

1963

## Book Reviews

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### Recommended Citation

*Book Reviews*, 31 Fordham L. Rev. 615 (1963).

Available at: <https://ir.lawnet.fordham.edu/flr/vol31/iss3/10>

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## BOOKS REVIEWED

**Soviet Administrative Legality.** Glenn G. Morgan. Stanford: Stanford University Press. 1962. Pp. x, 281. \$6.00.

Professor Morgan's book represents a timely and well-labored attempt to fill a conspicuous gap in English-language source material in the area of Soviet Institutions. The essential subject matter of the work—the general supervisory function of the soviet procurator's (attorney general's) office—readily commends itself to the student of comparative government and international affairs (which in these crucial times we all must be), as well as to the specialist in soviet studies or comparative administrative law.

With the proliferation of bureaucracy, characteristic of all nations (including our own) in this century, the question of the limitations or "checks" to be erected on the exercise of administrative power is clearly raised.<sup>1</sup> The purpose of such limitation is twofold: (1) To ensure that lower-level administration conforms to overall policy mandates and rulings from higher echelons of the governmental matrix; and (2) To safeguard individual rights which invariably come into conflict with such administration. In the western democracies both policies have been thought worthy of emulation. Thus, the attempt has been made to keep in balance the oftentimes antithetical ends of efficient, smoothly operating government and the insulation of the rights and interests of dissident individuals and minorities. Indeed, the accomplishment of this objective constitutes the *raison d'être* of our Bill of Rights and is at the very heart of the doctrine of judicial review.

The ultimate control device varies among the countries, but characteristically it has been reposed in a body other than the administration itself. Whether by judicial courts (as in the United States), administrative courts (as in France) or *Ombudsman* (as in Sweden), Lord Acton's dictum<sup>2</sup> has been thought persuasive to the end of securing some degree of check and balance in the operation of the governmental organism. Where the only restraint upon the exercise of power is self-restraint, one labors in an Alice-in-Wonderland world to say that the legality of administrative action, assessed in regard to either of its dual aspects (mentioned above), is susceptible of actualization and this is true whatever is the repute (in honesty, education, and so forth) that the particular administration may enjoy.

Professor Morgan's inquiries afford—with a great wealth of translations from primary source material—substance for assessing *one* means by which the soviets have sought to check or limit administrative action in that country.<sup>3</sup> The technique discussed is that of the "general supervision function of the procurator's office," the history of which the author traces in great detail from its incipiency in 1711, through its demise in the reform period of the later Romanov Empire, its resuscitation by the Bolsheviks in 1922, and finally, its most recent renaissance since the death of Stalin and the renewed attention to "socialist legality." The views of government officials and academicians as to the meaning and proper scope of the doctrine are presented exhaustively, as are the means whereby the various procurators have sought to effect its accomplishment.

The difference from western practice is readily evident as the historical story

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1. This subject is treated in detail in Burrus, *Administrative Law and Local Government*, soon to be published by the Michigan University Legal Publications.

2. "Power corrupts, and absolute power corrupts absolutely."

3. The Party, of course, constitutes another basic check upon lower-level officials.

is unfolded. The characteristic separation of powers, which in its current application means a nonadministrative check upon the legality of administrative action, is curiously lacking in the soviet model.<sup>4</sup> As the author summarizes the basic theme of his work:

In essence [the supervisory] . . . function consists of one branch of the Executive checking on the legality of the operations of the other governmental offices and officials. Therein lies its peculiarity, for it is not utilized as a means of protecting the rights of individuals through challenges of governmental actions, but as a tool of the State in ensuring adherence to State goals and policies. (p. 1.)

As can be seen, the concept of "legality" means something very different to the soviets than it does to the western world. The use of such words or concepts by the soviets in a different meaning from that employed in the West has, as the reviewer has pointed out elsewhere,<sup>5</sup> constituted a constant source of confusion in the understanding by the two systems of one another's philosophical premises and practical undertakings. In the instant focus, "legality" is, to the soviets, largely confined to the literal compliance with the dictates of higher levels of the bureaucracy; to secure, in other words, exactness of symmetry in the pyramid of administrative orders from the apex in Krushchev down to the lowest level administrator in a distant Siberian commune. The goal of efficient government is not to be balanced with individual safeguards by some independent arm of the governing mechanism, as, for example, the judiciary. Rather, the executive serves to check itself—the higher echelons of the lower—and its function in this regard is to ensure that the directives from above are carried out, and that there is no conflict of subordinate with upper-level determinations. The individual rights aspect, so basic to western notions of the "Rule of Law," to wit, "legality," is completely excised from the province of "soviet legality."

Much more could be said in this regard. The fruits of productive thought and useful comparison blossom readily from the fertile seeds contained in Professor Morgan's book. The author himself, however, stops short of analytical treatment; and this, I submit, constitutes the only serious shortcoming of the undertaking. Elaborate translation and delineation of soviet thought and practice fills a previous gap in the English-language source materials, and thus constitutes a vital first step in analyzing the significance of the concept of "legality" in soviet administration. The raw data itself, however, is not self-explanatory; and, this is especially true in an area where the same words or concepts mean different things to different people. The point is simply that the mind uneducated in the mysteries of the soviet enigma<sup>6</sup> cannot readily draw the inferences and derive the necessary or probable conclusions even given the premises which the author has provided in great detail. This is intended not so much as a criticism, however, as a plea that the author follow up what is essentially a *source-book*—and, a very excellent and exhaustive one—with a *thought-book*, suggestive of the implications and inferences which may be drawn from this material, and of its significance to our dealings with the Soviet Union in the future.

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4. There is a very limited scope of judicial review of lower-level administrative action in the Soviet Union. Morgan, *Soviet Administrative Legality* 1-2 (1962).

