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### Book Reviews

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## BOOK REVIEWS

*Soviet Administration of Criminal Law*, by Judah Zelitch. Philadelphia: University of Pennsylvania Press. 1931. Pp. 418. \$5.

Mr. Zelitch has written an excellent description of Soviet administration of the criminal law since the Revolution of 1917. It is based upon a study of Soviet sources and upon a three months sojourn in the Soviet Union in the summer of 1928. The book was originally written as a thesis for the degree of Master of Laws at the University of Pennsylvania. It is extensively documented and shows the result of industrious research. The system of courts beginning with the People's Court and extending through the Provincial Court to the Supreme Court of the Union Republic is described in detail, as well as are some other courts which do not logically fit into this hierarchy. Mr. Zelitch also describes the system of procuracy, preliminary inquiry and investigation which leads up to the actual prosecution. He then explains the methods of prosecution and the proceedings by which a trial is inaugurated. A couple of chapters are then devoted to the trial itself, followed by other chapters on the judicial review of criminal cases and the execution of criminal sentences. Finally there is a discussion of the personnel of the Soviet judiciary.

The author presents to the reader the spectacle of a system of justice which prides itself on having no roots in the system of Tsarist justice and which proclaims itself completely proletarian in character, but which has been nevertheless compelled to copy some elements of the bourgeois court system in spite of itself. The differences between the Soviet system and our own are due in large part, no doubt, to the fact that the system is Russian as well as proletarian. The traditions of legal protection for the rights of the individual which are fundamental in the common law were not characteristic of the Russian judicial system. In the Soviet courts, for example, the witness cannot plead self-incrimination as an excuse for refusing to give testimony. There are practically no rules of evidence. The judge can demand the admission of any evidence which he desires. The "contest theory" of the trial is repudiated, although it cannot wholly be avoided. The procurator is supposed to be concerned, not with securing a conviction, but with obtaining justice. To a considerable degree the same thing is true of the de-

fending counsel. He is allowed to,—and as the reviewer can testify, sometimes does—associate himself with the procurator in declaring that the guilt of the defendant has been established. The judge is not considered to function in the rôle of an impartial arbiter. It is his duty to safeguard the new social order and he consequently is required to spare no efforts to see to it that the guilty are convicted, even if it is necessary for him to intervene positively in the court proceedings to see that this is done. It is likewise true that it is his duty to see that innocent persons are not convicted, and intervention must be as positive for this purpose.

Whenever the suspicion of counter-revolutionary activity is involved, all rights of the individual are disregarded. The author calls attention to this feature of Soviet law and the reviewer must emphasize its importance. Literally scores of thousands of such cases arise every year, since the term counter-revolution has such a wide application in Soviet Russia. Counter-revolutionary activity comes within the province of the G. P. U., the secret police. The G. P. U. in addition to detection and investigation, have the right of conducting their own "trials" and executing their own sentences. They may, indeed, turn over accused persons to the regularly constituted courts but they are under no obligation to do so.

As a general conclusion Mr. Zelitch believes that the Soviet system is being compelled to build up an organized and elaborate system of legal administration instead of being able to dispense with such a system by simply substituting for it a rough and ready "proletarian justice." He recognizes, however, a conflicting trend in opposition to this. Mr. Zelitch's book is a very valuable addition to our store of information concerning the social institutions of the Soviet Union. The reviewer, nevertheless, believes that the author has placed too much reliance upon what he read in the codes and in legal publications. In actual fact on numberless occasions the provisions of the codes mean very little indeed. No Soviet citizen assumes that there is an existing code of laws which defines his rights, duties, obligations, liberties and exposures. He not only lives in a world of legal uncertainty but he knows that the whole concept of legal relationships between individuals and between individuals and the proletarian state is repugnant to Russian Marxianism.

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*The King's Bench Masters and English Interlocutory Practice*, by Edward S. Greenbaum and L. I. Reade. Baltimore: The Johns Hopkins Press. 1932. Pp. xxiv, 106.

Those desiring to improve civil and criminal practice in the United States quite naturally seek to discover what aid or suggestion may be derived from English experience. Of distinct value in this respect is the recent volume of Professor Pendleton Howard on *Criminal Justice in England* (New York, 1931). The small volume now under review deals with certain aspects of English civil practice. It is published by the Institute of Law of the Johns Hopkins University and contains an introduction by Professor Herman Oliphant.

The present volume is of necessity somewhat fragmentary, but sufficiently indicates that English civil practice needs revision almost as badly as that in the United States. The English pre-trial procedure, as outlined by Messrs. Greenbaum and Reade, appears to serve its purpose less adequately than similar procedure in Wisconsin discussed by Mr. Quincy H. Hale in the *Journal of the American Judicature Society* for April, 1932 (Vol. XV, pp. 180-186).

The American reader will find some difficulty in contrasting English and American practice on the basis of the present volume. The authors refer to the subject of costs on page 98, and cite Professor Goodhart's able article on this subject in 38 *Yale Law Journal*, 849 (1929), but they do not make clear the important bearing of the English system of costs upon the subjects they are discussing. The volume is of value, however, in that it points out the defects of certain English institutions which have been highly praised in this country. See, for example, the discussion of the summons for directions (pp. 23-34). The chapters on discovery, admissions, payment into court, security for costs, and summary judgment, are chiefly of value because of their brief and elementary character. The appendix on chancery masters will aid the American reader in avoiding confusion which might otherwise present itself as between King's Bench Masters and chancery masters.

Upon the basis of some years of practical observation, the reviewer finds it difficult to concur in Professor Oliphant's optimistic introductory statement that "a university trained bar may be removing" some of the difficulties occasioned through an inadequate presentation of issues to the court.

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