BOOK REVIEW

LEGAL THOUGHT IN THE UNITED STATES OF AMERICA UNDER CONTEMPORARY PRESSURES (1970) and LAW IN THE UNITED STATES OF AMERICA IN SOCIAL AND TECHNOLOGICAL REVOLUTION (1974). Reports from the United States of America on topics of major concern as established for the VIII (1970) and IX (1974) Congress of the International Academy of Comparative Law, John N. Hazard and Wencesles J. Wagner editors. Emile Bruylant, Brussels, pp. 689 and 697 (Approx. $40. and $44.)

*Reviewed by Kazimierz Grzybowski**

The International Academy of Comparative Law is one of the most prestigious world-wide organizations of scholars devoted to the comparative study of law. Its membership periodically holds congresses to take stock of legal developments and to review systematically the present state of the law. Except for wartime interruptions, Congresses have been held regularly since 1900. In 1900 the Academy was dominated by continental scholars, with only Professor Pollock from England representing the common law. Since that time the International Academy has grown and expanded, with American and English scholars becoming increasingly important.

The titles of these two volumes indicate the mood behind the VIII and IX Congresses and reflect concern over the integration of the rule of law and the process of social change. The tension here is felt practically everywhere, not only in free societies, but also under authoritarian regimes.

Volume 1970 contains thirty-five, and volume 1974 thirty-four, reports. The organization of the earlier volume follows the program of the Congress and is divided into five parts, namely, Section I: History, Philosophy, and Methodology; Section II: Civil Law, Conflicts of Law, Civil Procedure; Section III: Commercial, Labor, Patent, and Air Law; Section IV: Constitutional, Administrative, and Public International Law; and Section V: Criminal Law and Procedure. Volume 1974 adds a sixth section—Special Section: Resources—which contains an article dealing with the use of computers for legal applications.

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A comparison of respective sections will show a change in approach between the two volumes. Section I in the 1970 volume centers on history (three out of nine reports). Three others directly address the problem of change and legal reform, and the remaining three deal with issues which, although of great theoretical interest, do not necessarily relate to pressures on social and legal systems. Most contributions in Section I of the 1974 volume, on the other hand, emphasize the relationship between science and law; the remaining three treat certain problems in the methodology of comparative law which are created by the rapid shrinking of the world.

Once we move outside Section I, movement and change are indeed the main theme of most of the reports contained in other sections of both volumes. The preface to the 1970 volume identified the problems facing modern societies and their lawyers in the following words:

> Legal scholars in the United States of America enter the final third of the twentieth century facing serious problems created by accelerating technological and social change. Not only are there obvious novelties created by the discoveries of scientific laboratories, but also there are emerging threats to traditional social and political forms created by multiplying populations, urban congestion, racial strife and organized crime. These phenomena call for solution, and voices are heard increasingly demanding radical departure from traditional concepts.[1]

The 1974 volume adopted a different tone:

> The dynamics of change are evident in all legal systems as legislatures and judges attempt to resolve the tensions of our time created by clashing ideologies and scientific and technical innovation. Prevailing trends in both domestic and transnational relations include, irrespective of men's commitments to an ideology, recognition of the equality of men, their right to privacy, protection against unrestrained police and prosecutorial officers, expansion of legal services for the indigent, activation of the judge and of a ministère Public or its equivalent to assure equality of parties before the court, a measure of worker participation in industrial management, justice for the foreign worker, restraints on governmental administrators, preservation of the environment against excessive exploitation to the detriment of mankind, discouragement of terrorists and highjackers, and even protection of tourists against avaricious agents.[2]

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1. LEGAL THOUGHT IN THE UNITED STATES OF AMERICA UNDER CONTEMPORARY PRESSURES 7 (J. Hazard & W. Wagner eds. 1970).

2. LAW IN THE UNITED STATES OF AMERICA IN SOCIAL AND TECHNOLOGICAL REVOLUTION 5 (J. Hazard & W. Wagner eds. 1974).

The introduction to volume 1974 then continues:

> As with the first volume published in 1970 . . . this . . . volume . . . permits law trained investigators in the United States itself to lift their eyes above the horizon of the inevitably narrow field of the individual's specialization to the whole sweep of the law. The forest, which is the whole legal system, rather than the tree of the individual discipline becomes visible. Consequently this second volume, like its predecessor, serves as a survey of contemporary law in the United States in the critical areas currently noted for their tensions.[3]

The tenor of these two prefaces is an interesting testimony to the moral and ideological change which has occurred since American society confronted the social and technological revolution. In the preface to the 1970 volume, threats to traditional social and political institutions were represented as distortions caused by disruptive and antisocial elements. The proposed remedy was radically new techniques of social control. The 1970 preface also testified, however, that members of the American legal profession were leery of these calls for reform and sought change within the basic principles on which the American legal system rests:

> Lawyers in the United States . . . have been reluctant to depart from patterns embodying the values of the ancient English common law and the eighteenth century humanistic concepts incorporated by the founding fathers in the Constitution. They hope for solutions meeting the new demands but preserving the best of the past. They are prepared to codify much of the law and to search for means to unify it among the fifty states, but as men reared in common law inherited from England, they wish to retain some of the flexibility of judge-made principles within a pattern establishing sufficient certainty to facilitate regulation of increasingly complex relationships often transcending state frontiers. They are also prepared to expand administrative procedures to simplify controls, but not without raising questions about the danger thought to be lurking in the imposition of governmental regulation for the traditional common law rights of the individual.[4]

In other words, American lawyers were prepared to proceed only with caution to safeguard the individual's common law rights.

From the perspective of the 1974 volume, the preface to the 1970 volume can be seen to have correctly forecast what actually took place, namely, a continuing liberalization of the law in the United States. In

3. *Id.* at 6.