5. See Burrus, *The Soviet Law of Inventions and Copyright*, 30 *Fordham L. Rev.* 693, 721-22 (1962) ("rights").

6. See generally Pares, *Russia* (1949).

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**Government Contracts Handbook.** Gilbert A. Cuneo. Washington, D.C.: Machinery and Allied Products Institute and Council for Technological Advancement. 1962. Pp. ix, 374. \$25.00.

It is to be seriously doubted whether any field taxes the comprehension of the executive of a manufacturing corporation, and his legal adviser, as does that of United States Government contracts.

In themselves, the statutes and the court decisions in this area are not unusually numerous or complex. There does exist, however, a prodigious quantity of procurement regulations,<sup>1</sup> which frequently do more than merely amplify the statutes. Such regulations touch on virtually every aspect of securing and performing government contracts.

By far the greatest obstacle to understanding government contracts, in the opinion of the reviewer, has been the inability to synthesize the statutes, regulations, standard contract clauses, court decisions and boards of contract appeals decisions.

In his relatively short book, *Government Contracts Handbook*, while writing "a practical working handbook for the business executive charged with the administration of government contract work and for the company legal adviser similarly engaged" (Preface). Gilbert A. Cuneo has successfully sought to meet this problem of synthesis.

The author brought to the writing of this work a rich background in government contracts. A frequent lecturer and the author of several law review articles on government contracts,<sup>2</sup> Mr. Cuneo was a member of the War Department Board of Contract Appeals and its successor, the Armed Services Board of Contract Appeals, from 1946 to 1958. He is the chairman of the Public Contracts Division of the Administrative Law Section of the American Bar Association.

The format of the book is generally based on the chronological sequence of events that are apt to occur during the life of a contract. The chapter headings indicate not only the format of the book, but also its scope: (I) Basic Considerations; (II) Methods of Procurement; (III) Types of Contracts; (IV) Contract Modifications; (V) Subcontracting; (VI) Contract Financing; (VII) Patents; (VIII) Technical Data; (IX) Inspection, Acceptance and Payment; (X) Default Termination—

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1. See Air Force Procurement Instructions, 3 CCH Gov't Cont. Rep. ¶ 42000; Armed Services Procurement Regulations, 2 id. ¶ 32000; Army Procurement Procedures, 2 id. ¶ 36000; Atomic Energy Commission Procurement Regulations, 4 id. ¶ 68000; Defense Supply Procurement Regulations, 3 id. ¶ 40000; Federal Aviation Agency Procurement Regulations, 4 id. ¶ 70000; Federal Procurement Regulations, 4 id. ¶ 60000; General Services Procurement Regulations, 4 id. ¶ 67000; National Aeronautics and Space Administration Procurement Regulations, 4 id. ¶ 69200; Navy Procurement Directives, 4 id. ¶ 63000.

2. Cuneo, Armed Services Board of Contract Appeals: Tyrant or Impartial Tribunal?, 39 A.B.A.J. 373 (1953); Cuneo, Determination of Government Contract Disputes, 4 Prac. Law. 54 (March 1958); Cuneo, Development of the Administrative Record, Gov't Cont. Rev. (Lupton) 4 (Nov. 1957); Cuneo, Disputes Between Subcontractors and Prime Contractors, 16 Fed. B.J. 246 (1956); Cuneo, Extra Work Under Government Construction Contracts, 24 Fordham L. Rev. 556 (1955); Cuneo, Judicial Review Under the Wunderlich Act, 17 Fed. B.J. 626 (1957); Cuneo, Research and Development Problem Areas as Reflected in Board of Contract Appeals Cases, 17 Fed. B.J. 386 (1957); Cuneo, Waiver of the Due Date in Government Contracts, 43 Va. L. Rev. 1 (1957).

Damages Against the Government; (XI) Termination for Convenience; (XII) Price Adjustments; (XIII) Cost Principles; (XIV) Audits; (XV) Disputes; (XVI) Relief Other Than Through the Board of Contract Appeals; (XVII) Statutory Renegotiation; (XVIII) Small Business; (Appendix I) Basic Principles of Government Contract Law; (Appendix II) Pertinent Statutes; (Appendix III) Selected Forms Used in Government Contracting.

Footnotes and individual bibliographies appear at the end of each chapter and of the first two appendices. The bibliographies contain selected citations of 122 articles that have appeared in thirty-three law reviews, including eleven articles that have appeared in this Review. These bibliographies should prove invaluable to lawyers.

Attorneys reading the book, however, should bear in mind the fact that it is not a textbook in the traditional legal sense. Accordingly, a lawyer attempting to deal with a difficulty in government contracts may find that his specific problem has not been treated. For example, in reading Chapter IV, "Contract Modifications," one might expect to find a discussion of the rights of a contractor upon receipt of defective government-furnished property, which has been the source of many appeals to the Armed Services Board of Contract Appeals.<sup>3</sup>

On the other hand, at many points in the text, the author has ended statements of general principles with references to administrative and judicial precedents, which lawyers will find to be of great value.

Mr. Cuneo's book is a major contribution to the law of government contracts. It represents the most important single step in many years towards a goal long awaited by those interested in government contracts—publication of a definitive textbook of the calibre of *Corbin on Contracts* and *Wigmore on Evidence*.

In its primary appeal to corporate executives, it should serve to dispel much of the frequently voiced antagonism towards "government red tape," by showing corporate executives the reasons why the Government operates as it does with respect to government contracts and contractors.

JAMES V. JOY, JR.\*

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3. Austin, Digest of the Decisions of the Armed Services Board of Contract Appeals 1955-1956, at 52-53 (1959).

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