Reviews and Notices

Comparative Law: An Introduction to the Comparative Method of Legal Study and Research. By H. C. GUTTERIDGE. Second edition. Cambridge: At the University Press. Toronto: The Macmillan Company of Canada Limited. 1949. Pp. xvi, 217. ($2.85)

Ce livre est une initiation à l'étude et aux problèmes de la science du droit comparé. Dû à la plume avertie d'un des pionniers de la méthode comparative, il vient si utilement remplir une lacune dans la littérature du droit comparé que trois ans après sa publication, une deuxième édition s'est imposée. Celle-ci se distingue de la première surtout par l'élargissement et l'approfondissement de certains chapitres analytiques. Elle comporte en outre une mise à jour extrêmement utile de l'appendice qui contient la liste des principales sources du droit privé législatif et judiciaire de la plupart des pays du monde, à l'exception des pays du Commonwealth et des Etats-Unis.

En moins de deux cents pages, ce livre présente un plaidoyer savant, complet et ardent de l'utilité pratique et de l'intérêt scientifique de cette méthode de recherches juridiques qui a pris le nom trompeur de droit comparé. Il définit la nature et l'objet du droit comparé et établit, en un certain sens, le bilan de son développement, marquant ses réussites jusqu'à nos jours et montrant les voies qui restent à explorer. Veritable "somme" de la méthode comparative, il a d'autant plus de valeur et de force "authoritative" qu'il émane d'un des apôtres de la première heure qui, avec Edouard Lambert en France, Joseph Kohler en Allemagne, Salvatore Galgano en Italie, et avec bien d'autres de nos "anciens", a forgé cette discipline nouvelle, si souvent traitée avec mépris ou suspicion par les praticiens des palais de justice. A eux, tout autant qu'à l'universitaire est destiné cet ouvrage dédié à la mémoire de Sir Henry Sumner Main dont l'*Ancient Law* a suscité plus d'une vocation de comparatiste.

Comme son sous-titre l'indique, le *Comparative Law* du premier titulaire de la chaire de droit comparé à l'Université de Cambridge est une introduction à la fois à la méthode comparative et à la recherche en droit comparé. Or, s'il s'était limité à l'analyse de la méthode du droit comparé, il aurait déjà été d'une très grande utilité. Car, à notre connaissance, il n'y a pour le moment, ni en anglais, ni en français ou allemand, de "manuel du droit comparé" résumant à l'usage du débutant, comme le fait M. Gutteridge, l'objet (chapitre I[er]), l'histoire (chapitre II), la technique (chapitres VI, VII, VIII et IX) et la valeur pratique et scientifique du droit comparé (chapitres III, X, XI et XIII). A raison même du développement de cette science au cours du dernier quart de siècle, un pareil "précis" était devenu indispensable.

Qu'est-ce donc, selon M. Gutteridge, *que le droit comparé moderne?* Il n'est pas, comme son nom le fait croire, une branche du droit, semblable au droit privé, au droit commercial ou administratif (p. 1). D'autre part, il ne se limite plus à ce qu'on appelait autrefois la "législation comparée", très en vogue au début du siècle lorsque de nombreux pays entreprenaient la codification ou la "consolidation" de leur droit écrit, coutumier ou judiciaire, et dont d'importantes sociétés savantes perpétuent le nom. Il dépasse aujourd'hui aussi le domaine de la "jurisprudence comparée", intéressée à trouver à l'étranger des décisions judiciaires susceptibles d'être imitées ou de servir de solution au "cas non prévu". En effet, le droit comparé moderne comprend en plus l'étude de l'origine et de l'évolution des systèmes et des institutions juridiques des différents pays. S'engageant ainsi sur le terrain de l'ethnologie juridique, de l'histoire comparative du droit et de la comparaison des institutions sociales, il est devenu, selon l'expression du savant anglais, une méthode d'analyse et d'étude, applicable à n'importe quelle "branche" ou discipline du droit (p. 10). Ainsi comprise, la science du droit comparé sert à la fois d'introduction et de complément à la théorie générale du droit (analytical jurisprudence) (p. 9).

