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Book Reviews

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BOOK REVIEWS.

English Contributions to the Philosophy of Law: The Seventh Annual Benjamin N. Cardozo Lecture. Arthur L. Goodhart, K.C. New York: Oxford University Press, 1949. Pp. 44.

An Introduction to Legal Reasoning. Edward H. Levi. Chicago: The University of Chicago Press, 1949. Pp. 74.

These two slender publications have more in common than the mere fact that the text of each has previously appeared in the columns of a law journal,[1] plus the further fact that each author occupies an eminent place in the field of legal education. The first is intended to demonstrate that the English view of a philosophy of law is essentially a pragmatic one, tending away from *a priori* reasoning and abstract ideas in the air. The other, to show the dynamic role of legal concepts in a society where both certainty and change are essential to development but where neither can be attained by attention simply to formalistic reasoning. They are, then, worthy of joint consideration.

The first author attacks his assignment by expounding a text borrowed from the writings of the man in whose honor the lecture was given. Justice Cardozo had written that a "philosophy of law will tell us how law comes into being, how it grows and whither it tends."[2] Professor Goodhart amplifies thereon by showing, briefly yet historically, how the great English legal writers and thinkers, from Bracton onward, strove to establish the concept of supremacy of law while at the same time recognizing its mutable character. Growth of law, he notes, has been left, by and large, to the hands of English judges who have supervised that growth not always from slavish regard for precedent but often with conscious awareness that the common law case system is not complete, hence may well require the formulation of new precedents to fit truly novel cases. As to the third problem, or purpose of law, he indicates that the more modern writers, while not organized into definite philosophic schools, have generally concentrated on the proposition that law, to be effective, must bring about compromise between conflicting interests so as to achieve a desirable, if not logical, uniformity. He and they agree, with Justice Cardozo, that the "philosophy of the common law is at bottom the philosophy of pragmatism."[3]

1 The Goodhart paper may be found, less certain revisions, in 48 Col. L. Rev. 671-88 (1948). Professor Levi's article first appeared in 15 U. of Chi. L. Rev. 501-74 (1948).

2 Cardozo, The Growth of the Law (Yale University Press, New Haven, Conn., 1924), p. 24.

3 Cardozo, The Nature of the Judicial Process (Yale University Press, New Haven, Conn., 1921), p. 102.

Professor Levi's study may be said to recognize and accept Goodhart's thought as to the pragmatic nature of Anglo-American legal philosophy, in fact he gives reinforcement thereto at the outset by demonstrating the illogic of any other belief. Books have been written, are undoubtedly in the course of being written, to prove that judges do not do what they say they do. Legal reasoning is not, nor can it be, entirely a process of strict adherence to logical forms. It is, as he suggests, more nearly a process of reasoning by example, yet with the distinction that similarities and differences between the example, that is the precedent case, and the new situation are not always to be regarded as the key factors leading to the solution. In that respect, it is uttering a truism to state that lawyers will acknowledge that "the law is not always logical at all."[4]

If Professor Levi had stopped at that point, he would have done little of real service. The balance of his study possesses far more value. He has taken three fundamental situations of divergent legal problems and carried them through all the stages of judicial development in order to show how legal reasoning does, in fact, proceed. One illustration, drawn from the realm of case law, elaborates on the "inherently dangerous" rule of *MacPherson* v. *Buick Motor Company*.[5] A second, posing the problem of judicial construction of statutory law, uses the Mann Act as a guiding text. The third, showing how a court may expand on a constitutional provision, traces the judicial attitude toward the commerce clause. The treatment of all three is detailed and excellent, yet the study ends on the note that to contrast law and logic is to do a disservice to both.

What, then, does Professor Levi seek to prove? In his own words, simply that legal reasoning "has a logic of its own." Briefly, it seeks to "give meaning to ambiguity and to test constantly whether . . . society has come to see new differences or similarities . . . [It is] the only kind of system which will work when people do not agree completely." That statement is reminiscent of Goodhart's closing remark to the effect that law "must be a compromise between conflicting interests, and that the proper interpretation of the law depends not on abstract conceptions but on a wise judgment which does not forget that it is concerned with the lives of ordinary men." The parallels are sufficiently obvious to warrant the reading of both books or the consideration of neither. The person who does the latter will have only his own ignorance to blame.

