

## REVIEWS

READINGS IN JURISPRUDENCE, selected, edited, and arranged by Jerome Hall.<sup>†</sup> Indianapolis: The Bobbs-Merrill Company. 1938. Pp., 1183. \$7.50.

Here in 25 chapters, 214 selections, and some 1200 pages of *readings*, designed primarily to be used "in schools as a source book," Professor Hall seeks "to integrate jurisprudence in each of its principal subdivisions, with relevant general fields of philosophic and scientific thought" and so to promote "a general understanding of some of the foundations of jurisprudence." Working under the three main rubrics of "values," "logic," and "science," he hopes "to relate jurisprudence to problems dealt with in other parts of the curriculum," "to implement insight into actuality, and to lend a general cohesiveness to broad ramifications of thought."

Part One on Philosophy of Law (8 chapters, 332 pages, 79 selections and text notes) has for its objective "nothing less than the deliberate formulation and cultivation" by each reader "of his own legal philosophy." What is the "relationship" between "law" and "right," "justice," "utility," "value," "ethics," "morals," "ends," "social purposes," and so on?<sup>1</sup> "To what extent is law, itself, an independent system of values? What is meant by law as 'normative'?" What have been some of "the principal philosophic approaches to, and analyses" of "the general problems of end-seeking" and of "value expression"? Chapter headings are Natural Law, Historical Jurisprudence, Transcendental Idealism, Utilitarianism, Social Functionalism, Pragmatism, Further Aspects of the Conflict between Empiricism and Idealism, and Idealism in the Judicial Process.

Part Two on Analytical Jurisprudence (introduction, 7 chapters, 334 pages, and 55 selections) is designed to offer "formal analysis" of a "general field," in which

"the need for expert knowledge is more apparent than elsewhere" and also some "understanding," in the light of recent developments, "of logical method in its application to law." The section is prefaced by an italicized quotation from John Austin,<sup>2</sup> who urges upon students "a well-grounded knowledge of the general principles of jurisprudence" to enable them to see "Law as a whole" and to avoid a mere "beggarly account of scraps and fragments." Chapter headings are Logic and Law, The Nature of Law, Terminology and Basic Concepts, The Syllogism,<sup>3</sup> Analogy, Classification, and Formal Science.

Part Three on Law and Social Science (introduction, 10 chapters, 502 pages, and 80 selections) puts "the emphasis" upon "an emerging, distinctive, socio-legal discipline." Students "who wish to think relevantly to the modern scene, must come to grips with the problem of the relations between law and social science." The term "science of law" provides "the arena within which the whole sweep of jurisprudential thought must be reexamined, correctly integrated, and synthesized." This section is prefaced by a quotation from Justice Holmes,<sup>4</sup> who suggests that from law, "the roads are plain to anthropology, the science of man, to political economy, the theory of legislation, ethics, and thus by several paths to your final view of life." The task of the thinker is to show the "rational connection" between his "fact" and "the frame of the universe." Chapter headings are Science and Scientific Method, The Nature of Social Science, The General Theory of an Empirical Science of Law, Primitive Law, Law and Custom, Social and Legal Institutions, Social Control—Non-legal and Legal, Legislation and Social Problems, The Judicial Process, and Methods of Research.

So much for the purposes and general outline of Professor Hall's vast undertaking. To criticize in detail his selection of

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<sup>1</sup> This is a rough paraphrase of two of Professor Hall's prefatory sentences.

<sup>2</sup> Hall, 333.

<sup>3</sup> Written specifically for this book by Paul E. Treusch.

<sup>4</sup> Hall, 667.

materials would be futile. Some readers may justly wonder whether a single footnote reference is enough of Arnold and Robinson;<sup>5</sup> others may wish for a little Yntema to stir with the Morris Cohen; and so forth. Still, by and large, Professor Hall has almost everything—granting his premises and accepting his objectives—that anybody could want. His index lists 154 authors; it will be a rare reader who does not come across some new names. Generally, the materials are well arranged, with authors neatly played off against each other; *Lunberg v. Mac Iver*, *Timasheff v. Malinowski*, *Elliott v. Duguit*, *Cook v. Adler*, *Oliphant v. Goodhart*, and so on.

The editing of the materials raises more question. It borrows too much from the technique of the fast moving motion-picture preview. Let us look at the first chapter on Natural Law. There the selections are: Plato, *Laws*, ½ page; Plato, *Republic*, ½ page; Aristotle, *Politics*, 1½ pages; Aristotle, *Ethica Nicomachea*, ¾ page; Aristotle, *Rhetorica*, 1½ pages; *Wandelband*, 9½ pages; Cicero, *De Re Publica*, 1 page; Cicero, *De Legibus*, 4 pages; Maine, *Ancient Law*, 4 pages; St. Thomas Aquinas, 13 pages; St. Germain, 4½ pages; Suarez, 1½ pages; Grotius, 3½ pages; Hobbes, 5 pages; Maine, *Ancient Law*, 2½ pages; Burlamaqui, 9½ pages; Rutherford, 6½ pages; Blackstone, 4½ pages; Lorimer, 2¼ pages; Miltner, 1½ pages; Hill, 2¾ pages.<sup>6</sup> To this kaleidoscopic hopping, now add severe internal editing—throughout the book—of individual selections. So many excisions are made, for example, from Professor Underhill Moore's definitive review<sup>7</sup> of the very kind of book Professor Hall is editing that a reader, who does not know the original article, must miss its full blast.

What of the book as a teaching device? It is a superb bibliographical source; whatever a teacher's "world views," he

<sup>5</sup> Id. at 269.