Il nous semble que cette description ne rende pas compte de toute l'étendue du champ de travail du droit comparé. Science à la fois juridique et sociale, selon la définition d'Edouard Lambert,[1] le droit comparé prend aujourd'hui aspect de *sociologie appliquée,* mettant à la disposition du sociologue un instrument non moins utile et peut-être plus souple et plus précis que les sondages, enquêtes sur place, interrogatoires, etc., dont il se sert d'ordinaire.

Ayant défini l'objet de la méthode comparative, M. Gutteridge analyse la méthode de comparaison. Ce chapitre est complété plus loin par une étude approfondie des difficultés particulières que soulèvent la terminologie juridique et la traduction (ou transposition) exacte des termes et locutions judiciaires. A ce propos il signale à juste titre les obstacles presque insurmontables que rencontre l'élaboration d'un dictionnaire juridique international, pourtant indispensable (p. 124 et ss.).

Plusieurs chapitres fort documentés montrent ensuite l'application de la méthode de droit comparé aux problèmes qu'elle rencontre du fait de *l'existence de deux grands systèmes de droit moderne apparemment inconciliables*: le common-law et les droits écrits. Dans des résumés magistraux M. Gutteridge examine leurs divergences et leurs similitudes. Ayant montré aux juristes de common-law l'existence dans les pays "continentaux" d'un "droit fait par les juges" (jurisprudence, case-law), il étudie la signification juridique et morale du "précédent" judiciaire dans chacun de ces deux "mondes juridiques". Spécialiste de la question, il rectifie utilement les fausses idées répandues dans les pays de droit écrit au sujet de la prétendue souveraineté du juge de common-law et les conceptions non moins erronnées des juristes anglo-américains sur l'automatisme des jugements en pays de droit écrit.

On regrettera qu'en explorant la nature respective du common-law et du droit écrit, le savant anglais ne nous ait pas donné des aperçus sur l'interpénétration qui s'opère, ou justement ne s'opère pas, dans plusieurs points du monde entre ces deux systèmes juridiques. Cette question présente, en effet, un intérêt particulier pour le juriste canadien, et notamment pour le juriste

[1] Ed. Lambert, *L'enseignement du droit comme science sociale et comme science internationale,* introduction à R. Valeur, *L'enseignement du droit en France et aux Etats-Unis,* Lyon, Institut de Droit comparé, 1929.

québecois qui est appelé à appliquer tantôt le common-law et tantôt un droit écrit. Si M. Gutteridge a gardé le silence c'est peut-être parce que les juristes canadiens n'ont pas encore fourni le travail préparatoire indispensable en dégageant de la masse de la jurisprudence canadienne la matière première pour des recherches de ce genre. Or, tout récemment encore, un autre comparatiste anglais, M. F. H. Lawson, a insisté avec beaucoup de vigueur sur l'intérêt particulier que le droit québecois moderne et la jurisprudence canadienne présentent au point de vue de la science juridique et spécialement du droit comparé. Espérons que la leçon inaugurale de M. Lawson et le chapitre que M. Gutteridge consacre au rôle du droit comparé dans l'enseignement du droit (chapitre X) convaincront ceux qui sont responsables des programmes de nos Facultés de droit que l'enseignement et les recherches de droit comparé constitueraient un enrichissement non indû de nos futurs juristes et apporteraient à la science du droit et à l'"analytical jurisprudence" la contribution que le monde scientifique attend de ce pays.

M. Gutteridge sait fort bien qu'il ne peut gagner la cause du droit comparé en insistant uniquement sur sa valeur d'instrument de recherche et de formation de juristes. Aussi a-t-il consacré plusieurs chapitres importants à la *valeur pratique du droit comparé: son rôle dans le mouvement pour l'unification du droit et l'intérêt qu'il présente pour l'avocat et le juge.*

L'unification nationale et internationale du droit retient actuellement l'attention d'un nombre croissant d'organisations inter-gouvernementales et d'institutions scientifiques. Mais comme ces efforts rencontrent encore beaucoup de scepticisme, un intérêt particulier s'attache aux chapitres dans lesquels M. Gutteridge analyse ce problème et dusse le bilan des efforts entrepris jusqu'ici (chapitres III et XI à XIII). Ces pages sont, en effet, le fruit d'une longue expérience acquise par une participation active à l'élaboration de nombreuses mesures d'unification du droit.

