

BOOK REVIEWS

Modern polgári jogelméleti tanulmányok [Studies in Modern Bourgeois Legal Theory]. Edited by Csaba Varga and András Sajó. Budapest: Akadémiai Kiadó, 1977. 145 pp.

This small volume, published under the auspices of the Institute of State and Legal Sciences [Állam és Jogtudományi Intézet], is a series of translations of studies in twentieth-century legal theory. All of the writers are celebrated representatives of non-socialist legal scholarship: Hans Kelsen, Rudolf Stammler, Bódog Somló, Eugen Ehrlich, Jerome Frank, Axel Hagerstrom, A. Vilhelm Lundstedt and Gustav Radbruch. Outstanding as these legal theoreticians are, the inclusion of their contributions was not intended to provide a complete sample of twentieth-century legal theories, but the editors claim that they do represent the most important trends in "contemporary bourgeois scholarship."

The volume opens with Hans Kelsen, the most distinguished positivist of the twentieth century. The section from Kelsen's *The Law as a Specific Legal Technique* (1941), includes the seminal theses of his theory, analyzing the law as a particular societal technique. Law is viewed as an enforced order based on the application of sanctions. The evolution of the legal technique is a history of the differentiation of the system of sanctions; a higher system of law is based on centralization as against the decentralized nature of primitive law. The presented material includes the core of Kelsen's pure theory of law. He argues that no theory of justice can form part of a pure theory of law. Ideals of justice must be a matter of political science, while the pure theory of law must be uncontaminated by politics, ethics, sociology and history. Its task is knowledge of all that is essential to law, it is a quest for pure knowledge. Kelsen does not extend a theory of law to what the law *ought* to be; that is the task of political science, or of ethics, or of religion.

From the neo-Kantian school, Rudolf Stammler's legal philosophy is presented. The selections are based on his *Theorie der Rechtswissenschaft* (1911) and focus on the form and substance of the legal thought, the concept and meaning of law and the distinctions between written and effective law.

The Hungarian Bódog Somló represents the analytical legal positivism (*Juristische Grundlehre*, 1917). He was among the first continental jurists who studied John Austin thoroughly, but reduced Austin's six necessary notions to four: right, duty, sovereignty and state. All these are logically presupposed by the idea of legal order. In the translated parts Somló deals with the meanings of the concept of law, the law-making power, the multiple meaning of the word "law" and the consequences of its different interpretations.

The exponent of the modern sociological school is Eugen Ehrlich's *Grundlegung der Sociologie des Rechts* (1913). His main thesis is that the crucial aspect of the legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself. The "living law" that actually lives in society is in permanent evolution, always outpacing the rigid and immobile state law.

From the perspective of Marxism-Leninism, probably the most disagreeable scholar in the collection is the American Jerome Frank who probes into the fundamental myth of law (*Law and the Modern Mind*, 1930). In tracing the historical roots of this problem, he explores the causes: desire for stability in the society contradicts the relative nature of law and of the legal cases. Frank analyses the law from the psycho-analytical point of view: he likens the desire for (legal) certainty to the infant's craving for infallible authority (father complex).

The volume continues with two outstanding exponents of the Scandinavian realists: Axel Hagerstrom (*On Fundamental Problems of Law*, 1930) and A. Vilhelm Lundstedt (*Legal Thinking Revisited*, 1956). Scandinavian realism is essentially a philosophical critique of the metaphysical foundations of law. Hagerstrom totally rejects the natural law philosophy and any absolute ideas of justice. Lundstedt analyses the contemporary legal sciences as well as outlines his concept of the "constructive legal science." For him, law is nothing but the very life of mankind in organized groups and the conditions which make possible "peaceful coexistence" of masses of individuals and social groups; law is determined by "social welfare." This formulation does not differ greatly from the objectives of legal order as outlined by Soviet jurists.

The last piece in the collection is by Gustav Radbruch, a distinguished exponent of relativist legal philosophy. In his *Gesetzliches Unrecht und Übergesetzliche Recht* (1946), he analyzes the questions of "lawful illegality" and "lawless law." Based on the bitter experiences of national socialist jurisprudence, Radbruch suggests that where the violation of justice reaches an intolerable degree ("lawless law"), the law has no claim to obedience.

This reviewer concurs with the editors' statement that there are no discernible ideological reasons for the selection of the translated pieces. Nevertheless there is some cohesion between the chosen themes of the respective jurists: they all address themselves to fundamental questions of legal theory, i.e., the nature and origin of law, the sociological, psychological and philosophical foundations of legal institutions, as well as some important controversial issues of contemporary legal thought. Careful effort was made in selecting from each writer the vital substance of their respective theories.

While most major modern trends are represented by a renowned scholar, some other schools of thought have been altogether omitted. The new legal idealism, François Geny and the German 'Interessenjurisprudenze,' the neo-scholastic doctrine, modern Catholic legal philosophy, the questions of legal theory and international society are cases in point. Furthermore, in some instances the question arises why some jurists were included while others were not. The reader has a feeling of uncertainty and discomfort, because of the lack of explanation by the editors as to the rationale of their judgment regarding their choices; if this would have been done adequately, the scholarly value of the volume could have been so much greater.

Although the publishers apparently expect that the volume will contribute to the Marxist evaluation of these "bourgeois" scholars, the real value of the publication is that it makes these works — hitherto unavailable to readers without proficiency in foreign languages — accessible to the Hungarian students of legal theory. It is, however, questionable whether the publication of this somewhat haphazard selection of legal theories will meaningfully contribute to knowledge in the larger sense. If this is all that the readers can know, the material will be out of focus; yet it may provide a limited, but valuable insight into non-socialist theory.

The publisher of the volume is a strictly party-controlled institution representing the official Marxist-Leninist scholarship. Therefore, it is not meaningless that the work appeared in print without an ideological critique; it is one more expression of the generally more tolerant academic atmosphere in Hungary.

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