

BOOK REVIEWS

LAW AND AUTHORITY IN EARLY MASSACHUSETTS: A STUDY IN TRADITION AND DESIGN. BY GEORGE LEE HASKINS. New York: The Macmillan Company, 1960. Pp. xvi, 298. \$5.00.

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A people ignorant of its past, the saying goes, is condemned to repeat it. To accept the reminder as a timely one, in an age when behavioral scientists are apt to scorn or forget it, need not commit one to the counter-arrogance of regarding sociology as history with the history left out. The study of continuity and change in legal and political institutions, of inheritance and adaptation, of habit and innovation, is surely one to be pursued with all the resources of learning. What, in particular, would one not give for an inquiry into the legal order in a seminal period of American history when the tension between continuity and change tested the best minds of the commonwealth to ensure that the fabric of their society be stiffened and not rent?

This is the inquiry undertaken by Professor Haskins in his scholarly, lucid, and engaging volume, aptly subtitled "A Study in Tradition and Design." The work focuses in detail on the formative years of the Massachusetts Bay Colony, 1630-1650, when a joint stock company chartered by the Crown set out to establish in the wilderness a viable commonwealth of Englishmen to the greater glory of God. How the disparate and jarring elements of this dedicated enterprise were reconciled in the legal order is the special theme of the account. Dissenters yet Englishmen, pioneers yet medievalists, the settlers had to create an identity, as the sociologists would have it, by transmitting and transmuting their heritage.

In the first several chapters the framework of social, religious, and political life is described, with emphasis on the divisions within the community. Here the analysis draws on the investigation of modern scholars such as S. E. Morison, Perry Miller, and Julius Goebel, who have suggested the complexities of doctrine and authority that falsify the simplistic image of an open haven for the oppressed or a grim fortress of bigotry, a

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rude people's law of the frontier or a transplantation of the laws of Westminster.

In succeeding chapters Professor Haskins makes his own contribution to an understanding of the legal precepts and practices of the period. Utilizing his earlier special studies, he traces with great care and subtlety the influences of Biblical law, medieval ideals, English royal justice, borough and manorial law, and the amalgamation of these into a distinct colonial system, whose greatest monument is the *Laws and Liberties of 1648*. The background and authorship of this, the first modern code of the Western World, are traced in detail; it marked a concession by the magistrates to the demands of the deputies for a more certain, less discretion-ridden corpus of laws, and if it reflects the harsh verses of Deuteronomy in many of its criminal provisions, it tempered the received law in noteworthy respects, as for example in its limitations on imprisonment for debt. The whole problem of debtor-creditor relations exemplifies the process of adaptation of traditional law; while debtors were advantaged in the matter of penal sanctions, creditors were given the benefit of the custom of London in respect of attachment and garnishment and a generally more expeditious and inexpensive recourse to court, but debtors in turn were favored with the privilege of paying in goods instead of money.

As Professor Haskins explains it, the reforming impulse of the Puritans combined with practical necessities to produce departures from the law of the King's courts despite the caveat in the royal charter: "Soe as such lawes and ordinances be not contrarie or repugnant to the lawes and statutes . . . of England." It does not deny the creativity of the Puritans to point out that they employed a number of practices and customs followed in local English courts, particularly in the eastern counties of the homeland. As in psychosomatic medicine the puzzling question is why different organs seem to be singled out in different individuals, so here an explanation must be sought for the selective adoption of portions of borough and manorial law. Professor Haskins points to the conditions of the economy that serve to explain two of the most remarkable derivations from local English law, partible inheritance and the recording of deeds and mortgages.

One of the challenging aspects of this work is the beckoning vista of local English records to be explored for their illumination of the Massachusetts experience. Professor Haskins has done his share of these investigations and urges their enlargement. It is an interesting fact that the study of records of the manors, which has given new dimensions to the economic and social history of seventeenth-century England, should also be of first importance for an appreciation of the law of the emigrants overseas.

A reader of this volume will have been absorbed in some of the perennial issues of the law: democracy and authority; the functions of the criminal law as educator and deterrent; the relation of the secular to the spiritual arm; and of course the roles of convention and creativity in the

law. I venture to think that this book will help us not only to understand our own past but also to apprehend the problems of new nations, emancipated but not adrift, which are now endeavoring to construct a viable legal order out of the elements of religious heritage, local practices, and received laws, through a wise admixture of tradition and design.

