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BOOK REVIEWS

JURISPRUDENCE WITH CASES TO ILLUSTRATE PRINCIPLES. By Francis P. Le Buffe, S.J., Ph.D. and James V. Hayes, LL.B. (Third edition). New York: Fordham University Press. 1938. pp. xxxiii, 286. \$3.00.

The original edition, entitled "Outlines of Pure Jurisprudence" was published by Father LeBuffe in 1924. It was a digest of lectures delivered at the Fordham University Law School, "to substantiate our fundamental rights as men and as Americans."¹ The present edition, occasioned largely by the desire to contradict the widespread "totalitarian, absolutist philosophy of law,"² seeks to "hand on the torch of traditional American Jurisprudence."³ Like its predecessor, the publication is intended for classroom use in American Law Schools.

While the political objective of the original edition orientates the present volume, there is a departure in so far as many new legalistic ingredients have been introduced into the new edition, with consequent alteration of title. Doubtless, this change of content reflects the influence of Mr. Hayes, lawyer, who is co-author of the work. Evidence of an intention to enhance the usefulness of the book among law students and jurists may be seen in the new chapter on American Schools of Jurisprudence and in the addition of numerous excerpts from the decisions of American courts. These passages have been arranged in such a way as to illustrate the judicial recognition of the ethical principles enunciated in the various chapters. Despite these additions, however, the *schema* of chapter headings in the original edition has been retained for the most part. There is approximately the same technique of presentation.

This margin of difference between the two editions represents a considerable improvement. It is a frank admission of the limitations of the First edition, which was basically a treatise on ethics rather than on jurisprudence, at least, in its now generally accepted sense. The new edition makes available for the student of scholastic jurisprudence a better synthesis of the ethical principles with which he ought to be familiar and a broader vision of law as a normatively controlled social science for the furtherance of individual, public and social purposes, in turn, means toward the realization of man's happiness, both rational and physical. The aim of the authors has been to transform a book dealing primarily with scholastic ethics into a work on juristic science. But was such a transformation possible? Does the book now adequately speak the language of contemporary jurisprudence so that the ancient wisdom has a maximum opportunity to affect the legal life of the student?

Philosopher and lawyer have pooled their resources. But generally speaking has the task of the legalist been more than to find American decisions which were favorable to the ethical conclusions of the philosopher? Has the lawyer's skill been principally used for the special purpose of vindicating philosophical formulations? Is the work still largely one on ethics? In answering these questions, the reviewer is confronted with the facts that such chapters on ethics as those dealing with the vindication of rights and with the conflict of rights and duties have been retained; that only one chapter has been allotted to the consideration of the American Schools of Jurisprudence; and that detailed categories of ethical science still appear in certain parts of the book.

As a result of apparent reliance on distinctive skills, there seems at times to be an insufficient blending of the ethical and legalistic components. Has an abstract, analytical, ethical conceptualism been seemingly imposed upon an assembly of frag-

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1. Preface, First edition.
 2. Preface, Third edition.
 3. *Idem*.

mentary quotations, gleaned from the works of leading authorities in the domain of philosophy and law and from the opinions of judges? It is questionable whether these excerpts are long enough to serve as reading assignments for the student. Would it have been more effective to place these quotations in the footnotes and to reserve the text for an exposition of the ethico-legal content of the principles and of their meaning in the area of legal history, doctrine and institution?

Quotations from the decisions of American courts have been placed under the heading of "Legal Recognition," in numerous chapters, to demonstrate the conformity of the positive law with scholastic principles. But is there here the possibility of wrong implications? Does the reader always know whether these citations reflect a majority, minority or exclusive position on the part of the common law? There are no references to opinions illustrative of a conflict between scholasticism and legal doctrine. Are there such conflicts? In the absence of historical perspective in the handling of these case excerpts, can the reader be sure whether the view cited is or simply was the attitude of American law?

Positive law apparently is thought of by jurists in terms of such classifications as equity, corporation, legislation, tort and the like. Within these divisions, there are distinctive and essential legal growths which have in origin and development conformed or deviated from the conclusions of a particular *a priori* rational science. Perhaps the crucial center of interest for the scholastic jurist is the area of significance of the normative element in the evaluation of these fundamentally juridical propositions. To what extent does the present work unfold that significance?

