

October 2016

Planning for Freedom: The Public Law of American Capitalism

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Recommended Citation

Miriam Theresa Rooney (1965) "Planning for Freedom: The Public Law of American Capitalism," *The Catholic Lawyer*. Vol. 11 : No. 1 , Article 15.

Available at: <https://scholarship.law.stjohns.edu/tcl/vol11/iss1/15>

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PLANNING FOR FREEDOM: THE PUBLIC LAW OF AMERICAN CAPITALISM
by *Eugene V. Rostow*

Yale University Press, New Haven & London, 1959. Pp. 405. \$1.95.
(1962 paperbound edition.)

Reviewed by
MIRIAM THERESA ROONEY*

This book, originally issued five years ago, but only now beginning to make its way as a paperback, deserves much more attention than it has so far received. Those concerned with natural law and with its relationship to current legislative proposals could well look upon this book as a model since it supplies a jurisprudential setting for an act of Congress, nearly twenty years old, which has not yet been tested in depth in the courts.

As the author states in his preface, the subject matter of these talks (at the University of Michigan in March 1958) was the legal control of the economy. He notes that the operation of the economy has not hitherto been described in a book which meets the needs of the lawyer or the law student. Nor, he adds, has he been able to find a book about the legal setting of economic life which answers the kind of questions businessmen and economists habitually ask. In summary Dean Rostow observes that:

The Intelligent Common Reader's guides to economics never quite reach the complicated problems of public policy which are of acute daily concern to lawyers and law students. And the advanced books on economics take for granted a working knowledge of basic ideas, techniques of analysis, and institutions, knowledge which

is not yet part of the intellectual universe of that mythical creature, the liberally educated man.

The author explains the economic and legal interrelationships of the Employment Act of 1946 by discussing backgrounds, developments, and goals. Dean Rostow's background well equips him for the task of placing the Employment Act of 1946 squarely in the middle of contemporary legal trends. He has had the advantages of university training at Cambridge, England, where he learned, first hand, the significance of the Keynesian revolution in economics, and of university administrative experience at Yale, where he has done much to advance legal education in this country—from a mere "how-to-do-it" technique toward a truly liberalizing methodology in the unending human effort to comprehend the realities of life.

The study of law in American universities generally presents a rather dismal history in the growth of scholarship and the unending quest for truth. Today, in the better law schools, minds are skilfully sharpened through sound training in exactness of wording and in the analysis of legal language. It is still all too rare, however, to find adequate consideration given outside these practical skills to the goals of law or to the history of juridical ideas. And in the colleges, millions have been graduated without a comprehension of their

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cultural heritage in the juridical order, because of a somewhat exaggerated emphasis on state power by their political science departments, and of an undue professionalism in their law departments. In his attempt to bridge one sector in this scandalous gap, Dean Rostow has provided an extraordinarily valuable book.

Studies in legal history and jurisprudence can lead one to a better understanding of contemporary legal problems. For example, those who have begun to grasp the truly radical revolution introduced into modern thought by the encyclical letters of Pope Leo XIII, and his successors, are not entirely unprepared for the renewals inaugurated by Popes John XXIII and Paul VI in the appraisal and expression of human values. In the fields of labor law and corporation law, a vague awareness of these Papal innovations has crept into modern legal studies, at least to the point where Pope Pius XI was able to acclaim "the new jurisprudence" in his encyclical letter, *Forty Years After*, in 1931. (A more extensive treatment of these developments may be found in an article by Professor Rooney entitled "Planning and the New Frontier" in volume 25 of the *Notre Dame Lawyer*.) International law has also given more than the customary nod to philosophical foundations, as evidenced by the wide acclaim with which the 1963 encyclical of Pope John XXIII, *Pacem in Terris*, was received. But such an approach is generally limited to post-graduate law school studies which only a tiny proportion of the legal profession ever undertakes.

For them, reading Dean Rostow's book should be a gratifying experience. For the vast remainder of the legal profession, who have never been exposed to the realm of juridical ideas, and for those college and university graduates who have been permitted to look upon law as a negative discipline confined to obstructionism, this book should open new and thrilling vistas.

Dean Rostow presents the immediate task in a chapter concerning the goals of legal action:

We may distinguish two phases of the process by which law seeks to use its knowledge of economics, as it responds to other aspects of social experience, in the advancement of its own purposes. The first is to improve the actual positive law, the law in fact. . . . The second, and deeper part of the task of law is to use its powers in ways which gradually improve the culture's ideal of itself. This sentence presents a delicate issue in definition. From what source do we distill a better concept of justice through law than that which the culture has thus far produced? And how do we know it is better than the existing norm? The problem is easily solved by those who can accept a natural law of supernatural origin. For the less fortunate, the question involves a real dilemma. . . .

For the student of "natural law," whatever that term may mean to him, this volume will not only give him a contemporary outlook, but it will place before him unusual intellectual challenges for filling the very obvious void—between customary legal studies and prevailing education in our cultural heritage—that exists in even the best American universities.





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of St. John's University School of Law*

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