# BOOKS

PARENTAL AUTHORITY. THE COMMUNITY AND THE LAW. By Julius Cohen, Reginald A. H. Robson, and Alan Bates. New Brunswick: Rutgers University Press, 1958. Pp. xii, 301. $6.00.

This book reports a cross-disciplinary research project which should be of particular interest to lawyers and sociologists, so far as theory, technique, and methodology are concerned, and to legislators and the public generally, as to the substance of the findings. The research group (I would have used the word "team" if it had not recently fallen into disrepute) consisted of a law professor and two sociologists. The data were collected in a field study in which the questionnaire-interview method was employed in an effort to ascertain the extent to which the law, in a limited area of human relations with which most laymen have a working familiarity, coincides with or deviates from the "moral sense of the community."

Many of the present and some of the immediate past generation of legal scholars have reacted positively—and sometimes violently—to the arid deductions of analytical jurisprudence and to what they regard as the sterile speculations of the metaphysical jurists. The "moderns"—if this is a permissible term in this context—have insisted both on a realism that cuts through the logic and formalism of the law to uncover the social policy that is supposed to underlie it, and also on an examination of the factual constituents of the social and legal order upon which that policy is supposed to rest. They not only recognize but emphasize the fact that the law grows—or at least changes—as life itself grows and changes. They also recognize, of course, that there is a law of inertia—a legal lag—in the sense that law will always be somewhat behind much progressive social thinking as well as ahead of the thinking of those committed to what was once the status quo. Law as the conservator of social values must protect the values confirmed by experience in addition to those evolving in a fast-changing society.

In a democratic community, law is a mirror of a way of life. But it reflects that life with varying degrees of accuracy. There is always some distortion. A political party conducts a successful campaign on a platform, and the "people"—whoever they are—give it a "mandate." Much of the mandate is in such general terms, however, that there is considerable latitude for interpretation. Moreover, it is seldom, if ever, that a political party keeps—or tries to keep—all of its specific promises. Similarly, after a judge is appointed or elected it is seldom that his point of view does not change—or appear to change—so that his decisions disappoint his conservative supporters or his liberal sponsors or both.

But there may be something that can be called a "consensus," capable of being employed as a normative standard for all law, and comparable, perhaps, to the standard of the "ordinary reasonably prudent man" in the law of negligence. *Should* the law be what it is? *Would* a reasonable man act as this man did? There is a sense of "oughtness," which is conditioned, of course, by the common experiences of men in a particular culture, with its values, mores, superstitions—a moral tone with which law, if it is not strictly attuned, cannot be too discordant. Whether it is labeled a "sense of justice," a "sense of injustice," "public opinion," or "received ideals of time and space," it should be examined, analyzed, and studied. This is not necessarily to say that law in every respect and detail should conform to the average morality of the community. Indeed this study disclosed a considerable variance between the two. Nor does it mean that the boundaries of the "community" may not vary with respect to different laws. For example, the people of the State of Arkansas might well constitute the "community" to reflect the norm for determining the grounds for divorce, but not for determining the permissibility of segregation in schools.

Julius Cohen and his colleagues have sought to demonstrate a method of investigating this "moral sense" of the "community." To be sure, the techniques involved are not new. They have been used by social scientists in many contexts. They are used here, however, in a highly imaginative way and for a unique purpose, namely, to assess the moral sense of the community with respect to the rules of family law which regulate the relations between parent and child.

There are different terms in which the moral sense of the community can be assessed. It might be defined either in terms of what the community actually *does*, or what it thinks it *ought* to do. As the authors point out, the former approach has been adopted by a number of moderns, including Underhill Moore, Kinsey and his collaborators, Ehrlich, Jacobbs and Angell, Llewellyn, and others. In the words of the authors, "in all these studies the sights were on the 'is' or the 'was' side of the behavior pattern."[1] Borrowing Northrop's phrase, they say that the emphasis of these scholars was on the "normative 'is' of the living law,"[2] and they point out that the focal point of their study is also a normative "is," but the "is" of the community's feeling of what the law *ought* to be rather than the "is" of the *living law*. "With Ehrlich," they say, "it was the 'actual practice of the community,' and not its abstract moral standard that was sought. With us it was the 'abstract moral standard' of what the law *ought* to be that was sought . . . ."[3]

