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Book Reviews

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BOOK REVIEWS

PRIMER OF PROCEDURE. By Delmar Karlen. Madison, Wisconsin: Campus Publishing Company, 1950. Pp. xv, 525. \$6.50.

One valid reason for including a review of this book in a law journal is the fact, long since exploited by advertisers, that human nature includes a rebellious interest in those things which one is told are not for him. The author of the book declares that it "is not for lawyers." If others were informed of the book, however, it might interest not only people "who want to become lawyers" (for whom the book was written) but surely some who only think they want to become lawyers. Lawyers, also, may be interested in this book, because people who think they want to become lawyers usually consult lawyers, and because the book introduces a new method in legal education.

The potential value of the book is limited for the reason that, at places, it seems to have been directed primarily at persons who want to become Wisconsin lawyers, though the interests of others are never ignored. Perhaps this is less a criticism of the book than it is a criticism of any book designed to serve the purpose of orienting law students and giving them an understanding of basic civil procedure. Necessarily, such a book must either be vague and inaccurate about the procedure of the state in which the student is most interested, or else it must be less adaptable to use by those primarily interested in the law of other states.

The book is organized around the development of a lawsuit, beginning with the lawyers' interviews with their clients. It builds up to the appellate opinion, which the student should have grown to appreciate as the compact by-product of an extended labor of advocates and judges, and a fit subject for inclusion in a case-book. Each step in the process is explained in an informally written text with but a touch of historical background, and then

illustrated for the reader by reference to an appendix containing the record of a suit for breach of promise. Some special attention is then given to the development of law and equity. While the court organization and procedure of other jurisdictions is treated generally, and the organization and procedure of the federal courts more specifically, the case which forms the important function of a subject of illustrative study throughout the book is a Wisconsin case, and some of the text is influenced by this fact. One interested in using or recommending use of the book outside Wisconsin would have preferred that the setting of the principal case be a United States court.

This book is an expression of an idea, growing in favor and with good cause, that unless the student has an adequate concept of how points of law are raised and opinions written, the case method of study lacks some of the realism which is a principal compensating factor for use of so much more time than would be required for study of the same subject matter by text. Whether the method of this book in teaching such an adequate concept to a beginning law student is the best method is debatable; it is at least a good one. If such people knew of it, this book might incidentally serve the need also of those who, though having no thought of joining the ranks of the profession, for various reasons would like a capsule of learning concerning the way "the law" is applied to human relationships, and in the process is itself expounded.

*Robert E. Keeton.**

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THE COOPERATIVE MOVEMENT AND SOME OF ITS PROBLEMS. By Paul Hubert Casselman. New York: Philosophical Library, 1952. Pp. xiii, 178. \$3.00.

This book, by a professor of economics in the University of Ottawa, Canada, will interest almost any reader. Reactions will be mixed. One will find a vision of a new Utopia, while another

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will begin with a feeling of irritation and end in a rage. In any event, the book discharges the principal function of any book: to make its readers think.

It is a fair statement that Professor Casselman's belief in cooperatives, both producer and consumer, is tremendous, so great that it transcends any need to evaluate what appears to many to be proper and reasonable doubts.

The Cooperative Movement is here presented as a new economic order, Cooperatism, which is designed to supplant Capitalism in the Western world, and which offers the only effective opposition to the rapidly accelerating trend to Socialism. Among the evils which Cooperatism would eliminate are: monopoly and the concentration of economic power in individual hands, unfair trade practices, false advertising, recurring work stoppages and labor disputes. Among the benefits of Cooperatism would be a great reduction in taxes. The author points out, quite correctly, that a great deal of tax revenue and governmental activity are devoted to accomplishing a redistribution of income and wealth. Since Cooperatism is itself an economic leveling device, governmental activity in this field could be discontinued.

