
John N. Hazard
Columbia University

Recommended Citation
Available at: http://www.repository.law.indiana.edu/ilj/vol39/iss4/3
WHITHER COMMUNIST-LED SOCIETY? 
AN APPROACH THROUGH PROPERTY LAW 

JOHN N. HAZARD†

Professor Jerome Hall has challenged scholars to examine social structures by comparing laws.¹ In his view abstraction based on a few legal systems can provide the starting point for a fuller understanding of the interrelationship of values, facts and legal relationships in modern industrial societies. It can also lead to a positing of the direction in which society is moving.

This challenge provides the motive for this paper, which is designed to suggest the direction in which communist-led societies are moving in their effort to meet the problems posed by the industrial revolution. The materials are values, facts and legal relationships associated with the concept of property. This is particularly appropriate in a communist-led society for reasons that you will immediately suppose.

Two factors give validity to such an approach to communist-led societies: the conscious effort of communists to manipulate social structure through law, and their focusing of attention on property within their legal system. No doubt exists in the minds of scholars in societies currently led by communists that law is an instrument of what the late Dean Roscoe Pound would call "social engineering." The principal Soviet commentator on the emerging law of the communist-led states bordering upon the U.S.S.R. has put his creed in these words: "The new constitutions reflect not alone what has been achieved . . . but they provide the legislative foundation for the movement forward . . . . They define the new purpose . . . and create the necessary forerunners and conditions for its achievement. In that is reflected the new quality of socialist law, which is called upon to be the active means of developing socialism."²

This contemporary author is but paraphrasing Stalin, who declared in what is sometimes called his "testament" of 1952 that although men cannot negate or make new economic laws, the forces influencing society can be turned to social reconstruction when they are understood.³

† Professor of Public Law, Columbia University.
One of his legal experts, Professor Trainin, had earlier related this approach specifically to law by indicating that although economic forces provide the base for the superstructure that is law, law is not without vitality of its own. Once the proletariat had seized power in a country, “Law made secure, safe-guarded and regulated social relationships so as to assure the development and influence of the moving force of policy.”

In short, when communists have seized the superstructure, i.e., the state apparatus, they can manipulate it and its handmaiden the law to reform the base itself.

Marx's own writing was never quite so clear, but it suggested as much, for although he stated no such possibility in specific terms, the implication was there. His formula for success in a revolution was to take property ownership from the bourgeoisie and to place it in the hands of the proletariat. This would not only assure that workmen would themselves receive full value for their toil, but it would also prepare the way for the complete reweaving of the social fabric into what he called "communism." The value component in Marxist-inspired society is not in dispute; the debate emerges when the investigator turns to facts and legal relationships. What has happened in the application of the Marxist value system?

Communist and capitalist inspired societies seem poles apart when contemporarily espoused values are compared. Sharp contrast is provided between the community orientation of the former and the individualistic orientation of the latter, but do the differences remain as pronounced when the facts and the law are compared? Perhaps the conclusion of the historian, Cyril E. Black, provides a key to understanding the contemporary scene. He finds that in all contemporary industrial societies, regardless of their professed values, there has been a common guiding force resting upon facts. For him "modern societies are produced by the interaction of historically formed traditions with the more or less universal imperatives of industrialism."

In this reading Marxist-inspired leaders differ from those of the West because of the tactics they use to overcome the restraining forces of the particular traditions of the society which they lead. For them the acceptability of any given balance depends upon their willingness to sacrifice whatever may be the traditional concept of individual interests in the society in which they function for what they believe necessary to meet the inevitable pressures toward community which industrializa-

tion has created. This approach suggests that Marxists in Eastern Europe and Asia are striking their balance for the same purpose as leaders in the West, namely, salvaging as much benefit to the individual as possible under the pressures they face. They are all seeking to lift mankind above the crushing imperatives of industrialization. Differences are to be found only in the way they do it.

Black’s formula is pleasing because it suggests that all societies may be compared when ranged upon a constantly shifting spectrum rather than juxtaposed as unchanging opposites differing in quality, and hence incomparable. He denies the validity of definition of varying social structures in terms of polar opposites. Perhaps, under his theory, the voluble proponents of conventional capitalism and orthodox Marxism will be unable to deafen those who are seeking to determine whether there is a general trend to be discerned in contemporary human behavior.

To establish a framework for a limited testing of Black’s thesis, some facts should first be examined. Professor Hall espouses this procedure and would begin with the legal component, making certain that nothing is omitted whether expressed in formal statutes or informal social sanctions. For the Marxist societies, property is taken as the key element for examination because the Marxists say that it is the key. The basic question is: What is the current treatment of property relations in communist-led states, and in what direction are communist-led societies likely to move with regard to property?

