

THE SOVIET LEGAL SYSTEM: POST-STALIN DOCUMENTATION AND HISTORICAL COMMENTARY. By John N. Hazard and Isaac Shapiro. [New York: Oceana. 1962. xix + 595 pp. U.S. \$12.50.]

Since the publication in 1950 of Meisel and Kozera's *Materials for the Study of the Soviet System* preceded the death of Stalin, the end of the personality cult and the beginnings of some measure of liberalisation, and since works like Kelsen's *Communist Theory of Law* and Schlesinger's *Soviet Legal Theory* have tended to be more in the nature of jurisprudential commentaries there has been need of a one volume statement of the law based on actual documents. This Hazard and Shapiro's *Soviet Legal System* provides, and in its use of laws, articles and judgments is perhaps more useful than the *Fundamentals of Soviet Law* edited by Romashkin and published in Moscow in 1961.

The work, which has been produced under the auspices of the Parker School of Foreign and Comparative Law at Columbia University, is divided into three parts devoted, respectively, to relations between the State and the citizen, the administration of Soviet socialism, and the legal relations between Soviet citizens themselves — there has too long been an ideological assumption by the non-Soviet public that there can be no true scope for private legal relations in a Soviet socialist State.

As long ago as 1916 Lenin stated that 'a law is a political measure, it is politics.' In so far as legislation reflects the nature of society and the basic fundamentals on which it rests — an assumption which appears to underlie the views of Lord Simonds in *Shaw v. D.P.P.* [1961] 2 W.L.R. 897, which has much in common with Fedoseev: "Soviet law springs from the very same principles as communist morals" — this rubric would seem to apply regardless of the socio-economic system in which the law operates. However, such a view of the law easily leads to abuse, and became the ideology for Stalin's ruthless denial of any pretence at preserving the rule of law.

The break with Stalinism has in no way affected the concept of socialist legality as is brought out clearly in the 1961 Programme of the Communist Party of the Soviet Union, 1961. The difference is, however, that within the last two or three years it has not been uncommon for socialist legality to be invoked in order to punish, at least lesser, State officials responsible for arbitrary actions against Soviet citizens, and in execution of this new slant to legal theory the 'comrades' courts have been re-organised, while the scope of authority of the security organs has been somewhat reduced. The theoretical assumption of the new approach is expressed in an article by Denisov in 1960: "There will occur further change in the relationship between compulsion and persuasion to the advantage of the ever-growing role of methods of persuasion. The dictatorship of the proletariat applies methods of persuasion and compulsion, but its principal method is the method of persuasion."

Despite the new interest in the rights of the individual even in his relations with the State, the Soviet system is still based unquestioningly on the need for economic planning. This is made clear in the 1962 version of the Fundamental Principles of Civil Law which provides that state property, which includes land, banks, mills, factories, and all means of transport, belongs to the state and may only be distributed for use. On the other hand, "property intended to satisfy citizens' material and cultural needs may be their personal property . . . [but] may not be used to obtain unearned income."

Despite the importance of economic planning, the new approach to socialist legality is exemplified in Perlina's case, 1959. This woman had been condemned in 1956 to one year's correctional labour, withholding of 25% of her wages monthly, and confiscation of her property and her account in the state savings bank. Her crime, alleged to be contrary to section 99 of the Russian criminal code, consisted in having an 'Overlok' machine "engaged in a forbidden business — sewing parts of women's woollen blouses". In 1959 the Soviet Prosecutor General proposed that the sentence and decisions against her be set aside because of the absence of the elements of a crime. With this argument the Soviet Supreme Court agreed.

While even the modern Soviet lawyer still finds difficulty in dividing law, the aim of which is always to pursue state aims, into private and public sectors, there is, at least today, wide scope for private dealings in the fields of property, contract, succession, tort and family law, and private lawyers brought up in the western tradition may well be excused if they find it difficult to appreciate the exact differences in the theory of their and the Soviet systems where private legal relations are concerned. This view will only be emphasised if reference is made to the collection of abstracts printed at the end of this volume — although it would seem that Soviet legal documents are shorter and expressed in somewhat simpler language than are those in the non-Soviet world.

The documents presented by Professors Hazard and Shapiro confirm the view of the politicians that Khrushchev's Soviet Union is a different and more liberal place than was Stalin's. On the other hand, it is perhaps too early to state dogmatically that the end of the personality cult has meant the establishment of a more sympathetic and juristic approach to law in practice as well as in theory.

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