BOOK REVIEW

TWO BOOKS ON THE TOP SHELF

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Abstract
Each new shooting star in the sky, each sound of a clock striking midnight
on New Year’s Eve, and even each shrill ring of a morning alarm clock,
gives birth to one, or even two, new law books. It is not easy to manage this
flow of publications, which threatens to turn into a veritable flood. Legal
literature intended to be strictly professional helps to properly divide
an inheritance, decrease the tax burden, or accomplish other useful and
important things. Although this type of literature is a necessity recognized
by the chaotic courts of justice, the so-called upper shelves of the bookcase
often remain unattended because of lack of time and physical strength.
In this review the author draws attention to books occupying the upper
shelves of a legal bookcase representing two classical legal traditions – the Continental European and the Anglo-Saxon – respectively. Each
book mentioned in this review investigates the correlations between the
animate and the inanimate and between the animate and the animate.
The titles of the books are unexpected. Now that the intrigue is noted, let
us unravel it together with the authors of those books.

Keywords
Law, freedom, legal system, Russia, France

On the top shelf can be found books of honor, valuable and worthy. But
their content is remote from current realities. Somewhere in the middle is a
scattering of classics: Comte and Kant, Duguit and Dicey, Agarkov and Koni,
Meier and Shershenevich.
Close at hand and within easy reach are books that are useful in everyday life; for example, those concerning tax optimization, refinancing programs, and court practice. Of course, there is also – old and totally worn out, with lots of bookmarks, and full of comments made by others or sometimes by your own hand – the “comrade-in-arms” since student days: the Civil Code. Further on, looking at us from behind the placid glass of the bookcase, stern in content and reserved in form, is the Criminal Code and, of course, the book of occasionally failed hopes, the Constitution. However, our story is not about them. It is about the dwellers of the top shelves, seemingly so far removed from us.

One of those books in question is “Tolstoï et le Droit.” It was published a short time ago and received the award of the French Academy of Moral and Political Sciences [l’Académie des sciences morales et politiques] just in a month after its publication. The author, Professor Raymond Legeais, is the Honorary President of the University of Poitiers, Doctor honoris causa of the University of Marburg, and a member of the International Academy of Comparative Law. His works are well known far beyond his hometown, a small medieval-era borough near Paris. What is his latest book about? Is the word order in its title correct? Is “Tolstoy and the Law” really the best way to phrase it? You will find the answers below.

We know from Tolstoy’s War and Peace that “Everything was in confusion in the Oblonskys’ house”. We also can give a verbal portrait of Plato Karataev. But what does all of that have to do with the law?

First, it is worth mentioning that in 1844 Leo Tolstoy joined the Department of Oriental Language Arts at Kazan University, but later transferred to the Department of Law. It was around this time that he commented on the “Nakaz” of Catherine the Great, drawing comparisons with Montesquieu’s The Spirit of the Laws.

We can see some political and legal grounds in his novel Resurrection, which is a key to understanding the “legal consciousness of the Russian

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1 R Legeais, Tolstoï et le Droit (Poitiers 2014)
2 In particular, the classic work of Professor R. Legeais on comparative law “Grands systèmes de droit contemporains-Approche comparative” was translated into Russian.
people.” *The Death of Ivan Ilyich* in large part depicts the life of a junior lawyer of yesterday and today.³

Legais noted that many topics addressed by Leo Tolstoy in the nineteenth century evolved in the twentieth, from the idea of non-violence⁴ to criticism of autocracy and, of course, the ideas of “war” and “peace.”

Today, more than ever, the international communities (such as the United Nations and the NATO, which are in many ways polarized, as they consist of government delegations from different countries) lack, among their ranks, People of Peace. People of War have already fully shown their worth.

There is no doubt that the works should not be viewed as axiomatic, but through them, we are able to better understand even ourselves, as well as our political and legal realities, with their crises (both internal and external), revolutions, evolutions, wars, and peace.

The second book under review, entitled *Freedom and The Law*, appeared more than a half century ago⁵ (translated into Russian in 2008⁶) and emanated from the pen of Bruno Leoni, an outstanding Italian lawyer and public figure.

