

BOOK REVIEWS

JUSTICE IN RUSSIA—AN INTERPRETATION OF SOVIET LAW. By Harold J. Berman. Harvard University Press, Cambridge, 1950. Pp. x, 332. \$4.75.

It is a matter of common belief that Soviet law is the law of a socialist country and itself a socialist law. But what is meant by a socialist law and whether Soviet law is sufficiently characterized by such a definition are questions requiring further elucidation and exposition. These are the problems which Professor Berman had to face in order to give us "an interpretation of Soviet law," and even though his conclusions may sometimes appear questionable and cannot always be regarded as final, tribute must be paid to the courage with which one author has faced a difficult task, and to the importance and value of many chapters of the book.

Socialist law connotes the law of a country which has given up—deliberately—the nineteenth century policy of *laissez-faire*, and where the whole economy is now collectivized and planned. The first part of Professor Berman's book deals with this aspect of Soviet law, the best-known and best-studied so far, emphasizing the relation which exists in the U. S. S. R. between the economic (quinquennial) plan of the nation and the law. Professor Berman has, therefore, been able to use valuable recent sources of documentation and to bring up to date the account of the interplay between these forces. He points out especially how the property and contractual rights of the various state organizations which are active in the fields of industry and commerce have been strengthened and reinforced. New emphasis is laid upon such rights and on their protection by the courts, in a way that suggests a close analogy between Soviet law and the laws of capitalistic countries when the latter depart from traditional principles and themselves engage in planification of or governmental directions to their economy. The question arises as to whether the experience of the Soviets in this area may not have for us an important precedent value. Professor Berman, speaking from an American point of view, doubts it, since the development of Soviet law has been closely connected with the crisis through which the U. S. S. R. has passed on the one hand, and, on the other, with the social conditions and extreme poverty which obtain in the Soviet Union.

A planned economy is from a socialist point of view a necessary thing, but it is only, after all, a means toward an end, and not itself the end at which socialism aims. A planned economy is only a prerequisite, indispensable perhaps, for the building of a better world, and for the ultimate triumph, in an atmosphere of equality, free from all imposition by strength, of a "new humanism." Soviet law is apt to be misunderstood if one looks

only at its formulated rules, without considering its policies and the ideal which guides the law-makers of the U. S. S. R. in all their operations. Professor Berman has, with reason, stressed in the third part of his book the importance which the Soviet Union lays on making the law "popular." Law should not be applied in a mechanical way, as a matter of course. It is essential to persuade citizens that, by means of law, a better justice will be insured, and their adhesion to the application of the rules of Soviet national law must be won. The Soviet judge is not to be considered as an oracle of the law who, by virtue of his office, stands above and isolated from his fellow-citizens; his duty is to guide them and to teach them. The atmosphere of a criminal court in the Soviet Union, observes Professor Berman, is much the atmosphere of a juvenile court in the United States. No success is really achieved by such a court, unless the accused person is made aware of his guilt, and unless he is brought to confess his crime and to ask for penance and for punishment himself. The function of the civil courts, in actions brought by private individuals or by the Procurator, is not, as in the United States, to hear the arguments by the parties and to adjudicate their contentions. The court will examine the case as a whole; it will try to elucidate it for the benefit of the parties; and it will even on occasion decide a point not raised in the pleadings. The atmosphere of the civil court is much the atmosphere of a domestic relations court in the United States. Public arbitration itself (*Gosarb trazh*), although it has to follow the law, will try above all to dispense justice, and to reach a really satisfactory solution of the case; it resembles bankruptcy proceedings or corporate reorganizations.

