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Book Reviews

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forfeiture of his estate. On the other hand, the equitable principle that no one should profit by his own crime is a compelling force, for, as has been pointed out, the survivor does derive a practical benefit as a result of his wrongdoing.

It is submitted that the solution to this problem devolves upon the legislature. See Wade, *Acquisition of Property by Wilfully Killing Another — A Statutory Solution,* 49 HARV. L. REV. 715 (1936). Pennsylvania has adopted this method by enacting a statute which provides that where one joint tenant kills his co-tenant, immediately upon the death of the latter, one-half of the property held under the tenancy passes to the decedent's estate; the other half passes to the decedent's estate on the death of the survivor. PA. STAT. ANN. tit. 20, § 3445-6 (Purdons Supp. 1952). A statute of this type would govern any joint tenancy created under it by becoming a part of the original contract, and thus effectively resolve the problem.

Richard F. Welter

BOOK REVIEWS

BARBARIANS IN OUR MIDST, A History of Chicago Crime and Politics. By Virgil W. Peterson.[1] Boston: Little, Brown & Company, 1952. Pp. x, 395. $4.50. — In his book *Barbarians in Our Midst,* Virgil Peterson, the operating director of the Chicago Crime Commission, has attempted to tell the story of the alliance between crime and politics throughout the history of Chicago. Considering the public attention which is currently being devoted to the "alliance," the book could hardly be more timely. Moreover, the author is probably better qualified than any other professional investigator to write on this subject. The book certainly merits careful scrutiny by every citizen interested in eliminating all criminal elements from municipal government.

Inevitably, however, there are important weaknesses in a work of this nature. The public acts of government officials are usually preserved in official or other reliable records, but the details of criminal activities, unless tested in the crucible of an adversary proceeding, generally must be obtained either from Dame Rumor or from witnesses who are untrustworthy for various reasons. Rumors repeated to newspaper reporters often provide the basis for feature stories which in turn may be preserved as a likely hypothesis in a popular "history" of Chicago's underworld. Such hypothesis may often be entirely accurate, but anyone who is at all familiar with the tedium of thorough investigating knows how often the most probable of assumptions is exploded. Consequently, despite one's

[1] Operating Director, Chicago Crime Commission.

willingness to rely heavily on Mr. Peterson's expert judgment in this field, the reader cannot avoid wondering if many of his matter-of-fact statements are as plainly true as his style of writing would have one believe.

The author's style was probably developed to suit the needs of an investigator preserving every significant detail in a report for the files on an assigned task. Unfortunately this style does not make *Barbarians in Our Midst* a particularly easy book to read or digest. In some chapters the incidents seem to tumble into print in an order which is not easily related to the main thread of the story. Of course, this difficulty may merely result from the nature of the subject matter. Thousands of isolated details are known about the underworld, but obviously they cannot be woven into a simple yarn by a conscientious historian.

The assembling of these details, and the arrangement of their highlights, in the careful development of this work, is an important contribution to the study of Chicago's criminal problem. It is to be hoped that this study will stimulate needed thinking about reform. As Mr. Peterson points out so forcefully, however, neither words, nor ideas for reform, nor actual changes in the government can ever be an adequate substitute for a vigilant public that is willing to accept the responsibilities of good citizenship.

*Norman J. Barry**

NATURAL LAW INSTITUTE PROCEEDINGS 1951. Vol. V. Edited by Edward F. Barrett.[1] Notre Dame, Indiana: University of Notre Dame Press, 1953. Pp. 180. $2.00. —

> In every country the more noble, farseeing and mature minds have learned in the school of suffering in the recent past that despite all their differences they have a common element so essential that no one can tamper with it without imperiling the very foundations and the prosperity of his own people.

These are some of the words which His Holiness Pius XII addressed to me when I presented my letters of credence as a representative of China to the Holy See.

The reason why I have introduced this quotation is because I was constantly reminded of it as I read through the pages of the volume under review. In fact, I had not grasped the full purport of the words of the Holy Father until I had read through this book. I feel pretty sure now that in speaking of the "common element" of humanity, he was thinking of the natural law.

