St. John's Law Review

Volume 10
Number 1 *Volume 10, December 1935, Number 1*

Article 37

May 2014

Civilisation and the Growth of Law: A Study of the Relations Between Men's Ideas About the Universe and the Institutions of Law and Government (Book Review)

A. G. Keller

may be that we are requiring a psychoanalysis of a subtle and scholarly mind that defies such treatment. In any event, the book is disappointing.

What Mr. Pollard has done is not what we hoped for, but rather he has classified under orthodox headings the important decisions in which Mr. Justice Cardozo has participated; he has stated in substance the issues that were therein decided; and has, above all, repeatedly flattered and complimented the learned Justice and "his Court" for deciding so fairly, if not perfectly. All of this, in spite of the fact that there is probably no one who is so aware as is Justice Cardozo of the pitfalls of the judicial process and so cognizant of the shortcomings of any decision of any court, especially where the decision calls for a choice of method in deciding. To understand the mind of a Cardozo we must investigate and try to understand the choice of method in the given case rather than to assume, as is done in this book, that practically every decision is beyond unfavorable criticism.

There are many interesting and paradoxical phases of the mind of the venerable Justice that literally cry out for discussion and debate; such as his tenacious adherence to order and to *stare decisis* coupled with his admitted pragmatic approach to the problem of the hour; and his liberality in tort and civil rights cases in contrast to his somewhat technical conservatism in criminal cases. These are some of the paradoxes that we hoped would be solved by Mr. Pollard; yet these are the very matters that we look for in vain in the volume under review.

The author's monotonous and uniform discussion of case after case which has been decided by Justice Cardozo or "his Court" can only be justified if the title of the book were to be revamped. As amended, the title should indicate that the volume is a compendium of abstracted decisions properly classified for the use of those who are interested in knowing what has been decided by Justice Cardozo without particular concern as to why he has so decided.

EDWARD J. O'TOOLE.

St. John's University School of Law.

CIVILISATION AND THE GROWTH OF LAW. A Study of the Relations between Men's Ideas about the Universe and the Institutions of Law and Government. By William A. Robson. New York: The Macmillan Company, 1935, pp. xv, 354.

The sub-title of this book reveals its character in advance. The author should read Pareto, in order to see how well he has illustrated that realist's contention that books on social science concern themselves with derivations or rationalizations solely. Robson had, says the Introduction, "an irresistible desire" to write this volume. It is to be hoped that he is relieved; but it is at the expense of suffering on the part of the reader and of social science.

Naturally the author emerges with the bright, new idea that "a new freedom and new responsibility have been attained by the human race." The "irresistibility" connected with writing a book generally means that it will

wind up with a "message." Our troubles are due to "a denial of the belief that man is free to choose, to an assertion that he is rooted in an unchangeable social world. This refusal to recognize our ability to aim at the creation of whatever type of society we desire belongs to the old order of things. As such it is doomed to give way before a more hopeful attitude." [1]

In brief, the author is a wishful thinker, or "thobber," who, in addition, mistakes prophecy for argument. His materials consist of hasty reviews (under the three main headings of "The Origins of Law," "The Law of Nature," and "The Nature of Law") of primitive, classic, and medieval data wholly insufficient to demonstrate anything except that men have muddled their heads incessantly over metaphysical matters insusceptible of either proof or disproof. As Pareto has cooked this dish up brown, the attempt of an amateur to improvise on the same entrée is rather untimely, particularly as he seems never to have heard of Pareto. Furthermore, Robson seems to swallow and to enjoy the insubstantialities that Pareto finds to be scarcely more than vacua.

This book is of no consequence to the scholar in social science or law, and it is merely a confirmation to the layman of an optimism that he would do well to renounce. If he is keen enough, he will speedily perceive that the author has no grip upon his subject but is merely developing a preconceived idea. That the volume falls in with the spirit of the time, in its advocacy of making over human nature and society into the heart's desire—that it belongs to the "new dispensation" literature of this era—may lend it a passing acceptance. But every book of this sort is damaging to the development of genuine social science.