Both consumer and producer cooperatives have prospered in a capitalist economy. Capitalism is a market economy in which the success of the individual rests principally on his bargaining position. Efficiencies in production and distribution techniques are one source of bargaining power. Another source of bargaining power lies in combination with others of parallel interests, as in the cases of industrial combinations and labor unions. A combination of small producers or of small consumers to effect efficiencies and to accomplish a relative increase in bargaining power fits into the pattern. It is true that the combination of producers or consumers in cooperatives, as does the combination of labor in unions, gives them an increased political bargaining power as well. It is not unlikely that a measure of the success of the cooperatives in a capitalist economy may be due to privileges and concessions

which have been won by political bargaining. Professor Casselman, of course, denies that any privileges or concessions have been awarded. My own doubt is this: Even if we agree that the cooperative movement is not a parasite on the capitalist structure, that it is a legitimate exercise of a liberty of association within a capitalist economy, does it follow that Cooperatism is sufficient to sustain its own economic structure, to increase the material wealth of mankind as a whole and to distribute that wealth in the most just manner. I feel that the author offers little help in resolving this doubt but rather invites me to dream dreams.

Cooperatives fit rather easily into a socialist economy. After the state has taken ownership of producing wealth, and has become the prime economic producer, there remain the problem of the operation of service industries requiring little capital, and the problem of distributing the state-produced goods to the ultimate consumers. If the state leaves these functions to individual initiative, there will result a capitalist sub-structure within the socialist economy. If the state occupies these fields, there will result a totalitarianism which few socialists could approve. The organization of consumer and service cooperatives would supply an answer, leaving the function in private hands while avoiding the creation of a capitalist class. Quite naturally most socialist writers, other than Marxist extremists, accept cooperatives as an integral part of their systems. It is demonstrable, however, as Professor Casselman would admit, that the cooperative movement actually tends to promote socialism; while socialism once established tends to attack cooperatism.

Here is a real dilemma. The advocate of cooperatism must oppose socialism since in final analysis cooperatism is based on private (albeit collective) ownership of productive wealth, rather than upon public ownership. There is a philosophical difference in that socialism centers its system around man *qua* worker, and cooperation around man *qua* consumer; socialism must demand an ever-increasing authority in the state, cooperatism wants a state

of limited and largely negative functions; socialism rests upon a threat of compulsion, cooperatism on an assumed voluntary association. In spite of these differences, however, there is a strong superficial resemblance of the two systems, and they are attacking capitalism as a common enemy. How, then, can cooperatism avoid being swallowed up in socialism? The problem remains unanswered.

That one may be unable to accept some of the premises and a good deal of the reasoning of this book does not detract from its value. Cooperatism will be a more vital issue than it is today, even though it is already a matter of considerable concern to many. Knowledge of the full implications of the program, so well set forth by the author, should prove invaluable in reaching sound conclusions.

MAN AND STATE. By Eivind Berggrav. Translated by George Aus. Philadelphia: Muhlenberg Press, 1951. Pp. 319. \$4.00.

American readers are indebted to the publisher for making available an English translation of what is one of the more valuable contributions to a field of study receiving great attention in the post-war world.

The author was Bishop of Oslo, Primate of the Church of Norway, when his country fell to Hitler's armies. Attempting unsuccessfully to shield his people from the vengeance of Quisling's minions, he finally led his clergy into open defiance. For this he was sentenced to prison, where he remained until his country was liberated. Working secretly and with smuggled materials, he wrote this book and caused its pages to be smuggled out for publication. In it, he compressed the fruits of a great learning, of a keen insight into the strengths and weaknesses of man, and of a powerful faith.

The basic values and beliefs of traditional American democracy were and are held in higher esteem in Norway than in any other

European country. The language the Bishop uses is our language, the thoughts are our thoughts. The traps into which the Norwegian people fell are those which lie about our feet. The remedies proposed are those which we should consider.

As might be expected, the author begins with an attack upon the currently popular Machiavellian doctrine that the state is above and beyond morality, and that in the last analysis political destiny depends on power. In this way of thinking it is imperative that a standard of morality be imposed upon political subjects—otherwise they could not be effectively ruled—but the political ruler must stand ready to act quickly and ruthlessly in opposition to that morality when it is deemed expedient to do so. Through all of this the ruler must maintain an appearance of conformity to morals. The prevalence of Machiavellianism among modern day rulers is apparent. The form of the government is quite immaterial. Whether the ruler be called Prince, Leader, Commissar, or People, the result would be the same. To argue, as many do, for the unlimited political authority of a popular majority, is to fall into the Machiavellian trap.