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This volume covers the fifth University of Notre Dame Natural Law Institute Proceedings, and should be read in the light of the preceding volumes. It will be recalled that in the previous proceedings the papers were delivered by men who were more or less steeped in the Christian tradition and Western learning. The present volume, on the other hand, contains contributions from scholars of the East and non-Christian world. Rabbi Solomon Freehof presents the Natural Law in the Jewish tradition, Dr. Khalifa Abdul Hakim presents it in the Moslem tradition, Dr. M. S. Sundaram presents it in the Hindu tradition, Dr. Daisetz T. Suzuki presents it in the Buddhist tradition, and Dr. Hu Shih presents it in the Chinese tradition. While they seem to me of unequal merit, jointly the articles form an extremely impressive pageant of Natural Law philosophy and scholarship. I regret that I was not able to attend such an interesting conference. I can well imagine what a stimulating experience it would have been to listen to that magnificent orchestra of the Natural Law. It makes my mouth water retrospectively to read the testimony and wise comment of Rev. John J. Cavanaugh, C.S.C., in his Foreword: [2]

> In an unprecedented undertaking, five scholars of the highest rank and reputation, representing the thought of the non-Christian world, Jewish, Moslem, Buddhist, Hindu and Confucian, came together for four days of concentrated discussion in an American Catholic University, under the chairmanship of an American Archbishop [now happily elevated to the membership of the Sacred College of Cardinals].[3] From their voices we were privileged to hear what the traditions of over a billion of the earth's inhabitants had to say about the Natural Law and the claim for its universality as advanced by the thinkers and writers of the Christian world. No more magnificent exemplification of true "academic freedom" grounded upon sovereign respect for the conscience of man as the child of God could be imagined. It was not to be expected that complete harmony in terminology would occur between the thought of Christian and non-Christian, or that the results of Oriental intuition would sound familiar to western ears accustomed to the ring of the Aristotelian-Scholastic syllogism. The careful reader of the papers in the present volume will, nevertheless, discern the deeper and more abiding harmony in the evidence that all men everywhere have constantly reached out towards a norm, a standard or criterion of conduct, an absolute not the work of human hands and therefore carrying with it a regulative force superior to anything men themselves could devise. What matter if their "reach" may have "exceeded their grasp"? The significant and inescapable fact is the very tendency of men to "reach" at all. In what they thus seek, East and West are one.

What a masterly summary this is of the significance and the limitations of these lectures will be clearly realized by any reader who would follow them through with sympathy and discernment. Let me now deal with them separately in the order as presented in the volume, and offer my humble impressions on each of them as candidly as I can.

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2 See the third page in the Foreword.

3 Reviewer's note.

First, as to the Jewish tradition, Rabbi Freehof's paper is most refreshing. It reminds us what a God-intoxicated people the Jews are. Of course, there are Jews who neither become Christian nor even remain in the Mosaic tradition, but it is not of these that I am thinking when I say that the Jews are God-intoxicated — I am only thinking of true theists like Rabbi Freehof. I am happy to see the quotation from Isaias: "The Lord is our Judge; the Lord is our Legislator; the Lord is our King." [4] Commenting on this quotation, Rabbi Freehof says: [5]

> This was the authority from the very beginning. Every basic legal principle had the Name of God consciously attached to it. As among other peoples, laws would begin with the words: "I, the King," in Scripture it was always, "I, the Lord." "Ye shall not steal, ye shall not falsify, I am the Lord." "Ye shall not pervert justice; I am the Lord." (Leviticus 19). So through scores of enactments, the Giver of the Law proclaimed His Name that it might be known by Whose ordaining the law exerts its authority.

This seems to mark off the Jews as a special people of God. Of course, most of the early codes claimed to be based upon the eternal principles of heavenly justice, but in my modest acquaintance with the ancient legal systems, I know of none that claims to be a direct legislation of God Himself, as the Mosaic Law did. I have not come across elsewhere such pronouncements as for instance: "Let there be equal judgment among you, whether he be a stranger, or a native that offends, because I am the Lord your God." [6] "Do not afflict your countrymen, but let every one fear his God, because I am the Lord your God." [7] "If you walk in *my* precepts, and keep *my* commandments, and do them, I will give you rain in due seasons; and the ground shall bring forth its increase, and the trees shall be filled with fruit." [8] [Emphasis added.]

