

BOOK REVIEWS

ORGANIZATION OF COURTS. By Roscoe Pound. Little, Brown and Company, Boston, 1940. Pp. xiii, 322. Price: \$5.00.

This volume is the second to appear in the Judicial Administration Series, which is to consist of three studies sponsored by the National Conference of Judicial Counsels and is made possible by grants from the Carnegie Corporation of New York. The preceding work was devoted to a study of "Criminal Appeals in America", by Lester B. Orfield,¹ and its author there emphasized the three purposes of criminal appeals as being: to see that justice is done; to maintain consistent standards in the trial; and to develop the law of the jurisdiction.²

In the present volume, Dean Roscoe Pound but casually refers in his excellent bibliography to Professor Orfield's treatise, and then selects a different approach, that of history. The development of courts in America from 1620 to 1900 is sketched skilfully and accurately by one who obviously is at home in this field.³ Less than fifty pages are reserved for the systematic consideration of defects in the American system of courts as developed at the beginning of the Twentieth Century and for the presentation of a possible cure and remedy.

The historical introduction is in itself a valuable study which will be appreciated by lawyers and historians, and by all those who are tempted to draft legislation affecting the courts or to help shape rules for promulgation by the courts.

The defects in the organization of the American courts are summarized briefly in a single sentence:⁴

"Looking at the system as a whole, as it stood in the last century, the conspicuous defects are waste of judicial power, waste of time and money of litigants and public time and money because of hard and fast jurisdictional lines ill defined and frequently changed before judicial decision could draw clear bounds, hard and fast terms raising unnecessary technical questions and wasting the time of the courts, piecemeal handling of single controversies simultaneously in different courts, and general want of cooperation between court and court and judge and judge in the same court for want of any real administrative head."

These defects were discovered by Dean Pound prior to the publication in 1906 of his famous address entitled "The Causes of Popular Dissatisfaction with the Administration of Justice",⁵ in which he recommended the creation of "a single court, complete in itself, of which the inferior courts, at one end, the courts of general jurisdiction of first instance, and a single court of final appeal, at the other end, were to be but branches or depart-

1. Reviewed by Faught, Book Review (1940) 17 N. Y. U. L. Q. REV. 320; Harno, Book Review (1940) 88 U. OF PA. L. REV. 769.

2. The remaining volume in the Judicial Administration Series is to be entitled APPELLATE PROCEDURE IN CIVIL CASES, likewise by Dean Roscoe Pound.

3. The present reviewer had occasion to examine colonial court records in the preparation of his article, *Three Centuries of American Litigation* (1939) 13 TEMP. L. Q. 488.

4. P. 251.

5. 29 A. B. A. REP. 395.

ments.”⁶ The present volume expounds and expands the same proposed remedy:⁷

“Again, unification of the judicial system would do away with the waste of judicial power involved in the organization of separate courts with constitutionally or legislatively defined jurisdictions and fixed personnel. Moreover, it would make it the business of a responsible official to see to it that such waste did not recur and that judges were at hand whenever and wherever work was at hand to be done. It would greatly simplify appeals to the great saving not only of the time and energy of appellate courts, but to the saving of time and money of litigants as well. An appeal could be merely a motion of a new trial, or for modification or vacation of the judgment, before another branch of the one court, and would call for no greater formality of procedure than any other motion.”

The reader will realize how far ahead of the legal profession was the vision of Dean Pound when he began to write on this subject a generation ago. It is not the function of a reviewer to evaluate the soundness of a recommendation based on obvious scholarship and a lifelong study of a baffling problem. But he may be permitted to restate the three chief purposes of court appeals as formulated in the companion volume of Professor Orfield: that justice may be accomplished; that consistent standards may be maintained; and that the law of the jurisdiction may be developed. The attaining of these objectives in the three major fields of criminal law, of civil suits in law or equity, and of administrative law, may well involve the broad use of judicial power and the expenditure of time and money by litigants and by the public. It may then become a question of degree as to whether money, time and judicial power are or are not being wasted.

It should not be difficult for a state to avail itself of the tools which are at hand whereby it may add a cubit unto its stature, through the wise use of the rule-making power when conferred upon its highest court,⁸ through the careful drafting of statutes defining jurisdictional lines between courts, and through the exercise of administrative supervision over all courts by the court of last resort. Marked achievements may be attained through the use of these new tools, without obliterating the historic distinction between a state court of last resort and a series of courts distributed geographically throughout the state, the individual judges of which could be made available for service in any part of the state.

