

University of Michigan Law School

University of Michigan Law School Scholarship Repository

Reviews

Faculty Scholarship

1961

Review of The Soviet System of Government, Settling Disputes in Soviet Society, Government, Law and Courts in the Soviet Union and Eastern Europe, and The Law of Inheritance in Eastern Europe and in the People's Republic of China

Whitmore Gray

University of Michigan Law School, wgray@umich.edu

Available at: <https://repository.law.umich.edu/reviews/34>

Follow this and additional works at: <https://repository.law.umich.edu/reviews>



Part of the [Comparative and Foreign Law Commons](#)

Recommended Citation

Gray, Whitmore. Review of The Soviet System of Government, by J. N. Hazard, Settling Disputes in Soviet Society, by J. N. Hazard, Government, Law and Courts in the Soviet Union and Eastern Europe, by V. Gsovski and K. Grzybowski, and The Law of Inheritance in Eastern Europe and in the People's Republic of China, by A. Szirmai et al. Mich. L. Rev. 60 (1961): 251-8.

This Book Reviews is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Reviews by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

the end self-government" (p. 295). "The canonist methods of proof were soon to require a vast increase in the royal bureaucracy and the criminal inquisition came later to symbolize the overriding power of unlimited monarchy, but the initial choice of this procedure by the central government may well have been due much more to weakness than to strength" (p. 48). Nor are these central paradoxes all he finds. "The land that had exported the jury abolished it at home" (p. 122). "Perhaps this is another paradox, that the English respect for law is still partly due to the important share that laymen still have in administering it" (p. 145). The fault, if fault it be, is the fondness for dramatic overgeneralization that the liking for paradoxes betrays.

To point to these as the book's worst (though very minor) faults is merely another way of saying that this is an exceedingly important study, with interesting and fruitful hypotheses about the causal forces operative in legal change. This is a book to be read and reread, to be reflected upon and reconsidered. This review has pointed out only a tithe of the book's contributions to our thinking about our past. It may well become one of the classics of English and comparative legal history and should certainly become well known to everyone with any interest in that neglected subject.

*Spencer L. Kimball,
Professor of Law,
University of Michigan*

THE SOVIET SYSTEM OF GOVERNMENT (rev. ed.). By *John N. Hazard*. Chicago: University of Chicago Press. 1960. Pp. xiii, 262. \$4.

SETTLING DISPUTES IN SOVIET SOCIETY. By *John N. Hazard*. New York: Columbia University Press. 1960. Pp. xiv, 534. \$9.50.

GOVERNMENT, LAW AND COURTS IN THE SOVIET UNION AND EASTERN EUROPE. By *Vladimir Gsovski & Kazimierz Grzybowski*. New York: Frederick A. Praeger. 1959. Pp. xxxii, 2067. Volumes I & II, \$30.

THE LAW OF INHERITANCE IN EASTERN EUROPE AND IN THE PEOPLE'S REPUBLIC OF CHINA, No. 5 in the Law in Eastern Europe Series. By *Z. Szirmai, M. H. van der Valk, et al.* Leyden: A. W. Sythoff. 1961. Pp. 373.

Each of these four books makes a significant contribution to the rapidly growing body of literature on the communist legal systems. Together they provide an introduction to Soviet law and legal history and a basis for its comparison with the law of other countries within the communist bloc. Before examining the books individually a brief description of their contents may be in order.

Professor Hazard's revision of his survey of the Soviet state and society is an up-to-date introduction to the framework of the legal system. His monograph on the early years of the court system furnishes the details necessary for analyzing contemporary legal institutions, as well as a basis for comparing the Soviet experience with that of the satellites and China thirty years later. Gsovski and Grzybowski's two-volume treatise is a collection of essays dealing not only with aspects of Soviet public and private law, but the same topics in the satellite countries. In the most recent addition to communist legal literature, Dr. Szirmai has given us a detailed survey of the inheritance laws in the Soviet Union, in the satellites and in Communist China, presented in a series of essays which are both scholarly and fascinating.

The Soviet System of Government is an extremely well-written description of the Soviet state, and includes an introduction to Soviet legal theory and practice. It provides in brief form the political science background necessary for the study of specific Soviet legal institutions. In chapters dealing with the party as the hard core of the system, the organizations for radiating influence, the popularizing of the administration, and controlled mass participation, the author ably documents his thesis, namely, that the political apparatus can be best understood "if it is described as incorporating democratic forms, counterweighted with totalitarian controls" (p. 9).

The book contains also the full translated text of the constitution and the rules of the Communist Party¹ as well as several helpful organizational charts.

