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Review of “Learning the Law,” By Glanville Williams

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and the economic conditions of Germany, 1918-1933—in brief, the continuance of “the crisis”—probably contributed more to the failure of Article 48 of the Constitution to permit a restoration of normal government *after* a crisis than did the lack of “forms” and “methods” devised under that Article. The essential difference between the French “state of siege” and the Anglo-American “martial law” stems more from a fundamental difference in the legal systems of the two nations than from basically different postulates. Delegated legislation, and even enabling acts (in France and England) are not merely “emergency” techniques, they are relatively long-established techniques for meeting the legislative difficulties of a modern, industrial society. And, again (but the author recognizes this) except possibly for Lincoln’s “Ninety Days,” there has been no “constitutional dictatorship” in the *United States*, within the author’s own definition of that metaphoric term, despite the exercise of “martial law” upon occasion in some of the *states*.

Still, the author did not propose to write a treatise, either on comparative constitutional law generally or even on this narrow phase of it. He proposed to examine the techniques of “crisis government in the modern democracies,” to demonstrate anew the urgent need for preparing *now* for the governmental techniques to be used in *future* crises, to show that the very existence of democracies in these modern days depends on taking such steps *within time*, and to propose the outlines of a solution. In these purposes, Mr. Rossiter succeeds very well, given the small compass of his book and the vastness of his subject. That he has fallen into some historical error is no doubt true; that some of his analyses will not stand up because based on necessary over-generalization is to be expected; that his understanding of the law, and especially of the function of the courts, is hazy and perhaps limited results from the fact that he is not a trained lawyer; that he is somewhat overpowered by the results of his own laborious researches is an obvious function of his youth. But the field of political science and public law has been much enriched by his endeavors—and not only because he seems to have provoked many of the members of the species *Reviewer*.

Elmer E. Hilpert*

LEARNING THE LAW. By Glanville L. Williams. London: Stevens & Sons, Ltd., 1946. Pp. xii, 161. 7s 6d.

A FIRST BOOK OF ENGLISH LAW. By O. Hood Phillips. London: Sweet & Maxwell, Ltd., 1948. Pp. xx, 271, index. 16s.

It is surprising, no doubt, to review in an American legal journal these two volumes published for the guidance of English law students. The study of law in England is utterly different from that in this country; the American law student needs no *vade mecum*; if he does need one there is always Morgan or some of the recent, more ambitious, course materials.

But it can always be interesting to see how things are done elsewhere,

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and the differences between English and American methods of law study are continually narrowing as a result of piecemeal changes on both sides. If we should learn anything from current developments abroad, it would not be the first instance of reciprocal borrowing between our two systems to the profit of both. In fact, regardless of the particular setting in which the beginning law student is observed (and the differences between individual experiences in England are probably greater than the differences between that "system" and any other¹), the miseries he suffers during those first few fog-bound months seem to follow a somewhat constant pattern. Of that, the evidence lies in the nature of these efforts to help him, and in their general resemblance to similar efforts elsewhere.

These two modest little volumes share a stated aim to furnish general guidance for anyone commencing or about to commence the study of English law. As Mr. Williams points out, much of it will be more useful to advanced students. The implicit aim common to both seems to be to inject the student, relatively painlessly, with enough legal toxin to assure a positive reaction to his further studies. Both books offer him illumination in three areas: in the essential nature of our legal system both as substance and as administration, in the simpler elements of legal research, and in some measure of appraisal of the more common types of sources of our law. Both are written by barristers; Mr. Williams (LL.D. Cantab.) is Reader in English Law in the University of London, and Mr. Hood Phillips (M.A., B.C.L. Oxon.) is Barber Professor of Jurisprudence in the University of Birmingham.