I. FUNDAMENTALS OF PROPERTY LAW

Traditionally, an examination of a legal system and of its reasons for existence begins with a state’s constitution, if any there be. Here appear the assumptions, both expressed and implied. Every constitution of a communist-led state contains a chapter at or near the beginning declaring the fundamentals of the social structure, among which primary

8. Before the Second World War comparison would have been limited to two communist-led social systems, for there were no others. Only The Mongolian People’s Republic had appeared alongside the U.S.S.R., although there were remote regions of China in the hands of communists conducting governments that were essentially independent of Nanking. Today Khrushchev says that the number of communist-led states is fourteen. If a society may be called a “laboratory,” the laboratories for the observation of facts and legal relationships in states professing Marxist values have been multiplied. The possibilities for generalization on a statistically sound basis have been increased. What could have been previously only an exercise in tracing the influence of Marxist thought as filtered through Russian minds primarily on societies sharing a Slavic tradition or “culture” has become an exercise of much wider scope. The minds applying Marxism are now of markedly differing education, and the societies under manipulation are representative of quite different cultures, from the Latin American in the Western hemisphere to the Chinese in the Eastern.
WHITHER COMMUNIST-LED SOCIETY?

place is given to the ownership of property. Even the Yugoslavs, who in Chinese Communist eyes have slipped furthest from original Marxist conceptions, incorporate in the "basic principles" the rule of "socialist ownership of the means of production, which precludes the restoration of any system of exploitation of one man by another." This puts all communist-led societies within one framework as to basic principles regarding productive property.

It is not too much to predict that this framework is unlikely to change for any communist-led society, as it is fundamental to Marxist thought. Stalin once emphasized, and this provides reason for certainty that there will be no departure from this principle, that private ownership of means of production could not be tolerated in a communist-led society for two reasons, one doctrinal and the other practical. Doctrine requires smashing of the bourgeoisie at their base in private ownership because this provides the only means of preventing private individuals from obtaining as interest on their capital the value contributed by workmen's labor. Practice requires smashing of the bourgeoisie because hypothesis they will oppose effective national economic planning. This latter view was best expressed in Stalin's noted interview with H. G. Wells.

When Wells dared to suggest that President Roosevelt was on the way to achieving a "planned, that is, a socialist, economy," Stalin replied, "without getting rid of the capitalists, without abolishing the principles of private property in the means of production, it is impossible to create planned economy." In light of this statement, and in recognition of the fact that all contemporary communists think planning is essential to achievement of abundance and the perfect society, a communist-led legal system failing to provide in some measure for confiscation of private owners' productive property is unthinkable. That is the first fact that has to be established in the comparison, as the analysis moves from values to facts.

The intertwining of doctrine and tradition begins when this much has been said. How much, if any, property is to remain in the hands of private citizens in spite of the doctrine and the necessities of planning? The analysis necessary for response to this question has to rest on the method proposed by Professor Hall, who suggests that all comparison

be related to a type or model.\textsuperscript{11} In the case of the communist-inspired legal systems the model must unquestionably be that of the U.S.S.R. Not only was it the first on the scene, but its proponents conceived it to be a model for all that would come after. This is proved by Bolshevik reaction to the shop stewards' movement in England after World War I.

Lenin and his colleagues expected a proletarian revolution in England in 1920. The Independent Labor Party of England, which acknowledged Marxist inspiration, sought answers to several questions from the Communist International in Moscow prior to affiliation. Two were: Is the Soviet system of government a fundamental principle of the Third International, and if so, to what extent does the Third International recognize the possibility of diverse forms of Soviet government in different countries?\textsuperscript{12}

The reply stated that the formal way in which the proletariat will achieve power is of no importance, but "what does count, however, is the fact that the working class can neither protect nor maintain this power unless the capitalist class is disarmed, and unless it is deprived of its political rights until the time arrives when it can be included in the ranks of the laboring people; unless the source of all the forces and wealth of the country is concentrated in the hands of the working class, whose power must be protected at all costs."\textsuperscript{13} As to the form under which the disarming of the capitalist class would occur, the authors of the reply were less dogmatic.

"When the Communists in Russia put forward the slogan of 'All power to the Soviets,' they as yet had no idea whether this would be the form of proletarian dictatorship in other countries. The revolutions in Germany, Hungary and Poland prove that everywhere the workers strive to establish their dictatorship on the principles of the Soviet system as most suitable to their interests. . . . It is necessary to admit theoretically the possibility of variations of forms depending upon the varying economic structures of the different countries in a state of revolution. It must, however, be said that the experience of the development of the world revolution until recently has given no indications of the realization of this theory. It is the opinion of the Communist International that it is not its concern to indicate the exact form in which revolution is to develop."\textsuperscript{14}

This statement of faith in the Russian experience as creating a

---

\textsuperscript{11} See Hall, op. cit. supra note 1, at 98-100.
\textsuperscript{12} The I. L. P. AND THE 3RD INTERNATIONAL 37 (1920).
\textsuperscript{13} Id. at 43-44.
\textsuperscript{14} Ibid.
model which had proven itself generally, and which contained as a
fundamental element the disarming of the bourgeoisie through confisca-
tion of their economic base in property, i.e., private ownership of
productive wealth, has remained to this day the position of the leadership
of the Communist Party of the Soviet Union. When the Communist
International redrafted its program in 1928, all countries of the world
were placed in categories, each of which was expected to evolve to the
next more productive type of economy, as the system of property owner-
ship was changed. The final breakthrough to the road to communism
would occur when capitalists were deprived of their ownership of pro-
ductive property. The record suggests that although there would be
variation in form and perhaps in degree in application of the principle,
the goal was the same for all, i.e., ownership of productive wealth by
the mass. How that mass was to be represented seemingly presented no
question. Perhaps the answer was assumed on the basis of Lenin's
practice. He had said that the state represented the mass, and it was
logical for the state, therefore, to take title. Not until Tito was this
axiom put in question by communists.

