

had a partisan bias, it is none the less abundantly clear that partisanship, both nominal and real, has influenced its composition and that its decisions have in turn played a prominent role in American party battles." The American constitutional system has been the basis for criticism because "in passing upon the constitutionality of legislation it (the court) must decide matters of policy and its decisions are therefore political in a very real sense."

The main theme of this book is the contest of various interest groups, and the authors point out the pressure which these groups, economic and sectional, exert upon parties and government: pressure which is seen in every phase of politics—bosses and machines, nominations, financing of campaigns, propaganda, and the verdict of the voters. The closing note is one of tolerance for minor parties and pressure groups. "The future of modern democracy will depend upon the extent to which it affords opportunity for a peaceful—and, one is tempted to say piecemeal—transition from capitalism to democratic collectivism. To accomplish this it is vitally necessary that those who challenge the existing order, either wholly or in part, have ample freedom to do so not only as minor parties but as enclaves of pressure and persuasion within the major parties. Only thus can both parties move forward with the times and avoid that fatal cleavage which results in civil war."

One can scarcely refrain from questioning, however, whether the authors would be so insistent upon granting such freedom to those who would change the existing order if change would result in other than "democratic collectivism."

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JURISPRUDENCE — *Jerome Hall. The Bobbs-Merrill Company, Indianapolis. 1938.*

In this first attempt at a compilation of materials giving a comprehensive survey of legal philosophy, the author has used a three-fold treatment. Philosophy of Law, as the first part is described, deals with the literature and thought of all the schools of jurisprudence except the two most recent, deemed to merit co-ordinate headings. The relation between logic and law, the limitation on the use of logic arising from the very nature of law, the media through which the logical method operates, their value and inherent weakness, and the natural confines of any purely deductive or formal science form the subjects of part two on Analytical Jurisprudence. Part three, Law and Social Science, is

introduced by brilliant passages from Holmes which now seem shibboleths for the great movement of Sociological Jurisprudence following on them. An examination of the scientific method and the character of a social science as its subject leads from an inquiry of the attainability of scientific exactitude in this realm, to considerations of the nature of law and custom, of social and legal institutions, of non-legal and legal social control, more particularly of legislation directed toward social ills and finally of the nature of the judicial process itself.

A mere survey of the topics dealt with and the relative space or time allotted to each discloses that the entire selection and organization of materials was made with the purpose of interpreting legal thought in terms of present interests, emphasis and comparisons of value: of digesting thoroughly important features of the analytical and sociological method; but particularly of pointing up to present day implications every idea contained either in them or any other of the political, social or legal modes of thought. Indeed, the author has in his preface avowed this conscious purpose: "Hence that historicism that gives an illusion of jurisprudence as 'far away and long ago' as quite unrelated to contemporary practical problems, has been assiduously avoided."

Though, in a general way, this same purpose could always be ascribed to any philosophical work, however it proceeds, the extent of its influence here may be discerned in the development of the subdivisions within the main sections. Rather than delineating the various schools of legal philosophy as such and then evaluating in terms of present contributions the thinking and writings of their chief originators or exponents, the author chooses as his subjects the ideas themselves and then brings to bear on them not only the thoughts of their originators but the responses of any, whatever their time of writing or their affiliation, who have interpreted them in a manner facilitating greater understanding on the part of the reader. While dealing with a particular idea, throughout the book his technique is much the same: first he gives excerpts setting out fully the thought, theory or point of view; then he presents the criticisms or counterviews; and closes with the writings of one who has combined an appreciation of some genuine value in the idea at hand with a certain perspective that prevents its eclipsing other values of a contrary type. The result of such an organization is to provide a stimulating atmosphere of thought and always to inculcate the fact that the philosophy of law is in a constant state of flux. No philosopher, however great his insight, can so overcome the limitations of his own experience and the social background of his time as to be able to write unchallenged answers to the important questions involved. So influenced is the author by the

realization of the import of this truth that he creates in every part of the book the impression of opinions vying against other opinions, checking them and testing them. Continually the reader is challenged to select the sounder of various views presented or to formulate another tentatively that one would think defensible against all the criticisms levied. So there is in this method of treatment, which the author has utilized well, a strong stimulus to thought and a safeguard against passive or mere absorptive reading.

The method serves another and more important function in its irresistible influence on attitudes. When theories or explanations of this or that phenomenon of society are set forth, they have an authentic, forceful and convincing character that cannot but appeal in some small degree. A view that varies but slightly is presented by another author, and the imperfection in the original thought that induced this divergent opinion is then sensed. Soon the reader is finding himself in partial or complete agreement with one who asserts himself to be in opposition to the original thinker. The process frequently repeated concerning those very ideas which form the rationale of all the body of doctrine and rules which we call law, induces a reluctance to hold any view right and all others wrong, an appreciation of all the views thus far propounded, a broader glimpse of the function of law and, out of these, a tolerance and receptiveness to new ideas. These contributions the book makes; and I believe that the author regarded this broadening of viewpoint as its major purpose and well adapted his manner and order of presentation to that end.

There is here accumulated a wealth of material organized in such a way that one can easily find an excellent collection on any phase of thinking to which his interests may lead him. Nevertheless, some loss of value seems inevitable dependent on the end to which the book is adapted. The author states it is designed to be used as a sourcebook; and, when employed for this purpose the scheme of organization according to ideas is particularly helpful. But the selector of choice bits will fail to attain the perspective that may be derived from following the evolution in thought from the opening words of Aristotle to the closing sentences concerned with the technicalities of accurate research. For one already widely read in legal philosophy or for the student being furnished this perspective from other sources, this loss would not be serious; but for one in another field choosing this work as a way of acquainting himself with the philosophical thought of the law or for the practicing attorney this would be important. On the other hand, were the book to be read entirely or not at all, many including the intelligent layman and the practicing lawyer might be deterred by its length.

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.

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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