
Edgar Bodenheimer
Book Reviews


It is very difficult to gather accurate information about the Soviet legal system and its practical operation. A study and interpretation of Soviet statutes, governmental decrees, judicial decisions, and legal textbooks would not suffice to convey an adequate picture of Soviet law, for, as Mr. Berman points out in his book, in Russia the gap between the law as written and the law as practiced is very large. Only a direct observation of legal administration and law enforcement would give us a true insight into the character of the system, but the iron curtain not only shuts us off from such immediate observation but also makes first-hand reports about the workings of Russian legal institutions increasingly unreliable. Much of the material available on this sphere of Soviet life is propagandistically colored either by undiscriminating admiration or by unqualified detestation. Today an attempt to weigh pros and cons in an objective search for undistorted truth involves at times a certain risk to the author of coming under suspicion, a risk not confined to writers of the Soviet Union and her satellites.

As the author states in his introduction, much of the information compiled in his book was obtained through visits to Russian DP camps in Germany and France. There he talked to workers, peasants, schoolteachers, engineers, economists, and lawyers—some of whom later came to the United States—about their experiences under Soviet law. By this contact with people who had lived under the system, he supplemented the theoretical information he had derived from his study of the written sources. Since a number of these people definitely were not propagandists for the Soviets but, on the contrary, men eager to change their loyalties, Mr. Berman probably obtained a more balanced view of Soviet legal life by using this method than if he had talked to Soviet lawyers or other citizens living under the shadow of the secret police.

Whether or not the picture painted by Mr. Berman is in all
respects a true portrait, nobody but a completely unbiased expert on the entire Soviet system of law could attest to. There will be people who will argue that any use of such words as "law" and "justice" in relation to Soviet Russia is futile and misleading, and that the only instrument of government in that country is power, ruthlessly used or abused in the hands of a small governmental clique uninhibited by any concern for law. If this were true, life in the Soviet Union would be chaotic beyond description; there would be no rules governing marriage, divorce, the making of wills, the leasing of property, the adoption of children, the performance of a sales contract, or the endorsement of a check. Every decision concerning a transaction between individuals would be an arbitrary and unpredictable ad hoc pronouncement by an official invested with unbounded discretion. No observer of present-day Russian reality has provided us with a description in such terms. Mr. Berman is obviously correct when he informs us that "a system of law and a system of force exist side by side in the Soviet Union." There are many areas of life which are governed by well-defined standards and in which the decision of disputes is entrusted to specialized agencies following pre-defined rules and procedures. This is true, for example, in the fields of contractual liability, negotiable instruments, responsibility for torts, sales, domestic relations, social insurance, and non-political criminal law. There are other areas, characterized by the predominance of the political factor, where terror and force are the most conspicuous tools of governmental policy. Thus, we are confronted with the phenomenon of the "dual state," in which a stabilized legal sector co-exists with a fluid sphere of unlimited prerogative.

Mr. Berman deliberately confines his analysis to the legal domain and omits a detailed description of the system of force in effect in the Soviet state. The question to which he might perhaps have given more elaborate consideration is the mutual relationship and interpenetration of the two "orders." He does point out that the inherent conflict between law and force in Soviet Russia results in some strange paradoxes and inconsistencies, and that Soviet law is "always precarious" because any threat to the political stability of the regime may cause the abandonment of law in the area of danger. If this is true, the ever-present imminence of terror must considerably taint and vitiate the beneficial features of the legally stabilized sector. Undoubtedly
a citizen of Russia possesses today, on the "legal" side of the fence, certain personal rights, such as property in consumptive goods, the right to make a will, to recover damages for injuries caused by others, and the right to receive workmen's compensation and old-age benefits. The courts will normally recognize and protect these rights. However, political conformity is a condition-in-fact of their enforcement and, as the numerous Soviet "purges" have shown, even faithful compliance with a line suddenly abandoned by the Communist Party may be punishable as "heresy" after the volte-face has been accomplished. Thus, the threats of ostracism, administrative deportation to a labor camp, and execution hang like a Damocles sword over the "guaranteed" domain of the law, and the enforcement of personal rights is contingent on "political reliability" often determined by elusive tests. It is hard to see how under these circumstances the areas of law and political force can be kept strictly apart and "compartmentalized," as the Soviet leaders claim.

Mr. Berman distinguishes three main components of Soviet law. The first is the socialist component, which is characterized by an attempt to find legal solutions for problems created by the nationalization of production and the collectivization of agriculture. The second is the Russian component, representing inherited traditions and peculiar national traits which have become embodied in Soviet law. The third component is termed by Mr. Berman the "parental" factor. Mr. Berman finds a tendency in the Soviet system to regard the function of law, judicial tribunals, and legal procedures as a primarily "educational" one. The role of law is likened by the Soviet authorities to that of a parent, guardian, or teacher whose task it is to provide guidance to persons needful of pedagogical care. Mr. Berman, in an original and arresting way, traces the consequences of this approach through various branches of Soviet law, such as procedural law, family law, criminal law, labor law, and pre-contract disputes. Our own law has in the past treated the individual as a self-reliant, mature, and completely responsible being able to take care of his own interests without help from governmental agencies, and our whole "adversary" system of procedure is based on this psychology. However, as Llewellyn and others have shown, the paternalistic element is not entirely absent under our system, and it seems to attain a steadily increasing importance.

Mr. Berman's book is lucidly and attractively written and,
by focusing the spotlight on truly fundamental problems, he is able to keep the reader's attention alive from the beginning to the end. To this reviewer, the picture he has drawn of the Soviet legal system is in its chief contours convincing.

Edgar Bodenheimer*


This is a book which every law student, practicing lawyer and judge should have and refer to time and again.

To review this magnificent book one should first review briefly the career of its author. Chief Justice Vanderbilt is a man of many facets, of prodigious energy and ability. As is well known, he was an outstanding practicing lawyer for thirty-four years, and for much of that period was concurrently a professor of law at New York University and for five years its dean. Since 1948 he has been Chief Justice of the Supreme Court of New Jersey, ably performing tremendous administrative duties while at the same time maintaining a tradition of carrying more than his full load of appellate cases. He nonetheless has found the time to write many fine articles and carry a laboring oar in the building of the New York University Law Center. In addition, he has taken an active part in the advisory committee on the Revision of Statutes, the Citizenship Clearing House, the newly created Institute of Judicial Administration, and in the Judiciary Section of the American Bar Association. In brief, he has amazed even those who know and respect his tremendous ability and energy.

This latest of his publications reflects his wealth of experience in his many sided career.

The student, lawyer and judge will gain a new perspective from the author's discussion of the historical development of the principles of pleading and of the conflicting theories and systems. As a working tool, however, this book is especially valuable.

The various steps in court procedure, considered in order by Chief Justice Vanderbilt, are:

1. In what court may suit be brought—jurisdiction.
2. Who may sue whom—parties.

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