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CHINA POLICY: OLD PROBLEMS AND NEW CHALLENGES. By A. Doak Barnett. Washington, D.C.: The Brookings Institution, 1977. Pp. 125. $8.95.

CHINA AND THE MAJOR PROBLEMS IN EAST ASIA. By A. Doak Barnett. Washington, D.C.: The Brookings Institution, 1977. Pp. 333. $12.95.

China expert, A. Doak Barnett, has written two recent additions to his series of works on China. The first, *China Policy,* is an examination of the United States foreign policy toward China. The second, *China and the Major Powers in East Asia,* is an examination of the relationship between China, the United States, the Soviet Union and Japan in East Asia. Both books are excellant studies of their respective topics. They are exhaustively researched, clearly written and full of insight on the major problems which these four powers face in their interrelationships. The books well merit the distinction of publication by the Brookings Institution. Works by a lesser scholar might have been rendered obsolete by the recent institution of formal diplomatic relations between China and the United States, but not so for Mr. Barnett's works. His analysis and understanding of the fundamental issues which confront the major powers in Southeast Asia will withstand the change brought on by formal diplomatic relations. Despite the fact that Barnett's primary concern for full diplomatic relations has been realised, the books continue to be relevant because many of the underlying problems which Barnett discusses remain as yet unsolved.

Barnett's approach is political, not legal, but he touches on numerous matters of international legal significance, particularly the future legal status of Taiwan. The analytic framework in both studies is premised on Barnett's perception of a four nation configuration of power in East Asia. Barnett sees a precarious balance between the United States as a weakened, but ever present force, the Soviet Union as a physically present superpower which must be kept in check, China as an emerging power, and Japan as an economic power. The balance Barnett describes is not fixed. He discusses military, political, economic, ideological, and cultural forces which could independently or in combination alter the balance of power. Barnett feels that no one power is preeminent, nor is any power likely to become preeminent in

the foreseeable future. Finally, Barnett views this four power configuration as key to the maintenance of stability in the region.

China Policy is primarily concerned with the full normalization of Sino-American relations. Barnett briefly outlines the steps leading to the opening of Chinese-American relations in 1972, and then moves on to discuss the problems which precluded full diplomatic relations. Barnett establishes what he believes are the two major premises upon which future United States policy must be based. First, it is necessary, desirable and feasible to expand and improve Sino-American relations in the immediate future. On this point, time has proved him to be correct. Second, the normalization of relations will be difficult, and accomplished only by gradual improvements. On this point, Barnett was not right, for at least the short-run the dynamic leadership of Teng Hsiao-ping has moved our relations very far, very fast.

Barnett defines the areas of common interest and the areas of dispute between the United States and China. The points of common interest are the containment of Soviet power and the prevention of bilateral conflict. The points of dispute are Taiwan, a Chinese desire to manipulate foreign relations for anti-Soviet purposes and Chinese revolutionary instigation in the Third World.

A large portion of Barnett's analysis is devoted to the Taiwan issue. Full normalization of Sino-American relations is Barnett's highest priority and in his view, Taiwan stood as the major obstacle to full diplomatic relations. Barnett saw China as adamant in its refusal to extend formal diplomatic relations to the United States until the United States terminated formal relations with Taiwan, including an end to the Mutual Defense Treaty of 1954. Barnett argued convincingly that a two Chinas policy was no longer feasible. Thus, the United States faced the difficult task of severing formal diplomatic ties with Taiwan in such a way that Taiwan will not be left militarily and economically vulnerable. Barnett proposes the United States follow the Japanese model whereby the United States would terminate formal relations with Taiwan while maintaining informal diplomatic and strong economic ties.

In addition to the Taiwan question, Barnett proposes an agenda of other issues to which the United States and China must address themselves. That agenda would call for immediate negotiation in the area of bilateral trade and the areas of scientific, technological and cultural exchange. The agenda would later turn to the difficult and complex issues of military security and arms control.

The last topic Barnett addresses in *China Policy* is Chinese and American relations with other nations in East Asia, the topic which is expanded in *China and the Major Powers in East Asia*. In this first volume Barnett introduces the problems posed by the two triangular relationships in which both China and the United States are participants. The first triangle is completed by the Soviet Union and the second triangle is completed by Japan. Barnett does now however, neglect the other powers in East Asia. He examines the threat of renewed conflict in Korea and the problems in Southeast Asia. The book touches on global economic problems and then concludes with an approach for the future in which Barnett highlights all major factors which will affect future United States-China policy. He prescribes a slow deliberate policy of resolving problems on a realistic agenda. However, Barnett does not provide any easy answers nor does he believe that any exist.

China and the Major Powers in East Asia takes up a detailed discussion of Chinese relations with each of the major powers involved in East Asia. Beginning with an analysis of China's current position in the world hierarchy, he outlines China's emergence from isolation in the nineteenth century and examines the evolution of the Chinese Communist world view and strategy. Barnett describes the strategy as one in which China "walks on two legs" in pursuit of dual objectives which often conflict. The conflict is not great, however, in Barnett's view because of the Chinese propensity to place security interests above ideological goals when the two conflict.