Albert Smith Faught.†

CASES ON COMMERCIAL AND INVESTMENT PAPER. By Roscoe Steffen. The Foundation Press, Inc., Chicago, 1939. Pp. xxxviii, 965. Price: \$6.00.

In this new set of cases, Professor Steffen has brought together most of the forms of so-called commercial paper which, aside from the usual forms, includes the bond, stock certificate, bank-notes, money and bank paper.

6. P. 272.

7. P. 288.

8. See Pennsylvania Act of June 21, 1937 P. L. 1982.

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He has divided his collection into 46 sections, of which upwards of 38 deal primarily with bills and notes, 5 with the so-called collection problem and 3 with banking. His additional material is closely related to the main subject and while few, if any, collections treat it directly, most instructors of the subject bring it into their courses as a part thereof. All that the editor has done, then, is to emphasize it by text, case and note. While he was at it we think he might well have added some little material upon the negotiable bill of lading and warehouse receipt, as these may easily come within the "newer instruments". Both are important, form a sizeable basis for bank credit, and are extensively used.

But his collection is unique in several respects, and betokens an unusual approach to the subject for both instructor and student. The Professor rightly insists that a new work must "contribute something—in arrangement, in selection of materials, in scope or method—not previously done or done as well", and so insists that his approach to the subject has been taken in an attempt "to provoke as broad a study of the mechanisms and processes by which we have been giving increasing liquidity to our national wealth". To secure this he has (a) re-aligned the cases to show more clearly the growth of the subject generally, (b) presented each type of paper as it came "on the scene", (c) combined his material on "negotiability" and the "contract of the parties" in such form as to bring them together, the which, by the way, every instructor does in the classroom whether the material is brought together or not, (d) included material covering bonds and share certificates, (e) added substantial material on banking and (f) approached the subject of security by a most satisfactory combination of the law of suretyship and that of bills and notes.

Each of his 46 sections carries an introduction by way of text, so that some 70 pages of compiled text appears. We here note a growing tendency on the part of instructor-compilers to combine text with cases. It might well have been done long ago, if for no other reason than as a time saver to the instructor, who may well insist upon a careful notation of it by the student as extra-class-room preparation. Some of our ancient brethren may insist that this might well be left to the student to "dig out" for himself, but, in our opinion, the time thus required may be more properly devoted to "the law of the case".

The most important and somewhat startling innovation is the notes, which together take up some 175 pages of six-point type. These notes are not the garden variety of citations "in accord" or "opposed", but largely reflect the editor's comments upon the particular case it accompanies, together with comparisons and extensions of the principle of the reported case. It would, therefore, seem that the editor has very largely eased the way for both instructor and student. Ordinarily it is an instructor's job to criticize and compare, calling upon the student to make his notations and comparisons elsewhere than in the classroom. This wealth of notations is, in the writer's opinion, a mistake, assuming the work is intended to be used as in other subjects. As compiled, the work is too large to allow "free scope" to the instructor to criticize, amplify and compare the principal case as he would ordinarily do, unless the notes are to be omitted. If included, the classroom time usually devoted to the subject (60 hours) will permit little, if any, digression from the material in the book.

The editor's selection of principal cases is most excellent. With his early cases he has combined later and more modern cases, as he needs must in the light of the Negotiable Instruments Law. We applaud his comment that "well seasoned cases have not been required to make way for others whose only virtue is their newness". As principal cases, he has brought

together some 240, many of which have been "edited" or condensed with good effect. He has been lavish with cases in his notes, however, as something over 800 of them have been directly commented upon, while many others have been used as "contrasts".

Professor Steffen has gone further in his emphasis of the *Price v. Neal* and *Pain v. Packard* doctrines than any casebook editor we know of, and has brought together under the respective titles a number of cases, which, with his notations thereon, easily serve to place the subject in a complete and attractive form. That the two doctrines have created "food for thought" goes without saying, and that they afford an opportunity for extended discussion and comment is also true. His emphasis is therefore justified.

We are somewhat amused at what we believe to be his invention of the title "Fly Transfer". Inquiry "on the street" from both brokers and bankers brings the answer—"We never heard it before." It is not likely to become a part of "street" parlance.

In the belief that the student will find it advantageous to have the statutes before him at the time he is considering the case, the editor has collected his "statutory material", bound it separately and made it "a removable appendix". This material has been edited with care, cross references, statutory (state) variations, commissioners' notes and suggested or proposed amendments having been added. The idea is a good one, if the learned instructor can get his students to so use it. The writer recalls with some interest that when, some few years ago, he took up the course on the United States Constitution, one of the most difficult problems confronting him was to get his students to read the Constitution itself.

