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Review of Contemporary Soviet Law: Essays in Honor of John N. Hazard

Whitmore Gray

University of Michigan Law School, wgray@umich.edu

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SOCIALIST LAW

CONTEMPORARY SOVIET LAW. ESSAYS IN HONOR OF JOHN HAZARD. Donald D. Barry, William E. Butler and George Ginsburgs, eds. The Hague: Nijhoff, 1974. Pp. xxvi, 242.

*Reviewed by Whitmore Gray**

This excellent collection of essays on Soviet Law was assembled to honor Professor John N. Hazard of Columbia University on the occasion of his sixty-fifth year, as well as the fortieth anniversary of his embarking on his study of the Soviet legal system.

As an introduction to the contemporary essays, the editors happily chose to publish for the first time some of the letters Professor Hazard wrote to his sponsor in New York during his three years as a law student in Moscow, 1934-37. These excerpts are the jewel of the volume, and should certainly be read by anyone trying to understand the Soviet Union in the thirties and its developing legal system.

Hazard was chosen by the Institute of Current World Affairs because they "wanted a man with a mind that was blank as far as interpretations of Russian history and of the Soviet man were concerned."¹ The hope was that in that way his conclusions would be based as much as possible on his own first-hand observations. The excerpts from his letters show what a good choice they made. His enthusiasm and reportorial skill are obvious, as well as the humor familiar to his many friends of later years. Above all, the letters show that he was able to approach his subject matter with an honest enthusiasm without losing his ability to observe and report on the whole picture.

* Member, Board of Editors.

1. J.N. Hazard, "Reflections on Thirty-five Years of Research in Soviet Law," 70 *Col. L. Rev.* 188, 189 (1970).

The following items give a feeling for their author and illustrate as well the insights the letters provide into the intellectual tone of the period.

November 24, 1934

Professor Korovin granted me the privilege of an evening with him during the past week. I had postponed it a few days to give him a chance to finish his new book on Japanese treaties as compared with their subsequent acts. The publishers had been clamoring for it. But the few extra days made it possible for me to read all available material in languages I can understand on the Marxian theory of the State. This I supplemented with the reading of a lecture by Lenin printed in Russian. I sincerely hope that there will come a time when I can get more out of a Russian text than I got out of that one, but at least I could get the idea and see that my guess as to what he would say was about right. I wrote up a short thesis covering my understanding of the theory, then translated it into French, and went prepared for anything. As a matter of fact he said that he felt that I had caught the general principles, and then he augmented my exposé with some further explanations . . . The most recent (October) issue of the *American Journal of International Law* contains an article by Professor Brown of Princeton commenting on the Soviet attitude toward International Law. That article comes very near to presenting the accepted thesis, and although one may not agree with the writer's conclusions, his information apparently comes from an authentic source.¹ A few days later I had occasion to chat with another Professor of Law about this same attitude. He was inclined to discount any such fine spun theory as is presented in that article and take the view that the reason the Union would accept no law which was not part of a treaty or incorporated in a statute was because for practical purposes no one can rely on customary International Law, since every country has a different conception of which are the most binding precedents, and how many precedents it takes to make it customary law. Therefore the Union demands that the law be written down in a treaty, and they do not demand this merely because application of customary law would be in reality application of bourgeois law, as is Professor Brown's explanation and the explanation I have heard elsewhere on this side . . .

February 3, 1935

. . . The boys are very friendly and stop and talk to me in every interval before and between the two hour periods. An alert group they are, although younger than our law students, as they enter law school immediately after the equivalent of

High School. Most of them are at work in some practical work while at school, and the room is full of men in the uniform of the various organizations. Some try and lecture me and tell me how wonderful life is here. Others are very human and laugh and joke, and seem entirely appreciative of the American carefree attitude as regards politics . . .

Other extracts describe the curriculum, the attitudes of professors and students, the physical conditions of study and much more. Fortunately the full texts of these and his other letters from Moscow are available for scholars in the Harvard Law School Library.

The essays included in this collection present an excellent cross-section of contemporary scholarship in Soviet Law. They include survey articles, technical studies and some which point the way to new fields of scholarship.

