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## Book Review

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## BOOK REVIEW

*The History and General Concept of Contract Law—Contract Law in the USSR and the United States.* By E. Allan Farnsworth and Viktor P. Mozolin. Washington, D.C.: International Law Institute, 1987. Pp. xiii, 350. Index. Price \$35.00.

My perspective on this book is as a student of United States contract law who makes only occasional, limited forays into other legal systems. When making such forays, I generally have found two kinds of scholarly works useful and readily available to the novice in foreign law. One is a true comparative work, in which elements of different legal systems are compared, contrasted, and perhaps synthesized.<sup>1</sup> An ambitious example is the *International Encyclopedia of Comparative Law*.<sup>2</sup> The other is the exposition in English of a foreign legal system, with little or no attempt to compare the foreign and United States law.<sup>3</sup> Butler's *Soviet Law*<sup>4</sup> and Ioffe and Maggs's *Soviet Law in Theory and Practice*<sup>5</sup> are examples of English language works introducing the Soviet legal system. There are comparable works in other languages on United States law.<sup>6</sup>

*The History and General Concept of Contract Law* employs a third methodology. The book contains independent but parallel essays on Soviet and United States law, with a very brief comparative Afterword. This work is the first in a series of books of joint authorship and collective sponsorship on Soviet and United States contract law.<sup>7</sup> The initial

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<sup>1</sup> See generally Schwerin, *Comparative Law Reflections: A Bibliographical Survey*, 79 Nw. U.L. REV. 1315-40 (1985).

<sup>2</sup> The INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW is an ongoing project sponsored by the International Association of Legal Science. This multi-volume work employs numerous contributors in an attempt to compare all the world's legal systems. See Schwerin, *supra* note 1, at 1338.

<sup>3</sup> See generally Schwerin, *supra* note 1, at 1339-40.

<sup>4</sup> W. BUTLER, *SOVIET LAW* (1983).

<sup>5</sup> O. IOFFE & P. MAGGS, *SOVIET LAW IN THEORY AND PRACTICE* (1983).

<sup>6</sup> See, e.g., R. DAVID, *LES GRANDS SYSTÈMES DE DROIT CONTEMPORAIN* (6th ed. 1985).

<sup>7</sup> The International Law Institute and the Institute of State and Law, Academy of Sciences of the USSR are responsible for preparation of the series, entitled *Contract Law in the USSR and the United States*. This volume was produced in cooperation with Columbia University's Parker School of Foreign and Comparative Law. The entire project is underwritten by the American Council of Learned Societies-Soviet Academy of Sciences Commission on the Humanities and Social Sciences. Forthcoming volumes include W. VUKOWICH, V. YAKOVLEV & M. SHIMINOVA, *THE EXTENT OF*

volume, as the Introduction states, "establishes the perimeter of the concept and history of contract in both of our nations . . . [and] fixes the working methodology for the entire series."<sup>8</sup> It may be useful, therefore, to examine the methodology employed in the book as well as the substance of the individual essays and their definition of the subject.

The authors of the individual essays were well chosen for their tasks. The essay on United States law was written by E. Allan Farnsworth, the eminent scholar of United States contract law, author of the definitive text on the subject,<sup>9</sup> and Reporter for much of the *Restatement (Second) of Contracts*.<sup>10</sup> The essay on Soviet law was written by Viktor P. Mozolin, Head of the Section of Civil Law of the Institute of State and Law, Academy of Sciences of the USSR. The Afterword attributes to him a facility in English which is obvious from the clarity of his essay.

Both essays share the same structure. The initial chapters in each essay define the concept of contract in each legal system, then describe the history and sources of contract law. The substantive law for each legal system is presented in chapters entitled "Characteristics and Organization of Contract Law," and the final chapter of each essay addresses the settlement of contract disputes.

Farnsworth's essay is mostly a condensation and editing of portions of his treatise on contract law. Many sections of the essay have been borrowed wholesale from the text of the treatise with only minor changes. Although the result is hardly novel, the technique is entirely justified. Farnsworth's treatise is the leading source on the subject, and there is good reason to take advantage of it in this way. Moreover, he has gone the extra mile by adding new material and rephrasing some of the old to make contract law comprehensible to the foreign reader with no prior knowledge of United States law. For example, much of his explanation of mechanisms for settlement of contract disputes is a simple yet extensive discussion of the United States court system and legal profession.

Mozolin's essay is equally clear and basic. Like Farnsworth, Mozolin provides a simple introduction to the Soviet legal and economic systems that makes comprehensible the discussion of contract law itself. One would expect Mozolin to write from an orthodox Soviet point of

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THE POWER TO CONTRACT: REQUIRED TERMS AND CONTRACTS OF ADHESION (1988), and V. MOZOLIN & R. SUMMERS, THE LAW OF SALES (1990).

<sup>8</sup> Mozolin & Wallace, *Introduction*, to E. FARNSWORTH & V. MOZOLIN, THE HISTORY AND GENERAL CONCEPT OF CONTRACT LAW at xi (International Law Institute, Contract Law in the USSR and the United States, Volume 1, 1987).