Soviet society has changed rapidly in the few years since the first edition of this book. Party membership was revitalized, the school system was reoriented by an emphasis on practical work, general principles for the long-awaited new law codes were adopted, and a campaign was initiated to give the broader public an active role in law enforcement. This new edition reflects these changes and many more. It continues to be the best brief introduction to those features of the Soviet state which form the necessary background for a meaningful study of Soviet legal institutions.

In *Settling Disputes in Soviet Society*, Professor Hazard turns his attention to the study of one facet of the history of the Soviet legal system in considerable detail, *viz.*, the development of a system of courts and procedure during the early years of the regime. He traces the vagaries of theory and practice from the month after the revolution when the first courts were set up, with only a minimum of new substantive law to apply and no formal procedural rules, to 1926, by which time a rather full system

¹ A translation of a new proposed statute was published in 13 Current Digest of the Soviet Press No. 3, 1961, p. 3.

of courts, prosecutors, attorneys, and codified legislation had been re-established.

The path that he traces is that of the theorists searching for simplicity in the mechanism for settling disputes, constantly thwarted by the demands of the moment for legal stability. Within a few months after the revolution, even the inexperienced judges felt a need for procedural guidance, as well as for attorneys to assist parties appearing before them. A system of appellate supervision became necessary to insure uniform patterns of decision, and soon the substantive rules were consolidated in European-style codes.

Professor Hazard presents both the programs actually adopted (though sometimes not put into practice) and the various other proposals made, so it often requires careful reading to follow the thread of actual practice. Proceeding document by document he reveals the fascinating pattern of rejection of many pre-revolutionary and western concepts, then their eventual reincorporation into the "new" Soviet law.

The reader is left to draw from this abundance of material, which includes reports of many Soviet cases, his own conclusions as to what features of the system represent typical "Russian" reactions to the felt needs, and what could be properly characterized as "communist." While the book itself does not attempt a comparative analysis of the Soviet institutions, only a little knowledge of western European law is necessary to recognize many surface similarities in the procedural patterns. Perhaps the conclusion that should be drawn is that certain procedural principles are inherent in any system for the orderly settlement of disputes, and that the originality of Soviet legal institutions is to be sought in other fields.

The separate system of tribunals developed to settle commercial disputes among the state-owned industries might represent the new institutions based on the socialist organization of society; and, in a more unfortunate manner, the Soviet practice of imposing penalties by purely administrative action may be an inescapable feature of the system. Both these topics fall outside the scope of Professor Hazard's book, however, which is limited to civil and criminal procedure and the regular civil courts.

In contrast with the limited objectives of the two Hazard works, the monumental task undertaken in *Government, Law and Courts in the Soviet Union and Eastern Europe* is to provide a description of the origins, constitutional structure, and the substantive law of all the satellite countries except East Germany.

Among the essays in the two volumes are some excellent comparative studies of communist law. These are to be recommended as a first step of orientation beyond the study of strictly Soviet law. Dr. Grzybowski's

article on continuity of law in the new communist countries is a thoughtful study of the technique of change. He concludes that the present confusion in communist law may lead many communist jurists to conclude, as some have, that a "return to civil law is the only alternative to bureaucratisation of the economic life of the country, centralization of government power, and administrative regulation of daily life" (p. 508). His essay on the trend in the satellites from contract back to status, to reverse Maine's famous description of the movement of progressive societies, ranges over the whole field of private rights and economic regulation.

The balance of the book, apart from the consolidated treatment of the procedural material, is a collection of essays written by various authors representing the legal systems covered—Estonia, Latvia, Lithuania (these three for some topics only), Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Romania and Yugoslavia. They discuss for each country in turn the present (1958) regime and its origin; the organization of the administration of justice; the new substantive criminal law; the sovietization of civil law; worker and factory, and land and peasant.

This method of presentation results in a great deal of duplication in the areas where Soviet influence has been strong, particularly in the area of public law. It also makes it difficult to isolate the particular characteristics of each legal system on a given topic, for each author follows substantially his own arrangement of the material, even to the point of making his own choice as to what topics should be covered. The accuracy of some of the Soviet material has been questioned,² but on the whole these inaccuracies do not impair the value of Dr. Gsovski's sections as brief and relatively up-to-date summaries of various areas of the law in the Soviet Union, including in some cases valuable historical background.

As to the work of the other authors, it may be noted that there is a great variety in the character of the individual essays. The discussion of Polish substantive criminal law shows what can be done even in limited space in providing both a description of the outstanding features and thoughtful analysis as well. Other authors, however, follow a pattern of merely commenting on a few features of the law in the field under consideration. Perhaps the difficulty is in expecting a coherent coverage of the various fields of law touched upon, for in many cases the authors are only attempting to describe the "sovietization" of the law. This would seem to involve the assumption, however, that the reader can supply the basic patterns from some other more comprehensive description of the system, and this is unfortunately not the case for these countries.

