

***RUSSIAN LAW: HISTORICAL AND
POLITICAL PERSPECTIVES***

Edited by William E. Butler

Leyden: Sijthoff, 1977, xi and 266 pp. \$31.75

SOVIET LAW AFTER STALIN, Part I

Edited by Donald D. Barry, George Ginsburgs,
and Peter B. Maggs

Leyden: Sijthoff, 1977. xv and 303 pp. \$36.00

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While these two books on Russian law have been prepared and published independently of each other, they might almost be considered as if they were intended to be read in sequence and as a serial. The essays brought together by Professor Butler cover trends from the 10th to the 20th centuries, for, as is pointed out in the Preface,

the study of Soviet legal history. . . has been coming into vogue gradually as the realization grows that the legacy and vicissitudes of juridical and institutional developments are of crucial significance to an understanding of early Russian society, the revolutionary transformations which later occurred, and the course followed by modern Soviet law since 1917.¹

The opening essay is by Professor Feldbrugge who examines the law of land tenure in Kievan Russia, dealing with "the first unified historical state on Russian territory, the *Kievskaiia Rus*" up to 1125. From the ordinary reader's point of view, perhaps the most useful comment in this paper is the attempt to explain the use of legal history, which

may be studied either to gain a better understanding of a certain historical period or a specific historical society or to explain and better comprehend legal systems and institutions of a subsequent period, provided of course there is a real and demonstrable connection between the legal phenomena in both periods. There is no reason why a legal historian should not be moved by both motives simultaneously.²

Equally interesting is the contrast the author draws between Russian and European feudalism, with the former tending to follow the Byzantine pattern.³ He also points out that in their approach to Russian feudalism, Soviet scholars have tended to overemphasise the Marxist economic issues,⁴ and pay insufficient attention to political attitudes and spiritual values.⁵ He points out that the princely seats tended to be occupied by members of one family, that the Russian boyar never became a European knight, and "[b]ecause of the

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1. W. Butler (ed.), *Russian Law: Historical and Political Perspectives* (1977) xi.

2. *Id.*, at 1.

3. *Id.*, at 27.

4. *Id.*, at 25.

5. *Id.*, at 27.

dominant position of the prince, the contractual aspect of the feudal relationship did not develop in Russia.”⁶ The Muscovite autocracy thus produced is commented upon by Professor Kleimola who pays particular attention to the use of ‘disgrace’ which contributed to “the decline of the aristocracy as a force capable of any effective opposition” to imperial tyranny.⁷ The Muscovite records make it clear that *opala* (disgrace)

was primarily an instrument of political control. As such. . .it served as a general threat of punishment, with indeterminate sanctions, for those who failed or refused to obey instructions, did not fulfil their obligations, or violated legal restrictions. . .[It was also] a weapon utilized against the Muscovite elite for politically motivated reasons even in the absence of a specific offence.⁸

Still in the Muscovite period, Professor Dewey looks at problems of morality and law. It is interesting to note that while women were in an inferior position to men, the attitude towards men who battered their wives was at least as condemnatory as it is today, and was in fact possibly more punitive.⁹ There is a record in 1640 of ten relatives and neighbours being made to stand surety for the future conduct of a wife beater.¹⁰

During the Muscovite period drunkenness was as serious a problem as it would appear still to be in the Soviet Union. Professor Dewey points out, however, that

[e]fforts to combat drunkenness. . .were doomed after the government of Ivan IV established a monopoly on liquor sales. Putting it as plainly as possible, Moscow's greed for revenue from taverns and liquor stores overcame its concern for the sobriety of its citizens. Henceforth the Tsarist government reserved its most brutal sanctions not for those citizens who drank excessively, but for those who bought (or sold) liquor illegally, *i.e.*, independently of the state monopoly.¹¹

— a comment that has a somewhat familiar ring to it. Visitors to Russia have often commented upon the tyranny that they perceive and a legal system which they regard as completely alien to their own. In his paper, Professor Butler reflects upon some foreign impressions of Russian law to 1800 covering almost 150 contemporary accounts, pointing out that there was in fact “[a] gradual reception of European values, institutions, and legal concepts. . .to be greatly accelerated under Peter I and his successors”¹² although the description of a legal duel, in which it appears even foreigners might have been retained as champions or substitutes¹³ reads strangely even for the 16th century.

