

Book Review: Law in a Changing Society, by W. Freidmann

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Book Review

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LAW IN A CHANGING SOCIETY. BY W. FREIDMANN. HARMONDS-WORTH, MIDDLESEX, ENGLAND: PENGUIN BOOKS LTD. 1964. pp. 475. (\$1.65).

In this abridged edition of a book originally published in 1959, Professor Friedmann analyzes the impact of the social, economic and political developments of the 20th century on the structure of the law and the manner in which the law has either contributed to or attempted to cope with these sweeping changes in our society. The essay is majestic in scope and scholarly in depth, as Professor Friedmann draws liberally on other legal systems, notably those of

¹⁰ Pp. 80-81.

¹¹ S.C. 1960, c. 44, s. 2(f).

¹² P. 124.

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the Soviet Union, France and Germany and compares their solutions to contemporary social and economic problems with the conclusions arrived at by the great common law jurisdictions. The book is divided into six parts: (1) Theory of Legal Change, (2) Social Change and Legal Institutions, (3) Society and the Individual, (4) Public Law, (5) Law between Nations, and (6) Conclusions.

In Part I he investigates the nature of the interaction of legal and social change and observes that the influence is not all in one direction. The current upheaval in American society caused by the striving of the Negro to achieve social and economic equality stems from the decision in *Brown v. Board of Education*¹ which reversed the century old precedent of *Plessy v. Ferguson*.²

The repercussions of social change on the legal institutions of property, contract, tort, criminal and family law is the subject of analysis in Part II. Professor Friedmann examines how the complexity of modern society and the economic and defence requirements of the modern State have brought about restrictions inconceivable a century ago on the use of private property, ranging from zoning legislation to legal measures to protect and utilize natural resources; the traditional norms of the law of contract fashioned in the 19th century for two businessmen dealing on equal terms at arm's length have lost much of their relevance in the era of the giant corporation and the *contrat d'adhésion*. The development of the law of tort is traced from the principle of fault liability to the present concept of distribution of loss, and its rapid assimilation by social insurance in the nature of Workmen's Compensation, the British National Insurance scheme and the Saskatchewan Automobile Insurance scheme. The role of punishment, deterrence and reformation as well as the impact of the large corporation on criminal law and the growth of "economic" crimes are subjected to penetrating scrutiny; similarly traced is the effect of the emancipation and increased mobility of contemporary women on family law and matrimonial property. The changing social attitudes towards subjects like divorce, abortion, and birth control and the increasing encroachment of the State in family life are also considered.

In Part III Professor Friedmann explores the concept of freedom of trade in the era of corporate giants, organized trade unions, anti-trust laws, trade barriers in the form of customs tariffs, and national economic policy. The phenomenon of the charitable foundation as a means of preserving family control of business empires as well as the legal problems raised by the profound influence of unincorporated societies (like trade unions and the Law Society of Upper Canada) upon our lives are discussed. The part concludes with a consideration of individual freedom in the face of the pressure towards status brought about by vast trade unions which by collective agreements determine the conditions of work in a closed shop, the extensive

¹ (1954), 347 U.S. 483, 349 U.S. 294.

² (1897), 163 U.S. 537.

economic power of giant corporations which is brought to bear upon anyone dealing with them or on smaller competing businesses, and the demands of the State in the name of national security when awarding contracts dealing with classified matters.

In examining in Part IV the haphazard development in the common law jurisdictions of administrative law in spite of the massive encroachment of organs of the State into all areas of economic life, Professor Friedmann looks with favour upon the development of administrative tribunals characteristic of the civil law jurisdictions. The latter openly recognize administrative law as a discipline of its own, with its characteristic problems and solutions. The consequence of the failure to do so on the part of the common law jurisdictions has been "a wide spread lack of proper appreciation of characteristic public-law problems and institutions, such as the nature of government contracts, the status of the public corporation, the statutory immunities of public authorities, and many more."³ Professor Friedmann concludes:

The recognition of the duality of the legal system as an inevitable corollary to the development of modern government—is a basic problem which the common-law world can continue to ignore or belittle only at the cost of failing to develop a healthy balance between the needs of administration in the modern welfare state and the essential rights of the citizen.⁴

Part V follows with an investigation of law between nations in which a brief examination is made of such mid-20th century phenomena as local organizations of nation-states like ECM, EFTA, NATO, and subversive activity and the use of air waves to disseminate hostile propaganda in neighbouring states.

What immediately impresses the reader who takes up this book is the tremendous scope of this essay without a corresponding sacrifice of depth. Professor Friedmann's penetrating analysis takes cognizance of the legal systems of many nations in the myriad situations in which the law impinges upon our daily life. Although the book is an abridgment of the original text, the deletions have been distributed throughout and the scholarly presentation of the main thesis and line of reasoning has remained untouched. Copious references to other materials are made where individual problems are raised but unfortunately the very extensive footnotes are gathered together in a section at the end of the book, presumably out of deference to the general reader, and this organization is inconvenient. This is a book which a student who gives any thought to the law and its function in our changing society should read, and it will prove a richly rewarding experience.

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³ P. 317.

⁴ *Ibid.*

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