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Book Reviews

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child would be minus parental care. It was the opinion of the Pennsylvania court that one may, under certain circumstances, impose conditions or limitations as to employment and yet be "available" within the meaning of that state's compensation statute. PA. STAT. ANN. tit. 43, § 801 (d) (1952).

The instant case and *Kut v. Albers*, *supra*, appear to be the only two cases reaching a high appellate level that deal with offense to one's religious beliefs as the subject of unemployment insurance suits. However, the principles contended for here transcend this field and have achieved importance in other types of actions. To what extent is religious freedom restricted by legislation? In *Otten v. B.&O.R.R.*, 205 F.2d 58 (2d Cir. 1953), the railroad and the union entered into a union shop contract pursuant to legislation, compelling all the employees to join the union or be discharged. The plaintiff, whose religion forbade his belonging to a union, contended that his religious liberty was infringed, but the federal court, 205 F.2d at 61, ruled that the contract did not violate the constitutional guaranty:

The First Amendment protects one against action by the government, though even then, not in all circumstances; but it gives no one the right to insist that in the pursuit of their own interests others must conform their conduct to his own religious necessities We must accommodate our idiosyncrasies, religious as well as secular, to the compromises necessary in communal life

It is apparent from the foregoing discussion that religious beliefs will not in all instances excuse non-compliance with statutory regulations. The claim of Miss Tary, at least as far as unemployment claims go, may establish a trend towards allowing personal beliefs made in good faith to excuse refusal of employment deemed suitable by all other standards. Danger to one's morals is a subjective problem, and it is important to note that this discussion has been confined to the reaction of the courts. If the decision in the principal case is followed in the future in similar circumstances, it will be incumbent upon the courts and originally upon the various boards of review to determine whether the claimant is asserting his personal belief in good faith or whether he is merely using some caprice in rejecting new employment.

Patrick J. Foley

BOOK REVIEWS

THE ART OF ADVOCACY. By Lloyd Paul Stryker.¹ New York: Simon and Schuster, 1954. Pp. xiii, 306. \$5.00. CASES IN COURT.

By Patrick Hastings.² London: William Heineman, Ltd., 1949, Reprint 1950, 1953. Pp. xv, 342. \$2.95—"If a man goes into the law, it pays to be the master of it." This is the advice of Mr. Justice Holmes in his famous address, "The Path of the Law." It could be paraphrased, "If a lawyer takes up advocacy it pays to be the master of it", to epitomize these two books about the trial lawyer. The *Art of Advocacy* by a noted American lawyer and *Cases in Court* by a famous English barrister have other things in common though they are different in style and approach.

Both books emphasize the prime importance of a complete knowledge of the facts of the case and a thorough preparation before the trial. They both demonstrate the effectiveness of skillful cross-examination and each author in his own way pays high tribute to the art of advocacy.

Sir Patrick Hastings' book is autobiographic and consists principally of the highlights of twenty-one trials in which he participated. It seems he was on the losing side in only a few of them. Whether this high percentage of wins is typical of his whole practice is not known, but even so, he must have chalked up a remarkable record. The principal facts of each case are interestingly told. The court room episodes are depicted dramatically and there is no waste of words.

In the final chapter Sir Patrick states that one of the qualities of an advocate, if he is to be successful, is to have the ability "to seize the one vital element which is to be found in any case."³ The previous chapters demonstrate that he himself possessed this ability to a high degree. Many of the cases he talks about were won by a single or, at the most, a few critical questions during the cross-examination of a principal witness. There is no doubt a central fact situation in nearly every case on which the result turns, but not every case is susceptible of being won by a *coupe de main* during cross-examination. This, of course, is not Sir Patrick's thesis. It seems, however, that he was fortunate in having many cases of this kind and that he was skillful enough to detect the key point in each case and to take full advantage of it.

Mr. Stryker's book grew out of a series of lectures he delivered at the Yale Law School during the winter of 1952-1953. It is not a text-book on how to become a skillful advocate; yet it contains

¹ Member of the New York Bar and the American Bar Association. Author of *For The Defense*, *Thomas Erskine*, *Courts and Doctors*, *Andrew Johnson*, *A Study in Courage*, and also numerous articles in various law journals.

² Member of the Queens Bench and the Temple Bar.

