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Book Reviews

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BOOK REVIEWS

THE THEORY AND PRACTICE OF COMMUNISM. By R. N. Carew Hunt.
New York and Dallas: The MacMillan Company, 1951. Pp.
viii, 232. \$3.00.

This is an American edition of a work which already has received considerable acclaim in England. It is hoped that in this country also it will receive the wide circulation and reading to which it is entitled, for it has an important function to serve.

In the current hysteria of demagoguery and oath-taking, the word "Communism" appears to have lost most of its meaning. It is not uncommon to find that the anti-Communist crusader has little knowledge of the nature of the beast he is attacking, and that his listeners and followers huddle like sheep in fear of the unknown.

Communism is essentially an idea, or perhaps a faith. The first requisite of overcoming an idea is to know what that idea is, so that its strengths and weaknesses may be known, so that we may know in what channels to direct our attack, where our own defenses must be built up, and which of our own weaknesses must be extirpated. It is high time, in other words, that we have done with ringing denunciations, with ceremonials of abjurations, with boastings of bathtubs and telephones. It is well past time to have done with calumny of devoted citizens whose sole offense is outspoken devotion to traditional American liberty. It is time, in short, to learn, to think, to plan, and to do.

Here Mr. Hunt can be of tremendous assistance. In comparatively few pages he paints in sufficient detail the essential elements of current Communist dogma. Its conciseness defies further condensation in this review. I can say only that of all I have read to date this appears to be the most lucid and revealing. Mr. Hunt plainly does not like Communism, but he manages nevertheless

to attain an objectivity of presentation which is unusual for the times.

Many of us are dismayed, not altogether without justification, by the spectacle of an espousal of Communism by young men and women of intellectual promise. While various psychological frustrations no doubt contribute to such a result, it must be recognized that the writings of Karl Marx have a strong appeal to the emotionally immature and to the economically uninformed. Marx's strictures upon Capitalism were directed to English industrialism of the mid-Nineteenth Century and it was far from a pretty picture. That Marx's proposed remedies were faulty does not detract from the validity of a good deal of his criticism. Fortunately the capitalism of a century ago no longer prevails in England, in America, or in any other truly modern nation. But the youthful inquirer cannot always know this. He does know, as we all know, that our mid-Twentieth Century competitive economy does produce economic casualties, and that the lot of these casualties often is a hard one. The economically uninformed person is apt to take the fact of the resulting hardship and frustration as proof that the jungle-economy described by Marx and his followers still prevails. Having made this initial error, and with an emotional sympathy aroused, the reader is likely to make two additional errors; first, that Marx's proposals offer an effective program of action to eliminate the errors believed to exist; and, second, that contemporary Communism is dedicated to making such a program effective.

Here is presented a real challenge to intellectual leadership. To hope to fence out such thoughts is sheer folly. The problem is how to overcome them. Obviously on the one side there must be a continuing study of the weaknesses of our own economy to eliminate the injustices and soften the hardships. Proclaiming loudly that it is a perfect system will not do. Burying our own heads in the sand will not impel others to do likewise.

But, since we are dealing with an idea, there must be an intellectual attack on the problem. There must be a careful analysis of the

works of Marx and Engels so that their anachronistic economies and logical fallacies may be made clear; and also to determine to what extent their criticism still may be valid. Then we must examine the relationship between the basic doctrine taught by Marx and the practices of contemporary Communism.

Here Mr. Hunt does a superb job. His exposition of the philosophic basis of Marxism is accurate, and his criticism appears to be sound. A careful reader will be enabled to form an intelligent opinion and to reach an informed judgment. Mr. Hunt then traces the development of Marx's theory into present-day Communism. He brings out what often is overlooked; that in the hands of his followers "Marxism" becomes something quite different from what Marx taught. Marx himself was to protest before his death that he was not a Marxist. Continuing his development, the author outlines the philosophy of the Bolshevik revolution of 1917 with particular reference to Lenin, and then traces out the important changes worked by Joseph Stalin. The reader comes finally to perceive that present day Communism has erected a state capitalism containing most of the wrongs against which Marx and other reformers have inveighed, and a political imperialism not too different from the Nineteenth Century pattern. The denouement can be but shattering to one who follows the story seeking the fulfilment of the common man. But there are valuable lessons for all who would know the intellectual drive behind the Communist striving for political power, and the basis of the Communist emotional appeal to men outside its web.

This book is recommended not only to help us set our own house in order, but to enable us to combat intelligently and effectively those who would pull our house down about our ears. It is a must for the lawyer who would discuss Communism publicly.

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THE INHERITANCE OF THE COMMON LAW. By Richard O'Sullivan, K. C. Westminster, Maryland: The Newman Press, 1951. Pp. viii, 118. \$2.25.

This little book is an example of what our English brethren do so well, but of which we have failed generally to realize the importance. The Hamlyn Trust was established and endowed to provide a series of lectures upon English Jurisprudence, particularly to bring to the English people a realization of the privileges which they enjoy therein. Under this and similar trusts some of the most important contributions to English legal thought have been made available to the profession and to the public generally. The book here reviewed contains the Hamlyn lectures for 1950.

With the other peoples of Western civilization the inhabitants of the American colonies received the great medieval tradition of the Natural Law and, in establishing the government of the United States, translated the theory into a working theory of Natural Rights. In the hands of the American judiciary the doctrine has had a spectacular career and continues to be generally accepted by the mass of our people, notwithstanding some unfortunate episodes resulting from the Supreme Court's attempt in the late Nineteenth Century to fit the Kantian free-willing individual into the Natural Law pattern under the label of Freedom of Contract.

