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Book Reviews

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BOOK REVIEWS

HANDBOOK OF THE LAW OF TORTS, 2d ed. By William L. Prosser. St. Paul: West Publishing Company, 1955. Pp. xii, 952. $10.00.

It is not surprising that Dean Prosser allowed a considerable period to elapse since the publication of the original edition of this work in 1941. He had no particular reason to be discontent with the original edition. It started off with the considered approval of the experts, receiving reviews as favorable as anyone could desire from many quarters, and promptly became a deskbook for practically all of us who teach torts. The courts likewise gave the first edition a warm reception, citing it so frequently that the publishers soon gave up the attempt to keep track of the number of times it was relied on. Last, but not least, students and practitioners indicated their approval in a tangible way when the book proceeded to outsell by far any other single volume treatise ever distributed by the West Publishing Company. Under these circumstances it is understandable that the author did not rush into the preparation of a new edition, particularly after the amount of work which obviously went into the preparation of the original book.

It is evident, however, that during the past fourteen years there have been extensive developments in the field of torts, and the new edition is of substantial benefit not only to new readers but to all of us who have leaned heavily on the original work. In the early chapters, dealing with the more settled general principles about intentional torts and negligence, the main change has been to bring the citations up to date, but even here there is some rewriting, particularly in the parts dealing with mental disturbance and the doctrine of *res ipsa loquitur*, two fields where recent developments have been considerable. The general treatment of negligence has been rearranged to place the discussion about the standard of conduct before the more difficult material dealing with duty and the problem of the unforeseeable plaintiff, a change which seems helpful, particularly to students.

The discussion about the unforeseeable plaintiff has been considerably revised, as might be expected from the author's readable article on this subject.[1] Prosser remains somewhat skeptical as to the value of the doctrine which attempts to restrict liability to the scope of the original risk, to the foreseeable plaintiff, making the test of

1. See *Palsgraf Revisited*, 52 MICH. L. REV. 1 (1953), reprinted in PROSSER, SELECTED TOPICS ON THE LAW OF TORTS c.4 (1954). This book, which contains a number of Prosser's outstanding recent articles, is well discussed in Wade, Book Review, 8 VAND. L. REV. 657 (1955).

responsibility for the result about the same as the test for negligence. He concedes that rejection of this doctrine "throws the question of any limitation back into the morass of 'proximate cause,' and the search for some reasonably close connection between the defendant's conduct and the injury." (pp. 171-72). It may be that he does not give sufficient recognition to the risk doctrine in determining whether in fact there is a reasonably close connection between the conduct and the injury. The discussion accurately indicates, however, the fact that during the past fourteen years there has been no general shift by the courts from proximate causation doctrine to the risk theory, and the general state of judicial authority on this problem is reflected with considerably more completeness than in the first edition. One wonders, however, whether the Tennessee decision cited as definitely rejecting the risk doctrine, *Jackson v. P. Lowenstein & Bros.*,[2] was intended to go that far. While the opinion does indicate a tendency to let unusual cases go to the jury, the accident there does not seem to have been so unforeseeable as to indicate any clear rejection of the risk theory.[3] It would be surprising indeed, however, if any torts teacher did not find something to criticize about any discussion of proximate cause.

The discussion of strict liability has been expanded considerably. The various factors important in determining whether a defendant is liable without proof of negligence, such as the appropriateness of the activity to the locality, the customs of the community, and the general "abnormality" of the thing or activity involved, are well brought out. Here too the state of the decisions is indicated with greater completeness than in the earlier edition, and the recent shift of the majority of American courts to the doctrine of *Rylands v. Fletcher*[4] is clearly brought out. The rules of the *Restatement of Torts* on this matter[5] are criticized as "ignoring the relation of the activity to its surroundings" and as insisting too much "on extreme danger and the impossibility of eliminating it with all possible care." (p. 335). In that connection it is shown that the American as well as the English courts have laid much stress on the place where the thing is done and on the relation of strict liability to the established law about nuisances. There is an expanded and up-to-date indication of the various activities which in recent years have been held to come under the strict liability rule, and an interesting prediction that damage from the escape of radiation in the use of atomic energy will be found by all courts to come within the rule of strict liability. (p. 336). It is further predicted that the strict liability now resting on food manu-

2. 175 Tenn. 535, 136 S.W.2d 495 (1939).
3. See Comment, 23 TENN. L. REV. 1015, 1021 (1955).
4. L.R. 3 H.L. 330 (1868).
5. §§ 519-20.

facturers in a minority of jurisdictions "may eventually be applied to any article where there is a high risk of injury from any defects." (p. 347).