General adherence to a definitional approach has considerably curtailed the choice of subject-matter. For example, there is no account of the origin and history of the different schools of jurisprudence. There is no description of the revival of scholastic jurisprudence in the United States today. Finally a definitional treatment has excluded material which would have given the reader some conception of the identity and jurisprudential importance of the numerous authors from whose works the quotations were taken. Perhaps this might have been given in a brief supplement.

A rather imperative outlook suggests the possibility that the volume may not receive a very sympathetic hearing from the adversaries of scholastic jurisprudence. Will they raise the objection of one-sidedness and of no allowance for points of departure among well known and well informed jurists whose disagreements with each other on essentials are somewhat a matter of conflicting starting points, imbedded in opposing intellectual faiths? Evidently, it is a matter of opinion whether this possibility will be offset by the obvious advantage of the methodology of the book in acquainting students with the controlling principles postulated by scholastic jurisprudence.

To the extent that it provides materials which demonstrate that positive law is both a social and an ethical science and which lucidly inform the reader of the proper normative concepts in the domain of jurisprudence, the work is worthwhile and creditable. From many angles, the publication is admirable. Thus, references to the great masterworks on jurisprudence afford the student ample opportunity to acquaint himself with this field. Passages from the great papal encyclicals illustrate the authoritative attitude of the Church toward the reconstruction of the social and jural orders. The discussion of the fundamental civil rights is up-to-date and clear. The same is true of the chapter on Totalitarian Theories of Law.

The work has such commendable qualities as continuity and symmetry of logical pattern, characteristics which are often lacking in modern contributions to the literature of jurisprudence. The style is clear. The terminology is precise.

In conclusion, the mechanics of the volume are excellent. The book is attractively

bound and printed. The contents have been made easily accessible by a comprehensive index and by a well classified bibliography.

BRENDAN F. BROWN†

CASES ON PROPERTY. By Edward H. Warren. (Second edition.) Cambridge: The Riverside Press. 1938. pp. v, 925. \$6.00.

A rearrangement of the courses given in the Harvard Law School went into effect at the beginning of the present school year. Formerly, the first year Property course, which Edward Warren conducted and in which he used his well-known Cases on Property was allotted two hours a week for a full year, and in second year two hours a week for a half year were given to Professor Joseph Warren's course in Conveyances. Under the rearrangement, the Property course in first year is allotted three hours a week and the subject-matter consists of that formerly dealt with in first year Property and in second year Conveyances. The time given to this branch of the law thus remains the same. Professor Warren's second edition is intended for use in this enlarged first year Property course. The new book, therefore, is much more than a revision of the first edition. It seeks, also, to cover the subject-matter of the Conveyances course, and there are incorporated into it materials on most of the topics covered in Joseph Warren's Cases on Conveyances.

This second edition contains 925 pages, which, as its preface suggests, is about as large as a case book can be without becoming unwieldy. As the first edition had 856 pages and Joseph Warren's book 798 pages, it is obvious that considerable condensation was necessary. It was interesting to this reviewer, who formerly used the first edition in first year and still uses Joseph Warren's book in second year, to note the comparative space allotments, not only to the different topics, but also to the parts of the subject matter formerly in the first edition and formerly in the Conveyances book. In general, the amount of space devoted to the topics dealt with in the first edition remains the same; indeed, in his preface, Professor Warren points out that Book I, Possession, has 149 pages instead of 121. Some excellent new cases, decided since the first edition was printed, have been added. Changes have been made in the order of the cases and of the topics, as in the chapter on Rights Based on Possession.¹ Sometimes, also, as in Liens and Pledges² and Bailment-Sale,³ the cases given are different from the ones in the first edition.

The main saving of space as against the first edition is in the omission of the Book on Conversion, a topic which in many schools is dealt with in the Torts course. Also omitted are the chapters on Gifts Inter Vivos and on Emblements; and in the Book dealing with Liens and Pledges⁴ the chapter on Liens has been cut down more than half. The chapter on Pledges, however, has been considerably expanded, mainly by the inclusion of cases dealing with repledging taken from the Conversion Book of the first edition. The Book dealing with natural property rights⁵ gives less

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1. Book I, c. IV.
2. Book IV, cc. I, II.
3. Book III, c. V.
4. Book IV.
5. Book VI.

space to Lateral Support and Water, but Air has been expanded by including the late airplane decisions.

