

Law, the State, and the International Community (Book Review)

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valuation desirable, but in the opinion of the author there is no warrant for approving such treatment on the basis of sound accounting. The valuation of fixed assets with its allied problem of depreciation presents a problem that is well nigh unsolvable under any scientific standards. Accountants, the writer believes, are aware of their own deficiencies in the contributions they have been able to make towards this tantalizing question. Perhaps an engineering training will some day aid the accountant in solving this problem. The author feels that the accountant has relied too much on the engineer whose point of approach has seldom been that of the accountant.

The writer was quite fascinated by the author's analysis of assets as deferred charges. He says, "all assets except cash may be considered deferred charges, *i.e.*, some of them are deferred charges against future income, others are deferred charges to cash". On page 301, he sets up a balance sheet under such a classification. The set-up is interesting from an analytical point of view. The treatment of investments is striking; investments in stocks are considered by him as a deferred charge to future income, while an investment in bonds is a deferred charge to cash.

Periodically, the accounting profession and the business world need an intelligent summary of accounting developments. Even simple concepts require re-analysis. This book definitely furnishes the reader with a wealth of information. The presentation is scholarly as well as practical. While the book is written in a style that is simple and readable, the reader is at all times aware that the material he is absorbing is significant and profound. One concludes that accountancy is really a profession; that there is an underlying philosophy of accounting which will develop as modern business more and more places responsibility for its own growth in a capitalist economy in the hands of a group ready to help it grow in the interests of a democratic society. One regrets that there were only 611 pages to the book.

BENJAMIN HARROW.*

LAW, THE STATE, AND THE INTERNATIONAL COMMUNITY. Two Volumes. By James Brown Scott. New York: Columbia University Press, 1939, Vol. I, pp. xxiv, 613; Vol. II, pp. vi, 401.

To a reader of these volumes, it must seem unmistakably clear why all the ambassadors of peace in Europe wend their way to the Vatican. Lawlessness among nations can be stifled only by the laws of mechanical force, which mean war, or the natural laws of reason, which mean peace. As is so ably pointed out by the author, the Vatican for centuries has been the promulgator as well as the interpreter of the law of reason, which is the natural law, which in turn is the law of God. Divorced as it is from local and territorial law so often conceived in greed and avarice, there seems to be no better arbiter of man's disputes than the natural law, the first principle of which, according to St. Thomas, is that "good is to be done and ensued, and evil is to be avoided." The

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volumes might be described as a survey of the growth and development of legal and political thought and theory from the days of ancient Greece until the time of Richard Hooker (1553-1600). The author is of the opinion that the sanguinary history¹ of the past three centuries beginning with the Thirty Years' War (1618-48) and ending with the holocaust of 1914-18—the World War, did not create a fertile field for the development of natural rights. Therefore, only one chapter is given over to the last three hundred years.

Much of the material that is found in this work has been treated time and time again. However, there seems to be no other publication which has portrayed so romantically and so enthusiastically what might otherwise be heavy and dull.

The invention of political study by the Greeks, their emphasis on the spirit rather than on the letter of the law, their somewhat disinterestedness in law as a science, are all described in interesting detail. Inspiring, indeed, are the references to Socrates, the father of open discussion of public affairs; to his immortal student, Plato, the originator of "a way of life based on truth discovered by human reason"; and, finally, to Aristotle with his mystic realism and his conclusion that "he who governs the state should not be a tyrant above the law, but one who is himself obedient to the law." A full chapter is devoted to the Stoics with particular emphasis on their theory of the individuality, freedom and equality of all men, and their dream of a universal community. Rome, during the days of empire, found the idea of a universal community quite in line with what they were doing and adopted it as a political concept.

The reader will find the chapter on the Law of Rome² most stimulating. The author, in spite of the various interpretations which have been given to the *ius gentium*, has taken what is at least a consistent position. He maintains (1) that the Romans identified the *ius gentium* with the civil law and the universal law of the ancient civilized world followed; (2) that they combined the *ius gentium* with the conception of natural law derived from the Greeks, which combination became the basis of international law. Much attention is also given to the Roman interest in procedure and the gradual evolution of their forms, together with the influence of the College of Pontiffs on legal actions.