Another point is worthy of note. The Rabbi shows us that until modern times, the Jews were living in self-governing communities of their own. "Divine-Natural Law was the governing law in the self-governing Jewish communities all over the world from classic antiquity to the dawn of the Modern Era." [9] He further points out that ". . . the communities were governed from within by the inherited Law and the individual was governed from within by his own religio-legal conscience. . . ," [10] with the result that thousands of small communities, scattered as they were, were, nevertheless, ". . . governed almost in exactly the same way, yet without any functioning central authority." [11] These showings have an invaluable significance for the philosophy of

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4 Text at 16.
5 *Id.* at 17.
6 Leviticus 24.22.
7 *Id.* at 25.17.
8 *Id.* at 26.3-4.
9 Text at 20.
10 *Id.* at 21.
11 *Ibid.*

law, because they prove the error of the analytical school of jurisprudence which holds the State to be the only source of law. The essence of law does not consist in the external force that is at the back of it, nor in its abstruse technicalities, but in its intrinsic reasonableness. I readily give my assent to the Rabbi's insight that: [12]

> . . . to the extent that the people understand that the law is based upon fundamental principles of justice and fairplay, which every man can understand, to the extent that the average man knows more and more about the working of his government at every level, to that extent does tyranny receive its natural check.

It is not the voice of an impractical visionary, it is the voice of a true realist that says, "If men believe that the law is essentially natural and God-given, then with a minimum of police power, order will reign." [13]

Dr. Hakim expounds beautifully the Moslem version of the Natural Law. He starts with the proposition that Natural Law ". . . is universal and objective, is rooted in the nature of things and in the nature of humanity." [14] He maintains, as I think rightly, that the natural reason of man can know the existence of God. He strongly laments the positivistic and materialistic tendencies of the last century and a half. He says, "Every advance in physical science tended to belittle and almost annihilate the very man who was so proud of discovering the secrets of physical causation." [15] He paints the "modern temper" with a few masterful strokes: [16]

> Science arrived at certain conclusions like the following which began to be believed as self-evident truths: Matter is the ultimate reality; its working is blind, though inexorably uniform. Human values are not rooted in divinity or any cosmic reality and in the words of Bertrand Russell, science has no place for values. There is nature and there is law, and combining the two, you simply say that there is such a thing as natural law, but this natural law is loveless as, vice versa, in the case of numerous human beings, love is lawless. There appears to be some design in the universe at large and in the make-up of a leaf of grass but the wonder of wonders is that there is no designer; there is a cosmic architecture but there is no architect. The book of Nature is worth reading and it is a fascinating study, but the book has written itself and there is no author.

To state these conclusions is to expose their absurdity. However, I wish to make a little remark in this connection. I think that in fairness to the modern scientists and thinkers it should be pointed out those conclusions are held only by the more superficial people. After all there have been scientists and philosophers even outside of any definite faith who do not subscribe to such incredible absurdities. Such men as Henri Bergson, James Jeans, Arthur Eddington, Alfred N. Whitehead, F. H. Bradley,

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12 *Id.* at 25.
13 *Id.* at 26.
14 *Id.* at 29.
15 *Id.* at 30.
16 *Id.* at 31.

Aldous Huxley and a host of other intellectuals have not subscribed blindly to the positivistic position. The perniciousness of positivism lies in the fact that it is so shallow and such a cheap substitute for truth that it is liable to be shared by many people who are too lazy to think for themselves, but who repeat like parrots what others say. I am glad, therefore, that Dr. Hakim hits hard at this pernicious tendency.

At places, Dr. Hakim seems to set so much store by natural religion as to shut out the possibility of the revealed religion. He says, "The concept of the supernatural does not exist in Islam; the Quran says all creation is meaningful and every phenomenon is a sign and a symbol pointing towards God." [17] He ignores that God Himself is supernatural. In this his conception of God is not transcendental. It is precisely because he has no adequate conception of God's transcendence that he cannot have an adequate conception of God's immanence. He dogmatically denies the possibility of the Incarnation. "Christ or Muhammad or Abraham may be saturated with the attributes of God in so far as it is humanly possible but none of them is to be worshipped as a complete incarnation because God cannot ever be completely incarnated." [18] This is man giving laws to God and setting arbitrary limits to the Divine omnipotence. Nature has become so aggressive as to dictate terms to Grace. It is quite all right for a Muslim to say that he does not believe in the Trinity; but he goes too far when he lays down categorically that no one else should believe in it, or that the Word cannot be made flesh. I venture to think that Dr. Hakim is one of those whose "reach" has "exceeded their grasp."

