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PHILOSOPHY OF LAW. GIORGIO DEL VECCHIO. Translated by Thomas Owen Martin from the Eighth Edition. Forward by Brendan F. Brown. – THE ART OF ADVOCACY. LLOYD PAUL STRYKER.

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PHILOSOPHY OF LAW. GIORGIO DEL VECCHIO. Translated by Thomas Owen Martin from the Eighth Edition. Forward by Brendan F. Brown. Washington, D.C.: The Catholic University of America Press, 1953. Pp. xx, 460. $6.50.

Theoretically and at first sight, it would seem presumptuous for a busy practicing lawyer in America to appear to pass judgment on the rich fruitage of fifty years of teaching of the philosophy of law by an Italian scholar of international renown.

For Giorgio Del Vecchio's position in the world of scholarship is well established. Born in Bologna, educated at the Universities of Genoa, Rome and Berlin, he began teaching legal philosophy at the University of Ferrara in 1904 and was later Rector of the University of Rome and later Dean of its faculty of Jurisprudence. He was founder and editor of the Rivista Internazionale di filosofia del diritto, editor of the Archivio Giuridico, president of the International Institute of the Philosophy of Law and Juridical Sociology and professor at the Academy of International Law at the Hague. His writings have been translated into the English, French, German, Spanish, Rumanian, Bulgarian, Japanese and Swedish languages. The depth and range of his learning in the philosophy of law is astonishing to those competent of judgment.

An American reviewer may be unacquainted with subtle gradations of meaning apparent to one thoroughly familiar with the original Italian of Del Vecchio's works. He may be unable to test the accuracy of translation but aware of its difficulties, having in mind, for example, the ten meanings of "jus" in Roman law, the problem of working out in English equivalent denotations to say nothing of connotations of "giustizia", "legge", "diritto", "jus", "lex", "loi", "droit", "Gesetz", and "Recht". He knows, too, of possible shifts in usage of the same word by the same author. And always there are even in the same language those chameleon words "right" and "law". Furthermore, laying aside problems of translation, the reviewer may be without opportunity for months of leisured, laborious checking of the author's restatement in condensed form of philosophers from Thales and Anaximander through Kant to the modern day. Under such circumstances the competency of an American lawyer to review Del Vecchio might well be doubled. Theoretically, the words of such a recognized expert should be reviewed only by another expert recognized in the same specialized field of learning.

And yet, if the specialist's work be sound, if it be important, if it contain a substantial contribution to the solution of difficult and perplexing problems of vast consequence to mankind, the question at once arises, what are the prospects of its influencing the thought and therefore the action of men? Philosophical ideas expressed sometimes by the professional philosopher in a language understood in one way by himself and by other specialists in various often conflicting ways, do nevertheless influence the law if the ideas are important. They may not sally forth directly from the closet of the ivory tower into the market places of the world and make their way into the courts of law and the jurisprudence of a people. They may reach the law slowly, by indirection, by a process akin to that of osmosis because of their gradual effect upon that public opinion which is operative even in the most non-democratic countries. But when the need for sound philosophical ideas in the field of law is urgent, when the need arises in hurrying and determinative years, then time is of the essence. Then it is particularly needful that the professional philosopher of

law express his thoughts and present to the world the culmination of a lifetime of disinterested scholarship in such form and language as to be understood with facility and accuracy by those he would influence, indeed to be read not only with profit but with delight.

This is the challenge that Del Vecchio has triumphantly met. For with the help of a masterly translation into clear and flowing English by Rev. Dr. Thomas O. Martin of The Catholic University of America, he has produced what this reviewer believes to be the best single volume in English on the philosophy of law for the American lawyer. This is true whether the reader be a specialist in that field, a teacher or the average busy practitioner. And this is not strange. For fifty years of teaching experience have given the author great skill in the orderly arrangement of his works, the progress and development of his exposition and the clarity of his expression.

Advantage in these respects comes from the very fact that PHILOSOPHY OF LAW was originally written as an elementary textbook for the author's classes. As Dean Brendan F. Brown says in his scholarly and illuminating Foreword, the book "so well achieved its purpose as a pedagogical instrument that it was widely adopted by teachers in numerous universities throughout Europe, during the past two decades".

