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SOVIET LEGAL THEORY, ITS SOCIAL BACKGROUND AND DEVELOPMENT. By Rudolf Schlesinger. New York: Oxford University Press, 1945.

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But the cautious interpretations which are presented are so expertly handled that their briefness will be a matter of chagrin to the serious student of the Court.

Many more books will be written about the new Court; it is to be hoped that Pritchett will write some of them.

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SOVIET LEGAL THEORY, ITS SOCIAL BACKGROUND AND DEVELOPMENT. By Rudolf Schlesinger. New York: Oxford University Press, 1945. Pp. 299. \$10.00.

THE serious gap between Soviet legal ideas and the philosophical ideas implicit in Western jurisprudence is emphasized by the recent English edition of A. Y. Vishinsky's *The Law of the Soviet State* (1948). Rudolf Schlesinger, a non-Soviet scholar with a thorough knowledge both of Soviet law and its sociological considerations, has framed a valuable and highly useful reference for bridging the gap in his *Soviet Legal Theory*. By recounting the sociological atmosphere of the U. S. S. R. in terms of the reality of Soviet law, Schlesinger affords a striking vindication of J. L. Brierly's axiom that a merely juridical explanation of any legal system will not suffice and that comprehension must be sought outside the law itself.

Schematically, *Soviet Legal Theory* combines a positivist approach to the special nature of Soviet law with a chronological treatment of Soviet society since 1917. No attempt is made to conceal the rationalizations which creep into Soviet law to make it conform to the socio-economic pattern of the era of the "second revolution" (1929-30) as distinguished from theoretical conceptions in vogue during the period of war communism (1918-21), or from the theoretical foundations of the law in classical Marxism. Vishinsky, who presents the official view on the legal aspects of the second revolution, defends the illegality, in terms of previous Soviet law, of essential measures carried through in the process of "de-kulakization" on the grounds that "the interests of proletarian dictatorship were superior to its own laws and that the solution of the problems of revolutionary transition within the framework of any fixed legal system was impossible." The inevitability of having to pronounce such mystifying statements as this is apparent when Schlesinger reveals the rejection by the prominent Soviet theorist, Pashukanis, of his own earlier explanation of law as an essentially bourgeois institution based on the phenomenon of "commodity exchange" and bound to wither away as socialism was achieved. The "commodity exchange" thesis was that the possessors of

commodities, in order to exchange them, must appear as subjects of law having rights which within a society based upon commodity exchange are bound to reflect the possessors' needs. The fact was that the proposition failed when a continuing need for law was discerned despite absence of a commodity exchange economy. Besides, as Schlesinger indicates, the whole explanation was at variance with Marxian emphasis on the importance of the relations that men enter in producing their means of livelihood as distinguished from distribution of the products which Marxism regards as secondary. The confusion is complete and the fact of arguing in a circle becomes obvious when Stuchka, another theorist, is led to explain existing Soviet law as a "bourgeois (or class) law without a bourgeois society."

Schlesinger uncovers the central problem with which Soviet lawyers are confronted as a result of the Vishinsky thesis, namely the lack of predictability of the law. "There is no law superior to the interests of society; society has certainly the right to establish whatever law is regarded as serving its purposes. But the social interest is to be safeguarded by the content of the law, not by interference with the way in which it is applied to the individual case." Moreover, "people who are afraid of giving judgment formally contradicting the actual policy of the regime, are unable to fulfill the special function they have to fulfill *qua* lawyers within the framework of the regime, namely to look after the regularity and predictability of the state machinery, whatever the political tasks it has to fulfill." Neither the "socialist consciousness of justice" nor later acceptance of the classic principle *nulla poena sine lege* within a comprehensive and codified Soviet law appears to solve the problem under the circumstances.

If Soviet theorists have indicated illogical positions within specific periods of the Russian revolution, it would be improper, nevertheless, to ascribe the difficulties to classical Marxist theory. The Marxian polemic against the reformist idealization of the existing state, *Critique of the Gotha Programme of German Social Democracy* (1875), is, we are reminded by Schlesinger, possibly the most pertinent application of Marxian principles to the concept of law. What is expected to wither away in the classless society is not political organization as such but rather, as Schlesinger says, "the *oppressive* functions of the state." Since law in its present forms supports inequality according to social position, only that portion of law which fits the transitory socialist state is retained and, "for the higher stage communism proper, another form of social regulation is intended." The new, technical regulation, differing in form and content, would take account of individual abilities and needs with sanctions provided by public opinion. Since coercive machinery would be superfluous each case could be decided upon merit. But, Schlesinger warns, "Marx, political realist that he was, deemed 'the higher stage of the communist society' to be a mere ultimate aim (a *Utopia* in Mann-

heim's sense of the word). Within his system it served as a limitation of the functions of law in general and as a basis for criticizing reformist glorification of the existing law. Unhappily, for many revolutionary Marxists it also became an obstacle to investigating the concrete legal problems which might confront a revolutionary state once it was established, and attempted to shape its law."