Speaking of the Fall of Man, Dr. Hakim asserts, "Islam has not refuted that belief categorically but has touched it only tangentially." [19] We do not quarrel with him on that, because it is a matter of belief. But he goes on to say: [20]

> Islamic doctrine of good and evil is that man is free to choose good or evil. With the Lord there is a sensitive balance in which good and evil deeds are being perpetually put in the scales. The Quran says that not an atom's weight of good and evil escapes this balance. An evil deed however, may be nullified by a counterweight of goodness.

The last sentence does not seem to me to stand to reason. Suppose there is a man who commits adultery and murder. How can it help him even if he should save many lives and give alms liberally? How can his murder and adultery be nullified by his good deeds? Let me quote the words of St. James: [21]

> For whoever keeps the whole law, but offends in one point, has become guilty in all. For He who said, "Thou shalt not commit adultery," said also,

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17 *Id.* at 35.
18 *Id.* at 34.
19 *Id.* at 39.
20 *Id.* at 40.
21 *St. James* 2.10-11.

> "Thou shalt not kill." Now if thou wilt not commit adultery, yet wilt commit murder, thou hast become a trangressor of the law.

However, there are excellent things in Dr. Hakim's paper, wherever he does not go beyond the realm of reason and natural law. I heartily accord with such remarks as: [22]

> The principles of law must be the principles of ethics and when law gets divorced from ethics, it stultifies itself as, in modern times, economics and politics, cutting themselves adrift from ethics, have created a chaos in human existence.
>
> As has been said by certain Muslim jurists, there is hardly any right in which Allah has not a share; in that sense no right is absolute, and it is generally understood that in Muslim law Allah stands for public weal.
>
> The variety and multiplicity of life refuses to be codified. The final source of judgment therefore must be the Natural Law of Reason and Justice which, according to the Quran, is inscribed in the hearts of those whose consciences have not been distorted and whose reason has not been blurred by personal bias or greed.

Dr. Sundaram's treatment of the Natural Law in the Hindu tradition leaves little to be desired. It has seemed to me that of all natural religions Hinduism comes nearest to Christianity, and my impression has been confirmed by Dr. Sundaram's paper. Hinduism is theistic and has a lofty conception of God. It takes a spiritual view of man and human affairs. As Dr. Sundaram says: [23]

> In the ultimate reality, the individual soul is greater than all the groups, organizations, states, and communities of men. If the laws of men corrupt the soul of man besides dominating his body, man has the righteous duty to rebel against such laws and reassert the natural laws of his Maker.

In Hindu jurisprudence rights are founded on the idea of duty: [24]

> The emphasis is on the performance of one's duty as the only means to spiritual vision and inner happiness. The Gita compares spiritual joy to a hill-top of serene contemplation, but the pilgrim can reach the top only through an active life of service beginning at the base.

If we add that the function of the human law is to secure the peaceful conditions under which men can live together in harmony and render their service to each other without unwarranted molestation, we shall see that this idea comes very near to that of St. Thomas.[25] A Hindu does not rest in the things of the world, but regards all things as a means to the ultimate end of attaining personal perfection. It is in this light that we can understand and appreciate the beauty of the personality of a man like Gandhi, who wrote: [26]

> "My national service is part of my training for freeing my soul from the bondage of flesh; I have no desire for the perishable Kingdom of earth.

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22 Text at 43, 52, 59.
23 *Id.* at 85.
24 *Id.* at 82.
25 See ST. THOMAS, SUMMA CONTRA GENTILES, III, 37, 128.
26 As quoted in text at 86.

