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INDIANA LAW REVIEW

WOLFGANG FRIEDMANN AND ECLECTIC LEGAL
PHILOSOPHY

Dr. Wolfgang Friedmann, who died, tragically, on September 20, 1972, reflected, in the vicissitudes of his personal and professional life, many of the trials and agonies, and also the challenges and excitement, of the Twentieth Century man. His early studies in Law were at Berlin, where he took his Doctorate, at the age of 23, in 1930, and from where he fled to England with the onset of the Hitler regime. He stayed for more than a decade in London, first as a graduate student and then as a young lecturer, before going on to Melbourne in 1947 as Sir George Paton's successor in the Chair of Jurisprudence, and then to Toronto, in a similar Chair, in 1950. He left Toronto in 1955 for a Chair in International Law at Columbia University, the post that he held at the time of his death.

Professor Friedmann's early legal formation, in Germany in between the two World Wars, brought him into contact with the juristic teachings of Radbruch, the philosophical relativist and short-time Justice Minister in the first Weimar Republic Cabinet; of Renner, the Austrian socialist theorist and later Chancellor of the Austrian Republic; and of Max Weber, the great legal sociologist. From Radbruch, he acquired the critical discernment and tolerance that taught that while value judgments cannot be logically derived from facts, legal philosophy can clarify the ends by considering the means, and thus present the antinomies of conflicting values implicit in a legal situation; from Renner, the conception of law as an instrument of social control and ultimately of social reform and human betterment; from Weber, the notion of the continuing relationship or symbiosis between Law and Society and the necessity, in consequence, for a dynamic reshaping of old legal institutions and rules to keep pace with, and assist, the movement of historical forces in society.

The English period in Friedmann's life was in very many respects the intellectually most productive. The exposure to the ferment of wartime, and immediately post-War, ideas in England—running the gamut from Clement Attlee's "Methodist" (and not "Marxist") Socialism and Archbishop Temple's Christian Reform-

ism, brought a very strong element of pragmatism and functionalism to Friedmann's basic sociological approach to law. He also completed his mastery of the English language, developing a quite astonishing lucidity and succinctness and felicity of English style, if we both recollect that English was not his maternal language and also compare his writings with the extreme complexity and length and Germanic heaviness of some of the major North American and other English-language writings in the same area at the same time period. His *Legal Theory*, the first edition of which was published in wartime England in 1944, is a brilliant intellectual *tour de force* for a young man — a work of intellectual eclecticism and range, and also of unusual compactness and economy of style and phrasing, that are hardly matched by competing works or even by the later editions of the same work.

Professor Friedmann's travels — first of all through political necessity and then through sheer human interest and sympathy — made it difficult for him to establish too particularist or nationalist an "identity" as scholar and teacher. Thus he chose to remain a British subject, although the most important part of his teaching life was spent in the United States. This gave him, I think, a certain degree of detachment and balance in relation to the great burning issues of contemporary American life, as they came up in his International Law lectures at Columbia and elsewhere. If, for example, he would no doubt have considered himself a "dove," rather than a "hawk," on the Vietnam War, it is clear that he also rejected all the simplistic, black-and-white categorizations and the intemperateness and name-calling that have characterized so much of the "great debate" on this issue in American academic legal circles — on the part of the "doves" quite as much as the "hawks". His general writings on International Law, and particularly his published General Course in Public International Law delivered at The Hague Academy of International Law in 1969, reflect the tempered judgment that he maintained, even in the darkest days of the Cold War era, that the pursuit of truth in International Law, not less than in other areas of the community social process, would be achieved rather by the painstaking, and often painful, method of balancing and reconciliation of the conflicting societal interests pressed by the main participants or actors in the contemporary World Community, than by abstract formulae postulated *a priori* in holistic fashion. As an operational method for resolving the great international tension-issues of our times, the pragmatic empiricism of Professor Friedmann's basic approach has been ultimately vindicated in President Nixon's Peking and Moscow visits

in the early part of 1972, and in the series of concrete agreements, based on mutuality and reciprocity of interests, stemming from those "summit meetings."

I had known Professor Friedmann personally from my student days; we had taught together, in the same course in Jurisprudence, as Visiting Professors at New York University; and I had followed him, in the Chair of Jurisprudence and Comparative Law, at Toronto when he left there for Columbia. I welcome the decision of the Board of Editors of the *Indiana Law Review* to dedicate this issue containing a special symposium section on International Law to Professor Friedmann's memory. The intellectual weight of Professor Friedmann's ideas has been appreciated by law students in Indiana who have studied his writings in course and seminar work. In the breadth of his scientific knowledge and the universality of his human sympathies, Professor Friedmann has been one of the great figures of our times contributing to the building of a genuine International Law of human dignity.

EDWARD MCWHINNEY