As Arthur Kemp wrote in the foreword to the third edition of an English version of the book: “Bruno Leoni lived a dynamic, intense, vigorous, and complex life as a scholar, lawyer, merchant, amateur architect, musician, art connoisseur, linguist, and – above all else – as a defender of the principles of individual freedom which he so passionately believed in. He was a Professor

³ It would not be quite right to frighten young lawyers with the word «death» even if it is about some abstract Ivan Ilyich, who lived two centuries ago. But it may be useful for them to have an idea of syllogism, which this character learned about: «...Caius is a man, men are mortal, therefore Caius is mortal.»

⁴ As Legier suggests, the most conspicuous continuation of Tolstoy’s «non-resistance to evil by force» in the twentieth century was Mahatma Gandhi’s «nonviolent resistance» movement.

⁵ The book was first published in 1961.

of Legal Theory and the Theory of the State at the University of Pavia, and also served as the Chairman of the Faculty of Political Science, as a Director of the Institute of Political Science, and as founder-editor of the quarterly journal, Il Politico. As a distinguished visiting scholar, he traveled all over the world, delivering lectures at the Universities of Oxford and Manchester (in England), and Virginia and Yale (in the United States), to mention only a few. As a practicing attorney, he maintained both his law office and his residence in Turin where he was also active in the Center for Methodological Studies. He found time, on occasion, to contribute columns to the economic and financial newspaper of Milan, 24 Ore. His successful efforts in saving the lives of many allied military personnel during the German occupation of northern Italy gained him not only a folding watch inscribed “To Bruno Leoni for Gallant Service to the Allies, 1945,” but also the eternal gratitude of too many persons to mention.”

In his critical analysis of the state of affairs in then-modern legislation, Bruno Leoni, in particular, noted:

“... A fact that almost always goes unnoticed is that a remedy by way of legislation may be too quick to be efficacious, too unpredictably far-reaching to be wholly beneficial, and too directly connected with the contingent views and interests of a handful of people (the legislators), whoever they may be, to be, in fact, a remedy for all concerned. Even when all this is noticed, the criticism is usually directed against particular statutes rather than against legislation as such, and a new remedy is always looked for in “better” statutes instead of in something altogether different from legislation. While legislation is almost always certain, that is, precise and recognizable, as long as it is “in force,” people can never be certain that the legislation in force today will be in force tomorrow or even tomorrow morning. The legal system centered on legislation, while involving the possibility that other people (the legislators) may interfere with our actions every day, also involves the possibility that they may change their way of interfering every day. As a result, people are prevented not only from freely deciding what to do, but from foreseeing the legal effects of their daily behavior...”

Doesn’t that remind you anything or anybody? And if you think really well? “... We have changed the time either to winter or to summer ... adopted a
whole bunch of emergency laws making the subject of their regulation illegal…”

Something like this?

What is the solution suggested by the author?

“We do not need to take refuge in Utopia in order to find legal systems different from the present ones,” Leoni claims. “Both Roman and English history,” he says, “teach us, for instance, a completely different lesson from that of the advocates of inflated legislation ... Both the Romans and the English shared the idea that the law is something to be discovered more than to be enacted and that there is nobody in the society who could be powerful enough to identify his own will with the law of the land. The task of “discovering” the law was entrusted to the lawyers and judges.

Ways out of difficult situations always exist. So, place the residents of the top shelves of the bookcase a little closer to hand and heart and you will surely be rewarded.

**Bibliography**

Legais R, *Tolstoï et le Droit* (Poitiers 2014)


Two Books in a Shelf, Brazil. 180 likes. Página para resenhas, discussão e promoção de livros. This top nine represents me well, tattoo, my beautiful luna that is no longer with us, quote from @jkrowling, beautiful cover of @bcherryauthor, @authortilliecole with the first book of #hadeshangmen released here by @thegiftboxbr and draw with Our partner @ 3 Deaeditora. In addition to the beautiful campaign markers for the awareness of #retinitis pigmentosa for @jennifer_l_armentrout and couldn’t miss my favorite authors of mm @ellafrank1 and @brookeblaine1!!