

Book Reviews

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Book Reviews

The Communist Trials And The American Tradition.
By John Somerville. New York. Cameron Associates, Inc.,
1956. Pp. 256. \$3.50.

John Somerville, student, teacher, and Doctor of Philosophy, spent two years in Russia (on a Cutting Fellowship) in the late thirties studying how the Soviets put the philosophy of Communism to work. As a result of that experience, one would gather, from what he says in his introductory chapter, that he has devoted the rest of his life to pottering intellectually in that ragweed garden of thought which traces its unholy seeds to the briefcase of that renegade Hegelian, Karl Marx. Mr. Somerville has written a number of books and innumerable articles on philosophy in general and communism in particular, worked for UNESCO and lectured at several "name" universities in this country. He knows his way around.

Several years ago, after addressing a teachers' meeting in Philadelphia on the subject of civil liberties, he was taken into a lounge by two young men who wanted to talk business. One was a leader of the Pennsylvania Communist Party and the other was his attorney. The former had been indicted under the Smith Act.¹ He wanted help. He wanted Mr. Somerville to give testimony, in the capacity of a non-Communist expert witness, on the teachings of Marx, Lenin, and Stalin as to the use of violence as a method of achieving desirable results. Mr. Somerville thought things over, and his liberalism got the better of him.² He agreed, and thus found himself in a United States District Court in Philadelphia on July 21, 1954. The major portion of this book is absorbed in the story of his testimony at that trial (in which, it should be noted, all defendants were found guilty) and a criticism of the way it was handled by the judge and prosecuting attorney. The remainder contains a general criticism of all Smith Act convictions of Communists, a discussion of the two subsequent

¹ 18 U. S. C. A. Sec. 2385 (1951).

² SOMERVILLE, 16-22, describing how the appetite for witch hunt doth grow by what it feeds on. His own justification for getting into the anti-witch hunt act appears on p. 23:

"It appeared and appears very clear to me that if ever there comes a time in this country when the citizen who possesses special knowledge relating to some public issue is afraid to come forward and place it at the disposal of a judge and twelve jurors in a courtroom, justice will be dead and the moral meaning of this country will have vanished."

trials in which Mr. Somerville testified,³ full text and analysis of the indictments in each of the three trials, and an amusing little chapter devoted to his lop-sided correspondence with Representative Howard W. Smith (D. Va.), whose name the Alien Registration Act bears. But this is a book about ideas, and no effort at creating a table of contents can do it justice. Mr. Somerville's style is a model of clarity. His approach to the incredibly difficult intellectual problem of Smith Act prosecutions is novel and, in some ways, convincing. While his annotations and citations leave something to be desired, particularly from the standpoint of those whose legal training has made them hungry for endless documentation, the inclusion of the indictments is an immeasurable asset, and the index is studiously complete.

Mr. Somerville's approach is neither constitutional, nor historical. It is utterly, and often infuriatingly, logical. Every proposition is, to borrow the terminology of the sailor, "wormed, parcelled, and served" in major premise, minor premise, and conclusion. The whole book is entwined by the endless, seamless web of pure deductive reasoning. Unhappily, several of the premises are invalid, to my mind, and, even if not, the ultimate conclusion which is made so simple and simon pure by hothouse deduction is so glaringly oblivious of history and of historical, inductive reasoning as to insult the intelligence of anyone with a good education and an inquiring mind. In this no man's land between the individual's absolute right to express *any* belief and the government's absolute right to prosecute any criminal *attempt* or *act*, arguments are long, "life short, judgment difficult". This book presents *one* argument brilliantly. *Too* brilliantly, one might say.

That argument is essentially this: the Smith Act makes it a crime to knowingly belong to a conspiracy which advocates the violent overthrow of the Federal government by force and violence as speedily as circumstances will permit. In prosecuting members of the Communist Party under this Act, the government has relied, after proof of non-innocent membership, solely upon the writings of the leaders of the Communist school of philosophy to establish its case. There was never any proof of overt acts of violence even amounting to a breach of the peace. "In all these trials the prosecuting authorities came into court not with caches of guns or bombs to show the jury but with stacks of books.

³The last was *Blumberg v. United States*, 136 F. Supp. 269 (D. C. E. D. Pa., 1956).