<sup>6</sup> Here are 19 additional citations, 5 quotation notes, and 3 bibliographical notes. In his first footnote Professor Hall suggests that a student should, *inter alia*, differentiate "the various interpretations of Natural Law from each other," determine whether a writer is "discussing fact or ideal," ascertain the "similarities between the older systems of Natural Law and current discussions of idealism," and keep in mind the

should be able to use many sections of the book as bases for discussion of assigned topics. To teach straight through the book would be practically impossible; the repetition would, long before the end, choke both teacher and students. With a small and able class, the book could possibly be made the basis for an excellent experiment in "debabelization," in what Professor Harold D. Lasswell has called "symbol analysis."<sup>8</sup> Were some such analysis carefully worked out and applied to the whole of the book, it is probable that its "communicable" content could be restated in a very few pages.

For a random test, let us take a passage from Kelsen.<sup>9</sup> Here are 10 1-2 pages of good looking type. What are the author's "concept" words? What his "index" words? Which of his statements are "naturalistic?" Which "preferential?" Checking the passage hastily, without any pretense to exactness, we find "law" appears 77 times, "norm" 39, "theory" 30, "science" 29, "nature" 14, and "society" 4. Other obvious "concept" terms are "reality," "value," "essence," "justice," "ideology," "the Ought," "the Is," "normative entity," "the legal order," "mental content," "meaning" and so forth. Among the adjectives that roll are "pure," "positive," "fundamental," "self-evident," "real," "subjective," "objective," "mental," "natural," "absolutely right" "transcendental," and "meta-legal." "Index" words are almost wholly lacking or cast upon a level of abstraction practically as high as that of the "concept" terms. "Society is . . . something wholly different from nature, since an entirely different association of elements." The "real science of law" has been lost because "jurisprudence" has, "in wholly uncritical fashion," become "mixed up with psychology and biology, with ethics and theology." And so on. An astute semantician, like Mr. Stuart Chase, would undoubtedly translate most of this

question: "What social or economic conditions, what desire for reform, what objective may have stimulated the writer's insistence upon and interpretation of Natural Law?" Worthy advice; but a large order.

<sup>7</sup> Moore, *Rational Basis of Legal Institutions* (1923) 23 Col. L. Rev. 609; Hall, 961.

<sup>8</sup> Lasswell and Blumenstock, *World Revolutionary Propaganda* (1939) Chapter VII.

<sup>9</sup> Hall, 425-436.

into blah, blah, blah; he could not distinguish "preferential" statements from "naturalistic" or tell why the author thought what he was saying was important. The whole passage has all the external appearances of a vast exercise in repetitive ambiguity. Nor is this passage atypical. The book is full of such stuff.

Even some of Professor Hall's footnotes have about them an air of indefinable mystery. In one<sup>10</sup> his "major problem" is "the positive construction of a theoretical basis for an empirical science of law." Having in "progressive steps" (the first 3 chapters of Part Three) sought "to analyze the most important meanings of an empirical 'science of law,'" he poses his most 'insistent' questions: "Is the behavioristic interpretation of 'law' essential to the construction of an empirical science of law? Or, is that interpretation not only not essential, but also fallacious even *with reference to the purpose in hand*?" By keeping this question in mind, the reader may (in working through the next 6 chapters) "finally achieve an integrated point of view which he can defend not only in its own terms, but also upon the basis of positions previously determined." Earlier in the book he ascribes the reputed lack among American "legal realists" of interest in value judgments to pre-occupation with this same end, "analysis of the theoretical basis of an empirical science of law."<sup>11</sup>

In a reprint of one of his own articles Professor Hall states a goal more understandable than any we have listed above: "Realization of the nature of legal rules and their administration, and of present, social problem-solving, as dependent upon discovery of specific ends and means, places the emphasis where it needs to be placed, namely, upon the most detailed empirical research possible by the most creative minds that can be listed."<sup>12</sup> In 1929 Professor Karl Llewellyn picked as the "most immediate aim" of legal research for "the next ten years" the "checking up on the effects of law in life."<sup>13</sup> It is now 1939. The ten years have passed;

we have had a great fanfare of restatements, ideologies, and folklores and even of propaganda for "scientific method." Yet the list of "factual studies" which Professor Hall offers at the end of his book is pitifully small—eleven items and some of them of no great significance.<sup>14</sup> Is it conceivable that spiritual exhortation is not exactly the best possible training in scientific method? There may be more than passing truth in Professor Oliphant's suggestion that "the here-and-now most useful angle of approach to the study of law" is not "to expound either a theory of knowledge or a philosophy of life."<sup>15</sup> It is perhaps high time that law teachers should begin to acquire, and to impart, training in specific scientific skills.

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UNIONS OF THEIR OWN CHOOSING, by Robert R. Brooks.<sup>1</sup> New Haven: Yale University Press. 1939. Pp. xiv, 296. \$3.00.

The A. F. of L.-C. I. O. peace negotiations, the amendments to the Act now pending consideration in Congress, the recent decisions of the Supreme Court in Board cases, and the continued barrage of propaganda and publicity all combine to make this study of the National Labor Relations Board and its work exceedingly timely. Mr. Brooks has not attempted, primarily, to write a legal text for lawyers practicing before the Board, although his effort contains much that they may find valuable. He has rather set out to discover the value of the Board's work to labor, industry, and public. To do so it has been necessary to study that work in some detail. Brooks has done a carefully considered job.

The opening chapter of the book is sure to come as a revelation to many. Because the press quite generally places emphasis on the sensational and the violent in the news, and also, as Brooks indicates, because so much of the press has been violently anti-Board, about five per cent of the total number of Board cases get sub-

<sup>10</sup> Id. at 873. Italics Professor Hall's.

<sup>11</sup> Id. at 257.

<sup>12</sup> Id. at 1075.

<sup>13</sup> Id. at 235.

<sup>14</sup> Id. at 1169.

<sup>15</sup> Id. at 754.

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