Si, en dépit de toute leur bonne volonté, les promoteurs de l'unification internationale du droit n'ont obtenu que des résultats parfois assez maigre, "it would seem [dit M. Gutteridge] that much of the blame . . . must be attributed to an excess of zeal fostered by an exaggerated belief in the need for unification and overconfidence in its feasibility. . . . The cause is . . . unpopular among lawyers and makes little appeal to the general public" (p. 15). Toutefois, dans de nombreux domaines du droit l'unification des règles juridiques est une nécessité immédiate. Il est permis de penser avec M. Gutteridge [2] que les conventions internationales élaborées à cette fin seraient mieux conçues et auraient plus de chance de succès auprès des gouvernements et de commerçants, qui sont les principaux intéressés, si elles étaient le fruit de recherches systématiques en droit comparé plutôt qu'un compromis entre délégations nationales.[3]

Toutefois, on ne saurait trop insister sur le fait que le droit comparé n'est pas uniquement, ni principalement, une science internationale. Il a déjà fourni d'importantes contributions à l'application et au progrès des droits nationaux et présente de ce fait un intérêt direct et permanent pour les clients et les maîtres des palais de justice.

Sans remonter à l'époque de Lord Mansfield qui a systématiquement puisé dans la jurisprudence continentale pour compléter les règles du droit

[2] Gutteridge, p. 174 s.; cf. notre étude intitulée *Notes sur l'utilité d'un recueil international des décisions judiciaires intéressant l'aviation civile internationale* dans Revue du Barreau, mai 1949.
[3] Cf. l'analyse pénétrante des défauts de la "méthode de conférence", p. 176 ss.

commercial anglais, on peut citer de nombreux cas récents où l'imitation ou l'importation directe d'une règle ou théorie juridique étrangère a permis au juge d'améliorer ou d'asssouplir le droit de son propre pays. Ces "emprunts" de précédents judiciaires ne se font pas seulement entre les pays régis par le même common-law, mais se pratiquent aussi entre pays de droit écrit et entre systèmes juridiques ayant grandi selon des principes divergents. Nous avons indiqué ailleurs l'utilité que présentent à ce sujet les recueils internationaux de jurisprudence.[4] Nous nous proposons de revenir dans une autre étude sur l'avantage que le législateur et le juge peuvent retirer de l'analyse systématique des droits étrangers. Qu'il suffise ici de résumer les principaux arguments avancés par M. Gutteridge pour démontrer la valeur pratique de la méthode comparative pour le juge et l'homme de loi.

Devant l'expansion constante du *droit administratif* dans les pays du common-law, les juristes anglo-américains pourraient tirer des enseignements utiles de l'étude du droit administratif dans les pays où il a toujours tenu une place importante. "The rules relating to such matters as the control of public utilities . . . and the relation between central and local authorities and the citizens" sont en effet des mines riches en leçons immédiatement applicables (p. 29).

Même *le droit pénal* dont le caractère national a été si souvent souligné se prête avantageusement à l'étude comparative. Car "the success or failure of a particular policy in dealing with crime has its lessons, not only for the country which has made the experiment, but for all countries which have the like problem to solve" (p. 29). Et on pense immédiatement à la lutte contre la délinquance juvénile, qui préoccupe tous les pays depuis la dernière guerre mondiale.

Le *droit des obligations* et surtout son appendice le *droit commercial* sont des domaines où l'étude des droits étrangers, législatifs, judiciaires et coutumiers, est appelée à jouer un rôle de premier plan du fait même que les contrats de caractère international se multiplient au fur et à mesure que le monde devient plus petit et que les échanges internationaux s'intensifient. La connaissance des droits étrangers devient donc indispensable à l'avocat qui compte parmi ses clients des maisons de commerce. Mais ce n'est pas tout. M. Gutteridge indique très justement que l'étude du droit des obligations contractuelles à l'étranger peut avoir une importance considérable pour la réforme du droit anglais actuellement à l'étude. "This has become clear [dit-il] in connection with the reports to the Law Revision Committee on such questions as the Statute of Frauds, the Doctrine of Consideration and the rule in *Chandler* v. *Webster*, [1904] 1 K.B. 493" (p. 33).

