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titioners, and of academic interest to patent lawyers only. To the inventor and general practitioner this book would be meaningless. Admittedly, it cannot be relied upon as a thorough treatment of any one of the specific subjects touched upon. While there is much good advice contained in the various discussions that bears repeating to patent practitioners, this book will not supplant standard sources on the subject of patents.

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*Reviewed by Theodore Samore**

THE COMPLEXITY OF LEGAL AND ETHICAL EXPERIENCE; STUDIES IN THE METHOD OF NORMATIVE SUBJECTS, by F. S. C. Northrop. Published by Little, Brown & Co., Boston, Mass.; xvi and 331 pp. (1959).

Professor Northrop of the Yale Law School has written extensively in the fields of scientific methodology, legal theory and international relations. His latest book is a collection of articles and book reviews that have appeared in various journals and compilations within the past ten years. The first and final two chapters contain entirely new material. He plans future volumes that will round out in greater detail his theoretical principles and furnish concrete instances of these principles in action.

Although the book is full of unnecessary repetitions and too many non-stop sentences, at least two themes are clearly evident. One is expository, the other is hortatory. The special pleading needs no comment, but the exposition requires discussion in some detail.

Now any study worth its salt has its philosophy, that is to say, those propositions so general and necessary to it that from these propositions (or postulates) certain other propositions follow. It is usually agreed that these propositions should be coherent, consistent and capable of validity or proof. Northrop writes: "The place of philosophy in law will depend upon two things: (1) the legal needs of contemporary society, and (2) the capacity of traditional methods and theories of jurisprudence to meet these needs" (p. 8). Furthermore, he continues, there are three facts that make contemporary society unique and these

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facts demand a jurisprudence that will serve the legal needs of the world, not only the nation state. These facts are: (1) atomic energy; (2) the rise of political power in Asia; and (3) . . . "the inescapably ideological character of both domestic and international social problems" (p. 8). It is Northrop's hope that he offers a legal scheme that will satisfy everybody.

He recognizes three types of "law": (1) positive law, referring to statutes or legal decisions; (2) social or living law, referring to the "pattern of a culture," its ethos, mores or social norms; and (3) natural law, referring to those laws disclosed to us by the sciences of both nature and man. This trinity leads to at least three theories of law, namely, (1) legal positivism, (2) sociological jurisprudence and, (3) natural law jurisprudence. Two other legal theories that Northrop mentions can easily be fitted under types two and three. Pragmatic legal realism falls snugly under social or living law, and neo-Kantian and intuitive ethical jurisprudence would fit under natural law.[1]

Northrop believes that none of the existing legal theories are quite adequate. He claims that law is ". . . the application of ethics to society in the settling of its disputes" (p. 107). A legal theory would have to be grounded in an ethics that could be agreed to by almost all men. If so, then most men would not resist the law; indeed, nations would gladly bring their disputes to the International Court of Justice (just as individuals bring theirs to a local court), secure in the knowledge that justice would be done. "Justice," incidentally, is never discussed.

Nothing nobler could be hoped for. And the very fact—or seeming fact—that nothing is further from fulfillment makes a mockery of man's intelligence. But even if Northrop were correct in his analysis of the problem, his implied conception of man's "moral" nature is open to serious doubt.

It is Northrop's prime belief that law and ethics are as much "sciences" as are mathematics and physics. The epistemological apparatus employed in the natural sciences is equally valid for the normative sciences; in fact, the two are indissolubly linked. Furthermore, by erecting ethical and legal propositions upon physical and mathematical truths, we can arrive at ethical and legal propositions valid for all persons and places. In a word, Northrop abolishes the classic dichotomy between the normative and the physical sciences. He writes:

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[1] Although Northrop regards Kelsen as a defender of intuitive ethical jurisprudence, his position is more closely allied to the legal positivists.

