Soviet Civil Law (Vladimir Gsovski, 1948)

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A critical appraisal of a verbal opus needs to evaluate the obscure bias which inherently rests in the assumed relevance (to something) of the author’s subject matter. Scholarliness internal to the subject matter is not a sufficient criterion of worthiness—consider as an extreme an able treatise discussing all the variations of the stone flagging on a college campus as to size and direction of position. At the outset it must be conceded that Mr. Gsovski has handled his subject with a high degree of technical proficiency and has brought diligent effort to bear on the assembling and editing of his materials—minor quarrels with the accuracy of the author’s citations are left to experts in the field of Soviet source materials.

The study of comparative law has actually in most instances amounted to a study of the symbols of a formalized system of so-called rights, privileges and immunities existing between individual and individual, individual and group, and group or individual and government. That the answers to the real workings of these relationships are to be found by examining phenomena other than such symbols can scarcely still be labored. Mr. Gsovski appears to be under no illusions on this score when he says with only slight anticlimatic effect (Vol. I, p. 9): “Soviet law cannot be understood without its social and political background and without some historical information.” So far as the author’s heed to his own warning is concerned, one can only wish that it had been stronger. Deeper excursions into the law-in-action are to be desired. Particularly are the approaches of the cultural anthropologist and the depth psychologist ¹ in order, though perhaps not in force in this work.

These tomes are relatively free of internal bias, the author’s anxiousness or over-compensation in this respect possibly accounting for the absence of more “extra-legal” materials. It is, however, something of a relief to be free of the I-have-seen-Russia-firsthand treatment, one which almost invariably is found to be the most heavily slanted.

Volume I, titled “Comparative Survey,” consists of a descriptive analysis of the whole area embraced by the classical concept of law,

¹Cf. Spitzer, Psychoanalytic Approaches to the Japanese Character, 1 Psychoanalysis and the Social Sciences 131 (1947).
predicated almost entirely on an examination of authentic Soviet sources. Considerable emphasis is laid upon the theoretical bases of legal doctrine. Volume II consists of full translations of the major codes and is, perforce, most closely analogous to an American statutory compilation long overdue for an extensive revision.

The author attempts to maintain and is somewhat troubled by the distinction between public and private law. The necessity for delineating the boundaries of this dichotomy seems particularly fruitless, yet it is hard to resist the temptation to plunge into the pregnant implication contained in the author's reserved statement, "... the Soviet private law shows in many aspects features of public law." (Vol. I, p. 3, n.2). If by "private" law we refer to those doctrines in which society has a relatively slight interest in the outcome, we find that the differences are not great when compared with other non-primitive legal systems. The exact extent of such differences may well afford considerable pleasure to quibblers over legal niceties.

An example of what is worth the attention of semanticists throughout the work is the distinction to be made between (a) the abolition of the concept of private ownership of real property and (b) the literal taking over by governmental organizations of certain private properties, the former quite probably turning out to be relatively unimportant, and the latter of real significance.

These volumes lend themselves as well to a start in formulating a systematic and comprehensive blueprint of the role of the "law" (for there can be no doubt that "law" was used, certainly in the Soviet regime) in sustaining, consolidating, and furthering the aims of social revolutionaries. For example, we may note that one of the very earliest post-revolutionary steps was the liberalization of the marriage relationship; subsequent tightening of the bonds of matrimony and other marital obligations quite obviously was in response to the considered need for a strong familial unit in the orthodox Western traditional (Vol. I, c. 4, §1). Another example might be the early vigorous efforts toward the abolition of nationalism (Vol. I, pp. 136 et seq.) (via restrictions on the teaching of history among other "legal" devices) and the subsequent about-face involved in embracing chauvinism.

Throughout Volume I the reader can hardly help being impressed by the tremendous efforts of Soviet jurisprudents to evolve satisfactory theoretical rationales for various legal dogmas. Nor does the emphasis on such activity appear to be restricted to the aca-
demicians themselves—quite to the contrary, top-level policy makers demand the evolution of a theory compatible with practice. These intellectually compulsive undertakings place a severe strain on their creators when a shift in government policy is announced. It is not impossible to conjecture that contradictory absolutes may some day internally plague the top Soviet policy makers—the justification of expediency is wearing thin.

Though this work does not classify Soviet legal techniques in terms of values sought,\(^2\) it is apparent that Russian legality is, to say the least, no less preoccupied with the distribution of wealth, power, and income than are those of more conventional governments. There is little formal written concern for what we may speak of as non-economic values. This is, of course, what one might expect of a system based on the classic obsessive concept that the distribution of wealth is the sole determinant in fixing class stratification, including the dominant position of the ruling class.

