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BOOK REVIEWS

LANDMARKS OF THE LAW, collected and edited by Ray D. Henson, Beacon Press, Boston, 1963, 461 pages. Price: \$2.95.

Editor Ray D. Henson has provided both the general reader and the trained practitioner with an opportunity to acquire a variety of articles aptly illustrating what Mr. Henson, in his introduction, characterizes as the "rich treasury"¹ of the law. However, the reader will discover that the door to this wealth is difficult to open; with a few exceptions, this is not light reading.

The book is separated into two parts: "The Theory of Law" and "The Substance of Law." In Part I can be found selections by such legal philosophers as Holmes, Pound, and John Dewey. The first article, entitled "Theoretic Bases" discusses the opposing forces of natural law and positivism as they have alternately molded the development of law. These philosophies, along with others explained in later selections, are exposed for concrete examination in Lon Fuller's famous "The Case of the Spelunchean Explorers." The editor might have begun this volume by defining some essential terms. If the reader can master Arthur Corbin's "Legal Analysis and Terminology," he has opened that door to the wealth of legal thought. Attorneys would do well to review the distinctions between "fact," "act," "operative fact," and "evidential fact," before advancing into the more esoteric selections.

In the introduction, Henson remarks, "Law is not a science in the sense that physics and chemistry are sciences," because it is not a "systemized body of verifiable knowledge."² However, more importantly, law is not a science because legal principles cannot be applied blindly without regard to consequences. Roscoe Pound's "Mechanical Jurisprudence" indicates how and why a scientific approach can hinder the development of the law. What is considered equal protection of the law in one era, for example, is unequal in another.

In another article found in the first part of the book, Dean Pound discusses "The Causes of Popular Dissatisfaction With the Administration of Justice." After alluding to mechanical jurisprudence, the difference in the rate of progress between law and public opinion, "contentious procedure, which turns litigation into a game"³ and other criticisms, Pound attacks the still-present problem of multiplicity of courts and the accompanying concurrent jurisdiction which create a waste of judicial power. Finally, he crit-

1. LANDMARKS OF THE LAW vii (Henson ed. 1963).

2. *Ibid.*

3. Pound, *The Causes of Popular Dissatisfaction With the Administration of Justice*, in *id.* at 185.

icizes the "lavish granting of new trials"⁴ as the worst feature of American procedure. Unfortunately, this speech to the American Bar Association in 1906 could just as appropriately have been given during the 1963 session of that body's convention.

Oliver Wendell Holmes has contributed three articles to Part I. In "Path of the Law" the editor has furnished a true "landmark of the law." The primary function of this work is to distinguish law, morality, and logic. They are distinguished by a man who by admission venerates the law. Holmes preaches a philosophical approach to the law, suggesting that the attorney should "connect [his] subject with the universe."⁵ "Theory is the most important part of the dogma of the law . . . It is not to be feared as unpractical, for to the competent, it simply means going to the bottom of the subject."⁶ The search for the theory of the law is a recurring theme in Holmes' other two articles, "Ideals and Doubts" and "Law in Science and Science in Law."

The theme which emerges from the various thoughts expressed in Part I of this book is the self-sustaining force of the evolution of the law. As Holmes observes in "Law in Science and Science in Law," the last selection of this part: "It is perfectly proper to regard and study the law simply as a great anthropological document . . . It is proper to study it as an exercise in the morphology and transformation of human ideas."⁷

Part II begins with an introduction to the essays of Frederic W. Maitland. "The Deacon and the Jewess; or, Apostasy at Common Law" should reawaken the reader's interest in Pollock and Maitland's *History of English Law Before the Time of Edward I*.

Most of the remainder of the section is devoted to many of those law review articles which have made legal history either in their incisive explanations of aspects of the law or in the manner in which they have influenced the development of the law. As could be expected, "The Right of Privacy" is included. However, the editor has followed that famous article with "The Right of Publicity," which does not oppose the Brandeis-Warren thesis, but advocates an expansion of what are now the traditional notions of the right of privacy. Mr. Henson has also included "The Right to Compensation for an Idea" which serves as the last part of a trilogy on the law's attempt to cope with the increasing complexities of human interaction.

For those who enjoy a diversion "Perpetuities in a Nutshell" is included to illustrate that the law really is an "anthropological document." Most of the articles in this and the first part intimate that even if the law is not the same

4. *Id.* at 192.

5. Holmes, *Path of the Law*, in *id.* at 57.

6. *Ibid.*

7. Holmes, *Law in Science and Science in Law*, in *id.* at 230.

in every state, it at least has a common foundation. Then, the editor includes "Community Property: A Guide for Lawyers and Students of Forty States," and we are reminded that not all American law has a common heritage.

In his introduction Mr. Henson properly confesses that he cannot expect to please everyone with his choice of material, but feels that there should be "something in this volume to afford special delight to anyone who opens it." If there is any weakness in the collection it is a minor one of organization. The difficulty of the first few selections may turn away the less persistent reader. This is not a book to be read from beginning to end over a weekend, but it is a volume that belongs in a convenient place for one who enjoys spending an occasional hour or two browsing through the highlights of legal thought.

MARX X. LEOPOLD*

REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS, United States Government Printing Office, Washington, 1963, 268 pages. Price: \$1.00.

Presently pending before Congress is the Kennedy (now Johnson) Administration's Civil Rights Bill, an extremely controversial effort to secure for the nonwhite American citizen an increased measure of the civil liberties he has so long been denied. It is hoped that members of Congress will have time to read and digest the contents of the 1963 Report of the Commission on Civil Rights.

While necessarily cumbered with statistics, making somewhat laborious the reading of its informative material, the primary thrust of the report is apparent: denial of civil liberty is not a problem confined to the South, but is a nationwide problem which cries out for vigorous Federal action. Most illustrative of the broad scope of the problem are the facts determined from hearings and surveys conducted by the Commission in four representative urban areas—Indianapolis, Memphis, Newark, and Phoenix. Though the manner of denial of civil liberty may differ in each city, it is clear that the Negroes and other nonwhite residents are relegated to the role of second class citizens. In Indianapolis, for example, failure to integrate the public schools appeared to be the result of discrimination in housing, while in Memphis the same result was accomplished by the more direct means of school assignment on a segregated basis. Employment was available to nonwhites in all four urban areas, but usually at reduced pay scales and in

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menial occupations. The local governments evidenced an unwillingness to provide employment for nonwhites in law-enforcement agencies and an even greater reluctance to promote nonwhites within the agencies.

The report runs the gamut from voting and education to housing and employment. It demonstrates in its exposure of these areas of discrimination that the phrase "all men are created equal" is often respected by the white majority only when it suits its purpose.

For years we have all heard that the civil rights issue is one of the most pressing of our domestic problems. Still there are few who are more than vaguely aware of the extent and import of the situation. If the Report of the Commission serves no purpose other than simply to inform its readers of the many and varied instances of discrimination in the United States, it will have been a worthwhile endeavor. If it goes further in inducing individual and collective action designed to alleviate the dilemma, it will indeed have made a notable contribution to humanity.

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