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Book Review

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BOOK REVIEW

LAW IN A CHANGING AMERICA. Edited by Geoffrey C. Hazard, Jr. Englewood Cliffs: Prentice-Hall, Inc. 1968. Pp. xiii, 207. \$2.45 (paperbound).

The title of this book is exciting, and its sponsorship, jointly by Columbia University's American Assembly and the American Bar Association, is impressive. The twelve contributors are all distinguished exponents of their chosen subject, either as academic teachers or as practitioners. It was therefore with considerable anticipation and excitement that one student of the problem of law in a changing society began to read this symposium, only to lay it down with a sense of disappointment. Of course, the subject suggested by the title is so vast and ubiquitous that different authors or editors will tackle it in many different ways. Nevertheless, it is not unreasonable to expect that a book of this kind would center in some way upon the crucial problems of the changing function of law in a society whose structure and pace of change during the last generation is, in many ways, totally different from that of any previous period.

Without even attempting to summarize the principal causes of the transformation of the function of law in our society, it may be suggested that, at the very least, three major perspectives should have been considered. First, in a highly organized, increasingly urbanized and industrialized, and extremely articulate society, law has ceased to be merely the reflection of social changes which develop and transform a society gradually. Rather, the law is becoming more and more a paramount instrument for initiating major social changes, ranging from the regulation of traffic to the regulation of reproduction. The second change, related to the first, is the dramatic transformation in the relative importance of public law. As organized society, through the instrumentalities of the state, has become more active in regulating and molding social relations, public law has gained growing importance, partly by infiltrating such private law institutions as contract or property and partly through the enormously complex and intricate mechanisms of legislative and administrative regulation. It follows — as indeed is pointed out in the contributions of Professors Cavers¹ and Goldstein² — that the traditional emphasis in legal education on law as primarily an instrument for private litigation and private transactions is absurdly out-of-date. Among the academic best of the present generation of graduates from American law schools, there is an increasing disinclination to regard, as the first choice, the big Wall Street firm that concentrates on the practice of corporate and tax law, and a concomitant growing interest, even at considerable financial sacrifice, in the new preoccupations of law with the improvement of social conditions, with legislative and administrative matters on the national and international level and with teaching. Finally, there is the tremendous and many-sided challenge of modern science to the function and techniques of law. Law, like other social sciences, is being increasingly subjected to

1 Cavers, *Legal Education in Forward-Looking Perspective*, in LAW IN A CHANGING AMERICA 139 (1968).

2 Goldstein, *The Unfulfilled Promise of Legal Education*, *id.* at 157.

the experimental and behaviorist techniques formerly applied only to the natural sciences. For example, the growing investigation of the causes of human behavior and the increasing ability to predetermine genetic makeup pose problems of almost unbelievable magnitude and gravity as to the traditional assumptions of individual legal responsibility.

In an increasingly complex and interdependent society, and certainly in the highly industrialized and urbanized society of contemporary America, the law becomes just one of a number of social planning techniques which react upon one another. Thus, housing legislation for a certain area will both influence and be influenced by estimates of population projections, traffic density, social composition of the residents, the degree of transformation from an agricultural into an urban society, and the structure of education. The relationship of law to the various other disciplines in such projections, and the increasing degree of scientific analysis brought to bear upon the function of the contemporary legal system in a complex society, are almost totally different from what they were in previous periods.

