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Book Reviews

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BOOK REVIEWS

THE NEGRO PERSONALITY: A RIGOROUS INVESTIGATION OF THE EFFECTS OF CULTURE. By Bertram P. Karon. Springer Publishing Co., 1958. Pp. 184. $4.50. We no longer hold our fathers' truths to be self-evident. We try to test them. That all men are created equal was a proposition to which a number of slave-owners were willing to dedicate their lives, their fortunes, and their sacred honor. But they left to a Constitution, and to civil war and later generations of lawyers, legislators and judges, the expounding of a truth that was, by its self-evident contradiction of the facts of a slave-holding society, a question.[1]

For the founding fathers, who adopted a representation formula by which a Negro slave counted as two-fifths property and three-fifths person, constitutional commands were also questions. Freedom of speech, due process, commerce among the several states, the equal protection of the laws — these are necessarily questions to which no court can give final answers.

In *Brown v. Board of Education*,[2] the Supreme Court held that compulsory segregation of white and Negro children in public schools had "a detrimental effect" upon the Negro children and therefore deprived them of the equal protection of the laws under the Constitution. Referring to its now celebrated footnote number eleven,[3] the court said that this finding was "amply supported by modern authority" whatever "may have been the extent of psychological knowledge" in 1896 when the doctrine of "separate but equal" was approved. Dr. Karon's book is an amplification of that controversial footnote.

Through the Tomkins-Horn Picture Arrangement Test, Dr. Karon seeks to answer two fundamental questions: whether the Negro is in fact hurt by legally enforced segregation, and whether the inferior scores of the majority of Negroes on intelligence tests is caused by innate racial inferiority or by an unfair environment. Dr. Karon summarizes the caste sanctions under which the Negro lives, emphasizing the difference in racial status in the South and in the North. He reviews the previous studies of Negro intelligence and personality, taking as the most suggestive fact not the generally higher intelligence scores for whites, but the fact that on the average northern Negroes score higher than southern Negroes.[4] That the average score of Negroes from some northern states on army intelligence tests was higher than the average score of whites from some southern states, and that the intelligence scores of Negroes in the North were found to vary consistently with the number of years they lived in the North, he recognized as significant, but the focus of his examination was the difference between northern and southern Negroes.[5]

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1 To Stephen Douglas's contention that the Declaration of Independence "referred to the white race alone," Lincoln replied: I think the authors of that notable instrument intended to include *all* men, but they did not intend to declare all men equal *in all respects*. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness in which respects they did consider all men created equal — equal in "certain inalienable rights, among which are life, liberty, and the pursuit of happiness." . . . They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence and augmenting the happiness and value of life to all people of all colors everywhere." Springfield Speech, June 26, 1857. 2 COLLECTED WORKS OF ABRAHAM LINCOLN 405-06 (Basler ed. 1953).

2 347 U.S. 483 (1954).

3 *Id.* at 494.

4 Text, at 42, 52. See MYRDAL, AN AMERICAN DILEMMA 144-53 (1944).

5 Text, at 11, 52, 76.

From all this he constructed a working hypothesis:

> If, on the one hand, the effects of the caste sanctions account for the differences in the personalities of Negroes and whites as well as for the differences between northern and southern Negros, then whites will differ from Negroes on the same characteristics that differentiate northern from southern Negros. If, on the other hand, there are hereditary differences in personality between whites and Negroes, the differences will be found on characteristics which are *not* the same as those which differentiate northern from southern Negroes.[6]

From his tests he concluded that northern Negroes do in fact differ from southern Negroes in the same direction and on the same characteristics which differentiate northern whites from southern Negroes, and that caste sanctions and not heredity account for these differences.[7]

For a lawyer untutored in either the methods of psychological testing or the intricacies of scientific sampling it is difficult to judge the weight to be given to Dr. Karon's study. In this world of modern science and technology we will need to learn the mathematical language of probability and be able to handle the tools of sampling, and, like the Supreme Court, we must be ready for Brandeis briefs that rely on the evidence of psychology and sociology.[8] Dr. Karon carefully explains his statistical methods and safeguards, but this reviewer can only trust the adequacy of the representative cross-section of the United States population chosen by Dr. Gallup and the random sampling for groups of northern whites, and of northern and southern Negroes. Moreover, the significance of the Picture Arrangement Test (PAT) is itself outside the scope of this lay reader.

PAT is an objective test that can be machine-scored. Each question consists of three pictures that can be arranged in six different ways. Then one of a series of alternative descriptions of the arrangement chosen must be checked. The situations involved are supposed to measure some 150 different personality characteristics. PAT is based on the assumption that the individual will project his thoughts and feelings into the pictures placed before him, and that the technique of free association used in the highly individual Rorschach inkblot test or in psychiatric interviews can thus be adapted to a mechanical method of large-scale research.

