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Studies in Jurisprudence and Criminal Theory. by Jerome Hall.

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BOOK REVIEWS

STUDIES IN JURISPRUDENCE AND CRIMINAL THEORY. By Jerome Hall. New York: Oceana Publications, Inc., 1958. Pp. VI, 300.

In the law school curriculum as well as in the routine of law office and courtroom, jurisprudence has remained something of a mystery to the American mind. No one presently wishes to deny its assumed virtues. Indeed by all accounts there is a renewed emphasis on the need for the jurisprudential perspective in every area of law. And yet a lingering skepticism persists. Like a small boy clutching an empty spool from his mother's sewing basket, the exhilaration over the possession is clouded by doubts about the utility.

In his latest book Jerome Hall pursues a long-held conviction that jurisprudence is not small talk for the coffee hour, but "the most thorough elucidation of law and legal problems." (p. iii) He does this most indirectly, by stringing together a number of studies written over the past seventeen years with three essays published for the first time. The subject matter ranges from provocative dissections of such phenomena as "authority" and "causation" through historical evaluations of Plato and American trends to the advocacy of a position in the present fight over the M'Naghten rule. The burden is primarily on the reader to discover the point at which a circuit is established between the philosophical insight and the positive law.

These studies, the author tells us, "represent a point of view which seems significant." (p. iii) That view point he has called integrative jurisprudence, an orientation which attempts to see adequately the fusion of fact, idea and value.[1] These represent in their unitary coalescence the thing we call law. Integrative jurisprudence is not to be thought of as eclecticism. The endeavor is to achieve a synthesis of the basic factors.

Professor Hall thus has declined to take his position with any of the convenient, customary schools by which the ordinary battles of jurisprudence are mapped. These schools—Natural Law, Empirical Legal Science, Legal Positivism —are "particularist."

The oldest of them is unable to bridge the gap between the values it represents and the empirical sources of those values. Taking Jacques Maritain as a fair example, he concludes that even a sympathetic reader will find "vague platitudinizing and dogmatic assertion of general doctrines that are debatable and defensible only as tentative hypotheses."[2] In a piercing stroke, he contends that Natural Law eschewed empirical reality for so long that it "facilitated the notion that positive law is intrinsically non-ethical." (p. 28)

1. P. 47: ". . . It must be emphasized that Integrative Jurisprudence disavows the ambitious claims of 'holism.' Comprehension of the 'totality' of anything can only be an ideal; no matter how detailed is the knowledge of even the simplest object, there is always something more to experience regarding it."
2. P. 26, referring to Maritain's THE RIGHTS OF MAN AND NATURAL LAW.

Across the chasm from Natural Law are the realists (a dwindling number), deluding themselves that they are foregoing evaluation when the only consequence of such a goal would be suffocation in formless facts. Unconsciously reducing their objectives to fit behavioristic and mechanistic patterns, they read the important problems out of the law. The measure of their success is inevitably their own extinction. If the thrust of this empiricism rises above its original formlessness to become a sociological science, certain inadequacies still remain.

Somewhere in the middle of the gorge stand the legal positivists, a motley group more or less conceptualistic and empiricist at the same time. Closer to Natural Law than they would care to admit in their concern for universals or concepts and their depreciation of facts, they are nevertheless (in some parts) inclined to exclude as "nonsense" those propositions that cannot be empirically verified.

Fencing himself in with an exclusive allegiance to any one of these three schools, the man of law needlessly impairs his vision of his subject-matter. Each emanates from a different context, the author tells us, a milieu in which it has legitimate claims. But none alone can hope to give the full picture which it is the object of jurisprudence to find. If the quest is a definition of law, Natural Law may explain for us the revolutionary vortex in which men seek to hammer their aspirations into political forms—but it does not explain the day-to-day workings of a mature legal system. Realism may show how law is "official behavior" but it falls short of the structural elucidations which are also a vital element. Law for the positivists may fruitfully reflect the concerns and psychology of practicing lawyers, but however much we incline to forget it the law is not essentially the preserve of a profession. Such are the consequences of one's jurisprudence on the philosophical level which raises such fundamental questions as the meaning of law.

But if we step down to the strata of legal theory we find the same ramifications. To formulate a system of criminal procedure, one needs more (but cannot do without) the insight e.g., that the criminal law serves a dual function, convicting the guilty and acquitting the innocent. Similarly, while empiricism yields facts about the inadequacies of the jury system, that knowledge cannot substitute for the needed awareness that criminal procedure "serves other functions than purely logical and scientific decision"; the jury is an institution of political security and democratic ideals. Or, to take another example, positivism with its tendency to systemization may encourage a codification of criminal procedure with the aim of precision and clarity, oblivious to the resulting sacrifice of the values of a long tradition. In Professor Hall's view, a man's jurisprudence has significance for his legal theory. And "although one may distinguish the ideas of law from the facts of law and both of these from the value of law, law is actually the coalescence of these factors." (p. 129)

But this relevance of jurisprudential outlook makes a difference even on the level of legal rule, the particular specification of the positive law. Thus, while the author in his well-known defense of the M'Naghten Rule has argued from a position roughly Natural Law in emphasis, he has never ignored the need for psychiatric data in the legal field. In a positivistic strain (as conceived above), he also has reacted against the denial of scientific valuation implicit in the psychiatrist's claim that he "can tell a jury nothing whatever about the capacity of the defendant to appreciate the moral significance of ordinary conduct." (p. 291) His essay on "Psychiatry and Criminal Responsibility" is in all probability a representative specimen of his attempts to avoid the view of a particular school and work toward integration of all three factors ("the fused, interconnectedness of functioning, socio-legal complexes"). (p. 47)

While it is easy enough to detect the counterpoise of fact, value, and idea, integrative jurisprudence does not aspire to be merely a venture in critical analysis. As Professor Hall has indicated elsewhere about his work, it is an attempt to effect a "viable union" of legal realism and natural law philosophy.[3] These studies, or some of them, are end products of that attempt. What still remains to be done is the articulation of integrative jurisprudence *qua* a philosophy of law. Its founder has described the putative characteristics for us; (p. 37-46) he has striven for the fruits it should bring. Yet until the conception emerges fully-grown, doubts will remain that it is more penetrating technique than philosophical explanation.

In the foregoing exposition of what is taken to be the inner structure of this book, a false impression may be conveyed that Professor Hall is sedulously and single-mindedly pursuing a linear thesis.[4] Quite the contrary is true. The progression of the book could well be compared to an artist at his canvass, explaining the goal and techniques as he works at their achievement. In a deeper sense than is normally meant, the book repays a second reading. For example, the first chapter, in which the author adumbrates the interrelations of jurisprudence, legal theory, and legal rules, is much more meaningful when one has absorbed the last third of the book, devoted exclusively to aspects of criminal law. The experience (to try another comparison) is similar to reading a novelist's essay on criticism after his latest best-seller. If this is not the most efficient way of making a point, there is little doubt it is potentially the most illuminating.

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3. 7 BUFFALO L. REV. 403 (1958).
4. For such a rendition of the author's thought, the reader might consult LIVING LAW OF DEMOCRATIC SOCIETY, Bobbs-Merrill Company, 1949.