The greatest saving of space, however, appears to have been at the expense of the subject-matter covered by the second year Conveyances book.⁶ Accretion is left out, and Title by Lapse of Time substantially reduced. Of the familiar chapter on Landlord and Tenant, only Section 4 on Surrenders by Operation of Law survives.⁷ The chapter on Covenants for Title⁸ is reduced to six cases taken from that chapter in the Conveyances book—in which connection, it was pleasing to this reviewer to note that of the six thus retained five are the ones he has been accustomed to assign.

This preference which the new book shows for the subject-matter of the traditional first year Property course, where selection must be made between it and the Conveyances material, would indicate that in the author's opinion it has greater value for the beginning law student. Perhaps, also, the natural prejudice of a teacher of first year Property in favor of the importance of his subject matter as against that of second year Property had something to do with the space allotment.

In the parts of the new edition devoted to topics from the Conveyances course, the author has preferred in general to substitute different cases from those appearing in Joseph Warren's book. The cases in the chapter on Recording⁹ and about half of the cases in the chapter on Implied Easements¹⁰ are from the other Warren, but in Surrender by Operation of Law¹¹ all of the cases are different and in Boundaries¹² only *Sleeper v. Laconia*¹³ survives.

It is customary today in reviewing a case book to make some reference to whether the book under review is in the traditional case book mode or whether it belongs with the newer type of which Professor Llewellyn's Cases on Sales is a monumental example. Were it not for the "Introductory Statements," about which more anon, this book would be in the traditional order consisting of cases and surprisingly few statutes. With the exception of the English Factors' Act of 1899 and the United States Air Commerce Act of 1926, the only statutes printed are the early English real property enactments.

The "Introductory Statements," which appear at the beginning of most of the chapters, are an outstanding feature of the new edition. They seem to be used for two different purposes. Sometimes they serve as introductions to problems which are then to be worked out from the cases which follow. At other times, they are practically text statements of the law and the cases which follow either develop additional points or are merely illustrative of what has already been stated in the text. That these statements are excellent in themselves goes without saying. Whether at times they tell the student too much before he has read the cases, and whether text statements are desirable in a case book, are questions upon which law teachers will differ. The preface states that matters fit for exposition rather than discussion have been covered by the "statements";¹⁴ and it must be borne in mind, too, that in reducing to less than one thousand pages the materials of a year and a half course the space

6. WARREN, SELECTED CASES AND OTHER AUTHORITIES ON THE LAW OF CONVEYANCES AND RELATED SUBJECTS.

7. Book VII, c. XVIII.

8. Book VII, c. XII.

9. Book VII, c. IX.

10. Book VII, c. XX.

11. Book VII, c. XVIII.

12. Book VII, c. XI.

13. 60 N. H. 201 (1880).

14. See p. IV.

saving accomplished by replacing a group of cases with a short statement becomes necessary. The presence of these "statements" recalls again what has been much discussed, how strictly the case system is being or should be adhered to. Some parts of this new book seem to give implied approval to the combined text and case method of teaching law.

The book contains an excellent collection of cases. With its distinguished author and his law teaching experience in mind, and with the background the book has in its first edition and in Joseph Warren's *Conveyances*, this was to be expected. And while it is generally true that the only way to form a worthwhile opinion of the merits of a case book is to try using the book in class, in the instant case it is reasonably safe to pass favorable judgment without trial experience.

JOHN A. BLAKE†

THE SPIRIT OF THE LEGAL PROFESSION. By Robert N. Wilkin. New Haven: Yale University Press. 1938. pp. 178. \$2.50.

This interesting little book written by a former Judge of the Supreme Court of Ohio, a lawyer of wide experience and one whose life has been spent in the study and practice of law, is a brief summary of the great influence which the noble men of the legal profession have always exerted in advancing civilization, by their ceaseless and heroic struggle for law, order, and justice.

As stated in the foreword, "its purpose is to show that, during the years, whenever the professional influence has predominated there have been good judges and efficient administration of justice, and that the contrary has been true whenever that influence has been subordinated to imperial, political, or commercial influences."