> I am striving for the Kingdom of Heaven, which is Moksha. To attain my end, it is not necessary for me to seek the shelter of the cave. I carry one about me if I would but know it. My patriotism is for me a stage in my journey to the eternal land of freedom and peace. Thus it will be seen that for me there are no politics devoid of religion. Politics bereft of religion are a death trap, because they kill the soul."

Dr. Suzuki's paper is the hardest to understand. In the first place, he has a terrible misconception of God. He takes his idea of God from shallow Christians who are accustomed to speak of Him in anthropomorphic terms and try to pin Him down, as it were, to a definite form and shape. As Frank Sheed has humorously remarked, many people seem to have the mental picture of God ". . . as a venerable man with a beard, rather like the poet Tennyson, or perhaps Karl Marx." [27] The Orientals, who like to dwell in the Indeterminate, look down upon a clear-cut conception of God as rather primitive and superficial. They find it difficult to believe in a personal God. But as Sheed says, "My own conviction is that they are not revolting against the philosophical concept of personality as applied to God: they are revolting against the venerable man with the beard." [28] With this we can more easily understand why Dr. Suzuki has such an external idea of God. For instance, he says: [29]

> As regards the first moral injunction "not to kill," — this is observed by everybody belonging to any civilized community. One who violates it is not only legally punished as a civil criminal, but is also morally condemned as inhumanly-minded. The Christian would go further and pronounce this man as sinning against God, as a violater of the divine commandment. To the Buddhist mind the murderous deed is not connected with the authority of any outside agent who commands us to do this or that, or not to do this or that.

All that is necessary is "an appeal to the fellow-feeling natural to all humanity. Buddhism does not think it necessary to trace this feeling to an external source." [30] As a matter of fact, God is neither inner nor outer, but rather more inner than the inner and more outer than the outer. As soon as a man considers God merely as an "outside agent" or "an external source," you can see how superficial he is. Instead of speaking of "God" Dr. Suzuki speaks of ". . . the common ground out of which we rise." [31] But he does not realize that God is the "common ground" and infinitely more than that. He says further: [32]

> Deeds are bad when they go against the general welfare of the community. By this it is meant that bad deeds are always ego-centered; they grow out of selfishness, they tend to sacrifice the general welfare to the interest of the individual. Good deeds, on the other hand, grow straight out of the common good and go back to it.

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27 SHEED, THEOLOGY AND SANITY 27 (1946).
28 *Id.* at 27-8.
29 Text at 92.
30 *Id.* at 93.
31 *Ibid.*
32 *Id.* at 95.

But he does not realize as St. Thomas does, that God is the ultimate common good.

My second difficulty with Dr. Suzuki's paper comes from the fact that he only represents a particular school of Buddhism, namely, the Zen school. Besides that, there are the schools of Realism, Nihilism, Idealism, Negativism, Totalism, Phenomenology, Mysticism, Amita-Pietism, Lotus Pietism and Disciplinary Formalism. Zen Buddhism is pure intuitionism. Scared away from the false conception of God as a rigid and fixed Being, the Zen Buddhists seek their delight in the pure becoming. As Dr. Suzuki has written in another book: [33]

> Zen has from the very beginning made clear its principal thesis, which is to see into the work of creation and not interview the creator himself. The latter may be found then busy moulding his universe, but Zen can go along with its own work even when he is not found there. It is not depending on his support.

The spirit of Zen is the spirit of fluidity and extreme adaptability to all circumstances. The bearing of this doctrine on jurisprudence lies in its warning against literal-mindedness. There is no abiding place; we must go on. In this respect, Justice Holmes comes very near to Zen Buddhism. Let me quote an interesting passage from one of his letters to Laski: [34]

> Upon rather urgent solicitation I looked in at a meeting of illustrious lawyers the other day. They are bent on a 'restatement of the law.' I just came in while Root was flamboyant, took a back seat, wagged my head at Learned Hand and one or two others and slid out for Court. I suppose my name will go in as also present — which I take it was what was wanted — but I don't care much for the business. As Brandeis said, "I am restating the law every day. It's my job." You don't get originality or genius by saying that you want to do something particular — and I don't quite see where the desired restatement is to come from, unless from the fresh minds that from time to time sing their song.