A twenty-page Introduction discusses the concept and function of philosophy of law, the relations of philosophy of law with jurisprudence, theoretical philosophy, psychology, moral philosophy, sociology and the other sciences. Particularly excellent in clarity and compression is the author's treatment of induction and deduction and empirical (*a posteriori*) and rational (*a priori*) knowledge.

One hundred and six pages are devoted to a history of the philosophy of law, including the Sophists, Plato, Aristotle, the Roman jurists, Church Fathers, Ghibellines, Contractualists, Renaissance writers, Machiavelli, Grotius, Hobbes, Spinoza, Pufendorf, Locke, Vico, Kant, Fichte, Hegel, and Savigny.[1] Particularly interesting to this reviewer is Del Vecchio's criticism of the historical school of law.

Although of lesser interest to the average reader, one hundred ten pages of notes on the philosophy of law in recent times in Italy, France, Belgium, Germany, Austria, Switzerland, England, the United States, Spain, Portugal, Latin America, Rumania, Hungary, Greece, Holland, Scandinavia, Finland, Poland, Russia, Czechoslovakia, Jugoslavia, Bulgaria and Turkey are a mine of materials for exploration by the scholar and a revelation of the wide interests and international scholarships of the author. These notes are confirmatory of the impression gained by a reading of Del Vecchio that here is no closet philosopher dreaming up abstract worlds of legal philosophy, but one who is thoroughly saturated not only with the learning of the past but of this present age.

It is this scholastic richness and amplitude of learning which, while not overwhelming the author and preventing creative thought, nevertheless prevents provincialism and egotistic narrowness of thought and gives the reader assurance of a closer approach to objective truth.

The major portion of the book is devoted to the concept of law, including

[1] If not already read, it is suggested that Del Vecchio's restatements of legal philosophies be compared with those by HUNTINGTON CAIRNS in his LEGAL PHILOSOPHY FROM PLATO TO HEGEL (Johns Hopkins, 1949), and excerpts from various authors in JEROME HALL'S READINGS IN JURISPRUDENCE (Bobbs-Merrill, 1938). And see ROMMEN, THE NATURAL LAW (Herder, 1947).

the skeptic attitude, natural law, the sources of positive law, right and interest, the state and society of states. All of us have profitted from Dean Pound's little book on LAW AND MORALS, first published in 1924. Most stimulating is Del Vecchio's Chapter on that subject. In effect, he says that morals creates a duty; law a duty plus a right—a correlative right. "Morals imposes upon the subject a choice between actions which he can perform. It directs itself to the subject *per se.* It compares one action with another action of the *same subject.* Law on the other hand compares his action with the actions of *different subjects.* We have expressed this differential characteristic by saying that Morals is *unilateral* and Law is bilateral. Morals indicates a duty, the fulfillment of which can have effect for other persons, in addition to that which it has for the agent, but it does not give a norm for those persons. The behaviour of those other persons is not determined. By the moral norm is defined only the attitude of him who must fulfill the duty. In Law, on the other hand, the behaviour of a subject is always considered in relation to that of another subject. There is imposed on one hand an obligation, on the other there is attributed a faculty or a right to demand, nor does one, in this, do two distinct things. It can be said that this concept of Bilaterality is the keystone of the juridical edifice."

"Law tends to establish an objective order of coexistence. It must, therefore, look first of all at the external aspect of the action, because in the external or physical field the interference, the encounter between the behaviour of several beings takes place and thus, consequently, there arises the need of a limitation. . . . Likewise one can deduce from the fundamental difference the characteristic of *coercibility* which is proper to Law alone. Coercibility, that is, the possibility of constraining to fulfillment, comes from this, that Law is a limit, a barrier between the operations of several subjects. The passing of this barrier by one party implies the possibility for the other party to reject the invasion."

"Another differential characteristic which is likewise deduced from the different logical position of the two ethical categories is that Law is more definite than Morals. . . . More simply it can be said that Law is the part of Ethics which establishes the bases of coexistence between several individuals. Consequently, without Law one could not even conceive of a society. *Ubi societas, ibi jus.* Since *Ubi homo, ibi societas,* we can conclude, *Ubi homo, ibi jus*".

