

Soviet Legal Institutions: Doctrines and Social Functions (Book Review)

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SOVIET LEGAL INSTITUTIONS: DOCTRINES AND SOCIAL FUNCTIONS.

By Kazimierz Grzybowski. Ann Arbor, Michigan: University of Michigan Press, 1962. Pp. 285. \$7.50.

Dr. Grzybowski is a scholar with rare preparation in the field of Soviet legal studies. And he undertook this work on Soviet legal institutions with what I take to be an unusual insight into the nature of modern legal institutions. His book, however, falls far short of the expectations his scholarship and his germinal insight promised.

In the very first sentence of this book, the author states that the "present social and economic order of the Soviet Union, with its emphasis upon industrial economy and the urban mode of life, is only a phase of that general process of change which has produced modern industrial society." And he then goes on to remark that "in the Soviet Union, no less than in the West, the role of the state and the concept of public order have been reformulated as the control and management of the national economy became the central problem of public concern."

These opening words, expressing one aspect of the author's "terms of reference" and read in the context of his intention to provide a "comparative treatment of Soviet institutions of law,"¹ excited the hope that a new approach to Soviet law was to be attempted. This new approach would be one designed to test the hypothesis that Marx and his followers, no less than so-called "bourgeois" theorists of law, were mistaken about how fundamental private ownership of the means of production was to the nature of a legal system. Or, to put it in other words: the new inquiry would be directed at determining the degree to which the major outlines of contemporary law — whether Soviet or Western — are determined by the size and complexity of the economic institutions in a given society, rather than by its formal adherence to or abandonment of the concept of private property.

Whether because I misread his intention or because, having had the intention I have supposed was his, he fell short of executing it, the fact is that this book breaks no new ground either from the point of view of approach or result. Although some of the chapter headings have a ring of novelty — "Homo Sovieticus," and "The Question Mark Over the Socialist Rechtsstaat," for instance — and although there are occasional illuminating comparisons with West European civil systems of law, the book, for the most part, treads well-worn paths. Thus, a chapter is devoted to changes in Soviet theories of law, and there are sections devoted

¹ GRZYBOWSKI, SOVIET LEGAL INSTITUTIONS 2 (1962).

to a discussion of the Soviet law of contracts, of crimes, of inheritance, of property and other areas.

Perhaps the most challenging feature of Dr. Grzybowski's book is his discussion of the communist theory of the "withering away of the state." Although he indicates that this "prophecy . . . lies beyond the range of the present study," he nevertheless examines it as part of the "ethos of Soviet planning" and as an "influence" on the forms of Soviet legal institutions, legislative techniques and social action.² The influence he discerns is two-fold: in the first place, the thesis of the withering away of the state provides an ideological justification for decentralization of administration.³ In the second place, it dictates a preference for the transfer of governmental functions to social organizations, a preference for social control as against governmental control.⁴ "The general picture of this process," Dr. Grzybowski says,

is an almost total identification of social organizations with the governmental apparatus, and the integration of social and governmental actions into single patterns of activity not only within a single area of life (*e.g.*, economic activity) but also within the same governmental function (administration of justice, police functions, etc.). Social organizations become government agencies organized on a different principle.⁵

Unfortunately, in this regard, Dr. Grzybowski fails to go far enough, fails to search for underlying explanations. If there is a tendency to shift from governmental to social sanctions, does this mean that the use of coercion as a sanction for the enforcement of norms has diminished in importance or does it mean only that these sanctions will be exercised and administered through new forms of organization? And is the tendency he is examining a unique characteristic of communist systems of government or is it and was it also attractive to fascist governments? Is the real source of its impetus Marxist-Leninist theory or does it rather represent a new insight into the psychology of the masses?

Surprisingly, Dr. Grzybowski fails to relate the role of the Communist Party to the tendency to prefer social to state agencies of control. To be sure, in an early part of the book, he describes the party in terms of its "penetration . . . into the viscera of each social organization" and goes on to say that it "represents the basic plan for the correlation of social forces and the integration of social and governmental organizations."⁶ But he nowhere examines what part the Party plays in the withering away process.

² *Id.* at 241.

³ *Id.* at 243.

⁴ *Id.* at 244-45.

⁵ *Id.* at 247.

⁶ *Id.* at 58.

The relation is a simple one I believe. As the state withers and has its functions absorbed by social organizations, the influence of the Party as the co-ordinator and director of social development grows. This being so, the question is whether anything fundamental has really been accomplished by the transfer of state functions to social organizations or whether it merely represents a political "shell game."

In the main, the book presents an intelligent and highly informed discussion of some of the basic principles of Soviet law. Given its size, however, and given that the author's interest is jurisprudential and analytic rather than descriptive, the work is necessarily very abstract. It cannot, therefore, be recommended for the beginning student of Soviet law or the informed layman. Its proper level is rather that of the specialist in Soviet law who will read it, not for new insight or a new method, but rather for the occasion to compare his own very general conclusions about Soviet law with those of another informed specialist.

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