Babb (Trans.): Soviet Legal Philosophy

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some national regulation over the bars of each state. He appears to advocate appropriations of public funds to a quasi-public body similar to library boards or port authorities, which could be representative of the court, the organized bar and the general public. He would also like to see implementation of the Poor Litigants Statute, a proposal which dates back to 1924.

In summarizing the problem of financing generally, he concludes that "If Legal Aid Officers and attorneys in private practice could both receive reimbursement from public funds, in proper cases and under suitable safeguards, for necessary court work carried on in behalf of persons unable to pay attorneys' fees, it would relieve materially the financial burden on private resources." My quarrel here is with the apparent assumption that the primary source should be private sources. In view of the large sums which, I am convinced, an accurate study of need would show are necessary, the principal financial support should come from public funds. And these funds should be supplemented, as far as possible, by private resources. Privately financed legal aid offices should be continued to provide leadership in developing techniques and standards of service.

Brownell eloquently states:

"The individual does not exist to serve the state. The state exists to serve the individual. The object of law is to protect the dignity and worth of every human being, whatever his income. American history demonstrates that our national strength is founded on individual opportunity and freedom.

"If law is to fulfill its important mission, the facilities of Legal Aid in the United States must be materially strengthened, for here is the tested and exclusive means of assuring that every citizen stands equal before the law."

My only regret is that an otherwise excellent study should be marred by differences of opinion among the members of the Survey Council on an issue which does not exist.

ALEX ELSO†


When the American Council of Learned Societies sponsored its translation of Vyshinsky's The Law of the Soviet Union many turned to it with high hopes of finding an exposition of the basic premises and intellectual currents of Soviet legal thought. But its 750 pages of tedious formal description, in-

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terspersed with virulent abuse, effectively dispelled those hopes. The Council's current offering, *Soviet Legal Philosophy*, should more than recompense the professional and lay reader for the previous disappointment. This volume is composed of seven major selections from leading Soviet jurists, representative of each stage of Soviet development from the Revolution to the present. The editors have interpolated shorter pronouncements by Lenin, Stalin and Vyshinsky, each designed to state official political dogma to which the changes in legal theory correspond. Professor Hazard's excellent introductory essay provides biographical sketches, and relates each selection to the historical and polemical context in which it was written.

I

A short introductory lecture by Lenin on the state is followed by a series of selections first published in 1921 by Pavel Ivanovich Stuchka, organizer of the body now known as the Institute of Law of the Academy of Social Sciences of the U.S.S.R. His primary thesis is that society is a whole, changing and developing according to its own laws. "Explanations" of social phenomena must lie on the purely social level. Therefore, he urges, jurisprudence must cease treating law either in terms of individuals or eternal values. Law is solely a social phenomenon, a system of social relationships. "He who has understood that the institutions of family, property, inheritance, purchase and sale, and so forth are nothing but legal relationships—and consequently social relationships of human beings as well—will have his eyes open also to the social relationships latent behind every genuinely legal clause of a statute." The only constant factor in law is that it always "corresponds to the interests of the dominant class and is safeguarded by the organized force of that class."

In a classless society, it follows, there can be no law. "and it is only the most undiscriminating application of contemporary terminology to antique society that creates illusions such as this."

Mikhail Andreevich Reisner, in the next selection contends that Stuchka's identification of law and force is an "essentially meaningless definition." In a bold and imaginative essay, Reisner maintains that Stuchka's denial of the normative element in law reduces the claims of the proletariat to political and economic importunities. They "lose all the force of an ideal robed in legal vestments." The object of such works is clear: "to invest the dictatorship of the proletariat with the decent garment of bourgeois-like law at whatever cost."

In prophetic words, Reisner warns of the results of such thinking:

"The state under the authority of the proletariat will constantly be brought into association with the bourgeois state, and for the mass it will be difficult to distinguish the present order from the future order. In each of them there is the dictatorship of a definite class, the old apparatus remains, the principles of executive authority are old, and if
the blue policemen . . . be converted into red policemen, . . . this will entail such an affirmation of the old ideology under the banner of the dictatorship of the proletarians, that the dictatorship will—in the shape of a transition form—create a dictatorship of a proletarian chancellery, police station and barracks. . . ."