There is not a single exhibit of military plans but there is quotation after quotation from the teaching of Marx, Engels, Lenin, and Stalin."⁴ As to what is in these books, it can only be said that

" . . . no matter how many passages can be found which talk about violence, no matter how horrendous they may sound when taken out of context and read in isolation, . . . the question always remains: In the teachings of this school, when, under what conditions, is this violence to come about? And the answer is always the same: This school teaches that this violence will come about only in a revolutionary situation. And these teachings define the revolutionary situation clearly and emphatically as one in which governmental processes have already broken down to a degree making normal balloting impossible and where a revolutionary step has majority support."⁵

As to when the decision of a "revolutionary situation" exists, the teachings of the school require that it be made on the basis of "objective conditions".⁶ Finally, the Communist Party is not unalterably opposed to peaceful transition. Thus, it follows that the Communist Party doctrinally advocates a violent revolution on the same basis as did the signers of the Declaration of Independence, Thomas Jefferson, and as would any normally intelligent person picked at random from any American street corner. For this there can be no criminal conviction without a total destruction of our traditional system of civil liberties, so carefully nurtured for something less than two centuries, for the action advocated by Communist dogma is not "criminal" according to our beliefs about the rights of free men.

Mr. Somerville's basic contention, then, is that the advocated revolution is one which will never come off until government is ossified and the majority are ready to fight. This is strong stuff, from a man who knows his way around, who at least had enough sense never to get mixed up in the Party, even in the thirties when, as some of the cry-babies would have us believe, failure to join a cell was certain to result in one's being cut by his peers. It is a proposition unnerving even to one who has a moderate understanding

⁴ SOMERVILLE, 44.

⁵ *Ibid.*, 113.

⁶ Or, as government counsel put it on cross examination: "Now, you mean, what you are saying is that the Communist Party decides [when a revolutionary situation exists], but they don't decide unless they are right?" *Ibid.*, 90.

of Marxism, in both its malignant and non-cancerous forms. If what he says is so, why has the proposition been largely ignored at the judicial and other atmospheric levels in this Smith Act hurricane? Evidently because precious few people really believe it with the unswerving conviction that Mr. Somerville holds, and perhaps because some who would believe it are afraid to let anyone know about it.

It would be unfair to his reserved style to suggest that he has an axe to grind, though his shoddy treatment by the prosecution on the matter of his qualification as an expert might ruffle the serenity of Job. The government rather stupidly maintained that Mr. Somerville was unqualified simply because he was a non-Communist, evidently on the premise that only Party members and the government could know what are the teachings of the Marxist school.

When he restricts his gunning to the concrete skeet range of the trial court, his accuracy is commendable and his score high, but when he journeys off into the marsh of American historical traditions and the fen of constitutional law, the soft footing plays hob with his aim. It is quite possible that, as Mr. Somerville suggests, the government presented a bad case to the jury, that the passages it selected from its Appalachia of books to prove its own contentions about the doctrine of force and violence, when read in context, are as harmless as he contends. And the policy of trying people on a criminal indictment, not for what they *actually* believe, but for what they are *supposed* to believe because they admittedly follow a certain named philosophical school is a matter worthy of the strongest criticism. To nail the teachings of any philosophy to a board is an elusive task, but to try to tell a jury what Communism teaches is nigh impossible, since the orthodox, hypothetical system of Marx has been converted and interpreted into a creed of conduct under all situations by the Bolsheviks⁷ — they have made it a chameleon with which to morally justify their every act.

⁷ I have used the term interchangeably with Communist. At the time of the Russian Revolution there were two schools of orthodox Marxism (1) the Mensheviks, or Social-Democratic, who were the passive or determinist group, willing to compromise with existing government and co-operate in the Dumas, content in the faith of the inevitability of capitalist downfall, and (2) the Bolsheviks, led by V. I. Lenin, who were the revolutionaries, or activists willing to compromise with no one, except to gain a short-term advantage. The members of the various national Communist Parties, all of whom look to Moscow for orders, are the heirs of Bolshevik interpretation of Marx and Engels. They are the Leninist or Stalinist stripe of Marxist. Today's communists (with a small "c") are principally those anti-Soviet Marxist thinkers who trace their philosophy to the Mensheviks, or to the Bolshevik-who-lost, Leon Trotsky.

“Another consideration that stands out very plainly is that if judges and juries are to be asked to decide these matters they will have to be educated and trained far more thoroughly in a mastery of the literature of the fields concerned. And if expert witnesses are to be called in to supply what is lacking, they will have to be given far more time and leeway to do the complex job required.”⁸

This is no criticism of the jury system but one of the prosecution system in the jury trial concept. It is rather absurd to believe that the average auto mechanic can answer intelligently the question of what are the strictures of Communism on the employment of force against government, and it is certainly true that many of our trial judges don't know much more about Communism than what they read in the papers. The suggestions on the use of expert witnesses are but a restatement of the hoary complaint of all experts that they don't like being handled by lawyers. But so much for the policy of trial on the basis the government has chosen to put it.