Même dans *le droit des "torts"* qui est si typiquement anglo-américain M. Gutteridge estime à juste titre qu'on pourrait poursuivre utilement des études de droit comparé. Certaines de ses règles, remarque-t-il, "have become so rigid as to create the possibility of failure of justice. The situation . . . appears to be one which calls for a study of the law of those countries which have endeavoured to mitigate the recognition of what Lord Dunedin has called "super-eminent equities" (p. 33). Les efforts faits par d'éminents juristes anglais pour introduire en common law la doctrine française de l'abus des droits montrent la justesse de ces remarques.[5]

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[4] *L'utilité, pour l'étude comparative des droits et des évolutions économiques, des recueils internationaux de jurisprudence*, dans *Recueil Lambert*, Paris, 1938, vol. 1, p. 572ss.

[5] Cf. p. 33, p. 68, et R. H. Mankiewicz, *Le rôle et le comportement du juge en pays de common-law et en pays de droit écrit*, Shanghai, 1945, p. 34ss.

Nous n'avons pu donner dans ces lignes qu'une vue rapide des richesses du livre de M. Gutteridge qui défend si habilement et avec tant de compétence la cause de la méthode comparative. Le scepticisme qu'elle rencontre encore aujourd'hui dans certains milieux d'avocats et de juges est particulièrement surprenant parce que, dans toutes les autres sciences, on se fait un point d'honneur de suivre l'évolution à l'étranger. "Even Anglican theologians, who are reputed to be most nationalistic of all divines in their outlook, have never adopted this attitude of extreme insularity" qui caractérise les juristes (p. 24). "What would have been the fate of the art of healing [demande M. Gutteridge] if our physicians and surgeons had disregarded the research of foreign workers in the same field?" (p. 24). Certes, il ne s'agit pas d'imiter à tout prix et dans toute circonstance, la loi ou le précédent judiciaire étranger. Mais, pour prendre l'hypothèse la moins favorable, l'étude des droits étrangers permet au moins au juriste de "profiter des erreurs commises par les pays étrangers" [6] et cette leçon vaut bien une étude, surtout lorsque le nivellement des civilisations crée partout des problèmes semblables.

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Federal Income, Estate and Gift Tax Laws, Correlated. Tenth edition. By WALTER E. Barton, Attorney and Counsellor at Law. Washington: Tax Law Publishing Company. 1950. Pp. xxv, 893. ($35.00)

This is a book which will be of great value to anyone concerned with tracing the legislative history of the provisions of the United States income, estate and gift tax laws. The tenth edition covers the years 1944 to 1949 and with the author's second, eighth and ninth editions gives the complete legislative history of any given section from 1913. In the early days of the United States Internal Revenue Code, which embraces the income, estate and gift tax laws, there was a complete re-enactment of the Code approximately every two years. This policy has not been pursued since 1939, however, and during the period 1944 to 1949, covered by the tenth edition, there have been 380 amendments, many retroactive for several years and few of them made by re-enacting the amended sections in their entirety. The need for the work is obvious, and it very admirably fills the need. The arrangement is good, the type is clear, and the text is easy to use. In addition there is an admirable subject index of great utility.

In brief, although there cannot be very many Canadian lawyers who are normally interested in tracing the legislative history of the United States tax laws, for those who are, this volume will be most useful for the years 1944 to 1949.

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[6] Gutteridge, *La valeur du droit comparé*, dans *Recueil Lambert*, vol. 1, p. 294 ss.

Trial of James Camb (The Port-hole Murder). Edited by GEOFFREY CLARK. Notable British Trials Series. London: William Hodge and Company, Limited. 1949. Pp. 225. (15s. net)

This volume is the seventy-first in the well-known series that for half a century has given instruction and pleasure to lawyers and laymen alike, drawing its inspiration as well from the past, with for example the trial of Mary Queen of Scots, as from the latest sensational murder case. On October 18th, 1947, Miss Gay Gibson, a passenger on the "Durban Castle" en route from South Africa to England, disappeared from her cabin during the night. Her body had been slipped into the sea through a port-hole, and so it became for the press "The Port-hole Murder". A ship's steward, one James Camb, was arrested and charged with murder. He had been seen in Miss Gibson's cabin on the night of her disappearance by a watchman who came to the door in answer to a bell. Scratches were also found on his arms as though he had been opposed by someone he was strangling. Camb admitted that he had pushed Gay Gibson's body through the port-hole, but he reiterated to detectives, as well as later when he gave evidence on his own behalf, that the girl had died a natural death in the cabin. His version was not believed by the jury and James Camb was sentenced to the gallows. An appeal was dismissed but he escaped hanging because of the "no-hanging" clause in the Criminal Justice Bill then before Parliament.