Reisner attributes Stuchka's errors to his failure to recognize that within the Marxist framework law is an ideological form as well as the coercive social control of the dominant class. Marxism knows not only "dictatorship law" but also a "right to revolution." Starting with Petrazhitskii's system of intuitive law, he develops a theory of intuitive class law which provides the basis of the "revolutionary consciousness" so prominent in the Soviet ideology of the twenties. The specific indicium of law for Reisner is not coercion but a sense of justice, in turn closely associated with the concepts of equality and inequality—a sense of justice which is the intuitive reaction of social groups determined by their position in the class structure. Law will disappear in the communist society because the source of law is class conflict in which the ruling class invokes the concept of equality in law to hide inequality in fact. When equality in fact is achieved, the formula of "from each according to his ability, to each according to his need," a formula which economically assures that which is unequal to each unequal person, will destroy law.

Unlike Reisner, who, accused of "idealizing" Marxism, had a temporary impact, Evgenii B. Pashukanis was a major influence in Soviet legal development. His most significant work, The General Theory of Law and Marxism, published in 1924 and reproduced here in full, established him as a first-rate legal thinker by any academic standards. His book develops what has come to be known as the "Commodity Exchange Theory of Law."

Pashukanis starts from two fundamental Marxist premises: (1) law is an ideological form reflecting the basic economic organization of a society, and, (2) in communist society law and the state will wither away. Since the basic institution of capitalistic society is exchange, bourgeois law is permeated with the concept of exchange. Contract is king not only in the marketplace but in criminal law, in the institution of marriage, and every other phase of bourgeois jurisprudence. It is a mistake to view law as authoritative social control because social control in its most naked forms, such as the army or slavery, is precisely the opposite of what we think of as law. Law emerges in society when reciprocal relations develop between individuals each of whom has certain rights and duties. The basic legal concept, therefore, is the legal subject who possesses rights and duties. He is only the juristic aspect of the economic man in the marketplace. Modern theory is wrong in deriving individual

rights from the legal order, because the legal order exists to protect the individual's rights as a trader, rights that precede law.

The essence of bourgeois law, Pashukanis maintains, does not lie in its use as a means of exploitation, as the instrument of the ruling classes, because class domination can exist without law. Its essence lies in the particular form of capitalist exploitation: the idea that the relations of capitalist and worker are established through contract, through exchange of commodities in the market.

Since the conception of law postulates reciprocal relationships between autonomous individuals, it follows that it is only with the development of capitalism that a fully developed legal system can emerge. In fact, there is no law except bourgeois law. And, so long as economic exchange exists within a socialist society, its law will remain bourgeois. Only when all exchange has been eliminated and replaced by the system of "from each according to his ability, to each according to his needs" will the legal superstructure disappear. Man will no longer be an autonomous end in himself—the economic, legal and moral trader—but will be transformed into a wholly social animal whose self-interest is identified with that of the social group.

In the late twenties, Pashukanis, then the leading spokesman of Soviet jurisprudence, came under heavy attack as a follower of the discredited Bukharin theory of the withering away of state and law. This was the period of the Five-Year Plans, the rise of Hitler, the Stalin Constitution, the Soviet abandonment of the policy of world revolution in favor of collective security abroad and of building socialism in one country at home. Modifying his earlier position, Pashukanis sought to adapt himself to the new orthodoxy which recognized the necessity of the stabilization rather than the withering away of law. But the attempt was unsuccessful, and he finally fell victim to the 1938 purges.

The final selections in this collection are from an authoritative legal textbook written in 1940, and from the journal of the U.S.S.R Academy of Sciences in 1945. Starting from Stalin's conclusions that communism could exist in one country and that under prevailing world conditions the state as an instrument of compulsion must continue to exist and indeed be strengthened, they elaborate a legal theory which represents present-day Soviet orthodoxy. Theoretically the ultimate withering away of the state is maintained, as is the Marxist concept of law as the instrument of the state and the state as the instrument of the dominant class. But the emphasis is on the gradualness of the transition from capitalism to communism, on the need for flexibility in theory. They look to further changes in the state directed towards further democratization and conclude that "law is an aggregate of the rules of human conduct, established or affirmed by the state, whose coercive force guarantees their being put into operation to the end of defending, securing and developing legal relationships and arrangements agreeable and advantageous to the dominant class."
II

