom more severe punishments than a prison term. His writing evidences a keen sense of the dramatic, the pathetic, and the commonplace in life.

The book is mainly historical, for the author left Czechoslovakia in 1959. The Soviet invasion and the repression which followed the hopeful spring of 1968 in Czechoslovakia, however, have shown that lessons from history may be all too worth learning. For example, the purges of the 1950's, of which the author speaks (p. 70), are not unlike those which occurred almost twenty years later, after the Soviet reinvasion. In fact, most of the book deals with conflicts among economics, fairness, and political theory which can arise under any authoritarian regime.

This is a particularly hard book to review, for any summary or selection would not do justice to this rich tapestry of anecdotes. Underlying many of the anecdotes, however, are two dominant themes. One is the similarity, or lack of it, between the Czech legal system and that of the Soviet Union. The general contempt, or at least superiority, which most Czechs have continued to feel in regard to things Soviet comes through in a number of incidents. Of more scholarly interest, however, is a substantial amount of hard data showing that even the dedicated pro-Soviet leaders in Czechoslovakia did not blindly follow the Soviet model in shaping their legal institutions. For example, after initially abandoning, in a wave of pro-Soviet enthusiasm, their prerevolutionary, black-trimmed-with-violet judicial robes in favor of the civilian garb worn by the Soviet judiciary, the Czech judges brought back their traditional attire in 1953 (pp. 105-06). While the idea of a code of family law separate from the civil code was copied from the Soviets, the contents of the code

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were not (p. 213). The Czechs included lay assessors on the Court of Appeal, while the Soviets use them only at the trial level (p. 29). Of course, there are many similarities between the two systems as well, such as the prominent role of the state attorney as prosecutor, *amicus curiae*, and general ombudsman (pp. 89-96).

The second theme is the interaction between the legal system and the Party apparatus. The author describes in great detail the relationship between the Party and the various types of judges in the 1950's. He observes:

Only the insiders knew for sure whether or not the Party ran the courts. There was neither total independence nor unqualified subordination. The practice of the apparatchiki varied from leaving the judges entirely alone to drafting verdicts in the Party Secretariats. In about ninety per cent of the court agenda there was not the slightest sign of interference in our decision-making. This observation, however, does not warrant the conclusion that some sort of "ninety per cent judicial independence and integrity" existed. Both the sorry experience with the remaining ten per cent and the awareness that someone might at any time inflict his "suggestion" upon us, conditioned *all* our adjudication. One had to distinguish between "hints" and "orders." One had to weigh the importance of the interfering apparatchik against the issue involved. [P. 61.]

The Party Secretaries, in their search for total control, were aided by a particular mentality that had also developed among the judges themselves. Responsiveness to the Party's wishes—expressed or only presumed—was not due solely to outright orders and pressures, but rather to our calculations and self-imposed controls. It was not so much the order to [do] this or that that mattered, as the knowledge, feeling, or at least suspicion that our necks were at stake and that at any time someone might come and accuse us of "violation of socialist legality and aiding the class enemy." A few years of practice with totalitarianism taught us to react in the same way cows react toward an electrified fence. This preventive adjustment in our behavior made, in fact, total control unnecessary. In other words, our concern with survival, conditional to a large extent upon the state of mind of the First Secretary, molded our actions in such a way as to conform to the apparatchik's desiderata. Like a newsman who, living with censorship, becomes his own censor, the judge adjusted his actions to the anticipated response of the Party. Here, totalitarianism appears at its best. The judge becomes his own apparatchik. [P. 69.]

The fact that economic conditions play a more important role than economic theory and political zeal in determining individual conduct is apparent in many incidents. The high incidence of theft is attributed both to socialist ownership theory and to consumer goods shortages (pp. 166-67). For example, if a toilet in a home needed repair, rather than wait a year for a spare part to become

available or pay the expense of an illegal private repairman, even a hard-line party member might "denationalize" the required part from a toilet in the factory where he worked and do the job himself (p. 167).

The author has not avoided any area in his survey of matters coming before the courts. In fact, the unusually numerous and detailed anecdotes involving varieties of sexual matters might lead one to call this the first X-rated book on a foreign legal system. The increase in sexual crimes under socialism is described in great detail (pp. 159-65). The scholarly reason for the inclusion of these matters is usually apparent, however, for it is often in such cases that the need to describe cause and effect in political terms becomes particularly ludicrous. Such description was employed in all cases, however, to such an extent that even in murder cases "it became increasingly difficult for the average man to give credence to the suggestion that John might choose to strangle Jim for anything other than political motives" (p. 150).

In summary, the over-all impression which this book conveys of the communist state in Czechoslovakia is more pathetic than diabolical. The scenes are told in the manner of a comic opera, though with a deadly serious purpose and a message that cannot be missed. While the author may have been inclined to present a balanced picture by describing both the routine life and the miscarriages of justice, the examples of anything positive in the society—something suitable for emulation—are few indeed. One obvious matter for emulation is, however, the humor and patience apparent in the Czech people themselves, as shown in this delightful and insightful book.

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