No claim is made by the author to original research. In fact, the author, in the fashion of the lawyer, sets forth at the end of the book four pages of "Authorities", covering the four main parts of his work, so that the student, who might wish to pursue the subject at greater length, is conveniently furnished with the list of books from which the author derived his material.

The style of the author is simple, clear and interesting. The development is chronological in the first three parts, in which the author considers his subject first in Rome, second in England, and then in America. The fourth, concluding part of the book is a reflective consideration of the subject "in retrospect and prospect."

In the very outset of the book, the whole subject matter is concisely outlined in the author's definition of his title, and his direct and pleasing style is evidenced, when he says:—

"By spirit of the profession is meant that animus, that afflatus, that inspiration which has moved so many great men to love, to study, to teach, to practice, and to establish the law. Spirit of the profession is used rather than profession because the profession has always contained some second-rate fellows who have reduced their vocation to a trade; who from earliest times have been referred to as trimmers, barkers, hawkers, shysters, and mountebanks; who have memorized the laws, practiced the tricks of the trade, and bartered their talents to any cause that would pay a price. Selfish gain has been their only motive. But in striking contrast to them are the men who have been moved by the professional spirit—men whose performance has followed their profession. Theirs is a record of unselfish devotion, moral courage, and fine accomplishment—a record of which the world, if it were truly informed, could be justly proud."

How true it is that there have always been members of the profession, who, by

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their misdeeds, have brought the condemnation of the misinformed world upon the profession as a whole. It is the old philosophical blunder of postulating of the class what is true of only a few in that class. And so in the general chorus of abuse that has always been heard, on all sides, from the immortal Shakespeare, who, through his character cries out, "First, let's kill all the lawyers" to the modern critics, whose number is legion and who believe that honor in a lawyer is an impossibility, it is refreshing, at least to the lawyer and the law student to hear this note of praise raised in tribute to a profession which has so many noteworthy accomplishments to its credit.

It would be well for lawyers and law students to read the facts set forth in this little book and with the knowledge gleaned from such reading, to take justifiable pride in the profession and be prepared, to meet the attacks to which lawyers are constantly being subjected.

This author gives us a brief history of the legal profession. Rome is given credit for being the birthplace of the law. Roman necessity and Roman genius gave us the law. History records the founding and development of the great Roman Empire. The growth of the empire produced problems of government and trade which required men devoted to the study of legal principles. These men made the study of the law their calling, their profession. There were no law schools, but there were always law teachers. Each one learned in turn from their older and more experienced preceptor. Out of this confidential relationship arose a professional feeling. The lawyers championed the cause of others, because of their superior knowledge of the law and their exceptional ability in speaking and writing. They became the trusted spokesmen of those whom they served. As the Roman legions expanded the empire, the law followed the military into the provinces and Roman law grew into a great system of jurisprudence, which survived even after the empire fell. The legal profession was founded on the doctrine that the accused shall not stand alone. It was the beginning of the constitutional guarantee of the right to counsel. It would be well for lawyer and layman to read Chapter 6 of Part 1 entitled, "The Voice of a Need". It is well written and pictures the true relation between lawyer and client from the very beginning of the profession. One cannot help but realize that the services rendered by lawyers from the early days of Rome down to the present time have been based upon a charity to one's fellow man. It is to the everlasting credit of the legal profession.

Part Two is devoted to a consideration of the spirit of the legal profession in England. Stress is placed upon the great gift of the common law—the independent judiciary. This independence arose out of the separation of the judicial function from other activities of government. Great conflicts ensued between the King and the Courts about "the supremacy of law". Here we find told how lawyers fought to subordinate the arbitrary will of their King to the principles and reasons of the law, how Magna Charta was the instrument by which the King was forced to acknowledge the rights of the individual. King John is compelled to promise: "We will sell to no man, we will not deny or delay to any man, justice or rights". Back of this epic struggle to preserve and defend human rights were the lawyers of England, whose intellectual integrity and heroic courage prevailed in the face of the greatest odds. The young men were trained by their elders to carry on the work at the Inns of Court, where high standards of general scholarship were maintained. Sir Thomas More, Lord Chancellor under Henry VIII, exemplified the high character of the men of the profession, when he resigned rather than bend the law at the King's behest to permit a divorce of the King from Queen Catherine. "His sense of right had prevailed over his love of office, it next prevailed over his love of life".

