control set by the natural law of physics if nothing else. No one expects public authority to control everything in a totalitarian state, but the ever-present power to control without limits most phases of life and the constant claim of state superiority over all things will satisfy most of us as touchstones of totalitarianism.

In his chapter on "Rational Natural Law" Fraenkel points out the grave consequences for modern Germany of the denial of the doctrine of natural law. Mr. Fraenkel's wisdom exceeds that of most modern political and legal theorists who reject not only the doctrine of natural law, but who also reject its noble qualifying adjective "rational." He quotes a gem from Leuner in the review Jugend und Recht to the effect that "there is no right residing in the stars; there is no equal right which is innate in the individual; there is no universal transethnic Natural Law. There is only one norm which is equally valid for all inviduals, namely that they live in accordance with the imperatives of their race." Fraenkel goes on to show the complete repudiation among National Socialists of traditional and absolute values. He contends that the German political and legal theorists of the past century were the special offenders in propagating the general rejection of rational natural law and absolute values. Why should he limit the accusation in any degree to the Germans? The repudiation was and still is almost world-wide among Englishmen, Frenchmen, and Americans. The very suggestion of the acceptance of absolute, immutable, and universal values, and of natural law, by a few intrepid Aristotelians raises a storm today. Mr. Fraenkel does well to call attention to the excellent spade work unwittingly performed for the totalitarians by modern social scientists who generally misunderstood the doctrine of natural law and rejected it. The author well understands the difficulty of defending democratic theory without that rational doctrine.

In connection with his treatment of natural law and National Socialism he distinguishes between "relative natural law" and "absolute natural law"—a distinction taken from the able and scholarly Ernst Troeltsch. Relative natural law would seem to be a contradiction in terms in any case, but to ascribe such a doctrine to the writers of the Middle Ages, would, to say the least, be inaccurate and confusing.

In the concluding chapters of his work, Fraenkel considers the legal history of the Dual State with its economic and sociological background. The close association of capitalism and National Socialism has received considerable attention in other works; the value of its treatment here is in the succinct handling of material of recent nature. The consideration of the sociology of the Dual State shows breadth of comprehension and wide acquaintance with the ablest and foremost authorities.

The work merits careful reading by students of recent legal and political theory.

Jerome G. Kerwin


Professor Thurston in his preface cordially recognizes the "pioneer work" of Walter Wheeler Cook. The organization of the present casebook is a modification and simplification of the organization used by Mr. Cook in that portion of his Cases on Equity dealing with restitution. The rearrangement introduces the student at once to the rela-
tions between tort, contract, and restitution. In this respect, the organization has a distinct advantage. By the elimination of questionable subclassifications in the treatment of mistake, the editor has gained further advantage in his treatment of the material. He has, however, left until the end the subject of recovery on account of “benefits voluntarily conferred.” The reviewer has found this subject an excellent one for early discussion with students concerned with restitution. Here the analytical and practical differences between contract and quasi-contract come out clearly, and one is driven to consider carefully the practical reasons for quasi-contractual relief.

It remains true at the same time that other situations in which restitution is allowed are of greater practical importance. In these other situations tort liability and, much more, contractual liability interact with the liability enforced by restitution. The interaction between these different types of liability has seemed to the reviewer practically so important that he has combined contract and related quasi-contractual obligations in his first-year course in contract. Here the relations between defenses and claims for restitution based on mistake and “impossibility” are developed. The quasi-contractual remedies available to a party in default are considered along with the effect of default on the other party’s obligations. The contractual and quasi-contractual foundations of a surety’s rights against his principal both appear at once. Similar relationships are developed in connection with such subjects as duress and the curious contrast between the treatment of assignment and the claim of a “volunteer” to subrogation. While the opinion should doubtless be heavily discounted for prejudice, the reviewer considers such an arrangement a vast improvement over separate courses in contract and restitution.

The separate treatment of this subject, particularly in the United States, has, on the other hand, been generally credited with a marked contribution to the improvement of the law. Professor Thurston’s casebook makes a further contribution to this same important objective. The argument implicit in his selection and arrangement of cases appears to be an argument for simplification and coherent generalization. It is an argument against such refinements as have developed, for example, in connection with mistake of law, unilateral mistake, and restitution in favor of a volunteer. The book suggests the flexible development of the rules and principles included in the Restatement of Restitution. It should contribute to the vitality of development in this field of the law.

MALCOLM P. SHARP*

1 See, e.g., Lord Wright’s review of the Restatement of Restitution, 51 Harv. L. Rev. 369 (1937).

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