In Part One of the book Barnett explores the relationship between China and the Soviet Union. He follows each step in the long dilemma that ultimately led to a total split between the Chinese and Russian Communists. Barnett further explores ideological differences and internal political trends which have made Sino-Soviet relations difficult. In particular, Barnett explores Mao's impact on that relationship. Barnett then turns to the territorial and security problems which have caused dangerous border clashes in the recent past.

In the period ahead Barnett looks to a "no war—no peace" state of affairs in Sino-Soviet relations, marked by intense hostility. He views any open military conflict as improbable, and any far-reaching rapprochement in the near future as equally improbable. In the event of a Sino-Soviet detente Barnett believes that it would only have adverse affects on Sino-American relations if the detente were achieved prior to the solidification of Chinese-American relations.

Part Two of the book considers Sino-Japanese relations. Barnett approaches this relationship differently with a view toward historical and cultural links because Japan currently poses no military threat to China. Barnett is particularly interested in the Chinese attempts to influence internal Japanese politics. He closely follows the political developments in Japan which led to the opening of formal relations in China and then shifts to economic relations which are the key to future Sino-Japanese relations. He examines potential economic competition for other Asian markets and ends the chapter with a review of the territorial and security issues affecting the two nations.

Part Three of the book concerns Sino-American relations. Barnett examines the prevailing attitudes in both countries toward the opening of relations and then moves backward historically to examine the American role in China prior to the complete break in relations following the Communist take-over. He explores the role of the Korean War in perpetuating mutual hostility and later the role of the Vietnam War. Barnett also charts the minimal diplomatic ties which were maintained over the past two decades and which ultimately were instrumental in opening a dialogue in the 1970's. He then turns to the topic presented in *China Policy,* the problems of normalization of relations. There is a more detailed discussion of economic relations, strategic and security factors, and the long-run future of Taiwan. The chapter concludes with a review of the prospects for the future in which Barnett stresses the need for full normalization of relations, a goal which now has been achieved, a solution to the Taiwan problem and a minimum of friction in the three-way relationship between the Soviet Union, the United States and China.

Part Four of the book brings all of Barnett's analyses together in a discussion of China and the four-power equilibrium. The focus is on China, and Barnett utilizes all of the relevant factors once again to reexamine the Chinese situation in East Asia. Barnett concludes that no drastic changes seem likely in the pattern of four-power relations in East Asia. All the major powers would continue to play a role and no one country would have any realistic basis for achieving regional hegemony. For the reader with hindsight one must query how Mr. Barnett defines "drastic" since the Chinese invasion of Vietnam could have caused quite drastic consequences.

It is difficult to critique these works of Mr. Barnett except in light of events which have unfolded since the books were written. Barnett's knowledge of Chinese affairs so surpasses that of the average reader

that it would be difficult to find a point of discussion upon which the reader could knowledgeably disagree. Moreover, Mr. Barnett's analysis is so multi-faceted that no reader can accuse him of presenting an incomplete view of the problems which are present. He has examined all of the variables in each of the relationships studied. Finally, Mr. Barnett's cautious approach, with no rash predictions or suggestions indicates an educated and believable approach to the problems. Of course with the hindsight that time has brought to the reader certain of Barnett's views as to the pace at which events will transpire must be qualified, and the reader must superimpose upon Barnett's analysis the knowledge that one is now dealing with a group of dynamic leaders in China who have decided to push for change very fast and who are determined not to have their position in Southeast Asia undermined by the Russians even if the risks are great.

Yet on the whole Barnett has predicted quite well the dimensions of the problems and the obstacles to be overcome to achieve stability in East Asia. The books are highly readable and presented in such a fashion that even a novice in Chinese affairs can fully comprehend his discussion. Both works are suggested to any reader with an interest in Chinese affairs.

Marilyn J. Gottlieb *

DETENTE OR DEBACLE. Edited by Fred Warner Neal. New York: W. W. Norton & Company, 1979. Pp. 108.

After three decades of the Cold War with Russia, there has been an attempt to build a more constructive relationship with the Soviet Union under the general label of detente. Yet, while many parties on both sides of the controversy desire and work for trust and cooperation between the two countries, the subject of detente has always sparked controversy and extreme reactions. This book, *Detente or Debacle*, is an economical and thoroughly moderate approach to the most current problems of detente.

Originally compiled by the American Committee on East-West Accord, the articles of the book represent a spectrum of viewpoints from such scholars as John Kenneth Galbraith, David Reisman and

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Stephen Cohen, to corporate executive Donald Kendall, and scientists George Kistiakowsky and Sidney Drell. This diversity of perspective, and the rather short space allotted to the development of each author's ideas, tends to hamper the continuity of the book and often leaves the impression of conclusory and oversimplified treatment of the subject matter. There is, however, a clear strain of common sense which is characteristic of the articles; and a sense of unity finally emerges from the repeated attack on the critics of detente and the belief that a stable relationship with the Soviet Union is vital to our national welfare.