In the succeeding chapter, the author comes to the defense of Cicero, who has frequently been accused by historians of merely copying the philosophic principles of the Greeks. Accordingly, we find in Chapter VIII that "Cicero transmuted as well as transmitted these great doctrines of the past." Perhaps, it is the power of expression that brings so many defenders to the cause of Cicero. "True law," says Cicero, "is right reason in agreement with nature; it is of universal application, unchanging and everlasting." This language may be repetitious of earlier Greek doctrine, but it does help to immortalize the stated principle.

The contribution of the Hebrew prophets and Christianity to legal and political thought are fully considered. "Political groups are made up of individuals" and surely the moral fibre of the social whole is greatly influenced by the morals of the majority of its constituents. To the great extent that the

¹ P. 590.

² Chapter VII.

prophets, and later Christ, preached the personal morality of each member of the state, to that extent did they affect the very foundations of law and order. Peace among men was their sublime ideal. "And," said the prophet Isaiah, "they shall beat their swords into ploughshares and their spears into pruning hooks; nation shall not lift up sword against nation, neither shall they learn war any more, and none shall make them afraid."³ "Ye have heard," said Christ, "that it hath been said, An eye for an eye, and a tooth for a tooth. But I say to you, That ye resist not evil: but whosoever shall smite thee on the right cheek, turn to him the other also."⁴ Finally, there is the Golden Rule, "All things whatsoever ye would that men should do to you, do ye even so to them."⁵ "Here," says the author, "we have the fundamental guiding principle for all human relationships * * * It is the basic precept of our social morality; and the hope of the future is that we may one day accept it as the foundation of our political and legal morality."

In Chapter IX, there is a reminder that in St. Augustine (A. D. 354-430) there is found the meeting place of two worlds, the Ancient world and Christian Civilization.⁶ As a highly educated Roman he was versed in the pagan philosophy of the past, and as a convert to Christianity endowed with indomitable spirit. He was the pioneer in the integration of the old with the new. "His structural materials * * * were derived from Christianity, but his foundation stones were quarried from ancient philosophy."⁷ With great vigor, St. Augustine contended that "a city is in its citizens, not in its walls" or in other words that the city or government exists only insofar as citizens consent. It is not an entity apart from its constituents—a doctrine which is sadly discarded in many countries at present. Because of St. Augustine's influence on international law, the author has gone rather thoroughly into his writings on the subject. He points out that St. Augustine was not a pacifist in the modern sense. Although strongly opposed to war, he believed there were occasions which would justify it, especially if the ultimate end were lasting peace. "War," he wrote, "should be waged only as a necessity, and waged only that God may by it deliver men from the necessity and preserve them in peace."

The transition from St. Augustine to St. Thomas Aquinas in 1225 is dealt with by the author in somewhat brief references to St. Isidore of Seville (560-636) whose Etymologies, which were in the nature of a compendium of all existant knowledge, acted as a "transmitter" of past learning. The same transition period was also marked by the Decretum of Gratian, a classic which greatly influenced the development of the canon law and later the principles of equity.

"Time," says the author, "has conclusively proved that the theology of St. Thomas (1225-74) was not of his day only." As collaborator in the translation of the important works of Aristotle he became "the Christian Aristotle" and carried on the work of St. Augustine in interpreting the new era and interpreting it in the light of the old. Voluminous as are the writings of

³ *Isa.* x:1-2.

⁴ *Matt.* v:38-44.

⁵ *Matt.* vii:12.

⁶ P. 184.

⁷ P. 186.

St. Thomas, the following of his concepts in the light of history seem outstanding. He taught that the ruler should be the servant and not the tyrant of his people; that a ruler who broke faith with his subjects forfeited the right to rule; that the basis of the state is morality; and that "rule and measure of human acts is the reason, which is the first principle of human acts."⁸ The concept of Divine Reason or Eternal Law as the basis of the natural law was also advocated as the essence of all law.