II. PROPERTY IN THE LAND

What has practice indicated as to the applicability of the model?
Will it be forced by communist leaders upon a society, regardless of its
traditions? The answer is "no," although the outsider can easily de-
termine that it is a reluctant no. Take the U.S.S.R.'s own experience.
Lenin compromised when he drafted his first property decree—that
concerning ownership of land. It annulled property ownership only in
large landed estates; it specifically exempted small landholdings of
peasants from confiscation. Lenin frankly admitted that he was com-
promising with tradition: "The land of the peasants and Cossacks of
average means shall not be confiscated. I hear voices raised here de-
claring that both the decree and the land mandate were drafted
by the Socialist-Revolutionaries. Well, suppose they were? What does it matter
who drafted them? As a democratic government we cannot ignore the
resolutions of the lower strata of the people, even though we may not
be in sympathy with them. In actual practice the peasants will find out
for themselves where the truth lies."

15. 1928 Program of the Communist International, in BLUEPRINT FOR WORLD
CONQUEST AS OUTLINED BY THE COMMUNIST INTERNATIONAL (1946) (with an intro-
duction by William Henry Chamberlin).

17. Address by V. I. Lenin, Nov. 8, 1918 (n.s.), 2 A. M. English translation in
BUNYAN & FISHER, THE BOLSHEVIK REVOLUTION, 1917-1918; DOCUMENTS AND MA-
TERIALS 128, 131-32 (1934).
Applying this strategy of compromise Lenin introduced a decree nationalizing all land, including that of small peasants, only when he felt confident that his forces were superior to those of the Socialist Revolutionaries. This decree was issued after the disbanding of the Constituent Assembly in January 1918 and the assembly of the Third Congress of Soviets with unquestioned Bolshevik leadership. The decree of February 19, 1918,abolished for all time property rights in land, sub-soil, waters, forests and livestock, transferring them without direct or indirect indemnification “to the use of the whole toiling population.” Lenin’s record demonstrated that within three months he had thought it possible to abandon compromise with peasant aspirations and to establish state ownership of Russia’s primary resource, the land, as the rock on which his legal system was to be built. Here was the model against which he expected others to measure success. Compromise was admissible under this formula, but it was to be recognized as such.

The Mongolian People’s Republic, established in 1921, provided the first proving ground of Lenin’s formula in a culture of a different type. Its constitution, adopted shortly after Lenin’s death in 1924, declared land the property of the state, and this fundamental principle has been retained ever since. In many respects Mongol patterns of life were wholly different from those of the predominantly sedentary peasants of Russia, but this did not dictate the desirability of variation. Perhaps no one thought culture of any importance, for the Russians had already established their model in Central Asia where the nomadic Kazakhs lived a type of life quite like that of the Mongols. Or perhaps the real motive lay in the feeling that culture could be ignored when the communists were sufficiently strong to impose their model in spite of it. This had been the case in Central Asia, which was an integral part of the Soviet Union, and it was almost as strongly the case in Mongolia where Soviet troops had helped establish the Mongolian Communists, and from whom they were never far distant. Perhaps even more importantly, the nomadic Mongol did not care who owned the land as long as he could use it for his flocks and was not kept from it by some other individual’s claim of ownership.

The Soviet model was tested under more resistant conditions after World War II. A measure of the severity of the test may be found in the fact that of the communist governments emerging in Eastern Europe and Asia, not one nationalized all of the land. Lenin’s first

19. The legal history and texts of constitutions and principal decrees are published in Denisov, Konstitutsiia i Osnovye Zakonodatel’nye Akty Mongol’skoii Narodnoi Respubliki (1952).
land decree nationalizing only great estates and exempting the peasants was the stopping point for all of them, although several continued through various forms of social organization of agricultural production to bring about in effect what they felt undesirable in law, namely, communal use of the land. Rumania declared achievement of 100 per cent collectivization of agriculture in 1959, and China through organization of "communes" went far beyond the terms of the Land Law of 1950, which had confiscated the land of landlords but preserved the system of peasant land ownership, even providing for the return to each former landlord of a small plot for his own use. In the Chinese case the members of the village in theory pool their privately owned lands, being permitted theoretically to retain small private gardens. In fact, by this pooling they lose the value of private ownership which is the right to alienate and to determine how the land shall be worked. It is now said that a group of villages, called a "brigade," owns the land. Only in Poland and Yugoslavia is the contrast in land ownership and use not present. About 90 per cent of Polish farm lands remain privately owned and used, most of these being very small.20

