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Book Review

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BOOK REVIEW

ENCYCLOPEDIA OF SOVIET LAW, 2D REV. ED. Edited by F.J.M. Feldbrugge, G.P. van den Berg, and William B. Simons. Dordrecht: Martinus Nijhoff Publishers, (Law in Eastern Europe No. 28), 1985. Pp. ix, 964. \$148.00, DFL 450.00.

*Reviewed by Igor I. Kavass**

The Documentation Office for East European Law at the University of Leyden in the Netherlands is one of the most prominent and active research institutions in the West dedicated to the study of the laws and legal systems of socialist countries.¹ Established in 1953 for the purpose of gathering and interpreting information about legal developments in the socialist countries, the Documentation Office is reputed to have now one of the most comprehensive collections of rare and generally inaccessible documents in its area of specialization. This collection attracts researchers from around the world. The staff of the Documentation Office is widely known for producing some of the best analytical and statistical reports on legal developments in socialist countries, as well as timely translations of important laws of these countries. Commanding an excellent reputation among specialists, the Documentation Office has been able to attract the participation of many leading United States and Western European scholars in its projects. Aside from several institutions of similar standing in the Federal Republic of Germany, where a systematic study of socialist legal developments is taken seriously, nothing comparable to the Documentation Office exists elsewhere in the Western World. Even the United States, despite an intensive preoccupation with the Soviet Union, does not have a permanent scholarly establishment of

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1. For a general description, see Feldbrugge, *The Documentation Office for East European Law: 1953-1978*, 4 REV. SOCIALIST L. 197 (1978).

the same dimensions and importance as the Documentation Office.

From the outset the Documentation Office has vigorously promoted the publication of scholarly works on the laws of the Soviet Union and other socialist regimes. Its efforts to induce the writing and publication of such works have been remarkably successful. The publications, appearing under the auspices of the Documentation Office, constitute today a sizable and impressive collection. First and foremost among them are monographs, essays and translations of laws published in a series known as *Law in Eastern Europe*. Inaugurated in 1958, this series currently consists of more than thirty volumes authored or edited by the leading Western specialists on socialist laws. In 1975 the Documentation Office began to publish a journal entitled *Review of Socialist Law*. It contains timely articles on important topics, reports on current legal developments, short translations of laws, and valuable bibliographic notes. From time to time the Documentation Office also has issued other publications which are not incorporated in either of the above series. Though the Documentation Office is located in the Netherlands, all of its works are published in English. This policy ensures a wider circulation for its publications and is a boon to English-language readers.

In the early 1970s the Documentation Office embarked upon a project which, perhaps, represents its most ambitious venture. Western students of Soviet law had felt for a long time the need for a comprehensive reference book (a "Nachschlagwerk," to use a more accurate German term which does not have a convenient counterpart in the English language) containing sufficient basic information about the concepts, principles and institutions of the Soviet legal system to serve as a convenient introduction to that subject as a whole. The Documentation Office decided to publish a work of this kind in the form of an encyclopedia. It recruited the help of the leading Soviet law specialists in the West to collaborate on the project as authors of entries on individual topics. The work progressed remarkably well (a rare occurrence in collective scholarly projects of international dimensions) under the singularly able editorship of Professor Feldbrugge, the Director of the Documentation Office. It resulted in the publication of the first edition of *Encyclopedia of Soviet Law (Encyclopedia)* in 1973.² Very quickly this work gained popularity among researchers on Soviet law as an indispensable reference tool, and it remains to this day the only publication of an encyclopedic format in the English language containing accurate, reliable, and relatively complete information on the Soviet legal system. Subsequent developments in

2. Gray, Book Review, 23 AM. J. COMP. L. 590-591 (1975) (reviewing *ENCYCLOPEDIA OF SOVIET LAW* (F. Feldbrugge ed. 1973)).

the Soviet Union, including the promulgation of a new Constitution in 1977, induced the Documentation Office to revise and update the *Encyclopedia*, once again with the assistance of many Western scholars as subject specialists on individual topics. The new edition, representing a substantial revision of the first, was published in 1985. Edited by F.J.M. Feldbrugge, G.P. van den Berg, and William B. Simons, it contains information current as of January 1, 1984.

Eschewing a dictionary approach of many short entries on minute or detailed items, the *Encyclopedia* encompasses all pertinent information on related specialized subjects within broader topics. Each topic is discussed in a separate article varying in length from one paragraph to as many as ten pages. The second edition of the *Encyclopedia* contains about 500 such articles.

