

Book Review

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Recommended Citation

Book Review, 3 Md. L. Rev. 105 (1938)

Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol3/iss1/10>

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Book Review

THE SPIRIT OF THE LEGAL PROFESSION. By Robert N. Wilkin. New Haven. Published for the College of Law of the Ohio State University by the Yale University Press, 1938. Pp. 178.

The author, one time Judge of the Supreme Court of Ohio, has served on Judicial Councils and professional committees. Except for the period of his term on the Bench, he has been engaged in the active practice of his profession. As stated in Dean Arant's Foreword, this slender volume contains the substance of addresses delivered to the student body of the Ohio State University College of Law. Its title is "The Spirit of the Legal Profession". It might as appropriately have been the more hackneyed "The Spirit of the Law," since the author finds the spirit of the profession to have been the creator as it remains the fosterer and promoter of the spirit of the law itself.

By the spirit of the legal profession, the first of all true professions, the author means "that animus, that afflatus, that inspiration which has moved so many great men to love, to study, to teach, to practice, and to establish the law." In the constitutional guaranty of the right of counsel he finds the supreme gift to humanity of the spirit of the profession.

This spirit was first developed among the lawyers of Rome. The law came to the world through Rome, just as philosophy and art came to us through Greece. In Greece, the equality of men before the law had been a philosophical concept. In modern times it has become a political dogma. The Roman lawyers had raised equality before the law to the dignity of a legal rule. Cicero clearly saw and expounded the doctrine of that balance of the elements of government which eventually crystallized in the American Constitutions. The spirit of the Roman lawyers gave us the science of law; their contribution is forever embalmed in the Latin name of the science—jurisprudence.

The lawyers of England developed and gave to the world the science of administering the law, and to that end the independent court was their principal contribution. As a result of their labors, the independent administration of justice through the medium of the independent judge and

the independent jury came to be permanently and firmly established. In this development the Inns of Court played a heroic part. The author expresses the view that the English judiciary has no superior among the courts of the world, because, he says, "English judges have understood the universality of the law and have demonstrated their patriotism, not by chauvinism, but by their devotion to truth and justice."

The third part of the book is devoted to the spirit of the legal profession in America. The aversion to lawyers of the earlier colonists is noted and it is interesting to observe that in Maryland also the opposition to lawyers was quite marked even in the presence of a more kindly disposition toward the common law than was to be found in the other colonies. The lawyer had to win his place in the new world. As law had come from the Latins, the independent judiciary from the Anglo-Saxons, so the new Constitution of government was the gift of the spirit of the legal profession in this country. For the first time a charter and complete frame of government were encompassed in one document. For the first time a tribunal was empowered to interpret the authority created by the Constitution and to adjudicate its limits. To statesmen imbued with the spirit of the legal profession, it was not derogatory to the dignity of the state to subject it to the judicial power when that power was to be exercised by an independent tribunal according to the established processes of the law.

Thus the author traces the development of law and its administration as the incarnation of the spirit of the legal profession from early Rome to modern America. This he does forcefully and eloquently and the foregoing abstract does but scant justice to the learning and the vividness and lucidity with which he develops his thesis. His dominant thought is revealed to be that, through the entire period of time surveyed, so long as the professional spirit has been in the ascendancy there have been good judges and efficient administration of justice has been provided; that, on the other hand, whenever the profession has been commercialized or subjected to imperial or political influence and its ideals and standards have become debased, the administration of justice has suffered, both in the character of its judges and in the quality of justice administered.

The author's hopes for the future of our democracy would be far from sanguine but for his faith in the saving grace of the professional spirit. This spirit is the deadly

foe of self-seeking and self-aggrandizement. It awakens social consciousness and conscience. Its influence should be extended, he contends, to all vocations. If the blessings of popular government are to be preserved and the forces of democracy are to keep pace with the forces of evolution, men in general will have to be motivated by something like the professional spirit that has inspired and actuated the great judges and lawyers. That professional spirit alone can supply the quality of reasonable, conscientious and disinterested men to whom alone the nations will with abiding faith submit their differences.

"If", concludes our author, "the world is to continue to have men who, in the words of Justice Holmes, can live greatly in the law, drink the bitter cup of heroism, and wear their hearts out after the unattainable, we must preserve the means of charging men with the spirit of the profession." The law schools must be our chief reliance, but the schools must be more intensively supported by the leaders of the profession. The best way in which to acquire the spirit of the profession is to admire it, for what we admire we sub-consciously emulate.

On this high note ends this stimulating study of what has been and is best in the legal profession. No law student, no mature lawyer can read this book without being moved to admiration for the ideals of the law, for the great lawyers who have been the embodiment of its spirit and for the astounding results that have been achieved. And in the words of our author "what we admire we unconsciously emulate."

ELI FRANK.*

Book Note

JURISPRUDENCE, Third Edition. By Francis P. LeBuffe and James V. Hayes. New York. Fordham University Press, 1938. Pp. xxiii, 286. \$3.00.

The first-named author is a Jesuit priest and Lecturer in Jurisprudence in the Fordham University School of Law, and the other author is a member of the New York bar. The book is based on earlier prepared mimeographed mate-

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rials collected and arranged to form the outline of a law school course in Jurisprudence. It consists of the authors' text material interspersed with selected quotations from and citations to other materials. While the principal utility of the book is to serve as the basis for a course in Jurisprudence in a Catholic law school, yet a perusal of it can be valuable for other purposes.

Of particular timeliness is the book's analysis of the totalitarian theories of law (Fascist, Nazi, and Communist) which theories are presented for the purpose of attacking them. The preface makes clear that opposition to those theories is the book's essential thesis. Considerable space is devoted to "Limitations Upon Civil Law."

While the book leans too heavily upon Church documents and too much reflects the Catholic philosophy and theology to be counted as a significant one on general jurisprudence, yet these very facts give it a certain value, not to be ignored. To the Catholic lawyer it will be useful for its orderly correlation of matters theological and matters juridical as his own denomination sees it. To the student of comparative jurisprudence it will be valuable in giving insight into the extent to which the Catholic theology and philosophy affect the jurisprudential scene.