Though the point was not raised by the defence, *Rex* v. *Camb* has once more shown the falsity of the popular notion that it is impossible to convict of murder where no body has been found. The rule requiring proof of the *corpus delicti* is only a cautionary rule, as was recently stated by the Ontario Court of Appeal in *Rex* v *Chambers*, [1947] O.R. 1038. The case was also another demonstration of the fairness of the administration of criminal justice in England: expert evidence was made available to the defence by the Crown and the expenses of three witnesses for the accused who came from South Africa were paid from public funds.

From the judicial as well as the human point of view, *Rex* v. *Camb* is now history, but it remains a debatable subject in forensic circles, as readers may see from the interesting discussion that followed the reading of a paper on it by Mr. G. D. Roberts, K.C., counsel for the Crown, before the Medico-Legal Society (The Medico-Legal Journal, 1948, 147-154). On that occasion, indeed, Dr. Hocking, who had been a witness for the defence, reiterated that Camb's story as to the manner of the girl's death was a possible one on medical grounds.

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Legal Theory. By W. FRIEDMANN, LL.D. (London), Dr. Jur. (Berlin), LL.M. (Melbourne), of the Middle Temple, Barrister at Law, Professor of Public Law, University of Melbourne. Second edition. London: Stevens & Sons, Limited. 1949. Pp. xxiii, 470. (30s. net)

It is with diffidence that I attempt to review this valuable and stimulating work, and the more I study it the greater my diffidence becomes. Dr. Fried-

mann's writings have always appealed to me, even when I have found myself in disagreement with him. He has the gift, too often denied to writers on legal subjects, of expressing himself in easily understood and most attractive prose, and the extent of his learning is something I always marvel at afresh.

From the day, now well over forty years ago, when, as a law student, I first read Stair's saying that "no man can be a knowing lawyer in any nation who hath not well pondered and digested in his mind the common law of the world", I have endeavoured, so far as in me lay, to study law in that way. During my time, the output of books that a lawyer should read has attained almost fantastic proportions, and a simple calculation will show that, if even a small part of such works were read, pondered and digested, there would be little time left to do anything else. A judicious selection therefore must be made and it is refreshing, to say the least, to be presented with a book such as Dr. Friedmann has given us.

Any work on legal theory must represent the personal opinion of the author, just as any review must represent the personal opinion of the reviewer; and each is inevitably coloured, often unconsciously, by the background, training and experience of the writer. There are, today, many schools of legal thought — too many in my opinion — but even the disciples of the founder of a school are usually in disagreement with their "master" and with each other. In the result we have as many "schools" as there are writers, and, man being the individualist he is, it must be so.

My thoughts about this book are those of one who has now had some years of judicial experience, after many years of active practice at the Bar, during most of which he has lectured to the Manitoba Law School, and who has had the temerity from time to time to write on various legal topics.

It is impossible, in my opinion, to deal justly with a book such as this within the limits of a review. To express admiration for it is easily and sincerely done. To select points of difference and comment on them would take up more space than is available to any reviewer, and would leave no opportunity to discuss the many matters in which I find myself in agreement with the writer. In order to do justice to Dr. Friedmann I should really write a book — my own Legal Theory — which of course is impossible, and might be absurd.

I find myself in complete accord with Dr. Friedmann in certain of the basic statements he has made in his Prefaces and Introduction. I agree that "the need for a systematic treatment of the principal movements in Legal Theory has long been felt" (Preface to first edition, 1944). I agree that "Understandable though the longing for absolute values is, after the shattering experiences the world has gone through, I remain more than ever convinced that any attempt to define law in terms of absolute justice can only end in failure. It obscures the vital tasks of constantly re-defining and translating particular political philosophies into concrete legal values and precepts" (Preface to second edition, 1948).

I found the concluding chapter (32) which, as Dr. Friedmann says, has been expanded by a discussion of the relation between freedom, planning and the rule of law, in an attempt to apply these principles, one of the most informative and provocative portions of the book.

