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Book Reviews

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errors. The statute exempts but one table and only six chairs, and the relentless sheriff is authorized to leave only ". . . six knives; six forks; six spoons; six plates; six tea cups; and six saucers . . ." N. Y. CIV. PRAC. ACT § 665 sub. 5. This might shock Emily Post, but not our forbears. The *faux pas* of serving soup in tea cups did not bother them. To round out the table settings, the debtor is allowed to retain one sugar dish, one milk pot and one tea pot. It seems that once there is an unsatisfied judgment against a person, coffee and cream are beyond his reach, legally and literally, and he must satisfy himself with tea and milk. Perhaps the legislature could go far in cementing hemispheric solidarity with our "Good Neighbors" by exempting a coffee-pot. Since the statute is silent as to whether or not the judgment debtor is allowed to keep any water glasses, it is presumed that the ever faithful tea cup must perform this additional service. Pity the poor debtor with four children when the door-bell rings shortly before the dinner hour. What agony he must go through when company stays for dinner. Must he improvise a double shift system, the adults eating first and the children, later? Here, at least, the alphabetical mandate "F. H. B." symbolizes something domestic, not Governmental!

What, No Coffee?

The legislature properly protects the spiritual welfare of the debtor by exempting "A seat or pew occupied by the judgment debtor or the family in a place of public worship," (N. Y. CIV. PRAC. ACT § 665 sub. 3) and allows him to find solace at home by exempting the family Bible. How much protection does the exemption of "one coal scuttle" afford the "cliff-dweller" of Manhattan? By exempting a cow and two swine, how are department store workers benefited? Why limit the exemptions to certain specified articles? Although it is true that ". . . necessary household furniture, working tools, . . . professional instruments, furniture and library, not exceeding in value two hundred and fifty dollars, . . ." are exempt (N. Y. CIV. PRAC. ACT § 665 sub. 7) the average non-professional white-collar worker does not gain a great deal by this subdivision. Certainly, an automobile is more valuable to the salesman than ten or even a hundred sheep with or without their fleeces. The exemption statute of Indiana, which provides adequately for both the rural and urban population, would be a good model for New York to follow. Indiana exempts personal property *of the debtor's choice,* to the value of six hundred dollars, and effectively protects the judgment creditor from fraud on the part of the debtor as to appraisal of the property. IND. STAT. ANNO. (Burns, 1933) v. 2, ch. 35, § 1, as amended, §§ 2, 3. Surely the debtor is best qualified to know exactly what property is absolutely essential to him. Under such a statute the farmer can select whatever livestock he wants, and the salesman his automobile. The tribute to the "wonderful one-hoss shay" which ran one hundred years to the day, (HOLMES, THE DEACON'S MASTERPIECE) should not blind us to the weakness of an exemption statute, which ought to be a motorized vehicle of progressive legislation.

Tit for Tat

BOOK REVIEWS

THE RIGHTS OF MARGIN CUSTOMERS AGAINST WRONGDOING STOCKBROKERS AND SOME OTHER PROBLEMS IN THE MODERN LAW OF PLEDGE. By Edward H. Warren. Norwood, Massachusetts: The Plimpton Press. 1941. pp. xv, 464. $4.00.

The volume and variety of cases, statutes and administration regulations in many of

the recognized fields of law make it increasingly difficult for one person to produce and impress with his personality a comprehensive legal treatise. The treatises tend to be the product of a group of editors and even if they represent on publication a single author, the necessary supplements are often little more than pages of digests. In some instances the treatises seem to be facing a losing struggle with services furnishing current material with no effort at legal analysis or generalization.

Professor Warren's book is proof that if the legal scholar abandons the manufacture of treatises, he has still a wide scope for his activities in the publication of authoritative monographs or seemingly narrow topics. I use the word "seemingly" because it is possible that the exposition of theory and history regarding a small subject may provide illumination over a much greater area.