The articles in the *Encyclopedia* are arranged in an alphabetical order of their designated subject headings. This arrangement is both good and bad. The subject headings consist of a mix of general, universally understandable, legal terms (e.g., contracts, freedom of speech, law, ownership, separation of power), some terms peculiar to Anglo-American law without any known counterparts in the Soviet legal terminology (e.g., mandamus, torts), and some terms denoting typical Soviet concepts or institutions (e.g., kolkhoz, nomenklatura, samizdat, socialist legality). For someone familiar with the subject headings, the alphabetical arrangement offers a quick and convenient access to the relevant topics. It also obviates the need for a table of contents (which the *Encyclopedia* does not have). However, the search for specific information, especially if the inquiry deals with a narrow or technical point, may become an agonizing exercise for the user who does not have an advance knowledge of the subject headings. This exercise is further aggravated by the arrangement of the *Encyclopedia* into broad topics. In vain might a reader, not fully familiar with the content of the *Encyclopedia*, hope to find discussion of details of a subject which does not clearly fall within one of the general topics. An example in point is the Soviet policy and practice on genocide. References to it are tucked away in several articles not directly related to this subject. The problem could be overcome by a generous use of "see" references. Unfortunately, the *Encyclopedia* does not have many of them.

The alphabetical arrangement also creates another complication. Many of the articles discuss interrelated matters. For a complete answer on any topic this may require extensive flipping of the pages to the front of the volume, then to the middle, then to the back, and so forth. The administration and regulation of foreign trade in the Soviet Union may be a convenient example to explain this point. For comprehensive information on this subject, it is necessary to consult articles on "foreign

trade," "export and import," "foreign trade contracts," "supply contracts," "representation offices of foreign corporations," in that order, as well as several other articles on related topics.

To alleviate such difficulties in the use of the *Encyclopedia*, an overview of the subject headings is presented in a "Systematic List" at the end of the volume. However, the "Systematic List" requires a careful study of its own. It is not arranged alphabetically like a subject index. Quite the contrary, reflecting the editor's perception of the major categories of the Soviet legal system, it is divided into twelve parts. The first part lists the subject headings for "law in general" and for other topics which do not easily fit elsewhere. It defies a logical characterization because, in addition to such obvious general law subject headings as "law" and "legal history," it also lists such uniquely Soviet terms as "communist party" and "nomenklatura." The second and third parts, "constitutional law" and "administrative law," are equally ubiquitous. In addition to the universally accepted constitutional and administrative law subjects, they include, for example, such terms as "export and import," "migrant workers," "samizdat," and "weapons." However, in fairness to the editor, it should be pointed out that the same subject headings may be repeated several times in different parts of the "Systematic List" whenever they do not fall neatly within one part. The remaining parts of the "Systematic List" are more straightforward, though they reflect to some extent the official Soviet classification of its major areas of law. This classification does not necessarily correspond to how the categories of law are actually viewed or used in practice within the Soviet Union. In this respect readers may find it quite illuminating to compare the major areas of Soviet law with what United States lawyers view as the major areas of law in the United States. There are fundamental differences between the two systems. In any event, the remaining parts of the "Systematic List" cover the following areas: "financial law," "agriculture and land law," "civil law," "labor law," "civil procedure," "criminal law," "criminal procedure," "administration of justice," and "international law."

The compilation of the *Encyclopedia* must have been a truly enjoyable experience for the editors and the contributing authors. In their quest for comprehensiveness, using both their prior knowledge of the subject matter and the structural organization within the *Encyclopedia* itself, the editors succeed in presenting a neat and coherent panorama of the theoretical structure of the Soviet legal system. But does this help the reader who does not have the benefit of being privy to the editorial plan? And does the editorial scheme of the Soviet legal system reflect Soviet law as

it is practised in reality?³ A reader, whose general knowledge of the Soviet legal system is based solely on Western writings about that country, may look in vain for explanations of subjects that concern Western writers most.

