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The Revival of Natural Law Concepts

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be conceded that the whole thing, whatever it is, is too large and has too much momentum to be swerved very much from its course by any process of retrospective analysis. Yet it is believed that, differ with the author as we may as to some of his generalizations, no one can read this volume without conceding the force of many of his conclusions. Particularly, his methods of analysis help to disclose the inadequacy of many of the orthodox methods of approach to legal problems, and, to this exent, at the least, should help to clarify the application of accepted, conventional standards of solution.

The author's style is entertaining. The repetition is a little tiresome, but we are warned in the foreword to expect this, owing to the fact that the book is what may be described as an "assembled" volume.

—LEO CARLIN.

THE REVIVAL OF NATURAL LAW CONCEPTS. By Charles Grove Haines. Cambridge: Harvard University Press. 1930. Pp. xiii, 388.

The subtitle of this volume indicates its most significant content, "A Study of Limits on Legislature With Special Reference to the Development of Certain Phases of American Constitutional Law", to the thoughtful student of the Constitution of the United States this work is particularly welcome. Over a period of little more than a century there has been erected an elaborate structure of fundamental law for the protection of private rights against legislative action. Many students have turned their attention to the application of this body of law by the courts of the nation, but few have sought either to examine the sources of judicial doctrine from which the law emanates, or to define the nature of the guaranties thus accomplished. Dean Pound, more perhaps than any other scholar, has indicated the presence and influence of higher law doctrines in American law, particularly the force of Puritan thought, but it has remained for Professor Haines to subject to painstaking study and thorough analysis the process by which the presence of this ingredient came about. A considerable share of the material in the volume has previously appeared in a series of law review articles by the author, particularly those in the *Texas Law Review* on judicial review and implied limitations on legislative action. The concentration of this material,

however, into one volume accompanied by a thoughtful study of contemporary naturalistic tendencies in the law of other nations, serves to give the work a comprehensive scope and incidentally to justify its title.

From the point of view of the student of American Constitutional Law the body of the book provides an arresting study of the assimilation into the concept of due process of law of the substantive element which tends to restrain legislatures from arbitrary and unreasonable action. From the beginning of the national existence, a higher law determining the proper sphere of legislative activity has found expression through the courts. The democratic movement in politics profoundly influenced this tendency. Written constitutions had been set up to serve a three-fold purpose, to define and limit legislative authority, to defend the minority of wealth and position and to give security to private vested rights. But constitutions alone, as was amply demonstrated, could not accomplish these ends. The part played by the courts in imposing checks through judicial review was indispensable, and through this device the vested interests of the propertied elements in the population found adequate protection.

As legislatures fell under the influence of the irresponsible democratic element the role of the courts grew in importance. To the procedural concept of due process of law there was added the substantive aspect. Here is the root and branch of naturalistic doctrines in American Constitutional Law. Prominent commentators added the weight of their dicta. Chancellor Kent in his *Commentaries,* Judge Dillon in his monumental work on municipal corporations, and Judge Cooley in the field of taxation all urged the existence of general principles of law of higher sanctions than any legislative enactments. State courts developed the theories of public purpose in taxation and in eminent domain and gave through due process of law security against arbitrary and oppressive legislative action.

The doctrines of due process developed in the state courts during the period from the democratic ascendancy to the Civil War, found restatement, following the adoption of the Fourteenth Amendment, in the decisions of the Supreme Court of the United States. Slowly, and only after much hesitating exploration, the court accepted this point of view, and the final result has been the development of the rule of reason by which legislative and administrative action is tested by judicial.

In this manner Professor Haines has traced the natural law

element as the leaven of conservatism in the development of constitutional restraints securing private rights. It might be possible to take issue with the author over his terminology. Thus, is not the restraint of due process of law a formal positive check rather than a natural law restraint on legislatures? But none of these objections could impair the fundamental significance and value of the work. Professor Haines has made a substantial contribution to scholarship. His book is a welcome addition to the literature of American public law.

—GEORGE SHIPMAN.

CASES ON TRUSTS. By Austin W. Scott. Cambridge, Massachusetts. The Editor. 2d ed. 1931. Pp. xiv, 818.

In the law school world few, if any, case books have been so relied upon and so thoroughly a part of the course of instruction as Scott's *Cases on Trusts*. It has been a mainstay. Recent currents in legal education have taken a swing that reflects disfavor upon anything not markedly pragmatic. To remain abreast of this movement case books are supposed to picture more clearly such a juristic device as a trust in relation to the uses to which it is put. Artificial classifications of material are frowned upon. Now comes the second edition of Professor Scott's book to meet the present requirements.

Comprehending only 799 pages of case material the new edition, the pages of which are a little larger than those in the first edition, is admirably proportioned for a one semester, four hour course. It is enriched by a comprehensive revised bibliography; an appendix, which includes a brief not on *Modern Uses of the Trust Device* and two forms, one of a deed of trust and the other of an unfunded life insurance agreement; many recent cases; and an amplification of foot-note material in which are to be found extensive references to recent primary and secondary authorities. Although the appendices are of no great consequence the aggregate of these features of the second edition speaks well indeed for the volume.

Doubtless the three most important features of a case book are the selection of cases, its organization of material, and the inclusion of secondary authorities and material. It is in this second feature of the new edition that one might wish that SCOTT'S CASES had undergone more extensive revision. Several helpful changes