I have quoted this in order to show the remarkable affinity between Holmes and Zen Buddhism. Their common aim is to keep the mind absolutely free and detached from all things so that it may remain flexible enough to respond to new situations as they arise. I have always suspected that the mental outlook of Holmes was more Buddhist than Christian, and this surmise has been confirmed by the experience of reading Dr. Suzski's paper. Speaking of the *Dharmadhatu,* or the Universe, as "a network of causes and effects infinitely complicated and intertwining," [35] Dr. Suzski remarks: [36]

> This intertwining and interfusing complexity is such that when a hair is picked up we perceive at its tip the whole system of three thousand chiliocosms in all its particularization, revealing itself, so that when one thought-instant is caught up from the eternal flow of becoming it is seen

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33 SUZUKI, ESSAYS IN ZEN BUDDHISM 261.

34 1 HOLMES-LASKI LETTERS 486 (Howe ed. 1953).

35 Text at 107.

36 *Ibid.*

> that all the past and all the future evolve out of it in either direction, backward or forward.

This reminds me of a similar vision of Holmes: [37]

> If the world is a subject for rational thought it is all of one piece; the same laws are found everywhere, and everything is connected with everything else; and if this is so, there is nothing mean, and nothing in which may not be seen the universal law.

Both Suzuki and Holmes have magnificent insights into the nature of things, but from the standpoint of true Christian mysticism, of which they are utterly ignorant, they are but gropers after "the known God." All profound things are obscure, but not all obscure things are profound. The great merit of the pure intuitionists is that they point to progress as the law of life. But they do not see that this is one of the immutable principles of the Natural Law.

Perhaps the most solid contribution to the present volume is Dr. Hu Shih's paper on the Natural Law tradition in Chinese philosophy. It is a masterly summary of the different forms the idea of the Natural Law has taken throughout the ages up to the sixteenth century. Dr. Hu is a pragmatist, and applies a practical test to the notion of Natural Law. To him it is, in effect, an appeal to a higher authority overriding human authority, and it works as a salutary check on the arbitrary will of kings and emperors and their powerful ministers. This appeal has taken various forms. In the hands of Confucious and Mencius, it takes the form of appealing to the authority of an idealized antiquity, the Golden Age of the ancient sage-rulers. In the hands of Lao-tze, the founder of Taoism, the appeal is made to the Way of Heaven as against the way of man. In the hands of Mo Ti, the appeal is to the Will of God as the highest norm for all laws and administrative measures. In the hands of Tung Chung-shu and other Han Confucianists, the appeal is to the Canon of the Sacred Books of Confucianism as the highest authority on all matters concerning moral and political justice. Finally, in the hands of the Neo-Confucianists of the Sung and Ming periods, the appeal is made to Reason. Dr. Hu has given a succinct and clear account of each of these tendencies. It is not necessary for me to give a synopsis of his paper. The reader will profit greatly by reading it with the care it deserves. But I am specially delighted with the quotation from the great Ming philosopher Lu K'uen (1538-1618): [38]

> "There are only two things supreme in this world: one is *lei* [Reason], the other is political authority. Of the two, *lei* is the more supreme. When *lei* is discussed in the Imperial Court or Palace, even the Emperor cannot suppress it by his authority. And even when *lei* is temporarily suppressed, it will always triumph in the end and will prevail in the world throughout the ages."

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37 HOLMES, COLLECTED LEGAL PAPERS 159 (1921).

38 Text at 152.

I have admired Lu K'uen and thought him to be one of the greatest philosophers of China, because he represents a rare combination of Confucianist and Taoistic strands. But he is very little known in the West. I am happy to see him quoted by Dr. Hu.

Dr. Hu's intellectual honesty and humility is nowhere more manifest than in the conclusion, where he says, "None of these concepts was able to achieve the objective of checking or limiting the absolute powers of the unlimited monarchy. No concept of the Natural Law alone can ever achieve that objective, in China or in any other country on earth." [39] In America, at least, it was not the Natural Law philosophy alone, but Natural Law backed up by a sincere and strong Christian faith in the dignity and equality of men on the part of the Founding Fathers and the bulk of the population, that has helped in establishing a truly constitutional government.

