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Book Reviews

BOOK REVIEWS

CORPORATE MEETINGS, MINUTES, AND RESOLUTIONS (3d ed.). By Lillian Doris and Edith J. Friedman. New York: Prentice-Hall, Inc., 1951. Pp. 1114. $12.50.

This reviewer has refrained from reading the two previous editions of this work preferring to judge it as it is now. In the preface to the first edition the authoresses state their aim: "to explain to those who are responsible for preparing the minutes of corporate meetings, the elementary principles of corporation law, a knowledge of which is essential to a proper authorization of corporate action and to a proper record of action taken." Considering that this work constitutes but a single volume and is devoted primarily to forms of resolutions and minutes, the aim is well accomplished. Moreover, the forms are as detailed, complete and informative as those in any form book can reasonably be expected to be.

The forms of resolutions adopted at corporate meetings and the minutes recording corporate action are, after all, worthwhile legally only to the extent that they reflect *proper* corporate action, a fact recognized in the quotation above. What is proper depends entirely upon the substantive law of corporations, a comparatively not too well settled field of the law and one which is still expanding. It is not surprising, therefore, to find a considerable part of this book devoted to a statement of the fundamental principles of such law, very amply annotated with decisions, texts and law review articles. In fact the text of the book—that part not devoted to forms—constitutes, within the space allotted, a brief and fairly accurate statement of legal principles. Here and there, as in the case of most law books, a question may be raised: to pick an instance of some practical importance, the statement that a "contract for the sale or purchase of stock is not required to be in writing under the statute of frauds."[1] On the other hand, one finds in this work a recognition and discussion of some of the niceties of corporate practice with which the average practitioners may understandably be unfamiliar.[2]

An attorney advising corporate clients, large or small, should find this work of great help. Not only do the forms furnish a useful guide, if they are used intelligently and with discrimination, as all legal forms should be used, but the text constitutes a convenient horn-book of corporation law. This observation, however, compels another. A little knowledge is a dangerous thing. Use of the forms by a corporate secretary, who does not possess a well rounded legal training, can be dangerous. Not too many problems in the law of corporations can be answered categorically, and a decision based upon the wrong answers can prove to be costly.

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1. P. 355. See Tisdale v. Harris, 37 Mass. (20 Pick.) 9 (1838). Agar v. Ordo, 144 Misc. 149, 152, 258 N.Y.Supp. 274, 276 (Sup. Ct. 1932), *aff'd without opinion*, 239 App. Div. 827, 264 N.Y.Supp. 939 (1st Dep't 1933), *aff'd*, 264 N.Y. 248, 190 N.E. 479 (1934), contains a dictum that shares of stock clearly come within the Statute of Frauds. A contrary conclusion has been reached in respect to a subscription to stock. Mills v. Friedman, 111 Misc. 253, 269, 181 N.Y.Supp. 285, 294 (Sup. Ct. 1920).

2. See *e.g.*, the decision in Topken, Loring & Schwartz, Inc. v. Schwartz, 249 N.Y. 206, 163 N.E. 735 (1928), which would render void *ab initio* the average agreement by a corporation to purchase its own stock. As the footnote reference in the book under review points out the decision is legally questionable, but it apparently still represents the New York law. P. 437, n. 244. See Greater New York Carpet House, Inc. v. Herschmann, 258 App. Div. 649, 17 N. Y. S. 2d 483 (1st Dep't 1940).

Furthermore a work of the size of this single volume can not be expected to furnish forms which will conform to the statutes of each state and the preface makes this clear.

Except for fairly routine matters, careful corporate officials will be well advised to seek assistance of counsel in the preparation of corporate minutes and documents and not to rely upon a book of forms, even so excellent as the one under review. In this observation the publishers of this book agree.[3]

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LEGAL PHILOSOPHIES OF LASK, RADBRUCH & DABIN. By Kurt Wilk. Mass.: Harvard University Press, 1951. Pp. 394. $7.50.

In the first sentence of his introduction to this volume, Professor Edwin W. Patterson[1] speaks of the "significant contributions to the general theory of law that are translated in this volume." With respect to the first two "contributions," I cannot agree, except on the theory that the word "contribution" means anything (no matter what its quality) that a man may be prompted to write on the subject of jurisprudence; or upon the theory that the word "significant," simply means "more or less meaningful," without bothering to inquire whether the meaning is consistent, worthwhile and objectively true. All three parts of the book are from European writers. So far as I can see, the only thing they have in common is that they are all aimed in the general direction of jurisprudence, a word on whose definition no two of them would agree. They are contributions of very unequal values.