Del Vecchio considers the historical formation of law and the state, the horde, matriarchate, patriarchate, organization of the gentilitial group and juridical progress. Finally, he treats of the natural foundation of law: man's original power, not deducible from experience, to distinguish justice from injustice, referred to by Aristotle; theories of skepticism and of empirical realism, of the historical school, of theologism, of utilitarianism, and human nature as the foundation of law.

The importance of this book lies not only in its quality but in its timeliness. Forty years ago the distinguished editorial committee of the Association of American Law Schools under the chairmanship of Professor Wigmore in introducing the Modern Legal Philosophy Series, referring to the American bench and bar, could say that "Philosophy of Law has been to us almost a meaningless and alien phrase and approval would generally have been given to the saying 'All philosophers are reducible in the end to two classes only: utilitarians and futilitarians.'" This was not strange because American lawyers as a rule had little or no philosophical training, were reared on the case system in the traditions of an Austinian philosophy that prided itself on its self-sufficiency and its divorce

from morals, ethics, the social sciences and anything savoring of theology or philosophy. And they generally succumbed to that philosophy of pragmatism which tended to dominate American culture.

But as long ago as 1921 Dean Pound had pointed out that philosophy of law was "raising its head throughout the world." Valuable as Austinian, utilitarian, historical, sociological jurisprudence, in turn, had been, appropriate in many respects to the need of their times, they could not meet the challenge of world-revolutionary change. Neither pure science, nor social sciences which bowed down in adoration of the "fact" and scrupulously and systematically excluded any consideration of values, nor history which regarded any philosophy as anathema, could give the peoples of the world any sure footing in a world of chaos. Though this was said to be an age without standards, there was at least one gleam of hope amidst the encircling gloom. Men the world over became conscious of their need of an integrating philosophy. They saw that internal insecurity and discord and world wars were but symptoms of a profound malaise; they were results, not causes. So, as they have again and again down the ages, men began to wrestle with problems of the ultimate. And they asked the perennial questions. Who made the World: Is there a God? What is man? So they renewed the question which they had so often pondered ever since the dialogues of Plato. What is Law? What is its essence and basis? What is its justification and purpose?

So too, American lawyers have been led in recent years to discuss these questions, partly because they arise naturally out of a consideration of the basic problems of the ages the world over, problems which each man approaches with deep concern not only for himself and for the profession that he loves, but for his country and for all suffering, aspiring humanity.

Buried like ancient Herculaneum and Pompeii beneath a Vesuvian deluge of statutes and decisions, trying to discern some pattern that will give meaning to and make comprehensible and therefore usable the vast mass of modern law, seeking for unifying, basic principles amidst a multitude of clamorous and often conflicting rules, the thoughtful American lawyer is beginning to turn to philosophy. He may still distrust the word; he may remember the warnings of semanticists, "realists" and certain high judicial authorities against those fearsome things called "abstractions". But to the extent that he turned to history so as to guide his feet by the light of experience, perhaps he learned that there can be order in the world, that philosophy, even though unavowed has inescapably determined the content of the law as it does of life and that it is philosophy that is a creative element of the law, its great source of strength in the time of need that comes when legal institutions must be remodelled to meet the necessities of a changing age.

The American lawyer too, may have been appalled at the marked tendency to disregard stare decisis, especially in the field of constitutional law. Like the layman in the world in general, he is looking for some rock of stability amidst the engulfing torrents of law and the unpredictable tides of judicial opinion. He may well ask himself whether, perchance, there may not be some stability, some constructive and satisfying answer to the problems of his day in that philosophy which had been so long disdained by Our Lady of the Law.