First, presumably in their effort to be conciliatory, the editors by and large have avoided including separate articles on subjects that may be especially offensive to the Soviet authorities. This does not mean that information of such nature does not appear in the *Encyclopedia* at all. The scholarly integrity of the editors and their quest for objectivity do not permit such omissions. The reader, however, must carefully peruse articles under inoffensive subject headings to locate information which may be viewed as criticism. For example, the existence of concentration camps and their pervasive corrupting effect on legality in the Soviet Union has been widely documented in scholarly as well as general literature.⁴ Yet the *Encyclopedia* does not contain a separate article on this shameful and tragic aspect of the Soviet administration of justice. It does not even include the terms "concentration camps" or "Gulag" as "see" references. To find a brief discussion of the concentration camps, it is necessary to read the final paragraph of the article on "penitentiary institutions." Though the *Encyclopedia* also contains articles on "corrective labor" and "political crimes," neither one of them mentions concentration camps or the Gulag system, though millions of people had to endure pain and suffering there for no cause whatsoever. The editors may argue that the *Encyclopedia* deals with law and that it is not a work on political or social issues. If this is the case, then one may well ask why it includes articles on such apparently non-legal topics as "democratic centralism," (in which the author of the article admits that the concept is "hardly a principle or a technique of a legal nature"⁵), "foreign trade," and "sports." Similarly, there are no separate articles on psychiatric confinement in criminal prosecutions or other psychiatric abuses (though some information thereon may be found in articles on "confinement procedures" and "forensic psychiatry"). This is also the case with censorship (it is necessary to look at articles on "freedom of speech," "press," "samizdat," and "security"), religious persecution (on which the infor-

3. Many Western writers have commented upon the significant gap between "law in books" and "law in practice" in the Soviet Union. See, e.g., O. IOFFE and P. MAGGS, *SOVIET LAW IN THEORY AND PRACTICE* (1983).

4. See LIBUSHE ZORIN, *SOVIET PRISONS AND CONCENTRATION CAMPS: AN ANNOTATED BIBLIOGRAPHY 1917-1980* (1980).

5. *ENCYCLOPEDIA OF SOVIET LAW* 249 (F. Feldbrugge, G. van den Berg & W. Simons 2d rev. ed. 1985).

mation may be found in the excellent article on "church and state"), political persecution, genocide, and other equally controversial topics. It is not that the information on these matters is completely absent from the *Encyclopedia*. It is there, but careful reading is required to find it.

Second, getting the complete information on a particular subject, especially if it is a broad one, frequently requires simultaneous reading of many articles in different parts of the *Encyclopedia*. For example, to gather relatively satisfactory information on the Soviet political and administrative structure, it is necessary to begin with a brief article on the "Soviet Union," which does no more than arouse curiosity, and then proceed to read through articles on the "constitution," "constitutional law," "democracy," "democratic centralism," "federation," "local authorities," "self-determination," the "state," the "union republics," "autonomous republics," "dictatorship of proletariat," "autonomous provinces," "territorial division," "district," and many others. The reader may be better rewarded by reading John N. Hazard's *The Soviet System of Government*⁶ which presents similar information in a clearer and a more succinct manner.

Third, some of the information tends to be sterile. It consists of uncritical paraphrases from official Soviet sources without examining the relevant surrounding issues or the practical implications and consequences of their true state of affairs. Many Western scholars of Soviet law (some of them also being contributors to the *Encyclopedia*) refer to the serious gap between "law on books" and "law in practice" in the Soviet Union.⁷ There is an ever present danger that the information in the *Encyclopedia* may be incomplete or even misleading when this gap is ignored.

Fourth, the *Encyclopedia* omits some translations of subjects and terms which might be helpful or informative. There are a few inconsistencies in this respect as well. Most articles give English translations as well as transliterations of the original Russian terms or titles where the text refers to Soviet concepts or institutions. Unfortunately, this is not always the case. In these few cases, where either the Russian term or its English translation is omitted, further research may be stymied by reason of an incomplete reference. The term "state enterprise" is an example in point. Neither the article on "public property" nor the article on "state enterprise" offer the official Russian original of this term.

Furthermore, not all articles contain information as complete as may be thought relevant. The article on "special courts," illuminating and very revealing in other respects, fails to mention that special summary

6. J. HAZARD, *THE SOVIET SYSTEM OF GOVERNMENT* (5th ed. 1980).

7. See *supra* note 3.

tribunals, operating in secret and outside the requirements of law, were established as early as 1919. Thereafter, imprisonment and even execution without proper trials, prescribed by the Soviet Union's own criminal laws, were documented to continue quite extensively until the 1950s.⁸

The *Encyclopedia* contains several articles dealing specifically with manifestations of Soviet culture emerging directly from the oppressions or shortcomings of the law in that country. One article, for example, deals with "arteli," the loosely organized teams of tradesmen or workers with historical origins in pre-Petrine Russia. Another discusses the "samizdat," the underground publication of unauthorized writing in the Soviet Union. In this respect, it is regrettable that the *Encyclopedia* does not discuss more terms of this kind. There would certainly have been some justification for at least a brief reference to the term "limitchik" which describes the status of a growing segment of the population residing in the larger cities without residential permits ("propiski").⁹ Equally important might have been a discussion of "tolkach," the entrepreneurial arranger of supplies and deliveries between different state industrial enterprises without whom, according to some writers, Soviet production might come to a complete halt.¹⁰ It is also curious that the international area of the *Encyclopedia* does not discuss disarmament or arms limitations, two subjects of some importance for the Soviet Union during the past twenty years.

