

authority and illustration. It would wrong the law to say that it is uninteresting, but I come away with the impression that we have little to learn from Soviet law except perhaps that it is a mistake to suppose that the natural tendencies of mankind cannot be thwarted and twisted by a group of resolute men, provided they are willing to pay the price. That the price is heavy there is no doubt, and the general insecurity which is a large part of it affects the leaders perhaps even more than the led.

Soviet Law in Action must be taken for what it is said to be in its subtitle, "The Recollected Cases of a Soviet Lawyer." The author was during the greater part of his career a professor of law and legal advisor to the Odessa Bread Trust. He has set down what he remembers of fifty-three cases with most or all of which he came into contact professionally between 1931 and 1941. His book is therefore not at all like an American casebook and his accounts resemble ordinary reports in the popular press; for all he can give is a general description of the facts, the decisions and, in some cases, the subsequent fates of the parties. However Professor Berman has added valuable introductions to the whole book and its various sections, together with explanatory notes to each case.

The book is eminently worth having, but it is interesting not because it adds anything to our knowledge of Soviet law but because it affords a view of the legal and social atmosphere in which Soviet lawyers have to work. This, I have already suggested, is more novel and more important than anything in the law itself.

As a comparative lawyer who has made no special study of Soviet law but has read not only these but other books on it, I am bound to confess that although it is our duty to provide experts on Soviet law, I would rather not be one of them. It seems radically uninteresting and unlikely to shed new light on our legal problems. Nor do I think this should be a matter for surprise, for the initial doctrine of the Soviets was that law was only a makeshift which must wither away in the not very distant future, and when this was announced as a heresy, it was only because they recognized that law was a convenient, and indeed necessary, instrument of absolute power.

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The Growth of Scandinavian Law. By Lester Bernhardt Orfield. Philadelphia: Temple University Publications, University of Pennsylvania Press, 1953. Pp. xx, 363. \$8.50.

The western world's legal systems are usually divided into two groups, those of the civil and those of the common law. The former of these is not too well defined and contains within it legal systems which are so different from each other as those of France and Germany, or of the Union of South Africa and Mexico or Switzerland. But even if one defines the concept of civil law so broad-

ly as merely to indicate that all the legal systems within it have been strongly influenced, at one time or another, and in some of many different ways, by the law of ancient Rome as revived in the Middle Ages, it is difficult to find within that civil law group a place for the legal systems of the Scandinavian countries. Certainly, these countries have not totally escaped the influence of Roman-law thinking, just as such influences have not been absent in the common law. But those influences have not so strongly turned the legal thinking of Scandinavia toward that peculiar kind of conceptual thinking by which the civil law has come to be characterized. On the other hand, there has been totally absent that feature which is characteristic of the common-law systems, viz., that they are directly derived from the practices and traditions of the royal courts of England. Precedent has, of course, played a considerable role in the laws of Scandinavia, but to no greater extent than in the laws of, let us say, France or Germany. The Scandinavian laws should thus be regarded as forming a third group together with those of the civil law and the common law. What characterizes this group is the unbroken development from ancient Germanic customs to a modern body of law in which autochthonous traditions are happily blended with institutions of common European civilization and highly progressive ideas of twentieth-century welfare-state ideology, all held together by the vigorous democratic spirit of nations which have successfully preserved their independence from foreign domination.

A group of legal systems presenting such special and, in many respects, exemplary features, would seem to deserve careful attention, but nowhere outside of Germany do the Scandinavian laws seem to have constituted the subject-matter of intensive study. In this country, where we have never shown much interest in the ways in which the problems of modern civilization are being attacked abroad, the laws of the Scandinavian countries are to all practical effects unknown. In the present book Professor Orfield has undertaken to arouse our interest in the legal traditions and institutions of Scandinavia and to present to us some of their principal features. The aim is meritorious, but the achievement is not fully satisfactory. However, if there is any fault, it does not lie with Professor Orfield but with the general state of legal history in this country.

As the laws of Scandinavia are characterized by their long and unbroken development from the days of the Vikings on, the author has appropriately chosen to present these laws in their historical development. As its title indicates, the *growth* of Scandinavian law is the subject-matter of his book. Such an undertaking would seem to require at least some acquaintance with the methods and results of legal history, and quite particularly of that branch of it which has flourished for some one hundred and fifty years under the name of Germanic legal history. But where in the United States, outside of Professor Goebel's Institute at the Columbia Law School, could anyone obtain any training in, or even acquaintance with, that field of learning? As far as American law schools

are concerned, it does not exist, although our American law constitutes an offshoot of that body of traditions which are studied by the "Germanists." This state of affairs has not always prevailed. Melville Bigelow was a great scholar in Anglo-Saxon law and, consequently, in Germanic legal history. Langdell and Ames were at home in it, at least through their acquaintance with the work of Maitland. In every chapter of his *Common Law*, Holmes draws upon the general stock of learning of the Germanists, and so did, in their wide-flung works, John H. Wigmore and Max Radin. But where could a Scandinavia enthusiast like Professor Orfield have found this grounding today? Who, indeed, could have advised him as to the need of such grounding?