In the chapter on owners and occupiers of land there has been considerable revision, particularly in the section originally entitled "Business Guests" and now labeled "Invitees." As in his well known law review article[6] Prosser objects in this new edition to the concept in the *Restatement of Torts*[7] that the duty to use due care to make premises safe is imposed simply as the price of an economic benefit from the presence of the visitor. He considers that "the basis of liability is not any economic benefit to the occupier, but a representation to be implied when he encourages others to enter to further a purpose of his own, that reasonable care has been exercised to make the place safe for those who come for that purpose. . . . When premises are thrown open to the public the assurance is ordinarily given." (p. 455). It is shown that the element of invitation continues to be emphasized by the courts, and it may well be that the *Restatement* should be revised on this point, at least to avoid such an exclusive emphasis on the factor of pecuniary advantage.

The liability of suppliers of chattels, another field where there has been much development in recent years, is remarkably well discussed in the new edition. The general discussion of the relation of tort and contract is shifted so that it immediately precedes this topic where the relationship is so significant, and the increasing importance of warranty doctrines is well brought out. With reference to the growing responsibilities of manufacturers the author remarks, "It is not difficult to predict a process of development similar to that of the maker's liability for negligence, which will extend first to products involving a high degree of risk, and perhaps eventually to anything which may be expected to do harm if it is defective." (p. 510). A number of recent cases involving general products are referred to in support of this statement. The revision of the section on liability of contractors has been considerably expanded and brings out how the analogy of *MacPherson v. Buick Motor Co.*[8] is at last being accepted by a considerable number of courts.

After approximately a year's use of the new edition, this reviewer is convinced that it will confirm and strengthen the position of the original work as the standard treatise in the field. Various improvements reflecting the author's extensive reading, research and writing during recent years constantly become apparent. Enough has been said to show that the author's increased prestige has not led him into

6. *Business Visitors and Invitees,* 25 MINN. L. REV. 573 (1942), reprinted in 20 CAN. B. REV. 446 (1943), and in PROSSER, SELECTED TOPICS ON THE LAW OF TORTS c.5 (1954).
7. §§332, 343 comment *a.*
8. 217 N.Y. 382, 111 N.E. 1050 (1916).

a dogmatic rather than a reasoned approach to the subject. As in the first edition, complicated areas of law are summarized without making matters seem more simple than they are, with indication of the general direction in which the courts are moving. There are plenty of illustrative cases in the text, and the footnotes often indicate in a helpful way the general nature of the case cited. The citation of law review material is usually complete and to the point. An enormous amount of tort law is covered with remarkably little sacrifice to completeness and accuracy of statement. Few will regret the omission of the material on workmen's compensation and on the liability of labor unions for interference with contract, since this omission leaves room for expanded treatment of misrepresentation, privacy, and other basic topics.

The external form of the book has been remarkably improved. The print is much clearer, and the shorter lines further contribute to ease of reading. It also is quite helpful to have a book that lies open easily on one's desk.

Any review of a book by Dean Prosser would be incomplete without observing that he can turn a phrase as well as any writer in the field. He has proved that a sense of humor and an occasional light touch are appreciated even in a legal treatise, not only by students but by the more grave members of the profession. The writing reflects an unusual understanding of how people ordinarily act, think and feel. There is full realization of how changing social conditions cause tort law to be in a continuous state of development, without neglect of the basic concepts about fault and responsibility which lie at the core of the subject and make it one of such vital interest.

DIX W. NOEL*

IMPARTIAL MEDICAL TESTIMONY—A Report by a Special Committee of The Association of the Bar of the City of New York. New York: The Macmillan Company, 1956. Pp. ix, 188. $3.95.

