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William F. Hodny

Wesley N. Harry

John H. Crabb

David Orser

James M. Corum

See next page for additional authors

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William F. Hodny, Wesley N. Harry, John H. Crabb, David Orser, James M. Corum, and H. G. Ruemmele

BOOK REVIEWS

ADMINISTRATIVE LAW TEXT. By Kenneth Culp Davis. St. Paul: West Publishing Co., 1959, 617 pages. Price: $8.00.

In the preface of this book the author states: "This book is exclusively for law students. It is not for practitioners, not for judges, not for administrators, and not for legal scholars." Having thus limited the purpose of his book the author proceeds in a fashion differing from other "hornbook" writers.

No attempt was made to cite a great deal of authority. Rather the author gives a complete discussion of leading cases which are representative of the rules and conflicts found in the field of administrative law. Davis' analysis of the decisions plus his discussion of their ramifications gives the reader an insight into administrative law which would be difficult to find elsewhere, especially in view of Davis' reputation as a leading writer in this area of the law.

Since the book is intended for students, state law has been virtually excluded except that each chapter presents the trend of state as contrasted with federal law. The federal law in this field is well developed, and omitting state law makes it possible for Davis to get directly to the core of the problems in administrative law. Also, at the end of each chapter is presented the pertinent rule of the Administrative Procedure Act and its relationship to the material previously discussed.

For anyone desiring a short, but comprehensive treatment of administrative law this book is extremely valuable. For the practitioner this book can be useful as a "guide book" to the *Administrative Law Treatise* by the same author since all chapter titles, section and chapter numbers are the same.

WILLIAM F. HODNY.

THE COMPLEXITY OF LEGAL AND ETHICAL EXPERIENCE. Studies in Method of Normative Subjects. By F. S. C. Northrop. Boston: Little, Brown and Company, 1959, 331 pages. Price: $6.00.

The author of this excellent work, Professor F. S. C. Northrop, is a Sterling Professor of Philosophy and Law in the Yale Law School. One of his most important contributions to the literary field in the recent past was the authorship of the outstanding book,

The Meeting of East and West. That book, in a sense, set the stage for his latest work, which is the subject of this review.

Professor Northrop opens his critique by citing three major facts with which everyone should be seriously concerned. These facts, however, hold a greater significance for lawyers, judges, political and social scientists and theorists, and philisophers due to their prominent position or status in our society. The basic facts stated briefly are these: first, the release of atomic energy; second, the shift of the political focus of the world from Westren Europe towards Asia; and third, the inescapably ideological character of both domestic and international problems. Faced with these fact-questions, the author very deftly proceeds to dissect the many phases of each problem by analysis, and to say merely that the author has a deep, keen, or penetrating insight would be an understatement.

In developing his points, the author critically examined the most important of the world's past and present social and legal philosophers such as John Locke, Adam Smith, Bentham, Kant, Moore, Petrazychi, Hegel, Marx, Ehrlich, Roscoe Pound, Justice Holmes and other eminent justices of the United States Supreme Court, Judge Augustus, Judge Learned Hand, Thomas Jefferson and other former presidents, and many other leaders of sociological and naturalisitc jurisprudence. The impact which each of these persons has had on our system of law and ethics in our changing society is scrutinized, and rather precise conclusions, based on the combined legal and ethical experience of these individuals, are drawn.

The author then traces the prevailing conflicts, using such concrete examples as the crisis at Little Rock, to show our domestic problems; the comparison of the Soviet, Chinese Communist, and Oriental philosophy as contrasted with Western Occidental philosophy; and further, he very effectively points out the changes in political and legal experience which have taken place throughout the world since World War II.

Professor Northrop approaches the ultimate goal of a workable, international law by delving into the anthropological and sociological data on various societies. He arrives at the conclusion that the success or failure of our society rests in a reformed United Nations which is based on the living, natural law of these societies. He suggests that the answer lies in the education and the persuasion of the majority of mankind to make *explicit* in their foreign policy,

through the United Nations, the international law which is already *implicit* in their present national law.

