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COMMENT

The Legal Difficulties of Swiss-American Legal Co-operation

One may ask why Swiss and American legal experts are finding it so difficult to reach a legal co-operation agreement in their fight against drug traffic. After all, the aims of this agreement are of vital interest to both countries and of sufficient importance for the negotiating teams to speed up their proceedings. After three years of arduous negotiations, the experts have reached an amended formula following the first proposals, which were published in 1971 which is currently under review by the Cantons and banking organisations.

Negotiations of this type are necessarily embroiled in complicated legal considerations. What is sought is a way to ensure co-operation overcoming national boundaries in the implementation of a specific chapter of Criminal law. This purpose will necessarily be confronted with conflicting national legal systems. In practical terms, the Americans are asking the Swiss authorities to help them to pin down drug racketeers who have vast accounts with Swiss banks under a respectable cover.

One of the only ways to unmask them is to expose their fiscal fraud. This obviously requires a knowledge of their holdings and hence a possible violation of banking secrecy.

But before the authorities allow investigators to poke their noses into numbered accounts, three legal principles would have to be broken, because fiscal fraud is not considered as a crime in Switzerland. In fact, the difficulty originates in the fundamental differences between Swiss and Anglo-Saxon law. The envisaged co-operation is believed to be the first of its kind.

Firstly, Switzerland would need to ignore the terms of its agreement to the 1966 European legal assistance

convention, whereby the Confederation refuses to co-operate in criminal enquires in the fiscal, political and military matters. Secondly, it would break the principle according to which Switzerland helps to find criminals wanted by another country only if their offences are punishable to the same degree under both legal systems. Special provisions have been worked out for this case. Thirdly, Switzerland would break its own laws by considering fiscal fraud, as a crime for all practical purposes.

Other legal finesses are involved. For instance, the Swiss are adamant that the information disclosed during an enquiry on any case should not be used in a second and unrelated case against the persons concerned. This is current practice in America. Furthermore, the enquiry should not lead to case being opened against a person unconcerned with the original one. The Swiss, as one can see, are particularly concerned with the protection of individual liberties. Although they are aware of the importance of combatting narcotics, they feel it essential to leave their sovereign legal rights essentially untouched.

The issue at stake is really the independence of Switzerland and her institutions. A right balance has to be struck between the notions of sovereignty and international co-operation in a field which is the concern of humanity. Just how much can sovereignty yield to co-operation? This the crux of the controversy over the Swiss-US legal co-operation agreement. At the present stage, Switzerland is asked to make exceptions to the normal implementation of her own laws. The Americans had initially required the permission for their agents to carry out enquiries on Swiss territory but they have abandoned this demand. There is no doubt that the terms of the latest agreement reached between Berne and Washington will be very closely examined by banking interests and employer organisations. It is highly probable that this agreement already goes too far for the liking of many a Swiss banker.

enslaving love for their respective images. Instead of enjoying a free and enterprising relationship, respectful of the other's difference, Tristan and Isolde are tied to each other in a passion making them sublimely unhappy and urging them to a tragic fate. They will never marry and live "happily ever after," if only because it is not possible to imagine "Mrs. Tristan."

De Rougemont offers no wonder solution for the ideal marriage. He takes stock of the situation of western marriage today, and stresses that its ills are mainly due to the claim that one should marry in the state of being in love which doesn't last. Passion conflicts with marriage, which he says "is the communion of two beings revealing themselves to each other in their difference, becoming through one another what they are." However, de Rougemont also notes that the current "breakdown" of marriage has been accompanied by an annihilation of passion caused by the very destruction of all barriers and taboos.

"Passionate love cannot subsist outside a world of spiritual values. Defile this world and passion has no meaning, you are left with animal pairing" he says. Thus in a way, the present trend in morals may pave the way to a strengthening of the conjugal relationship.

(PMB)

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