³ *Cases in Court*, p. 333.

many useful suggestions to both the young and the older lawyer. Its primary aim seems first, to serve as a panegyric to the art of advocacy underlining its importance in the workings of our legal system, and second, to plead for a return to better advocacy in our American courts.

The author says that advocacy has fallen into neglect. He deplores the lack of stressing its study in our law schools. Without wanting to detract from the argument Mr. Stryker makes on this point, it should be noted that many law schools presently provide practice court courses and that most of them have moot court competition which has extended during recent years into the intercollegiate field. There also has been an increase of trial technique institutes and books on trial practice sponsored by bar associations.

Another suggestion for better advocacy offered by Mr. Stryker is a divided bar patterned after the English system.⁴ It seems doubtful if this suggestion will gain much favor at the present time. Tradition and habit will discourage such a radical change. On the other hand the author's views are persuasive and perhaps his ideas are being realized more than we think. While there is no sharp division in this country between the solicitor and the barrister, and there probably never will be, the important trial work seems to be becoming more concentrated in the hands of those who specialize in trial practice. This is particularly true in the metropolitan areas.

The Art of Advocacy as a whole is an entertaining and instructive book. The sketches of some of the great advocates, past and present, are inspiring. One minor fault is its verbosity in spots.

The book is directed, but not wholly, to the legal profession. It should be required reading for law students. While many law students will not become advocates and perhaps only a few masters of the art, the book should prove helpful to those who do aspire in that direction. It may also serve in aiding self-elimination of those who find they should engage in some other phase of the practice.

To all, and to the legal profession in particular, it will serve as a challenging reminder of the Bar's responsibilities to promote honorable and effective advocacy, and more important, to stand by the side of the honest advocate who may be subjected to public criticism and attack for representing an unpopular defendant in a criminal trial. Those responsibilities involve not only the Bar's independence and integrity, but also its vital role in maintaining our judicatory institutions. In the words of Sir Patrick Hastings, "Perhaps it is only necessary to watch a litigant in

⁴ *The Art of Advocacy*, Chap. XIII.

person trying to conduct his own case unaided, floundering through a mass of evidence, quite unable to express the simplest point in such a way that anyone can understand it, in order to realize at once that trained advocacy is an absolute necessity to justice; without the advocate Law as we understand it could not survive."⁵

Luther M. Swygert*

PHILOSOPHY OF LAW. By Giorgio Del Vecchio.¹ Washington, D.C.: The Catholic University of America Press, 1953. Pp. 474. \$6.50.—The foreword to this volume is from the pen of Dr. Brendan Brown, Prof. of Law, Loyola University, himself an authority in the field of law and philosophy of law. The foreword itself contains a commentary and criticism of Del Vecchio's work and is alone worth the price of the book. It is no exaggeration to name the book a work of genius. We are fortunate to have the translation written in the style and beauty that the original possesses without loss of the clarity of Del Vecchio's masterpiece.²

In the author's introduction, philosophy of law is distinguished from the science of law. Philosophy of law is a part of philosophy and a part of practical philosophy, treating of principles of operation. Practical philosophy is divided into Moral Philosophy and Philosophy of Law. (Del Vecchio does not mention philosophy of art as a division of practical philosophy.)

The study of law in a universal sense constitutes the object of philosophy of law. Juridical science or Jurisprudence has for its object particular points of law, the individual systems of law, considered separately for each people at a given period; for example, Roman Law, Italian Law, German Law, etc. Furthermore, Juridical Science does not, properly speaking, consider a system in its entirety. It proceeds to further specifications and distinctions, considering a particular part of that system (Public or Private Law) then more particularly as branches of Public Law: Constitutional, Administrative, etc.

The three fields of research in philosophy of law: the logical, the phenomeno-logical, and the deontological must be considered. With respect to the first field, the logical, it is clear that no particular juridical science can tell us *sic et simpliciter* what is law in the universal sense. It can only tell us what is the law

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² Translated by Thomas Owen Martin, from the eighth edition (1952) of *Lezioni di Filosofia del Diritto*.

among a certain people in a given period. The definition of law in general requires an investigation which transcends the competence of each individual juridical science. It is the first task of philosophy of law to investigate the logical essentials of law, the elements which are common to all law, law in its logical entirety. The definition of such a concept implies the presence of several investigations on the relationships between Morals and Law, on the distinctions of the various aspects or phases which constitute the Law (subjective and objective) and even many other concepts which permeate or are connected with that Law, for example, that of power to coerce.