Author Northrop, in the final analysis, points out that the ultimate goal of a legal system is to ascertain what *is* the world's living law, and then to balance this with what *ought* to be the law.

This reviewer, at the onset, questioned the practicality of implementing such a proposition, but the author gave convincing arguments on this phase, to which this reviewer tacitly and qualifiedly assents.

This is a stimulating, thought-provoking book, written in a positive and optomistic manner, and in an intense, masterful style and it definitely would be a valuable addition to the lawyer's library.

WESLEY N. HARRY.

THE ELEMENTS OF LAW. By Thomas E. Davitt. Boston-Toronto: Little, Brown and Company, 1959, 370 pages. Price: $9.00.

This is a very welcome work which the author announces in his preface as being "an introductory book on jurisprudence". He presumes his reader or student has no prior acquaintance with the field of jurisprudence, and commences his discussions on the simplest and most readily comprehensible level possible for a subject-matter which is unavoidably slippery and devious. He commences with a brief survey of the principle premises or approaches from which universal explanations of the phenomenon of law have been offered. Then he more or less dismisses all of them as being valid for comprehensive purposes by comparing them to the "well-known" fable of the six blind men of Hindustan, each of whom touched an elephant to find out what he was like. "Upon returning home, they reported respectively that an elephant was like a wall, a spear, a snake, a tree, a fan, and a rope." He then proposes to analyze the phenomenon of law more objectively than to start from some relatively superficial supposition that the law is a "remedy," or "institution for social control," or any of the others that one of the six blind Hindustani might have chosen, and he succeeds quite admirably in his purpose.

The current period is one in which the "natural law" verses "positivist" controversy (to repeat increasingly shop-worn terms) is particularily active in jurisprudential writings, and there is a natural tendency to align every author in this field with one or the other of these two basic schools. Fr. Davitt is a Jesuit priest as well as a member of the law faculty at Marquette University, and expectably

enough, if not necessarily, his thoughts appear to follow along the lines of a Neo-Scholastic school tracing back recognizably to St. Thomas Aquinas. Indeed, he announces himself on page fifteen as being a follower of the Aquinas (or "Thomistic") school of thought. However, his avowed purpose, consistently with his use of the fable of the blind Hindustani, is to avoid entangling himself in controversy regarding the nature of law. That is a large order, and it is not surprising to find him emerging throughout as a convinced natural law theorist. That is not in the least to his discredit, as it would seem impossible for anyone to delve into this field in any depth without coming out with some matured conclusions. After all, this sort of thing has been going on since the days of Aristotle, and it is not likely to come soon to a screeching halt. But he does avoid indulging in polemics, except for an occasional dig in his footnotes against some members of the opposition such as Kelsen and Patterson.

He accomplishes very well his prime purpose of setting forth jurisprudential concepts and problems with great clarity and provoking the reader to analysis. He uses the term "man-made law" for the positive law which natural law theorists recognize as one of the funamental parts of the total organism of law, and which the positivists consider to be the totality of law. His explanation of "man-made" law is very lucid and instructive. This is true even though occasionally he puts forth some questionable tenets which require sympathetic reading in context to prevent one from going into opposition or charging him with inconsistency One such is his statement on page fifty-nine to the effect that adjudication is an "essential" source of law.

The next major subdivision of the book is devoted to "man-discovered" law. By virtue of considering this an integral element of law, he largely parts company with the positivists. But here again, he is very lucid and instructive, irrespective of whatever school of legal philosophy one may favor. Just as the positivist stalwart, John Austin, should excite the respect and admiration of natural law theroists, even though they may disagree with him, so is Davitt's writing of a calibre to provide profitable reading to those of any shade of opinion.

