the Middle East—great self-control is required from both sides, who must co-operate in good faith in its meticulous execution and in serving its ultimate purpose—the establishment of a lasting peace. In the absence of this, no Commission or other UN presence will achieve anything.[3]

Dr. Bar-Yaacov's *Israel-Syrian Armistice* was written before the June War and it would be interesting to know whether he would still maintain that "it is conceivable that in deference to the desire of the Great Powers and the United Nations Organization for peace in the area, and in view of Israel's deterrent military power, Syria might revise her attitude and consider that a stable armistice would be in her own interest. . . . Given the mutual desire to achieve tranquility, one might expect that both parties would be prepared to take account of changing circumstances and make concessions."[4] At the same time, it is as well to be reminded that when the Armistice Agreements were signed, it was not envisaged that the Security Council would deal with every incident, however minor, constituting a breach. It would only deal with serious armed clashes and would do so, not in accordance with the Agreement, but under the ordinary terms of the Charter. It may well be that any future Armistice Agreement, whether in the Middle East or elsewhere, should attempt to be far more specific as to when the powers of the Council become operative and should expressly seek to make the United Nations a party to the Agreement with its terms being supervised actively by United Nations' representatives on the spot, enjoying the right of initiative and not having to wait for one or other of the parties to lodge a complaint and invoke their participation.

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3 At 286.
4 At 287-8.

LAW IN IMPERIAL CHINA. By Derek Boddle and Clarence Morris. Cambridge: Harvard University Press; Toronto: Saunders. 1967. Pp. xiii and 615. US $17.50.

THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA, 1949-1963. By Jerome Alan Cohen. Cambridge: Harvard University Press; Toronto: Saunders. 1968. Pp. xvi and 706. US $15.00.

Until comparatively recently the attitude of most western lawyers towards foreign law was narrow to say the least. There was awareness of the Common Law, of the Code Napoléon, of Jewish Law, of Roman-Dutch Law, and of Hindu and Muslim Law, but of little else. Moreover, with the dissolution of the British Empire knowledge among English lawyers of the content or importance of Hindu and Muslim Law declined. Few westerners showed any interest in the possibility of the systems of law that existed in Asia outside of the Indian sub-continent. To most Adat was completely unknown, while ignorance of or lack of interest in the law of China and Japan was easily explained away on the ground of language difficulties. The defeat of Japan and the imposition of MacArthurian rule awakened some Americans to the fact that a different and strange system of law operated in that country, and

the occupying authorities proceeded to modify it as rapidly as possible. Interest in China declined with the defeat and flight of Chiang Kai-shek, only to revive again with the realization that the People's Republic could not be wished away, and that the acquisition of nuclear know-how by the Peking régime intimated that the new China was a power that would have to be reckoned with. Gradually it was felt that the more one knew about China the better it would be in the future, and Chinese studies in the universities became popular and the "in-thing."

The newly instituted Harvard Studies in East Asian Law will assist in filling the void, and it will no longer be possible for western lawyers to plead inaccessibility or unintelligibility of material. The first two volumes in the series are devoted to Chinese law, the first on *Law in Imperial China* and the other on the *Criminal Process in the People's Republic*. Professors Boddle and Morris indicate that Chinese written law dates from as early as the sixth century B.C. and, as is so often with the development of such law, was intended to deal with the breakdown of the social and political order and was, therefore, primarily penal in character. Unlike other systems, however, it was never considered to be of divine origin.[1] Its development was affected by the conflict between the Legalists, who were interested in the political control of the mass man with all being regarded as equal before the law, and the Confucians, whose main concern was moral development of the individual, depending on his place in society. The bulk of the work is devoted to an analysis of the position during the Ch'ing dynasty which lasted from 1644 until the establishment of the Republic in 1911. In addition to analysing the Code, the penal system and the organization of the judiciary, the learned authors have provided summaries of some 190 law reports.

One of the most fascinating of the cases relates to nocturnal entry into a domestic residence without proper cause. It appears that X, because of insanity, went to sleep partially clothed in Mrs. Y's bed. When Mrs. Y entered the room and saw him she screamed. X thereupon embraced her and would not release her. Hearing Mrs. Y's screams, her nephew Z entered the room, and believing that X was trying to rape his aunt, stripped him, beat him and drove him out. Due to the cold weather, X froze to death. In accordance with the statute relating to the punishment of those "related within the five degrees of mourning to a woman who is the object of attempted rape" who kill the would-be rapist, Z was sentenced to 100 strokes of the heavy bamboo and three years penal servitude. At the same time, X's father was sentenced to 80 blows in accordance with the statute relating to the punishment of relatives of an insane person failing to report that person to the authorities, thereby allowing him finally to kill himself.[2]

Students of legal history will be aware how frequently in the common law it would appear that judicial reason has varied in accordance with the state of the judicial digestion. In contrast to this, "the few cases in our collection that can be viewed as instances of judicial whim are not surprising. More significant is the general conclusion that Ch'ing penal procedure was systematic, reasoned, and an outgoing effort to

