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WATER LAW IN HISTORICAL PERSPECTIVE*

LUDWIK A. TECLAFF

Buffalo, N.Y.: William S. Hein & Co., 1985.

Pp. xi, 617. \$67.50

Water Law in Historical Perspective is a tour de force. Professor Teclaff has given us the advantage of his lifelong experience and learning in water law. Every page is enriched by his mature insight and scholarship.

This book is a virtual encyclopedia within the covers of one volume. If one wants to refer to groundwater law in Israel, or riparian surface water law in Spain, or water permits in the Soviet Union, one can easily find a discussion of each of these items, as well as other water laws of jurisdictions from Argentina to Yugoslavia. And at the same time each discussion is placed within the perspective of history. Because of this historical approach, the reader can understand and distinguish between various water doctrines—prior appropriation, for example, which aided in water development, and riparianism, which placed conservative restraints on such development in Europe and elsewhere.

The book is divided into two parts. The first consists of a far-ranging discussion of national legal systems, while the second is devoted to the development of international law both as to surface waters and groundwaters. The discussion of the river Oder is particularly valuable in that comparatively little is known about either its status in international law or its history.

The international river basin section is a superb discussion of treaty practice regarding major river basins. Anyone who wants to have an understanding of international treaty practice can easily thumb through the pages of this chapter and come away with an informed understanding. The chapters on transboundary groundwater pollution and transboundary toxic pollution of drainage basins brings up to date the discussion of these issues. The various approaches and theories of different nations are compared and contrasted.

In his final chapter, Professor Teclaff warns us of the “fluvial lesson.” He points out that from the middle of the nineteenth century onward, under the impact of increased population and of rapid industrialization, the demand for water began to grow at such a pace that it is expected to outgrow the existing supply in many regions before the century is over. From being water surplus regions, Europe and the eastern United States are turning into water-deficient areas. The situation becomes not dissimilar

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to that which faced the engineers and administrators of the fluvial civilizations. And the answer, too, has been much the same—more and bigger dams, more and bigger reservoirs, more transfers of water over greater distances, and more centralization of administrative control over water disposition. He warns that if trends in water development and management reflect a general overtaxing of the limited environmental base of ever-expanding economies, then the inadequate quality of individual life of the fluvial civilization may be in store for us.

The main factors which might tend to propel us in the direction taken by the fluvial civilizations already exist, namely: 1) shrinking water resources; 2) an expanding economy highly dependent on water; 3) a developmental outlook; 4) the means to build large projects. The ancient water managers in a similar situation strove relentlessly to match the available water to the expanding needs of the economy, regardless of cost to the social and sometimes to the physical environment. As a consequence, they left us the most significant lesson of history—that without a technological breakthrough which would either provide new sources of water or permit reduced consumption in many of the tasks which water now performs, sufficient water for the needs of a growing economy can be provided only at ever-increasing cost to the physical environment or the social environment or both. There is a point in water resource development when water can no longer be matched to the economy, but the economy must be matched to the water available. This may be a bitter pill to swallow for a development-minded modern society, but history teaches us that when such time arrives water development must be controlled with the utmost thoroughness.

In the light of past experience, one thing above all should be asked of modern scientific water management—that major projects be undertaken only when all their potential effects on the totality of the environment have been assessed by all available means. Professor Teclaff goes on to suggest that “present-day technology, wedded to the developmental outlook bequeathed by a water-rich European past, may and can at least do, what the low energy output of the fluvial civilizations could not do, namely irreversible damage to the environment, not just on a local but on a global scale.” His final word is “the fluvial civilizations send a warning across the ages that there is a limit beyond which water development cannot be pushed without impairing the quality of life. . . . [A] message can be read that attitudes required in periods and areas of water plenty dare not be carried over into periods and areas of scarcity. Expansion at the expense of the environment and of the individual can be avoided if the growth of technology and the economy is geared to a pace concomitant with maintenance of the environment as a whole fit for what is considered to be the ‘good life.’”

This striking book is one that anyone interested in water resources will want to have as an all purpose reference with a global perspective and a historical insight.

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