In August, 1952, the Alfred P. Sloan Foundation and the Ford Motor Company Fund each made a grant of $20,000 to The Association of the Bar of the City of New York for the express purpose of financing an experimental project the object of which was "to test a remedy for the deficiencies and abuses prevailing in the presentation of medical proof in judicial proceedings." The "remedy" required the active cooperation of the Bench, the Bar and members of the medical profession. It was applied in New York County beginning December 1, 1952, and was extended to Bronx County October 1,

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1953. This Report covers the period between December 1, 1952, and December 1, 1954. It includes (1) the Committee's description of the machinery and its operation, an account of experience under the project, and the Committee's reasoned conclusion as to its successful operation, (2) a study by the medical consultant reviewing one hundred cases with the expressed opinions of participating physicians as to some salient points of the remedy in application in specific instances, and (3) a list of "Exhibits" covering over one hundred pages which set out the details of the plan, the medical and surgical specialists involved, the fees paid, the pertinent facts of each of the one hundred reviewed cases, and the opinions of trial judges upon the effect of the remedy in specific cases which came before them. In a word, the Report is a model of what a report should be when designed to make clear to all members of both professions and to legislators the practicability and value of this plan or device for securing honest unbiased opinions of qualified experts as to diagnosis and prognosis of the physical and mental, including psychiatric, condition of an actual or potential litigant, and making those opinions available to the litigant, to counsel and to the court.

(1) How are the impartial experts chosen and made available? At the request of the Director of the New York Academy of Medicine, the Academy and the New York County Medical Association have provided a list of highly qualified experts in the several fields of medicine. The justices of the Supreme Court of New York County indicated the areas in which expert testimony was most likely to be needed, and the medical organization "compiled panels of specialists and persuaded the men named upon them to serve."

(2) How is the specialist for a particular case selected? The Supreme Court of the county (New York or Bronx) established a Medical Report Office in charge of a deputy clerk. If a judge determines that an examination and report would be helpful, he first has a consultation with counsel for the parties, and then orders the examination and report without cost to the parties. The examination will be made by a member of the appropriate panel. The consultation is in connection with a pre-trial conference at which the judge gets all relevant data as to the claims, medical examination previously made, and records then available through the parties. The judge does not know the names of the available doctors. In his order he indicates the type of specialist required. Counsel make arrangements with the Medical Report Clerk for the examination, and the clerk selects the specialist, usually the next in rotation on the list. (Thus far there appears to have been no claim that the clerk has been guilty of favoritism or of using his office for political purposes. Because there is a possibility of abuse, similar to that revealed by past experience in the appointment

of special masters and receivers in bankruptcy, it has been wisely suggested that the selection be made by or through the medical societies.)

(3) What use is made of the reports? The examining expert sends three copies of his report to the Medical Report Office. The clerk retains one copy for the use of the judge and sends the other two copies to the lawyers for the parties. These are used in a second pre-trial conference. In the event of trial the expert may or may not be called as a witness at the request of one of the attorneys or of the judge.

(4) What has the project accomplished? The Committee lists the following accomplishments, and the accompanying data seem to furnish ample support for each of them:

1. The Project has improved the process of finding medical facts in litigated cases.
2. It has helped to relieve court congestion.
3. It has had a wholesome prophylactic effect upon the formulation and presentation of medical testimony in court.
4. It has proved that the modest expenditure involved effects a large saving and economy in court operations.
5. It has pointed the way to better diagnosis in the field of traumatic medicine. Unlike the others listed above, this accomplishment is an unexpected dividend, which was not in contemplation when the Project was initiated. (p. 5).

No informed person can doubt that the expert witness in the usual current practice is in effect an expert advocate instead of an expert analyst and expositor. Expert medical testimony, unhampered by restrictions imposed by statute or rule of court, has become notoriously unreliable in certain classes of litigation both civil and criminal. No plan for dealing with this evil has heretofore been suggested which promises such a high degree of success. One strong item of evidence of its effectiveness is the statement of the Presiding Justice of the Supreme Court of New York, Appellate Division, First Department, printed in the Preface, that the plan "has been adopted as a regular part of the operations of the Supreme Court of New York in the First Department, and the expense of operating the plan has been included in the court budget approved by the Board of Estimate of the City of New York." (p. v).

The Report should be studied by the appropriate committees of every bar association genuinely interested in the improvement of the administration of justice.

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MODERN TRIALS. By Melvin M. Belli. Indianapolis: Bobbs-Merrill, Inc., Three Volumes, 1955. Pp. 2,763. $50.00.

Mr. Belli has, in my opinion, contributed to trial lawyers the most outstanding work of its type. It is primarily, however, a "plaintiff's" *Modern Trial.* The approach is understandable since the author's principal practice is from the plaintiff's side of the table. However, it can and will be of great aid to the defendant's attorney. The subject, as presented by Mr. Belli, is made up of three well-bound volumes totaling some 2700 pages. The indices are well prepared. The great number of excellent photographs, illustrations and charts and statistics are surprising in a work of this type, and add materially to the well-prepared text and annotations.