Yugoslav law established the principles that "land belongs to those who cultivate it" in their first land law of August 23, 1945, but landlords were deprived of any excess over 25 to 35 hectares if they were individuals, and of all land if absentees or institutions. This principle in variation currently appears in the Yugoslav Constitution of 1963 as a guarantee of the right of ownership of arable land up to a maximum area of ten hectares per household. Still, the Yugoslavs emphasize social interest in land, for the constitution declares that "land is a resource of common concern," and "shall be utilized in accordance with the general conditions determined by law to assure the efficient utilization of land and other general interests."21 The socialist feature in Yugoslav practice is spelled out in two laws. The first, promulgated in 1957, requires every land owner to cultivate his land in the manner of the district, and the propriety of his use is supervised by the people's committee of the district. Tillable land which is not worked for a year is to be taken temporarily from the owner and transferred to an agricultural organization or another individual for use, the socialist organizations having priority in distribution. The temporary use is terminated under circumstances suggesting that the owner will resume use. The second law, passed in 1959, establishes an obligation on the part of every user to use

20. Statistics on the size of private holdings are given in Szemberg, Changes in Agrarian Structure, 6 Polish Perspectives No. 10, 6-12 (1963).
the land for agriculture and in accordance with an approved plan, prepared with the help of a technical commission. Failure to comply results in loss of use.

The Poles likewise link private ownership to their socialized economy, which is accomplished by four measures. Land owners are required to deliver grain, potatoes and meat to the state in fixed quantities at prices lower than the open market. The ratio of produce delivered on a compulsory basis to total production is about 60 per cent. A second link is through contracts between individuals and a socialist organization under which the farmer is provided with the resources and advice necessary to a technical type of production, in return for which he is obligated to deliver all produce to the organization and to take money premiums for his labor. A third link is the requirement that crops be planted according to local planning, and the fourth is the revival of agricultural cooperatives of a pre-war western type. In addition to their old functions, the cooperatives are now being used as farm machinery stations to raise the level of mechanization of peasant agriculture. The individual feature in land law is reflected in a 1957 law which abolished all previous restrictions on sales of agricultural land, although the prospective buyer was required to submit a certificate of his proficiency as a farmer. No farmer may own or lease, however, more than 50 hectares in Eastern Poland and 100 hectares in Western Poland.

The situation existing in China, Poland and Yugoslavia exemplifies the necessity of going beyond the law relating to ownership of land to examine the use if the hard fact is to be disclosed. The same can be said of the situation in the U.S.S.R., for although the contrast is sharp between the Soviet rule of no private ownership and the rule of all other communist-led states except Mongolia of no prohibition of private ownership, the edges of the contrast are blurred in the law relating to use.

Just as the communist-led states other than the U.S.S.R. and Mongolia have modified their apparent private enterprise policies to socialize use, the U.S.S.R. law modifies the apparent state-enterprise policy to individualize use. All land in the U.S.S.R. must be owned by the state, but the occupiers are given “perpetual use.” This means that for the approximately 200,000 private households who still function on private plots outside of collective farms, there is provided a form of land tenure that has features of ownership. Even for households who have entered the collective farms, there are features of private control. Their houses and household gardens are assigned to the household so long as it shall

WHITHER COMMUNIST-LED SOCIETY?

remain on the farm, and if it wishes to leave, other land must be provided. Urban plots of land on which private dwellings are constructed are also allocated in perpetuity, as are industrial sites for state enterprise. In consequence, although all land in the U.S.S.R. is constitutionally declared to be state property, much use is in the hands either of private individuals or cooperative associations of peasants, both having use guaranteed in perpetuity, defeasible only when the land is required for a specific state purpose for which no other land can be found.\(^2\)

The current system of permanent usage of land in the U.S.S.R. was introduced by the Land Code of 1922 to enlist the incentives normally associated with private ownership in encouraging development. By this 1922 innovation Lenin acknowledged that his land victory of February, 1918, had been too swift. At that time he had successfully overcome the Socialist Revolutionaries; he had not, however, made sufficient compromise with peasant tradition. With the retreat to modified capitalism introduced by the New Economic Policy in 1921, he decided to obtain the benefits of incentive which private ownership provides without sacrificing what seemed to him a sacred principle of Marxism; that productive resources may not be privately owned.

Eastern European communists have not followed Lenin's example, nor have the Asian communists. They have not taken Lenin's two steps of nationalization and subsequent allocation of land on a permanent use basis. Instead, they have preferred to continue with the pre-communist form of ownership, although limiting the extent of the land that may be privately owned and the manner of disposition and use. They have presented a contrast with the Russian pattern in that their system permits alienation, as the Soviet system does not. Yet they have placed themselves at a point somewhat short of that of modern capitalist states where restraints on use by owners have multiplied extensively in recent years beyond the common law of nuisance and waste to include zoning and related statutes, but where an owner in fee simple still enjoys a considerable freedom to use and dispose of his property as he wishes, and is not subjected to limitations on the size of his holding.

What has caused the differences in approach to ownership of land in the communist-led states? Scholars in the Eastern European law faculties suggest that in each of the legal systems of their group the determining factor has been the strength of tradition. In all communist-led states the ultimate goal is total state ownership. This has been possible in the U.S.S.R. where ownership by private households was only begin-

23. Details relating to the law of land use may be found in Hazard & Shapiro, The Soviet Legal System ch. 10 (1962).
ning to appear under the Stolypin Laws introduced in 1906-1907 in an attempt to create a middle-class. In the other Eastern European states private ownership was of much longer duration so that the peasants had fixed in their minds the position of a private owner. Poland and Yugoslavia provide the supreme examples, and precisely in those states, there has been nationalization only of large estates and almost no collectivization of use. Private households dominate the agricultural economy albeit subject to socializing influences.