It is with a sense of profound pleasure that I read, in the preface to the first edition, the author's statement:

"This book does not attempt to add a specific legal theory of its own to

> the many variations on a few basic themes which greater minds have developed. Its approach to legal theory is close to the relativist philosophy of Max Weber and Radbruch, which leads to results not vastly different from those reached by some leaders of modern Anglo-American thought from a different point of departure. Its essence can be briefly summed up: Ultimate values must be believed, they cannot be proved."

The only thing I have to quarrel with here is the reference to "greater minds". This is undue — though, I am sure, not false — modesty on Dr. Friedmann's part. I may be wrong, but according to my view one of the tests — perhaps the greatest test of any mind — is the ability to express its thoughts simply: in "words easy to be understood", as St. Paul once wrote.

If I am correct in this, then I have found in the modern writers no greater mind than Dr. Friedmann's. There are others who possess this gift of clear exposition, but there are too many who write in a jargon that is often incomprehensible. In some cases the theories put forward are perhaps not worth the effort to comprehend. Again we suffer, not gladly, from writers who in order to express their shades of meaning find themselves impelled to invent almost a complete new language.

This seems to be a continental fault. The Germans are perhaps the worst offenders, but it is also noticeable with many American writers. It has perhaps been carried to the extreme by Dean Wigmore, for whom, and for whose writings, I have considerable regard. As Stone remarks (7 Mod. L. Rev. at p. 111), Wigmore divides "nomology (the science of law) as a whole into nomoscopy, nomosophy, and nomopractics. Nomoscopy is to ascertain the facts of legal science, whether present facts (nomostatics); past facts (nomogenetics); or concurrent facts of other science (nomophysics). Nomosophy is to test legal rules either by logic (nomocritics), by ethics (nomothetics), or by economics (nomopoetics). Finally, nomopractics is to deal with the making and enforcing of legal rules, either by courts (nomodikastics), by legislature (nomopoetics), or by execution (nomodrastics)."

When, added to jargon we get diffusiveness and discursiveness, as we too often do, we have confusion worse confounded. This is not a vice to which those trained in the British Islands have as yet become much addicted and Dr. Friedmann's writings all demonstrate that it is possible to be clear and concise. No one would condemn a certain amount of repetition, in which our author does indulge. Indeed it is often necessary to instruction.

I am not inclined to agree entirely with Dr. Friedmann when he says in his first chapter:

> "Before the nineteenth century, legal theory is essentially a by-product of philosophy, religion, ethics or politics. The great legal thinkers are primarily philosophers, churchmen, politicians. The decisive shift from the philosopher's or politician's to the lawyer's legal philosophy is of fairly recent date. It follows a period of great developments in juristic research, technique and professional training. The new era of legal philosophy arises mainly from the confrontation of the professional lawyer, in his legal work, with problems of social justice."

It is impossible for me to agree that it was only in the nineteenth century that the professional lawyer in his legal work was confronted with problems of social justice. It is, I think, a mistake to consider that problems of social justice are in any sense new in the legal work of the practising lawyer.

"Justice" is a much abused word. In the abstract it means different

things to different men. When sought by any individual it means, in my experience, that which will give him what he wants at the moment he wants it. The law at any given time must represent what the majority of those under the law are satisfied with or are prepared to submit to. When the majority is dissatisfied we find the law is changed, sometimes as a result of revolution, sometimes as a result of evolution. In each process some practising lawyers have for centuries played a leading part.

It must never be overlooked that the primary function of the lawyer is to obtain for his individual client in the courts that which the law says he is entitled to. It is the duty of the judge to see that that is done. Most cases before the courts have been cases as between man and man. Each case presents individual problems and, generally speaking, the courts have shown themselves conscious of where the merits lie. Judges are human and there is some truth in the saying that hard cases make bad law.

On the whole, I believe it can be demonstrated that the professional lawyer has for centuries played a vital part in the development of the law and, as Dr. Friedmann himself says, any attempt to define law in terms of absolute justice can only end in failure.