Out of the 150 personality characteristics tested, a high level of significant difference between whites and Negroes was found in eleven characteristics, six of which were directly concerned with the area of aggression.[9] Negroes inclined more to feel that people would go out of their way to make trouble for them. Negroes strongly exhibited the psychological defense mechanism of denial of their suppressed anger. Negroes also showed a comparatively "weak affect," a deadening of affective relationships or of emotional life generally.

What is most interesting is that northern Negroes differed from southern Negroes on precisely the same eleven characteristics and in the same way as northern whites differed from southern Negroes.[10] In fact, Dr. Karon states that the average test score on these characteristics, corrected for age and vocabulary, is the same for northern Negroes as for northern whites.[11] Moreover, a northern Negro sample that included migrants from the South was more like the southern Negro samples and less like the white sample, than the northern Negro samples that did not include migrants. Also of special interest is the finding that aggression traits increase and "affect" weakens in Negroes from rural deep South areas compared not only with northern Negroes but also with Negroes living in southern urban areas.[12]

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6 *Id.* at 77.
7 *Id.* at 145.
8 See Sorensen, *The Admissibility and Use of Opinion Research Evidence*, 28 N.Y.U.L. REV. 1213 (1953); SOCIETY OF BUSINESS ADVISORY PROFESSIONS, CURRENT BUSINESS STUDIES No. 19, *Symposium on the Role of Sampling Data* (Oct. 1954).
9 Text, at 171-72.
10 *Ibid.*
11 *Id.* at 174.
12 *Id.* at 172.

From this Dr. Karon does not conclude that the northern Negro suffers no psychological damage from the racial discrimination he experiences in many sides of his life. He suggests that the relatively small samples used, involving only several hundred persons, may show only relatively large differences, or that the personality disturbances of northern Negroes may be related to different kinds of problems not measured on this test. But he does find that Negroes living under the sharp, legally enforced caste sanctions in southern states are psychologically disturbed on a serious scale.[13] He hazards an explanation of what protects the northern Negro from the same kind of damage:

> Perhaps the southern Negro, whose whole society tells him he is wrong even to resent his treatment, can never be completely sure that he isn't wrong, nor can he bring himself to completely accept the treatment he receives. The northern Negro, on the other hand, may be made to suffer, but he feels that those who make him suffer are wrong, and he has a right to resent it. He is engaged in an unequal struggle which he may never win, but he knows he is engaged in a struggle which is not hopeless. Apparently, being able to face the fact that one is being mistreated preserves a sense of personal integrity which, in turn, serves to ward off much of the destructive impact of oppressive experiences. It would seem that when we face the truth, the truth really does, to a large extent, set us free.[14]

What does all this prove? It can hardly prove as much as Dr. Karon claims. "Objective and rigorous answers," he says, "are now available" to questions about the effect of legally enforced segregation.[15] Without sharing his faith that "those matters which are closest and most important to human beings are as resolvable by scientific investigation as are the secrets of the physical universe,"[16] or his faith that with PAT the question "What does it mean to be a Negro?" is "no longer an unsolvable problem,"[17] the results nevertheless are suggestive.

For the Negro it should not be news that caste sanctions hurt.[18] But it should be encouraging to all concerned that there may be psychological benefits from the current turmoil and tension in the South. Even though the new law of desegregation may be massively resisted by southern whites, the educational, psychological effect of the Court's decision on southern Negroes may be of immeasurable value. If the depth of the wound caused by segregation depends on the degree to which the Negro is inflicted with self-doubt — with fear that he is in fact not created equal — then the Negro in the deep South may be fortified by the discovery that the Supreme Court and the Constitution are truly committed to the protection and realization of his equality.

In support of this possibility, Martin Luther King, the minister who led the Negro bus boycott in Montgomery, Alabama, contends that as a result of the Negro protest and of the court victory there is now increased self-respect among even the least sophisticated Negroes in that city, evidenced by better standards of cleanliness and a decline in heavy drinking, crime and divorce.[19] Who would dare say that the Negro children and parents of Little Rock, despite their ordeal, are psychologically stronger and healthier because they have taken a stand and know that the Federal government is on their side? But Dr. Karon's study encourages this hope.

There are many important questions that he does not touch. What, for instance, are the effects of segregation or integration on the whites? Does the feeling of racial superiority supported by enforced segregation damage the personality of whites, particularly in terms of the attributes of fair mindedness and mutual respect necessary for good citizenship in a republic? Or, assuming that enforced segregation does psy-

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13 *Id.* at 175.