All of this results from a new conception of the law and the functions of law. Soviet law is there not only to give remedies when a right has been violated, but also, and perhaps more, to play the part of an active agency in the education of people and in the organization and social development of the country. This, of course, reminds us of administrative law and administrative agencies, which are no longer satisfied solely with the execution of the law, but which are every day more and more concerned with the carrying out of policies—policies by which the state has been deeply transformed and its very nature and purposes altered within the last thirty years. Soviet law follows an identical line and, therefore, far from withering away as has been predicted, it flourishes today transformed in its very essence in a new role—the role which was of old attributed to church, school, family, trade or labor organizations, etc. Soviet citizens should no longer think or feel in forms of what is morally righteous or bad; they are expected to think and feel in forms of legal rights and duties. The chapters devoted to the paternal moralizing organizational aspect of Soviet law are probably the most novel as well as the most interesting part of Professor Berman's book.

In addition to these two characteristics of Soviet law, both of which are connected with the doctrines of socialism as established in the Soviet Union, Professor Berman also considers a third feature: what the law of

the U. S. S. R. may have inherited and retained of the legal tradition prevailing in Russia in the pre-Soviet era. Chapters five and six devoted to western legal tradition and to the spirit of the Russian law, are open to much criticism. To tell the truth, the author seems insufficiently or badly informed about European legal history and continental legal tradition. In spite of that, however, the book is here again most interesting, particularly in showing how a legal institution may be accounted for in the Soviet Union to explain an institution such as the Procurator General of the U. S. S. R., or the mystic conception which links individuals as members of a community, or the idea that Moscow, as a third Rome, has a quasi-religious mission to fulfill in the universe.

The interpretation of Soviet law given by Professor Berman will no doubt cause much discussion. Nothing will prevent some people from peremptorily asserting that the citizens of the U. S. S. R. live in a police regime of terror without any notion of law; such people, it is true, will not read Professor Berman's book and will gladly keep their prejudices and their ignorance. Others, however, try in good faith to understand the U. S. S. R. and endeavor to ascertain what the present trends in the law are; these will find in Professor Berman's book much useful information and, still more, some matter for thought. Soviet law will appear to them, for all its weaknesses and insufficiencies, as the law of a society which is different from ours but which also tries, as we do, to realize an ideal of justice. The means which are resorted to by this society are alien to us and will frequently be regarded by us as shocking. It is, nevertheless, a great thing that our ideals should be the same. A study of Soviet law may, therefore, help us in many ways at a time when, in all the countries of the world, it is necessary to revise our traditional conceptions as to law and society. Professor Berman's book is from this point of view most valuable. One wonders why the author, particularly in his introduction, has found it necessary to make anti-soviet statements and to give way to anti-communistic feelings. Such passages have nothing to do with science and in no way increase the value of the book. It is a grave matter for all those who sincerely love freedom to think, as these passages suggest, that, when one enters upon the study of Soviet law, it may be necessary for him, even though he is in a free and democratic country, to utter some words of excuse and to affirm his orthodox feelings—as though it is not a perfectly natural and even a necessary thing to study the institutions and the law of the U. S. S. R.—a country which is, with the United States, the most powerful in today's world. Let us hope that American legal and political science will be "guarded from internal suppression and from the deadly imposition of conformity."

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MANUAL OF PREVENTIVE LAW. By Louis M. Brown. Prentice-Hall, Inc., New York, 1950. Pp. xix, 346. \$5.00.

Manual of Preventive Law is a necessary reference book for every businessman and homeowner. This book is to law what hygiene is to medicine. It is designed to show you how to keep out of legal difficulties. . . .

. . . Written in layman's language *Preventive Law* tells you what your rights are in every business deal, what legal remedies you have in case of default, and how to protect your interests at all times.

This is part of what Prentice-Hall, Inc., has to say about *Manual of Preventive Law* in the blurb on the jacket. The author himself, in his preface, is more modest. He confesses that "It would be foolhardy to assert that a single book can discuss all the specific legal problems that confront us" (p. viii). But he qualifies himself for the task which he does undertake by reference to his years of experience in business and the practice of law, and he tells us that he has lectured on preventive law at the University of Southern California School of Law. He qualifies his book by naming two Harvard Law School professors "who read [unidentified] portions of the manuscript and offered many valuable and encouraging suggestions," although "such errors or omissions as may appear are my responsibility, not theirs" (pp. viii-ix).