Arranged in an order of my appreciation, Dabin's is easily the best. It is the only one which, in my view, makes sense, synthetically and analytically considered.

Lask's part of the book is a pompous and cumbersome adventure in words which both lack interest and originality. I know of no sound reason for its ever having been written. It toys with great notions and fundamental philosophies without ever going deeper than abstractions arranged in a difficult style. Its lumbering terminology has too few roots in existential reality. It is loaded with indefensible statements and conclusions; *e.g.:*

"Only in the nineteenth century has legal science achieved its full independence and apparently final deliverance from metaphysical speculation."[2]

It is implicit with pathetic misconceptions:

"There is absolutely no reason, and no one has ever attempted to show, why the absolute validity, the universality of a value, should be bound to the logical structure of a general concept and why it is not as compatible with the logical structure of incomparable singleness and individuality. The sublimity of a value is in no way affected by this second possibility."[3]

It attempts to destroy by superficial criticism systems of thought which the author has quite evidently failed to digest intellectually:

3. A cautionary note is inserted at the outset of the book that laymen will find the forms informative "but should consult their own legal counsel before entering into any contract or business arrangement based on these forms."

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2. P. 3.

3. P. 5.

"But the metaphysics of natural law and the critical philosophy of law differ fundamentally in determining the relationship between value and reality. This difference bears directly upon life; yet it is grounded in deep contradistinctions of theoretical philosophy. It opens the way to a clear demarcation between natural law and a legal philosophy free of metaphysics."[4]

It makes summaries of opposing views which are comical caricatures:

"The exponent of natural law believes that out of a system of abstract values he can deduce a stock of legal norms, the contents of which need not be individualized any further and are suitable for introduction as law anywhere, regardless of concrete historical connections."[5]

It blandly adopts a standpoint of "critical dualism" with respect to value and reality precisely and simply because it never proceeds far enough in its own analysis, to those depths of reality and being where value and reality are one and the same. It makes useless if learned distinctions which serve no advantage in jurisprudence and which fail to aid in the appreciation of reality and sound philosophy:

"To be sure, the subject matter of jurisprudence, as of philosophy, is not what exists but what signifies, not what is but what ought to be, what commands obeisance. But in philosophy the character of the ought is grounded in absolute values for which there is no empirical authority. In jurisprudence, on the contrary, its formal ground is its positive establishment by the will of the community."[6]

The whole treatment is so remote from the ordinary practice of the law as to leave the impression that jurisprudence is a waste of time for a practical lawyer's training. It is radically voluntarist and anti-intellectual. Its author needed the learning Fr. Thomas E. Davitt, S.J., recently made available in his valuable study "The Nature of Law."[7]

The author demonstrates, too, that he simply did not know what he was talking about when he spoke of the Natural Law. For example, he says: ". . . any natural law is metaphysical rationalism; it hypostatizes legal values as legal entities." Then he proceeds to talk of "the reification common in natural law."

Lask is fond of inventing formidable words to designate conclusions in which truth and error are ludicrously confused. "Natural Law thus is *emanatist*. It eliminates the criterion of the community authority and replaces it with reason as a higher formal source of law, from which 'law' emanates without and against any human enactment, so that law conflicting with reason becomes formally void."[9]

The author neglects the important areas of Natural Law application and *fallible* criterion derivation which St. Thomas Aquinas referred to as "determinations." In that area it is wrong to say that the "criterion of community authority" is eliminated; indeed, it is an exact contradiction of what Natural Law philosophers have constantly taught from the time of St. Thomas until now. Moreover, in writing about "emanatism" in this fashion, the author fails to appreciate, apparently, that in *fundamental moral principles*, criteria above community authority are essential not only to preserve rationality, but to save us from totalitarian tyranny. Unless one is to assume that community authority or the community is always rational,

4. P. 4.
5. P. 7.
6. P. 29.
7. St. Louis: B. Herbor Book Co., 1951. Pp. 274.
8. P. 6.
9. P. 7 (emphasis added).

one needs, for a complete and sound jurisprudence, a critique of community authority and a criterion which transcends the community. Otherwise, there never would be any theoretical reason for questioning civil authority. The community, in its will or authority, would be either an absolute or at least a postulate beyond all questioning.