This is not, I venture to think, a totally arbitrary or iconoclastic estimate of the major aspects of law in a changing America. Nevertheless, the present volume largely bypasses them. In part this perhaps results from the very nature of a symposium, which collects individual contributions from a number of different individuals at the cost of a unified concept. But it is also due, at least in part, to the preoccupation of the volume with peripheral rather than central issues, with techniques of legal training and the role of the legal profession rather than with the fundamentally changing functions and perspectives of law. As was already mentioned, the essays by Professors Cavers and Goldstein come closest to what appears to this reviewer to be the central theme. Professor Cavers criticizes both the uniformity and the archaism of the law school curriculum, and calls for a program of applied social science, especially through urban legal studies programs.³ Professor Goldstein, in a provocative and challenging analysis, argues against "generalism" and pleads for a far more specialized approach to the training of lawyers accompanied by a much more intensive interdisciplinary exchange with other professions.⁴ He also adverts, although only marginally, to the increasing importance of public against private law.⁵

Some of the essays are essentially pleas for a pragmatic and behavioristic approach to legal problems, as opposed to the analytical approach advanced more than a generation ago by the realist school. This is true of Professor Kalven's reflections⁶ on the pioneer study made by himself and Professor Zeisel

3 Cavers, *supra* note 1, at 146-48. Much of this is already in progress. For example, the program of the Columbia University Center on Social Welfare Policy and Law, carried out under the auspices of the Legal Services Program of the Office of Economic Opportunity, provides assistance to private counsel and legal services' attorneys on a wide range of important test cases relevant to urban housing and poverty law. It also engages in negotiating activities, through conferences with government departments and other administrative authorities. It is increasingly active before administrative and legislative forums and helps in the planning of welfare regulations. A number of law schools throughout the country are engaging in programs of this kind which attract the interest of some of the best law students.

4 Goldstein, *supra* note 2, at 161-66.

5 *Id.* at 158-59.

6 Kalven, *The Quest for the Middle Range: Empirical Inquiry and Legal Policy*, *id.* at 56.

on patterns of jury behavior,⁷ or of Professor Yarmolinsky's reference to the new techniques of budget planning⁸ which he couples with the obvious but perhaps still necessary demonstration that scientific budget techniques are not a substitute for policy and value judgments. Dean Pollak deals with the problem of the protection of individual rights in the context of segregation and the growing threat to privacy.⁹ Professor W. K. Jones demonstrates, against a detailed analysis of *United States v. Von's Grocery Company*,¹⁰ the continuing lack of adequate economic theory in the decision of antitrust cases,¹¹ but such need was certainly no less paramount more than a half a century ago when *Standard Oil Co. v. United States*¹² was decided. Mr. Gosset considers, against the background of long experience in the automobile industry the problem of the public interest in modern industrial collective bargaining.¹³ The other essays concern themselves with the adequacy or inadequacy of the legal profession, as presently organized, for its tasks in the present age.

All these essays are interesting and important, but they surely do not touch more than the fringe of the problem of law in a changing America. Perhaps a more appropriate title would have been *Legal Training and the Legal Profession in a Changing America*. In the form in which the book is presented, one would have expected at least more than the marginal reference to the changing role of law sketched out briefly at the beginning of this review. It is also surprising that there is not a single mention of the major changes in legal perspective and training caused by the dramatic transformation of the United States from an essentially inward-looking society to the world's leading power. No reader of this volume would get even an inkling of the significance of international studies in the contemporary United States. Perhaps it would have been a good idea to include among the contributors a representative of the small but important group of younger lawyers who have had the opportunity, through the Peace Corps or some similar program, to work overseas in developing countries, for most members of this group have come back to their own country with a greatly changed perspective of the function of law in the contemporary society.

Wolfgang G. Friedmann*

7 H. KALVEN & H. ZEISEL, *THE AMERICAN JURY* (1966).

8 Yarmolinsky, *Responsible Law-Making in a Technically Specialized Society*, in *LAW IN A CHANGING AMERICA* 97 (1968).

9 Pollak, *To Secure the Individual Rights of the Many*, *id.* at 43.

10 384 U.S. 270 (1966).

11 Jones, *Legal Regulation and Economic Analysis*, in *LAW IN A CHANGING AMERICA* 75 (1968).

12 221 U.S. 1 (1911).

13 Gossett, *Balances and Controls in Private Policy and Decision-Making*, in *LAW IN A CHANGING AMERICA* 26 (1968).

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