The publisher's statements about the book may come within the principle Mr. Brown describes on page 223: "A seller is permitted to express 'sales talk' opinions, even though he may be stretching a point or two." But the salesmanship is of dubious variety. The fact is that Mr. Brown's preventive law is not what hygiene is to medicine. It is a book of home remedies that is likely to induce dangerous tinkering before the lawyer comes. This is so despite the continually repeated injunction that you may need to consult a lawyer for advice on these problems.

An example or two will illustrate. Mr. Brown says that when things get really tough for an insolvent debtor, and less drastic measures fail, bankruptcy may be the answer. But as he points out, quoting Section 17 of the Bankruptcy Act, the fly in the ointment is that not all debts are discharged in bankruptcy. But he still finds an out: "Suppose a debtor has \$40,000 in assets, and \$100,000 in obligations of which \$60,000 are dischargeable obligations and \$40,000 are nondischargeable obligations. Obviously, it is of no value to the debtor to use his \$40,000 to pay dischargeable obligations prior to bankruptcy, since a bankruptcy discharge thereafter will not relieve the debtor of the remaining \$40,000. However, payment of the \$40,000 nondischargeable obligations prior to bankruptcy will greatly aid the debtor because frequently he can obtain discharge of his remaining obligations in bankruptcy" (p. 161).

And frequently, although Mr. Brown does not say so, the trustee in bankruptcy will completely undo this slick maneuver by avoiding these

payments of nondischargeable obligations, since such payments are likely to be voidable preferences. Nor does his advice thrown in on the next page quite repair the potential damage: "Normally, before petitioning for voluntary bankruptcy, a debtor should seek legal advice about obtaining a discharge of all dischargeable obligations" (p. 162).

Again, Mr. Brown is less than helpful when he says: "If the check does not clear, there is a required procedure to follow in order to hold the endorsers liable, and unless one is already familiar with this procedure, aid of counsel should be sought" (p. 143). Mr. Brown should have added, with italics for emphasis, "and within twenty-four hours!" But the writer is not at his best in this area. In the same paragraph he erroneously contrasts an indorsement "in blank" with an indorsement which omits words like "without recourse." And there is no word of warning about the hazards of using a blank indorsement instead of a special indorsement. In fact, the special indorsement is not mentioned, although the chapter is entitled "Upon Receipt of Money or Check."¹

Examples might be multiplied. They would show that the chief beneficiaries of this book, if it is widely read, may be lawyers called on to straighten things out after readers attempt the legal equivalent of penknife appendectomies. But only one other passage will be quoted—a paragraph selected because its implications are morally offensive. This paragraph is headed: "*Caveat to bystanders.*"

From a legal point of view, a bystander who is not a party to an accident should do nothing at the time of the accident except (1) give his name and address and (2) notify the police. This word of caution arises out of a generally prevailing rule of law that seems, at first blush, unkind. The rule is that (a) a bystander is not under duty to render aid or assistance, but (b) if he does render aid, he is then under a duty to render aid in a diligent manner. One reason for this rule is that when a person has started to render aid, others are deterred from so doing, so that the one rendering the aid is held to a standard of reasonable conduct. The law discourages one from being a good Samaritan, so the thing to do is to notify those (police, public emergency hospital) whose duty it is to render aid. Even calling in a private doctor to render aid subjects the bystander to a legal risk; the possible obligation to pay for the medical services rendered (p. 298).

So the next time you see someone lying in the street with blood spurting from an artery, restrain that impulse to apply a tourniquet. Remember

1. How not to indorse checks which are subject to any risk of being lost is something that everyone who handles checks should know. Furthermore, it can be easily explained to nonlawyers. See Harvey, *Hapless Homeowner Cautions: "Don't Endorse Check Until Ready to Cash It,"* Christian Science Monitor, Jan. 12, 1951, p. 7, cols. 5-8. Mr. Harvey is a little off the center of the target on some of his shots, but in his first paragraph he scores a bull's eye on the important point: "Hold it, Mr. Homeowner, don't endorse that bank check until you're ready to cash it. Or, if you must sign it now, don't endorse it 'in blank.'"

that the priest who passed by on the other side of the road (Luke x, 31) was not really uncharitable. He had just been dipping into secular literature—a book on preventive law.² And if you are connected with some organization like the Boy Scouts of America, pass the word along that some legal caveats should be added to their first-aid literature.