> Ethics is merely true (that is, empirically verified) natural philosophy applied to human conduct and relations. . . . it is not the facts of nature that define the good for man, but one's scientific theory of the facts in their interrelations as a whole when this scientifically verified theory has been analyzed to bring out its epistemological and its substantive ontological assumptions, if any. . . . Furthermore, propositions are not good or bad because of any primitive ethical quality of goodness or badness which resides in them. . . . a proposition is bad because it is false to the facts to which it purports to refer; a proposition is good because it is true to the facts to which it purports to refer (p. 244).

We must remember that external objects are not to be defined in terms of directly sensed qualities. The greatest discovery of modern science is that scientific concepts are ". . . constructs introduced by contractual or other postulational techniques . . ." (p. x.). Such constructs are intelligible without ultimate recourse to the images of the senses or of the imagination. Their ultimate validity lies in the testing of inferred or deductive propositions which *are* capable of empirical verification.

But if the truth of a proposition is what makes it good and the falsity of another proposition is what makes it bad, then we would be calling only mistaken people bad (i.e., people who believed in false propositions) and only correct people good (i.e., people who believed in true propositions). In addition, any fact would be good, willy nilly, just because it is true. The proposition "Hitler killed millions" is true to the facts, therefore this proposition is good; go now and do likewise. To escape this folly, Northrop borrows from Russell the theory of types:

> . . . let us call natural facts, facts of a type of the first order. Such facts are antecedent to scientifically verified philosophical theory. Such facts are also neither good nor bad. Let us, on the other hand, call cultural facts, facts of a type of the second order. Facts of this type can be designated as good or bad. They achieve their goodness or badness, however, not because they are facts, but because they are facts which derive their character and existence in part at least from human behavior based upon beliefs in scientifically verifiable propositions about nature and natural man which are true or false. . . . This enables us to assert that the factual conduct of Hitler was bad because this conduct was the consequence, in part at least, of philosophical beliefs about natural man which scientific method can demonstrate to be false. This distinction between the second-order facts of culture and cultural man and the first-order facts of nature and natural man permits us to obtain verifiable philosophical theory which, when applied, gives its particular norm for

> culture and cultural man, while at the same time preventing us from falling into the culturalistic fallacy of identifying the "ought" for culture with the "is" for culture (p. 245-46).

In a word, the criterion of, ". . . the objective and absolute good in law is to be found in the philosophy of empirically verified natural science" (p. 166).

Despite this display of verbal thaumaturgy, Northrop's account remains unsatisfactory. The dispute concerning values really involves two "dilemmas". One, values can be either cognitive (true or false) or non-cognitive (incapable of validity). Two, values are autonomous (unique or indefinable) or non-autonomous (analyzable without remainder into natural or non-moral predicates, usually psychological states such as happiness, pleasure, etc.). Between those who hold that values are cognitive and those who hold the contradictory, no agreement is possible. They disagree too fundamentally. However, a person who believes that values are cognitive is still confronted with a choice. Are these concepts indefinable (as the word, "red")? Or are they analyzable into mathematical, physical or psychological predicates? Northrop, of course, holds that such value concepts are ultimately physical or mathematical constructs. The verification of propositions involving value concepts is determined directly through experience, or are instances of general propositions arrived at through previous experience (method of deduction). Immediately another problem arises, namely, are these general propositions necessary or contingent? Northrop will have to give a satisfactory account of this question as well as others which arise from his naturalistic view of ethics. Here are some of them:

One, why do good? Two, what is fundamental in ethics—obligation or the good? Is either reducible to the other? Three, what do we *mean* when we say "x is good" or "x is right"? Whatever definition of a value concept Northrop suggests, we should be able to substitute the definition for any situation where the concept is used and still not change the meaning of the proposition.

I feel that Northrop's scheme is inadequate to explain the "complexity of legal and ethical experience." For one thing, we can accept his claim that ethics is the application of law to society, but it does not follow that law itself is normative or that legal decisions *must*[2] be influenced by ethical considerations.