Harold J. Berman's study of the educational role of Soviet criminal and civil procedure provides evidence of "the golden nuggets of novelty"² in Soviet law. While much of the detail of Soviet substantive law appears vaguely familiar (and uninspired), the study concludes that the functions and style of adjudication in the Soviet Union offer "a new resolution to the age-old dilemma between the objectivity of the court, on the one hand, and its involvement in the specific situation before it . . . on the other."³ This essay is a good introduction to and interpretation of the excellent earlier book by George Feifer, *Justice in Moscow*,⁴ where many court scenes are described in detail.

Two studies on criminal law and labor law give a good perspective on the pattern of development of Soviet law in the years since Stalin. Peter Juviler's "Criminal Law and Social Control"⁵ details the vagaries and vacillations of control mechanisms and penalties as reform movements and conservative personalities did battle. The retrenchment victories of the law-and-order forces in the sixties are detailed, and the additional penalties and stepped-up efforts at prevention in the seventies. He concludes that crime remains a major challenge to policy, and that the present response thereto "reveals a complex synthesis of compulsion, popularization, persuasion, centrist statism, and scientific rationality . . . It appears that neither the experts nor the criminal law are slated to wither away in the near future, whatever changes in ideology or emphasis occur."⁶

In "Soviet Labor Law Reform Since the Death of Stalin," A.K.R. Kiralfy documents developments both before and after the 1965 economic reforms, when certain enterprises were given increased autonomy of management. His description includes paraphrasing Soviet literature on the subject, thereby giving the foreign reader some feeling for Soviet attitudes and scholarship as well.

2. Hazard, *supra* n. 1 at 191.

3. P. 13.

4. Feifer, *Justice in Moscow* (1964).

5. P. 17.

6. P. 54.

The rich array of scholarship presented here is too varied to permit detailed comments on each individual essay, but this is more than a collection of unrelated specialized studies. In fact, the overwhelming impression is to the contrary. Each of the pieces mentioned above is complemented by other related research.⁷ Many essays continue themes suggested by the Hazard letters.⁸ Some include concise, helpful summaries of substantive law and practice, e.g. of the copyright law and state publishing in an article the main thrust of which is the extra-legal field of private publication of circulation.⁹ Another study of substantial interest to the practitioner is George Ginsburg's treatment of the execution of arbitration awards.

Two studies which point toward the future are Zigurds Zile's article on the Soviet tension between environmental quality and central planning for economic development,¹⁰ and Peter Maggs' attempt to apply American management to Soviet industry.¹¹ Zile's study deals with an emerging substantive field in Soviet law, and raises many questions the answers to which will only be known as Soviet practice develops. The principal one, of course, is whether Soviet planners and managers will finally decide to lay down environmentally sound rules which may conflict with the maximization of economic production, and then obey these rules. Most Soviet managers and lawyers, as well as Soviet cases, tell us that even the purely economic rules have been broken as a matter of course in the pursuit of production goals. The Maggs study is a pioneer attempt which is surely as interesting to the Soviets as to us pure observers. Soviet observers in recent years have expressed their fascination with our business schools, and may well be on the road to the more sophisticated model building and business games discussed here.

The editors are to be congratulated on a volume of lasting value. John Hazard's own voluminous writings¹² deserve such a tribute. His teaching has helped to create a fine group of scholars, interacting to provide excellent prospects for a continued high level of scholarship in the field.

7. The study by Donald Barry and Carol Barner-Barry fleshes out one aspect of the Berman thesis, and Feldbrugge's contribution complements the Juviler survey.

8. For example, compare Hazard's report on Soviet reaction to Taracouzio's book on the Soviet Union and international law (p. xxii) with Butler's comments on the same work (p. 220).

9. Loeber, "Samizdat Under Soviet Law," p. 84 at pp. 84-99. An excellent complementary treatment of samizdat is Sharlet, "Samizdat as a Source for the Study of Soviet Law," 1 *Soviet Union* 181 (1974), a special issue on Soviet law also dedicated to John N. Hazard on the occasion of his sixty-fifth birthday.

10. Zile, "Soviet Struggle for Environmental Quality: The Limits of Environmental Law Under Central Planning," p. 124.

11. Maggs, "A Computer Model of the System of Legal Regulation of the Soviet State Industrial Enterprise," p. 175.

12. These are listed in the volume in a ten-page selected bibliography, pp. 226-235.