Mr. Williams offers two introductory chapters on the basic divisions of the law and its terminology. This material lacks headings and seems quite as disorganized as any bramble bush. In any such effort at orientation, proper headings would seem essential. He then offers a chapter on the "mechanism" of scholarship. Two chapters follow on methods of study; these carry further suggestions about getting into the books. Chapter 11,

1. A member of the Law Faculty of University College, London, commenting on the barrister side of the picture, remarks that there is "no single mode of entry into the legal profession in England. A potential barrister may or may not attend a University first. If he attends a University first, he may or may not read law. If he does not attend a University first, he may or may not attend the lectures provided by the Council of Legal Education. Moreover, he may or may not attend day or evening courses of lectures at London University or enter for an external law degree of London University. In practice it has become usual to read for a law degree which, incidentally, will exempt him from taking the bulk of Part I of the Bar Examinations. Even when a student has been called to the Bar, there is nothing which compels him to read in chambers before practising, although it must be very rarely today that a barrister practises without this preliminary pupillage. There is, however, no uniformity of practise concerning the time spent in chambers, or upon the question whether reading in chambers should occur before or after call to the Bar." The solicitor's training is possibly somewhat more standardized, since the supervision given by the Law Society is closer than that given by the Council of Legal Education (of the Inns), but within its wide permissive limits the practice here too is far from uniform. See Keeton, *The Problem of Legal Education*, 27 CAN. B. REV. 283, 289 (1949).

Legal Research, carries a list of recommended texts in the major fields, also two pages of haphazard remarks on such diverse mysteries as regnal years, medieval Latin, and Hicks. Most teachers might agree that such hopeful suggestions may be better received, in the classroom, if well spaced. But within the covers of so small a book, more might have been gained, and little lost, by tighter organization.

Beginning with Chapter 6 and for the last two-thirds of the book, the going gets heavier, and is designed for more advanced students. The lucid language of the chapter on case law technique should make it helpful, especially the simple but enlightening discussion of the different levels of "fact" and its bearing upon the proposition of a case. Three chapters follow on the techniques and niceties to be observed in handling examination questions (primarily, it is presumed, the "intermediates" and "finals" of the Law Society). The implications of his very detailed suggestions are not flattering to English law examiners.

The chapter on moots and mock trials might be of interest to any group of law students devoted to such activities, and the game of "alibi" (p. 112) could be an uproarious way of learning the practical art of cross-examination. The last chapter, that on the problems of choosing a legal career, furnishes interesting light on the place of the legal profession in England today.

Mr. Hood Phillips' book is in three main divisions: Part One, The Courts; Part Two, The Sources of English Law; and Part Three, General Principles of English Law. The chapters on the courts are extremely well done and furnish something which was lacking in the earlier book. The English court system is here presented from a subtle variety of approaches. Yet it all blends into a well-organized picture of the structures, functions and customs of the various courts and of the nature, appointments, privileges and responsibilities of the judges that sit upon them. The place of the legal profession is presented as an integral part of this picture, which leads one to wonder why it is not always thus presented. Most significant is the emphasis placed upon the various minor and miscellaneous courts, the peculiarities of which are enumerated in detail. Your reviewer discovered how little he knew of the English courts today upon reading that "the Tolzey Court is suspended while the Bristol Court of Pie Poudre is sitting" (p. 65).

The emphasis throughout this portion of the book is not so much historical as positivistic. This is probably a healthy thing for the beginning law student, though it is a bit startling to see it exemplified in such a statement as this (p. 7): "The power to issue writs was held in check by the Courts, for there comes a point when the creation of remedies amounts to law-making, and that is the province of Parliament." This, however, is an isolated instance. Even in Part Three, which achieves a summary statement of basic English law in some ninety pages, the author fairly fulfills the hope expressed in his preface that he is not too dogmatic.

His whole discussion of the courts abounds in happy instances of terse illumination. Examples: "If all Equity were abolished we should still have a coherent though inequitable Common Law, but if the Common Law

were abolished we should be left with a number of unrelated equitable principles suspended in mid-air" (p. 9); "Peers are a small element in the population and they do not often commit treason or felony nowadays; if they do, the indictment must be moved into the House of Lords by *certiorari*" (p. 57). Elsewhere (p. 81) he says: "The doctrine of the divine right of kings has complicated matters still further by disregarding the Commonwealth period and calling the first Act of Charles II's reign '12 Car. 2, c.1'."