Professor Warren has written an unusual little volume. Those who have known him as students at the Harvard Law School will appreciate especially how completely the chapters are a picture of his personality. There are the dogmatism and urbanity, the joy in dissecting logical fallacies, the fierce combativeness against misleading words and phrases, the pride in the advocacy of new terminology, the enthusiasm for Socratic dialogue, the respect for the great lawyers of the past, the seeking for the light of historical research, the frequent insular disdain for other contemporary writings, the love of learning, which characterized his classroom performances.

The cover title on the book is "Margin Customers", but the work is important rather as an essay on pledges and as an introduction to the law of security. No student studying any phase of security law should fail to read at least part of the chapters. The discussion of assignments, for example, is of great value to the student of real estate mortgages.

Professor Warren does not deign to mention the Restatement of Security, but his views, as previously expressed in his pamphlet on Trover and Conversion were presented and debated at the conferences that prepared the Restatement. On many points the Restatement agrees with him, although at one fundamental point, that of the theory of dual ownership between pledgor and pledgee, the final decision was contrary to his position. The Restatement regards a conversion by a pledgee as a forfeiture of the pledge interest. The draftsmen of the Restatement also felt that the expressions "first class" and "second class" securities as designations of negotiable and non-negotiable securities, were not particularly suitable nor likely to be generally accepted.

Within less than 500 pages, Professor Warren includes an essay on style, analyses of many legal terms, essays on assignability, trover and conversion, and other topics, a considerable amount of history, a brief excursion into Roman law, law teacher's briefs for class discussions, outlines, which might well serve for lawyers' appellate briefs, a dialogue after Plato between the author and Samuel Williston, an annotated digest of New York decisions, law school examination questions and a dozen fine illustrations mostly of celebrated jurists.

The book is made up of a preface, eleven chapters, eight appendices, tables of cases, table of statutes and an index. The chapter titles are as follows:

I. Wood v. Fisk Delendum Est; II. Mortgages, Pledges, Liens; III. Debts and Securities; IV. The Assignability at Law of Debts Before Default; V. Trover and Conversion; VI. Tortious Withholdings; VII. Tortious Transfers of Second-Class Securities; VIII. Tortious Transfers of First-Class Securities. Herein of *Wood v. Fisk;* IX. Tortious Transfers of First-Class Securities (*Continued*). The New York Law in Detail; X. Tortious Transfers of First-Class Securities (*Continued*). Legislation and Decisions in Jurisdictions Other than New York; XI. Separation of Debt from Security.

The intellectual interest of this book and its practical importance make it not only a necessity for a professional library but a fine and enjoyable addition to a private collection of a reader's books. The challenges made by Professor Warren are numerous and some of them deserve to be met by those who disagree with them, in articles more extended than a book review. It is to be hoped and expected that if some of the propositions enunciated by Professor Warren are to be accepted they will prevail only after they have conquered the criticisms of some persons who are willing to devote a corresponding industry and comparable skill to a counter attack. His research will at least simplify that arduous task.

JOHN HANNA†

PROSSER ON TORTS. By William L. Prosser. St. Paul: West Publishing Co. 1941. pp. xiii, 1309. $5.00.

Sometime after starting to prepare this volume Professor Prosser in a personal conversation said to me, in substance, that he was going to try to set forth the law of torts as the welter of cases seemed to him to show that it actually is, rather than to try to set forth what it ought to be. Setting forth what the law of torts ought to be, he said, he was going to leave to others. When his finished volume came into my hands and I started looking into its presentation I was readily reminded of this earlier conversation.

