

Furthermore, the novice seeking the "feel" of the subject may find that the mass of the material itself involves him in such minute detail — particularly in the latter half of part two — as to make it difficult to follow the continuity and to see the well-worked-out plan of development. The decision as to its best utilization must rest on the balancing of these features. My own view is that it can very profitably be used as a source-book for courses, but that only a few students, instructors or attorneys will find it desirable to read it "straight through." Yet, I believe the author has done remarkably well the task he set out, and that he himself might concur in these evaluations.

Except for the observation that the section dealing with the characteristics of the scientific method do not seem on equal quality with the remainder of the book, the sole criticism relative to content is that the detailed elaboration of the media of the analytical method seems unwarranted by the prospective interest of readers. The deviation occurring in this portion of the writings from the usual vivid and attractive quality of the material seems not wholly attributable to the formal, automatic and mechanical attributes of the analytical method itself. In spite of my own enjoyment particularly of the first sections of the treatise and in spite of the relative allotments of material, it is my own prediction that the unrestrained reader will find himself turning about in the pages of part three and will be more than pleased with the quality and selection of articles he finds there.

ANNA FAYE BLACKBURN

JURISPRUDENCE — *Francis P. LeBuffe and James V. Hayes.*  
*Fordham University Press, New York. Third Edition, Revised, Augmented. 1938*

Today many parts of the world have adopted the totalitarian philosophy of law. "Man as man, with God-given, natural, pre-State rights, is, we are told, an exploded myth." "Against this totalitarian, absolutist philosophy of law this book stands in flat contradiction." This is the theme of "Jurisprudence" by LeBuffe and Hayes, as expressed in the preface to this third edition. This work on Jurisprudence is a revision of a digest of lectures published in 1924. The volume is committed to the development of Scholastic Jurisprudence, "much of which lies at the very heart of our American Jurisprudence."

This development necessarily entails an investigation of the Natural Law, for it "is first in order of thought and superior in way of authority

and ultimate as the source of all obligation." The authors point out that men have quite generally held that there is a Natural Law. Such Law has been misinterpreted, but the fact that it has been misinterpreted is no reason for denying it. There is sufficient proof for the existence of Natural Law. Such proof may be adduced either from reason alone, from general history, or from legal history. Proofs from reason alone may be found in Ethics, Rational Psychology, and Comparative Psychology. Historical proof is found in the "universality with which peoples at all times have admitted a Natural Law."

In legal history, while it is not maintained that the decisions were based on Natural Law, still the judges recognize the Natural Law behind the Positive Law. The authors point out that while Positive Law is not necessarily a conclusion from the Natural Law, nevertheless Positive Law should not contradict Natural Law. Whenever such a contradiction exists, Positive Law must give way to the superior Natural Law.

In addition to Scholastic Jurisprudence, which the authors maintain is "the traditional philosophy of American Law," three other schools of Jurisprudence are prominent in recent American legal thought, *viz.*, Sociological Jurisprudence, Economic Determination and Realism. Each of these schools is analyzed. The Sociological Jurists are said to "fail to accept a sound philosophy which establishes an objective standard of value wherewith to measure the propriety of suggested human interests." The Economic Determinists are accused of attempting to prove too much when they urge economic motives as the exclusive influence in human action. They are said to over simplify the problem. The authors are particularly critical of the Realists. The Realists are charged with failing to sift the evidence impartially and are said to lack a true scientific attitude. The authors believe that one is justified in inferring that the Realists desire the collapse of the whole common law theory and the replacement of such theory with "a theory of judicial free decision untrammelled by precedent or principle."

Turning from the schools of American Jurisprudence to Totalitarian theories of law, the authors undertake an appraisal of the Fascist, the Nazi, and the Communist concept of law. They point out that while Fascism theoretically rejects the doctrine of Natural Law, many parts of the Fascist program are in harmony with Natural Law. Under the Nazi state, natural law is not recognized and "natural rights are non-existent." Under the Communist concept of law there "is no notion of fundamental natural justice" and, as against the state, "no natural rights are enjoyed by the citizen."