The second "contribution" to this volume is the "Legal Philosophy" of Gustav Radbruch originally published in 1932. While it is an improvement on Lask, it falls far short of being a real contribution. With an air of discovery, it makes distinctions that are older than St. Thomas Aquinas. On the other hand, it fails to make obvious distinctions for which we never needed the help of St. Thomas Aquinas or anyone else. It is pock-marked with inconsistencies, half truths and immature and unwarranted generalities. Its basic method is that of an adolescent relativism. It manages to raise most of the fundamental questions. (Because of this, it is better than Lask's effort). But it answers nothing and, indeed, adopts a point of view which makes answers impossible or meaningless.

Radbruch's easy opportunism could be exemplified by quotation after quotation. For example:

"The method which is here presented is called relativism, because its task is to determine only whether any value judgment is right in relation to a particular supreme value judgment, within the framework of a particular outlook on values and the world but not whether that value judgment and that outlook on values and the world are right in and of themselves."[10]

Here is the same shoddy *pabulum* on which with equal moral and intellectual justification, democrats as well as fascists, communists and other totalitarians could batten. You relate some values to other values as a kind of logical game; but you never inquire whether there is any justification for the most ultimate of your evaluations. You build, with complicated architecture, on foundations for whose grounding you are not concerned. It is like being satisfied with Hindu cosmogony when it says that the world is supported by an elephant and the elephant rests on a turtle. They were never bothered about what supports the turtle.

There are self-defeating and intellectually suicidal opinions, such as:

"The decisive blow against natural law has been struck not by legal history and comparative law but by epistemology. . . . Kant's critique of reason has shown that reason is not an arsenal of finished theoretical cognitions, of ethical and aesthetical norms ready to be applied, but rather the mere power to arrive at such cognitions and norms. . . ."[11]

If men can't know their own nature and its implications, how can they know legal history or epistemology? We are powered to arrive at norms, but we never do. We are intellectually doomed; like Tantalus, always trying and never succeeding.

How impoverished men were, intellectually, before Kant, if they had to wait for such a great epistemological discovery! Of course, the simple truth is that they did not have to wait. Plato and Aristotle, St. Augustine and St. Thomas had, centuries before Kant, arrived at the rudimentary recognition of man's intellectual powers *and achievements.* Indeed, even those lesser lights which, like moths about the flame, fluttered, this way and that, in foci of world thought easily recognized that man's reason has never supplied norms of any kind automatically *"ready to be applied."* Throughout the ages men have had problems, and their problems always demanded intellectual and moral effort. There was no easy application of ready-made yardsticks. There never will be. The Natural Law promises none.

10. P. 57.
11. P. 60.

If you are sufficiently inept, you can take seriously some convulsion of dadaist, surrealist or abstractionist "art" and, after moments of puzzlement, you may agree with a title, such as, "Man on a Horse"; even though the work thus labelled looks like nothing so much as splotches of color on canvas, such as a man might make in moments of wild enmity between himself and his hurled pigments. Perhaps, as I listen with greater or less boredom to speakers at some conference, I might unconsciously doodle; and the product of my doodling could be given an arty name. But the mere label of a name does not justify nomenclature. I have no right to call a Rorschach inkspot (which betrays no semblance of similarity to the anatomy of man or horse) a *man on horseback.* If I give to *the real things* about me certain *names,* I only betray language and intellectual effort if I use words indiscriminately so that "cat" equals "horse" and an inkspot a man. All of this leads me to the strange definition which Radbruch gives to the word "law." He says law is "the complex of general precepts for the living-together of human beings."[12] Not only does he say this; he emphasizes what he says by italics. This caricature of law scarcely does justice to the real thing, as a moment's reflection will demonstrate. I know of nothing, no matter how ruthless and tyrannical, which some men have chosen to call law, which could not fall within the indiscriminate category of this definition. It would have been much simpler to say law is whatever any person in governmental power has called law. For, certainly, Radbruch intends no ethical or normative implication from the phrase "for the living-together of human beings." Apparently it doesn't matter *how* they live together. Indeed, from his extremely relativistic point of view, I fail to see why he regarded *living-together* as a value or end to be preserved or achieved by this instrument known as the law.