6. *Ibid.*

7. *Id.*, at 29.

8. *Id.*, at 29-30.

9. *Id.*, at 53.

10. *Id.*, at 54.

11. *Id.*, at 59.

12. *Id.*, at 67.

13. *Id.*, at 77.

In fact, it would appear there were mercenaries available for such purposes! In so far as methods of punishment are concerned, it would be interesting to know the comments of writers on modern Koranic criminal sanctions in the light of their reactions to those they witnessed in Russia.¹⁴ On the whole Professor Butler believes that careful reading of contemporary comment transforms "[t]he image of Russia. . .in this era from among the most unsparing to one of the more progressive European Powers. . .concerning the objectives of punishment."¹⁵

Many of the remaining papers in *Russian Law* are interrelated and lead into consideration of *Soviet Law After Stalin*. Thus there are essays on the legislative reform of inheritance to 1914 by W.G. Wagner, pre-revolutionary peasant laws by R. Beerman, the history of Soviet collective farm legislation by A.K.R. Kiralfy, elements of continuity on Soviet constitutional law confirming that "the minister in Russia. . .is, in the first place, a functionary with an administrative, a bureaucratic, role"¹⁶ by G.P. van den Berg, and a short piece by Professor Hazard on "The Bridge Years, 1917-1920."

The latter book is concerned with the citizen and the State in contemporary Soviet law, and covers such matters as housing law by D. Barry; corrective labour law by F.J.M. Feldbrugge and V. Chalidze; court reform 1956-58 by G. Ginsburgs; the right to counsel in criminal cases by Y. Luryi — although one would not think so from the reports of recent trials of dissidents, the defendant has a right to have a lawyer present at all stages of the criminal procedure¹⁷ but this does not apply to the supervisory instances, "the stage of review of judgements, rulings, and decrees, which have taken legal effect. . .[and] there are at least five courts of various levels that have the right to review cases and to vacate or change judgments of the lower courts previously handed down."¹⁸ Other topics include conjugal ties by P. Juviler, collective farms by P. Maggs, and due process of law and civil rights by C. Osakwe —

When the time comes to judge the degree to which contemporary Soviet criminal law has conceded the process guarantees to political dissidents, the actions by Soviet law enforcement agencies speak louder than all the written and spoken words pronounced by the Soviet government and by the intellectual apologists for the Soviet system of law on this subject. No one who is familiar with the plight of political dissidents in the Soviet Union will take at face value the public declarations by Soviet authorities that political crimes are not singled out for special treatment.¹⁹

14. *Id.*, at 81-88.

15. *Id.*, at 91.

16. *Id.*, at 234.

17. D. Barry, G. Ginsburgs, and P. Maggs (eds.) *Soviet Law After Stalin*, Pt. I (1977) 109.

18. *Id.*, at 114.

19. *Id.*, at 214.

The final chapters deal with protection of Socialist property by S. Pomorski; and job security since Stalin by Z. Zile, with the

cautious conclusion that the developments. . . have resulted in somewhat greater rationality in the organization of legal rules. . . [T]he knowability of law has been somewhat enhanced. It is not at all certain, however, that this state of affairs will last. This somewhat more integrated body of law is being revised in the face of changing needs, and the revisions are not invariably by means of incorporated amendment. The greater rationality in the organization of legal rules of job security achieved in the early 1970's may, therefore, be but a temporary way station to something again far less systematic and orderly.²⁰

— a comment that could be just as easily made with regard to any branch of law in any country, regardless of its political or economic ideology.

Taken together, *Russian Law: Historical and Political Perspectives* and *Soviet Law after Stalin*, especially if used in conjunction with Feldbrugge's *Encyclopedia of Soviet Law*,²¹ will provide the non-specialist with about as much as he is likely to want to know about the transition from Russian to Soviet law and the law as it exists in the Soviet Union today. For the specialist, they will prove useful and wellnigh essential additions to his library.

20. *Id.*, at 288-89.

21. F. Feldbrugge, *Encyclopedia of Soviet Law* (1973).