

Chapter VII covers the law of private property in a manner not generally found in most texts. It includes such topics as patent and copyrights, the various estates in land, the transfer of ownership of personal and real property *inter vivos* and by *intestate* and *testate* succession; all of which are developed with a clear and interesting style.

Part III comprises five chapters devoted to an examination of the application of legal principles to business activities. In the opinion of the reviewer, the material in Part III, together with that in Chapter VII, go to make up the heart of the book, set it apart from other texts, and deserve much praise.

Chapters VIII and IX deal with the law in relation to the market and to finance. Problems involved in bailments, sales, bills, notes, checks, mortgages, powers of creditors and the privilege of debtors are developed in an intelligible manner.

Chapters X, XI and XII treat of law and risk-bearing, law and labor, and the legal aspects of the different types of business organization. They include such topics as speculative contracts (risk-shifting devices), insurance, employers' liability (under the common law and by virtue of compensation legislation), competitive labor practices and injunction relief therefrom, devices for raising capital, powers and obligations of the business unit (corporation, partnership, etc.), duties of its members, and the rights of its creditors.

Dean Spencer's treatment of the material in Part III is commendable. It is an attempt to put the teaching of business law on a sound footing. The content of business law courses should be built up carefully. The author's text reveals an effort to keep such study up to date. If such a book is to command the respect of both teacher and student it should keep abreast of actual business conditions. The student in a school of business is interested chiefly in that which is useful in the current transaction of business affairs. Spencer's *TEXT ON LAW AND BUSINESS* should amply satisfy those requirements.

The book is closed with a table of cases cited in the text and an index which, for the business student, is entirely adequate.

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THE REVIVAL OF NATURAL LAW CONCEPTS. By Charles Grove Haines. Cambridge: Harvard University Press. 1930. Pp. xiii, 388.

In the preparation of this book, the author has allowed a good deal of latitude to his concept of "natural law." The array of theories and writers which he parades before the reader bears witness to the liberality of his notion of a higher law. From Ulpian to Duguit is a long step in juristic thinking as well as juristic history. Yet both come within the limits of appropriate treatment of the problem, as Professor Haines conceives it. That problem is to indicate the significance of natural law and all kindred ideas in the development of both the philosophy and the content of law, and their probable significance for the future.

The place of the higher law idea in the thought of the Greeks and the Romans is briefly traced, together with the course and modification of those ideas through the medaeval period. It is highly significant that from the time of Aristotle the doctrine has persisted in some form or other that there were

definite legal limits to the action of the state; that there is a technical *corpus* of law to which those who administer positive rules are bound to conform. To be sure, there is a vast confusion and vagueness in the varying conceptions of this superior law. But whether regarded as proceeding directly from God, or indirectly from God, immediately through reason; from "nature," that is the sentiments and reactions supposed to be common to all men or from that "nature" which is common to all living things; whether expressed as *jus naturale*, *jus gentium*, law of nature, eternal law or *lex naturalis*, these notions contain the one useful idea that, though man errs in making and applying law, he is bound by some kind of authority which transcends his own being, to which he is bound to conform and to which he may look for help in his mundane difficulties. These ideas, while quite consistent with the divine origin of the temporal power of princes, at the same time operated to impose much-needed limitations upon the unbridled exercise of that power.

Professor Haines thus describes the background of eighteenth-century political and legal philosophy. In the state of nature, men were equal. The church had accepted this dogma and incorporated it into the canon law. It was easy to make him equal in the sight of man when he was equal in the sight of God. The intellectual stage was thus ready for the eighteenth-century revolutions, with a religious, political and legal justification therefor.

Thus the emphasis was gradually shifted from a *jus naturale* to a system based upon the natural rights and liberties of individuals, which it was the duty of the state to protect. The situation was generalized and the same position was regarded as the basis of international law. From this doctrine, the movement for written constitutions took root. But constitutions and declarations of rights did not "create" rights and liberties. They merely "declared" them. They came from a higher source. The same promises, of course, were freely employed in common law thinking in this country. The judges with few statutes and law books did not hesitate to appeal to natural law, sometimes of the divine variety, sometimes as they found it in the immemorial rights of Englishmen or of men in general.

In the nineteenth century, forces conspired to somewhat weaken and discredit natural law thinking. Conservative thinking replaced revolutionary radicalism and the need for a stable social and political order fostered a reaction from the appeal to the higher law which had been so useful in justifying defiance of constituted authority. In England the social utilitarians and on the continent the historical movement in law helped the decline of natural rights which were superior to man-made law.

The author finds natural law ideas of great significance, as postulates from which the American courts developed the theory of their supremacy over other departments of government and in their development of limitations upon legislative action. Such limitations are to be found in the nature of the Social Compact and from the nature of Free Government, in the necessity for the protection of vested rights, and to protect minorities from the tyranny of majority oppression. Particularly in the construction and application of the due process clause, did the natural law idea find a medium of crystallization, after that clause became a general limitation upon the powers of the legislature rather than a mere check upon procedure. The due process clause thus became the orthodox limitation upon the powers of government to invade the traditional

eighteenth century natural rights of the individual. This movement was, of course, consistent with the economic desires of those classes of society who made their wishes effective, and whereas the natural rights doctrine in the previous century had been the philosophy of the radical, it now became the bulwark of conservative dogma. Soon it was to be regarded as the embodiment of Spencer's "Social Status."

The same point of view characterized the development during the latter half of the nineteenth century of the constitutional phases of the law of taxation and eminent domain. Natural right thus became a limitation upon both the taxing power and the power of condemnation as well as the police power.

Professor Haines tells very well the story of the pressure of economic and class interests which led to a complete repudiation of the earlier attitude of the Supreme Court toward the Fourteenth Amendment and its application to protect powerful interests in their right of property against state interference, particularly public utilities and industrial interests, until "rugged individualism" becomes a higher law principle of our constitutional jurisprudence.

In the modern revival of higher law theories in Europe, the author finds a complete abandonment of classic notions of the nature and source of law. But he detects a natural law in the works of such divergent thinkers as Gierke, Stammler, Salielles, Géný, Duguit and Krabbe, as well as the metaphysical and transcendental jurists of the Catholic tradition. This renaissance of higher law is directed toward various objectives, chief among which are (1) the bringing again of a larger ethical element into law, (2) providing an ideal for positive law, that is affording political and ethical ideals as to the purposes of law, (3) furnishing a guide to judges and legislators especially in cases not at all or not entirely covered by positive law and in the application and making of much of our public law, (4) discovering a basis for limitations on state sovereignty, and (5) in America, construing anew a theory of implied constitutional limitations.

If Professor Haines has demonstrated one thing more than another in his excellent book, it is the undying passion of the human mind for a monistic legal universe, with the certainty, comfort and protection that only such a system can afford. He has, in the judgment of this reviewer, stretched the inferences from some of his material, e.g. when he makes his expansive cloak of natural law include such names as Duguit and Gierke. But it is not to be denied that he has done it plausibly and with insight. To natural law, so broadly conceived, there can be less hostility from "hard-headed" jurists. In any event, it is a pleasure to find so important a phenomenon of the juristic universe treated critically but sympathetically, with dogmatism reduced to a minimum. An excellent bibliography, chiefly of Continental literature, is included as an appendix.

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