It may be that he has been touched by the present world-wide revival of scholastic or neo-scholastic natural law, of those eternal principles of justice that constitute that "higher law" which are the basis of constitutional government and of liberty in the western world. Whether or not so touched, whether or

not made aware of the distinction between true natural law and its many counterfeit presentments, whether or not convinced of the validity of its claim to a real existence and its availability as a solution of many problems of this chaotic age, the American lawyer will find in Del Vecchio's summation of a lifetime of scholarships food for reflection and inspiration. It may be a means of lifting him above those concerns of day-to-day practice which so often momentarily loom up like Pelion piled on Ossa but in the retrospect of a lifetime, to say nothing of eternity, are the veriest molehills. This will help to give him at least a glimpse of those wider horizons which stimulate him to greater effort toward understanding the law which he loves, towards making the law meet the challenges of the age, towards an appreciation of those broad philosophical principles which ennoble his profession and lift it above the level of a trade.

BEN W. PALMER*

THE ART OF ADVOCACY. LLOYD PAUL STRYKER. New York: Simon and Schuster, 1954. Pp. xiii, 296. $5.00.

This book is dedicated to Mr. John W. Davis and represents a summary of fourteen lectures before the Yale Law School on the subject of Advocacy. The introduction is by Judge Harold R. Medina and the book has been ably reviewed in the "New York Times" by Judge Arthur T. Vanderbilt, Chief Justice of the Supreme Court of New Jersey. Surrounded, at the outset, by such an array of imposing names, including the publishers, any comment by an ordinary Law Professor would seem to be mere surplusage. However, as Judge Medina says "this is an exciting book" and since that is so, Law Professors and students will find it both useful and inspirational. The work is divided, like Gaul, into three parts; the trial, the art of Advocacy and the crying need for Advocacy. The section on the trial emphasizes the great need for minute preparation (an unending search for the facts) and contains an admonition for the constant rehearsal of witnesses and their story before their appearance in court. Whether this is the practice today of the average trial lawyer, this reviewer is not informed, but the omission of it, according to the author, is a grave one.

From the student's standpoint, one of the great values of the book lies in the recording of the decalogue of Mr. John W. Davis, by which appellate arguments should be governed. These are briefly (1) "change places, in your imagination, with the Court", (2) "state the nature of the case and briefly its prior history", (3) "state the facts", (4) "state next the applicable rules of law on which you rely", (5) "always 'go for the jugular vein' ", (6) "rejoice when the Court asks questions", (7) "read sparingly and only from necessity", (8) "avoid personalities", (9) "know your record from cover to cover", (10) "sit down". Here is an excellent criteria for every law student intending to enter the coming National Appellate Court Competition: something which he can use to his decided advantage even before graduating from Law School.

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The chapter on the plea for a Divided Bar is probably the most controversial chapter in the book. Whether we should adopt the English distinction between Barristers and Solicitors would always provoke a controversy; even among laymen. However, Mr. Stryker presents a strong case for the idea. The thought occurs to the writer as to whether such a change would not provoke great opposition. Could you properly, by statute, deprive a lawyer from appearing in court in defense of his clients' cause especially in these days of free speech? Then too, does not the difficulty of trying a complicated case very soon discourage the average practitioner, so that he is glad to leave those things to his more experienced brothers. In other words, does not the system really prevail here, in spite of the fact that there is no limitation on the privilege to appear in Court? It is just as Judge Medina predicts in the introduction; this book will "stir up many a controversy."

From the standpoint of the Law Professor, this book has immense value. This writer believes that the law teacher constantly needs "inspirational" material; material which will maintain the student's interest, and make the classes more vital. Some of the personal experiences of Mr. Stryker may well be used to brighten up the sometimes all too dull class period. One chapter is devoted to the career of Martin W. Littleton—famous trial lawyer, of yesterday—but only yesterday, and the law student should be intrigued to find out that there is yet ample opportunity in the trial field today for someone without great family prestige or the background of a famous law school. The comments on the funeral of Mr. Littelton are an object lesson for the well meaning clergyman, who does not take the time to briefly study the career of the deceased.

After you have read this book, you are glad that you are a lawyer, and you may regret that you let those first two or three unsuccessful trials discourage you from entering the trial field. And, if you are a student, you will look forward eagerly to following the precepts of the author and trying your hand before a jury.

The book belongs not only on the shelf of law libraries everywhere, but in the hands of practicing lawyers, Professors and students.

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