One of the major sources for detente that is discussed, is the conclusion of a second SALT agreement. The authors, led by George Kistiakowsky and Sidney Drell, clearly recognize the ideological differences which separate the United States and the Soviet Union, and point out various factors which have hindered detente in past administrations, as well as in the present Carter Administration. In response, the authors assume a classical "moderate" posture, and stress the need for a new arms limitation agreement which will serve the mutual interests of both countries. They argue for a quantitative reduction of arms and mutual technological constraints. Moreover, the authors support an end to extremist approaches to Soviet interests, and to fear-producing myths such as the "Missile Gap" and "doomsday scenarios." At the bottom line, is the conviction that the future of peace for the two superpowers depends on reaching a second SALT agreement.

Another major source for detente is legislation regulating trade with Russia. In a most persuasive and well-written article entitled, *U.S.-Soviet Trade, Peace and Prosperity,* Donald Kendall argues that increased trade with the Soviet Union will provide commercial benefits and enhance the possibility of peace. Kendall, with other authors, concludes that the 1974 Jackson-Vanik Amendment which linked the granting of most favored nation status to the Soviets' emigration policy was a "tragic Congressional decision" which not only decreased emigration from the Soviet Union, but had a chilling effect on detente itself. The common solution proposed is the re-opening of the 1972 Trade Agreement.

Finally, the authors urge a re-evaluation of Soviet domestic politics, and the development of a foreign policy which is more responsive to a Russian society that is much changed from the time of Lenin and Stalin. Articles by Stephen Cohen and George Kendall are the main

proponents of this view. Together, the authors highlight past miscalculations of the Soviet system, and subsequent policies and courses of action which have damaged Soviet-American relations as a result of such miscalculations. A recent example of this phenomenon is President Carter's "Human Rights" campaign which appeared antagonistic to the Kremlin and caused a strain on relations with Russia. In order to avoid similar difficulties in the future, the authors contend that the United States must take a fresh look at the Soviet system, and develop responsive policies that will enhance detente.

Overall, *Detente or Debacle* is a sound analysis of the current problems of detente, centered around the belief that detente is an absolute necessity for the peaceful co-existence of Russia and the United States. The value of this book is further enhanced by the variety of contributing authors, who attack their common theories from diverse perspectives. However, the book fails to go far beyond a presentation of issues and conclusions. While the articles compliment each other well, they lack the detailed analysis which might make the declared urgency of detente more forceful and convincing. In addition, some of the articles attempt to present too much statistical detail with insufficient space devoted to an evaluation of the data. This can be confusing to the reader, and tends to obscure the author's ultimate points.

With these limitations in mind, *Detente or Debacle* provides an appropriate beginning to an investigation into the different legal and political sources for detente. The authors espouse a moderate, "common sense" approach to the current problems of detente, with the fundamental underpinning being the critical state of Soviet-American relations today, and the necessity for both countries to strengthen detente—our hope for future peace.

*Kenneth Berman**

HUMAN RIGHTS IN A ONE-PARTY STATE. International Commission of Jurists. London: Search Press, 1976. Pp. 133.

With considerable candor and objectivity, this report describes the inherent problems of the one-party state and other related difficulties which affect human rights and the "rule of law." The latter term is intended to mean not only strict adherence to legality, but the existence

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of a body of substantive and procedural law adequate to "protect the individual from arbitrary government and to enable him to enjoy the dignity of man."[1] The report is based on a seminar conducted by the International Commission of Jurists which took place in Dar es Salaam. This was an appropriate scene for the conference, because Africa was the backdrop for the analysis and Tanzania and Zambia were the principal models discussed. Procedurally, a keynote speech was followed by a number of topical working papers which were the basis for discussions during various workshops and committees. The discussions were summarized after each meeting and a set of conclusions was adopted by a concensus of the participants at the seminar.

For those unfamiliar with the International Commission of Jurists (ICJ), it is an organization of eminent jurists representing the main legal systems of the world. The organization's goal is to promote human rights through the "rule of law" throughout the world. The ICJ grew from a Standing Committee of six members set up at an international legal congress held in West Berlin in 1952. The original purpose of this Committee was to follow-up an inquiry being made into the abuse of justice in East Germany and other Eastern European countries. The scope quickly broadened and the non-profit incorporation moved from the Hague to Geneva in 1959. From 1955 through 1968 it organized a series of congresses and conferences, mostly in the Third World, which took place against the background of the movements towards independence and the assumption that the multi-party democracy would be a standard form of constitution. Publications include bulletins, newsletters, a journal and special studies and reports. Other recent reports include studies on Chile, Iran, the Philippines, Rhodesia and Uganda. The format of this report is not atypical, but it makes a move to discuss new issues in light of changing circumstances which have led to a rejection of the multi-party system and adoption of the one-party system in many states.