W. F. ZACHARIAS

4 See opinion by Lord Halsbury in Quinn v. Leathem, [1901] A. C. 495 at 506.
5 217 N. Y. 382, 111 N. E. 1050 (1916).

LABOR RELATIONS AND FEDERAL LAW. Donald H. Wollett. Seattle, Washington: University of Washington Press, 1949. Pp. xxv, 148, and appendix.

An attempt is here made to chart a new course in the field of federal policy on the subject of labor relations. Charting new courses should not prove to be unusual to the author, he having been a naval officer during the war and now being a professor at the University of Washington School of Law. To the reader, however, any appreciation of the new policy which the author visualizes must be based upon an understanding of the present policy as manifested by the statute commonly known as the Taft-Hartley Act. An evaluation of the terms of that statute being imperative, the author lays down certain principles which, in his opinion, must be accepted as basic prerequisites in any attempt to build up a constructive labor policy.

Paramount among these principles is the recognition that "collective bargaining is the most effective device for spanning the schism between organized labor and management in a free economy," and "that the administrative process is a more useful and just device for achieving economic objectives which are in the public interest than criminal or civil law." There can be no quarrel with these statements, especially in view of the past history of labor relations in this country. Obviously, collective bargaining is the only appropriate method by which free men can thresh out their mutual problems and arrive at a satisfactory solution, blunting the sharpness of their conflicting economic interests. It also seems proven that the administrative process is much better suited to deal with the problem of labor relations than time-honored and slow-moving court procedures.

The discussion of the structure of the National Labor Relations Board and its procedure does not overlook the tremendous power possessed by the General Counsel of the Board. As he has been invested with the final authority to determine what unfair labor practice charges should be investigated and what formal complaints should issue, no review of his determination is possible. The concentration of so much power in the hands of one man seems unfortunate. The Board itself is supposed to exercise jurisdiction only over industries or activities which "affect commerce." Failure to note or emphasize the trend taken by the Board, in an effort to extend its jurisdiction to hear and determine cases which have only a very loose connection with interstate commerce, leads to a belief that a more detailed discussion of these jurisdictional problems, especially by one attempting to lay the ground-work for a future federal labor policy, would have been desirable.

The analysis and evaluation of the substantive provisions of the Taft-Hartley Act is, however, extremely well done. The author here reveals not only a thorough knowledge of the legal questions involved but also a deep understanding of the human and economic problems which underly the thorny issues. It would exceed the limits of a review to discuss in detail all the questions thrown up by this book. One example might serve as an illustration. The author, dealing with union security measures, points to the fact that unions have sometimes used closed shop and union shop agreements as "instruments of abuse." Barring workers who belong to racial minority groups from admission into union membership often prevents them from earning a livelihood in a chosen occupation. The Taft-Hartley Act does not provide an adequate solution although it deals with some aspects of the problem. It is the author's judgment that the federal statute is not likely to promote individual worker freedom by insuring democratic rights to the worker within the institutional framework of strong unions. It is more likely apt to promote individual worker freedom by weakening the unions institutionally.

In that regard, the author believes the 1947 amendment to the Massachusetts Labor Relations Act deals more intelligently with the problem by forbidding the employer from discharging an employee for non-membership in a union having a union security agreement with the employer, unless the union certifies that the employee was deprived of membership for a bona fide occupational disqualification or because of proper disciplinary action. That act provides an opportunity for review of the lawfulness of the suspension or expulsion. The book, then, in general, furnishes an intelligent guide to the problems which face any effort to formulate a rational federal labor policy.

F. HERZOG

CASES AND OTHER MATERIALS ON THE LAW OF INSURANCE, Second Edition. George W. Goble. Indianapolis, Indiana: The Bobbs-Merrill Company, Inc., 1949. Pp. xiii, 944.

When an instructor is faced with the selection of a new casebook, being faithful to his calling, he determines to examine meticulously each offering in the field and, with caliper and micrometer of thought, to gauge the quality of all. Many who have done so have all too frequently concluded that, except for the color of the binding, there are but few differences in the casebook lists of the recognized publishers. It is, therefore, a little like striking a "lost chord" when one discovers a casebook novel in its method and presentation, albeit sound. Such a casebook is the subject of this review.