A natural offshoot of this political doctrine was the elevation of legal positivism to the summit of the legal order. In such a system there could be no external source of right or justice, only a mass of rules backed by the sanctions of political authority. Law became cold, objective, and scientific, essentially a codification of national interests. The possible basis for any international law is destroyed, and the only check on international lawlessness is that of personal risk. Here the failure of the League of Nations to measure up to its moral responsibilities receives scathing comment—comment almost as justly applicable to the United Nations.

To be contrasted with the current doctrine of the amorality of states and its resulting legal positivism, is the great natural law tradition of the Western world. Here was a tradition of a law higher than political states, a law which could formulate standards for the conduct of political rulers, and could lay the foundations

for world order through international law. The history of our present difficulties is said to begin with the drift away from the natural law doctrine after the Reformation.

Wherein did the post-Reformation world depart from the natural law tradition? The natural law of Cicero and of Thomas Aquinas was essentially a compound of law as developed by an ideally perfected human reason and of law as given and revealed by God. The post-Reformation defection went in two directions. The anti-religious rejected the idea of divine participation altogether and posited a natural law established entirely by human reason. On the other hand, the evangelical Protestant tended to reject reason as a proper basis and to recognize as natural law only that revealed by God, and often only that revealed by God in particular Scriptures. Experience has indicated that neither of these doctrines can stand alone.

The basic cleavage, however, goes much deeper than any doctrine of natural law. The fundamental problem is one of the philosophy of man himself. On the one side is a belief, expressed in theological form in the doctrine of original sin, that man is inherently animal and evil, and will do wrong unless effectively restrained. It is here that Machiavelli found the moral justification for his political creed. On the other extreme we have developed a doctrine of the inherent goodness of man, and of the inevitability of human progress. This has resulted in a religious humanism in which man almost displaces God as the focal point of belief. In such a system human will becomes equivalent to right.

And so the problem. If we underestimate man we justify despotism. If we overestimate man we destroy the foundations of ethical law. It is only upon an understanding of both the powers and limitations of man in the Universe that we can erect a state which can be relied upon to accord proper recognition to the interests of individuals and can create an international order in which the lust for power can be effectively restrained.

Having analyzed his problem, the author seeks an answer. The

course of the search must be read in his words and cannot be summarized here. The record is both thought-provoking and challenging.

An appendix to the book contains an address delivered by Bishop Berggrav before the Oslo Bar Association in 1941, shortly after the Supreme Court had resigned in protest against the government and its Chief Justice had been imprisoned, and on the very day on which the Bishop had first been taken before the Gestapo for questioning. The opening sentences of that address seem to summarize a legal philosophy. They are:

Religion and law have this in common that while they both apply to man neither of them can arbitrarily be made or remade by man. Both in law and in religion there is something which *transcends* man. If the law did not transcend man it would be merely custom and not law. If religion did not transcend man it would be merely the power of emotion and not the power of conscience.

IDEAS AND MEN. By Crane Brinton. New York: Prentice-Hall, Inc., 1950. Pp. ix, 597. \$6.00.

Highly significant is the current renewed interest in intellectual history, the history of ideas that have helped shape the course of conduct of men. This is a major facet of a renewed interest in philosophy and social theory which history tells us portends important social change.

A perhaps never-ending dispute centers about the relationship of philosophers to social movements. Do philosophers actually set in motion quiescent social forces, or is their function merely to describe and rationalize forces already moving? Did Francis Bacon actually cause the development of modern science in England and France, or did he merely give it a philosophic respectability? Did Marx set off the ever-accelerating drift to socialism which has marked the last century, or did he merely report it to a complacent world? The answer appears to be that there is a

mutual interaction between ideas and men. For example, the socialist movement originated before Marx wrote, in response to human demands which Marx did not create. Marx reported these facts, but he gave the movement an impetus not yet spent. The emotional surcharge of his description no doubt won adherents, but most of all his economic interpretation of history and his distortion of the Hegelian dialectic gave to the emerging dictatorship of the proletariat an aura of inevitability which could not but impress those who would run with the herd. Similarly, it cannot be said that Thomas Jefferson caused the American Revolution, but it cannot be denied that he helped it along, and helped to shape the political doctrine to be established in the new Republic.

