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## Book Review

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## BOOK REVIEW

THE JUSTIFICATION OF THE LAW. By Clarence Morris. Philadelphia: University of Pennsylvania Press. 1971. Pp. 214. \$12.50.

At the risk of needlessly antagonizing the editors of one of the most distinguished university presses in the United States, I shall state my wonderment at the title *The Justification of the Law* which covers a new book by Professor Clarence Morris. It is perhaps more properly bewilderment I feel; the book fails to come up to expectations induced by so ambitious and grand a title. I had at the least expected—and, indeed, genuinely looked forward to—a systematic examination of a stated proposition or a group of propositions leading with an inexorable thoroughness to what T. S. Eliot called the “final ecstasy of assent,” or else (my own term here) a disturbed dissent ready to undertake refutation.

Neither of these acts of the will was possible. We are called on to say neither yes nor no to a thoroughly demonstrated idea. We are, rather, given a proposition and then chapter upon weary chapter of other material which is in some manner molded to accommodate that initial proposition. This characteristic is not, I think, hard to understand, for *The Justification of the Law* has all the appearances of a put-together book. Seven of the eight chapters have either appeared before in book chapter or article form (in a plethora of variations), or been dealt with by Professor Morris in other circumstances and at other times. The one chapter not of this kind—Chapter 4, “Law and Logic”—looks like lecture notes written out and filled in. The “Introductory Schema” states the book’s aims and weaves a very thin line to tie the chapters one to another. The inclusion of Chapter 7, “The Board of Punishments’ Interpretation of the Chinese Imperial Code,” the longest chapter of all, suggests the heartiness of the effort to make things that are not quite congruous fit together, and the result is, not surprisingly, an uneasy and distracting book that might have been better made a collection of essays.

I ought not give the impression that *The Justification of the Law* is a dull or uninteresting work. Although it is not graced with a felicity of expression or an easiness of style, it is full of at least interesting and informed discussions and analyses of political and legal philosophies, including those of Kant, John Stuart Mill, Jeremy Bentham, Herbert Marcuse, Montesquieu, and Rousseau. Its chapter on Chinese law suggests a whole area for fascinated study. Further, Professor Morris makes some exceptional observations on matters of contemporary concern, but these spring up unexpectedly and not entirely with clear antecedents. The footnotes are extensive and very often more interesting than the text they seek to augment.

The simplest formulation of Professor Morris’s theory of justice he provides himself: “The more that law implements the public’s genuine and important aspirations, the more just the legal system becomes.” Before we may wonder too much about the general character of the public’s aspirations, Professor Morris defines their nature more closely: “The public’s aspirations are not the same as widely held desires for individual gratifications; public aspirations are social,

deep-seated, unselfish, and nonexploitative." He posits that without law (and by further explanation, good law), there can be no justice, and that justice is "intentionally produced" only when lawmakers act as the public's agents. Law in this context means "more than statutes and ordinances; it includes both adjudicated decisions of cases and social recognitions of those legal obligations that exist without governmental prompting." Professor Morris holds that man's "capacity for justice does not flow from divine reason or divine revelation. Men enjoy justice steadily and by design only when they live in a society that affords opportunities to all its inhabitants to develop their capacity to form aspirations for their society."

I am considerably disturbed by Professor Morris's theory. I do not, I allow, fully understand what he means in this theory, a fault, however, not entirely my own. But he does clearly concern himself with the relation between justice and law. He does set law before all justice, I believe, in the last implications of his view, and my fear is that if that were actually the way of the matter, justice would have severe difficulty surviving.

I do not believe human law is the embodiment of all justice. Law cannot justify justice, and there are questions of human conduct which it is impossible for law to deal with justly. It is sufficient to say that human law seeks to undertake the proper ordering of earthly society. Human law becomes more just not, as Professor Morris thinks, when it more fully implements the public's genuine and important aspirations, a quantity to which he gives only vague standards. Human law becomes more just when it does more fully what is its proper business to do. When that law runs against true justice, as it may and as it has so very often, it loses its authority. Caesar has his due, but it is Caesar that has a border, not God, and if anyone is to cross borders, it ought not to be Caesar.

This is the worrisome matter—that human law is good but necessarily imperfect. The same human condition that vivifies human law also places severe limits on the possible efficacy of that law. A man kills his terminally ill wife who happens to be very wealthy. He does it quietly and without pain to her. Caesar takes him and tries him and condemns him. Reprehensible though the act of killing is and as justly as a man is condemned (in some way) for it, does Caesar know truly whether the man he has justly condemned acted well or ill, acted from hate and greed, or from love and mercy? Caesar does not know, because he cannot know. Human law in the last analysis must look at each matter it is called on to weigh as if the parties of the matter were only objects, as if all that counted for value was the committed action itself. The judgment cannot dig deeper, nor, perhaps, should it be able to do so. That would be, perhaps, an unwarranted crossing of borders. The act, we say, cries out for justice, but there is justice of many kinds.

Human justice can be good, for men are good, and human justice will do what it must. But human justice is not Justice alone and exclusively and no amount of public aspiration will make it so. If there were no justice without law, then we would soon see even that law fall. The hope for justice is not satisfied by human law, nor does it expect to be. If it is taken away from that hope to trust in Justice—divine or whatever one cares to call it—and justice

seen subjectively, from the inside and not only from the outside, then there will be no hope left in human law for even the partial accounting it can afford.

Law, the kind that gives attorneys their livelihoods, organizes human conduct in its public ordering. But human conduct in both its private and its public doings, as well as human thought and human will, is subject to another law and it is in the nature of that other law—that higher Justice, if you will—to have more to say to men than humanly made law does. This other law also brings men invariably into conflict with the laws of men and in the working out of these conflicts resides no small amount of the matter of men on earth.

