

thor's idea of the social order approaches the minimum of a legal order, and at other times it seems to imply an "order of common goods or aims," a "spiritually" unified whole. That such considerations are not foreign to legal problems might be illustrated by the limitations of Professor Cohen's critique of property. He begins with admirable precision to define the essence of property as "the right to exclude others" (p. 46) and argues that this confers on the owner a type of sovereign power over others. Property rights do not enable me to use my property as I please, for there have always been restrictions on its uses, but they guarantee my power to prevent others from using it. He has little difficulty, therefore, in rehearsing the now familiar arguments proving that "the ideal of absolute *laissez faire* has never in fact been completely operative" (p. 58). He fails, however, to undertake the more positive task of a philosophy of property, namely, that of distinguishing between "justifiable and unjustifiable cases of confiscation" (p. 63) or use of private property, and of studying the actual restrictions less for the purpose of disproving a false theory of property than for the purpose of discovering the principles of the legitimate uses of property. What light he throws on this problem comes incidentally from his examination of the various theories of property, in the course of which he suggests that "possession as such should be protected," that "labour has to be encouraged," and that real freedom (or rational obedience) must be promoted. How easy it would be for our capitalistic sovereigns to exploit such principles! A more detailed study of the actual practice of the courts in regulating property would probably supply better principles than can be inferred from the critique of false theories. All this is in the spirit of Professor Cohen's own theory of what the philosophy of law should undertake and serves to suggest the more positive problems and principles for which the present essays have cleared the way.

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The Law of the Press. By William G. Hale and Ivan Benson. St. Louis: West Publishing Co., 1933.

As stated in the preface to this work, the authors' purposes are to develop a book not only for use as the basis of a course in the law of the press in schools of journalism, but one which might serve as a manual for active journalists.

In form they have combined hornbook text with "principal illustrative cases," some of which are voluminous in extent (pp. 253-265; 265-282).

Since I am neither teacher nor practicer of journalism this review must be made rather from the standpoint of one who has had some occasion to give legal counsel to a large metropolitan newspaper and from that vantage ground to consider the legal needs of the newspaperman. So considered, the work under review is neither adequate textbook nor comprehensive casebook, and I seriously doubt if it can be of much practical service to a newspaperman in practicing all the affairs of the fourth estate.

However firm a believer one may be in the Langdellian case system for law schools, it is hard to believe that the smattering of law which a journalist needs can be better served to him by the case method than by text. Would that the entire work were written in half the number of pages or less and in the refreshing running style of the chapter on the freedom of the press.

My chief criticism of this book, however, is more fundamental than its form, and is

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a criticism that is imposed by the march of "progress" rather than by the omissions of the authors. The authors have, in my opinion, attempted the impossible. A modern newspaper, especially a large city daily, is not a profession—it is a business with as many ramifications as the most complex modern industry. The editorial, the news-gathering, and the news publishing departments are, after all, but departments, whose legal requirements and legal problems are but a fraction of the legal requirements of the paper as a whole.

The lawyer for such a newspaper is called upon at least twice as often to advise the advertising department whether this or that advertisement, particularly those of "prize contests," is that of a lottery, as he is to advise or defend a suit because of a libelous news story; yet there are 253 pages on libel, and 7 pages on advertising lotteries. To the one case on lotteries there could very well be added a reference to the comprehensive article on the subject by Charles Pickett, *Contests and the Lottery Laws*, 45 *Harvard Law Review*, 1196 (1932).

The business of distributing the newspaper through all the complexities of wholesalers, retailers, interstate commerce, airplane distribution to outlying areas, and controversies with competitors in such distribution creates many more problems for the publisher and his legal adviser than do contempts of court.

In the physical publishing of the paper there is involved a manufacturing business with all the problems of patents, contracts, labor disputes, group insurance on employees with which a hundred other manufacturers in a hundred separate fields daily are concerned.

The modern newspaper is a publicity seeker of the first rank and hence must be an accomplished showman and promoter. Boxing contests, cooking schools, flying meets, football games, balloon ascensions, and what not bring over the lawyer's desk an avalanche of interesting contracts and problems.

Nearly every large newspaper either runs a radio station itself or has some sort of radio connection or facility. The newspaperman and his legal adviser must know a good deal of radio law.

These examples at least indicate that to one who counsels a newspaper the task of putting into one book even the chief legal problems met in running a newspaper seems well nigh impossible, and that the authors have missed the mark when they devote nearly one half of their work to libel.

The chapter on libel is fairly complete and should be of value to one desiring a general view of the subject in the newspaper field. It is to be regretted that the book probably went to press too early to include reference to the recent interesting case of *Layne v. Tribune Co.*, 146 So. 234 (Supreme Court of Florida, February 3, 1933), holding that a newspaper publishing in good faith libelous matter furnished it by a national news service could not be held for libel in the absence of a showing of "either wantonness, recklessness or carelessness." Since the publication of the book the Circuit Court of Appeals for the Tenth Circuit has held the contrary. *Oklahoma Publishing Co. v. Givens*, 67 F. (2d) 62 (1933).

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