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BOOK REVIEWS

THE SPIRIT OF THE COMMON LAW, by Roscoe Pound, Beacon Press, Boston, 1963, xiv + 216 pages. Paperback. Price: \$1.75.

In 1921 Dean Pound's series of provocative lectures was first published under the title *The Spirit of the Common Law*. This volume is the latest in the Beacon Press' series of Classics of the Law. Essentially, the lectures consist of an evaluation of the common law as it existed in the first two decades of this century. In his evaluation Dean Pound introduces the reader to the tenets of "sociological jurisprudence" which in his day were considered revolutionary.

After enumerating seven "factors of the first importance" which contributed to the shaping of our common law, Dean Pound devotes a separate chapter to six of these factors, tracing each factor's development and influence. He continues in separate chapters by discussing judicial empiricism and his expectations for the development of the common law in the future. Since Dean Pound's predictions for the development of the common law encompass the forty years of our immediate past history, the reader should derive considerable enjoyment in comparing the author's optimistic expectations of 1921 with the actual state of the law's development up to the present.

Six of the seven factors presented tend to point to strong individualism as the philosophical backbone of our legal institutions, with the remaining factor, the feudal law with its foundations resting firmly on status or relationship, tending to point away from the free will or contractual emphasis of individualism. Dean Pound in discussing the influence of Puritanism, one of the seven factors, uses the term "ultra-individualism." He challenges the usually accepted generalization of Henry Maine that the development of law is a process by which the status of principles evolves, and suggests that sociological jurisprudence with its implications of according preference to society's interests as opposed to a particular individual's interest should reverse Maine's progress in American common law. This challenge to the modern development of the law is worth re-examination. The author admits that much of the law's return to a relationship principle as its philosophical foundation stems from legislative rather than judicial action. The legislatures have extended the protection of the law in some form or another to the injured employee, the unemployed, farmers, "Good Samaritans," borrowers, consumers, and, until very recently in Pennsylvania, "fair trade" sellers. The protection even extends to indigent defendants, juvenile delinquents, utilities, home owners, and all sorts of occupations requiring licensure. In each case

the individual obtains his economic or legal advantage at the expense of society as a whole. Ultimate "social utility" dictates that his advantage arises not out of effort or intent, but because of a status relationship to society, a segment of society, or even another individual. The person today who insists upon his rights must bear the heavy cost of litigation, often only to find, his "rights" must bow to frequently undefined, if not indefinable, social utilities. In concluding, Dean Pound discusses the last quarter of the nineteenth century, during which the concept of individualism enjoyed its greatest period of general acceptance.

The author's style is not only most readable but its incisiveness stimulates the present day reader to reappraise today's law in the light of his predictions. The book will certainly inform and enlighten in a most entertaining fashion.

WILLIAM H. NAST, JR.*

A MATTER OF LIFE, edited by Clara Urquhart, Little, Brown and Company, Boston and Toronto, 1963, 255 pages. Price: \$5.00.

This book is a compilation of opinions of the world's leading writers and thinkers on the subject of civil disobedience as related to the threat of nuclear war. These essays reflect on the principles of civil disobedience and the justification of such action within the existing laws. Each writer proposes ideas on the possibilities for such conduct in the world today.

Norman Cousins outlines a course of action that utilizes the United Nations Organization in such a way that the principles of Federalism will be applied. This plan is seen as the best way of meeting the objectives of disarmament and international security. Albert Schweitzer firmly believes that atomic weapons must be denounced. Carl-Freidrich Von Weizsacker proposes the theory that scientists should disassociate themselves from any participation with atomic weapons and firmly stand by their renunciation.

Bertrand Russel, Herbert Read and others believe in the theory of civil disobedience as the only solution; for Christianity was born in civil disobedience. Read refers to civil disobedience as the weapon of those who despair of justice. He stresses the clash in the laws of humanity, civil law and the law of political existence between countries, and the practical problems of complying to one of these laws. Read is just one of the several writers supporting civil disobedience.

In summary, this work sets out the rationalization of man's conscience

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in adhering to civil disobedience as a means to thwart the dilemma of possible annihilation via nuclear war.

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