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Book Reviews

William Francis Roemer

W. D. Rollison

As was mentioned before that the courts of this country have been disinclined to extend absolute privilege beyond legislative and judicial proceedings, there is a recent case, however, in which there has been a departure from that rule. That is the case of *Tanner v. Gault,* 20 Ohio App. 243, 153 N. E. 124 (1925), wherein it was considered that a board of county commissioners would fall in the category of such a legislative body as obtains absolute immunity, even though the report made by the board of county commissioners proved to be false. Other courts doubt the propriety of extending the rule beyond legislative and judicial proceedings and look upon such an extension with disfavor. *Raymond v. Croll,* 233 Mich. 268, 206 N. W. 556 (1925); *Peterson v. Steenerson, supra.*

Thaddeus J. Morawski.

BOOK REVIEWS

AMERICAN INTERPRETATIONS OF NATURAL LAW. By Benjamin F. Wright. Cambridge, Massachusetts. Harvard University Press. 1931.

"AMERICAN INTERPRETATIONS OF NATURAL LAW" is worthy companion to that other recent Harvard contribution by Professor Charles Grove Haines, "REVIVAL OF NATURAL LAW CONCEPTS." The latter happened to be Dr. Wright's first teacher in political science. What better compliment could a student pay his first instructor than the one which Dr. Wright pays in acknowledging the inspiration he drew from Professor Haines' lectures? This acknowledgment is made explicity in the introduction to his work, and implicitly by pressing his valuable research along the same front as that chosen by his senior colleague. Proof of his early enthusiasm aroused in the natural law theory is found in his tireless pursuit of that concept in the political writings of pre-revolutionary days, and on down to the present time. This research will be found to be convincing, clear, interesting and profound.

Here is a "study in the history of political thought" whose subject matter, by reason of its dignity and its importance in the philosophy of law, deserves perusal by all students of political science, law, philosophy and history. Dr. Wright has been inspired by the belief that his "study of the rise and decline of the natural law concept, during the nineteenth century will be of service as a preliminary investigation which will prepare the way for a thorough and definitive history of American political thought." In the preface he says: "I have attempted to deal with the place of natural law in all of the political literature which seemed to be of significance for the subject."

It is the cumulative force of the army of political scientists drawn from every walk in the intellectual life of American citizenry that impresses the reader of this formidable volume. Statesmen, lawyers, ministers of the Church, academicians and students of politics—all are found to have furnished themselves with the same weapon of truth and in its trusted power have mustered undaunted courage to assail those enemies of American liberty and progress which threaten her very life. There is no resisting the conviction that results from the observation of similarity in the interpretation of this basic concept discovered by the author as he passes in review his conscript militia of Americans, an otherwise motley assemblage of individuals as distinct in education, prejudice and culture as any undisciplined crowd drawn from the far corners of a vast new continent.

Since each recruit has been found by Dr. Wright to have welded the same type of offensive and defensive theory, the reader concludes that the original

must have been the unpatented creation of a common mother of them all, more solicitous in her dictates than they themselves knew,—their common Natural Reason.

One finds so much to praise in the method adopted by Dr. Wright, and in the clarity of his presentation, that he hesitates to express an opinion with regard to the limitations of the work. In the preface the writer admits that he "probably inadvertently neglected several writings which should have been included." The chief neglect of which Dr. Wright has been "inadvertently" guilty is the scant reference to those sources of American theories of natural law which may be found in the writings of Bellarmine, Suarez, Vittoria and a host of other Catholic philosophers who antedated or were contemporaries of Grotius, Pufendorf, and Burlamaqui.

Again Dr. Wright in glossing over the mediaeval period, conceding that "throughout the Middle Ages the concept continued to be one of importance" nevertheless misinterprets the mode of derivation constantly in vogue. He says that "Ordinarily this law of nature was identified with the Bible, with the teachings and laws of the Church, and with the teachings of the Fathers of the Church." Obviously this rather trite confusion of the exegetical, the Patristic and the canonical writings with the purely philosophical speculations of mediaeval scholars is hardly commendable.

In the conclusion of his work, Dr. Wright takes occasion to weaken or to destroy the impression which most readers would be expected to receive from the repetition of the same concept. Emphasis should be placed on the striking similarities in concept, rather than on differences of less importance. Yet the author adopts the opinion that "So long as the intellectual world continues to be influenced by the evolutionary hypothesis the more philosophical theorists will probably follow the example of the recent juristic trend and discourse of 'a natural law with a changing content.' As I have attempted to point out in the preceding pages, this is, like James' *'Pragmatism,'* a new name for old ways of thought. And in periods of controversy there will doubtless be no time or inclination to appeal to such a conception. In any case it is clear that the content or applications of natural law vary in many respects from generation to generation. The essential element in the concept of natural law is not its content; certainly it is not a particular content at any given time or place. It is the attempt to answer the problems of politics which seemingly cannot be answered in any way capable of objective proof. In other words, natural law, in its essence, is an attempt to solve the insolvable." (Page 345.)