This sort of thing is not entirely a matter of history. In our own lifetime we have seen similar occurrences. So long as the trade-union movement was presented as a part of a Marxian class struggle, it could win few adherents in a society which believed firmly that it had no classes. As more intelligent and more literate union leaders came on the scene, they presented the movement as a logical development of traditional American libertarian principles, with the result that in the minds of many the Right to Strike took on the same aspect of inviolability accorded more traditional liberties. In the atmosphere of emotional approval so generated, the trade-union program could not help but prevail. Similarly a revolution in basic American thinking was accomplished by the semantic wizardry of Mr. Roosevelt in equating Freedom from Want with Freedom of Speech and Freedom of Religion.

It is of this sort of interrelationship of men's ideas with their social conduct that Mr. Brinton writes. His scope is that of Western civilization. Beginning, as he must, with the Greek classical culture he traces out the ideas which sustained the Mediterranean civilizations of 1500 to 2500 years ago, picking out the major threads, Greek, Roman, Jewish and Christian, which later were to form

the pattern of our own civilization. The lawyer-reader will be particularly interested in the story of how Aristotelian doctrine, as modified by the Greek Stoics, served in the hands of Cicero to shape traditional legal theory, while the same doctrine, as modified in the hands of St. Paul, gave rise to important parts of Christian doctrine. Likewise fascinating is the story of the great medieval Natural Law tradition shaped by Thomas Aquinas and Grotius upon these same Aristotelian postulates.

Next is the story of the Reformation, where the Aristotelian reasoning of the Church was actually used to destroy the authority of the Church, the most striking example of the paradox of the Natural Law, which is both a defender of the *status quo* and a catalyst of revolution.

Then begins the story of our modern modes of thought, a compounding of elements of medievalism with new and radical ideas released by the Renaissance and the growth of modern science. The role of Protestant theology is well brought out, and it was not always in the interest of progress or enlightenment. Here we perceive recurring conflicts of forces which continue to the present day. An upsurge of Aristotelianism may be seen in 1951 in the revived interest in Natural Law doctrine, in the New Orthodoxy among Protestant theologians, and in the warnings against excessive gullibility toward those who claim successfully the name of Science.

Most interesting is Mr. Brinton's analysis of the 19th and 20th Centuries. The 19th Century was a paradox. In a society which professed unstinted devotion to traditional doctrines of human liberties, to a free *laissez faire* economy, and to the Kantian doctrine of the fulfillment of human personality, how could there be produced a stable well-ordered, complacent, compartmentized social structure? Marx answered the riddle with the theory that the economically dominant class was using the force of the political state to prevent the ideals of the masses from being put into practical operation. Mr. Brinton pictures the era as one of transi-

tory compromise in which the dynamics of libertarian beliefs were offset in large measure by a genteel, perhaps Puritanical, tradition of self-restraint. Being a compromise, the structure was bound to be attacked from both sides and ultimately to fall.

Thus we come to our confused 20th Century, where traditional libertarian beliefs must do battle with economic determinists or materialists of both extreme Right and extreme Left positions, while others of a pragmatic or empiric turn of mind seek to produce a good society by a day-to-day adjustment of conflicting claims and interests. We must pick our way between an excessive optimism about human perfectibility and the excessive pessimism which seems to overpower us. Most of all we must realize that Democracy, as we define it, contains powerful and even dangerous forces which must be directed and adjusted skillfully and eternally if the Good Society is to be brought about.

Mr. Brinton has written a good book of the sort he set out to write. It is a history of opinion rather than of philosophy, and so does not contain the critical appraisal found in works such as Russell's *History of Western Philosophy*. It is compressed into relatively few pages and so is denied the majestic panorama of Durant's *Story of Civilization*, and the fine detail of works such as Windelband's *History of Philosophy* or Berolzheimer's *World's Legal Philosophies*. It is thought-provoking and lucidly written. The available space is well distributed. The one thing which appeared not to receive sufficient notice was the Mohammedan link between the Greeks and the medieval Schoolmen such as Saint Thomas.

The book is recommended for introductory orientation of the lawyer-citizen who is a little puzzled by some of the discussion going on about him, who perhaps has been too busy to remain fully conscious and cognizant of the intellectual heritage which is his. It might well be followed by the other titles referred to above.

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