Looking to the implications of law, the authors state that law always implies "oughtness" or obligation, sanction, and permanency or stability. Scholastic Jurisprudence explains this "oughtness" on the basis of the right of the superior to command obedience, the actual exercise of the superior's right through a command, and the pressure on the will, springing from the knowledge that the command ought to be obeyed. Kant's view that the obligation of law lies in the "categorical imperative" and the "force" theory of Hobbes, Spinoza, Jhering, and Bentham are rejected.

The origin of positive law may be (1) juridical, (2) genetic, and (3) historical. The effect of Positive Law, when enacted, is to impose a duty and to confer a right. All rights come from law, but the fundamental law from which all other laws derive their force and efficacy is the Natural Law. Since there is a Natural Law, there are natural rights, and since these natural rights are independent of and prior to civil law, civil law is obliged to respect them and is limited by them. The State is not the ultimate source of natural rights.

Since we have "rights," we have a right to vindicate such rights. There can be no conflict between rights and duties since every right or duty is derived ultimately from Natural Law which will not support a contradiction. Apparent conflict arises only because rights are not properly understood.

The notion of Justice is founded in the objective order of rights and duties, and, since rights and duties are the effect of law, Jurisprudence necessarily concerns itself with the analysis of the concept of Justice. Justice is concerned with the relations of individual to individual, of the State to individuals, and of individuals to the State.

The State comes into being by consent of the people and the right to determine the form of government thereof is theirs. But civil authority imposed by such government when constituted is subordinated to the dictates of the Natural Law.

When appraising this volume one should bear in mind that the authors are apologists for Scholastic Jurisprudence. They are permeated with the tenets of Scholastic Philosophy, with its insistence on the superiority of Natural Law. Granted that Natural Law is superior, the difficulty involved in recognizing it in a concrete case or in agreeing upon its scope and application in any given instance would seem to be insurmountable. No one short of an infallible interpreter could hope to accomplish the task. American jurists have recognized no such interpreter of Natural Law.

This volume on Jurisprudence does make interesting reading. How-

ever, the fact that it is written in outline form may deter some from investigating its contents, but for the student of Jurisprudence this will not prove a barrier to a modern exposition of the tenets of the Natural Law Jurists.

EDWARD C. KING

JEAN JACQUES BURLAMAQUI — *Ray Forrest Harvey. The University of North Carolina Press, Chapel Hill. 1938*

A perusal of the Constitution of America of 1789, with its amendments to date, will make one conscious of the presence of certain concepts, such as life, liberty, and the pursuit of happiness, property rights, due process, and other similar symbols of freedom, strength in unity, and sacredness in individualism. From where did the colonists derive their inspirations and fact pattern? This question is adequately answered by Ray Forrest Harvey, author of "Jean Jacques Burlamaqui."

The title of the book, in and of itself, means little to the reader, but it represents and identifies itself with a Swiss philosopher of what might be called the "rational utilitarian school of thought." According to the author, Jean Jacques Burlamaqui (1694-1748) as a source of American Constitutionalism has never before been treated. He is the primary source of the theory voiced in the Declaration of Independence, and his principles of a constitutional system have been adopted in the Federal Constitution as well as in those of the States in the Union.

The author endeavors to point out the chief characteristics of Burlamaqui's political philosophy in so far as it relates to constitutions and constitutional governments of America. For purposes of achieving the ends desired yet maintaining the interest of the reader, the author has divided the book into two parts. The first part is devoted to a study of the Political Philosophy of Jean Jacques Burlamaqui. The second part reveals the influence he had in America at the time the Colonies broke away from the influence and control of European countries and set up their own government.

After discussing the philosophy of Burlamaqui and contrasting or comparing it with that of other philosophers, the author elaborates upon other concepts of Burlamaqui's political philosophy, namely, what is sovereignty, from whence does it derive its powers, and what are its limits. In regards to this, his entire theory may be summed up in the following: "The State or sovereignty derives its powers from the consent of the individuals ruled." The author also treats Burlamaqui's philosophy of separation of powers of the various governmental agencies into Legisla-