While such generalization of contrast is possible, enough reports reach the Soviet law reviews to show that even in a highly socialized polity the incentive to make profit causes permanent users to violate the law. Thus, collective farm managements have leased plots of land to private persons. A flagrant example of abuse was the leasing to an individual of 11 hectares of marshy land by a collective farm management in the Kazakh Republic for the purpose of growing onions. The rent was 517,000 old rubles. To disguise the transaction the individual was made a member of the collective, and his group of employees was organized as if it were a "vegetable brigade" of the farm. He kept the profits which were computed as being 200,000 old rubles. In another report, land was given by a farm to an individual who had performed work for the farm, and he presumably thereafter used it as his own. Another case discloses that land was made the subject of a contract concluded by a farm with a shepherd who was not a member of the farm. For tending the herd, composed of privately owned animals of collective farm members, he was to receive in addition to grain, money and milk, a parcel of land for a garden one-quarter hectare in size. The individual failed to receive his parcel and had the effrontery to sue. More importantly, the trial court gave judgment for him and did not even discuss the illegality of the contract as a violation of the constitution and the civil code. The mores of the locality were such that the court took for granted the legality of such a deal.

Violations of land law by greedy individuals became so extensive during 1963 that the Presidium of the Supreme Court of the R.S.F.S.R. found it necessary to issue an order to struggle decisively with the squatters upon land who had appropriated parcels to their own use

24. For the most thorough discussion of peasant history and of the Stolypin policy, see Robinson, Rural Russia Under the Old Regime 193-94, 198-99 (1949).
27. Ibid.
WHITHER COMMUNIST-LED SOCIETY? 743

without obtaining legal allocations. 28 The struggle was to take the form not only of return of the land to local authorities, but of criminal prosecutions under the Criminal Code of the R.S.F.S.R. 29 Examples cited by the Vice President of the court in an explanatory article indicated the extremes to which individuals have dared to go.

One Nustrov in the city of Dzerzhinsk over the years 1959 to 1962 constructed a house on land which he had appropriated without formal allocation. One Laverzhentsev in the city of Piatigorsk built a six-room house and systematically rented its rooms, one of the lessees even being the municipality's housing administration from which he had received 712 new rubles. Such cases mentioned are reported not to have been unique, and they help explain the order of December 30, 1960, issued by the Council of Ministers of the U.S.S.R. prohibiting the further assignment to citizens of plots of land utilized for the private construction of cottages, and the sale of cottages to citizens by state, cooperative and other public organizations. If plots already allocated were used for purposes other than those designated in the allocation, the allocation was to be terminated, and prosecution initiated where appropriate. 30

The Polish Supreme Court has, however, moved in the direction of compromise with tradition under the policy introduced after the events of 1956. Prior to the refusal in 1956 to accept further direction of Polish affairs by Soviet advisers, the supreme court issued a series of decisions limiting use of privately owned property when owners seemed to be functioning in a manner detrimental to what the court determined to be the good of the workers. Thus, the Supreme Court of the Polish People's Republic in 1952 completely forbade the remedy of eviction of tenants for two months failure to pay rent or serious and repeated infractions of apartment house regulations, as authorized by inter-war statutes. In doing so the court said that "every member of society has to support the goals outlined by the State. Since the State exerts particular efforts to provide homes for everybody, nobody can create a new need (for shelter) for the exclusive reasons that he has a civil law claim for eviction." 31 In another case a landlord of an apartment

31. These cases have been collected and abstracted by Dr. A. W. Rudzinski in an unpublished manuscript prepared for the Research Program on Communist Affairs of Columbia University. Other information on Polish law utilized in this paper has been taken from his research notes.
house in western Poland sued a worker who was his tenant for removal of a pigeon coop from the backyard where it had been placed without the landlord's consent. The defendant argued that he should not be required to comply as this would deprive him of a favorite working man's hobby. The trial court sent the case without decision to the supreme court asking whether the building of the coop was admissible, and whether the landlord in demanding its removal was violating article 3 of the general provisions of civil law of 1950 under which "rights cannot be exercised in a manner violating the principles of social intercourse in the People's State." The supreme court in its decision dealt with the class character of the suit, but left the case undecided, returning it to the trial court for further factual clarification. The end result could not be ascertained from the published reports.

Even before the events of 1956 the court began to be more conventional in its treatment of property ownership, and after 1956 it consistently upheld the right of an owner to use his property without greater restraint than had been required under the law as it was applied before the establishment of the People's Republic of Poland. Thus, in 1955 a plenary resolution of the civil chamber of the supreme court declared "People's legality means the duty of citizens to observe the laws in force. While imposing this duty on the citizens it is not permitted to obscure the actual meaning of the law and to expose citizens to unexpected situations and surprises." Later in 1955 the court declared "a presumption exists that the provisions of law are in conformity with the binding principles of social intercourse."