At times, of course, the judiciary became corrupt. Judges bought their appoint-

ments by yielding to every royal demand. But there were always the faithful who would not sell their souls and they prevailed in the end. The struggle reached its climax in the life of Sir Edward Coke. James I was king and Coke was Chief Justice. Coke was one of the truly great men of the profession. Of particular interest is the story of his controversy with the king and his immortal reply that, "The King should not be under man, but under God and the law". Coke was forced to sacrifice his office but history records the ultimate triumph of his struggle for justice even against the royal prerogatives.

The author next outlines the accomplishments of the lawyers in America, first in championing the rights of the colonies and then down through the Revolutionary days. The lawyers who sat in the Continental Congress and those who aided in the formation of the constitution have given ample evidence of what the legal profession has meant to the welfare of all. The story here told by the author is not new. It is but a brief review of facts well known and an interpretation of those facts to show forth in its true light the wholesome effects of the spirit of the legal profession. The front line trenches, in the struggle for freedom and in the establishment of the firm foundations of government, law and order in America, were occupied by lawyers. That selfishness did not inspire their efforts, and that good counsel prevailed are obvious from the results. They consecrated their lives to the service of their country.

In the fourth and concluding part of the book, emphasis is placed upon the services rendered by lawyers, in the administration of private law as well as in their part in the public law. The needs of humanity were attended to. In the beginning, when precedents were non-existent or few in number, the analytical reasoning of lawyers, based upon experience and a sense of justice supplied the means for arriving at true decisions. Legislation was sponsored. Schools for the teaching of a formal course of study were established to augment the legal training of the ordinary law office. Great teachers of the law developed in turn better lawyers, better equipped to serve humanity. Bar associations were organized and Canons of Legal Ethics were formulated and published. Professional conduct was placed on a high plane and strict discipline was meted out to those who violated the rules. The devotion to public service has been the basic principle of the profession. That certain members of the profession have become corrupt is a truth which cannot be denied. In a country of great wealth and power, it is natural for avarice to dominate some. But, as the author reminds us, there has always been "the remnant" of the faithful who always continued their practice according to professional principles.

In these times of great economic changes and in a period when social problems of every kind cry out for solution, it is well to read of what the spirit of the legal profession has meant in the past and to express honest hopes that the same influence will lead in adjusting present difficulties. As the author aptly states, "The spirit of our legal institutions which has brought us thus far in our progress will meet our present needs". It is particularly gratifying to note that "the great lawyers of all times, though not always orthodox, have been men of deep religious sensibilities." This concluding thought of the author of the importance of religion, morality and of God in the legal profession, alone justifies a reading of the book, because in the materialism of the day, too many are forgetful of man's true relations to have an intelligent approach in solving present-day ills.

VICTOR S. KILKENNY†

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HANDBOOK OF THE LAW OF PARTNERSHIP AND OTHER UNINCORPORATED ASSOCIATIONS.

By Judson A. Crane. Hornbook Series. St. Paul: West Publishing Co. 1938. pp. x, 535. \$5.00.

This is a useful book. It comes nearer to supplying a long-felt need than any other book of which we have knowledge in the field of partnership law. The Uniform Partnership Act was approved by the National Conference of Commissioners on Uniform State Laws on October 14, 1914. Beginning with 1917, it has been adopted by 19 of the states, including New York in 1919. The adjudications construing the Act are as widely scattered as the states which have adopted it.

In the State of New York, we have, considering the vast volume of business litigation which is carried up to our higher courts for determination, very few partnership cases. Most large businesses adopt the corporate form. It is, as a rule, smaller businesses only which adopt the partnership form. If these latter become involved in litigation, it usually ends with the decision of the trial court. This is particularly true in litigations arising in the smaller towns, villages and country districts. The loser does not appeal. The amount involved does not make it worthwhile.