Robson's pages offer a text for a few remarks upon the modern tendency to depreciate the accuracy of natural science and the permanency of its principles. In these days, when everyone thinks he must talk about Whitehead, Eddington, and Jeans, whether or not he reads them, it has become the fashion to opine knowingly that science winds up in a mysterious uncertainty. Of course it does, when one ascends into the metaphysical froth that overlies all human knowledge. But it is pertinent to note that the barometer has not ceased functioning and that H_2O still comes out as water, not as beer or a bull frog. We all trust our lives to the accuracy and dependability of science every time we open a can of beans or press the accelerator of a car. The irony in the case is that even those who pretend to decry and scorn science for its "materialism" are pounding out their wisdom on a typewriter that could not have been at their disposal but for science. This tall talk about the inadequacy of science is nonsense.

Robson scorches farther on a risky road-bed. He claims that "the social sciences have advanced enormously in clearness of aim, objectivity of method, and clarity of statement, while natural science appears to have declined in these qualities." [2] Any road will do that seems to lead Rome-wards; that is, towards the realization of the thesis to which desire presses irresistibly.

---

[1] P. 344.

[2] P. 332.

Books of this kind deserve the utmost severity of criticism. They simply darken counsel. Fortunately they are not read much except by those who are already persuaded. They should be filed by libraries under "Sermons" rather than "Treatises."

A. G. KELLER.

Yale University.

CASES ON EQUITY JURISDICTION AND SPECIFIC PERFORMANCE. Two volumes. By Zechariah Chafee, Jr. and Sidney Post Simpson. Cambridge: Published by the Editors, 1934, pp. xiii, 1-870; vi, 871-1619.

Whether equity should be taught in a separate course is a problem worthy of a thesis. The questions involved have caused considerable disagreement. Maitland regarded it as supplementary law, a sort of appendix to, or gloss around, the Code; the substantive principles, except trusts, to be studied with the law of real and personal property, contracts and torts.[1] In accordance with these views, but not necessarily because of them, one notable curriculum places specific performance and injunction against tort in the last half of a first-year course in procedure; mistake, reformation (rectification), etc. in advanced contracts; vendor and purchaser, in a separate course.[2] Holdsworth, however, maintains that an understanding of the principles "will never be acquired if equity is studied in snippets." Chafee and Simpson evidently belong "to those cautious and conservative folk who cling to the tradition of equity as a separate subject," [3] for they do not believe "that the day of the separate equity course is over" and do believe that a thorough understanding of equity can be best attained by a historical—a genetic—approach best made through a course devoted to equity as such.[4]

As a natural sequence to this belief, the general plan of the book follows Dean Ames' Cases in Equity Jurisdiction. The subject matter of the two volumes deals with the nature of Equity Jurisdiction (Part One, 243 pages) and Specific Performance of Contracts (Part Two, 1233 pages). The vast amount of material used in an exhaustive treatment of these topics requires 1475 pages as against 441 pages for the same topics in Chapters I and II of Ames. The technique of arrangement is new, interesting, and stimulating. The principle cases (which are less than fifty per cent of the book and contain late, significant decisions as well as about sixty per cent of the cases in Ames) are followed

[1] MAITLAND, LECTURES ON EQUITY, 18-22 (1909).

[2] See Catalogue Columbia Law School, 1934-1935. See, The place of equity in a curriculum of jurisprudence, HANBURY, ESSAYS IN EQUITY. Chafee, Book Review (1935) 48 HARV. L. REV. 523.

[3] See Book Review, CLARK, CASES ON PLEADING AND PROCEDURE, ONE VOLUME EDITION, E. M. Morgan (1934) 48 HARV. L. REV. 366, 368. This interesting characterization reflects a current mental attitude of the functional approach obsession.

[4] Page x. See also Book Review, CLARK, CASES ON PLEADING AND PROCEDURE: Vol. II, Prashker (1933) 7 ST. JOHN'S L. REV. 380.