Two features commend it to the writer. They are: (1) the suggested plans for the development of the subject dependant upon the time devoted to the course in insurance with a selection of cases in each instance indicative of much thought, and (2) the definite separation of life and accident insurance from that of property, a division logical enough because of the basic difference in the concept of insurable interest but one often disregarded in the format of other casebooks. The placing of the life and accident section immediately following the introductory material is itself a new approach, but a good one for, as all instructors know, it is best to begin with matters concerning which the student has the greatest familiarity. In the field of insurance, that is generally the life policy.

If, in the reviewer's creed, there is the cardinal rule that fault must be found with something, then it is the opinion of the writer that the author devotes too much space to the section on life and accident insurance. A few cases there present might well be eliminated. One is also apt to miss, and regret the absence of such basic cases in property insurance law as the decisions in *LeCras* v. *Hughes*[1] and *Lucena* v. *Crauford*.[2] These are negligible imperfections at most for Professor Goble has produced a casebook which undoubtedly will be well-received.

T. F. BAYER

LOCAL GOVERNMENT LAW: Text, Cases and Other Materials. Jefferson B. Fordham. Brooklyn, New York: University Casebook Series, The Foundation Press, Inc., 1949. Pp. xxx, 1060.

Few subjects in the law school curriculum are better suited to the mode of presentation followed by this author than is the course in Municipal Corporations. It is inevitable that some departure from the case system should be made to permit inquiry into the techniques and materials familiar to students of political science, since the lawyer's function in local government matters requires a knowledge of administrative procedures and management practices. He will not be limited to problems that are strictly legal in nature. Recognizing the need for orienting the student before repeatedly plunging him, without warning, into complex phases of local government, the author has prefaced each section with extensive textual material designed and written especially for that purpose. This supplementary material, which constitutes roughly a third of the book, is partly concerned with the development of the various topics, partly explanatory of the subject matter, but at times

1 3 Doug. 81, 99 Eng. Rep. 549 (1782).

2 2 B. & P. N. R. 269, 127 Eng. Rep. 630 (1805).

clearly sets forth trends and approaches which have become well established in spite of the enormous number of local units involved.

Since much of the material in a course in local government law cannot be adequately presented through the use of isolated cases, the supplementary material thus provided make the book a storehouse of information not readily available for presentation in lecture form by most teachers of the subject. The cases are, for the most part, of recent date, historical material having been covered in the text. They are illustrative of the judicial approach to typical, as well as to provocative, factual situations. Statutory matter has not been neglected and many typical constitutional provisions are reproduced. The author's consideration of the modern relation between local units and the federal government furnishes a valuable addition.

The demand for an approach which prepares the student with functional knowledge of local affairs in such areas as those concerning financial administration and personnel matters has been met. The modification of the traditional case system is justified by the wealth of valuable and hard-to-get information which the book contains. That fact alone places this volume among the small group of school books which will remain useful to the student when he becomes a lawyer.

J. R. BLOMQUIST

DELIBERATIONS OF THE INTERNATIONAL PENAL AND PENITENTIARY CONGRESSES: Questions and Answers. Negley K. Teeters. Philadelphia: Temple University Book Store, 1949. Pp. 198.

An introduction to this book, written by the present president of the International Penal and Penitentiary Commission, notes that the heavy tomes of the various proceedings of the eleven international congresses which have been held since 1872 are generally inaccessible, first because they are published in French, and second because shelved in few American libraries. For these reasons alone, the author has performed a labor of distinction by translating and compiling at least the questions submitted and the answers adopted by vote of these several congresses. He has added valuable historical data concerning the personalities responsible for the conduct thereof, the places which served as the scene of the deliberations, and other sidelights on the several sessions. Students of penology are here provided with material which should stimulate interest in the twelfth such congress which is to be held at The Hague in 1950.