Content generally with the workings of the Natural Rights doctrine in his own land, the American has not appreciated the extent to which the idea has been rejected and discarded in other important nations. In Europe the doctrine has been nourished most effectively in Switzerland and in the Scandinavian countries. It is perhaps more than a coincidence that those countries appear today as beacons of freedom in a sea of absolutism.

Great Britain once had a proud Natural Rights tradition, which had been developed more or less independently of the great scholastic tradition of the Continent. From Cicero through John Salisbury, Bracton, Sir Edward Coke, John Locke, the doctrine came to us. In English Equity it received a sanction which it attained

in few other countries. It was announced ringingly in the first part of Blackstone's *Commentaries*, although it must be admitted that in later chapters the author appears to overlook it. However, under the driving attacks of Jeremy Bentham and John Austin in the Nineteenth Century, the tradition was driven almost completely out of British consciousness.

It is significant that, as present-day Britain seeks to extricate herself from a political and social morass, there is a revival of interest in and discussion of the Natural Rights doctrine which the Church alone had sought to keep alive for a century. Mr. O'Sullivan's lectures are in keeping with this movement.

There are four lectures: The Concept of Man in the Common Law, The Family, The Political Community, and Law and Conscience. In the first the author traces the development of the Englishman from subject to citizen. The story is told not in terms of philosophical doctrine but rather in terms of English private law. It is well done and is, as always, a moving story. The second lecture has to do with the impact of the English law upon Christian marriage and vice versa. The author has some definite ideas on what the English consider to be their divorce problem. These ideas are controversial but are worthy of serious consideration. In the third is told the story of the development of the English ideal of political freedom. Most thought-provoking of all is Law and Conscience.

Mr. O'Sullivan's thesis is cautiously stated, as befits one of His Majesty's Counsel. By American standards he is perhaps conservative. It is believed however that he does reflect the Great Tradition as it came to our shores two centuries or more ago. His book is well worth the time of one who would understand better our own tradition in its historic form, freed of some of the barnacles more recently fastened upon it.

To some readers Mr. O'Sullivan's reiteration of the role of the Church in the development of legal institutions of England may appear strange. It is, however, historical fact matched to a great

extent by the impact of Puritanism upon our own development. The thought recurs that perhaps even today an informed Bar and a devoted Clergy may have common cause.

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THE CONFLICT OF LAWS: A COMPARATIVE STUDY. By Ernst Rabel. Ann Arbor: University of Michigan Law School, Vol. 2, 1947, and Vol. 3, 1950. Pp. xli, 705; xlvi, 611. \$12.50 each volume.

THE CONFLICT OF LAWS AND INTERNATIONAL CONTRACTS. A symposium edited by Hessel E. Yntema. Ann Arbor: University of Michigan Law School, 1951. Pp. xiv, 200. \$3.00.

What lawyer engaged in the practice of commercial law has not wrestled in despair with the ambiguities and uncertainties of the Conflict of Laws with respect to contracts and other mercantile transactions? On how many other occasions has he been relieved to find that there was no substantial difference in the laws of the several states touching the transaction so that the Conflict of Laws point could be overlooked?

Incident to the development of international commerce in the area, many Texas lawyers are discovering that the international Conflict of Laws *re* Contracts is fully as complicated as is the Interstate doctrine, and that the differences in the laws of possible application are of such magnitude that the matter cannot be overlooked. The field, moreover, is one in which conventional law books offer little help.

The volumes cited above come at an opportune time to fill a serious gap in the shelves of the lawyer who acts for clients in international trade.

Volumes 2 and 3 of Professor Rabel's work mark the completion of a project begun over a decade ago by an outstanding German scholar now a resident in the United States. The author undertook a detailed analysis and collation of the rules and principles of the Conflict of Laws of all the principal legal systems of the world, organized principally in terms of Anglo-American legal

categories and concepts. It was a task of Herculean proportions and has been executed in a magnificent manner.

The first volume dealt with Family Law. The second and third volumes have to do with commercial transactions of all kinds conducted across international boundaries. For example in Volume 2 may be found discussions of business organization law, maritime and aeronautic torts, and general matters of contract law. The principal topics in Volume 3 include loans and deposits, sales of chattels, agency and employment, transportation contracts, insurance, suretyship, statute of limitations. Each topic is treated in an effective manner. The work is well documented. Realizing that many of the works cited will not be available readily to some of his readers, the author is careful to make his textual statements sufficiently full to convey necessary information.

In tribute to Dr. Rabel and in appreciation of a task well done, the University of Michigan Law School in 1949 conducted a Summer Institute on the topic of *The Conflict of Laws and International Contracts*. The papers there presented are now made available to the profession. Recognized authorities from foreign lands were invited to attend and participate. Included in the published proceedings are papers by representatives of the University of London; the University of Lille, France; The International Institute for the Unification of Private Law, Rome; Oriel College, Oxford University, as well as of American universities. Significant topics include: "The Conflict of Laws in Australia and the United States"; "Bills of Lading and the Unification of Maritime Law in the English Courts"; "The Representation of Bondholders in International Loan Contracts"; "Form and Capacity in International Contracts."

Particularly interesting are Professor Graveson's paper on "The Proper Law of Commercial Contracts in the English Legal System," and Dean Batiffol's discussion of "Public Policy and the Autonomy of Parties." Both deal with the vexing question of the extent to which parties to commercial transactions may stipulate

in advance concerning the law to control their obligation. Professor Rabel, in the second volume of his work, vigorously asserts the propriety of such an arrangement. In an interesting paper entitled "International Contracts" and published in Glasgow in 1948, Professor G. C. Cheshire, an eminent English authority, has filed what may be considered a dissenting opinion. This is a difficult and somewhat theoretical problem to which lawyers interested in international trade well may devote attention, since it is likely that here will be laid the foundation for a workable international commercial law.

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