

Because, on the one hand, man has the prevailing role in the play of Man, Nature and Time, and, on the other, world consciousness is not nature-given, but rather "an acquired characteristic"³ of man, the lack of world study in formal education should be remedied. Perhaps it was due to this deficiency that older diplomacy assumed that "the interests of nations are necessarily antagonistic, and that state sovereignty is the final word in national and social evolution."⁴

Among the experiments of world organization which aim at overcoming those faulty concepts the author mentions as quite recent forms those of internationalism and cosmopolitanism. In the first he sees an attempt to form "an organized super-national society, built out of independently functioning constituent national societies."⁵ The other he considers "more hypothetical as it takes the unity of mankind for its starting point rather than its goal and would ignore the present structure of world states altogether."⁶

The author thinks that very few persons believe in either of these ways toward world organization. When the book was written, two years ago, he could not yet realize that sovereignty would again develop as a formidable obstacle to international understanding. Thus he could hardly know that the longing for it would induce more and more people to set their hope in world organization by any of the means mentioned or by any other means, the youngest of which is perhaps the striving movement of world federation.

One owes the author hearty thanks for the many and thorough ways in which he exposes the fact of the basic unity of this world.

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THE JURISPRUDENCE OF INTERESTS. Translated and edited by M. Magdalena Schoch. The Twentieth Century Legal Philosophy Series. Cambridge: Harvard University Press, 1948. Pp. xv, 230. \$5.00.

This is the second volume in the new series edited by the Association of American Law Schools. The first volume was Kelsen's writings; and the third volume is *Latin-American Legal Philosophy*, containing representative authors in translation. Perhaps the legal philosophical world has most wanted the projected volume of Petrazycki's writings. It seems the original plan was to make Petrazycki's writings the second volume in the series. Certainly in importance his work is of the very first rank. The fact that much of it is now inaccessible to most readers, since it is found only in the Polish and Russian languages, makes a comprehensive translation all the more important. We may judge in part of Petrazycki's true stature from the fact that his influence is so great in the English-speaking world, although he is known to this world almost solely in second-hand ways, through the heterogeneous comments of others. Whatever has caused the delay in the Petrazycki volume, certainly the general interest would seem to require that it be published next.

The volume under review is somewhat deceptive. It consists of shrewdly selected excerpts from the writings of Rümelin, Heck, Oertmann, Stoll, Binder, and Isay. These represent writings from the German which have hitherto not appeared in English. The translation and all the editorial work have been done by Dr. Schoch, and are of the very highest character. The entire legal profession is greatly in debt to her for the sacrifice in time and effort that she has so generously given to this work. The volume begins with an excellent introduction by Lon L. Fuller, commenting on the scope and position of these writings in the present state of scholarly development of the concept of legal interests. But the title and the scope of the book remain somewhat confusing. It is not

³ P. 285.

⁴ P. 270.

⁵ P. 265.

⁶ *Ibid.*

called *Some German Comments on the Jurisprudence of Interests*—although this would be an accurate title. Its general title is surely inaccurate and misleading. Furthermore, even the German authorities in this field are not fully given.

These selections are articles of criticism which assume a developed system of interests, but nowhere is an actual system of interests set forth. It is like having essays on constitutional law in this country without the text of the Constitution itself. One result of this is that the whole discussion is dragged down to a lower level, sometimes needlessly involved and petty in its details, without the strength and dignity that would come from an initial setting forth of an actual scheme of interests. Substantially speaking, a developed scheme of legal interests comes from Jhering. Of course, this volume purports to cover material in translation for the first time, so that Jhering's discussion of interests in the translation of his main work under its English title, *Law as a Means to an End*, was perhaps excluded on this ground. But Jhering's discussion of interests in the second volume of his *Geist des römischen Rechts* is perhaps the most significant of all his writings on this subject, and it could surely be presented in translation for the first time with every propriety.

Perhaps part of the difficulty is the rigidity of the editorial committee in purporting to make available in translation for the first time the writings of foreign jurists, and its decision not to include any former translations or any writings on these subjects in English. But surely a too rigid adherence to this plan is artificial and denies to the reader material he should have. For instance, in the first volume by Kelsen, a large part of the actual text (especially the footnotes) is not translation at all, although the titles and editorial notes do not indicate this in any way. A large part was written by Kelsen in English and intended for this volume. In keeping with this, it would seem fortunate not only to include the original work of Jhering in translation but also to include a presentation of interests by Pound from his writings in English. While Jhering was substantially the originator, he has not developed the theory of interests in anything like the substantial way that Pound has done. If, then, generous excerpts from Jhering were placed first, and Pound's treatment followed these, the stage would be set for the critical comments by the present authors and the general title of the book would be justified.