Two starting points were established. First, the concept that democracy is not necessarily inconsistent with the adoption of the one-party state. Secondly, the multi-party system is not necessarily the greatest protector of human rights. With this in mind, it was noted that African nations had at least three choices upon achieving independence from the colonial powers: (1) transplant the Western-style representative government onto African soil; (2) create a strong authoritative government along communist lines to deal with economic

[1] INT'L COMM'N JURISTS, HUMAN RIGHTS IN A ONE-PARTY STATE 43 (London 1976).

development; or (3) combine a centralized government with various checks and balances built into the system to guarantee government responsiveness and, at the same time, focus on nation building and economic progress. This third option is the theoretical base of the one-party system in Africa. It reflects African culture, history, and the need to mobilize the nation towards developmental goals without stifling "constructive" criticism. But the conference, in dealing with various institutions, wrestled with the nagging question of who sets the limits on "constructive" versus "destructive" criticism. In the absence of organized political opposition, these limits are not easily determined and there must be institutionalized mechanisms which promote free expression and participation in government. Otherwise, there is no democracy in the one-party state and the rule of law and human rights will not be respected.

Much of the answer to this question depends on the dedication the party has to these goals, the relationship between the governing party and these institutions. One of these institutions is the ombudsman-type organization which is an independent investigatory agency dealing with alleged abuses of authority. Both Tanzania and Zambia have this type of agency and certain improvements were recommended by the committee. This agency is not unique to the one-party system but its role is crucial because of potential abuses which might be avoided in multi-party systems. Another vital mechanism discussed was freedom of expression. The Committee expressed great concern for continued freedom of the press as a means of venting criticism and educating the public. Regarding freedom of association, with the major exception of political association, the workshop concluded that this was no less a feature of a one-party system than of a multi-party system. The focal point was the trade union movement and the effect of government intervention. The civil service was also examined and the need for absolute impartiality of civil servants was rejected. This view differs from the standard under the colonial governments. The discussion emphasized the need for loyalty and commitment to the party, accompanied by absolute integrity in rendering advice to the political leadership and a "firm rejection of any partisan temptations to nepotism and intrigue."[2]

Considerable attention was paid to the role of the judiciary and the legal profession within the one-party state. The underlying consensus was that independence of the judiciary is a critical aspect of a democratic one-party system. However, the Committee did not rule

[2] *Id.* at 99.

out party dedication by judges although it strongly submitted that this should not compromise judicial integrity and that active participation in policy-making organs of the party should be discouraged. Zambia has created a new "Law Association" whose purpose is to take a more active role in promoting a high standard for the profession, provide legal expertise for proposed legislation, suggest legal reforms and a host of other objectives. Tanzania has established a "Legal Corporation" which combines the private and public sectors into a quasi-firm which then represents quasi-governmental organizations and private individuals. The Committee noted a danger here of discouraging private practice which might have an overall adverse effect on a private individual receiving the best possible representation. The concept of "preventive detention" was clearly recognized as "basically abhorrent to the committee as a denial of the right to fair judicial process, through the operation of a legally authorized but arbitrary power to confine an individual without the benefit of trial."[3] This abused right of the executive (again, not unique to the one-party state) weighed heavily on the minds of the participants to the conference as an intrusion on the independence of the judiciary and a violation of basic human rights.

Overall, an honest disclosure of the problems facing these countries culminated in a valuable, well written report. The format is well organized and the content quite readable despite numerous typographical errors. Some portions are strictly descriptive as to what was said during the conference and other sections highly argumentative. A discussion of the issues presented is important in light of the current human rights debate in the world forum and the overall fate of "democracy" within numerous one-party states already in existence. Given recent upheavals in the Middle East, the general trend in Latin America over the past twenty years, and other explosive situations in Africa, this is a problem which, perhaps, has not yet reached its peak. Therefore, an exposition of the possibilities to secure human rights within such a system has global significance. Perhaps, limiting the case studies to Zambia and Tanzania provides a very incomplete analysis of these possibilities, but the basic ingredients are there to make the topics presented intellectually provocative. Again, the value of the report does not lie in any proposed sure-fire solutions to a series of difficult questions, but rather in the airing of these issues in an objective manner.

*David C. Indiano**

[3] *Id.* at 71.

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THE IMPACT OF AMERICAN LAW ON ENGLISH AND COMMONWEALTH LAW. Edited by Jerome B. Elkind. St. Paul, Minnesota: West Publishing Co., 1978. Pp. 362.

The incorporation of American law into the English and Commonwealth legal systems is a striking phenomenon in light of the fact that American law itself developed as an outgrowth of the English legal system. This volume, edited by Jerome Elkind, contains seven essays on the modern impact of American law in English and Commonwealth countries. Included are essays on constitutional law, race relations, consumer protection, restitution, corporate law and divorce law. The seventh and final essay is jurisprudential, tying the whole volume together.