To seek justification for Communist teachings on the “right of revolution”, whatever they may be, in the utterances of Thomas Jefferson and the spirit of the American Revolution is what H. L. Mencken would have called “palpable nonsense”. Jefferson was a forefather whose credentials are open to question. Regardless of what the contestants in our annual 4th of July declamation derby may say in pompous efforts to honor his ghost, he was a radical in his own time and would be one today. But, be that as it may, for all his absurd ideas on man's freedom, he was at least willing to “play the game”; that is, he fervently believed that all political action was to take place within a context of representative republicanism, that the principal aim of revolution was to assure that republicanism. The Bolshevik revolution has no such aim; its purpose is to establish a dictatorship of the proletariat and the extinction, rather than representation, of the middle class and other property owners, so that transition into the utopia of communism will be easier. Even before the revolution gets rolling, the Bolsheviks refuse to “play the game”. Curiously enough, while Karl Marx's system of classical economics and the theory of history which he imposed on top of it stress that the entire process of capitalist crisis, revolution, dictatorship and the ultimate “withering away” of the state are all *inevitable*, both he and his Soviet

⁸ SOMERVILLE, 181.

legates, Lenin and Stalin, emphasize, with varying stress, that it is the duty of every true Communist to devote himself to the acceleration of that inevitable process; that, disregarding the question whether a revolutionary situation exists, every Communist must work toward a revolutionary goal. So, even if it is believed that a "peaceful transition" is possible through reforms in, say, the United States, the Communist must keep plugging toward the big coup. "The revolutionary will accept a reform in order to use it as an aid in combining legal work with illegal work, to intensify, under its cover, the illegal work for the revolutionary preparation of the masses for the overthrow of the bourgeoisie."⁹ The Bolshevik is not entitled to the same benefit of doubt as to his notions on revolution as is Jefferson because he won't even play Jefferson's game of football.

There are two main reasons why the American Revolution and its Declaration of Independence provide no historical justification for Mr. Somerville's definition of "revolutionary situation". First, there is no common ground of objectives between the events of our tangle with the English and any Communist revolt. Ours was a luxurious revolution, an insurrection for the benefit of private property. Sparked mostly by the cupidity of those Yankee merchants who resented the King's hand dipping into their purses and fanned by a combination of English traditions about taxation and representation and a batch of translations from the French on the rights of humanity, our main complaint was that neither Parliament nor the crown would play the same game with us that they played in East Anglia. But a Communist revolution is an attack on any purse worth the grabbing and a denial of every rule in the game of representative government. It offers confiscation and dictatorship first, then no private holdings beyond wife, bed and board, and no government at all. Second, there must be a contrast of the personalities involved. The signers of the Declaration, and those who fought in the Revolution lived responsible, productive, constructive lives before and after the fight. But who are the members of the Communist Party? Men whose livelihood is a foment of ugly situations

⁹ STALIN, FOUNDATIONS OF LENINISM (Little Lenin Library vol. 18, International Publishers, New York, 1939), 104. "Tactics change according to flow and ebb [of the revolutionary tide]." See *ibid.*, 92, 93. This is a classic statement of Bolshevik strategy: cooperate when necessary, but as soon as trouble starts, be quick to take advantage of it. The lesson is clear enough. Communists, regardless of their professed "revolutionary situation" requirements, thrive on the destruction of efforts to compromise a troubled situation. The pattern has remained unchanged for 50 years — from the struggles in the old Dumas to the strife in the Middle East.

and destruction of peaceful compromise — in short, the creation of the revolutionary situation. The Party is no place for men of divided loyalties or inquiring minds; it is a home for devoted and desperate men. If it is as harmless as Mr. Somerville implies, why didn't he join? Surely he could have immeasurably advanced his studies of Marxism in action. The fact is that he knows the Party is no place for the merely curious. This is as true of the Party in the United States today as it was of Lenin's underground cabal fifty years ago. Lenin wrote in 1902:

"If we begin with the solid foundation of a strong organization of revolutionists, we can guarantee the stability of the movement as a whole, and carry out the aims of both Social-Democracy and of trade unionism. If, however, we begin with a wide workers' organization, supposed to be most 'accessible' to the masses, when as a matter of fact it will be most accessible to the gendarmes, and will make the revolutionists most accessible to the police, we shall neither achieve the aims of Social-Democracy or trade unionism, . . . the organization must consist chiefly of persons engaged in revolution as a profession, . . ."¹⁰

As Mr. Somerville points out,¹¹ Lenin hated terrorists and minority revolutionists; but he wanted shock troops, a true vanguard, and not a discussion group.

Mr. Somerville's criticism of the *Dennis*¹² case, at both the Appellate and Supreme Court levels is based on his implacable belief that the teachings of the Party do not call for the necessary use of violence, that these teachings recognize the "possibilities of peaceful, lawful success, and that this doctrine (Marxism-Leninism) furthermore points out that these possibilities exist in this country in the present period, . . ."¹³ This peaceful success, the possibility of which he speaks, will, of course, come about when all private property is voluntarily rendered up to the state and the officers of government abdicate in favor of a Communist dictatorship. Again, "palpable nonsense". At any rate, his objection to this case and all other cases in its line is that

¹⁰ LENIN, WHAT IS TO BE DONE (Little Lenin Library vol. 4, International Publishers, New York 1929), 112, 116.