We believe Professor Steffen has succeeded in his declared purpose and that a study of the subject in the manner and form indicated in his collection can but bring to the student a wider horizon and an enlarged perspective.

Leslie J. Tompkins.†

DIPLOMATIC CORRESPONDENCE OF THE UNITED STATES. INTER-AMERICAN AFFAIRS, 1831-1860. Selected and Arranged by William R. Manning. Carnegie Endowment for International Peace, Washington, 1939.

TEXAS AND VENEZUELA (Vol. XII). Pp. xxxiv, 858. Price: \$5.00.

Few fields of diplomatic history have been so fully explored and so extensively recounted as that relating to the Republic of Texas, but the work has been done by men in academic life or by men academically minded. The resulting picture has an atmosphere of unreality except that Tyler, Upshur, and Calhoun did sit in easy chairs and well appointed offices in Washington and dealt with affairs as so many pawns. The diplomatic agents of the United States in Texas and the officials of Texas were plain people who lived and worked under the crudest and most primitive frontier conditions. This is what we learn from the perusal of the despatches in this volume. The resulting picture is far from academic and throbs with elemental reality. The plain, mediocre men who represented the United States in Texas did a surprisingly good job under most trying and irritating conditions and kept remarkable clear minds and cool heads. The Texan officials, most of them untrained and inexperienced in the technique of international relations, confronted problems that would have been worthy of a Talleyrand or a Metternich and steered a shrewd course to a satisfac-

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tory goal. What a picture is furnished by Houston and the American agent debating the problems in an open log cabin on the lonely Texan plain till the wee small hours and then turning into adjoining bunks!¹ Then, too, danger, disease, and death were on every hand. Long and perilous journeys on horseback by fever stricken officials were in the line of duty and some paid the price with their lives.

The history of the Texan Republic presents one of the most perfect pictures of nineteenth century imperialism in operation. Texan independence and the Great Trek in South Africa occurred in the same year. In the ensuing year occurred the Canadian Rebellion and the foundation of Melbourne. Bugeaud's campaigns in Algeria and the First Afghan War were being fought while the Texan question was pending. Texas, with its 250,000 square miles and 50,000 frontiersmen harassed by Indians, lay between Mexico and the United States, each with its interest and designs, while Britain and France fenced for trade and empire. It was a fine drama. Texans may well be proud of their part, and the United States has been too apologetic about its motives and acts—even though it is confessed that Calhoun played his hand badly. The loyalty, faithfulness, and intelligence of the American agents in Texas, of whom A. J. Donelson was probably the best, were commendable. Their suspicion and fear of the British bogey were characteristic of the time, as was their belief in manifest destiny. Indeed, Donelson came near anticipating O'Sullivan's coinage of the phrase by a year. In his despatch of 10 December 1844, he wrote, "If the United States gain Texas, it will be because that same free spirit by a law of destiny naturally returns to a congenial association" The evidence of Duff Green's potent influence for annexation is significant.

The Venezuela despatches are less satisfactory reading. The diplomatic representatives of the United States in that country were fully as loyal and competent as those in Texas but they were set a petty task which reduced them to pettifogging. The Aves Island controversy reflects no credit on those involved. The truculent policy of Secretary Marcy in the matter was pertinaciously prosecuted by his agent Eames. Fortunately Secretary Cass ultimately took a wiser view and the issue was promptly and reasonably closed. Perhaps he had sufficient sense of humor to realize that the Venezuelan diplomats had read the United States a well-deserved lesson in good manners toward our less favored sister-republics. The documents also include interesting premonitions of the Guiana boundary controversy. A footnote contains a remarkable unofficial communication from Fermin Toro, a former Venezuelan minister, dated 20 May 1848. Its clarity of vision is illustrated by the following sentences, true then, truer now:

"This internal labor has ended for the United States, and however its Government may endeavor to follow its traditions, a new force of expansion impels it to exercise the powerful means of its foreign influence. The old maxims of the cabinet at Washington, regardless of the respect which they deserve and the success with which they have hitherto been crowned, begin to be found narrow for the administration of a power which today impresses a new character on world politics.