This unconscious pattern of selection may, in fact, be almost misleading. For example, the lesser role assigned to the positive presentation of

² Berman, Book Review, 74 HARV. L. REV. 1248 (1961).

civil law may give the impression that the sources do not permit the detailed treatment given to some areas of criminal law.³ A selective approach is necessary, since it is obviously impossible to cover all the law in the space allotted, but the reader should be aware that this is a conscious policy, and that his curiosity as to much of the everyday "law" in Communist society will not be satisfied in these essays.

Once this point is clear, this treatise will serve the reader well as the major source of information on the communist systems available today. A comprehensive bibliography is included, and the index is arranged so as to facilitate comparison of the material in the various essays on any particular topic. Even after other works become available to document the further elaboration of the communist laws, this treatise will retain its value as a reference work because of its coverage of the historical development of the regimes and some legal institutions both of the Soviet Union and of the satellite countries.

The material presented is sufficient to indicate that the satellites have drawn heavily on Soviet experience (p. 1399). There is also much to indicate, however, that many traditional concepts were retained in various fields of private law, such as tort (pp. 1265, 1294) and inheritance (p. 1269), and that original patterns have developed which are not simply copies from Soviet models, as in some divorce provisions (p. 1275). The high level of legal scholarship available in the satellite countries and a more gradual adoption of new laws than was the case in the early years of Soviet development have perhaps led to a more consistent pattern of development, avoiding the vacillation of early Soviet regulations in the traditional fields of private law.

The fine symposium on the *Law of Inheritance in Eastern Europe and in the People's Republic of China* carefully documents this conclusion in the field of inheritance law.

After an extremely lucid summary of inheritance legislation and practice in the Soviet Union, Dr. Szirmai concludes that the unsatisfactory nature of Soviet inheritance law as a legal opus "explains why the Satellites, mostly countries with high legal traditions, while following the general trends of the Soviet law of succession, keep aloof from Soviet lawmaking techniques" (p. 65).

This scholarly study deserves careful consideration, not only as an ex-

³ For example, there is no section at all on tort law in the chapters dealing with Bulgaria and Romania, and no discussion of it in the section headed "Contracts and Torts" in the chapter on Albania (p. 1198). Perhaps an explanation that the old provisions remained in force might have been given, as was done for Czechoslovakia (p. 1268) and Hungary (p. 1294), but one can assume that there are particular topics even in the field of "Sovietization" which might have been noted, e.g., the impact on tort claims of the new schemes of social insurance and workmen's compensation.

position of Soviet law in a field of considerable interest, but also as a study in legislative and interpretative techniques in the Soviet Union. For example, the gradual development of the meaning of "dependents" in the inheritance provisions is traced. The law does not require that a dependent be a relative, but the cases seem to deal only with relatives in the broad sense. The code requires that he be "unable to work." Does this mean persons who are physically unable to work, or might it mean, as one leading Soviet commentator suggests, anyone who has reached the age necessary to obtain a pension, or persons too young to be allowed by law to work (pp. 39, 40)? Another Soviet commentator thinks this formal showing is not sufficient, and the only court decision on the point seems to try to avoid the issue (p. 40). It is only this kind of detailed examination of Soviet law which, coupled with a general understanding of the system, can give the Western reader a basis for judging the functioning of the legal system in Soviet society.

While the material on the various countries is presented here, as in the Gsovski and Grzybowski work, in separate chapters without a comparative analysis, the authors "consented to follow approximately the same system in dealing with their subjects and to discuss a set of specified questions, the answers to which determine the general character of any inheritance system" (p. 13). The detailed nature of the presentation and the attempt to allow the reader direct access to the material free from the individual author's point of view particularly recommend the book. Only in the chapter dealing with Romania is there an apparent departure from this scholarly objectivity, admittedly difficult to maintain in this field of research. For example, the author introduces his discussion with the statement, "Communist legislation has abolished ownership rights to real property and has limited other property rights, making inheritance rights insignificant" (p. 227). Yet in the following twenty-page discussion he deals with topics such as private land ownership only for small-scale production, and ownership of the workshops of artisans and handicraftsmen, both mentioned in the Constitution (p. 227); the acceptance by communist authorities of inheritance of small houses (p. 230), and the intestate provisions dealing with inheritance of agricultural land (p. 230), the very existence of which seems to contradict his sweeping proposition. While his original statement may of course be correct, it would perhaps be more effective simply to present data from which the reader could reach this conclusion himself.