The author touches in not too small measure on the role of the Communist Party vis-a-vis the Russian government (Vol. I, pp. 62, 79). Fashionable conclusions are reached that the extra-legal effects of the Party on the machinery of the government make for a role "totally different" from that of a political party in a democratic country. The top-levels-fusion principle is set forth as something completely alien to the democratic political arena. With the fact that the Communist Party has differing objectives from Western political parties, that it has attained a far greater degree of discipline, and that adherence to party principles is maintained by something more vigorous than the devices of loyalty, prestige, or personal gain, there can be no quarrel; but with the implication that the party hierarchy in democratic countries does not realistically perform the function of making important governmental policies, and frequently through informal fusion, there must be disagreement.

Particularly carefully and interestingly presented is the metamorphosis of the current doctrine in respect to tort liability (Vol. I, c. 14). Committed early to the concept of liability based on mere "causation" and the corollary limitation of considerations of "fault," even the sophisticated Soviets were apparently unable to cope successfully with preserving the bifurcation so long as compensation depended on individual efforts within the framework of a legal sys-

tem preserving many of the attributes of an adversary proceeding. Both the substantial reversion to fault concepts and, peculiarly, the tendency to be "defendant-minded" in their application (Vol. I, p. 522) fortify the overall conclusion that the societal advantages of compensation for injury can only be clearly and evenly attained through the technique of premium assessment and governmental administrative disbursement such as in our Workmen's Compensation Acts. But this manifestly raises difficulties where the great preponderance of potential tort-feasors are governmental organs, entities, and subdivisions and there exists a high degree of sensitivity on the sovereignty score.

Again we are shown dialectic legerdemain at work in the reversal from the original strong Marxian proscription against the institution of inheritance. Today there appears to be no restriction on the value of an inheritance, governmental "fee" even being maximized at 10%. Thus we would seem in this area to have arrived at a more ruggedly individualistic attitude than in the citadel itself. Before embracing such a conclusion, however, we ought to know whether the present social doctrine on inheritance in fact is creating the accumulations of wealth that make for a significant disparity among the citizenry. Or are there devices and patterns that present such a succession windfall from any fair amount of applicability? Most valuable would have been, if available, statistics as to amounts of inheritances and other testamentary dispositions, using the term loosely.

No treatment of a legal system could be adequate without a consideration of the role of the judiciary (Vol. I, c. 7) and the lawyery. In Anglo-American jurisprudential and political philosophy all but a few still shy away from assigning any role to the judiciary other than that of applying the law. That the Soviets have frankly assigned a subordinate task to the judiciary is well spelled out by Mr. Gsovski. That the function of their judiciary is radically different from ours is not evident in spite of the fact that the functioning is wholly dissimilar; that is, the American judiciary is basically geared to the preservation of American values and norms, and the decisions and interpretations are rendered in the light thereof, while the Russian is devoted to the furtherance of socialist objectives. In the latter case the implementation of cultural and political objectives is almost primitive in its directness, while in the former, centuries of syllogistic enterprise have tended to obscure the role (and make difficult the task of those trying to reduce the obscurity).
If by a lawyer we mean one skilled in the manipulation, invocation and avoidance of sanctions imposed by virtue of governmental authority, we find him significantly arrayed in the Soviet scheme on the side of government as part of an enforcement hierarchy parallel to the hierarchy of courts (Vol. I, pp. 846 et seq.). He seems to be a combination of district attorney and FBI agent. In his supervisory capacity he appears, strangely enough, to be a relic from Czarist regimes. The private practitioner as we know him does not appear to be an important factor, rather obviously because (1) there are no affluent private entities by whom he can be recompensed, and (2) there are inherently great limitations on the extent to which he may go in opposing government. As a consequence the “private” practitioner is relegated to the status of a sort of legal-aid clinician, in which capacity, in relatively innocuous areas, he may espouse and advocate in some degree; and more recently he appears to be used in arbitration procedures. The text is silent on the methods, techniques, and tactics employed by attorneys in shaping the results of a trial.

Soviet Civil Law will be many things to many people. To this reader it is a chronicle of lego-philosophical bravado. Having coined the word “contradiction” and used it with the full measure of opprobrium towards capitalistic systems, the Marxists appear desperately determined to verbalize away by elaborate rationale any seeming disparity between line and life. Objectively they seem to do no better job than we do, but apparently they are better satisfied with their efforts. For those whose business it is to seek for breaches in sovereign walls sufficient to emit rays of rapprochement light, a chink may lie, by way of acceptance of some Western norms, in this self-satisfying capacity of the Communists for making the pragmatic fit the credo.

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