14 *Ibid.*

15 *Id.* at 6-7. For a discussion of the limitations in all tests of personality, see TRAVERS, EDUCATIONAL MEASUREMENT 209-50 (1955).

16 Text, at vi.

17 *Id.* at 75.

18 See GROUP FOR THE ADVANCEMENT OF PSYCHIATRY, REPORT NO. 37, *Psychiatric Aspects of School Desegregation* (1957).

19 KING, STRIDE TOWARD FREEDOM: THE MONTGOMERY STORY 187 (1958).

chologically cripple the Negro, what about enforced integration? What happens to the Negro children, taken out of culturally and economically deprived homes, segregated environments and inferior schools and placed in the midst of white children? Is it compounding the damage to place Negroes who already doubt their equality and who have serious personality disturbances and achievement disadvantages in competition with white children who for the most part will surpass them in school work? Or, assuming that the Negroes who are assigned to white schools are able to hold their own scholastically, how does a constant climate of hostility from their white schoolmates affect them?[20] How does all this affect the educational standards of a school undergoing integration?[21] Does the degree of damage done by racial discrimination go so deep that a far-reaching program of remedial education is required before there can be more than token integration in the deep South?

These are some of the questions that must be answered with all deliberate speed. These are some of the considrations, no doubt, that caused the parents of 95 percent of the Negro first graders eligible this year for integrated schools in Nashville, Tennessee, to secure transfers to all-Negro schools.[22]

Neither this book nor Dr. Karon's tests tell what it means to be a Negro. Perhaps even more than all his rigorous objective testing a chance remark by a Negro he was interviewing gives a glimpse into that problem: "You live in a city all your life, but you're never home. Maybe that's what it means to be a Negro."[23]

But this raises the question of what it means to be an American in the lonely crowd of modern industrial civilization. The equality protected by the Constitution is a corollary of the proposition that We the People shall govern ourselves. Self-government begins in the minds and hearts of people. If the personalities of large numbers of people are so warped that society seems alien or hostile to them, the public reasoning necessary to a republic will be impossible. Persuasion, the principle of a republic, requires minds and hearts that are free from crippling fears and hostilities.

White America has been testing the Negro, but in the eye of history it is the Negro who is testing America. For in this colony of mankind, among this uprooted people of immigrants none are more American than the sons of slaves who were torn from their primitive homes, thrust into a new industrializing world, and told they were free. If the American Negro can find himself, if through the equal protection of the laws he can make a home for himself in this strange new City of Man, then there will be hope for all of us and for this republic.[24] Yet as Montesquieu wrote in 1748, "Though real equality be the very soul of a democracy, it is so difficult to establish. . . ."[25]

*Harris Wofford, Jr.**

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20 Anderson, *Clinton, Tennessee: Children in a Crucible,* N.Y. Times, Nov. 2, 1958, § 6 (Magazine), p. 12.

21 See the position of the Little Rock School Board in Cooper v. Aaron, 357 U.S. 566 (1958).

22 Southern School News, Sept.-Oct. 1958, p. 10.

23 Text, at 1. See also FRAZIER, BLACK BOURGEOISIE 237-38 (1957).

24 Equal opportunities for Negroes should reward this country in many ways. See GINZBERG, THE NEGRO POTENTIAL (1956).

25 MONTESQUIEU, THE SPIRIT OF LAWS Bk. V, § 5 (Nugent transl. 1899). "Weak minds exaggerate too much the wrong done to the Africans," Montesquieu also wrote in summarizing the case for slavery. From his argument in 1748 one can guess that the wounds to Negro pride and to the white conscience must go very deep: "These creatures are all over black, and with such a flat nose that they can scarcely be pitied. . . . It is impossible to suppose these creatures to be men, because, allowing them to be men, a suspicion would follow that we ourselves are not Christians." *Ibid.*

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BOOK NOTES

FREE MAN VERSUS HIS GOVERNMENT. Southern Methodist University Studies in Jurisprudence. Dallas: Southern Methodist University Press, 1958. Pp. xi, 117, $3.00. This volume contains four essays based on papers delivered at the 1957 Conference on Law in Society presented by the Southwestern Legal Foundation and Southern Methodist School of Law.

The first essay is entitled "Freedom to Believe," and the author is Dean Merrion Cuninggin.[1] The subject matter of the essay is the free expression of religious belief in the United States. Dean Cuninggin presents the thought-provoking proposition that on a national level freedom of religious beliefs exists in the United States but on the individual level the freedom exists as a matter of degree. The author then concludes that Protestant Americans enjoy the highest degree of religious freedom. This conclusion may be correct but this reader feels that the author failed to prove the validity of his thesis.