From Mr. Brown's "legal point of view," his preventive law here may be as accurate as many statements in more scholarly works—as far as it goes. But he fails to suggest that the standard of reasonable conduct for good Samaritans is a standard of reasonable conduct under the circumstances. And most good Samaritans who can be shown to have incurred liability have done so under circumstances in which most of us would agree they should be liable. Of course, there is a risk of liability. But as a colleague who teaches torts said with a snort on reading this passage, "Tell 'em if they're *that* worried about legal risks, stay in bed!"

Maybe this is unfair to the author. In 333 pages he must of necessity omit many matters, and most qualifications of the rules of law which he describes. But this is a problem inherent in the project—a one-volume "manual" of law for laymen. The project should never have been undertaken.

So far we have been discussing the book in the light of the uses to which its title suggests it might be put. But there is some indication that it may be intended for use also as a text in some sort of course. Most of the chapters are followed by one or more reported cases in abbreviated form. At the end of the book, there is a handful of questions relating to each of these cases. Sample: "What is a suit for 'specific performance?'" (How long must a layman spend in contemplation before he can answer that one without help? And how meaningful is his answer?)

As a text the book's shortcomings are especially apparent. In particular the way in which the cases are used is poor. The preface says only that "each case is a decision of an appellate court rendered after an appeal was taken by the party who lost in the trial court. The procedural aspects of the case have generally been omitted" (p. vii). There is no hint about what the function of an appellate court is when it decides an appeal, or why appellate courts publish their opinions. Even were these deficiencies supplied, the utility of asking students or laymen to read about 40 cases on widely scattered subjects would be doubtful where the primary purpose is to give information about how to stay out of legal trouble.

If this is a legal hygiene book—text or manual—it is a strange one. It is a hygiene book which says nothing about basic things like circulation of the blood, or the function of digestion. It tells you only that if you bleed, or can't eat, that is a "warning signal." Sheer length makes the check list of warning signals and risks impressive but not very useful.

2. Perhaps it is not amiss to recall that the good Samaritan parable came out of Jesus' colloquy with a lawyer (Luke x, 25). And that he did not think well of lawyers: "Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers" (Luke xi, 46).

Most people know that if they froth or bleed profusely at the mouth they ought to see a doctor. And most people know, without reading a book that when someone writes a letter demanding payment of \$100 this is a "warning signal" suggesting there may be a law suit (p. 25). Most people know that "Black's promise to pay \$1,000 with interest in one year reaches a warning signal stage when the calendar shows that a year has elapsed" (p. 149). Doubtless there are some who need to be told these things, but they are not people who can be reached by books.

But with one objective of Mr. Brown we can agree. Most people need to know much more than they do about the law. Even very well educated people need to know more than they do about the law, among other reasons, just to help them understand their daily newspaper. American colleges and universities are neglecting their responsibility here. But a book which acquaints laymen with "the law" at the level of Mr. Brown's manual is worse than useless.

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INTRODUCTION TO COMMERCIAL LAW. By Robert Braucher and Charles Corker. The Foundation Press, Inc., Brooklyn, New York, 1950. Pp. xxi, 308. \$5.00.

To the student who takes his first classes in Bills and Notes and Sales, the trade acceptance and the order bill of lading are Men from Mars. The same student who heartily voiced ideas about larceny, or automobile accidents, or offers for a year's supply of gasoline, sits frozen at the mere mention of a C. I. F. contract or collateral note. "Introductory" lectures, designed to take the student once around the subject, leave him still trying to master the difference between the drawee and the payee, or between documents of title and chattel mortgages.