After the resistance to Soviet guidance in October 1956, the supreme court evidenced the new spirit of legality strongly. In a decision of 1961 it permitted the eviction of a cooperative by a landlord, even though cooperatives are strongly favored in the communist-led states. It said that "a demand for eviction cannot be considered an abuse of right for the sole reason that a unit of the socialized economy (a cooperative) has to be evicted, particularly when the actions of the latter constituting the basis for eviction consist in violations of law."

III. Property in Industry

Compromises such as the above worry the Chinese communists, especially when they extend to the exploitation of industrial property. Yugoslavia's pattern of decentralization of the economy to permit workers in each plant to share in the selection and dismissal of plant directors and to plan production with very few limitations set by the central government has been anathema to the Chinese, even though the
latter have permitted privately owned businesses to exist within limits and have included within the categories of property permitted in China "private property," which means in Marxist language privately owned means of production.

The Chinese communists have presented a contrast between the advanced doctrinal position that "communes" are desirable both in agriculture and industry to bring together the individual peasant households and individual artisans within a framework of communal production and the compromise made in preservation of capitalists. In the Chinese view the Russian revolution moved too fast in expropriating many privately owned industrial establishments in 1918, and all privately owned industrial establishments having more than a set minimum number of employees in 1920. Lenin's reversal of this policy in part with the introduction of the New Economic Policy in 1921, with return of medium-sized industrial establishments to private owners or sale to new entrepreneurs, had come only after chaos on the industrial scene, and the Chinese were determined to avoid moving too fast.

In view of this record of compromise with capitalists one may wonder why the Chinese are violent in their criticisms of the Yugoslavs as revisionists of Marxist doctrine, claiming that Yugoslavs are re-established on a path that will lead to restoration of capitalism. The conclusion suggested by the course of the two countries is that the Chinese recognize the existence of privately owned industrial property only as a concession of very limited duration. This is evidenced by the Chinese transition to "communes" in agriculture and in the small-type industrial sphere, while Yugoslav measures are interpreted as a permanent retreat within the "socialized" sector, which is bound to lead to even further corruption of the state-ownership system until capitalism has been restored.

Even the Russians have recognized that state ownership of the means of production does not preclude all possibility of slighting of workmen's interests by state managers intent upon making a noted production record regardless of cost in mechanical protections left unprovided or worker's rights that are ignored. While refusing to admit that a situation resembling in any degree the emergence of an administrative class in the factories with something of the same sentiments and motivations as the managers in capitalist countries, the Communist Party of the U.S.S.R. has sought to provide restraints on managers. Moreover, it has established trade union direction of what are called "permanent production conferences" and has also ordered factory Communist Party organizations to establish commissions which will exercise
control over the managers.22 The Chinese have gone even further in their restraints on managers, creating an administrative council which shares decisions so that no one individual has the power that he is given under the concept of edinonachalie or "one-man management," which Lenin favored and Stalin put into practice.23

Property incentive to production has been manifested most remarkably in the communist-led states in the wage system adopted by Stalin in 1930. At that time he denounced the concept of egalitarianism which Fabian and Marxist socialists alike had previously espoused. He introduced wide variation in pay and supported it theoretically by reference to Marx's slogan of what was appropriate to socialism as the stage through which a society on the road to communism would have to pass, namely, "from each according to his ability, to each according to his work."

IV. INHERITANCE AND SOCIALISM'S PLATEAU

The reintroduction of property incentives to achieve maximum production carried with it a new attitude toward the role of inheritance. Prior to 1930 it had been tolerated as one of the concessions appropriate to the New Economic Policy. Presumably, it would be abolished, to be replaced by a system of social insurance developed to provide for widows and orphans of the deceased bread winner of the family. Such had been the approach of the first decree of 1918 which had abolished the Tsarist inheritance law and substituted a system of administration of estates by local soviets in the interest of incapacitated family members, if any existed.24 With the New Economic Policy, the civil code of 1922 carried provisions for inheritance in limited amounts, any quantity above such amounts escheating to the state, but inheritance was limited to a narrow circle of heirs (the spouse of the deceased, his descendants, and relatives or strangers incapable of working who had been dependent upon the deceased for at least one year prior to the date of his death). It was again permitted for property to pass by will, but only to beneficiaries


33. The Chinese law has been taken from an unpublished manuscript written in 1961 by Prof. H. F. Schurmann of the University of California (Berkeley) entitled "Organizational Contrasts between Communist China and the Soviet Union." Other information on the law of the People's Republic of China utilized in this paper is taken from the research notes of Dr. Lin Fu-shun of the East Asian Institute of Columbia University.

chosen from among the statutory circle of heirs eligible to participate as intestate takers. An accompanying law introduced an inheritance tax progressing to a maximum rate of 50 per cent. When the New Economic Policy was at its height, the maximum limit on estates that might pass by inheritance was withdrawn because it was being evaded by those who gave property to their children before death, and so in 1926 with an extension of inheritance to estates of any amount, the only restraint lay in the tax law, which increased its maximum bracket to a 90 per cent.

With the passing of the New Economic Policy and of capitalism, and the change in emphasis to state enterprise, a new factor entered the scene. It took the form of encouragement of savings to the benefit of state investment. Thus, in 1928 the savings banks were authorized to accept designations by owners of government securities of persons who might place these securities in the bank's safekeeping even if those persons were outside the circle of heirs to whom property might be left by will under the civil code. In 1935 this exemption was extended to cash deposits to encourage savings, and the inheritance tax was abolished in 1942 and replaced by a schedule of notarial fees graduated up to 10 per cent.

