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Book Review. Friedrich, C. J., The Philosophy of Law in Historical Perspective

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for the United States to agree by treaty or otherwise to the enforcement of foreign awards on account of our dual system of sovereignty, state and federal, in which each state has in the past determined its own arbitration law. A treaty naturally would supersede local law, but query, would such a treaty be approved if state opposition developed?

It may be noted that certain excellently prepared articles apparently have very little application to international arbitration; for example, History of Commercial Arbitration in England and the United States, a Summary View, by William Catron Jones, gives an excellent historical background of the local situation in England and of the local legal development of arbitration in the United States, but there is no particular tie-in to the international trade arbitration. The article by Pieter Sanders, Arbitration Law in Western Europe, likewise is an excellent discussion of the local legal situation in the states of Western Europe, but has very little relationship to international trade arbitration except to point out the diversity of the local law and the resultant difficulty in obtaining enforcement of an award in a foreign state.

Space does not permit mentioning and commenting on each of the articles; however, each, in and of itself, is excellent. The authors are experts, in most instances of world renown, in their particular fields. In reading this book one gets the impression that the problems and the possibility of their immediate solution are rather limited. If criticism can be directed at the editor, who has performed a monumental effort in the editing of the articles that compose the volume, it may be said that there is considerable repetition in the views expressed in articles that are not necessarily under the same caption. It is apparent, however, that this obviously could not be avoided in a book of this type where no one author is attempting to paint the picture and a certain amount of over-lapping is bound to occur. It would appear, however, that by and large the book offers much of great value.

Martin J. Dinkelspiel*


This book, by a distinguished political theorist, is a translation of an essay published in a German encyclopaedia; the author's original purpose and intended readers must be considered in appraising the present work. From the point of view of the original production, the book is commendable. The author's erudition and the fruits of his academic experience both in Europe and in this country, especially at Harvard University, are manifest. But judged as a contribution to legal philosophy, the book falls far short of what one would expect from Professor Friedrich. The book consists mainly of comments that seem to have occurred to the author in the course of his reading in the field. These are often very acute and suggestive, but they are not thorough elucidations of legal and political theories. The discussion of American legal philosophy is inexcusably scant, e.g., of the 229 pages, only two or three are allocated to American writers. In a chapter entitled "The Revival of Natural Law in Europe and America," there is a bare reference to Pound's "social engineering" and not a single sentence deals with the revival of natural law in this country, especially that since the last war. The distinctive and extremely important American contributions to the philosophy of an empirical

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science of law are ignored. European legal philosophers find much more significance in American jurisprudence than is indicated in Professor Friedrich’s brief references.

Perhaps the most helpful aspect of the book is the bringing together of problems which, in this country, are treated separately by legal philosophers and political theorists. Thus, Professor Friedrich discusses several important problems which American legal philosophers are apt to neglect, e.g., constitutionalism, sovereignty, consent as a basis of the validity of law, authority and legitimacy. Some of these problems, to be sure, are discussed in other terms by legal philosophers. Although Professor Friedrich’s intention is a welcome antidote to the current specialization, there remain many difficult problems to be studied before legal philosophy and political theory can even begin to be unified.¹

The author’s effort to provide the outlines of a history of legal philosophy from Plato to the present time is also highly commendable. Finally, it should be added that Professor Friedrich’s own philosophy, a rational and normative one with emphasis upon constitutional government, is significant and well summarized. The reader will find many helpful references in the footnotes.

Jerome Hall*


The winds of criticism—even of violent and vituperative criticism—have blown about the United States Supreme Court throughout its history. The role of the Court in interpreting and applying the Constitution has been the subject of debate ever since the giants of Marshall and Jefferson squared off in opposite corners. And the angry, intemperate language used by contemporary critics of the segregation decisions is well within the bounds marked by historical precedent.

Most of the discussion of judicial review—the popular and the learned, the practical and the academic—is strongly conditioned by the critic’s approval or disapproval of the legislation which the Court invalidates or refuses to invalidate. Here again it is well within tradition to say that it all depends on whose ox is being gored at the moment. Thus the denouncers of judicial review in the 1920s and 30s have become its defenders in the 1950s, and vice versa—although many academicians have found it more comfortable to discover learned rationalizations to counter the charge of inconsistency.

In the Oliver Wendell Holmes Lectures for 1958, reprinted in the book under review, Judge Learned Hand falls outside these traditional patterns. His discussion is lucid and temperate. His attack upon much of what has become traditional judicial review appears to stem not from his personal reaction to the pattern of decisions or the statutes which have been reviewed but from two separate factors. In the first place, long experience as a judge has given him a genuine sense of modesty about the role of judges in society. He appears to be saying something like the following: I know that I am not especially equipped to decide the problems of public policy which come before the courts in the guise of judicial review. I know that I cannot avoid bringing to the decision of such questions my own personal appraisal of the considerations underlying the statutes challenged. I do not


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