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### The Quest for Law

Max Rheinstein

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THE QUEST FOR LAW—by William Seagle. Alfred A. Knopf, New York, 1941. Pp. xxiv and 439. \$5.00.

The author of this book, while setting out to write an introduction to law for educated laymen, has succeeded in producing a fascinating treatise on sociology of law. The social phenomenon "law" can be treated in several different ways. The professional lawyer, as judge or attorney, studies the law of his own country, primarily by classifying and systematically arranging both the types of trouble situations courts and lawyers are supposed to adjust, and the rules and principles which the lawyer is supposed to apply to the solution of these troubles. To him the science of law is a classificatory science, similar to descriptive mineralogy, zoology or botany. Just as the entomologist collects insects, labels the various species and arranges them systematically by families, classes, orders, etc., so the "lawyer" collects types of trouble situations and legal rules relating thereto, sticks labels upon them and arranges them in such groups as, let us say, easements, profits, licenses and covenants; servitudes; interests in land; property interests; or assault battery, trespass; intentional torts; torts, etc. In addition to this classificatory activity, the lawyer develops and applies a technique to adapt the rules of law to changing needs and to develop new rules for new trouble situations. For the practicing lawyer and the teacher of a school for future practitioners, law is both a classificatory science and an art. His subject-matter is the law of his own time and country.

Different from the approach of the "lawyer" is that of the sociologist. His science is comparable to that of the physicist, chemist, or physiologist, who all study the phenomena of nature in order to discover regularities, *typical* connections of the kind that has traditionally been called the relation of cause and effect. In this way the scientist tries to make predictions about the working of the forces of nature under given conditions finally to enable us by artificially creating the necessary conditions to utilize the forces of nature to achieve certain desired effects. In an analogous way the sociologist studies the phenomena of social life, searches for regularities and tries to discover typical connections either between certain social phenomena *inter sese* or between certain phenomena of nature (*e.g.*, climate, topography, race) and certain phenomena of social life. The application of this method to the social phenomena of the class commonly called law constitutes the sociology of law. Sociology searching for propositions of a general character, its subject-matter must obviously be constituted not by the law of one single country or period but by the laws of all times and climes. This statement indicates the difficulties of the achievement. Where is the man who can

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possibly have all that knowledge and who, in addition, masters the techniques and terminology of general sociological research? Until very recent times these difficulties have been a powerful deterrent. There have been numerous programs but few achievements.

Mr. Seagle's work comes as near to achievement as can be expected of a book that is not intended to be an exhaustive (and exhausting) treatise but a popular survey of the principal problems and phenomena. The extent of the author's knowledge is prodigious. It is not so phenomenal as that of Max Weber, whose unfinished sketch of sociology of law<sup>1</sup> is still the broadest and deepest research in the field, but Mr. Seagle also takes his materials from an amazingly wide field. He is familiar not only with contemporary and past Common Law but also with the Civil Law and its history, with the laws of antiquity and with the customs of primitive peoples of the present and the past. Mr. Seagle's former connection with the editorial staff of the Encyclopedia of the Social Sciences served him as a good training ground.

Unlike Max Weber, Timasheff<sup>2</sup> or Gurvitch,<sup>3</sup> Mr. Seagle has not undertaken to write a rigorously systematic sociology of law but rather a "historical typology." He presents his materials arranged in accordance with the sequence which he properly believes to be applicable to the development of every system of law, *viz.*, primitive law, archaic law and mature law. What distinguishes the second from the first phase is the emergence of courts to which Mr. Seagle ascribes the central role in the development and functioning of law. The existence of a court does not necessarily presuppose the existence of pre-determined rules. Mr. Seagle seeks to show that it is rather due to the court that the development of legal rules must be ascribed. The principal illustrations of archaic law are the laws of the peoples of the ancient orient with their royal courts and codes, the laws of the early Greek cities, of the Germanic tribes and of certain contemporary peoples of Africa and Asia. Mature law is distinguished from archaic law by the emergence of a class of professional legal specialists, *i.e.*, of a legal profession, as, for instance, in Rome at the so-called "classical" period or in England and the continent of Western Europe around the 12th Century. While archaic law is centered around the court and officialdom, mature law is centered around the legal profession.

In the Book dealing with Primitive Law Mr. Seagle describes the role of custom, traces the trend from blood feud to composition, evaluates the role of the "peace of the kindred" and analyzes the rudimentary forms of property, sagaciously criticizing the wide-spread attempts to

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<sup>1</sup>MAX WEBER, 2 RECHTSZOLOGIE. WIRTSCHAFT UND GESELLSCHAFT, (1925) 387-513.

<sup>2</sup>INTRODUCTION TO THE SOCIOLOGY OF LAW. 1939.

<sup>3</sup>ELEMENTS DE SOCIOLOGIE JURIDIQUE. 1940.

label such forms as either communism or individualism. The Book on Archaic Law is concerned with the origins of the state and the court and the role of kings in imposing their "peace" upon gradually enlarging communities and thus replacing the reign of force by the reign of law. The author describes the typical phases in the development of procedure; he surveys the origins, functions and contents of the archaic codes, inquires into the interrelations between law and religion and, finally, gives a brilliant sketch of the history of the legal profession from ancient Rome to the present day. The development of Roman law from the Twelve Tables to its submergence in modern Civil Law is traced in the first chapter on Mature Law. It is followed by essays on the ideas of equity and natural law, the subjection of the state to its own law, the development and function of criminal law, the role of contract and the techniques and implications of modern codification. In the final part, entitled "The Vanishing Points of Jurisprudence," Mr. Seagle attacks the burning contemporary problems of constitutional and administrative law and of international organization. Covering the tremendously vast field of universal legal history from the blood-feud to the Labor Relations Board and Mr. Roosevelt's Supreme Court Plan, Mr. Seagle makes numerous statements which may be challenged in this or that detail by the professional historian. In tracing connections and developments he shows a tendency to challenge generally accepted theories without always presenting absolutely convincing proof for his own ideas. But throughout he has succeeded in making apparent typical phenomena and connections, in demonstrating the essential similarity of legal developments the world over and in revealing the history of law as a continuous and, by and large successful, struggle of mankind for the ideal of a more peaceful and just world.

Mr. Seagle writes a facile style. He has a fine gift for attractively presenting apparently complicated problems without incurring the mistake of oversimplification. He never forgets that he is writing not only for lawyers but for laymen. By this very approach he presents a good many legal phenomena in a light the professional lawyer is likely to overlook. In his felicitous efforts to present law as the fascinating phenomenon it is, Mr. Seagle in places becomes flippant and it is obviously difficult for him to suppress a wisecrack. But he has succeeded in writing a book which one would like every law student to read twice, when he enters law school and when he graduates from it.

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