An attempt to solve the insolvable would not justify all the labor that has been spent on this single idea, in this volume alone. Perhaps further reflection will some day, in a later edition of this timely work, lead Dr. Wright to conclude his final chapter with a more optimistic note, for the simple reason that the pessimistic attitude happens to be both false in its perspective of the real fact and utterly destructive in its ethical implications. To insinuate that reason dictates *no* categorical imperatives for all time to all men is to consign standards of moral conduct to the junk-heap every few years as soon as new models render the old obsolete. However, Dr. Wright's final paragraph does not do justice to his most praiseworthy historical achievement, and his attempt to prophecy anent the future usefulness of the natural law concept is not a logical inference drawn from his previously expressed evaluation of the concept in the molding of American institutions.

William Francis Roemer, Ph. D.

University of Notre Dame, College of Arts and Letters.

CASES ON CREDIT TRANSACTIONS. By Wesley A. Sturges. St. Paul: West Publishing Company. 1930.

Professor Sturges presents here a new grouping, from the functional approach, of materials formerly covered at Yale in the courses in Bankruptcy, Suretyship and Mortgages. The volume is divided into six chapters which, to list them *seriatim*, are: (1) Accommodation Contracts; (2) Mortgages, Pledges and Conditional Sales; (3) Dealers' Financing by Accommodation Contracts, Mortgages, Pledges, Conditional Sales, and Trust Receipts; (4) Security Holders' Use of the Credit and Security Documents; (5) Security Holders' Protection and Priorities; and (6) Enforcement Proceedings and Rights to Redeem. There is a realignment of much of the materials that are ordinarily included in the courses in Suretyship and Mortgages especially and the inclusion of cases and other materials dealing with problems that have not formed the usual content of the case-books on these subjects. A great amount of material on the procedural aspect of Suretyship, Mortgages, Liens, Bankruptcy and Pledges has been included. This will afford a more practical preparation for the actual work of a practicing attorney; it will give a more realistic touch to the study of the law than the case-book that has the emphasis placed on a ramification of the principles of substantive law. But, as to the latter type of text, there is no reason for neglecting the practical aspect of the course.

The initial section of each of the first two chapters is "The Technical Contract." In the first section in the book the author includes material on such topics as the *distinction* beween a surety and a guarantor and questions arising in connection with various sections of the Negotiable Instruments Law, the defenses of *ultra vires*, delay of the creditor to sue the principal, and infancy, construction of technical language in guaranties, guaranty of collection as distinguished from a guaranty of payment, demand as a pre-requisite to liability on a guaranty, married women as sureties for their husbands, a customer's right to securities in the hands of a bankrupt broker, and the Statutes of Frauds (a very good selection of cases). This is evidence of what the author purposes to do—"To present suggestive materials for study in some of the simpler and more frequently recurring transactions involving, for the most part, borrowing and lending of money and purchase and sale of property on credit." More evidence appears in Chapter 5, where there is incorporated cases and other materials on problems of priorities that arise in the application of the law of fixtures, priorities between such security holders as laborers (having liens) and chattel mortgagees, landlords and conditional vendors, liens for storage and chattel mortgages or conditional sales, repairmen and chattel mortgagees or conditional vendees, and taxes and assessments for benefits and mortgages.

In some of the cases parts of the opinion have been omitted and the question "Judgment for whom?" is substituted. In a few instances, the portion of the opinion included suggests the result reached by the court, but in others it does not. This should encourage the student to draw upon his power of reasoning. Extracts from legal periodicals and from texts are interspersed throughout the book. The former are often arranged so as to present a series of divergent views on the same problem. An appendix contains the Negotiable Instruments Law, The National Bankruptcy Act, The Uniform Real Estate Mortgage Act, The Uniform Chattel Mortgage Act, and The Uniform Conditional Sales Act. Footnotes indicating the trend of authority or the extent of adoption of the view set forth in the particular case, in many instances, would have added to the value of the book.

Professor Sturges appears to emphasize business facts rather than the development of legal principles. There is a difference of opinion as to whether it is

more advisable to emphasize the origin and logical development of the law or whether it is more desirable to emphasize the study of certain subjects from the standpoint of equipping the student so as to enable him to become a business counsellor. Can the lawyer do more than to present to his client the nature and scope of operation of the legal devices that are available? On the one hand, it is rather futile to expect that the lawyer can predict the successful operation of any particular legal device in connection with the extension of credit to his client. On the other hand, is not the business man better equipped to know the extent to which he can use any legal device? If the lawyer is to successfully present the nature, scope and operation of the available legal devices, should not he have a knowledge of the development of legal principles rather than have come in contact with the law as a hodge-podge of principles? Should loopholes be left in the student's training in the subjects dealt with in this book? Would not it have been more desirable to have developed the subjects of "reimbursement," "contribution," and *jurisdictional* problems as well as those of *administration* in Bankruptcy than to consider them in the manner in which they are treated by Professor Sturges in this volume? Of course, it is plausible to point out, in the note at the end of the first case in the book, that the problem of reimbursement exists; but that is another matter. And many principles in real estate and chattel mortgages can be handled interchangeably if the allotted time permits, thus giving the student a knowledge of both. In teaching law with emphasis on the history and development of legal principles, the resourceful instructor can very well present the new propositions that confront the practicing attorney.

W. D. Rollison.

University of Notre Dame, College of Law.