_Soviet Legal Philosophy_ is more than just another book for limited circulation among specialists in the field of Soviet law. Social scientists, lawyers and laymen will find it profitable reading from a wide variety of viewpoints. The student of comparative law will be struck by the many parallels between the disputes of the Soviet theorists and their American counterparts. The controversy between Stuchka and Reisner, for instance, centers upon many of the issues that have embroiled American realists and their critics. Reisner's description of intuitive law appears to be very close to Cahn's "sense of injustice."² For the sociologist the book contains a wealth of data for current studies in the relationships of ideology and social structure, the sociology of knowledge, and problems of social change. To those convinced of the need for cross-fertilization between law and sociology, the book can provide a welcome stimulus to inter-disciplinary collaboration.

Above all else, however, _Soviet Legal Theory_ fairly shouts a message that American citizens and policy-makers can ignore only at our greatest peril. One of the greatest dangers confronting the United States in the present world crisis is that we are becoming more Marxist than the Marxists themselves in interpreting the motives and conduct of the Soviets.³ Many of us have convinced ourselves that the communists are interested only in world revolution abroad and dictatorial terror at home. In analyzing Soviet materials we cull from the doctrinal writings every quotation that buttresses those conclusions. Anything that does not we either ignore or pass off as expedient dissimulation. With no slight sense of superiority we point to the predominance of vituperation and polemic over intellectual content in Soviet publications in every field. Through such an approach the innumerable complexities and contradictions in Soviet doctrine and motivation give way to a beguilingly simple pattern.

This book exposes the folly of such oversimplification. It reminds us once again that the essence of Marxist thinking has always been its emphasis on movement: "Our teaching is not dogma . . . Life will show us . . . We know the direction . . . But only the experience of millions, as they move to the task, will discover the road."⁴

If present-day Soviet doctrine presents a dismal canvas, it also contains a ray of hope. If Pashukanis can be replaced by Vyshinsky, if the fundamental belief that all law is capitalist law and soon to disappear can be replaced by the belief in the necessity of stabilizing and strengthening Soviet law, if world revolution can give way to socialism in one country and that in turn give

². Cahn, _The Sense of Injustice_ (1949).
³. Fuller, _supra_ note 1. Professor Fuller has emphasized this point but it bears reiteration here.
⁴. Lenin, quoted by Maynard, _Russia in Flux_ 1 (1948).
way to world revolution again, then there is good reason to expect that with future changes in social conditions will come further changes in doctrine.

Our task is two-fold. We must strengthen our efforts in every direction to bring about those changed conditions throughout the world which will force the Soviets to reconsider their position. That task is well under way. The more difficult task remains. We must resist the temptation to relieve ourselves from the fearsome burden of uncertainty, frustration and perplexity with which we are faced by retreat into a certain world with simple answers. As Professor Fuller has so cogently said, "In our present predicament, we need above all else to keep some sense of contingency, some feeling for the pressures that lie behind the printed page, some awareness of the complexity and the possible internal contradictions in the motives of our potential enemy. We must have the intellectual forbearance to let time and nature work on our side; we must not be like the farmer in the Chinese proverb who pulled his crops out by the roots trying, as he explained, 'to help them grow.'" 5

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Among the disabilities from which the field of correction has suffered is the lack of a comprehensive and authoritative statement of (a) the principles concerning crime and the behavior of convicted individuals which may be regarded as governing the operation and planning of our various prisons and reformatories, (b) the policies and programs in administration and treatment which have been successful or have failed, with particular emphasis upon evaluative criteria, and (c) the correctional problems which seem to bear the highest priority.

Regular readers of such specialized publications as Federal Probation, The Prison World, and the Proceedings of the American Prison Association may be able to piece together trends and gain insights from the shop talk of prison officials, but a single, systematic treatment of the whole field of correction has scarcely existed for the present period. Contemporary Correction is designed to fill this gap. It is a collection of thirty-three articles almost all specially written for this volume by thirty-one selected experts in the correctional field. These are arranged in five sections under the headings: Correction: Preliminary Considerations, Administrative Organization and Classification, Programs in the Correctional Institution, Types of Correctional Institutions, and Extramural Treatment.

5. Fuller, supra note 1, at 1166.
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