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This is certainly a worthwhile objective. It is an investigation into the ideals of a society—into its objectives, its goals; and it is certainly more difficult in an empirical study to attempt to discover, with any degree of confidence in the results, what a community thinks it *ought* to do than to investigate and analyze what it *does*. And while a community, like an individual, frequently fails to live up to the standard it sets for itself, this would be a sorrier world than it is if its ideals were no higher than its achievements.

The "community" studied was the adult population of the State of Nebraska, excluding inmates of mental institutions, prisons, and reformatories. A trained staff of interviewers was used to find the views of a stratified random sample consisting of 860 respondents, or approximately one out of every thousand qualified adults in the state.

The criteria for stratification were selected on the basis of what may be assumed to be factors relevant to the subject under investigation. They included residential area (rural or urban), race, nationality, income bracket, occupation, religion, education, marital status, and number and age of children, among others. Twenty-two counties of the state were selected at random on the basis of these socio-economic criteria. On the whole, the entire procedure appears to be consistent with the best principles of scientific random samplying. The basic data are tabulated and included in the text where convenient, and otherwise in the appendices.

Some of the findings of this study will surprise those who make guesses. For example:

> The majority of the community feels that the law should restrict parental control over children in a substantially greater number of ways than the law actually does at the present time.
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> The majority of the community feels that the law should grant pre-adolescent chilldren freedom from parental control in more areas than the law in fact does.
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> This last-mentioned community view is even more marked when the child reaches the later stages of adolescence. From the age of 18 years, the majority of the community feels that the law should permit the child to have rights in a considerably greater number of situations than at the present time.
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> The majority of the community feels that the law should recognize a gradual transition during the period of adolescence from childhood to adulthood by assigning the child an increasing number of rights and obligations, rather than make an abrupt change at the age of 21 from childhood to full adulthood, as the law does at the present time.[4]

The above represents the core of what the authors investigated and learned. In their investigations, however, they gathered many other data

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about the community which are of significance for social scientists. Aside from the central problems involved, here are some collateral questions to which answers were obtained: Are men more willing than women to have the law restrict parental control over children? Are men more willing than women to have the law grant autonomy to the child? Do men agree with women on the question of familial versus governmental financial responsibility for indigent family members? The same questions are answered with regard to Protestants and Catholics, younger people and older people, college people and non-college people, low-income people and high-income people, different occupational classes, and parents and childless people.

The findings made by these scholars throw considerable doubt on the widely held sociological and juristic theory that law is the resultant of the clash of interests of different pressure groups in the community. The theory may be sound in some areas, but there is no substantial evidence in this study that it is relevant to the field of law under investigation.

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THE NATURE AND FUNCTIONS OF LAW. By Harold J. Berman. Brooklyn: The Foundation Press, Inc., 1958. Pp. 662. $7.50.

Sporadic efforts, in a few American colleges, to make "Law" an integral part of the liberal arts curriculum have been hampered by the lack of an appropriate published text. "Materials" have been put together here and there, most usefully by a group at the Law School of the University of Wisconsin;[1] but Dean Garrison and Professor Hurst were the advance guard, and their compilation of readings and cases was published in a cumbersome and expensive format. In fact, the notion that undergraduates, in the course of a proper general education, should have the opportunity to become acquainted with the legal and judicial process just as readily as they may learn about the "law" of supply and demand or Boyle's Law[2] is still comparatively novel in this country. One reason for its failure to spread more rapidly is, I think, the burden it puts on the instructor. That burden is now greatly diminished by the appearance of Professor Berman's book.

Another obstacle to giving a nonprofessional law course for college juniors and seniors is the contemporary trend in the social sciences, away

1. GARRISON, HURST, AUERBACH & MERMIN, THE LEGAL PROCESS (1956).
2. See Freund, *Law and the Universities*, 1953 WASH. U.L.Q. 367.