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Book Reviews

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BOOK REVIEW

A TREATISE ON LABOR LAW. By Morris D. Forkosch. Indianapolis: The Bobbs-Merrill Company, Inc., 1953. Pp. xiv, 1197. \$10.00.

One of the most difficult subjects in any modern legal system is, without any doubt, labor law, and it is not difficult to understand why. In the first place, labor law has been developed in recent years, and there is a great deal of discussion concerning its basic concepts. It is not possible to find here the certitude and clarity furnished by a long tradition and by a well elaborated doctrine. Moreover, certain important conceptions in the field of labor law are but the expression of sharp innovations with reference to the classic concepts of contracts, torts, agency, etc. In the second place, there is no agreement as to the systematic principles which should govern any adequate classification of the material. Hence, an acute diversity is observable among labor law attorneys and theorists as to the proper way of expounding and developing the subject. Confusions and misunderstandings in growing number are due to the lack of a proper system of classification. In the third place, labor law is extremely flexible and fluid and is still far from any stage of consolidation and definitive organization. No better instance can be found, in the United States, than in the continuing criticism of the Taft-Hartley Act by both labor and management; and abroad, than in the lack of codification in countries where code law embodies the best of their traditions (*e.g.*, France and Germany). This flexibility, though an excellent characteristic for an ever growing and changing subject, is a serious problem for the jurist who attempts to describe the state of the law. The only solution seems to be a subtle line covering the basic concepts and the most widely accepted standards, along rather general systematic principles, but also stressing distinguishing material factors, relevant criteria of individualization, and some vital elements, pressing day to day, in the working process of the law.

Any labor law book which can state the basic legal concepts in the matter, following a certain and comprehensible classification, without obscuring the remarkable flexibility and elasticity of the process of individualization, seems to be the best that can be expected at this time. Professor Forkosch has met, to a great extent, those requisites. To say this is to assume that the author has been clearly aware of the difficulties of the task and of the nature of the enterprise. "To compress fluid concepts in a still-evolving area of legal study," says Forkosch "is not alone an impossibility but is also unfair to the reader, be he practitioner or student." (p. v.) Consequently, the reader will have opportunities to appreciate the cautious and prudent approach of the author and the conditions and provisos which qualify his statements. In instances, suggestions, trends, probable lines of development and uncertainties are stressed to show the present situation of the law. Could it be otherwise? But the author does not avoid judgments and predictions and does not refuse critical evaluation. Hence, creative thinking is stimulated, and questions, interrogations and doubts are properly placed to point out problems, uncertainties, and shortcomings of the system. What is even more important is the fact that the author has stated, at the very outset, the paramount influence of security as the key value which has given meaning to the whole process of creating, construing and applying the statutes and precedents controlling the complex reality of industrial relations. A very healthy awareness of claims, interests, values and social facts has kept the author far away from the illusions and dreams of those who consider the law to be a mere structure of norms and legal concepts. Thus, the realities of life have gained an adequate place *within* the scheme and are not transitory makeshifts to solve isolated problems.

No less commendable is the fact that the author has confessed the presence, throughout his thinking, of some predilections and inclinations. This is the bare recognition of an unavoidable personal element in legal research. Each jurist looks at the object

from a certain standpoint. The standpoint is an essential factor in legal research, and the best that can be done is to recognize and elucidate that factor in order to avoid its pressure. But the standpoint or criterion is not, by necessity, the expression of subjectivity. It may be an objective standpoint if it accords with the positive ideologies of the community. In the last analysis, objectivity is nothing else but the possibility that the standpoint of the author, or the judge, or the lawyer can be shared by multiple individuals in repeated experiences. And this is the type of objectivity which makes it possible to speak of a science of the law, in the strictest sense of the word. For those who have become acquainted with American labor law, or who have lived it, there is no doubt that Forkosch' standpoint is objective and adequate. "The author's approach to labor problems," he says, "has been conditioned by an abiding belief in the system of a free life pursued within institutions detracting the least therefrom. . . . The present volume reflects this bias, for a studious attempt has been made to present all opposing labor philosophies and all phases of the numerous problems involved." (Pp. v, vi.)

It is presumptuous to attempt in this comment to cover with the minimum needed detail a study of the caliber and complexity of labor law as treated by Professor Forkosch in his book. Within the limits set by a volume of no more than 894 pages of written text and notes, we find an excellent coverage with an acute evaluation of the controlling authorities, and timely references to additional sources of research and study. The organization of the material is clear and easily understood. First, the minimum standards obtained by workers through legislation (social and the so-called "labor" legislation, such as old age and survivors insurance, etc.) are developed. Next, comes the worker in his collective capacity. Adequate attention is paid to the economic and organizational history and background of modern labor organizations, and then to their present structure. Thereafter a whole "Book" is devoted to the development of union liability through common

law, judicial and statutory doctrines. The difficult and always interesting problem of labor injunctions finds here an excellent discussion, with a keen exploration of the possibilities established by the Taft-Hartley Act and the limitations which a deep research would find in the Thirteenth and Fourteenth Amendments. The statutory law of collective bargaining is the subject of the fourth "Book." A comprehensive explanation of the structure and mechanics of the system is given, stressing the central importance of the National Labor Relations Board and the role it has performed in the execution of the policies set forth in the Wagner and Taft-Hartley Acts.

Finally, Professor Forkosch describes the collective bargaining process in practice, emphasizing two aspects: the effectuation of national policy through conciliation, mediation and arbitration, and the customary content and result of collective bargaining.

The book is a striking instance of case law technique applied to statutory law. The writer of this comment—a civil law lawyer—and his students of Comparative Labor Law in the Law Institute of the Americas, Southern Methodist University Law School, who are also, for the most part, civil law lawyers, have been most impressed by the way in which case law, and techniques of expounding it, have permeated the exposition and explanation of the statutes as enacted by the Congress. There is no coherent and orderly development of the statutory norms, along the lines followed by the courts, plus the new trends foreseen by the jurist in the main text of the book, with very brief and concise notes, citing doctrine and precedents "pro" and "con," as is usually done by civil law lawyers, but the habitual common law practice of merely citing a concept in the text and then developing the subject in notes through citation of precedents organized around some relevant "distinguishing" factors. It seems that statutory law, with its basic characteristic (written abstract norms), furnishes an excellent ground for an organic and integrated exposition of the law, less broken and interrupted. There are outstanding

contributions, in civil law doctrine, in which the norms of the code and statutes at the more abstract level, and the contributions of the courts ("jurisprudencia") are jointly examined, considered and expounded, in a highly systematic and coherent manner, without any harm to the concrete actualities of legal experience. In our opinion civil law techniques can greatly contribute to the development of American statutory law. In any event, it is evident that case law techniques of research and exposition are not sufficient for statutory law.

In connection with what has just been said is the fact that there are theoretical contributions, extremely valuable, as to the nature and meaning of the collective bargaining process in the European and Latin-American labor law doctrine, which should be taken into account by American labor law attorneys. Contributions such as those of Philipp Lotmar, André Rouast, Barthélemy Raynaud, Marcel Planiol, Alejandro Gallart Folch, Gaetan Pirou, Virgile Rossel, Charles de Vischer, Jean-Marie Arnion, Ernesto Krotoschin, Enrique Deveali, Paul Pic, Walter Kaskel, Hugo Zinshemer, *et al.* can be of great help to develop a sound theory of collective agreements.

In conclusion: this volume furnishes an excellent exposition and discussion of the American labor law system, covering the main subjects from a sound and realistic viewpoint. Its value will be appreciated by students as well as by lawyers and practitioners.

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