The author's ability to talk meaningfully upon several levels at once is even better exemplified in Part Two of this book. In that discussion of the sources of English law he does not find it necessary to segregate, though he distinguishes, its formal sources (of validity), its legal sources (of promulgation), its literary sources (of reference) and its historical or material sources (or origin). By this approach, he at once dispels the dullness of legal materials and renders immediately useful to the student various notions in legal thought. This is in interesting contrast to the increased compartmentizing of "principles" and "skills" in our own curricula. One wonders if much of our current instruction, even in such separated areas as Legal Bibliography and Legal Philosophy, would not gain from such a merging. The issue is not, of course, what may be included within the covers of any single book, or single course, but is, rather, the possibility of discussing *ratio decidendi* in terms of West headnotes, or of explaining research problems of catalogue and index in terms of forms of action, legal realism, and the growth of law.

Part Three is a well-documented summary of the law of crimes, property, tort, contract and persons. If the student's first inspection of the seamless web is to be anything more than a glance at its four corners, this approach would not seem to be such a bad idea. Certainly it has advantages over any mere outline of the "divisions" of the law: even a mere outline is the better for being stated in terms of complete propositions. Such a summary can also expose the student to numerous word definitions, either by statement or by implication of context, and further it can still some of the myriad eager questions which ramify so at the outset as to interfere with his concentration upon some particular matter at hand. One might cavil at the absence of procedural law from Part Three. But the whole book conveys such a lively sense of law as an active process that any such criticism would be quite unfair. In fact, it has long been on the agenda to make any criticism of omissions from a book of this size a capital offense.

Since Mr. Williams' book did the pioneering, it may be also unfair to suggest that upon comparison with the Hood Phillips book it gives the impression of an attempt to expound legal etiquette—a sort of Emily Post for the law student—while the Hood Phillips book offers more understanding, and at several levels. Both books undertake to teach "skills," but there seems to be a good deal of confusion (which will not be dispelled here) in the use of that term. Let it merely be said that the conviction is growing, everywhere, that the law student can be taught to swim otherwise than by tossing him into the deepest water. The resulting

program in this country is not lacking several fairly successful pocket books or teaching vehicles. The question remains, however, just how much can be successfully packed into one course, or into one book. Perhaps the best gains will always come not from any one book but from several, the smaller and the less formidable the better. Various features of these two books may suggest what sort of thing we may still be looking for. Neither book is likely to become required reading for many law students in American schools. Still, both books might safely be made required reading for teachers, and for prospective authors, in this field.

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MATERIALS AND PROBLEMS ON LEGISLATION. By Julius Cohen.¹ First Edition. Indianapolis: The Bobbs-Merrill Company, Inc., 1949. Pp. vi, 567.

Before having read Professor Cohen's book on Legislation, your reviewer had been of the opinion that to review a law school "casebook" was a formidable undertaking of a rather dull and uninteresting nature. Surely that was the belief if, as a condition precedent to the writing of the review, one would have had to read all of the materials and all of the (often too many) cases printed between the covers of the book. Although perhaps that may very well be the situation in the case of the ordinary or conventional "casebook," such was not the fact with Professor Cohen's book. The reading of the book, together with its only forty-three cases, was a pleasant as well as a very worth-while experience. However, it must be stated at the outset that this book is not the ordinary casebook on one of the traditional law school subjects. Actually it is not a casebook. The book is entitled **MATERIALS AND PROBLEMS ON LEGISLATION**, and its contents justify the title. Although recently there seems to be a trend favoring the "Cases and Materials" type of a casebook, usually the book is no more than the conventional casebook with its over-abundance of cases, together with a sprinkling of introductory notes and text, an occasional statute, and a sufficient number of footnotes and references to permit the use of the word "materials" in the title. Occasionally "the materials" may tend to create an atmosphere befitting scholarship and erudition.

Professor Cohen's book does not possess the bulk of the average "materials" book. Nevertheless this book of only 567 pages contains a wealth of material consisting of some of the finest literature in the field of legislation.

The topics chosen for treatment have been adequately explored. Although the student may not always be given "the answer" to many of the questions asked by the author, the student will feel competent to discuss the matter and to venture an intelligent answer based upon the technique that he has acquired. By virtue of the many problems and questions found therein, the book possesses an admirable flexibility as a teaching tool. This enables the teacher to devote to any particular phase of the subject as

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