The book is not an exhaustive treatise. That is not its intent. The book does not, for instance, discuss the impact of the Uniform Commercial Code on the commercial laws of Canada, Australia and New Zealand. Nor does it discuss the impact American "no fault" insurance on the Accident Compensation Legislation of New Zealand and Australia. However, the volume does present a significant selective overview. Ostensibly, it is aimed at the British audience. For this reason an appendix of American resource materials is included. But from the American perspective it is valuable as well. As the essays demonstrate, the laws and lawmaking processes of Commonwealth legal systems cannot be totally understood apart from the major influences that American law has exerted and will continue to exert on these systems.

The unifying premise of the book is embodied in the editor's proposition that, "[a]s parents learn from their offspring, so too should English law learn from its American offspring."[1] Pursuant to this idea, Mr. Elkind posed the following two questions to each essayist: (1) whether American law has had an impact on the drafting of English and Commonwealth statutes; and (2) whether those areas of English and Commonwealth law in need of reform should look to developments in American law for guidance.

The credentials of each author are set forth at the beginning of each essay. These credentials are uniformly impressive. In his preface to the book, Elkind states that this device was employed because "each contribution can best be understood in terms of the point of view imparted by the contributor's legal education."[2] This rationale is

[1] THE IMPACT OF AMERICAN LAW ON ENGLISH AND COMMONWEALTH LAW xi (J. Elkind ed. 1978).

[2] *Id.*

dubious. The five authors (two authors prepared two essays each) have strikingly similar backgrounds. Knowledge of these backgrounds, therefore, does not provide the reader with insight into the perspectives underlying each essay.

The first two essays address Elkind's first question and demonstrate the very significant influence that American law has exerted in various areas of English and Commonwealth law. In the first essay, David V. Williams discusses the influence of American constitutional law notions throughout the British Commonwealth. He finds this influence to have been strong and fundamental. For example, every Commonwealth nation, with the exception of New Zealand, has or has had an American style "controlled" constitution as the basis of its legal system. This is of course surprising in view of the fact that these nations have maintained a long tradition of close political, economic and social association with England. In the second essay, Jerome Elkind describes how American race relations law has greatly influenced many aspects of English law in the same area; and how English law, in turn, has influenced the law in Australia and New Zealand. Unlike the American influence on constitutional law concepts, it is not surprising that American law has influenced race relations law in England. Racial tension is a relatively new phenomenon in England. In contrast, the United States has the distinction of being the only nation where a civil war was waged by members of the majority primarily over the treatment of a racial minority. Since that time, over 100 years ago, the United States has had the opportunity to develop a most elaborate and sophisticated set of laws and institutions for dealing with the problem of race relations. Titles II and VII of the Civil Rights Act of 1964 strongly influenced the English Race Relations Act of 1968. The subsequent growth and development of the English law, however, pinpoints an interesting phenomenon. When American statutory provisions exert a strong influence on corresponding British or Commonwealth legislation, one might expect that American caselaw construing these statutes would be persuasive in the judicial interpretation of the English statutes as well. But this is not the case. English courts take little notice of American caselaw on the subject, though in the area of race relations, American courts have had much more experience in dealing with the problem.

The next four essays address Elkind's second question. Two of the articles, each prepared by Michael Whincup, argue that American law should serve as a guide for the reform of English law. In his essay on consumer protection, Whincup concludes that the American position with respect to products liability as presented by the *Restatement of*

Torts is more responsive to demands of public safety than the antiquated English principle of *caveat emptor*. Similarly, in his essay on company law, Whincup argues that American law, by "piercing the corporate veil" when equity demands, has achieved a more equitable balance between individual hardship and commercial advantage.

Two of the essays reject the American approach, but for different reasons. R. J. Sutton, in his essay on restitution, particularly the discussion dealing with the defense of "change of circumstance" in both Britain and the United States, states for some amorphous reason that Britain's adoption of the American *Restatement of Restitution* position would probably have a very unsettling effect on English law. This rationale is ultimately indefensible. The very purpose of legal reform is to upset precedent or enact a statute that changes an outmoded legal concept. Sutton's position, however, can be understood in the context of the process of judicial decision-making in England. As Elkind points out in his conclusion, English courts are far less willing than American courts to overrule established precedent or modify it to meet current social problems. Given this framework, it is understandable that Sutton would consider the unsettling effects that may be involved in incorporating American legal concepts into the English system. Similarly, Pauline Vaver rejects the American approach to divorce law because she finds it as inadequate as English law in the same area. It is not the laws *per se,* but the legal institutions which implement the laws which Vaver dislikes. Vaver argues that the adversary system is not conducive to conciliation nor to the assessment of the subjective state of mind of the parties. In regard to this problem, she further insists that there is a cultural lag between these institutions and the prevailing attitude toward marriage. Vaver's perceptions are probably correct, but they stem from a blatantly subjective view of marriage and the role that divorce law should play in its dissolution.