<sup>9</sup> E. FARNSWORTH, CONTRACTS (1982).

<sup>10</sup> RESTATEMENT (SECOND) OF CONTRACTS (1981).

view, and he does. Some aspects of the essay, however, raise concerns that his ideological and intellectual predispositions may color his scholarly description. One annoyance is his use of politically-loaded language. For example, his history of Soviet contract law is separated into periods such as the Period of the Great Patriotic War, in which "contract law . . . helped to solve the major tasks before the Soviet people—defense of the Motherland and repulsion of the troops of the aggressor that had invaded the Country,"<sup>11</sup> and the Period of the Completion of the Construction of Socialism.<sup>12</sup> A more serious concern is raised by his selective use of sources. An extensive body of commentary by émigrés and Westerners on Soviet law is available, but Mozolin appears to rely entirely on Soviet scholarship. Indeed, even the Soviet sources have been sanitized. For example, there is no citation to the works of Olympiad S. Ioffe, who until his emigration around 1980, was a leading Soviet scholar of civil law. This limitation of sources suggests a bias in the analysis, and even a cursory investigation of non-Soviet sources strengthens the suspicion.<sup>13</sup>

Each essay, then, reasonably if not ideally serves its purpose. The more important issues are whether the methodology of parallel, noncomparative essays is a useful approach, and what purposes the resulting volume might best serve. The audience for traditional forms of comparative and introductory scholarship is easily identified, but the audience for this book and the others in the series is less apparent.

The search for a purpose and an audience might begin in the Introduction and Afterword of the book.<sup>14</sup> These affirm that the authors intentionally avoided producing a comparative work. Instead of comparison, each author's purpose was "to be as true as possible to his understanding of his own system, bearing in mind that his work was being done in the context of a joint study that is to edify readers in both the United States and the Soviet Union, as well as in other countries."<sup>15</sup>

The lack of comparison is one of the major limitations of the book. The other limitation is the almost exclusive focus on legal doctrine as the subject matter of the essays. The authors suggest that the doctrinal character of the work is more or less inevitable, given their backgrounds.<sup>16</sup>

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<sup>11</sup> E. FARNSWORTH & V. MOZOLIN, *supra* note 8, at 78.

<sup>12</sup> *Id.* at 81.

<sup>13</sup> For example, compare the discussion of the relationship between the economic plan and contract law, *id.* at 26-36, with the discussion of the same topic in O. IOFFE & P. MAGGS, *THE SOVIET ECONOMIC SYSTEM: A LEGAL ANALYSIS* 217-39 (1987).

<sup>14</sup> Mozolin and Don Wallace, Jr., Director of the sponsoring International Law Institute, are responsible for the Introduction. E. FARNSWORTH & V. MOZOLIN, *supra* note 8, at xi-xiii. The book's authors wrote the Afterword. *Id.* at 335-40.

<sup>15</sup> *Id.* at xi.

<sup>16</sup> *Id.* at 335.

At least as to Farnsworth, this strikes the reader as an excess of modesty, but the doctrinal character of works on contract law in any context is by now almost predictable. The mainstream of United States contract law is still dominated by analysis of appellate cases significantly detached from their social context, and Soviet legal scholarship tends toward the more theoretical end of the already-theoretical tradition of civil law scholarship. Thus, this work is mostly about law-in-books, rather than law-in-action, to use the traditional characterizations.

The Introduction suggests that, despite the doctrinal and non-comparative nature of the book, it can “yield insights into the workings of [each] society . . . reveal the nuances of social and commercial life . . . [and] clarify . . . the full significance of the law in the reader’s own country.”<sup>17</sup> Further, it is proposed, although the role of contracts is different in each society, there are similarities: “a contract is a contract.”<sup>18</sup> These statements rather obviously overreach the limited scope of the book and raise the problem with this whole enterprise.

The problem with the enterprise is its doctrinal focus, which is an odd choice for an effective introduction to a foreign body of law or for providing insight into another or one’s own legal system. This type of work provides little more than an introduction to legal vocabulary—how United States and Soviet lawyers use words relating to certain economic transactions. At this level, the book might be useful for a rudimentary introduction, like the International Law Institute programs preparing foreigners to study in United States law schools. Beyond that, the doctrinal focus understates the role and nature of the economy, overstates the rationality and importance of the law, and thus fails to provide an accurate or useful picture of the legal system in operation.

Even as an introduction, the book does not serve an obvious audience: as an introduction to United States law, the Soviet half is extraneous, and vice versa. As a comparative work, combining the two essays without more is of limited effectiveness. In sum, the individual essays have their virtues and limits, but their combination in this form is puzzling. The collaboration of the authors and sponsors in producing this series may further Soviet-United States cooperation, but this book and its

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<sup>17</sup> *Id.* at xii.

<sup>18</sup> *Id.* at xi.

successors are themselves likely to make only a limited contribution to scholarly or general understanding of our respective bodies of law.

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