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REVIEWS

EUROPEAN UNION AND UNITED STATES FOREIGN POLICY. A STUDY IN SOCIOLOGICAL JURISPRUDENCE. By F. S. C. Northrop. New York: The Macmillan Company, 1954. Pp. viii, 230. \$4.75.

IN terms of his own personal philosophy of law Professor Northrop may fairly be categorized as belonging to the school of sociological jurisprudence. Northrop's main intellectual inspiration in this regard, however, comes not from native American sources (of whom Roscoe Pound is certainly the most notable) but through association with his friend and colleague at Yale, the late Underhill Moore, from Eugen Ehrlich, the great legal philosopher of the old Austro-Hungarian Empire. Sociological jurisprudence, as Northrop defines it, is the science which studies the relation between (a) positive legal constitutions, institutions, and procedures, and (b) the underlying living habits, associations, and beliefs of the people to whom the positive legal institutions are applied. The basic hypothesis of the science is that positive law forms can be effective in action only in so far as they are derived from and have their roots in those underlying living habits, associations, and beliefs—the "living law" as Ehrlich defined it all.

Professor Northrop's present thesis is that a viable European Political Community can be built only if its member-countries have, both qualitatively and quantitatively, common "living law" norms. This clearly is not the case, Professor Northrop points out, with the fifteen-nation Council of Europe,¹ and it is perhaps not surprising, therefore, that the Council of Europe has remained throughout its existence an essentially amorphous, nebulous organization. On the other hand, Professor Northrop believes that the present six member-countries of the European Coal and Steel Community—Belgium, France, Italy, Luxemburg, The Netherlands, and West Germany—do have such common norms. This viewpoint was shared by the State Department under Dean Acheson in lending every possible encouragement to the Ad Hoc Assembly appointed by the Coal and Steel Community for the purpose of drafting a constitution for a European Political Community coincident with its own membership. Indeed it was a committee of American jurists, operating from Harvard University in an advisory capacity to the Ad Hoc Assembly, that prepared the detailed reports and documents² from which the draft constitutional instrument for the proposed European Political Community finally appeared.

1. Belgium, Denmark, France, Great Britain, Greece, Iceland, Ireland, Italy, Luxemburg, Norway, the Saar, Sweden, The Netherlands, Turkey, and West Germany.

2. BOWIE & FRIEDRICH (EDS.), *ETUDES SUR LE FÉDÉRALISME* (1953; English ed. 1954).

Professor Northrop bases his conviction that there is a sufficient identity of "living law" norms throughout the six Coal and Steel Community countries upon an extensive study of the key concepts of the major political parties and pressure groups operating in each country. It must be recognized that this process involves, on Northrop's part, the exercise of very considerable freedom, both in the classification of the main doctrinal beliefs of those political parties and pressure groups, and also in the assumption, which he makes for working purposes, that there is *de facto* acceptance of and adherence to those doctrines by the rank-and-file of the parties. This is, of course, a practical limitation to the utility of the study as a guide to policy-making, though it does not necessarily impugn its validity as an exercise in sociological jurisprudence. Indeed, with the tremendous sweep of Northrop's project, it is perhaps not to be wondered that he did not model himself too closely on existing detailed ventures in sociological jurisprudence.

In developing his present study, Northrop first rejects as incompatible with any supranational European organization the polar political extremes in each of the six countries today: the Communist party with its monistic conception of political sovereignty and its Marxist ideology for ordering social relations generally, and, at the other extreme, the various parties of the Right (for example, in France the de Gaullists, in Italy the Monarchists, in Germany the neo-Nazi groups) which are imperialistic, chauvinistic, and nationalistic with monistic theories of political and religious sovereignty. By contrast, he finds, common to the two major opposing political parties of the Schuman Plan states, the Socialists and the Christian Democrats, an element which he regards as indispensable to a viable European Union: a pluralistic theory of political and religious sovereignty. In the case of the Socialists, this theory is combined with emphasis on a strong nationally controlled, legally and federally regulated economy. In the case of the Christian Democrats, it involves notions of Christian responsibility, at times even Christian Socialism in economic relations, and, at the present time, the extra factor of outstanding party leadership.

It would necessarily follow from Professor Northrop's central thesis that even if the Christian Democratic parties should go out of office in the core countries of the Schuman Plan—France, West Germany, and Italy—there would still be a sufficiency of "living law" support for European Union provided the present main opposition party in each of these countries, the Socialists, take control. Yet he does seem to build his hopes for the realization of European Union to a very considerable extent on the maintenance of the present supremacy of the Christian Democratic parties. Their support for this objective, he feels, represents, "something much more fundamental and lasting than the threat of a foreign power or power-politics political expediency of the moment."³ He stresses the fact that the really active leaders of the movement for European Union, from the principal post-World War II architects of foreign policy in the three core countries—de Gasperi, Schuman, and Adenauer—on downwards through the working personnel of the consti-

3. P. 89.

tutional committee of the Ad Hoc Assembly, have all been Christian Democrats imbued with Roman Catholic "living law" beliefs transcending national boundaries. The presence of a solid Roman Catholic, Christian Democratic plurality in the core countries of the projected European Union is therefore the major premise on which Northrop's present thesis rests. To those who would attack his choice of this premise, Northrop (incidentally, not a Roman Catholic himself) would reply that it is one of those facts of effective power that no policymaker in a foreign office, and certainly no would-be Constitution-maker, can afford to ignore, that it is, in fact, the only premise on which a successful European Political Community can proceed today—granted the non-adherence to any such supranational European Union of the United Kingdom and the Scandinavian countries.