The history of the development of philosophical and legal philosophical thought is set out with a conciseness and clarity that leaves nothing to be desired. It is essential to have a good understanding of the work of the various writers, ancient and medieval, as well as modern. But they must not be too slavishly admired or too blindly followed. I am inclined to think that the Greeks were better at posing problems and refining ideas than in settling them. They "laid the basis of natural law and developed its essential features" (Chap. 4). Dr. Friedmann's treatment of this problem forms Part 2 of his book. I found his chapters on the "Twilight of Natural Law Ideology" (Chap. 8) and the "Revival of Natural Law Theories" (Chap. 10) especially interesting.

Two of his comments are particularly illuminating. As the conclusion of Chapter 10 he writes: "Thus the tale of natural law breaks off as inconclusively as the tale of western civilization in its search for the best way of life". This brings us back to the first sentence of Part Two (Chapter 3): "The history of natural law is a tale of the search of mankind for absolute justice and its failure".

From this discussion of natural law, after dealing with "The Individual, The Universe, and The Community" in Part 3, and "The Impact of Modern Social Development on Legal Thought", Part 4, the author again brings us back to natural law in Part 5—"Modern Political Movements and their Legal Thought".

In this Part Dr. Friedmann's first chapter (20) discusses "Socialist Thought on Law". He begins with Marx's original and later somewhat modified theories and their development in Russia. He points out that "the development of the Soviet State thus needed simultaneously the restoration of law as an instrument of authority and the limited restoration of law as a protector of individual rights". He refers to the vacillations still continuing of Soviet legal theory and comes to the conclusion that State Policy remains the overriding consideration and says: "A new balance between security, which characterises private law, and controlled utility, which characterises public law, must be sought".

He then proceeds to discuss the situation in Great Britain; but before mentioning that, I proceed to Chapter 21, "Fascist and National Socialist

Legal Thought". He says of Germany and Italy that "legal theory here has not been used as a result of genuine reflection on the relations of man and universe, but entirely as a cloak to cover the nakedness of the will to power and domination and in order to maintain the appearance of continuity of a civilization which these movements at heart deny". He next points out that, under the influences he mentions, greater emphasis is given in Italian Fascism to the corporate state than in National Socialist Germany.

This is a matter of considerable importance in the light of recent trends in Italy, and perhaps especially to us in Canada, having regard to the recent pronouncements by His Holiness the Pope on the duties of judges and the statement recently issued by the Roman Catholic Hierarchy in this country, which has something to say about the corporate state.

And this brings us to Chapter 22: "Modern Catholic Thought on Law". In the system formulated by St. Thomas Aquinas, natural law "celebrated its greatest triumph", and Dr. Friedmann says that modern Catholic doctrine "is a development, not a modification, of Thomistic principles". This chapter demands particularly careful consideration. The Roman Catholic doctrine is that of over three hundred million people and that Church is in the forefront of the struggle against Communism. The way in which these theories operate in various parts of the world is defined in Chapter 22; to what extent these theories will prevail, how they may be modified, or whether they will survive, only history will tell.

Then we return to the situation in Great Britain as discussed by Dr. Friedmann (Chap. 20). Here the great experiment is still being tried out. Can there be a "welfare state" which will not end as a totalitarian regime? It is yet too soon to tell.

Dr. Friedmann says: "So far the theory and practice of socialism has neither abandoned the generally recognized basic concepts of law nor created fundamentally new concepts. What it is doing — and this is a true process of 'social engineering' [Pound's term] — is a new combination for new purposes of existing legal concepts, such as freedom of contract, breach of promise, corporate personality, constitutional responsibility, and a re-adjustment of values which is neither more nor less closely related to the underlying political and social values than the legal interests paramount in other economic systems."

As I see it, if the experiment fails in Great Britain, the only places in the world it has any chance to succeed are Canada and the United States.

There are other matters to which I should like to refer, such as "Legal Ideals, Public Policy and The Practical Lawyer" (Chap. 23). Here I think the practising lawyer and the judge would have much to say. There would be, I think, some healthy disagreement, and I should expect a different approach, depending upon whether it was an American, a Canadian or a Briton leading the discussion.

But I must forbear. This is really a great book. Every judge, every lawyer, every teacher of law and every law student should ponder and digest it. Dr. Friedmann has placed us all under a great obligation. The book is attractively printed on good paper and well bound. I have noticed a number of misprints, but they can be corrected in another edition, which it is certain will be required, and they did not interfere with my pleasure in reading the book. Thank you again, Dr. Friedmann.

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