The final essay presents a valuable overview placing the concepts discussed in the earlier essays in proper perspective. Elkind explores differing jurisprudential notions in the United States and Commonwealth countries that place limits on the mode, manner and intensity of potential American influence. He further examines the reasons why American law, though a common law system, developed differently than English law; and why American law in some areas, both closely resembles European civil law and has come to strongly influence civil law in areas where such influence on a Commonwealth law has been minimal. Finally, Elkind advances several observations concerning the future impact of American law in Commonwealth jurisdictions. This

influence is sure to be substantial. It already has been more substantial than the book reveals. Yet despite its limited scope, the book is both interesting and enlightening.

In the final analysis, the ultimate significance of this volume rests upon its exclusive nature. The *Impact of American Law on English and Commonwealth Law* is not an exhaustive treatise. Rather, one of the stated purposes of the book is to kindle interest in and enthusiasm for its subject matter. The intriguing nature of the topic and the scholarly manner in which each essay is prepared accomplishes this purpose.

*Howard D. Denbin**

THE SOVIET LAWYER AND HIS SYSTEM. By George Dana Cameron III. Ann Arbor, Michigan: University of Michigan, 1978. Pp. 181.

The Soviet Lawyer and His System stands out as a well researched and informative historical and bibliographic overview of developing trends in Soviet law and legal institutions. Extensive references to in depth analyses of parallel issues render it an ideal reference source for scholarly research on virtually all aspects of Soviet law. Although readable and instructive, it is overly ambitious in scope. While it presents a variety of analytical perspectives, these are not thoroughly and systematically developed. Chapters overlap not only with respect to the time periods covered, but also in their substantive analysis. Other than the introductory chapter, they need not be read in any particular order to grasp the author's perspective and to understand the substance of his presentation. As a result, the study lacks a cohesive and schematical development characteristic of scholarly treatises. In essence, it presents a synopsis of the Soviet legal system from its inception to the present, and should be regarded as a primer.

Briefly stated, the author's heavily footnoted compendium is designed to evaluate the gains of the Soviet lawyer in three contexts: historical, ideological and institutional. He posits that all three frameworks have exerted a negative impact upon the development of a cohesive and "rationally functioning" legal system and, as a result, have perpetuated a dilemma. That dilemma is rooted in the historical

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antagonism between the legal and extralegal control systems which have led to a tortuous coexistence in the Socialist order. Of related significance has been the perpetual difficulty of translating the "law on the books" into "law in action." Although noting shortcomings, Cameron is generally positive about the growing legitimacy of Soviet lawyers and remains optimistic about the ultimate evolution of a "rule of law."

The work begins with the proposition, accepted as a truism by historians, that a full understanding of the present requires an evaluation of past conditioning influences. Accordingly, the introductory chapter presents a survey of pre-revolutionary law. Spanning nearly eleven centuries in a mere fifteen pages, such an overview is superficial at best. Furthermore, although the premise may be regarded as valid by historians, the 1917 Revolution signified such a fundamental and radical break with past social and political philosophy, that analysis of pre-revolutionary legal codes is strictly tangential to analysis of Soviet law. Its only relevance to the study as a whole may be found in the conclusion that a "basic incompatibility existed between tsarist autocracy and a freely functioning legality," (p. 14) which was to be "tsardom's enduring legacy to the Soviets in the legal field." (p. 15)

Cameron's portrayal of the lawyer's predicament under Marxist-Leninist theory, which viewed law and lawyers as merely temporary and necessary expedients ending the transitional phase to perfect communism, is central to his analysis. The examination of the evolution of this perception under subsequent Soviet leadership provides the only real framework for this study. This analysis is both theoretically and historically valid. Its only flaw is that while professing objectivity, the author repeatedly cites to the "oversimplification" of Marxist theory, and claims that Soviet scholarship has "failed miserably" to justify its propositions.

Written in outline form, the core of the book consists of a detailed examination of the structure of the Soviet judicial system, and its substantive and procedural laws. Readability is not sacrificed for compact analysis and the work retains its literary effectiveness. Once again, however, the reader senses that Cameron has spread himself thin. Only intermittently during his analysis does he shed the hats of historian and political scientist to interject effective legal analysis. The author succeeds in touching on a myriad of issues, including counter-revolutionary offenses, sentencing, theories of punishment, and the organization of the Soviet legal profession. It is disappointing that these concepts and themes are merely acknowledged and not developed

substantively through in depth application to particular facts and circumstances. Furthermore, the analysis of statutory law and procedure is limited to those provisions which were chosen arbitrarily as the most significant for purposes of comparative analysis. Such selection is not completely without justification in that it suits Cameron's purpose of providing a general overview. Nevertheless, the end result is both a spotty selection of issues and an incomplete development of the selected issues.