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[2] Is this a logical, empirical, or "moral" connection?

There is good law and bad law, but until the law is changed it is usually agreed that a citizen is "morally" obliged to obey it. Lawyers and judges do not have to be moral philosophers to either practice law or judge it. However, it might help a great deal to have moral philosophers as legislators.

Furthermore, his faith in science is misplaced, particularly the so-called social sciences. The more general and rigorous a psychological or sociological proposition the more trivial and empty its concepts. Nor are the physical sciences above epistemological suspicion. Since Hume, Kant, Santayana, Heisenberg and others, they do not claim nearly so much for their method as some of their overzealous admirers.

His distinction between first and second order facts begs the question. Ethical propositions do not depend on experience for their validity; they seem independent of, or prior to experience. For example, to say that the proposition, "murder is bad" is empirically verifiable, sounds rather odd. Nor would his first and second-order facts throw any light upon what to do in a "moral" situation. Let us take an illustration. I see a man lying on the ground in great agony. My first impulse is to help him. However, I quickly discover that he is suffering from a virulent, highly communicable disease. I can help him, but it might mean eventual death for me. Throw in a few more facts: He is five feet, ten inches tall; is an atheist; lives on 99 Sycamore Street, works as a dogcatcher; has five children; and drives a Rolls Royce. Furthermore, I am six feet tall; weigh one hundred and ninety pounds; go to church; work as a physicist for the Atomic Energy Commission; live on 1111 Meadow Avenue; am unmarried and drive a 1960 Austin. And the sun is shining, the grass is green, etc., etc., etc. The question remains; ought I to help him? Can one really *derive* from these facts or any other facts, whether of the first or second order, *what one ought to do?*

In addition, Northrop implies that as knowledge increases it might be necessary to modify our moral beliefs and behavior. The late Professor Kinsey published hitherto little suspected facts in his sex census, but I doubt if the hundreds of instances of infidelity recorded shatters the "validity" of the proposition that one ought to remain sexually faithful to one's spouse. Moral propositions seem "immune" to cases or instances.

Nor do we excuse either past or present "immoral" behavior on the grounds of ignorance (Mr. A can always claim his knowledge of first order facts was wanting). The belief in witchcraft

flourished several hundred years ago in the very citadels of learning.[3] And today countries run amuck despite the availability of knowledge which renders their beliefs and behavior fatuous. The connection between knowing something and doing the same thing still needs extensive exploring.

[3] The similarity between the "reasoning" of demonologists and the tortuous explanations of contemporary psychoanalysts is rather striking.

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*Reviewed by Stanley E. Harper, Jr.**

THE LAW SCHOOLS LOOK AHEAD, 1959 CONFERENCE ON LEGAL EDUCATION. Proceedings of the 1959 Conference on Legal Education and Contributions by the Participants. Foreword by Charles W. Joiner. Ann Arbor: The University of Michigan Law School, 1959. 328 pp. $4.00.

This is a good book. I got the book kind of late, and maybe somebody else has reviewed it, but since I'm from a small law school, I thought I'd like to tell the teachers in the other small law schools that they ought to read it. Teachers in small schools don't have big libraries and so they don't read much except for *Reader's Digest* and *The Saturday Evening Post.* Teachers in small schools can get this book for $4.00 in paperback. It may be more expensive than Shakespeare's tragedies in paperback, but it is worthwhile. The book is a little disturbing and confusing at times, and I didn't get the sharp focus that I get on Channel 5, but then I'm much closer to the television transmitters where I live. I'd like to say that we *should* be disturbed in these disturbing times.

The book is printed on good paper and printed with what looks something like a typewriter, but they make the lines come out even on the right hand margin so that it looks very neat. The type is clear.

But how did the book get written in the first place? The University of Michigan Law School sent out invitations to lawyers and law school teachers and other college teachers. These men got together from all over the country in Michigan at the law school. They were eager and sincere, and they had come

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