AMERICAN ENTERPRISE IN THE EUROPEAN COMMON MARKET: A LEGAL PROFILE. (2 vols.) EDITED BY ERIC STEIN AND THOMAS L. NICHOLSON. Ann Arbor: The University of Michigan Law School, 1960. Pp. xxiv, 510, xxix, 732. \$30.00.

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Books and articles on the European Common Market have been cascading upon us ever since the treaty of 1957. One of the latest and most formidable is this two volume product of the Michigan Legal Studies project. It consists of twelve articles of varying length by specialists in areas affected by the Common Market agreements: the new institutions themselves (Commission, Court, Assembly, Council of Ministers); the Customs Union; industrial property; labor law and social security; cartels and competition; taxation; organizing for business in the Common Market; the association of overseas countries and territories with the new entity; and other peripheral matters. The articles on labor law and social security (161 pp.), protection of competition (146 pp.), organizing for business (152 pp.), and taxation (304 pp.) are in reality monographs on the subjects considered, containing enormous detail on the existing laws and practices within each of the six countries comprising the European Economic Community.

In fact, the reason for the length of the books, as all the authors are careful to point out, is precisely that the existing laws and practices of the six countries are and will remain for some time to come the overwhelmingly dominant conditions for investment and doing business with and in them. In consequence, in order that American businessmen—or anyone else—might appreciate the possible legal and economic impact of the new Community, it was necessary to present a survey of the national laws, regulations, and practices in many of the relevant areas of interest. In addition, apart from the very good descriptive analyses of the new institutions of the Community (by Eric Stein) and the stage-by-stage establishment of the Customs Union (by Marc Ouin), which were made possible by the relative specificity of the treaty, it was difficult for the authors to do

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more than speculate, from the vague or horatory or loopholed language of the treaty in other areas, concerning the long range effects of the Community upon existing labor, social security, tax, business, patent and trademark cartel, and related laws and practices in the six countries.

Given these conditions and necessary limitations, the authors and editors have produced a study which will be of value to business advisers, lawyers, and students of comparative law perhaps more for its coverage of existing laws and practices in the six countries than for any steady illumination of what lies ahead as a result of the possible impact of the Community upon existing institutions.

This is not to say that nothing can now be usefully said about the probable direction in which the labor, taxation, business, and other parts of the institutional framework of economic activity will be moving as the Community develops. It seems quite clear that there will be an uneven movement, glacial in some areas, relatively quicker in others, toward "harmonization," not uniformity, of the variant laws and institutions of the six countries, barring large-scale war or economic depression. For while the political movement toward integration, the relationship of the Community to Britain and its other neighbors, the thorny issue of agriculture, and many other uncertainties cloud the crystal ball, the past several years have unquestionably given the Community a momentum toward mutual adjustment and cooperation which only events verging upon the cataclysmic are likely to reverse.

Nevertheless, these very uncertainties, together with the "differences [among the six countries] in tradition, in political outlook, in social *mores*—differences which are deeply rooted in the political and social history of Europe and quite incapable of being eliminated by a stroke of the pen of a legislator or treaty maker," (Kahn-Freund, *Labor Law and Social Security*, vol. 1, p. 304) indicate the caution with which predictions of evolution of the Community beyond a customs union must be treated.

No criticism of the authors for carelessness in making such predictions would be warranted. On the contrary, the exhaustive, if not exhausting, length of some of the contributions is due to their descriptions of existing national legal institutions, not to any excessive speculative enterprise about the future.

There is, however, one glaring gap in coverage: agriculture. The agricultural problem was in 1957 and remains today the most difficult economic issue facing Community nations among themselves and in their relations with the United States and other countries. A special portion of the treaty (Title II, Articles 38-47) deals with a possible "common agricultural policy" only in the most general terms. An analysis of the treaty's background, of the variant agricultural programs of the six countries, of their trading patterns, and of the consequent problems in creating such a common policy, would have been most helpful. It may seem strange to suggest such an addition to an already gargantuan publish-

ing venture, but apart from the fact that pruning elsewhere might have left sufficient space, an issue which is of such importance to the evolution of the Community is entitled to treatment.

As always, there can be the usual quota of cavils, as at the lack of an index (which is only very partially offset by an analytical table of contents), but on the whole, except for the agricultural omission above noted, Michigan Legal Studies and the editors should be congratulated for a serious and comprehensive effort to bring about an informed appreciation of the legal aspects and impact of the European Economic Community, one of the most far-reaching events of the postwar era.