So, to find judicial construction of the Uniform Partnership Act, it becomes necessary in many instances to go outside the State of New York. Crane on Partnership presents an up-to-date assembling of authorities for most, if not all, of the jurisdictions which have adopted the Act. It contains also as adequate a discussion of these authorities as can reasonably be expected in a work of this size.

These features, in our opinion, constitute the most important attributes of the book. They make it useful to the law teacher, the student and the practitioner.

But there are other features which entitle the author's work to commendation. The principles of the law of partnership as they appear in the common law are so presented that the reader is enabled to see and understand the bases upon which the structure of the Act has been erected. The arrangement is good. The "black-letter" is always valuable. The style is simple, clear and direct. Anyone who is capable of comprehending anything beyond a "Tabloid" can, from a careful reading of this book, understand the nature of a partnership and the rights and liabilities of partners. This is an achievement in itself. Partnership is a peculiarly complex business relationship. One who has endeavored to teach it knows how difficult is the presentation and application of its law. Every teacher of the subject may find help in this book. Every student may by resort to it procure a clarification of his ideas. We venture the assertion, too, that there are few practitioners who may not find by reading this work that they have learned a great deal that they did not know before.

LLOYD M. HOWELL†

TRADE ASSOCIATIONS IN LAW AND BUSINESS. By Kirsh & Shapiro. New York: Central Law Book Co. 1938. pp. 400. \$5.00.

The "Monopoly Inquiry" which is being conducted by the Temporary National Economic Committee, created a few months ago and composed of Congressmen and departmental representatives, once more draws attention to a study of anti-trust laws, restraint of trade and unfair competition activities. Benjamin S. Kirsh (formerly special assistant to the U. S. Attorney in New York in the prosecution of Sherman Anti-Trust Act cases), in collaboration with Professor Harold Roland Shapiro, has presented an exhaustive study of the trade association as an anti-trust organization. The book is more than a mere second edition of the author's former work

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entitled "Trade Associations, The Legal Aspects", published in 1928. The changes of the last ten years have been numerous and important, and the present volume is of interest not only to those who are concerned with trade associations, but to all who desire a clear analysis of the trend of the decisions and rulings of courts and administrative bodies in the past decade, and to those who will come within the scope of the Congressional investigation. Decisions and rulings under the defunct N.R.A. are set forth. Closely related topics arising from the enactment of the Robinson-Patman Act, the fair trade and resale price maintenance laws, and the Wheeler-Lea Amendment of the Federal Trade Commission Act are discussed; other problems of trade organizations, such as the relation to labor, internal organization and management, and various minor activities are not dealt with.

The book stresses the co-operative functions of the trade association, as the means of halting cut-throat competition and chaotic conditions in production and marketing. In general, it pictures the efficiency, stabilizing influence and service of the trade association to the public and the business man. The Sherman Law is criticized as stifling the beneficent results which would follow if trade associations were given a freer hand to halt obstreperous minority members pursuing a near-sighted course, forcing them to accede to majority wishes, as was possible under the N.R.A.

An exhaustive, comprehensive study of various major activities is presented, dealing with trade association statistical reporting services, uniform cost accounting methods, trade relations, standardization, credit bureau functions, boycotts and defensive combinations, patent interchange and cross-license agreements, uniform basing point systems, collective purchasing functions, and foreign trade functions. A chapter is devoted to each of these topics, and, in addition, a great many subsidiary and co-related activities are studied and clarified. In general, the first portion of each chapter presents a description of the activity, and an economic and social appraisal thereof. Then follows a survey of the adjudicated decisions which have considered the legality of these activities. A complete digest of the cases is not intended, but rather an analysis of the legal aspects of trade association policies and practices. In some fields the legal principles are well defined, and the discussion is limited to the more important United States Supreme Court decisions. Where the activities have proceeded relatively unchecked by the courts, administrative body rulings and reports are cited, text books and published articles of lawyers and accountants are referred to, and even speeches of important Governmental officials are quoted. The decisions and rulings are carefully analyzed, factual backgrounds are set forth fully, quotations are made freely, and the border line between legality and illegality is marked out as sharply as the adjudications permit. A word of commendation should be added for the excellent annotations which will facilitate further research. The material is presented in language that laymen can understand and that lawyers will find stimulating. Throughout, the appraisal of past influences and of future trends is clear and thorough.