The author begins his exposition by demonstrating that the religious belief of one group may clash with the laws of the state and if that state law is a reflection of another's religious concept, the freedom of the former group will be restricted. The author, as one example, cites the legal restrictions placed on the Mormons' belief in polygamy. This part of the Dean's thesis is true but a close analysis of the essay demonstrates that the method of proof does not sustain the proposition that Protestant-Americans have the greatest degree of religious freedom.

The cases illustrate that when non-Christian religious concepts, *e.g.*, polygamy and blasphemy, clash with Christian concepts, the courts apply tests springing from Christian beliefs. Granted that Protestant-Americans are members of the Christian group, it does not follow that such membership operates to the exclusion of all other sects sharing the same religious aspirations as that expressed in the cases the author uses to bolster his contention. The Dean mentions that the phrase "Hebrew-Christian" may be used instead of the term "Protestant-American,"[2] but this seems to weaken rather than support his conclusion that Protestant-Americans have the greater degree of religious freedom, since the Protestant-American classification is but one member of the Hebrew-Christian category, rather than the only, or synonymous, member.

Dean Cuninggin's first premise is correct, *i.e.*, that religious freedom of minority groups is often restricted. However, his conclusion that Protestant-Americans have a greater religious freedom than any other group fails because his analysis has failed to consider the true nature of the concepts that the courts are using, and the various religious beliefs that this view encompasses. The conclusion is a thought-provoking one, and one deserving of a more logical and analytical approach than it received. It would seem that the force of the essay has been destroyed by such a narrow approach to the problem and a failure to apply the whetstone of logic.

The second essay by Samuel Enoch Stumpf[3] is entitled "Freedom to Learn." The author has presented a penetrating and clear approach to the problem created by the restriction on the free exchange of ideas in our society. Professor Stumpf concerns himself with the need for an active freedom in the quest for truth and knowledge. However, he recognizes the need of the state to restrict the freedom in the interest of order. And the need of any law designed for the purpose of restricting the free exchange of ideas must rest upon a significant measure of truth. Here the reviewer is presented with a pivotal problem, for to summarize or condense the Professor's article would be an

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1 Dean, Perkins School of Theology, Southern Methodist University, Dallas, Texas.
2 Text, p. 23.
3 Professor of Philosophy, Vanderbilt University, Nashville, Tennessee.

injustice to the writer and to his essay. This reader can only recommend this article to those interested in the current struggle surrounding the academic freedoms, and the restriction placed on these freedoms by both government and private pressure groups. One could certainly disagree with the author's conclusion, but not with his lucid, systematic approach to the problem.

The third essay, "Freedom of Political Association," is authored by Frederick K. Beutel.[4] This essay is an historical approach to the right of political freedom as determined by the United States Constitution and the interpretation of the Constitution by the Supreme Court. The author is primarily concerned with the sources of rights to, and limitations upon, political association. Cases involving restriction of freedom to assemble and the right to vote are discussed. This essay is a good review of constitutional law and the author is to be complimented on the thoroughness of his research and the soundness of his case-by-case analysis.

For those that feel a review must summarize, I would mention the main points of Professor Beutel's thesis: one, neither the state nor the federal government may restrict the right of an assembly whose purpose is protected by the United States Constitution or by a federal statute; two, when the purposes of the assembly are not directly protected either by the Constitution or federal statute, the assembly may be regulated but not by the use of unconstitutional methods of control; three, the political rights of citizens will be protected from the actions of other individuals by tort and criminal remedies.

"Freedom to Use Property" by Arthur L. Harding[5] is the fourth essay in this volume. Professor Harding discusses the origin and nature of private property, the varying concepts of private property being asserted in our time and the extent of their recognition in current legal doctrines. The approach used is historical, with careful attention to changes in these concepts as they occur and the effects of various philosophical theories.

The reviewer would recommend a careful reading of this article. Professor Harding has attempted to present a panoramic view of the private ownership of property in his short essay. And even though the nature of his paper prevented a detailed examination of the private-property concept, the author has written with clarity and a great deal of perception. His essay is to be recommended and his efforts commended.