About the last half of the book is devoted to Part III, "Integration of Man-Made Law". Here again, he generally leaves the area of controversy about the nature of law, and gets into practical or applied jurisprudence. This he seems to consider the most im-

portant part of the book, since in the preface he invites a relatively hasty treatment of Parts I and II and a more thorough or leisurly consideration of Part III. Here he applies the underlying basic concepts of law he has discussed to broad fields of law, such as crimes, torts, property, contracts, and equity. He succeeds in inspiring some fundamental reflections. Thus, in the field of torts, he exposes the implications and issues involved in the concept of liability without fault. In the field of contracts there is an excellent discussion of the doctrines of consideration in Anglo-American common law and *"causa"* in civil law and their relation to the nature of law.

This reviewer considers fortunate the current trend to draw the attention of the legal profession to the very nature of law. This should not be considered by the legal profession to be something esoteric or an interesting diversion for such lawyers as have the leisure or inclination to look into it, but rather an essential part of every lawyer's equipment and development. This book is admirably suited to focus the attention of the student or practitioner of law on the nature of the phenomenon to which he is devoting his professional life.

JOHN H. CRABB*.

EVIDENCE OF GUILT. By John MacArthur Maguire. Boston: Little, Brown and Company, 1959, 295 pages. Price: $12.50.

In this book Professor Maguire presents a technical, compherensive treatise of the protective rules designed to shield persons from what is called the tyrannous pressures by officialdom. History, older cases, and statutes are for the most part omitted in favor of an analysis of the later cases, since Maguire feels the former have been quite adequately covered by other authors, notably Wigmore.

The book contains an analysis of the five important protective rules affording protection against (1) self incrimination, (2) involuntary confessions, (3) unreasonable search or seizure, (4) wiretapping and related communication interceptions, and (5) the introduction into evidence or other use of confessions obtained during illegal detention (commonly called the *McNabb or Mallory* doctrine). The historical development of the five rules is traced, and then the reader's attention is focused to the recent matrial—such as cases, statutes, and text—which is thoroughly examined to show the role it is playing in shaping the rules into what they are at present, and what they will be in the future.

* Associate Professor of Law, University of North Dakota.

The method of analysis employed by Professor Maguire is to state a hypothetical situation which brings into play possible application of one or more of the protective rules. Then the rule and the situation are critically examined to determine whether the protective rule may be properly invoked. Some of the things considered in this respect are the nature of and justification for each restrictive doctrine; governmental and other types of pressure exerted to discourage application of the doctrines; whether a violation of one of the doctrines will lead not only to exclusion of evidence directly obtained by the prohibited conduct but also to evidence indirectly obtained thereby; and the behavior of a claimant which may bring into play a wavier of the restrictive rule or which will make it unavailable to him.

Since the five protective rules contain considerable overlapping, their study is done on a comparative basis. The amount of overlapping in some areas as opposed to others is shown, and a consideration of deviation in operation of one protective rule from another is made to determine to what extent such deviation is justifiable. Because of the confusion that would obviously result, the comparison is not made by simultaneous presentation of all the protective rules. Instead, the rules are treated successively with a uniform pattern of inquiry. Each section of a chapter is numbered with a decimal system which enables the reader to refer immediately to the corresponding section of another chapter.

The treatment of material contained in the book is so clear and orderly that it may be benefically read by the layman as well as the person trained in the law. Judges, lawyers, law enforcement officers, and others concerned with the problems encountered and examined in the textual analysis will find it a valuable contribution to a thorough understanding of the complex problems encountered in this field.

In his conclusion Professor Maguire explains that the purpose of the book is not so much to accomplish reformative changes in the protection afforded to individuals in the face of overwhelming governmental pressures as it is "to explain the present form and effect of those safeguards". However, he does express hope for eventual reform in this area. His suggestion is not of specific advocated changes but rather lines of analysis to be followed in framing group recommendations for improvement.

DAVID ORSER.