JULIUS B. BAER†

LAW IS JUSTICE. Edited by Abraham L. Sainer, Ph.D. New York: The Ad Press Ltd. 1938. pp. 441. \$3.00.

If Shakespeare had visualized these eventful times when propaganda has assumed the livery of a fine art, and certain professional literators employ their power over words, not to enlighten but to confuse, he could not have been more searingly contemptuous than when he said:

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"The fool hath planted in his memory
An army of good words; and I do know
A many fools that stand in better place,
Garnish'd like him, that for a tricky word
Defy the matter."¹

In pointed contrast to this too frequent abuse of language, the writings of the late Justice Cardozo, motivated by a passion for the *mot juste*, the crystal expression, the shaftlike thought, stand out as loftily as the classics tower over the dime novel.

Adopting the pageant form of treatment, and nowhere, except in a brief introduction, interjecting his own opinion or comment, the editor of this work presents chronologically a selection of the most notable opinions of Justice Cardozo, not merely to demonstrate juristic writing at its best, but primarily, as the title of the volume states, to show that to Justice Cardozo, the Law was not a collection of dried bones, but a dynamic, living instrument for the administration and perpetuation of justice. To this end the cases chosen are those of general interest, involving situations having an appeal for readers of all classes and occupations. For the benefit of lay readers, the editor has given a complete and adequate statement of the facts of each case setting up clearly in non-technical terms the problems involved.

Since the prime thesis of this book is the devotion of Justice Cardozo to justice, it is interesting to garner from the cases what the Cardozian concept of justice was. Today civil rights are the focal point of many controversial views agitating world society. In discussing such questions a trend toward two extremes may be noted. On the one hand a segment of liberal opinion fosters a sort of milk-toastish philosophy which exalts the rights of individuals to such an extent that it regards many of the disciplinary measures of school and society as tyrannical; on the other is to be found the citadel of the so-called rugged reactionaries who exalt the right of institutions over individuals. Since Dr. Sainer has divided the Table of Contents into various headings which classify the cases according to the subject matter, an examination of the cases set forth under the topic Civil Rights would be helpful for our purpose. The cases under this heading are almost evenly divided in result between those in which individual rights triumphed over the encroachments of society, and those in which society's disciplinary enactments were upheld over individual rights. And while it is true that this type of box-score analysis is at best superficial, in this instance it is an accurate index of the manner in which the judicial mind of Justice Cardozo functioned. For the cases themselves, read individually and then weighed against each other, reveal in the method of reasoning employed a nicety of balance between the intangible boundaries of rights and duties that is nothing short of admirable. If justice necessitates the weighing of each detail with infinite patience without ever losing sight of the broader issues involved, then certainly Justice Cardozo's method with its painstaking treatment of each important factor, and its final evaluation of the whole, displays the hallmark of justice. Fundamentally justice is a question of values, and the admeasurement of values is something in which Justice Cardozo excelled.

Dr. Sainer is to be commended on his selection of cases. Because they are generally of the human interest type they lend themselves perfectly to the essentially dramatic Cardozian style, which delighted in painting word pictures, in sometimes poetic and always compelling prose. And it is difficult to quarrel with the editor's assertion that the cases presented in this volume prove that to Justice Cardozo Law was Justice.

1. SHAKESPEARE, THE MERCHANT OF VENICE, Act III, Scene V, Lines 52-56.

The lawyer and law student will find another appeal in this book which the lay reader will miss. It is that of nostalgia. To encounter once again such familiar landmarks as *De Cicco v. Schweizer*,² *Alleghany College v. National Chautauque County Bank*,³ *MacPherson v. Buick Motor Company*,⁴ *Palsgraf v. Long Island Railroad*,⁵ to mention a few, produces much the same sensation as the warm handclasp of an old friend.

A brief foreword by Senator Wagner contains a fine tribute to Justice Cardozo, and excerpts from some of the Justice's other writings recall his gift for epigrammatic expression. This is a book which all admirers of the late Justice Cardozo will appreciate.

ROGER W. MULLIN, JR.†

2. 221 N. Y. 431 (1917).

3. 246 N. Y. 369 (1927).

4. 217 N. Y. 382 (1916).

5. 248 N. Y. 339 (1928).

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