The main feature, or perhaps it would be fairer to say one of the main features of *Modern Trials,* is the treatment of "Demonstrative Evidence" in its preparation and use on trial and on appeal. In treating this subject, the author has not confined himself to the bar of his community or state, but with the assistance of many others throughout the country, has stressed the importance of demonstrative evidence describing and illustrating its use throughout much of the United States. Undoubtedly, in the trial of cases today, demonstrative evidence is and has been for several years greatly relied upon, although no claim is made to its having only been discovered in later years. The excellent photographic service and scale models, for example, can now be more easily obtained than ever before.

Today, the trial lawyer in most cities of any size, may expect to meet face to face from time to time in court, a skeleton well-wired and conspicuously set up in the courtroom at the proper time, together with enlarged photographs, charts, and figures, the details of which might tax the mathematical skill of the jury, but being so compiled as to impress the totals upon the minds of the jury as the true measure of damages for the injuries. As would be seen from practice generally and upon a consideration of *Modern Trials,* the offense has for the present gained ground, if not considerably outdistanced the defense. Although the defendant's attorney is restricted in the use of some of these modern-day methods, their careful study, as in *Modern Trials,* together with hard work and some ingenuity, may be expected to blunt, if not successfully defend, a case in which the attorney for the defense is faced with the skilled use of demonstrative evidence. Defense attorneys, moreover, may utilize to advantage demonstrative evidence although in most cases of personal injuries, its use is perhaps of more value to the plaintiff.

Many techniques are suggested in *Modern Trials* which might work well in California or in other parts of the country, but which a trial

lawyer could readily see would "overdo" the job before the jury in a particular area. The experienced trial lawyer will consider this and the inexperienced one should do so. Something of this view is indicated in *Modern Trials,* by a quotation in the book from an eminent English Barrister, Norman Everett:

> It is surprising the number of people in this country who resent any attempt to inflame their feelings. They very easily suspect that their sympathies are being played upon.
>
> Nonetheless, Demonstrative Evidence is used to a considerable extent....

It is the impression among many lawyers who have not carefully read *Modern Trials* that it is a work on demonstrative evidence alone. The value of Mr. Belli's efforts is not confined to demonstrative evidence, but covers in sufficient detail such subjects as "Adequate Awards," "Admirality," "Investigation," "The Use of Demonstrative Evidence in Criminal Cases," "Medical Malpractice," "Medical Examination and Reports." The treatment of settlement negotiations is an excellent one, although the use of 'The Brochure" in settlement in the form recommended by Mr. Belli is somewhat unknown in Tennessee. Belli's treatment of "The Jury," beginning with the investigation, background and reputation of prospective jurors, and continuing through the void dire, deserves careful attention.

The discussed use of the trial judge as a mediator in settlement negotiations is one technique which many practitioners will take issue, their feeling being that the presence of the judiciary introduces a compelling force toward settlement. Further, by custom and tradition, the courts of many jurisdictions adhere to the principle and practice of adjudication rather than conciliation, so that such procedure is locally unavailable.

In his treatment of settlement negotiations Mr. Belli makes a suggestion:

> I have sometimes ascertained that an offer of settlement to policy limits has not been communicated to the insured by the lawyer for the insurance company. It would perhaps be unethical for me to communicate the offer directly to the personal defendant when he is represented by the insurance company lawyer. However, if I suspect that the insured has not been advised that settlement is possible within the policy limits, when their case is called for trial I invite defendant's counsel and defendant personally into the Judge's chambers, asking the reporter to be present. I then state that since it would be unethical for me to advise the defendant personally that we are willing to settle the case for his policy limits, I now advise his counsel and the court, in his presence, of such settlement offer, and ask the reporter to make the record.

Although fully agreeing with the view expressed by Mr. Belli that it is wrong for defense counsel not to communicate offers of settle-

ment to the defendant where insurance coverage may be exceeded, I suggest that as a practical matter in Tennessee at least, the above method of inviting defendant's counsel, client, the court and court reporter, into the judge's chamber, would very likely, in many instances, result in defendant's counsel's refusing or ignoring the invitation or in the judge's refusing to take part in such a meeting, or in both. My mention of this is not in any way to detract from this splendid work, but rather to illustrate the excellence of *Modern Trials* and at the same time, to point out that the effective use of some of these methods will vary greatly from jurisdiction to jurisdiction.

Certainly it is believed that all trial lawyers will find that *Modern Trials* will have an important place in their library, if not an indispensable one.