Schlesinger, as he indicates in his preface, has written a sociological and economic treatise rather than a legal work. He records the development of Soviet law almost entirely in terms of socio-economic periods in Soviet life since 1917. The fearful task of establishing the terms of war communism, the first codifications of law, the general legal conceptions of the NEP and the victory of economic collectivism through elimination of the kulak after 1929—all left a mark on the total aspect of the legal system. "The permanent result of the NEP," for example, "was not the NEP-man or the kulak, but the introduction of a new point of view into the management of state enterprise." The state trusts, endowed with legal personality and emerging under the provisions of the Soviet Civil Code of the NEP period, became autonomous units which might incur debts and earn profits, and whose output was distributed according to contractual agreement. Their funds were expressly separated from the treasury and are to be distinguished from the *res extra commercium* funds earmarked for other state enterprises whose output was intended only for the state. The problem of securing efficient management of the public property administered by the trusts led, in turn, to an elaborate system of economic accountancy founded in the civil law. In other fields also evolution was discernible. The labor, criminal, administrative, land and family codes as well as Soviet matrimonial and constitutional law all reflect changing economic conditions and alterations in the state plan.

Present problems of Soviet legal theory are identified by Schlesinger as follows: (1) the continued attempt of Vishinsky "to include class leadership, if not class rule, in the definition of a law claiming to express the will of the whole people"; (2) the problem of defining and delimiting the legal nature, rights and obligations of the various organs of the state which administer distinct enterprises and organizations. Schlesinger avers that to obtain "a theoretically defensible approach to the problem of state enterprise proper, subject to rights and obligations in civil law, it seems necessary to get a definition of it establishing its personality—although, as is generally recognized, the state is the very subject of all its rights and duties, so that lawsuits between these 'legal entities' are actually lawsuits of state versus state." Despite the attempt to define the area and content of civil law in the *Textbook on Civil Law* (1938), the Soviet conception has little in common with Schlesinger's notion that true civil law is concerned with the citizen's share in the means of consumption produced.

In an extremely interesting concluding chapter entitled "Soviet Concep-

tions of International Law" Schlesinger maintains that the reality of international law is indisputably recognized by contemporary Soviet theory despite the existence of antagonisms between the Soviet and Western social systems. This recognition is based upon the plain fact of the economic interdependence of states and their mutual political dependence. A final and prophetic word by Schlesinger warns that the linked principles of state sovereignty and national self-determination might precipitate post-war international issues involving the U. S. S. R. One need only glance at the dismal picture of present international relations to confirm the suspicion.

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ENGLISH CONSTITUTIONAL HISTORY. By S. B. Chrimes. New York: Oxford University Press, 1947. Pp. 200. \$2.00.

THE "constitution" of England contains many elements of an imponderable and intangible nature. Yet, there exists a body of fundamental law, the derivative of statute and usage, which regulates practically every aspect of governmental procedure in that country. This is easily forgotten when one cannot look at one single document in a museum or other national repository, or exclaim over the rare occurrence of some signatory's autograph. For the layman in particular, Chrimes' *English Constitutional History* can be extremely valuable in disabusing him of such illusions or misconceptions, as well as others of perhaps greater prevalence.

England has had one of the longest periods of governmental evolution in world history, with no major disrupting exterior force since 1066, the year of the Norman invasion. From the Norman and Anglo-Saxon elements that combined thereafter, grew a central regime that generally remained in advance of contemporary governments on the continent. The English governmental institutions that we know began to evolve before that conquest, with degrees of specialization in governmental service for different functions, with various subdivisions of administration in operation, and with enforcement powers held by the king or his agents. The generally illustrious line of Norman kings had much upon which to build, and, despite feudalization, the central government increased in authority to the termination of the twelfth century.

The thirteenth, fourteenth, and fifteenth centuries were years of stress, with baronial opposition to a powerful monarchy rising to a preliminary crescendo during the reign of John (1199-1216) and recurring at intervals throughout the period. The Hundred Years War was peculiarly disastrous