Professors Braucher and Corker have proposed to do away with some of these difficulties of getting the student through the front door and into the subject matter of commercial law. Their book, a text, was designed as part of a course which combines "elements of the traditional courses in Bills and Notes, Sales, and Chattel Security," concentrating upon "short-term finance in the distribution of goods, with particular reference to the concepts of negotiability and security." The purpose is to help the student in his commercial law course in two ways: to "introduce legal doctrine" and to "show students the setting in which the legal complexities arise." It is easy to agree with them that the latter purpose is the more important of the two. The authors have accomplished it in large measure.

Their material has been organized a bit more compartmentally in terms of the familiar classifications of subject than one might have hoped for in a book designed to break down traditional barriers. The first five

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chapters cover typical bills and notes problems, such as money, checks and check collection, the history of negotiable instruments, and the meaning of negotiability. Chapter six deals with bankruptcy and some of its antecedents. Chapters seven and eight mingle typical sales law with chattel mortgages and warehouse receipts. They include also a discussion of documentary drafts and letters of credit, meaningful because not discussed as abstract bills and notes problems but as parts of sales transactions. Chapter nine is a rapid survey of insurance problems; chapter ten, a discussion of familiar personal property security devices. The remainder of the book consists of reprints of relevant uniform laws and other commercial statutes.

Throughout this wide survey the authors have related legal issues to their business setting by posing simple and familiar "John Doe" purchasing or borrowing problems, and discussing the issues in terms of these practicalities. They have seeded their text liberally with excellent reproductions of the documents met most frequently in commercial practice and have tied these documents into their discussion of the business set-up. This description and explanation of the business situation is, of course, most helpful to the student. The certificate of deposit, the bill of lading, the warehouse receipt take on meaning as tools of an active economy, not merely as abstractions for study. This is the result the authors wanted so that they might increase the student's understanding of commercial legal problems. However, though it is true that the reciprocal interaction of business practice and the law is such that it is difficult to describe one meaningfully without speaking in terms of the other, introduction to the practical has been accomplished in this book at a cost of far too much exposition of the rules of law or what might be called the legal doctrine. To be sure, the authors have been painstakingly accurate in their doctrinal discourse and careful to cover their retreat in areas where the rules are debatable. But the doctrine is condensed and capsulated and then set forth in large quantities in concentrated form. The authors themselves are aware of the rapidity and intensity of their text. In the pithy, and at times provocative, summaries at the end of each chapter there are repeated admonitions to re-read the materials, and pointed references to the larger problems that have been raised. However, the doctrinal discussions are not particularly suited to either of the classes of students the authors intend to reach.

The authors propose on one hand that the book be used for pre-course or summer reading. A reading of this book will breed in the student a vague and passing familiarity with some terminology, the beginning of some perspective in the subject. That may be no mean accomplishment. But it also may be that the authors could have accomplished more by further and fuller exposition of the business background than of legal doctrine. It takes an intensely interested student at the pre-course level to look through these pages of text which set forth such concentrated legal diet and come out with anything approaching an understanding of the rules themselves. The average student will read and assure himself that com-

prehension is supposed to come later. As for perspective, it will probably be of the level adverted to by the authors in their summary to the insurance chapter: "You should by now be conscious of your vast ignorance of the subject of mercantile insurance." Surely there is not that much need to create intellectual humility in the student who has suffered through one year of law school.

The authors have suggested the use of their book during the term, as well as before. Perhaps there is a worthwhile purpose to be served by the student's having something with which to get his bearings every once in a while as he proceeds in his course, but to the extent that this book expounds legal doctrine, it will not appreciably increase his understanding of the problems of commercial law. Only occasionally do the authors discuss reasons and purposes behind rules. They do an admirable job in explanation of the rule which favors the holder in due course against the maker of a note, and, somewhat succinctly, explain why a check does not operate as an assignment. But many other problem areas do not receive the analysis, in terms of such reasons and purposes, that they require. On the whole, the text is only the bare bones of commercial study, and the student must make his after-class probings into the subject by reading the texts and articles which treat his questions not summarily but exhaustively. The student who has problems other than those of simple orientation will go elsewhere for help.

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