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LAW AND MORALITY. By Leon Petrazycki. (Translated by Hugh W. Babb with an Introduction by Nicholas S. Timasheff). Cambridge: Harvard University Press, 1955. Pp. 330. $7.50.

This volume represents an edited and somewhat abridged version of the eminent Russian jurist Petrazycki's creative and influential works which were written during the first decade of this century. As volume VII of the *20th Century Legal Philosophy Series* published by Harvard, his writings are made available to English readers for the first time and they represent a most significant point of view in the current discussion and debate in the field of jurisprudence and legal philosophy.

At the outset it must be made clear that Petrazycki is a pre-revolutionary jurist and should therefore not be confused with that group, such as Stuchka, Reisner, Pashukanis, Yudin, Strogovitch, Trainin, and the like, whose names are associated with the development of Soviet legal philosophy. Petrazycki's work was done, chiefly at the University of St. Petersburg, before the revolution of 1917 and from philosophical premises quite opposed to Marxist materialism. Although the Provisional Government appointed him to the Senate, Russia's Supreme Court, Petrazycki did not attend its sessions and in 1921 he took advantage of the peace treaty of Riga which granted persons of Polish descent the option of staying in the Soviet state or emigrating to Poland. In Poland he continued his creative writing and brilliant teaching, but the pessimism engendered in him by the

drift of history in Russia and Poland led him in 1931 to take his own life.

The context of legal philosophy in which Petrazycki wrote is not much different from the climate of juristic thought today. For Petrazycki sought to formulate a theory of law which would overcome the shortcomings of the positivists on the one hand and the idealists on the other. It was his striking thesis that the phenomenon of law had been fundamentally misunderstood by the chief theorists, particularly by the positivists who defined law in terms of a "command" of the sovereign. The positivists of his day were concerned to reduce the study of law to a "science" whose chief tool was the method of observation. This was also Petrazycki's concern, for he, too, wanted to formulate a science of law founded upon observation. But when he asked the questions as to where the legal phenomenon is to be found and by what manner of observation, he parted company with the positivists, charging them with looking in the wrong place and resting their theory upon an "optical illusion." In some fields of knowledge, observation means deriving information about external realities through the senses; this is central to the method of the physical sciences. Jurists have tried to adopt this method to the study of law. The most notable theorist of today who follows this line of thought is Hans Kelsen, who argues that in order to achieve cognition, *i.e.*, true ideas, we must look for the data of these ideas in the realm external to the self. This leads Kelsen to look for the essence of law in the realm that is accessible to the senses, to that sphere which can actually be seen by the eyes. Proceeding on this basis, Kelsen comes to the conclusion that law is essentially a "norm," *i.e.*, an impersonal command. For him, the science of law then becomes a science of the structure of norms. A law is "valid" not because it is "good" or "just" but because it proceeds properly as a command from the person or agency which, by virtue of a previous command, is empowered to issue commands. The concept of "justice" becomes irrelevent to a science of law because "justice" is a subjective ideal and is not accessible to the senses and therefore cannot be any part of a "science" of law. This point of view was well represented in Petrazycki's day by S. V. Pakham and others. Petrazycki's opposition to this method and a quick clue to his own theory is found in this passage of his work:

> Suppose we are concerned with this judgment: "Squire A has a right to obtain from lessee B, 5,000 rubles rent"; or "lessee B is bound to pay to Squire A 5,000 rubles stipulated in the lease." According to legal terminology, there is—as between A and B—the legal relationship of lessor-lessee. Here a legal phenomenon confronts us: Where is it? Where can it be found for purposes of study?
>
> It would be a mistake to suppose that it is to be found somewhere in

> space between A and B, or that—if A and B are in a certain province—the legal phenomenon is somewhere in that province, or to suppose that the legal obligation ascribed to lessee B in the judgment aforesaid is something found in him, and that the right to obtain 5,000 rubles is something present—and to be found—in Squire A in his hands, or in his spirit, or anywhere at all around or in him.
>
> The scientific and critical answer to this question can and should be simply this: the legal phenomenon is in the mind of the third person C, who supposes that A has a right to receive—and that B is bound to pay—5,000 rubles. . . .
>
> Legal phenomena consist of unique psychic processes . . . expressed, incidentally, in the unique form of ascribing to different beings . . . "duties" or "rights"; so that these beings, so conceived of, are seemingly found in certain peculiar conditions of being bound or of possessing special objects ("rights"), and the like. . . .
>
> The content of traditional legal science is tantamount to an optical illusion: it does not see legal phenomena where they actually occur, but discerns them where there is absolutely naught of them—where they cannot be found, observed or known—that is to say, in a world external to the subject who is experiencing the legal phenomena. (pp. 7, 8.).