All Europe is disturbed; its old social bases, which were believed indestructible, today appear decayed and unstable; their political doctrines which were considered as the last expression of the civilization of the century neither sustain the governments nor offer better organ-

1. Donelson, 24 November 1844.

ization to alarmed society; political economy sees its axioms disproved; and what is called free competition, industry and liberty, the people, having risen en masse, call tyranny, vassalage and oppression."

In closing, Dr. Manning's admirable editorial work must again be commended.

George Matthew Dutcher.†

CASES ON THE LAW OF TRUSTS. By George Gleason Bogert. The Foundation Press, Inc., Chicago, 1939. Pp. xlvii, 879. Price: \$6.00.

Professor Bogert has divided this book, which is one of the University Casebook Series, into four chapters. The first, entitled History, is very short, consisting simply of two paragraphs of references to historical articles and texts followed by the Statute of Uses. Standing alone it is inadequate. It is possible to consider the cases in Section 13 at page 244 on Active and Passive trusts at this point. The instructor will develop the historical settings as he wishes. In the second chapter the author deals with the creation of trusts, not express trusts alone, but also resulting and constructive trusts. The third chapter consists of problems of trust administration and the fourth of remedies available for trust enforcement.

This arrangement of materials caused some misgivings when the book was being considered for adoption. For example, the constructive trust is not treated consecutively and as a unit. In fact materials on that topic are scattered through the three main chapters. In chapter two the Statute of Frauds and Statute of Wills cases are found, in chapter three the cases involving the duty of loyalty of the trustee and in chapter four the tracing of trust funds cases, and in each instance the constructive trust of course must be discussed. One could not avoid a fear that confusion would be caused in the student's mind by such a piecemeal treatment, or that much time would be consumed in making sure that the students were getting a complete picture of this all-important device. Experience in the use of the book, however, has dispelled such fears. In fact the plan proves to be an ingenious one. First the student studies the constructive trust as a remedial device in situations where the express trust fails and thus, incidentally, contrasts it rather sharply with the express trust, then when considering administrative problems he sees it again utilized, at times almost dramatically, to work out justice, as when it is used to compel loyalty in a trustee, and finally he sees it, when the beneficiary's rights to follow trust fund is reached, again resorted to often as a means of defeating cunning and gross fraud.

Similarly, there is no unified presentation of the resulting trust. Instead cases dealing with the three classes of resulting trusts are scattered in three different portions of the book. After one case on page twenty-six, with which it is possible to contrast the common purpose of the court of equity in enforcing both the express trust and the resulting trust, that is, both as intent enforcing trusts, and in which case the classes of resulting trusts are revealed, there follow eight cases on purchase money resulting trusts. Resulting trusts caused by failure of express trusts are not brought together anywhere but are scattered from pages 116 to 331, and are considered incidentally with other problems. While the resulting trust respecting surpluses left over after the express trust is complete is found near the

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end of the book, at pages 632-635. Some considerable effort is required on the part of the instructor if the class is to achieve a clear unitary understanding of the various classes of resulting trusts. It is believed that one could bring these cases together for study without doing too much violence to Professor Bogert's general plan.

There is no separate chapter in which the trust is distinguished from other jural relationships, a method frequently employed by casebook builders following the pattern of Dean Ames in his famous casebook on this subject. As stated in the preface, however, this book contains materials with which an instructor so desiring could contrast satisfactorily the trust with eight other jural relations as a preliminary study. No one would neglect the opportunity to stress these distinctions when the cases are reached in their regular order, and it is believed the plan here used is as effective as an introductory chapter dealing with distinctions, and that well chosen references for supplementary reading afford an effective method of handling this matter.

Likewise, if one using this book desired to stress the various functions for which the trust may be used, he will find eight such functional uses supported by from one to five cases each. The fact that these cases are not assembled in one chapter seems to the writer to possess an advantage, in that the instructor can repeatedly keep before his class the fact that as a lawyer he must know how to make use of the trust and what he can accomplish with it, and it is believed that quite as satisfactory results can be attained as by collecting these cases in a separate chapter.

There is a fine balance in the selection of cases between the older well known cases and those of recent date. Two cases chosen were decided before 1800, ninety-one were decided between 1800 and 1900, ninety-eight between 1900 and 1930 and one hundred and three since 1930. So large a proportion of recent decisions presenting the trust problem in its current fact setting is very stimulating to a class. There are, however, a sufficient number of the old landmark cases to give solidarity to the cause and to permit an emphasis upon the historical importance of the subject. In the selection of cases there is also a wide geographic distribution.