This volume covers with unusual completeness for a hornbook the traditional topics usually included in the subject of torts. It maintains or improves upon the more recent hornbook development in that it discusses at many points the underlying reasons which give course and direction to the application of the rules in doubtful situations. It does more. It includes chapters on certain pertinent topics frequently slighted in books on torts, such as employer's liability at common law and under modern Workmen's Compensation Acts, nuisance, torts in the family, and interferences with domestic relations. It includes, too, a very creditable chapter on torts in economic relations, dealing with interference with contractual relations, strikes, boycotts, unfair competition, etc. The controversies involving these latter matters involve too many complicated fact problems, and raise too many unsettled and highly controversial questions of statutory interpretation, constitutional law and public policy for adequate treatment within the limits of the first year course in torts. If thoroughgoing treatment of these topics is to be given in the law school curriculum they must usually be taken up in more specialized advanced courses such as trade regulation and labor law. Since such courses are not always available, and though available are often barred from the individual student's schedule by conflicting electives, it is gratifying to find Professor Prosser's book giving these topics the substantial attention accorded.

Professor Prosser's book is a masterpiece of method in presentation. It not only states the generalized rules in question, but supports them by extensive citation of pertinent judicial authority at practically every step, listing in all what is stated to be some 15,000 citations. It indicates, also, that the application of the law to currently arising facts is not a static matter. Activity is constantly going on. Events are happening. This book recognizes that when harm results in the course of cur-

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rent activity it may often be a highly controversial question of which one among alternative available rules of law is properly to be applied in the instance. That question may be even more acute when the available authorities are themselves conflicting. At many points, accordingly, Professor Prosser appropriately deals with the difficult but unavoidable problem of what reasons are available and pertinent for shedding light on the question of what authority is in the instance properly to be regarded as controlling. In this connection he very helpfully includes a very extensive array of citations to the principal available law review articles containing more elaborate rationalization on the applications involved which can be followed up by those who have occasion to do so. It may be added, too, that Professor Prosser's text shows unmistakable signs that he has himself read the articles he cites. In proof I can state that some of those articles I have myself studied with minute care. In such cases it was readily apparent to me from his text that he had done the same. Some of the articles cited I have even myself written. These were cited in connection with comments on the ideas suggested therein, though usually without finding such ideas altogether convincing.

What the law ought to be is in many tort situations one of the most vital factors in the selection in the instance of controlling authority in the current practical application of the law that is. Professor Prosser's text is itself an open demonstration of the correctness of this statement. Though professedly bent merely on setting forth the law of torts as it is, and professing no adherence to any particular school of thought among legal theorists, Professor Prosser nevertheless in many instances not only sets forth the principal reasons that have been adduced in favor of the various conflicting views taken in the welter of decisions, but also indicates which reasons he regards as the most powerful and why. He thereby indicates which available alternative in his opinion represents the better view which ought to be followed. Questions of right and wrong, good and evil, justice and injustice are involved in such selection of controlling authority for the instance in hand. Professor Prosser, despite the expressed purpose of disregarding the law that ought to be in favor of the law that is, has at many points responded freely to such problems by taking his stand for what under the circumstances he believes to be right. The relative weight of conflicting interests which are at stake is often a highly arguable matter in the application of the law of torts to current situations. One can therefore readily disagree with certain of Professor Prosser's suggested preferences without in any manner impeaching the general statement that his book is one of the most serviceable text books on torts now available.

In large portions of the law of torts negligence furnishes the basis for liability. In various other portions of the law of torts absolute liability affords the basis for liability. The big unanalyzed and unsettled problem in the law of torts is how to determine which of these two broad underlying bases for liability is properly to be held applicable in particular instances as novel situations currently arise. The law of torts, as the welter of cases shows, leaves this fundamental question largely unanalyzed and involved in great obscurity and confusion. In the reports of cases the mere unexamined assumption that there is no liability without fault all too often furnishes the starting point for attempted rationalization thereon. This mischievous assumption Professor Bohlen's earlier writings, unfortunately, have done much to sanctify. Taken at its face, this unexamined erroneous assumption would place all new situations within the field of negligence, despite the manifest fact that for the last generation or more the range of actual applications of absolute liability has been

greatly extended. On this fundamental problem Professor Prosser happily recognizes squarely that both absolute liability and negligence are available within the torts' field as bases for liability. He therefore does not waste space or discussion, as do some of the earlier authorities, in misguided and futile efforts to demonstrate that fault is the sole basis for liability and that absolute liability consequently can be accorded no recognition.