4. LEGAL THOUGHT IN THE UNITED STATES OF AMERICA UNDER CONTEMPORARY PRESSURES 7 (J. Hazard & W. Wagner eds. 1970).

spite of an aversion to antisocial tendencies, the American answer was to expand the realm of freedom rather than restrict it. This solution is far more sophisticated than the original suggestions, as it conforms with modern understandings of public authority in conditioning social and individual existence. No author in the 1974 volume claims that problems facing public life in modern societies have been satisfactorily solved. It is easy, however, to recognize that the simple equation, in which law is made to react by restraining freedom, has been replaced by a highly complicated formula in which the call to increase prosecutorial power is replaced by a policy stressing greater competence of police authorities, greater attention to civil liberties, and greater concern of authorities and bureaucracies for individual rights and interests.

As the two volumes contain nearly seventy studies, it clearly is impossible to review them in detail. The expertise of the writer of the present lines, and the interest of the reader would be taxed beyond endurance. It is possible, however, to give an account of the general drift of ideas by grouping them according to the way they respond to the challenges of our times.

It is suggested that the studies in the 1970 and 1974 volumes fall into three different classes. First, there are those which respond to immediate challenges to social structures by advocating a strengthening of the guarantees of individual rights and the protections for individual existence. In this class belong the following from the 1970 volume: John T. Noonan: "Canon Law in the United States: A Time of Ferment"; Gray L. Dorsey: "The Relationship between Society's Social and Economic Development and the Development of Law: The Problem of Racial Equality"; Willis L.M. Reese: "Unification of Common Law Rules: The Role of the American Law Institute"; John G. Fleming: "Liability, Insurance and Risk Pooling in the Field of Injury Compensation"; Peter Hay: "Unification of Law in the United States: Uniform State Laws, Treaties and Judicially Declared Federal Common Law"; Julius G. Getman: "Interruption and Suspension of the Employment Relationship"; Richard B. Lillich: "Labor Law: Temporary Employment"; Richard W. Power: "Liability for Damage from Supersonic Flights"; Charles Aikin: "Freedom, Liberty and Privacy in Modern Society: Speech, Press, Radio, Television, Religion and their Brush with the Censor"; and Alan M. Dershowitz: "Pre-Trial Preventive Detention."

From the 1974 volume the following reports belong to the same category: John G. Fleming: "Exculpatory Clauses"; F.F. Stone: "Damage by Mass Media"; Courtland H. Peterson: "The Law Applicable to Multinational Corporations: From the Perspective of the Unit-

ed States"; Edward D. Re: "The Judicial Role in the United States"; Phillip I. Blumberg: "Employee Participation in Corporate Decision-Making in the United States: A Summary Review"; W.J. Wagner: "The Right of Privacy and Its Limitations in the U.S.A."; Ludwik A. Teclaff: "The Role of the Executive Branch in Protection of the Environment in the United States"; Alan M. Dershowitz: "Indeterminate Sentencing as a Mechanism of Preventive Confinement"; and Keith S. Rosenn: "Right of Compensation for Detention Prior to Acquittal."

A second class of reports includes those which deal with new dimensions in the traditional law of property, credit, and contract. Here belong from the 1970 volume: Curtis J. Berger: "Condominium Development"; Kenneth L. Karst: "Law and the Use of Agricultural Land: Perspectives from the Western Hemisphere"; John Dalzell: "Credit Card Law"; L.L. Waters: "Institutional Change and Common, Contract, and Private Carriage"; and William D. Hawkland: "Some Recent American Developments in the Protection of Know-How."

Similar offerings of the 1974 volume in this class are as follows; Harry D. Krause: "The Legal Position of Children Born Out of Wedlock"; Ralph Reisner: "Tourist Contracts: Emerging Trends Under United Statcs Law"; Peter E. Herzog: "The Legal Status of the Foreign Workers"; and Peter B. Maggs: "Unification of Methods of Legal Automation."

A further group includes those which deal with the impact of science and technology on law. In the 1970 volume we find two such reports: R.B. Van Der Borght: "The Effect of Biology and Modern Medicine in Private Law"; and Oliver C. Schroeder: "The Influence of Medical and Biological Progress on the Criminal Law." In the 1974 volume we find a magisterial analysis of the general relationship between science and the law by Gray Dorsey: "The Impact of Scientific and Technical Progress on the Development of Law"; and by John Henry Merryman: "Comparative Law and Scientific Explanation."

In addition, the two volumes contain a number of reports dealing with comparative law: Jerome Hall: "Methods of Sociological Research in Comparative Law"; Friedrich K. Juenger: "The Role of Comparative Law in Regional Organizations"; Hugh J. Ault and Mary Ann Glendon: "The Importance of Comparative Law in Legal Education: United States Goals and Methods of Legal Comparison." Also in this category are important and interesting studies dealing with legal aspects of increased international interaction, specifically in the form of regional cooperation (Stefan A. Riesenfeld: "International Regional Integration"), and the growing body of international law which increasingly brings the world into a single binding social and economic system.

From the foregoing, it is obvious that the range of subjects covered in the two volumes is extremely wide. At the same time, the list of problems and legal developments in this country is far from complete. Women and the law, as well as new protections for the poor, for the aged, for religious groups, and for convicts (to mention only a few) have not yet been touched upon. However, the two volumes, prepared by eminent scholars and experts in various legal disciplines, deserve widest attention as they represent the most comprehensive catalogue available of the reforms and adaptations undertaken by governing institutions in response to new demands of our age. By bringing the contents of these two significant volumes to the attention of the American community, this reviewer hopes to encourage their widespread use in legal and social science research.