¹¹ "We are not Blanquists; we are not in favor of seizure of power by a minority." SOMERVILLE, 26; see also 83, 84.

¹² United States v. Dennis, 183 F. 2d 201 (2d Cir., 1950) and Dennis v. United States, 341 U. S. 494 (1951). These were the appeals of the ten top Communists from the first successful prosecution of Communists under the Smith Act.

¹³ SOMERVILLE, 140.

it "gives judicial sanction to the distorted, 'popular' picture of Communist teachings as a body of doctrine in which there is no recognition of any possibility of success by lawful or peaceful means".¹⁴ His legal argument is that there was insufficient evidence to sustain the government's side, that no reasonable (i.e., logical) man could have returned a guilty verdict. Thus he steps unwittingly into the complex legal area of directed verdicts and from there to the pot-holes of constitutional law (for no criticism of the Supreme Court's handling of the *Dennis* case can safely ignore the precise issues covered by the various Justices).¹⁵ His arguments are better directed against the system permitting prosecution of this type than against subsequent appellate sustention of the verdicts. What is relentlessly logical to one man is not always so to his neighbor. For that reason we give the man in the jury box plenty of mental elbow room. To conclude that the government didn't present *any* evidence from which a normal jurymen might decide in its favor is too much to swallow. But one might be receptive to the idea that, from the welter of quotes and misquotes dumped before juries in any of these cases it is not bizarre to conclude that the evidence is so ponderous and the method of its presentation so confusing as to preclude any rational conclusions one way or the other about the teachings. But there is no feasible alternative. The basic difficulty lies in the government's method of prosecuting these cases; yet, as long as Congress condones it, the judiciary is powerless to change the rules of the game. An additional complication is the undeniable pressure on the juror for the return of a guilty verdict, and the pressure on judges not to tamper with that verdict in the absence of a clear showing of circumstances preventing anything approximating a fair trial. The kind of trial the Communists treated themselves to in the *Dennis* case requires no comment. The area is one of wretching complexity, legally and morally, if not logically. Regardless of what Mr. Somerville may think about the compelling logic of his thesis, it is no isolated, one shot stand for criticizing the ultimate judicial result in *Dennis*. The logician, and that is the only post that can be assigned Mr. Somerville in this discussion,

¹⁴ *Loc. cit., supra.*

¹⁵ I have purposely refrained from getting into such arguments because the author overlooks them and, anyway, they have been exhaustively reviewed in numerous legal periodicals. A short, concise, objective comment may be found in SCHWARTZ, *AMERICAN CONSTITUTIONAL LAW* (1955), Ch. X, reviewed, 16 Md. L. Rev. 266, 272-3 (1956), by Judge William C. Coleman.

has his place in a court of law, but his is not to be the only place.

The problem of the ultimate wisdom of prosecuting Party members in our present manner still haunts us. It was haunting Mr. Justice Frankfurter when he voted to sustain the *Dennis* convictions:

"It is a sobering fact that in sustaining the conviction before us we can hardly escape restriction on the interchange of ideas.

"It is not for us to decide how we would adjust the clash of interests which this case presents were the primary responsibility for reconciling it ours. Congress has determined that the danger created by advocacy of overthrow justifies the ensuing restriction on freedom of speech. The determination was made after due deliberation, and the seriousness of the congressional purpose is attested by the volume of legislation passed to effectuate the same ends.

* * * * *

"All the Court says is that Congress was not forbidden by the Constitution to pass this enactment and that a prosecution under it may be brought against a conspiracy such as the one before us.

"Civil liberties draw at best only limited strength from legal guaranties. Preoccupation by our people with the constitutionality, instead of with the wisdom, of legislation or of executive action is preoccupation with a false value. Even those who would most freely use the judicial brake on the democratic process by invalidating legislation that goes deeply against their grain, acknowledge, at least by paying lip service, that constitutionality does not exact a sense of proportion or the sanity of humor or an absence of fear. Focusing attention on constitutionality tends to make constitutionality synonymous with wisdom."¹⁶

Or perhaps Lord Coleridge had something very near the answer when he remarked that "It is far more important the law should be administered with absolute integrity than that in this case or that the law should be a good law or a bad one."¹⁷

ROGER D. REDDEN*

¹⁶ *Supra*, n. 12, *conc. op.* 517, 549, 550, 552, 555.

¹⁷ Attributed by MENCEN in A NEW DICTIONARY OF QUOTATIONS (4th Printing, 1952) 661, to his opinion in *Regina v. Ramsay* (1893).

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