As I read Professor Prosser's book, however, an echo of that discarded viewpoint still lingers in his connotations as it still lingers in the connotations found in many of the cases. At certain pages cases of absolute liability are described as "largely historical survivals"[1] and conduct involving absolute liability is described as "socially unreasonable" and "socially harmful from the point of view of the community as a whole",[2] or as "socially questionable" and involving "an undue risk of harm".[3] At other pages such conduct is described as "socially desirable conduct"[4] and "though it be socially valuable, must pay its way".[5] Such presentation does not misdescribe the judicial authorities as they are. Rather, it is a clever and picturesque way of manifesting the confusion on this matter shown by the authorities themselves. True to his professed purpose, mentioned at the outset of this review, Professor Prosser on this fundamental matter does an excellent job of setting forth what the welter of cases seems to him to show that it actually is, rather than concerning himself overmuch with setting forth what it ought to be. His treatment, accordingly, without discussing at length the debatable underlying reasons for the decisions involved, affords a relatively comprehensive detailed statement of what are the recorded situations to which absolute liability so far actually has been currently applied.

Personally I should have liked to see at this point Professor Prosser's book disclose a more bold and exacting independent analysis. What are the underlying elements, the reasons of logic or policy, the conflicting interests and their relative weight, which are involved in such decisions? How do these elements tend to determine the selection of controlling authority for the case in hand, as between negligence and absolute liability, as novel situations currently arise? No currently available text book on torts fully answers these questions. Comprehensive exposition of such matters here would have involved large consideration of what the law ought to be. Here, accordingly, as throughout the rest of the book, Professor Prosser has done excellently that which he set out to do, in writing the kind of book he said to me at the outset that he intended to write.

LAWRENCE VOLD†

PATENT FUNDAMENTALS. By Leon H. Amdur. New York: Chemical Publishing Co., Inc. 1941. pp. 305. $4.00.

This is a well written and readable book whose purpose is, to this reviewer, quite obscure. It is manifestly not a law book; there is nothing in it of any profundity con-

1. P. 9.
2. Pp. 9-10.
3. Pp. 431, 437.
4. P. 426.
5. P. 451.

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cerning the legal problems connected with patents or their procurement. As a matter of fact, the author himself states that it was not written for lawyers. But by the same token—its omission of the legal aspects of the relations growing out of patent ownership—the book is unsuitable for use by laymen who might like to obtain some acquaintance with the law. Indeed, through its failure even to suggest the possibilities of trouble, it might well be dangerous to an unsophisticated reader. Certainly the patent owner who attempts to draw his own license agreements and contracts may get himself into more serious difficulties than the jolly testator who drafts his own will; the latter has at least passed from the picture and left the law suits to his successors. In Mr. Amdur's book, elaboration of the complicated problems of license, assignment and co-ownership is confined to five pages, employer-employee reciprocal rights to a page and a half, and the necessity for marking devices "patented" to half a page. Obviously, then, it is no book for anyone remotely interested in the legal aspects of the subject.

Mr. Amdur does, however, explain the history of the patent statute, its express content, and the formal procedure necessary in obtaining a patent. In this sense of recounting the basis of the patent law, it might be said to deal with patent fundamentals. For the casual edification of the man in the street who is curious to know whence a patent comes, how it is obtained, and what it looks like, the book may serve a real purpose. So cursorily interested a reader may not find his attention held by the thirty pages explaining how patents are classified in the patent office storage arrangements, nor by the reproduction of pages from the Official Gazette showing "Condition of Application under Examination at the Close of Business January 20, 1940." But the description of absurd devices for which patents have actually been issued—a rat trap which puts a bell on the rodent's neck and lets him go, suspenders with a fire-escape attachment, tubes for conveying warm breath to cold feet—makes interesting reading. There are also reproductions of the patent office's printed and typed receipts for fees paid, of typed form letters between applicants and the examiners, and even a full page reproduction of a patent itself in all its sealed impressiveness. In another section are some dozen pages of interesting differentiation of bulbs, corms, runners, stolons, tubers, sporogenesis, mutants, sports, and methods of grafting as they relate to asexual reproduction of plants.