Radbruch bandies about a series of indiscriminate generalities and half-baked inductions as if they were important principles:

"Thus the collective values demand the opposite of what the individual values require."[13]

He even quotes with approval Storm's hyperbole:

"Now power is in itself evil no matter who wields it."[14]

His democracy is as brittle as totalitarian, as corny and as tyrannical as the divine right of 51 percent. He says:

"Democracy requires the unconditional rule of the will of the majority. . . ."[15]

If the majority wanted to exterminate Catholics or Jews their rule must be "unconditional" and, according to his definition, such tyranny is democracy.

He simplifies matters by a simplest summary which says:

". . . individualistic idealogies are rational, and conservative ones irrational: historical or religious."[16]

As if in proof of this, he says that the characteristic program of Fascism is: "first power, then the program!"

I suppose it will always be one of the human follies that men who know nothing whatever of theology and ecclesiology will talk as if they do, if for no better reason than to show their contempt for both.

12. P. 76.
13. P. 92.
14. *Ibid.*
15. P. 101.
16. P. 104.

"The state in the Catholic view is imbedded in, or at any rate attached to, the church. . . . Therefore, it is possible for Catholicism to join the right as well as the left, the trans-individualistic as well as the individualistic parties."[17]

True, none can at the same time go right and left in the same respect. But this is a pathetic caricature of Catholic political philosophy.

Radbruch puts form above substance and certainty of the law above its content:

". . . however unjust the law in its content may be, by its very existence . . . it fulfills one purpose, viz., that of legal certainty."[18]

It must be consoling to a victim of tyranny that his fate is certain and sealed! But this flatters legal draftsmen more than they deserve, especially when you reflect upon the recurrent phenomena of appellate courts unable to agree on what a statute means.

It is scarcely necessary to go further with Radbruch. A great deal of the time devoted to the reading of this part of the book is wasted effort.

Now, I turn to the third contribution which, by contrast with the previous two, is so good that it, alone, amply justifies publication of the volume. At the same time, I must confess that the fine contribution of Jean Dabin deserves worthier company. It is like having a ring set with one diamond and two pieces of broken glass. Fortunately, Dabin's part of this book is the most modern (written in 1944), the most complete and the longest.

Dabin's "general theory" of law is just that. But it is rooted in reality. It has the fiber and structure of a maturely pondered and well reasoned work. It is not so proudly individualistic that it was ashamed to borrow from writers of the oldest, most tested, most consistent and most objective tradition in philosophy. Here is no mere superficial smattering; it is a fine, logical and ontological development of a subject which does not deserve the dalliances and flippancies of relativism nor the unreality of polysyllabic conceptualism. Moreover, it is an orderly development. It provides a definition of law that makes sense. Here I find one of the best and most detailed treatments of the properties of law, derived from an inductive and deductive approach. It is, of course, impossible to be either purely inductive or purely deductive. The most deductive of our sciences are the mathematical. But they need initial and basic inductions in order to equip us with such knowledge as what is a triangle or a circle. In his approach to the characteristics of law, however, Dabin is more inductive than deductive.

Dabin's very first chapter is devoted to the concept of law. In a suggestive paragraph,[19] which derives its form and inspiration from the initial words of St. John's Gospel, he justifies the insight: "In the beginning was the rule."

Sometimes his style is a little heavy and on a few occasions he labors the obvious. Generally speaking, reading this book is a rewarding task. This is the only English book on this subject which takes the trouble to go back to the fundamental reasons why the science is called juris*prudence*. Usually the tractate on *prudence* is altogether neglected by modern authors on juris*prudence*. This is an unfortunate defect as anyone will realize if he reads the modernly applicable, objective and rational things St. Thomas has to say with respect to practical reason, prudence and jurisprudence. It is, therefore, a refreshing reversion to wholeness of view to read Dabin's Section, entitled "The Law Is 'Prudence' and Consequently Construed."

17. P. 107.
18. P. 119.
19. P. 232.

Another feature of this book which deserves note is the careful and exact manner in which the instrumental character of the legal rule is compared with the moral rule. One of the besetting occasions for sin in our time is the failure of both democrats and totalitarians to understand what *freedom is.* Linked with this folly is the failure to appreciate the nature and role of *authority.* Dabin makes no such crude mistakes when he investigates the alleged dilemma between freedom and rule.

All in all, the disappointment which I had in reading the first two "contributions" was redeemed by my large pleasure and intellectual satisfaction with Dabin's "General Theory of Law."

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