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ENTRAPMENT UNDER AMERICAN LAW

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A West European setting his foot for the first time on American soil carries with him something more than the helpless bulk of luggage and suitcases. It is something invisible to the naked eye, but yet so pervasive that he cannot leave it behind and escape its long tentacles.

It is the picture of the land he has come to.

It is a picture generated and accumulated, layer by layer, by such influential sources as film industry, literature, cultural myth and fantasy, expectation and hope.

It is the picture of America as the great immense land of the west with a short span of time and history comprising the condensed drama of crusading spirit and pioneering dreams of a people that began as a small group of Europeans setting out to find a new land with a new hope of a new life.

It is the picture of the Wild West, the American Indians, the blue cavalry, a nation in birth, held together by the perseverance of a Daniel Boone and the determined vision of an Abraham Lincoln.

It is the picture of a society relieved from the web of restraints of an old world with a tight grip on the individual and his role in the realm of human affairs. A society with an economic framework founded on the teachings of Adam Smith, the patron saint of free enterprise, and on an idea of constitutional liberty in the spirit of John Stuart Mill - that the government is the servant of the people and not the other way around, an idea still not too widespread in our haunted world.

It is the picture of a cultural cocktail, seldom stable for long and never in complete rest because of its brisk composition, but always with the flavour of hope and dedication and the will to struggle onwards—all so emphatically contained in the dictum of the American way of life.

Beneath this picture so unavoidably imprinted into the mind of the European observer, nourished by traditional concepts of history, there is something called American Science.

It is a tradition short in time, but big in scope. In the beginning it was but a borrowed tool from the old world, an imported commodity. Knowledge went westward as did the Mayflower. But grafted onto a new environment with a more untamed philosophy of the free enterprise of ideas and a strong practical demand for the benefits of scientific discovery—science took root, and science grew.

The most conspicuous results of this process have of course been within the fields of natural science—areas that by reason of their character are highly output-minded, but also very resource-dependent and resource-consuming.

But even if the image-conscious European may concede to the fact that the metamorphosis of electricity into lighting and communication is of American origin, he may be somewhat dubious as to the virtues of American social science in general.

Almost for decades it has been a proverbial saying in scholarly circles in Europe, that American social science concentrates too much on the mere compilation of statistical facts and neglects the analytical demands of fact interpretation and theory construction.

If there may be some common sense truth in this contention, it is at least clear that it is highly simplistic, since it does not address the unique situation of American social science. This science is situated in the midst of an overwhelming treasury of social facts and processes, the immense dynamic reality of a diversified and complex society covering all sorts of cultural trends and patterns to an extent unexperienced in any of the conventional philosophical centers of Europe.

In addition to this—and that I take to be the true target of the traditional attitude—American scientists are by blood linked to the English empiricist line of thought—that all knowledge and cognition arises out of experience as apart from mere speculation and logical reasoning, a view dating back to the English philosophers John Locke and David Hume. This philosophical approach has always—and understandably—had a strong appeal to people living in an environment adhering to the notions of practical experimentation and result output.

Sometimes, however, the practical needs may greatly influence the level of analysis. This is particularly the case within my own field, criminal law. And it is nowhere better illustrated than in a problem that American jurisprudence has struggled with for more than a century—the problem of entrapment. Entrapment occurs when police officers, agents of the government, induce someone to commit a crime that he would not have committed except for the solicitation of the officers. If so, he cannot be convicted, but must be acquitted. He has been

entrapped. The basic notion of criminal liability does not apply when the government employs an agent provocateur to implant into the mind of an otherwise innocent person the intent to commit a crime.

The agent provocateur has been a familiar figure in most totalitarian states ever since Machiavelli recommended to his prince to spy against the people in order to detect political dissenters.

In a modern legal light the problem of entrapment has wide aspects in American criminal justice administration.

On the one hand today's terms of law enforcement cannot be met without some use of undercover police investigation. This is particularly the case within the areas of drug crime and corruption—the so-called victimless crimes. Enforcement presupposes detection. Detection presupposes evidence. Evidence can but be gathered by undercover agents infiltrating the scene of the criminal enterprise.

On the other hand it is a central idea of western moral philosophy—embodied in the Bill of Rights of the American Constitution—that people have a right to be secure in their persons and a right to due process. Government interference into the minds of people inspiring them to engage in crime, because—rightly or wrongly—they are considered to be thought criminals is a highly dangerous practice, a remedy that may turn out to be worse than the disease.

The golden rule adopted by American law is that it is legal for officers of the government to incite, induce, inspire or provoke someone to commit a crime if that person were predisposed to commit the crime. The concept of predisposition is the crucial one, and many theories have been forwarded to expound the exact legal content of this central notion. In my opinion it cannot be put on a rational formula. It is but a technical vehicle for a broader moral reasoning as to who are habitual offenders and who are situational offenders.

The American law on entrapment merits interest not only because it is unique in Western criminal law, but because it deals with issues that have become all too familiar in many European countries in recent years. The rise in drug abuse and drug crime has been a challenge to traditional methods of investigation and has proved that crime is a business that may benefit unexpectedly from the sophistication of international means of transportation and communication. Until such times as the governments come up with new and effective solutions to the problems of drugs in modern society, more effective methods of investigation and detection will be in demand—and will give room for abuse that must be met by adequate safeguards.

It would be hasty to conclude that the legal solution to the problem of entrapment that American courts and American scholars so far have developed is a final one. It is not. But on the way to a coherent framework of thought that can tackle the problem, American law has shown a capacity of analysis of such basic issues as criminal liability and public policy. As with many problems of this nature, they cannot be solved by a direct attack, but must be dissolved through a refined analysis that clarifies the problem until its basic presumptions become clearly visible so as to enable an answer.

Entrapment as a legal and political problem is but one out of a number of subject areas that modern America has to offer for professional study. There is a plentitude of others that deserve interest from a European point of view—and for a very simple reason: they throw light on European problems of a similar nature.

So, there is more to American Social Science than huge compilations of facts. And there is more in the American picture than the Wild West and memorials of infinite number. Whatever your subject, you can feel confident that some place—either in the Wild West or in the more peaceable East of the nation, there will be a rich source for American Studies, waiting for you to find it and bring it back home.