Consistent with the asserted aims of maintaining objectivity and painting a "comprehensive" picture, Cameron also undertakes an extensive survey of the writings of scholars and journalists, both Western and Soviet, who deal with issues of Soviet law. The authors whose writings are explored were selected on the basis of what Cameron felt to be the most significant in the field. Any such selection must necessarily be arbitrary to some extent, reflecting the author's exposure to available literature. By any standards, Cameron succeeds in his purpose. Within the limited scope of his work, he covers a wide spectrum of opinion, convincingly plotting the development in perceptions of the Soviet legal system since its inception. In summarizing the writings, he is careful to include not only the author's positive impressions, but reservations and condemnations as well. The overall consensus shared by Western and Soviet writers alike, regarding the practical effectiveness of Soviet legal reform and the growing "legitimacy" of the Soviet lawyer, he concludes, is increasingly positive. In this conclusion he is convincing. Much of his analysis, however, becomes necessarily repetitive of previous discussions.

It is perhaps the author's recognition of the inherent limitations of basing opinion upon the interpretation of another's research, which prompts Cameron to conclude his study with an empirical analysis. His premise is that an increase in the quantity of legal news appearing in the press is indicative of a heightening concern with legal matters, in turn signifying a growing acceptance of a "rule of law." The proposed standard of measurement is the weekly word count totals appearing in weekly indices to Pravda and Izvestia under the category "State and Law." The years 1951 to 1973 were examined. Although findings are positive, their validity is open to question. Not only is the category selected not limited to strictly legal matters, but the findings fail to distinguish between articles which are positive towards the legal profession and those which are negative. Furthermore, the study does not reflect how the man in the street is receiving such news. Its practical

significance, subject to the limitations noted above, is that the findings underscore conclusions reached throughout the book.

Overall, Cameron's book is readable and informative. The conclusions following each chapter are particularly valuable as a recapitulation of major premises found therein. However, the reader is left with the impression that the author has spread himself rather thin. Although it is apparent that he has extensively researched the subject matter, his work spans on overwhelmingly large area without isolating and examining any specific issue in significant detail. Furthermore, his perspective eludes all attempts at classification, constantly fluctuating between that of a historian, political scientist and legal scholar. Nevertheless, Cameron's extensive citation to more in depth analyses of specific issues renders the study an ideal reference point for scholarly research on virtually all aspects of Soviet law. As such, it is highly recommended.

*Waldemar J. Wojcik**

THE ANDEAN LEGAL ORDER: A NEW COMMUNITY LAW. By Francis V. Garcia-Amador. Dobbs Ferry, New York: Oceana Publications, Inc., 1978. Pp. 483.

Latin American nations participate in many programs aimed at interregional integration. The Andean Common Market (ANCON) undertakes intra-Latin American economic projects. The Latin-American Force Trade Association (LAFTA), as the name suggests, furthers the goal of unrestricted intra-Latin America trade. To accelerate LAFTA's transformation into a truly integrated economic community, Bolivia, Colombia, Chile, Ecuador and Peru signed the Agreement on Andean Subregional Integration (the Cartagena Agreement) in Bogota, Colombia on May 26, 1969. Chile subsequently withdrew from the Agreement when the other parties admitted Venezuela.

The book attempts to show that Latin American subregional integration, primarily because of the Cartagena Agreement, has borne legal as well as economic integration. The author is Secretary General at the Inter-American Institute of International Legal Studies. He first established himself as an authority on the law of the sea.[1] His thesis

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[1] *See* F.V. GARCIA-AMADOR, THE EXPLOITATION AND CONSERVATION OF THE RESOURCES OF THE SEA (1963)

here reflects his concern that subregional agreements should lead to community law. Yet the originality of this proposition is undermined by the sparse evidence which the author presents to demonstrate that community law among Latin American nations does in fact exist.

The author excellently describes the foundation for community law in Latin America. The compendious review of the Cartagena Agreement presents the reader with a well documented analysis of its structure, history and purpose. The Agreement establishes a Commission consisting of one plenipotentiary representative from each member. The Commission supervises the Board, the technical committee of the agreement, to ensure continued compliance with the goals of LAFTA in the course of subregional integration. The Board itself sets up the subregional organs so vital to the hypothetical growth of community laws.

Before considering the workings of the subregional organs, the author evaluates the relationship between the Agreement and the legal order of LAFTA. At this point the text departs from an uncritical presentation of the Cartagena Agreement. The author points out many shortcomings in the Agreement. By this time, the reader himself will have discovered the more apparent ones.

One glaring problem is that mechanisms for agreement are biased in favor of adhering to the technical organ's decision, and not that of the more democratic Commission. Article 11 of the Agreement provides that the Commission's decision must be adopted by two-thirds of the member states. However, after a resolution fails the first time and goes back to the Board for consideration a negative vote cast by the same state voting previously against the decision will not be counted. The author does not go far enough in pointing to the coercive problems in this rule. Chile's departure from the Agreement indicates what can happen where a fundamental disagreement under this arrangement occurs.