In the historical part of his book, Del Vecchio outlines succinctly the philosophical notions of law by the early Greeks, the Sophists, Socrates, Plato, Aristotle, the Stoics; the Roman Jurists, Christian philosophers in the Middle Ages; the Patristic period, Scholasticism, the Renaissance, Grotius, Hobbes, Spinoza, Puffendorf, Locke, Leibnitz, Thomasius, Wolff, Vico, Montesquieu, Rousseau and others. Considerable weight is given to Kant, Fichte and the Law of Reason School. Turning to modern philosophers of law, he enumerates a host of writers on law in Italy, France, Belgium, England, Spain, Portugal, Latin America, the United States.

The systematic study of the philosophy of law occupies the second part of the book from page 244 to the end. This second part is divided into three sections, one entitled the Concept of Law and the second, Origin and Historical Evolution of Law. The third section concerns the Rational Foundation of Law.

What may be considered as Del Vecchio's most interesting insights are to be found in the last section where he locates the foundation of law in human nature. Here he demolishes modern positivism, his chief antagonist, which errs in denying natural law.

Since the foreward to this great work suitably corrects what is faulty in Del Vecchio's analysis of the fundamental, logical form of law, it is noteworthy that we assess the volume under consideration in its dual construction, combining the brilliant foreword of Dr. Brown's composition with the monumental study by Del Vecchio. It is then impossible to overestimate the value of the book for classroom study.

The time is 1954. The day of cold war is now far spent, unless the high-priests of positivism are unmasked so that we may reform the ranks of all students of nature and nature's God. There is much good to be accomplished by instruction given by erudite scholars like the jurist at the University of Rome. For he shows clearly that man finds his greatest perfection, dignity and happiness in reasonable activity. Law itself is concerned

with the regulation of operations; it is not something foreign to reason. It is the function of reason to order action and fashion law.

The points of similarity among Neo-Kantians such as Del Vecchio are many and pedagogically all-important. There agreement that law is *a priori* and that law and morals have their own proper sanctions needs to be emphasized. The champions of inalienable rights and defenders of true democracy against totalitarian governments by men need to close ranks. Del Vecchio has given us new courage and hope that all is not as yet lost in the battle for the minds of youth.

William F. Roemer*

WARREN'S FORMS OF AGREEMENTS. By Oscar LeRoy Warren.¹ Albany: Matthew Bender & Company, 1954. Pp. vii, 1460. \$20.00. —Mr. Warren, editor of the highly successful *Bender's Forms for the Civil Practice Acts*, and *Bender's Forms of Pleading*, has produced an excellent one volume business contract form book. The forms, dealing with contracts used in ordinary business transactions, are derived from reported decisions where they have been tested by the courts and from forms in actual use in various business enterprises. By substituting references to *Corpus Juris*, *Corpus Juris Secundum* and *American Jurisprudence* for the customary annotations to state decisions, the editor has been able to include in a conveniently sized volume many more forms than the average single volume work. The loose-leaf feature of the book with improved lock makes it possible to keep forms up to date and to insert from time to time the lawyer's own notes and variations of the forms suggested in an easily accessible place.

Each section commences with a brief discussion on the general requirements of the type of contract involved. Then the general form is given followed by additional clauses suggested for other peculiar needs or circumstances. A valuable check list helps not only the draftsman himself, but also the counsel asked to pass on the sufficiency of a contract presented to him.

Many of the forms Mr. Warren suggests show an admirable balance between the modern "stream-lined" contract and the older documents with their "wealth of recitals." The confusing "party of the first part", "party of the second part", etc. may well be dispensed with today in the interests of clarity and simplicity in many cases, but the reported decisions show that the full and detailed recitals of the old forms have still their value.

* Professor of Philosophy, University of Notre Dame.

Another excellence of Mr. Warren's volume is that it "allows for some play in the joints." No form book, however carefully and exhaustively edited, can come up with all the tested phrases the contract draftsman will need to meet the hundreds of special circumstances he will face. A form¹ book can never take the place of the draftsman's imagination. Mr. Warren's forms are not for legal stenographers or secretaries, but for lawyers.

In the practice of law this reviewer has had occasion to refer to many types of form books. Mr. Warren's can be recommended to the profession as one of the best from the standpoint of careful editing, comprehensiveness, and, most important of all, common sense.

*Edward F. Barrett**

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* Reviewed in this issue.