From this it is clear that Petrazycki advocated a radical reconception of the method of legal science. For him the chief tool would be observation but because the phenomenon of law is psychic in nature, the mode of observation would have to be introspection instead of external sensation. It cannot be emphasized too much that this theory has the effect of creating a fundamentally different theory of law from that advocated by the positivists. Whereas the positivists argue that the science of law has no concern with justice and morals, Petrazychi holds that the essence of law is its moral nature since it emerges from man's sense of obligation. To look at law as a command is to see simply the external manifestation of a phenomenon whose basis lies in the conscious awareness of obligation, that is, in consciousness or conscience. This is a legal theory whose foundation is psychology and to which the method of introspection becomes the new mode of observation. Introspection reveals that at the heart of the legal phenomenon is the consciousness of the will being bound by duty. Law, therefore, turns out to be an aspect of ethics since its chief characteristic is the awareness of "ought." This does not make law identical with morals; indeed, one of the most brilliant sections of this volume is the one dealing with the differences between law and morals. But law and morals do have this in common, namely, that they both contain an imperative to duty. There is, however, a certain *differentia specifica* which enables him to distinguish law from morals. The clue is in the word *attributive,* which is a trait found in law but absent in morals, namely, the experience in law wherein a duty which is binding upon one person, *A,* is also "indestructibly" fastened as a right or claim against *A* which is attributed to another person *B.* In

morals no right is attributed to a person to correspond with another person's duty: no one has an enforcible right to kindness, even though there is the imperative that people ought to be kind to each other. Thus, while law and morals represent two branches under the general title of ethics, morality is imperative whereas law is imperative-attributive.

In spite of his concern to show the essentially moral nature of law, Petrazycki remains within the broad classification of positivism. His quarrel with positivism was simply over the mode of observation and the locus of the legal phenomenon. This did not mean that he moved over into the camp of the idealists who tried to define law in terms of certain specific concepts of justice. To him, justice is equivalent to "intuitive" law but nowhere in his work can there be found any concrete analysis of the content of justice. Though he is sympathetic with the concept of natural law, he is very impatient with any attempt to spell out its contents. Two of his early critics were Chicherin and E. Troubetskoy who felt that his theory made no room for ideas of "right" and "justice" applicable to all men instead of only to those who experience particular relationships with each other. Such universal ideas Petrazycki dismissed as "phantasmata," and herein lies his chief criticism of idealism in juristic theory. For the idealist makes as serious an error in trying to find the essence of law in certain eternal principles as the positivist does in designating the "command" as the essence of law. The outcome of Petrazycki's argument is that the traditional positivist point of view must be given up because it does not really reveal to us the true nature of law. With this conclusion this reviewer is in complete sympathy inasmuch as any thorough discussion of law inevitably leads one to consider the value-content of law as its decisive element, whether in primitive tribal law[1] or in the judicial process of the most highly civilized state.[2] But it is precisely here that Petrazycki's analysis reaches the end of its usefulness and is unable to fulfill the rich promise suggested in its preliminary sections. For in refusing to embark upon a discussion of the content of the moral element of law, his theory lapses into precisely the kind of relativism found in the "historical school" of Savigny and Puchta which Petrazycki rejected. To reduce morality to individual impulses and to conceive of the moral life almost exclusively as reflexes caused by environment leaves untouched the critical problem of law, namely, the question of whose moral insight is "right"? Yet, it must be granted that Petrazycki's theory represents an enormous advance over such positivistic theories as that of Hans

1. GLUCKMAN, THE JUDICIAL PROCESS AMONG THE BAROTSE OF NORTHERN RHODESIA (1955).

2. *Cf.* Stumpf, *The Moral Element in Supreme Court Decisions,* 6 VAND L. REV. 41 (1952).

Kelsen, for it focuses the discussion upon the moral basis of the legal imperative. Throughout his book he refers to Biblical notions of law and appears to argue that the essence of law is to bring about the kind of conduct enjoined in Christian love. This argument, however, comes out only in muted tones; nevertheless, the implicit logic of his argument is that since the essence of law is its moral content, the ultimate end of law is to help man realise his *true* moral nature.

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