This is a casebook, no other materials are contained therein except in footnote reference and in the appendix. It is believed that this is a weakness. There are several areas in the law of trusts wherein much time could be saved and more information given by the use of text materials than can be presented by cases. For example, the qualification, appointment, removal, etc. of trustees, compensation of trustees, some of the questions respecting beneficiaries, the duty of the trustee respecting the keeping of records and accounts and giving information to the beneficiary, some of the investment problems and several other topics could be presented in narrative form with considerable saving of time.

In the appendix, Professor Bogert has made easily available considerable portions of the English Trustee Act of 1925, The Uniform Fiduciary Act, The Uniform Principal and Income Act, The Uniform Trustee's Accounting Act, The Uniform Trust Act, The Uniform Trust Fund Act, Regulation F. issued by the Board of Governors of the Federal Reserve System, and the appendix thereto, together with their statement of Principles of Trust Institutions. These materials can be effectively used in connection with the cases as pointing trends in the law, but they are perhaps even more valuable as indicating the desirability of a supplementary legislative solution of many of the difficult and conflicting areas of the law of trusts.

There is also found in the appendix a form of a testamentary trust and forty clauses which are recommended for grant of maximum discre-

tionary powers to a trustee. By placing some emphasis upon these materials an instructor can impress upon his class the necessity of care and skill in draftsmanship.

The book opens with a complete table of cases and closes with a very usable index.

Not infrequently the review of a casebook will close with the observation that the value of the book as a teaching tool can be proven only by its use. I have used this book during the past year with two classes and I am pleased with it. The size is right, the cases are very well selected and edited, the notes are suggestive and fruitful, and the cases stimulate discussion to the degree that class and instructor alike often manifest surprise when the class bell ends a session. It is flexible to that degree that it can be used in making almost any approach to the subject which an instructor may desire. It is a good teaching tool.

Harry W. Vanneman.†

LEADING CONSTITUTIONAL DECISIONS. (Seventh Edition). By Robert Eugene Cushman. F. S. Crofts & Co., New York, 1940. Pp. xiv, 354. Price: \$2.00.

This is a casebook, plus. Which is to say that it contains a great deal of valuable material of which the compiler and editor is the author. Each case is preceded by a carefully prepared note giving the historical background and immediate setting of the reported case and, in several instances, also a brief account of the subsequent course of judicial decisions on the particular subject. These introductory notes constitute a definitely illuminating feature of the book and hence add much to its value as a manual.

The cases are grouped under ten headings: I. Amendments to the Constitution; II. Principles of the Federal System—National Supremacy; III. Federal Citizenship and the Bill of Rights; IV. Restrictions on the States in Behalf of Civil and Political Rights; V. The President and Executive Power; VI. The Judiciary; VII. Powers of Congress—Nature and Construction; VIII. Commerce; IX. Taxation; X. Territories.

The Table of Cases lists not only those reported but also those upon which comments are made in the notes and those quoted or discussed in the reproduced opinions, each category being indicated by a different style of type.

Under "Amendments" the quite recent case of *Coleman v. Miller*,¹ involving the validity of the ratification by Kansas of the Child Labor Amendment, is reported. Of the four opinions handed down in that case, the editor, of course, includes only that of the majority. Yet the concurring-dissenting opinion of Mr. Justice Black, in which opinion he, and the three other justices who joined in it, expressed the view that the question of the validity of the adoption of an amendment is purely a political one, and to be decided by Congress alone, impressed this reviewer as being so definitely unsound and of such momentous import that he essayed a challenge of it in an article printed in the July, 1940, number of the *American Bar Association Journal*.

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1. 307 U. S. 433 (1939).

Following the reprint of *Marbury v. Madison*,² the editor reproduces the opinion of Judge Gibson in *Eakin v. Raub*,³ prefacing the opinion with a note which begins thus:

"The power of the Supreme Court to declare acts of Congress unconstitutional has so long been an integral part of our constitutional system, and Marshall's reasoning in the case of *Marbury v. Madison*, *supra*, is so impressive, that it is easy to lose sight of the fact that a most cogent argument may be made against the establishment of the power" (italics supplied).

Frankly, it was a surprise and a disappointment to find in the book under review such an expression as that contained in the italicized words of the foregoing quotation; and still more of a surprise that the learned and discriminating editor should have selected Judge Gibson's opinion as an illustration. That opinion, as this reviewer reads it, even taken by itself, is a singularly vague, fallacious and unconvincing one; and when set alongside Marshall's lucid and irrefragable argument in *Marbury v. Madison*, the contrast reveals that its lack of logical validity is complete.