There are also occasional inconsistencies. For example, Professor Harold J. Berman in his article on the "codes" refers to the recent codification in the Soviet Union ("svod zakonov") as the "code of law;" Professor William E. Butler in his article entitled the "svod zakonov" calls the same codification process a "digest of laws." There should have been more careful editing here because, as matters stand now, the reader without any knowledge of the Russian language may quite reasonably believe that the two articles refer to quite distinct codification projects. Parenthetically, this reviewer is convinced that Professor Berman's translation is the correct one.

8. Discussed by the article on "special courts" in more detail in *Special Courts of the USSR: Their Nature and Activities*, 8 REVIEW OF SOCIALIST LAW 237 (1982) and in *Special Courts: Lessons from History*, 10 REVIEW OF SOCIALIST LAW 63 (1984). For the consequences of such courts on the Soviet concept of justice, see R. Pipes, *LEGALIZED LAWLESSNESS: SOVIET REVOLUTIONARY JUSTICE* (1986).

9. This has been described in some detail by Dietrich Andre Loeber in *Limitchiki: On the Legal Status of Migrant Workers in Large Soviet Cities*, 11 SOVIET UNION 301-310 (1984).

10. For one definition of this term see B. MCCREA, J. PLANO, AND G. KLEIN, *THE SOVIET AND EASTERN EUROPEAN POLITICAL DICTIONARY* 234 (1984).

Many more comments of this nature could be made about the *Encyclopedia*, but they would not serve a useful purpose. Any work as monumental as the *Encyclopedia* is bound to have some omissions and shortcomings. Its selectivity and editorial arrangement cannot please everyone. Viewed objectively, the *Encyclopedia* achieves the purpose of offering the public as much useful information about the Soviet legal system as may be included, subject to editorial constraints, within the covers of one volume. An extensive bibliography, keyed to the individual articles, provides a useful guide to further information on the respective topics. Equally useful as a reference source to major legislative activities in the Soviet Union is a chronologically arranged "Selected List of Statutory Materials."

Hopefully, further editions of this work will appear without much delay. The Soviet legal system is not static. Many interesting and quite significant developments have occurred in the few years since the second edition of the *Encyclopedia* was published.¹¹ Considering the current

11. The most recent changes are taking place in the economic sector. While still committed to a model of centralized economic planning and control, General Secretary Mikhail Gorbachev is trying to improve productivity and bring about a stronger sense of commitment in the workplace through structural modifications. Recommendations for this approach, as a means to make the Soviet economy more efficient, were already made in the so-called Novosibirsk Report in 1983. See Hanson, *The Novosibirsk Report: Comment*, 28 SURVEY 83 (1984). For the text of the report, see *The Novosibirsk Report*, 28 SURVEY 88 (1984).

Gorbachev began to express similar ideas in 1986. These resulted in the publication in early January 1987 of a new draft law on state enterprises (associations) which, among other things, would enable individual enterprises to have a greater degree of autonomy and provide for the election of management by workers. See *Izvestiya*, February 9, 1987. This draft has been extensively discussed in the Soviet press, see *Pravda*, March 16, 1987, and there are strong indications of its enactment in the near future. Along somewhat different lines Gorbachev is also pushing for the development of privately-operated cottage industry in business and personal services. On November 19, 1986, the Supreme Soviet of the USSR enacted a law on individual working activities. See *Pravda*, November 21, 1986. This law came into effect on May 1, 1987, and there are already reports of privately owned restaurants operating in Moscow. See *Int'l Herald Tribune*, March 17, 1987.

In the area of foreign trade, the USSR Ministry of Foreign Trade and the USSR State Committee for External Economic Relations were substantially restructured in early 1987. See *Ecotass Report No. 04 (Special Issue)*, January 19, 1987. Simultaneously the Presidium of the Supreme Soviet of the USSR and the USSR Council of Ministers decided to authorize Soviet state enterprises to form joint enterprises with foreign firms, including capitalist country corporations. For the text of the USSR Council of Ministers resolution, see *Izvestiya*, January 28, 1987. It is still too early to judge the effect of these changes on the Soviet economy, but there are strong indications that more reforms may be introduced in the near future.

trend of Soviet economic and political activities, many more are emerging at an increasing rate. Without containing some reference to them the current edition of the *Encyclopedia* will become quickly dated.