Jerome M. Lynes

TRAFFIC VICTIMS, TORT LAW AND INSURANCE. By Leon Green.[1] Evanston, Illinois: Northwestern University Press, 1958. Pp. 128. $4.00. No intensive investigation of modern-day negligence law and traffic victim compensation is necessary to point up the inadequacies of our present system of adjusting losses incurred as a result of automobile accidents. Any person damaged as a result of the use of an automobile can readily designate two or three "inadequacies" he himself has personally met. Faced with a massive and complicated network of negligence doctrines which by virtue of their administrative intransigence work to the advantage of the insurance carrier, he may have found himself outside the protection of the law altogether. Or confronted with mounting hospital and medical bills as a result of the accident, and a three to five year waiting period because of court dockets badly congested with the relatively few cases that do reach litigation, he may have been forced to settle his claim for a small percentage of its value.

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1 Professor of Law, University of California's Hastings College of Law.

Professor Leon Green, long a familiar figure in the tort field, in addition to sympathizing with the complaints of traffic victims, has made a searching investigation of present-day negligence law and methods of compensating traffic victims. After detailing the results, he sets out a proposal which he offers as the answer for the future.

Indirectly, Professor Green has also answered the slightly puzzling, usually hastily dismissed question that occurs to law students when they read those cases demonstrating the "old rule" or "early thinking" which tort case book editors are wont to put at the beginning of each chapter. This question is simply: Why? Why the doctrine of res ipsa loquitur or proximate cause, or why is recovery allowed today for something for which there was no recovery one hundred or even fifty years ago?

Tort law, possibly more than any other field of the law, is a comprehensive reflection of the times and needs of the people. By tracing the increasingly unfavorable reaction to limited tort liability developed by the courts of the 1800's against the background of the different times and needs of the people, Professor Green offers plausable explanations for the "whys" of present-day tort law and even for its almost monumental fragmentation. But in turn he also readily demonstrates that this reaction against limited tort liability is traceable to a desire of the people to assume as a group the risks of living in our complex society by spreading the victim's burden indirectly to everyone. This desire of the people is the justification for Professor Green's proposal. The desire exists; our present system of compensating traffic victims of necessity does not and cannot achieve this desire; *ergo,* comprehensive compulsory loss insurance.

Comprehensive compulsory loss insurance, Professor Green's designation of his proposal, would be provided as an incident of the licensing of a motor vehicle. The cost of a license would then include the cost of insurance, depending upon the classification of the type of vehicle.[2] All claims stemming from automobile accidents are processed by court-appointed masters, who act in an administrative capacity. When a claim of loss is filed, it remains simply to determine whether the claimant suffered injury or loss as a result of the use of a motor vehicle and the extent of such injury or loss.[3] Eliminated is the troublesome question of fault which has spawned so many of the complexities of our present system. What remains is comparable to a present-day trial where the only issue before the trier of fact is the amount of damages to be awarded. It is further proposed by Professor Green that even this issue be limited by excluding the element of pain and sufferering from consideration.

To compel or not to compel, along with the question of whether this is a proper function for government, will be thoroughly debated before any state adopts Professor Green's proposal. However, for present purposes two aspects of the proposal merit examination: the cost of insurance to the individual and the prohibition of any recovery for pain and suffering.

The cost of insurance should reflect at least any large variation in risk, and the two factors (other than the type of the vehicle) which customarily determine risk are the propensity of the driver to have an accident and the amount of use of the vehicle. Presently, for example, the first factor has resulted in the separate classification of unmarried drivers under the age of 25 who must pay more for their insurance because of the greater risk they involve. By assessing cost simply on the basis of the type of vehicle, these two factors are overlooked. As an alternative method, it is submitted that the cost could be assessed as an initial fee of $50.00, increased by a specific amount for every person regularly driving the vehicle who falls within a classification of "Increased Risk Drivers." (Such a classification could include both drivers under a certain age as well as drivers with continual accident records.) The initial fee could then be increased also by a specific amount determined by the "amount-of-use" classification of the vehicle. It might be possible to collect this last mentioned amount in the form of a "tax" on gasoline and oil, thus assessing a portion of the cost against out-of-state vehicles which will be the source of at least some claims.

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2 Text, pp. 87, 94.
3 Text, p. 89.

It is difficult today to argue that pain and suffering per se should not be compensated for as elements of damage for personal injury. Objection must stem from the difficulty of assessment and the divergent amounts allowed for relatively similiar injuries in different cases. Perhaps as an alternative to excluding all damages for pain and suffering, establishment of fixed amount or a fixed maximum amount for particular injuries might eliminate the present unfavorable features.

No one today except perhaps liability insurance companies and personal injury lawyers would argue that our present method of compensating traffic victims is adequate. Professor Green's carefully thought out proposal may not be the answer, but it is an answer which deserves careful consideration.

Norris J. Bishton, Jr.