I add, as a purely minor suggestion, that it was disturbing to find no excerpts from Hegler included in this volume. Hegler with his emphasis on teleology is a very important contributor to the theory of interests itself and a very happy connecting link with Jhering's later period when he had given up the purely "constructive" theory of interests of his earlier period. None of the included authors deals significantly with the ethical side of legal interests or indeed with the whole problem of evaluation. This is surely the most important and the most difficult side of the whole subject. In view of the recent emphasis on the ethical element everywhere in the law, it seems strange that Hegler was omitted.

As for the authors themselves and the selection from their writings, they seem excellent, although not on the high plane of Jhering, Pound, and Hegler. The first four are on the whole generous proponents of the doctrine of legal interests, while Binder and Isay are adversely critical, mainly in the "free law tradition." For that matter, Stoll is rather critical also in the sense that he almost comes out with the *Pure Theory of Law* approach to the law generally. Indeed, Stoll's criticism on points of analysis is somewhat representative of all the writers in the sense that they are critics who come after the main ideas are developed and give their time to minutiae and to logical consistencies. This sort of writing has its place, but it does not deal with the sweep and the significance of the main ideas in fact, as the more important writers in the field have done. With the

possible exception of Heck, all of them seem to be more technicians than significant builders. A short quotation from Stoll will perhaps indicate something of what I mean:

Legal science must also satisfy the theoretical demands of systematization. Thus another limitation is imposed upon the scholar who establishes concepts and proposes theoretical theses or formulas. For he will discharge his duty toward legal theory only if he presents concepts and rules as components of a consistent and complete whole, into which all of them can be incorporated and as the result of major principles to which all of them can be traced back. Not only those concepts are erroneously formulated which fail to indicate the essential characteristics of the legal rules they are supposed to condense, but also those which prove to be contradictory to the system. "Within the system there can be no foreign bodies." In the process of systematization, formulation ceases to be a mere matter of usefulness; it becomes a matter of correct logical reasoning. It will rarely be possible to speak of an "equivalence" of formulations. The interests underlying a legal rule or institution may be expressed by different formulations; if we proceed, however, to assign to a given rule or institution its place in a definite system, we are bound by the historical content of the concept as well as by the fundamental outlines of the system. On the one hand, concepts and formulas must be capable of comprising all legal rules which come within their scope; on the other hand, they themselves must fit into major concepts, larger divisions, and more general propositions. To be sure, legal science will frequently achieve only provisional and relatively general formulations, and a choice between several concepts or forms may sometimes be possible. But ultimately one view will prove to be correct. For legal science works incessantly to build a system. Although every system represents a complete and harmonious whole, no system is ever perfect or finished.¹

All these comments are purely incidental to a sense of great debt which all of us owe to Dr. Schoch and to Professor Fuller and to the editorial committee. No such scholarly and thorough treatment of legal interests has been available in English up to this time. This volume will be found indispensable to those who work seriously in the law. Some of the discussion could perhaps be called statutory interpretation in the manner of Gény and Saleilles, although it is presented in the language of legal interests, while other parts are philosophical in interpreting the law itself on a high plane. But these are necessary variations in the work of continental jurists who constantly presuppose their codes, and who postulate the codes as an inarticulate major premise, while of course in the common-law world our theory of interests presupposes the very different system of customary or judge-made law.

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A NATIONAL POLICY FOR THE OIL INDUSTRY. By Eugene V. Rostow. New Haven: Yale University Press, 1948. Pp. xvi, 173. \$2.50.

Mr. Rostow writes a good brief for drastic changes of law and administration affecting the industry. His main bias seems to be to attribute imperfections in the present oil industry to the original sin of the Standard Oil trust. He fails to appreciate what a good job the oil industry is doing, as compared with the American coal industry or foreign oil industries, for instance. Those who agree with me that he has completely jumped the track to a sensible policy for the antitrust laws in the near future should not be dis-

¹ P. 271.