But though all this is in its way informative to casual curiosity, the reviewer is driven to wonder among what type of readers there can be a proper market for this pleasantly written book.

JOHN B. WAITE†

HOLMES-POLLOCK LETTERS. Edited by Mark De Wolfe Howe. Two Volumes. Vol. I, pp. 274; Vol. II, pp. 359. Harvard University Press. $10.00.

As Mark De Wolfe Howe states it in the Preface; " . . . it is seldom in the modern world that the instinct for intimacy finds its fullest expression in correspondence". One may readily agree that these letters passing between Oliver Wendell Holmes, distinguished American jurist, and Frederick Pollock, one of England's greatest legal scholars, provide the "fullest expression" for the many-sided talents of two outstanding jurists and scholars. So diversified are their viewpoints that the

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materials may be analyzed in different ways depending upon the purpose and objective of the reviewer.

Some may prefer to emphasize the wide reading and scholarly writing of both contributors, even though their written words were not intended for public consumption.[1] It is interesting to note that as their friendship grew, the subject matter veered away from the law and rambled over the entire field of literature. Others may marvel at the wide differences of opinion and frequent clashes arising between Holmes and Pollock regarding basic philosophic theory,[2] which were accompanied by "a peculiar quality of insulated calm."

But one of the most valuable and lasting features of the Holmes-Pollock Letters will be the disclosure of off-the-record intimacies, the frank discussion of many current movements and events and the informal appraisal of famous personalities in and out of the law. Indeed, a preliminary perusal of the Letters indicates that many opinions regarding Holmes must now be revalued, and perhaps revised.

Today one of the accepted generalizations is that which acclaims Holmes the father and leader of realist philosophy in America.[3] Jerome Frank rates Holmes as our "adult jurist" and praises his "insistence upon recurrent revisions of premises based upon patient studies of new facts and new desires."[4] Elsewhere the reviewer has suggested that Holmes's alleged interest in fact-finding has been unduly exaggerated.[5] It now appears that the tribute to Holmes for his patient studies of new facts is strangely at variance with the candid comment of Justice Holmes in his correspondence with Pollock.[6] When it is recalled that facts are the core of realist reform of traditional law, it may be that our realists have oversold Holmes as an unqualified advocate of realism.

Another myth regarding Holmes which is partially exposed in the Holmes-Pollock Letters is the general belief among our liberals that Holmes favored pragmatic jurisprudence. The source of this jurisprudence is the distinctly American philosophy of pragmatism which was developed by William James and John Dewey.[7] But Holmes says: "I think pragmatism an amusing humbug—like most of William James's speculations. . . . "[8] Yet his admiration for Dean Pound, who is mainly responsible for implanting pragmatic jurisprudence into American law, is evidenced by a glowing tribute to his scholarship.[9] Holmes's curt dismissal of Beard's economic interpretation of the Constitution[10] and of Hohfeld's fundamental conceptions[11] will disturb, and

1. Holmes is essentially a word-lover and is particularly pleased when he turns out an original verbal gem, and is correspondingly depressed when he, even unwittingly, borrows the thought of another. Vol. I, p. 271.

2. Vol. I, 270-271, 274-275.

3. Fuller, *American Legal Realism* (1934) 82 U. OF PA. L. REV. 429.

4. FRANK, LAW AND THE MODERN MIND (1931) 253.

5. Kennedy, *Principles or Facts?* (1935) 4 FORDHAM L. REV. 58-63.

6. " . . . I never know any facts about anything. . . ." (Vol. I, p. 118); " . . . I hate facts. . . ." (Vol. II, p. 13); "To me who always drops a fact as soon as I can. . . ." (Vol. II, p. 82).