The author also directs the reader to the Agreement's conflict with LAFTA's most favored nation clause. The language of the Agreement is loose and ill-defined. For those reasons, it would appear that the author is correct in concluding that the emergence of subregional agreements results because of the will of the members, and not necessarily because of strict adherence to the Agreement itself. The author fails to consider that this vagueness may inhibit the emergence of the community law which he has set out to prove.

Perhaps this problem is resolved because the author sees community law emerging from the actions of the subregional organs, not the

Agreement itself. The author analyzes the subregional organs in terms of their normative, executive and implied aspects. The Agreement, with subregional agreements approved by the Commission, provides the background for this analysis. Essentially subregional organs function as regional coordinators of international projects. It is this fact which creates the need, indeed the source for the community law which the author hypothesizes.

The elaborate analysis of the "paper structures" behind subregional organs culminates in the final chapter where the actual acceptance of subregional organ decisions is considered. The author's intention is clear. If the organ's decisions are respected by national courts, the existence of community law should be presumed. Assuming this logic correct, the actual decisions by national forums of the Cartagena Agreement member countries are too sparse to enable such a conclusion. The national decisions which have been made present a problem for the existence of community law.

For example, the Colombian Supreme Court has accepted the subregional decisions as law despite finding that the Agreement is not a treaty, but a derivation of the Montevideo Treaty (LAFTA). Other countries present inconsistent determinations on the force and effect of subregional acts due to an inability to avoid self-interest. While the Commission, with the backing of member nations, passed unifying decisions, the problem remains that these decisions are obeyed but not complied with.[2] The author's attempt to show that community law does in fact exist fails because Latin American courts have not yet dealt with subregional acts in any great numbers or with any predictable consistency. While the potential for community law persists, the absence of a central authority to encompass diverse nationalistic courts could very well prevent its development.

It is just as well that most of the book considers the Latin American agreements resulting in subregional integration. Those well documented pages will aid persons attempting to understand the Cartagena Agreement and related documents. However, the smattering of national decisions on subregional integration do not warrant the conclusion that community law exists today in Latin America. Nor do the shortcomings in the Cartagena Agreement make this event very likely in the near future.

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[2] F.V. GARCIA-AMADOR, THE ANDEAN LEGAL ORDER: A NEW COMMUNITY LAW 234 (1978).

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CONTROL OF SEA RESOURCES BY SEMI-AUTONOMOUS STATES. By Thomas M. Franck. Washington, D.C.: Carnegie Endowment for International Peace, 1978. Pp. 37.

Those interested in the phenomenon of the semi-autonomous state[1] will find that these thirty-seven pages present a crucial issue for those states but incorrectly extend the resolution of that issue by some home countries to a similar fact pattern. The issue presented is the control of sea resources by those states and how this control is reconciled with the interests of the home countries. The fact pattern to which the author incorrectly analogizes is the relationship between the United States and Puerto Rico. Clearly, the move in the international arena towards the 200-mile exclusive seaward economic zone is important to these relations. By using examples of other countries and their respective "associated" or semi-autonomous states, the author suggests that United States-Puerto Rican relations vary from the international norm and this is cause enough to restructure those relations. But there is no examination of that present relationship.

The purpose of the survey is to raise an issue rather than explore each case in depth. Many pertinent questions are left unasked. Empirical evidence was gathered looking principally to Great Britain, New Zealand, the Netherlands, Denmark and France. From this data, the author finds the following general rule:

> [M]etropolitan powers with integrated overseas territories or associated states either have given the population of the overseas territory full and equal representation in the national parliament and government or have given the *local* government of the overseas territory jurisdiction over the mineral resources and fisheries of the exclusive economic zone.[2]

Since most of the semi-autonomous states are a relatively recent development, the author explores the legal framework and how it is practically implemented. Each case is shown to fall into one of the two provisions of the general rule.

The author utilizes various examples setting up a parallel structure of focal points: constitutional guarantees, parliamentary connections

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[1] A state which has reached a relatively stable working relationship with a "metropolitan" or home country government which has stopped short of independence. A type of "commonwealth" which has clearly progressed beyond its colonial beginnings. T. FRANCK, CONTROL OF SEA RESOURCES BY SEMI-AUTONOMOUS STATES 3 (1978).

[2] *Id.* at 5.

and practical working relations. The study is well-documented in terms of primary sources and supplemented by interviews with various government officials. At the very least, an interesting collection of rather dissimilar situations are given some cohesiveness when viewed against the background of the 200-mile limit question.

But here the author's analogy breaks down. The answers to those unasked questions are critical if this norm is to be extended to the case of Puerto Rico. Many factors influence whether such a norm should apply, such as sizes and populations of a given semi-autonomous state, historical relationships between the parties, strategic value of the state, strategic position of the home country, language barriers and geographical proximity. There must be a more compelling reason to modify relations between two parties (the United States and Puerto Rico in the author's analysis) than merely complying with some international norm whose limits have not been clearly tested. The study and resulting norm would have been more useful had the author's analysis stopped short of making this ambitious analogy.

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