During the war the number of killed and missing became so large that the government was faced with the problem of administration of estates in large numbers, and the law was altered again to increase the circle of heirs to include parents of the deceased who were incapable of working and brothers and sisters, if none of the closer relatives was alive. In the absence of any heirs, a testator might bequeath his estate to anyone. In 1961 a new set of Fundamental Principles of Civil Law eliminated all restriction on persons to whom property might be bequeathed.

Soviet text writers have argued that inheritance is no longer related in any way to capitalism since the property of a decedent's estate cannot be productive property. It has become an aspect of socialism as a derivative of the right of socialist ownership. In so arguing they make inheritance a natural concomitant of personal property. If personal property is to be permitted at all, its inheritance has, apparently, to be permitted also.

Justification of inheritance as an institution of personal property gives it a permanency quite different from that of the one family farm, which is clearly a compromise. So long as personal property exists, and presumably that will be for as long as the state has not withered away with the advent of complete communism, inheritance will remain. It is

35. See Antimonov & Grave, Sovetskoe Nasledstvennoe Pravo 5-6 (1955), with English translation in Hazard & Shapiro, op. cit. supra note 23, at 53.
not a compromise of temporary character; all fourteen communist-led states have retained the institution.

Can it be said that with justification of inheritance as an institution of permanency the Marxist inspired revolution has reached its permanent plateau? Can one expect a subsequent movement to the left leading to its abolition when social insurance funds reach adequate proportions throughout the communist-led states to meet the needs of widows and orphans? The communists of 1918 would have responded in the affirmative to the second question and would have resisted vigorously the implications of an affirmative answer to the first. It seems unlikely today that any communists would take the view of the policy makers of 1918. Even the Chinese retain inheritance, although they declare their opposition to what they call the embourgeoisement of society in the U.S.S.R. They fear that Soviet leaders will follow Yugoslavia back to capitalism, but they do not place inheritance on the list of institutions to be overcome in the foreseeable future.

Soviet policy makers have become keenly aware of the extent to which personal property concessions tend to corrupt the group with substantial income. They prefer to declare this corruption a heritage of capitalism in the minds of men rather than to accept it as an inevitable consequence of their decision to utilize property incentives as a spur to production. They have published decrees in 1961 and 1962 authorizing courts to deprive owners of private homes, or of other consumers' goods such as automobiles, if their purchase was not from income derived from toil. Homes and automobiles have been confiscated at such a pace under these decrees that courts have begun to criticize excessive zeal in law enforcement agencies, and the Supreme Court of the U.S.S.R. found it necessary in October, 1963, to chastize careless investigators of sources of income. At the same time campaigns against embezzlers and thieves of state property are intensified to dry up the sources of unearned income.

V. EFFORTS TO REGAIN SOCIALIST MOMENTUM

The Chinese communists have not been content with Soviet measures which seem to them to evidence the degeneration of Soviet society and

---


37. For a review of these measures, see Feldbrugge, Soviet Criminal Law—the Last Six Years, 54 J. CRIM. L. 249 (1963).
which fail to reach the trouble at the source. Their contribution to efforts to regain socialist momentum has been the commune, both agricultural and industrial. They have been embarrassed by Soviet criticism of these communes as premature, and even more by proof of prematurity in failure of communes in many regions. Yet, they have not abandoned the idea. The return to the form of cooperative farm in some cases has been only a retreat, and the communes have been preserved generally where introduced into industrial communities.

Chinese fear of a Soviet retreat to private enterprise is so substantial that the road to communism can hardly be regained; this may soon be supported by yet another event. Reports reached the outside world from Poland at the end of 1963 that a committee from the U.S.S.R. was studying the Polish practice of private household farming.38 The report states that the committee is seeking an alternative to collectivized farming in the marginal areas of the U.S.S.R. If this report proves to be true, it will look as if the Soviet model of 100 per cent collectivization, which other communist-led states have sought to emulate, was being abandoned. Though this change might seem to be slight in view of the fact that both Poland and Yugoslavia have already retreated from their earlier campaigns to collectivize, the position of the U.S.S.R. is different. It is one thing to postpone and perhaps abandon a goal in a communist-led state of little stability and short experience; it is quite another to do so in a state of nearly fifty years duration and unquestioned stability.

Soviet leaders see the danger themselves in worship of property incentives as a means to achievement of abundance and ultimate communism. The Communist Party Program of 1961 restated for communists the goal of the 1919 program which called for a society in which money would eventually disappear. More than lip service is being paid to this goal in the U.S.S.R., for measures are being introduced in that direction. These measures are much less extreme than those of the period of war communism in Soviet Russia, when postal and telegraph services were free and housing was provided without rent. They are limited to efforts to persuade citizens to work without pay in government offices, especially in the distribution of housing space. Since the work-without-pay measure is on a rotating basis, many people are being brought into the scheme, which began in Sverdlovsk and has now spread to all cities. In addition, individuals provide unpaid police service in the druchini, and they serve on the comradely courts which were given increased power in 1963 to supplement the work of the regular courts.