On this same Christian Democratic major premise Northrop bases his principal criticisms of United States Foreign Policy in the past two years. The European Political Community project can only succeed, he believes, while Germany, like the other five proposed member-countries, has a Christian Democratic majority. A United Germany, which combined the present Christian Democratic West Germany with the Soviet-dominated German Democratic Republic in East Germany, would inevitably bring about the destruction of Chancellor Adenauer's government and with it the basis for German adhesion to European Union on terms acceptable to the other five proposed member-countries. In consciously seeking to replace the old Kennan-Truman-Acheson policy of the "containment" of Communism with an announced program of a "roll-back crusade" against Communism in both Asia and Eastern Europe, President Eisenhower and Secretary of State Dulles dealt, in Professor Northrop's opinion, a grave and possibly fatal blow to the European Union movement. President Eisenhower's threat to "tear up the Yalta Agreement," whatever its other effects, promised to destroy the legal basis for a divided Germany and incidentally for the presently Christian Democratic, West German Republic. Thus, he attributes to the Eisenhower-Dulles "new look" in foreign policy the principal blame for the disastrous faltering of the European Union movement in the last two years. In this view, for example, it would be the markedly unfavorable impact of the "roll-back crusade" on French public opinion, rather than any alleged perfidy in Mr. Mendès-France, that is responsible for the recent defeat of French participation in the European Defense Community plan.

Beyond its significance to any reexamination and reevaluation of current policy-planning objectives in the State Department, Professor Northrop's work has an extra importance at the present time to students of the newly developing science of comparative constitutional law. We live in a decade that has seen a resurgence of legislator's law as an instrument of law-making (in both the international and the domestic constitutional law fields) comparable in some ways perhaps to the activity of the English Parliament of the 1830's under the impulse of Benthamism. In this, one of the few significant attempts to apply sociological jurisprudence at the international constitutional level, Professor Northrop has sought to correct the undiluted enthusiasm of the

professional constitution-makers of the present day for experiments in legal eclecticism. In stressing the limits to the usefulness of comparative legal study, at least where it is not based on a sober study of community attitudes underlying the positive law, Professor Northrop has lessons to offer, for example, to the Bonn Constitution-makers. Perhaps prodded by Allied Occupation officials they grafted the American institution of judicial review on their positive law constitution without anticipating the difficulties that too mechanical an application of that positive law institution would later bring in connection with West German adhesion to the European Defense Community, or the extraordinary measures that a strong Chancellor, Adenauer, would resort to as devices to evade the full operation of that institution. Greater attention in drafting the Bonn Constitution to the conditions under which the institution of judicial review had prospered in the United States—especially the tradition of self-restraint, on the part as well of the Supreme Court as of the Executive—would have spared the German judges and Chancellor Adenauer's government considerable embarrassment during the constitutional impasse of 1952-1953.

One wonders whether, if Northrop's thesis of the necessity of resting positive law forms on underlying community "living law" had been more fully acknowledged in Europe, the leaders of the European Union Movement would have ventured to move so quickly towards the goal of political integration under a positive law constitution before an organic association, such as European Coal and Steel Community and European Defense Community, had been fully established. Again, granting a fact still too little appreciated generally and not always conceded by Northrop himself in this study—that positive law forms, by themselves, may help to mould and create "living law" norms—it seems surprising that in drawing up their constitutional instrument, the personnel of the constitutional committee of the Ad Hoc Assembly, all of them, as Professor Northrop has shown, "living law" Europeans, should have so substantially passed over their own Continental European experience. They drew analogies from the positive law of the federal countries, Australia, Canada, the United States, Switzerland, and Germany (Imperial Germany and Weimar Republic), whose "living law" norms were essentially quite opposed to the Christian Democratic norms now dominant in the six Schuman Plan countries. The pursuit of legislative mechanics, in this case the federal form, seems to have led the European constitution-makers to draft a positive law constitution that had too few roots in direct Continental European experience. As a matter of history, of course, the instrument, through operation of external political events, became a dead letter almost as soon as it was drafted. Yet the idea of European Union is a persisting one, and, as Northrop contends, there is an ample "living law" basis for a viable supranational European association in the Six Schuman Plan countries, so that future prospects of European integration at the political level are not necessarily unhopeful.

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