LAW AND TACTICS IN JURY TRIALS: Encyclopedic Edition, Volume 2. By Francis X. Bush. Indianapolis: The Bobbs-Merrill Company Inc., 1959, 987 pages. Price: 4 Volumes, $90.00.

Volume 2 of a four volume set on *Law and Tactics in Jury Trials* covers such aspects of trial practice as: Respective Functions of Court and Jury, Preparation of the Case, Opening Statements and Presentation of Evidence.

At the beginning of each chapter, the author briefly recites the common law procedure or background to give the reader a complete picture of the topic treated. Of particular significance are the extensive and thorough footnotes, citations to relevant American Law Reports annotations, and cross references. The author has attempted to cover all facets of given points of law and trial procedure to make the researcher's task less burdensome.

Unique features of this encyclopedic edition are the "specimen" examples, taken from actual cases or hearings, covering such steps as: outline of inquiries to be made of plaintiff and physicians in personal injury actions; demonstrations of pre-trial conferences and pre-trial proceedings; written interrogatories; forms of motions; and opening statements and examinations of witnesses. It is to be noted that both criminal and civil points are covered. This treatment of such vital steps in trial procedures is very enlightening since the reader is brought into the courtroom, so to speak, with the author pointing out the good and bad parts in each example. The beginning lawyer will find these illustrations plus the check list of materials and memoranda to take into court especially helpful.

The conclusion is inescapable that Mr. Bush has done a scholarly and thorough job of compiling reference materials covering a complex aspect of the practice of law. It should be noted also, that the author's own learned comments on trial procedure contribute greatly to the practical value of this book For the lawyer just starting his practice, as well as for the experienced trial advocate, this work should prove to be an invaluable aid.

JAMES M. CORUM.

THE PUBLIC'S CONCERN WITH THE FUEL MINERALS. By Maurice H. Merrill. Oklahoma: Thomas Law Book Company, 1960, 105 pages. Price: $3.50.

Professor Merrill's book is a compilation of lectures delivered in 1958 at the College of Law, West Virginia University, with an introduction by Dean Roscoe Pound.

Dean Pound's introduction summarizes the point Professor Mer-

rill was trying to get across in the lectures by pointing out that the complicated relations of land owners, lessees exploring for or taking out fuel minerals, agencies of transportation, distribution, and storage, a swell as demands of the public in connection with everyday processes and activities of both social and individual life, call for the application of not only the general principles of the science of law but also that of the social and economic sciences and of philosophy.

To the uninformed the law is a dry set of rules that no one completely understands, but to the informed it is a growing set of rules which must be flexible enough to meet the social and economic demands of our society. The field of oil and gas law is a most interesting study of public demand shaping and framing a new body of law, and the author points this out with graphic examples of how the judiciary has developed a field of oil and gas law. He starts with, as Dean Pound states, "analogies which have ceased to have useful significance in the social and industrial development of today, and would make of stare decisis an inflexible rule instead of a stabilizing principle," and then traces the law through the stages of encouragement of production and development, to the present emphasis on conservation.

As conservation raises its head, the author points out that one question of great public concern probably will continue to be of burning interest, and that is whether the states or the nation should play the major part in the determination of public policy as to the conservation of oil and gas.

The major portion of the body of law pertaining to fuel minerals has been developed by the judiciary and it is pointed out that usually only in cases where the judiciary has failed to follow the public's concern that the legislative branch has been resorted to. The book points out that "in company with a few courts, the Supreme Court of the United States, always more generous than most state judiciaries concerning the constitutional freedom of legislatures to promote social welfare" has found more and more federal jurisdiction, especially in the field of natural gas, and suggests that in view of the local and varying factors which are involved in conservation, that it would be better to return the matter to the states.

This small book is well worth the reading for the student of the law, for its insight into the reason for both the judiciary and legislatures heeding the public's demands and concerns.

H. G. RUEMMELE*.

* Member of the North Dakota Bar and lecturer of law at the University of North Dakota.