The Philosophy of Law

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and suggests as a method of valuation of securities which have not been on the market, the comparison of the value denoting factors of such securities with those of securities with a known market value. Such a comparison between industries similarly situated, the securities of one of which have a known price, by analogy, he contends, will show what the securities of the other are worth. This simple, but apparently unreliable plan, seems to have satisfied the author as the easy way out of a difficult problem.

The analysis, in this volume, of the effect of the actual cost of the tangible property behind the security, the depreciation of such property, together with the amount and continuity of earnings and the relation between different classes of securities of the same industry can be read with profit by the student and practicing lawyer.

The author is Associate Professor of Economics in Brown University. He is apparently not an attorney nor student of law, but some seventy-five court decisions are cited and many are discussed in this work. It concludes with a table of these cases.

H. C. Hirschboeck.


"Of making books there is no end"; and it would seem that writers often have no "end" in making books. The work whose title is given above is described on its wrapper as "a short, plain statement of the Essential Nature of Law"—a rather pretentious title when we consider that the "philosophy of law" is comprised in a booklet of eighty-six printed pages—printed in good large type and amply spaced—and the printed pages some three and a quarter by five and a quarter inches, the whole divided into one hundred seven paragraphs with no apparent consecutiveness.

One can hardly help wondering if the author took himself seriously in attempting to compress the whole philosophy of law into such a space; and even though he did attempt the task it is hard to see how he could expect to give even a "short, plain statement of the essential nature of law" without determining what "law" is or without adopting some guiding principles of thought, some system of philosophy to enable him to find that "essential nature." Yet it looks as though no such principle or system was adopted, although on page 3 we are told, "It is believed that the proper field of the philosophy of law is the explanation of the operation of the external factors of political power and public opinion in determining human conduct, and that all other matters frequently included in legal philosophy belong to ethics, etc." Yet the author immediately adds, "The conflict between teleology and mechanism is immaterial"—and immaterial is not intended as a pun—"so also the conflict between singularism and pluralism does not concern us.... We are examining such an infinitesimal part of the whole or such a small number of the parts that the view we may take of the whole situation is immaterial."

The fact that so much is "immaterial" to the writer may explain the contradictions which crowd the little volume. Section 6 tells us "Conduct unrestrained by any factor external to the individual is the concern of ethics; conduct restrained by some external factor engages the attention of a legal philosopher": but §7, while saying that the legal philosopher has nothing to do with the internal
factors naively adds, "It is, however, sometimes impossible to ascertain when conduct ceases to be influenced by an internal factor and becomes influenced by an external factor, or vice versa."

In several places we are told that confusion arises from not having definition, yet the definitions here attempted make "confusion worse confounded."

Section 19 gives us the headline in bold-faced type THE STATE and then at once "In this discussion the word 'state' will be discarded," yet the next three lines of the paragraph contain the word twice and in paragraph 69 the author found it necessary to insert the word (state) to explain his use of the word government.

What can anyone make of his "Definition of Rules of Conduct" pp. 24 and 25? But perhaps the author did not mean to make himself clear, for we are told in §28 "The word 'law' has been used in several senses." Then in §29 "There can be no dogmatic assumption that any particular definition of the word 'law' is correct. All that can be asked is that an author shall rigorously define the meaning throughout the discussion, and as a practical aid to the clarity of exposition, avoid the word 'law' whenever possible." Yet most of the subsequent pages of the book employ the word law and that without any rigorous definition, although in justice to the writer it must be said that §85 does select the "narrowest sense" of "law" while treating of jurisprudence but does not "stick" to that meaning. Similar treatment is accorded other terms. Under the heading "Rights," §41, we learn "The word 'right' is used in so many different senses that it has lost all possibility of accurate significance. It is obvious, therefore, that the word is useless for the purpose of expressing accurate thought and will therefore be discarded," yet the word is used nine times in the two pages following, besides being inserted in brackets to explain the words "Natural Powers." Since "right" suffers thus we must expect "duty" to be treated likewise, and we are not disappointed. "The notion of duty (44) bulks large in legal philosophy," but—"why, therefore, invent the idea of duty?" "It is totally unnecessary in any investigation of political power or public opinion."

It might furnish amusement to take up the author's treatment of "Liberty," especially "Civil Liberty," "Legal Persons," "The Government and Law," "Judges do not Make Law," and other topics, but "cui bono"? However, we cannot fail to object to the statement under the heading "Justice," "There is no standard of justice and the justice which, in fact, exists is of varying content."

Even a long, "plain statement" of this type could not give us the "Essential nature of law."

H. B. M.


The purpose of the author is to re-examine the whole subject indicated by the title from the point of view of theory and history in order to bring the law into harmony with the practical exigencies of modern life. He points out that the doctrine that a government is not responsible for the torts committed by its officers rests on the medieval English theory that the king can do no wrong which somehow was not discarded in America when the thirteen colonies broke away from the motherland, and has survived merely by reason of its antiquity. He emphasizes the fact that the most monarchical countries of Europe, though their