Before I dismiss Dr. Hu's paper, I am impelled to bring out two points on which I venture to differ with him. First, he calls Confucius "agnostic," and cites as evidence two passages from the *Analects,* where Confucious had said, "We have not learned how to serve men, how can we serve the spirits or ghosts?" and "We do not know what life is, how can we know what death is?" (Dr. Hu mistranslated the word "kuei" as "the gods." [40]). As I have pointed out in my *Beyond East and West,*[41] these passages do not prove that Confucious is agnostic, at least *vis-a-vis* God, Who is the God of the *living* as well as of the dead. I refer the reader to my book, in which I have presented Confucius as a theist. The second point is that Dr. Hu did not touch what seems to me to be one of the most important contributions to the philosophy of the Natural Law, namely, Mencius' theory of human nature, which, according to him, is essentially good, because it is endowed by Heaven. To him, human nature is essentially good, while evil is something acquired. Upon this basis, he worked out a complete philosophy of Natural Law, which comes very near to St. Thomas' conception. On the other hand, there was another Confucianist, by the name of Shun Ching, who maintained that human nature is essentially evil, while goodness is acquired, being the result of education. It is significant that some of his disciples became founders of legal positivism. Space does not allow me to tell the interesting story of these two divergent tendencies in Confucianism; I shall content myself with just one reflection. If you agree with Mencius that human nature is essentially good, then you will be inclined toward the Natural Law. If, on the contrary, you fall in with the view of Shun Ching, then you are likely to slip in to positivism. The Chinese positivist jurists were very powerful for a time, but they did not hold the reins of the government for long. To them, too, the words of Cardinal McIntyre

39 *Id.* at 152-3.

40 See *Id.* at 130.

41 See WU, BEYOND EAST AND WEST 151-3 (1951).

are applicable: "Our jurists in denying the absolutes, in reality deny the very principles and practices upon which our courts exist and operate." [42]

To conclude this longwinded review, I wish to say that this volume, like its predecessors, furnishes rich materials to the Natural Law jurisprudence. But it is even more stimulating than the others. I have no comment to make on the Foreword, Editor's Preface, Introductory Address, Mr. Sokolsky's Summation, and Father Hesburgh's Epilogue, except that I like them all. In fact, I would suggest to the reader to read the Foreword and Epilogue before he tackles the other papers. It does no harm to know one's bearings before embarking upon the open sea.

*John C. H. Wu**

PRINCIPLES OF AUSTRALIAN ADMINISTRATIVE LAW. By Wolfgang Friedmann.[1] New York: Cambridge University Press, 1950. Pp. 118. $2.25. — While administrative law seems clearly destined to retain its important place in countries having the Anglo-American legal system, innumerable problems still remain to be worked out. Accordingly, the American student often looks abroad for ideas and practices which may contribute to an understanding of the administrative process in government, or suggest acceptable solutions of problems still inadequately solved, or both. This reviewer has recently looked abroad to Australia.

Professor Friedmann's book on the Australian situation is well worth looking at. It has distinct limitations (largely inevitable because of the small size of the book); even while purporting to deal with "principles," rather than details, it deals with principles in a very meager fashion, with a minimum of analysis and of illuminating criticism, whether adverse or favorable. Nevertheless, there is much in it that will start trains of thought, suggest comparisons and alternatives, and, what is still much needed, contribute to an objective-minded study of problems in the field.

The background constitutional situation in Australia is almost uniquely interesting. While that Commonwealth, unlike Britain, has a written constitution, that constitution, unlike ours, provides very little in the way of securing individuals' rights — as distinguished from providing for the structure of government. Even ignoring developments in other countries where administrative law is widely used (as in France), one is still able to get a very interesting range of constitutional situations by considering those in Britain and the United States, and the intermediate one in Australia.

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42 Text at 9.

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As to the matter of constitutional limitations on legislative power, important in connection with delegations of rule-making authority and vesting of adjudicative power, the situation appears, according to Friedmann, to be in general of the English type, namely one of legislative supremacy, particularly over matters of private rights and interests, since the constitution does not, as a rule, protect such interests; but as to any matters provided for by the constitution, the provisions thereof, as judicially interpreted, prevail over conflicting legislation, as under the American scheme.