7. Kennedy, *Pragmatism as a Philosophy of Law* (1925) 9 MARQ. L. REV. 63.

8. Vol. I, p. 138-139.

9. "I never saw anyone so well-read in the philosophy of law. . . ." (Vol. II, p. 115).

10. Vol. II, p. 222. Similarly our behaviorists will be disturbed to find that Holmes believed that "high-mindedness is not impossible to man." (Vol. II, p. 223).

11. Vol. II, p. 64; *cf.* Pollock's view of Hohfeld, Vol. II, p. 63.

perhaps surprise, some of the followers of legal functionalism.[12]

Considerable light is thrown upon another interesting incident, which followed the appointment of Justice Holmes to the Supreme Court by President Theodore Roosevelt. Justice Frankfurter in his *Law and Politics* has told the story of President Roosevelt's careful inquiry regarding Holmes's legal and economic viewpoint. The President frankly stated to Senator Lodge that he "wanted to know that Judge Holmes was in entire sympathy with his views."[13] Archibald MacLeish, in the Foreword, says that Mr. Frankfurter fully agreed with the cautious action of President Theodore Roosevelt in examining into the political and social views of a candidate for the high judicial office.[14] It is interesting to recall the violent outburst of temper displayed by President Theodore Roosevelt when Justice Holmes refused to accept the legality of the trust-busting attack of President Roosevelt in the *Northern Securities* case.[15] Regardless of the consequences Justice Holmes dissented and was rebuked by Roosevelt for exercising his independent judgment.[16]

A new chapter in the Roosevelt-Holmes controversy is now written and deserves a prominent place in view of the present-day discussion regarding the doctrine of separation of powers. Referring to his dissent in the *Northern Securities* case, Holmes says:

"It broke up our incipient friendship, however, as he looked on my dissent to the *Northern Securities* case as a political departure (or, I suspect, more truly, couldn't forgive anyone who stood in his way). We talked freely later but it never was the same after that, and if he had not been restrained by his friends, I am told that he would have made a fool of himself and would have excluded me from the White House. . . . "[17]

It must not be assumed from the foregoing emphasis upon the letters written by Holmes that the Pollock contribution suffers by way of comparison. From his study come frequent lines which indicate the depth and soundness of his scholarship.

The Holmes-Pollock Letters is destined to be widely read and reread because of its literary value and its disclosure of the innermost thoughts of two great legal scholars.

WALTER B. KENNEDY†

12. The above fragments from the Letters are not offered for the purpose of attempting to prove that Holmes was a conservative with a veneer of realism, but merely to warn the realist followers that Holmes was ready to take an occasional slam at the liberal viewpoint when it displeased him.

On the contrary, well documented and calmly reasoned articles are appearing which argue that Justice Holmes' philosophy was basically one of power and force, in marked contrast with his well known humanitarianism in life and law. Ford, *The Fundamentals of Holmes' Juristic Philosophy,* PHASES OF AMERICAN CULTURE (1942) 51-79 (with an excellent bibliography of books and papers on Holmes' philosophy, jurisprudence and judicial opinions, 79-83); Simms, *A Dissent from Greatness* (1942) 28 VA. L. REV. 467; *cf.* Sayre, *Mr. Justice Holmes—Philosopher* (1942) 27 IOWA L. REV. 187; FRANK, *Holmes' "Bad Man" Starts Something,* IF MEN WERE ANGELS, (1942) Ch. VI.

13. FRANKFURTER, LAW AND POLITICS (1939) 66-68.

14. Foreword, xiii-xiv.

15. Northern Securities Co. v. United States, 193 U. S. 19 (1904); *cf.* my article, *The Bethlehem Steel Case—A Test of the New Constitutionalism* I, *supra,* at 000n.