Article VI of the Constitution declares that that basic instrument shall be "the supreme law of the land", and—to this reviewer's mind, at least—it is inconceivable how it would be possible for the court, in a case involving the question, to give effect to that categorical declaration except by treating as null and void any legislative enactment which in its judgment contravenes the Constitution. It is regrettable, indeed, that so truly able a jurist as was Judge Gibson should have had such an off day; and it is gratifying to know that he recanted later. For a recent crystal-clear and, as it seems to the undersigned, irrefutable enunciation of the principle established by *Marbury v. Madison*, see page 544 of *Adkins v. Children's Hospital*.⁴

We note with some surprise the absence from the book of *Erie R. R. v. Tompkins*⁵ and *O'Malley v. Woodrough*.⁶ In each of those cases former decisions of much importance, one of them nearly one hundred years old, were overruled. Perhaps the fact that the book is designed primarily for the use of students of government rather than of law in the juris prudential sense of that term accounts for the omission of the two cases mentioned.

In the *Erie Case*, *Swift v. Tyson*⁷ was expressly overruled. In the earlier case it had been held that the Judiciary Act of 1789, providing "That the laws of the several states . . . shall be regarded as rules of decision in trials at common law in the Courts of the United States, in cases where they apply" had reference only to state statutes and the construction placed upon them by state courts. In the *Erie Case* that doctrine, of long standing but often criticized, was definitely and formally disapproved, the Supreme Court holding that there is no federal common law, and that except in matters governed by the Federal Constitution or by Acts of Congress the law to be applied in a case is that of the state, whether enacted by its legislature or declared by its highest court.

In *O'Malley v. Woodrough* the Supreme Court virtually overruled *Evans v. Gore*⁸ and, in this reviewer's opinion, thereby performed an act

2. 1 Cranch 137 (U. S. 1803).

3. 12 S. & R. 330 (Pa. 1825).

4. 261 U. S. 525 (1923).

5. 304 U. S. 64 (1938).

6. 307 U. S. 277 (1939).

7. 16 Pet. 1 (U. S. 1842).

8. 253 U. S. 245 (1920).

of retrieval greatly to its credit. In the *Evans Case* it had been held that Article III, Section 1, of the Constitution, providing that the compensation of federal judges "shall not be diminished during their continuance in office", operated to exempt such judges from the duty of including their salaries in gross income when making their income tax returns. That far-fetched interpretation of the constitutional provisions was rejected unqualifiedly in the *Woodrough Case*. A full discussion of the subject may be found in "Tax-Exempt Judicial Salaries" in the October, 1939, number of the *American Bar Association Journal*.

The high merit generally of Professor Cushman's book would seem sufficiently attested by the fact that the present is the seventh edition and the thirteenth printing of it. Its quality entitles it to such recognition.

James Quarles.†

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BOOK NOTE

THE LAW IN QUEST OF ITSELF. By Lon L. Fuller. The Foundation Press, Inc., Chicago, 1940. Pp. vii, 147. Price: \$2.00.

The perennial controversy between the natural law thinkers and the legal positivists with respect to the proper approach to jurisprudence receives a somewhat different treatment in this stimulating book, consisting of three lectures recently delivered by the author at the Law School of Northwestern University. The problem of legal philosophy is defined from a pragmatic point of view and is thereby related to the everyday life of the practicing lawyer, student, teacher and judge.

Legal positivism is described as an attempt to find an exclusive authority for law in law itself and therefore distinctly separates what the law is from what it ought to be. On the other hand, natural law theorists look to ethical or practical goals for a justification of legal principles and consequently define the legal process in terms of a flow between what the law ought to be and what it is.

After a brief historical review of the principal legal positivists from Hobbes, the founder of this school of thought, to the so-called modern realists, Professor Fuller criticizes their fundamental philosophy because of its emphasis on forms and sanctions and its failure to examine the content of legal rules of conduct.

The average student and practicing lawyer will no doubt experience some difficulty with many passages, which treat jurisprudential problems in the light of a background in legal philosophy which this type of reader will not have acquired. Generally, however, the style is easy and greatly enhanced by a constant reference to modern "applications of human energy in the law" and their relationship to orthodox jurisprudence. By this effort to justify natural law philosophy in terms of the present day process by which legal principles are developed, the author has made a valuable contribution to legal thought.

Leon S. Forman.†

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