Neither the Dicey version of the "Rule of Law," nor the Montesquieu version of "Separation of Powers," has been effective in Australia, any more than in the United States or Britain, to prevent the development of administrative law. Indeed, the largely prevailing situation of legislative supremacy, as in Britain, freed administrative development from the restraints encountered for a time under our constitutional system. Nevertheless, Friedmann's chapter II, on the rule of law, is about as devastatingly critical of certain of Dicey's "principles" as can be found — although it seems that the author fails to take sufficient account of the fact that much of modern government is carried on partly by law and partly at discretion so that we are not confined to a choice between a largely absolute rule of law on the one hand, or largely unlimited discretion, as under Nazi and Soviet Russian practices, on the other.[2] Friedmann also is sophisticated as respects his treatment, in chapter III, of separation of powers; he asserts that Montesquieu incorrectly found such separation in the British constitution; that separation at most can be only relative; that in many matters classification, and hence separation, of powers is impossible; and that in practice the only common element of recognition of the theory among western democracies is in regard to independence of the judiciary.

Chapters IV, V, and VI deal respectively with changes in the social functions of the state, delegated legislation, and the status of subordinate law-making bodies. The Australian, like the American, constitution came to be construed so as not to prevent so much of legislative abdication as is involved in proper delegations of rule making power. It appears that lack of constitutional obstacles to legislative abdication, and absence of "due process" limitations in the field of private interests, permit the use of such wide standards that administrators may be granted almost limitless discretion — a condition said usually not to exist in the United States (but query). However, there appears to be a substantial judicial, if not constitutional, requirement that powers be exercised without arbitrariness, even when exercised *intra vires*.

Chapters VII-X inclusive deal with the related matters of liability or immunity of the state (The Crown) in view of doctrines as to sovereign-

[2] Text at 16.

ty and prerogative, and various, even extensive, "waivers" thereof, and of the legal position, and of the liabilities, of public authorities other than the Crown. Special consideration is given to the remedies available by way of injunction and declaratory judgment.

Judicial review is somewhat narrowly considered in Chapter XI where brief summaries are given regarding the use of mandamus, prohibition and certiorari — but not habeas corpus although used by us in certain situations. There is, however, nothing approaching the deserved sharp criticism as by Davis, for example, of the inadequacies, traps and pitfalls in these actions, and nothing on the desirability of having a non-technical review procedure as by a simple "petition for review."

Chapter XII (the longest in the book) deals with the matter of the adequacy of the administrative process to dispense a decent measure of justice. The broad conclusion is that in Australia the great extent of the safeguarding against improper official action is "remarkable." Judicial review is, unlike the situation in Britain, widely available for the correction of official errors. Such review appears, much more than among us, to extend to the whole case, and not merely to questions of law. It is said that the great majority of administrative tribunals enjoy real independence. Procedures, as with us, are widely variant. Representation by counsel is, as a rule, a matter of right.

Unfortunately, not everything can be gotten within the covers of a small book; but indebted as we are to Friedmann for his wide ranging in spite of the narrow space between his covers, American readers could wish that he had done more to inform us about the Australian problems, if any, in regard particularly to the procedural matters bearing on the conduct of hearings, and of the decisional process. This matter has engrossed our interest for a generation and will continue to do so.

In regard, finally, to a larger matter, the book helps to acquire (although not dealing with the matter directly) an understanding that seems desirable to the student of administrative law: namely, of the fact that the basic problems in the field of administrative law, as utilized in modern democratic government, are largely general rather than local in character. Neither legal and political theories, nor the forms and constitutions of governments, seem to prevent the development of administrative law; nor do local conditions seem either to call for or to provide unique institutions for its employment. If this is so, as it seems to be, the practice of searching widely for good ideas and fruitful practices in the administrative field, appears to have a real justification.

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*PRINCIPLES OF AUSTRALIAN ADMINISTRATIVE LAW. By Wolfgang Friedmann. New York: Cambridge University Press, 1950. Pp. 118. $2.25.

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QUASI CONTRACTS, CASES ON. By Herbert D. Laube. Indianapolis: Bobbs-Merrill Company, Inc., 1952. Pp. vi, 601. $7.50.

*Reviewed in this issue.