1 At 49.
2 At 312-3.

effectuate a few important policies," which were only rarely ignored, and the chief of each was that the punishment should fit each crime.[3]

Many critics of modern China apply to it the same sort of emotional reaction, based on ignorance, that was applied to the Soviet Union in the years between the Revolution and the rise of Hitler. It is easy to say without examination that the People's Republic is a lawless and perhaps even an anti-legal State, and the Cultural Revolution and western ignorance as to its real significance add fuel to such a view. How far this is from the truth is made clear by Professor Cohen's study of the *Criminal Process in the People's Republic of China* between 1949 and 1963, which also includes a glossary[4] that "merely indicates the English terms that have been found to suit the meaning of the Chinese terms in the particular contexts in which they appear. Although the English equivalents given are certainly not the only ones that could have been devised, they are, it is hoped, adequate to the extremely difficult task of finding linguistic analogies between the terms used by systems as different as the Anglo-American and the Chinese Communist."[5] It is perhaps unfortunate that English judges sitting on Commonwealth cases have not always been aware of this *caveat.*

As in other Communist countries, "the criminal process has faithfully reflected the twists and turns that have occurred in the Party's 'general line',"[6] although the liberalization processes have not been nearly so far-reaching. At the same time it must be recognized that, while all law is intended to preserve the society in which it operates, the nature and purposes of societies differ, and law in China should not necessarily be measured in the same way as it is in America or England. Thus, the purpose of the criminal law in China is not merely to punish the offender, but also to "reform, deter and educate the populace" and occasionally some who might be considered innocent in the west might be punished, while the guilty go free. Nevertheless, "from the State's point of view [and this is possibly the standard by which the criminal law should be measured], it can be argued that the contemporary criminal process is not arbitrary in character."[7]

Some of the criticisms that Professor Cohen makes of the position of the individual accused and his lack of rights[8] might equally be made of the system in France if the reports of the treatment of student and other dissidents in 1968 have any foundation, while at times the situation appears little different from what is in the southern States of the United States when a Negro is involved. Moreover, the learned author reminds us that much of what goes on today is traditional in China, where the interests of the State have always prevailed over those of the individual. It is for this reason that the almost contemporaneous publication of the two works under review is so useful.

In addition to professor Cohen's fascinating introduction on the nature of the legal idea in the People's Republic, he provides a comprehensive section of texts and analysis thereof. It is in this part of

3 At 541.
4 At 663-93.
5 At viii.
6 At 47.
7 *Ibid.*
8 At 49.

the book that we find comments that may be of most significance for the western lawyer. Thus, crimes are "all acts which endanger the people's democratic system, undermine the legal order or are socially dangerous and, according to law, should be subject to criminal punishment."[9] For this reason bigamy is criminal since it is directed against the family, whereas adultery—the sole purpose of which is indulgence in sexual intercourse—is not.[10] It does not take much effort to think of the terms that would be required to make this definition of crime serve the purposes of most criminal jurisdictions.

For the western lawyer, it is possible that the most interesting portion of this part of the book devoted to the criminal process as such is made of chapter 4 on "rehabilitation through labor" and chapter 11 on "reform through labor and release." They may also be attracted by the "moderate" type of brainwashing where fellow inmates of a cell try to "cure" a pickpocket of his "dipping" habits.[11] Equally interesting are the descriptions of the treatment of pregnant criminals.[12]

Reading books like these should widen the understanding of 'law' of the most egocentric of lawyers. They also have a major contribution to make to international understanding and a proper realization of the rule of law.

We look forward to further volumes in the series.

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9 At 318.
10 At 319.
11 At 611.
12 At 621-2.

EXPLORATIONS IN AEROSPACE LAW. Selected Essays by John Cobb Cooper, 1946-1966. Edited by I. A. Vlasic. Montreal: McGill University Press, 1968. Pp. xx and 480. $11.50.

John Cobb Cooper was a remarkable man. The world of scholarship was fortunate that his life was a long one, for after a successful career as a practicing lawyer and a businessman, he turned his mind and energy to the study of aerospace law. He was 58 when elected a member of the Institute of Advanced Study at Princeton; 59 when his first major work, *A Right to Fly,* was published in 1947; and 63 when he became the first Director of the McGill Institute of International Air Law (later renamed the Institute of Air and Space Law).

Professor Vlasic has selected 28 of Cooper's pieces. They range incisively over the whole field of international aerospace relations—from "Notes on Air Power in Time of Peace", a summary of the physical, cultural and political elements in a State upon which air power depends, to "A Study on the Legal Status of Aircraft," a well-reasoned analysis of one of the central legal problems in International Air Law; from "Roman Law and the Maxim *'Cujust est solum'* in International Air Law," a classical piece of historical scholarship, to "Who Will Own the Moon? The Need for an Answer," an examination of one of today's pressing problems. Each selection is prefaced by a very short note prepared by Cooper himself for this book.