16. BENT, JUSTICE OLIVER WENDELL HOLMES (1932) 251.

17. Vol. II, p. 63-64.

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THE QUEST FOR LAW. By William Seagle. New York: Alfred A. Knopf, Inc. 1941. pp. xv, 439. With Notes and Index. $5.00.

The author has really written a history of law. One who reads this book whether he be scholar, layman or lawyer will come to the conclusion that there is still much to be learned about this thing called law. The author presupposes a background of history and philosophy sufficient to grasp the facts and theories that he proposes to the reader and the book is not primarily intended for tyros. The title of this book might easily be changed to the "Why of Law" or the "Philosophy of Law".

The student of philosophy will find an objective metaphysical explanation of the bases of law. In his philosophy the author is Aristotelian rather than Kantian. Based on an objective study of primitive people he gives the moderate realist a more comforting doctrine than that of the anthropologists who seek the bizarre interpretation of the facts of primitive people. He brings the study of law back where it belongs—a branch of philosophy. We might differ with him in the interpretation of some facts but we agree that the student of law should know the philosophical foundations of justice as well as the history of law.

The student of law will appreciate the composition of the book. The author has divided his work into five "books" beginning with the "Elements of Law" in which he gives the basic elements of law; he develops this thought in the books entitled "Primitive Law" and "Archaic Law". His fourth book is captioned the "Maturity of Law" and in this book he develops law as it is applied in present day practice. In this book, one finds an interesting chapter on the "Omnipotence of Contract" which might be the basis for detailed discussion and controversy. His fifth book is called the "Vanishing Points of Jurisprudence". In this book he has an excellent section on Administrative Law which is titled the "Law Nobody Knows", but seemingly he does not have the fear which most legalists have for this growing field of jurisprudence. The administrative law of today is to the author, the ordinary law of tomorrow. His chapter on the "Law of Nature and of Nations" will no doubt give rise to discussion and controversy but is none the less thought provoking and interesting.

His "Conclusions" which he calls "Justice According to Law" seems to be a well reasoned ending to a work which will be welcomed by all students of legal philosophy. The notes and bibliography are excellent sources for a further "Quest for Law".

FIDELIS O'ROURKE, O.F.M.†

BOOK NOTES

A DIALECTIC OF MORALS. By Mortimer J. Adler. Notre Dame: The Review of Politics. 1941. pp. vii, 117. $1.80.

The work of the philosopher concerns itself with and encompasses all human action, because his science deals with "the ultimate". Yet the importance of this work is often underestimated. To the errors of unsound philosophy is attributed all that is repugnant to man's nature—tyranny, immorality, injustice and the rest. The more important the personage guilty of the error, the more widespread the lethal consequences. He will become like the Pied Piper. With St. Thomas and

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Aristotle as patrons, scholasticism has labored ceaselessly in the elimination of intellectual falsehood and error and has always adopted every means toward that end.

Professor Adler has long been considered a Thomist and through his efforts in the field of philosophy has distinguished himself among contemporary thinkers. This, his latest effort, is additional confirmation of that position. It is a dialectic attempt to refute moral scepticism—the denial of objective moral knowledge. Professor Adler continues to recognize the mammoth and arduous task which confronts the scholastic but abhors what may be "too little and too late."

In the light of the exemplary philosophical work of Plato, Aristotle and St. Thomas, the introduction points the way and the means which the author believes necessary not only for the advance but also the very existence of modern philosophy. At once it is an indictment of modern scholasticism for what the author believes to be its failure to adopt these necessary means—its failure to be modern, and a defense to his approach to the problem. Professor Adler reasons that the positive sciences have bred scepticism and hostility toward philosophy. Therefore he says that we must adopt Plato's dialectic methods, appealing to the reason, and get away from the ineffective demonstrative methods of modern scholasticism. Concededly, when working toward the same end we may well profit by one another's advice. However, this reviewer is unaware of modern scholasticism's failure to adopt dialectic methods in promulgating ultimate truths. Perhaps Professor Adler means to say that it too often indoctrinates rather than reasons. Generally this is untrue. Nevertheless, it might be pointed out that an exclusively dialectical approach has been found to be impractical. However, this is the medium selected by the author.

