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Grzybowski: Soviet Legal Institutions: Doctrines and Social Functions

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RECENT BOOKS

SOVIET LEGAL INSTITUTIONS: DOCTRINES AND SOCIAL FUNCTIONS. By *Kazimierz Grzybowski*. Ann Arbor: The University of Michigan Press. 1962. Pp. xiv, 285. \$7.50.

The question of the nature of the Soviet legal system has been the subject of much debate during the past forty-five years.¹ Some writers have contended that no legal system exists in the Soviet Union.² Others have claimed that law in the communist countries constitutes a separate and unique system of rules created in the socialist image.³ In his provocative and valuable addition to our bibliotheca of English-language materials on Soviet law, Dr. Grzybowski declares that, even after forty-odd years of independent existence, the Soviet legal system has not ceased to belong in the broad category of legal tradition known as the civil law. He rejects the notion that Soviet social institutions are qualitatively different from the institutions of the modern welfare state in the free world, finding that Soviet institutions have remained copies of their counterparts in Western Europe.

Having established his frame of reference, Dr. Grzybowski sets out to integrate the Soviet experiment into the general pattern of the development of legal institutions in Western Europe. He links Soviet legal thinking, concerned with the practical problems of lawmaking as responses to social needs as defined by the Party leadership, with two trends of thought in the West: the normative school, permitting systematic arrangement of legal institutions, and the modern sociological school, preaching the necessity of taking account of changes in the social environment in the adoption of legislative norms.

In tracing the development of legal institutions and rules in the Soviet Union, Dr. Grzybowski weaves into the fabric of his discussion the parallel development of Western and Eastern European institutions and rules responsive to similar social and economic problems. The main contrast which develops is the contrast between the socialist and Western European response to two fundamental problems: the relationship between the individual and the collective, and the nature and scope of property. Since socialist theory identifies the interests of the individual with, and subordinates them to, the interests of the collective, Soviet law has established a high degree of regimentation and high standards of conformity. In the final analysis, Soviet policy aims at complete integration of the Soviet man with the state. This is in contrast to the function of Western European legal institutions to protect individuals and their rights against encroachment by the state and to maintain a balance between the interests of the

¹ See HAZARD & SHAPIRO, *THE SOVIET LEGAL SYSTEM* chs. xiii-xv (1962).

² See, e.g., Rhyne, *The Law: Russia's Greatest Weakness*, 45 A.B.A.J. 246-49, 309-10 (1959).

³ See, e.g., DAVID, *TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL COMPARÉ* 224 (1950).

individual and that of the community. In the realm of property, Soviet legislation contrasts with that of western nations in that it responds to socialist economic reality in which the state holds a monopolistic position regarding the ownership of means of production, while the citizen's personal property rights attach only to consumer goods. Current trends in Soviet property law indicate that a legislative goal is the gradual concentration of durable consumer goods in the hands of social organizations so as to circumscribe to the greatest extent possible the regime of personal property.

Dr. Grzybowski concludes that at present the growth of Soviet legal institutions is characterized by two conflicting tendencies, one being the expansion of the rule of law and the other the increase in social pressure and mass control in which the rejection of abstract legal rules is inherent. In their determination to have social organizations deal with problems of public order normally within the exclusive jurisdiction of judicial and other state organs, the Soviet jurists have retreated from a strict notion of socialist legality and the traditional approach to the maintenance of law and order. For this deeper involvement of social organizations and individuals in the affairs of government Dr. Grzybowski finds no analogy in modern Western European legal institutions.

To students schooled in the common law, Dr. Grzybowski's comparative analysis may not always be too meaningful. Enough still separates the common-law tradition and Anglo-American economic institutions from Romanist tradition and the economic institutions of the modern Western European state so that Dr. Grzybowski's analogies from the Continental system do not always find a parallel in American legal concepts. Despite this obstacle, American students of Soviet law will find Dr. Grzybowski's telescopic comparative approach to the study of Soviet legal institutions to be of inestimable value.

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