Professor Morris's book does not take us to this matter. It could not even if it cared to. Its eyes look to a different horizon and a horizon considerably lower and more foreboding than I think there is to see.

*Roderick B. Porter\**

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## BOOKS RECEIVED

**BASIC TEXT ON INSURANCE LAW.** By Robert E. Keeton. Professor Keeton's treatise focuses upon the principle of indemnity, risks transferred, and the claims process. A supplement (Pp. 398, \$5.50) brings the book up to date. St. Paul: West Publishing Co. 1971. Pp. xviii, 712. \$12.00.

**BIASES AND PREJUDICES AMONG JURORS.** By Emanuel Demby. This short but enlightening study focuses upon eleven personal characteristics influencing jurors' opinions of claimants. Comments by practitioners are included. Belleville, N.J.: Educational Systems and Publications. 1970. Pp. 31. \$8.50.

**A CONSTITUTIONAL HISTORY OF THE MILITARY DRAFT.** By John R. Graham. Mr. Graham traces the history of the draft from the Constitutional Convention to the present. His conclusion is that the "citizen army" is the most desirable form of armed force. Minneapolis: Ross & Haines, Inc. 1971. Pp. ix, 147. \$5.95.

**DISPOSAL OF RADIOACTIVE WASTES INTO RIVERS, LAKES AND ESTUARIES.** By the International Atomic Energy Agency. This report, by a committee of atomic energy experts, discusses the movement of radionuclides within an aquatic environment, assesses the risk which these materials present to human life, and explains how to set safe discharge limits. New York: Unipub, Inc. 1971. Pp. 77. \$3.00 (paperbound).

**EQUAL JUSTICE: THE WARREN ERA OF THE SUPREME COURT.** By Arthur J. Goldberg. Former Justice Goldberg analyzes the Warren Court's major decisions in the areas of criminal law and personal and civil liberties. He attributes these decisions in part to the Court's "general impatience" with traditional legal formalisms. The author also discusses the concepts of judicial activism, constructionism, and stare decisis with relation to the Court. The book's contents were originally presented at the 1971 Rosenthal Lectures. Evanston: Northwestern University Press. 1971. Pp. ix, 117. \$4.50.

**LABOR-MANAGEMENT BENEFIT FUNDS.** By Noel A. Levin. Written primarily for the trustee and practitioner, this book extensively analyzes the area of employee benefit funds. Emphasis is placed upon the creation and operation of benefit trusts and the scope of the trustee's obligations. An extensive appendix of sample forms and agreements is included. New York: Practising Law Institute. 1971. Pp. xvii, 547. \$25.00.

**MEDICAL PROBLEMS AND THE LAW.** By Kent L. Brown, M.D. The author's aim is to describe unethical and dishonest practices by physicians and attorneys in the personal injury area. Topics discussed include overtreatment,

questionable testimony by physicians, malpractice, false or exaggerated medical histories, and the solicitation and compensation of medical witnesses. Springfield: C. C. Thomas, Publisher. 1971. Pp. xiii, 280. \$13.75.

**SAFE OPERATION OF CRITICAL ASSEMBLIES AND RESEARCH REACTORS.** By the International Atomic Energy Agency. This publication contains two main parts. The first part consists of a Code of Practice for the safe operation of critical assemblies and Research Reactors, prepared as a result of a meeting in Vienna in 1968. The second portion is a technical appendix, listing safety rules and practices which have been developed at different installations. New York: Unipub, Inc. 1971. Pp. 193. \$5.00 (paperbound).

**STATE AND LOCAL SALES TAXATION: STRUCTURE AND ADMINISTRATION.** By John F. Due. The retail sales tax is the most significant source of state tax revenue. Professor Due describes the sales tax structure and its administration. Extensive treatment is given to exclusions and exemptions, control of delinquency, and auditing procedures. Chicago: Public Administration Service. 1971. Pp. xiv, 336. \$11.95.

**TAXATION OF THE SHIPPING INDUSTRY.** By Richard F. Madigan. The author notes that the shipping industry's tax situation is governed as much by the Merchant Marine Act of 1936 as it is by the Internal Revenue Code of 1954. Those tax problems unique to the shipping industry are examined, including the subsidized shipping company and the taxation of foreign shipping companies. Cambridge, Md.: Cornell Maritime Press, Inc. 1971. Pp. vii, 59. \$4.00 (paperbound).

**TESTS ON TRANSPORT PACKAGING FOR RADIOACTIVE MATERIALS.** By the International Atomic Energy Agency. This work embodies the results of a Seminar held in Vienna in February, 1971. Studies of transport conditions, package testing, and design and construction features are included. Portions of the book are in Russian and French. Illustrated. New York: Unipub, Inc. 1971. Pp. 641. \$18.00 (paperbound).

**TRIAL DIPLOMACY.** By Alan E. Morrill. The author presents an exceptionally extensive and practical treatment of all phases of litigation. Included are the transcripts and pertinent evidence from illustrative civil and criminal trials. Ancillary considerations, such as interviewing the client, investigation, discovery and pleading and motions, are also covered in detail. Chicago: Court Practice Institute. 1971. Pp. xxx, 922. \$17.50 (paperbound).

**VICTOR'S JUSTICE: THE TOKYO WAR CRIMES TRIAL.** By Richard H. Minear. Professor Minear concludes that the defendants in this much-ignored war crimes trial were innocent and were "woefully wronged." The author sees the ideals and preconceptions which lay behind the Tokyo trial as playing a "contributing role in the more recent mistakes that the United States has made and continues to make in Asia." Princeton: Princeton University Press. 1971. Pp. xv, 229. \$7.95.