International reaction to proposals concerning extradition, juvenile delinquency, the indeterminate sentence, prison labor, and the like, as

disclosed by the pages of this book, reflects favorably on the American efforts to advance the science of penology. Humanitarian Americans, devoting selfless and untiring energy toward the improvement of the lot of imprisoned persons, have led in these matters. It is gratifying to learn, therefore, that the first Dean of this college, while serving in the Illinois General Assembly in 1867, anticipated international action on such matters as private management of prison labor by some twenty-three years when he succeeded in securing the passage of a bill taking the Illinois penitentiary out of private hands.[1] The recognition which the book accords to other American pioneers in the field should interest all concerned in prison management.

W. F. Z.

CASES AND MATERIALS ON LAW AND ACCOUNTING: Donald Schapiro and Ralph Wienshienk. Brooklyn, New York: University Casebook Series, The Foundation Press, Inc., 1949. Pp. xxi, 935.

The importance of acquiring a knowledge of accounting, either before or during a law course, receives growing recognition. The authors of this volume have written with the stated aim of presenting the subject for law students and lawyers. "Emphasis," they say, has been "shifted from book-keeping routines and procedures to accounting as a tool in the lawyer's kit." A skillful lawyer can often analyze general books of account and make immediate and helpful suggestions. His interpretations may have bearing upon a controversy wherein the books will play an important part. He may do this because of his background of general experience, although he may not have the technical training of a real accountant. His knowledge of facts, however, must often be amplified by a knowledge of figures and the purposes to which they may be put.

The present volume starts on a very simple level of explanation concerning those phases of accounting which every lawyer is expected to know. The material progresses by easy stages to a fairly comprehensive coverage of accounting as it is known to few but the proficient and experienced. There is a fresh approach to financial statements, and a thorough consideration of the details regarding principal and income, points wherein the lawyer and the trust officer are often asked embarrassing questions. The emphasis on all material is the legal one, witness the ample supply of more than two hundred cases, from courts and commissions, which furnish authority for the discussion. A lawyer, or

1 See Zacharias, "Joseph Meade Bailey, 1833-1895," 14 CHICAGO-KENT REVIEW 1-16 (1937), particularly pp. 4-7.

even an eager law student, could probably follow this material with understanding. Under an experienced mentor, the study would have heightened value.

MATERIALS AND PROBLEMS ON LEGISLATION. Julius Cohen. Indianapolis, Indiana: The Bobbs-Merrill Company, Inc., 1949. Pp. xiv, 567, and supplement.

Growing recognition of the importance not alone of statutory interpretation but also of the related subject matter of legislation has led to the increased teaching of courses of that character. This, in turn, has made the publication of new casebooks necessary, and Professor Cohen's book represents the latest addition to a growing parade. The title would seem to indicate a treatment of only the tasks and skills required in the drafting of legislation, but an analysis of the book's contents will demonstrate that its scope is much wider, including within its orbit problems commonly encountered elsewhere under the heading of statutory interpretation. Unfortunately, however, insufficient space has been allotted to important principles regarding the ascertainment of the meaning of ambiguous legislative language and the utilization of legislative precedents and analogies in comparison to other, from the student standpoint, less important subjects.

A chapter dealing with problems relating to investigations conducted under legislative authority contains much new material as well as presenting a novel arrangement. An additional feature is to be found in the author's method of taking a particular piece of legislation as the core of his teaching device and, working from that legislative effort as a centerpiece, developing all problems arising in connection therewith. In general, therefore, the book deserves to be classified as an excellent production.

F. HERZOG

BOOKS RECEIVED.

LAW OF TRUSTS. Ralph A. Newman. Brooklyn, New York: The Foundation Press, Inc., 1949. Pp. xi, 452.

CASES ON THE LAW OF AGENCY. Edwin R. Keedy and A. Arthur Schiller. Indianapolis, Indiana: The Bobbs-Merrill Company, 1948. Pp. x, 650.

CASES AND OTHER MATERIALS ON PRIVATE CORPORATIONS. I. Maurice Wormser and Judson A. Crane. Indianapolis, Indiana: The Bobbs-Merrill Company, 1948. Pp. xiii, 1055.

CASES AND READINGS ON CRIMINAL LAW AND PROCEDURE. Jerome Hall, Indianapolis, Indiana: The Bobbs-Merrill Company, 1949. Pp. xiv, 996.