The volume also includes a full translation of the *Draft Principles of Civil Legislation of the U.S.S.R. and the Union Republics*, which will serve as the basis for the new codes of civil law to be adopted by the individual republics. The provisions relating to inheritance law are brief (arts. 94-97), but include a new provision which will give the testator complete freedom

as to the persons to whom he will distribute his estate, subject to the limitation of the reserved share.

One of the most valuable features of the book is the presentation of parallel material on Communist Chinese inheritance law. In fact, Professor van der Valk's essay gives an even broader view of Communist Chinese law, for he places the inheritance rules and practices in perspective through a description of related institutions of property and family law.

The author draws on his fine scholarship in traditional Chinese law and social patterns in describing the classical characteristics of succession in China, such as the exclusion of females. The Nationalists' attempts to modify these patterns by provisions in a new civil code in 1931 were only partially successful, and these traditional ideas are still important background for the current Communist Chinese regulations.

The author draws his material principally from provisions in the Marriage Law of 1950; documents of government agencies issued from 1951-53; parts of a 1956 reference work on succession, which include views of the Supreme Court and excerpts from various court publications, as well as a survey of 535 cases on succession; a 1957 pamphlet on succession covering a number of topics in some detail; and the chapter on succession from the 1958 textbook for training of communist cadres. This representative, though not exhaustive, group of sources permits the author to give a well-rounded picture of the development of the law to 1958.

In addition to describing the positive norms in as much detail as possible, Professor van der Valk paraphrases a good deal of the actual Chinese commentary, thereby allowing the reader to follow the original method of presentation as well. In a study written to promote discussion of principles of inheritance law as a preliminary step in drafting a new civil code, a Chinese author discusses the views of the communist classics, and particularly whether or not they are applicable in contemporary China. He appears to understand pre-communist Chinese materials, and refers to Western legislation for comparison, but it is interesting that there is little reliance on Soviet or satellite laws. Other writings cited discuss the Soviet rules, but the general tone indicates a desire to arrive at a Chinese solution, one reflecting desired social patterns as well as the practicalities of present conditions.

An excess of formality is rejected, for example, in the case of wills. Whereas Soviet law requires a notarial act, Communist Chinese law requires only a writing, and in special circumstances might even give effect to an oral declaration by the testator. It is admitted that a notarial will is best, "but as public notaries are not everywhere established, specifications cannot be set too high" (p. 344). Other provisions, such as some of those related to the inclusion of actual dependents as heirs, seem to be

borrowed from the Soviet law, but Chinese authors raise objections based on "the customs of the masses."

The Chinese have so far shown that they were willing to accept Soviet models and leadership, but perhaps only in areas where this seemed the most expedient way to modernize institutions and solve immediate problems. It is only the long-run experience which will show whether the details or even the approach of Soviet regulation of property and commercial matters will be accepted, or whether it will be used as only one source along with others in developing a body of Chinese Communist law.

The Asian experience should complement that of the satellites in providing a basis for judging the adaptability of Soviet institutions to other societies. It should also permit an analysis of positive Soviet law to determine which institutions and norms are generated by a communist society and economy and, on the other hand, which features of the Soviet system are more the result of Russian attitudes and legal history.

*Whitmore Gray,
Assistant Professor of Law,
University of Michigan*

AMERICAN ENTERPRISE IN THE EUROPEAN COMMON MARKET: A LEGAL PROFILE. Volume Two. Edited by *Eric Stein* and *Thomas L. Nicholson*. Ann Arbor: The University of Michigan Law School. 1960. Pp. xxix, 732. Volumes I & II. \$25.

This is a most instructive and valuable volume, with a somewhat misleading subtitle. It purports to be the second part of a "legal profile" on American enterprise in the European Common Market. "Profile" is defined by Webster as: "Contour; distinctive outline; an outline seen in or represented in sharp relief; as, the bold profile of a hill." Emphatically, this volume is not a profile. The Common Market aspires to telescope into a decade for sovereign nations having diverse histories and institutions, what it took 170 years of constitutional development, 70 years of antitrust experience, etc., to accomplish for the relatively homogeneous American states. To sketch clear outlines of the new legal institutions and procedures that will eventually emerge from this less-than-four-year-old experiment would require superhuman clairvoyance.

The current volume, however, represents an encyclopedic distillation of the current state of the law of business organization, taxation and competition in the six countries of the Common Market, consisting in effect of three full scale monographs and two sizable essays. The chapter on business organization is by Professor Conard of the University of Michigan, who has most wisely associated himself with a large panel of informed European practitioners and law professors because European