The limitations placed on this review require that what the author calls "The transition from medieval to modern thought" be confined to a short discussion of two of the personalities of the many referred to in the first volume. Those two are Martin Luther and Francisco Suarez. The divergence in their views should serve to emphasize how philosophy deeply influences the course of historical events.

An objective view of Martin Luther (1483-1546) from the legal and political viewpoint should lead one to the conclusion that his interest therein was secondary to his pursuit of theological reform. He apparently believed that his main program could be advanced only by allegiance to the ruling class, which accounts for his denunciation of the Peasant Revolt of 1525. It has been indicated that he "saved the Reformation by cutting it adrift from the failing cause of the peasants and tying it to the chariot wheels of the triumphant Princes."⁹ Luther also took the view that "government was a punishment and a remedy for sin"¹⁰ as distinguished from the attitude that it was a natural organization of social man. Hence, his deduction followed that rulers were appointed by God to punish evil and that they must be harsh if they were to wipe out sin. Paradoxically, "he urged government suppression of heresy." As the author points out, Luther in his later years abandoned some of his earlier views on the Divine Right of Kings, but the rulers found "his early theology more acceptable". Luther undoubtedly accelerated the adoption of the political and theological concept of the Divine Right of Kings and thereby greatly influenced the subsequent political history of the world.

Long before the League of Nations was conceived or The Hague came into existence, their underlying principles had been defined by Francisco de Vitoria and Francisco Suarez (1548-1617), both of whom were Spanish Schoolmen. The federation of nations operating through law and carrying out its decrees by force owes its promulgation, if not its origin, to Vitoria. Out of this concept was born the League of Nations. A confederation of states whose sanction is primarily moral and which lives or dies to a great extent because of good faith among nations or the lack of it, was the dream of Suarez. This dream has found expression in fact from time to time as appears when we examine The Hague and the early Confederation of the American colonies. Even today, there are rumors of a European federation or confederation to preserve the peace that is to come. Suarez traced the necessity of good faith to the tenets of the natural law. "Therefore," says the author, "the universal principle of good faith attaches to every agreement the moment it is formed. And without good faith, anything which man makes in the nature of an agreement (from the

⁸ P. 217.

⁹ POLLARD, CAMBRIDGE MODERN HISTORY 194.

¹⁰ P. 470.

smallest contract to a universal treaty) is, as Hamlet would say, but 'words, words, words'—and empty words at that."

In spite of the teachings of the philosophers as to the nature of law and the absolute necessity for it among men and nations little seems to have been accomplished. War in Europe, undeclared war in Asia, war clouds over the whole world might lead us to look for a new philosophy, a new way of thought. The difficulty is, however, that the old way of thinking has rarely been adopted as a way of life as distinguished from a way of thought. The philosopher can discover, but it is the task of the world to take advantage of the discovery. The author is optimistic; he has confidence that the truth, as revealed by the great thinkers of history whom he has so vividly depicted, will predominate even though it may never live unmolested by the greed, avarice and other unreasonable attitudes of men and nations. The attempt to attain the ideal is always a justification in itself; whereas the abandonment of the ideal means the triumph of chaos and anarchy.

In the second volume there has been classified, according to ideology rather than time, a long list of outstanding quotations in English translation from the writings of the great masterpieces in the field of law and political science. Selected from the time beginning with the days of Plato and ending with the seventeenth century, these quotations stand as the veritable props of civilized thought in "Jurisprudence", "The State", and "The Law of Nations", which are the three main classifications of the author. Volume II might also be described as a complete and scholarly documentation of Volume I, which seems most desirable in an undertaking of such proportions as this.

Every lawyer, every clergyman, every judge and legislator should read and reread these two volumes. Those interested in the administration of justice will be edified by the struggle of those who preceded them to tap the sources of truth; and those who preach the gospel will be impressed with the necessity of inspiring mankind to accept the truth, no matter how great the inconvenience or how supreme the sacrifice.

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