Although these forms of unpaid public service are being introduced with the avowed purpose of moving the population in the direction of a “moneyless” communism, it would be startling if anyone suggested that industrial or agricultural production should occur without pay in the U.S.S.R. or in the People's Democracies to the West. Everyone is being required to work in accordance with the constitutional duty to work. Exhortation of the public to respect this duty as necessary to the guarantee of the right to work is frequent in the Soviet press, but it is not suggested that work in production be without pay.

VI. Conclusion

Soviet society's leaders have made their compromise and established their balance. Property incentives are still a major feature of their plan for production in both industry and agriculture. In the U.S.S.R., doctrine still plays its part in requiring that the land and industrial property be state owned, although the lines are blurred by the concept of perpetual use. But once the boundaries of the U.S.S.R. are crossed into the People's Democracies, compromise has been made even with this doctrine. While Rumania and Czechoslovakia claim to have achieved full collectivization, both still permit private land ownership. Poland and Yugoslavia allow both private land ownership and a high percentage of private cultivation, since the peasants seem unwilling to work at maximum capacity under any other scheme.

Industry has been curtailed in all communist-led states as a private activity, although the Chinese have made more of a show of keeping their private producers than have the other People's Democracies, albeit with many restraints on labor practices and on the realization of profits. They alone, although with a later start than the other communist-led states, seem confident that the proletarian revolution has not halted. They alone persevere in a vigorous plan to move on to full communism at a fast pace asserting that their comrades in the other communist-led countries are in danger of slipping back to capitalism, if they have not done so already as has revisionist Yugoslavia.

For the outsider seeking to assess the trend, the foreseeable future lies with continuing compromise. It will be compromise with both peasants and industrial workmen. The latter will be paid on the basis of work done rather than need. Peasants will be stimulated to work harder on the soil by a variety of incentives, perhaps including even decollectivization of marginal farms within the U.S.S.R. itself. If this latter event occurs, the U.S.S.R. will be brought nearer to Poland and Yugoslavia in property relationships, and will have been moved from its
position of polar extremity in the communist-led group of states.

With such a prognosis, it is unlikely that the fears of the Chinese are to be realized. Resale of public industry to capitalists, as occurred under the New Economic Policy in the U.S.S.R., is out of the question. The scales will not be tilted so far, although there may possibly be an adoption of a system of management that allows the trade union to participate more in the formulation of operating decisions than is presently the case in the U.S.S.R. with its system of one-man management. This would not be capitalism, but it could narrow the gap between the East and the West, if such systems as that of West Germany's representation of trade unions upon boards of directors be compared, and if one considers that even in the United States pension funds of unions are invested increasingly in common stocks of corporations in whose plants the unions function. The line between management, owners and unions is being increasingly blurred if not obliterated.

In sum, the communist-led societies are far indeed from achievement of the goals set by the Communist Party Program of 1919 for Soviet Russia in implementation of the Marxist value system. Some of the goals that are still acknowledged have been postponed to a time so remote as to look utopian, although the value system has not been renounced. Perhaps current leaders of the U.S.S.R. and of the People's Democracies still anticipate achievement, but communist leaders of new generations of Russians, Poles, Bulgarians, Yugoslavs and Chinese may be content with things as they are. They have met the first requirement of nationalization of major productive resources, and that achievement may seem to be enough to assure no exploitation of man in the interest of capitalist owners and sufficient economic planning to avoid what is believed to be the waste of capitalism.

This does not mean that experimentation with social forms and the revision of law designed to bring them into being has ended. Textbook authors describing the communist-led system of government and law will have a difficult time keeping their accounts up to date. Yet, whatever experimentation occurs the social outlines of society have probably been firmly established. The principal facts and legal relationships developed in implementation of values will probably remain recognizable for the rest of the century, and even longer. Variations there will surely be, for the Soviet communists seem really to have accepted the concept of "many roads to socialism." These will probably run from the "leftist" forms of China, to the "rightist" forms of Yugoslavia, with the U.S.S.R., Poland and Hungary in between. On this scale the U.S.S.R. will remain the median, the prototype, as it has been for over 40 years.
CONTRIBUTORS TO THIS ISSUE

JOHN C. McCord II: A.B. 1950, LL.B. 1953, Vanderbilt University; Professor of Law, Univ. of Virginia.

JOHN N. HAZARD: A.B. 1930, Yale Univ.; Certificate 1937, Moscow Juridical Institute; J.S.D. 1939, Univ. of Chicago; Professor of Public Law, Columbia Univ.

SPENCER L. KIMBALL: B.S. 1940, Univ. of Arizona; B.C.L. 1949, Oxford Univ.; S.J.D. 1958, Univ. of Wisconsin; Professor of Law, Univ. of Michigan.


BYRUM E. CARTER: A.B. 1943, Oklahoma Univ.; Ph.D. 1951, Univ. of Wisconsin; Professor of Government, Indiana Univ.

CHARLES S. HYNEMAN: A.B. 1923, A.M. 1925, Indiana Univ.; Ph.D. 1929, Univ. of Illinois; Distinguished Service Professor of Government, Indiana Univ.