The existence of that need is based upon the fact that the Scandinavian laws, genuinely national though they may be, have not grown up in isolation. Together with the Angles, the Saxons, the Franks, the Visigoths, the Bavarians, etc., the Danes, Norwegians and Swedes belong to that large group of the Germanic peoples who entered the scene of history in late antiquity, who destroyed the Roman Empire, who built new kingdoms upon its ruins, and who, through the Middle Ages, either in amalgamation with Romans or Romanized Celts, Britons and others, or, in Northern Europe, without such admixtures, in constant contact with each other built up the common civilization of Europe. Within this common European civilization, including its law, the Scandinavian nations present a special variant, but what is peculiarly Scandinavian and what is commonly European cannot be understood unless one is familiar with the history of Europe in general and its legal history in particular. Only upon such a background can we appreciate, for instance, in what respects the Norwegian "thing," the Danish nobility, or the Swedish law books of the thirteenth century were peculiarly characteristic. Familiarity with the general panorama of history would also be necessary to transform the mass of historical data from the accumulation of the mere chronicle into that meaningful presentation of interconnections which is the peculiar art of the historian. This art cannot be developed without training, and again we ask, where in the United States can a law teacher find this training?

The writing of this book, one can feel, has been a work of love for its author, who, while born in this country, is of Scandinavian origin, has spoken Norwegian as his first language, has constantly kept in contact with Scandinavian affairs, and is well read in Scandinavian legal literature. But, or so it seems at least, he has never studied the Scandinavian laws on the spot. Had he done so, he might have told us more about the legal life of these countries, about the men (and women!) by whom this legal life is carried on, about the practice of the law, the traditions of the bench and bar, the methods of legal education, etc. As it stands, the book gives us much information about both historical data and modern legislation, but we do not get that connecting link which constitutes the very essence of the Scandinavian laws and which sets them apart from both the civil and the common law. We are briefly told that custom plays a greater role than elsewhere. What does that mean: ancient custom or more modern

habits, general custom or that of localities or groups? Observing in action that special kind of court, the *härådet*, in which, in the country regions, sturdy farmers and small town burghers sit together with a magistrate of legal learning, can give insights which no book can provide. Age-old traditions are blended here with a kind of professional legal learning that has long exercised a profound influence on both legislation and the decisions of the higher courts. To some extent it seems, indeed, as if in Scandinavia legal development has in a peculiar way been determined by the blending of two influences. Lay people of both countryside and town, who, in that dignity which only the absence of any sort of serfdom could give, have maintained their traditions and combined them with courageous progressivism, have joined their outlook with the ideas of professorial scholars of great learning in both their peoples' own traditions and the experiences of the world outside. In England, the law has been decisively shaped by the judiciary; in this country, the attorneys and, in recent years, legal scholars, have added their special contribution; in Germany the decisive influences have been those of the scholars and the high civil service. In Scandinavia, the law seems to have received its peculiar features through a combination of popular and professorial influences. Of this unique spirit little can be gleaned from the present book, which also does not deal much with that branch of the law in which these inner characteristics present themselves most clearly, viz., ordinary private law. We do obtain much useful information, however, about modern legislation, especially of that kind which has made the Scandinavian countries appear as the very prototype of the welfare state. Enough is also said to indicate that this development has not blunted the Scandinavians' vigorous self-reliance and energies. Much information is also given about constitutional developments, about criminal law, and about procedure. As to the latter, the influential model has, incidentally, not so much been Germany as Austria, whose system of civil procedure is quite different from that of Germany. In passing it might also be observed that the first country besides Denmark to accept Lutheranism was the Duchy of Saxony rather than Switzerland, whose Protestant parts did not accept the teachings of Luther, but those of his rivals, Zwingli and Calvin.

In his bibliographies, Professor Orfield has given what seem to be complete lists of publications on Danish, Icelandic, Norwegian, and Swedish law in English, references to important writings in German, French, and Italian, and, finally, extensive lists of writings in the Scandinavian languages. Law librarians, let us hope, should feel stimulated by these bibliographies.

In our review of Professor Orfield's book we have been critical. Let it be repeated, however, that this criticism is directed mainly toward a defect in the present state of our learning and teaching in general. To Professor Orfield we must be thankful for a stimulating and informative book.

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