The inductive dialogue between student and teacher which comprises Chapters II-V is a result of actual arguments which President Hutchins and Professor Adler have had with students. The object is to establish an absolute criterion and order of human goods. Although orderly, logical, and rooted in "perennial" truth, this portion of the book is burdensome to the reader. There is much to be gained, however, if one persists in the mental drill required to glean out the fundamental meaning.

This reviewer believes that the main worth of the treatise lies in the pages from Chapter V to the end, although the foundation which precedes them is necessary. From established premises, the ethical concepts of happiness and virtue are shown to be indestructibly bound up in sound political philosophy. By consciously acting in accordance with his nature—rational—and distinguishing between real and apparent "goods" (e.g., objects which satisfy human capacities), man may realize the happiness and virtue which provide the basis for political order. Never before was there so crying a need for an understanding of the nature of government in its relation to the governed. To this end *A Dialectic of Morals* is a beginning. Perhaps, the major defect of the treatise is due in part to the subject-matter, but the argumentation might well have been made less difficult to follow. However, the milestones happily mark the return to idealism for which efforts of men like Professor Adler should be commended.

IN AND OUT OF COURT. By Francis X. Busch. Chicago, Illinois: De Paul University Press. 1942. pp. 306. $3.00.

"In and Out of Court" by Francis X. Busch is a book on the lighter side which will delight old practitioners and which is especially to be recommended to neophyte

members of the legal profession. Looking back over an enviable forty years of experience in the courts of Illinois and the Middle West, the author has culled a rich variety of original anecdotes which capture all the charm, wit and pathos that make up the daily drama of life in the courts. Mr. Busch's reminiscences take him back to his early days as a court reporter where he is able to obtain what he calls a "worm's eye view" of the ever-changing court-room scene ordinarily denied to the practitioner of strictly academic beginnings. They take him through his own years as practicing attorney and trial lawyer, sometimes as participant and other times as observer, but always the episode is something new and something different, defying classification and no two alike. Humor is provided by the disingenuous plaintiff who plays into the hands of the defense by exaggerating a mere knee scratch until it takes on the proportions of severe bodily injury, or by the literally intoxicated eloquence of the never-sober Colonel Waters, pleading his case midst loud hiccups and generally overcoming the dignity of the court. Tragedy too, in its different aspects is provided, and the unusual is provided in the chapter "A Modern Jean Valjean" or even more so in "The Strange Case of Nicolai De Raylin" which makes truth seem stranger than fiction.

The fascination of Mr. Busch's reminiscences is enriched by the striking personalities, who by their talent and wit, lent color and romance to the dull routine of court procedure, and gave to many a seemingly ordinary case the fine drama worthy of the stage. Such figures as judges Joseph E. Gary, Kenesaw Mountain Landis, Elbridge Hanecy, Frank Baker, Richard S. Tuthill, and at the Bar Russell M. Wing, John P. Altgeld, Francis W. Walker and Clarence Darrow are the subjects of both interesting and informative anecdotes. The author gives us glimpses of these men in action, trivial incidents in their crowded careers perhaps, but each a key which gives us an insight into the idiosyncracies of their varied and striking personalities.

Sometimes the incompleteness of Mr. Busch's random portraits leaves much to be desired. They are often affectionate caricatures rather than genuine portraits, but this, one must understand, necessarily derives from the nature of the medium the author has employed. Happily missing is the affectation of a scholarly approach, and those who look for scholarship will search in vain. But for those who are intrigued by the "subtleties of advocacy for which the books may be searched in vain," "In and Out of Court" will provide a liberal education in the true sense of the word.