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Book Reviews

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BOOK REVIEWS

A DEMOCRATIC MANIFESTO: THE IMPACT OF DYNAMIC CHRISTIANITY UPON PUBLIC LIFE AND GOVERNMENT, by Samuel Enoch Stumpf.

Nashville: The Vanderbilt University Press, 1954. Pp. 168. \$2.75.

Few topics are currently more at the center of both interest and need than that of Dr. Stumpf's new book. The ship of democracy is being tossed by heavy seas. Many are looking for a haven of faith. They tell us that the ship cannot stay afloat unless it reaches the well-protected harbor of religion. It needs at least to be overhauled, they say, and made more seaworthy in that harbor before it braves again the heavy onslaughts which it must necessarily breast.

Dr. Stumpf probes too deeply into the relation between democracy and religion, however, to fall prey to such an inadequate kind of analysis. Religion is not externally protective of democracy, or some merely useful means to its perpetuation, but lies at the very basis of democracy itself. Democracy was born, cradled and reared within the Christian faith—not as a foundling, but as a proper child of the household. Authentic Christian faith as a long-ranged cultural power, in at least one aspect of its nature, should evolve democratic institutions because of its kind of motivation, its kind of ideal for community, and its own intrinsic nature and goal.

Such a claim is presented in this volume not as mere propaganda, but as a serious historic proposition and as a conclusion derived from the analysis of the Christian faith itself. The theme, nevertheless, is no scholar's debate for the sake of pure knowledge, but is rather modern man's wrestling with rapidly accelerating threats to our actual democratic way of life. "Christian" democracy is slugging it out with Marxist communism near the middle of the ring, although we seem about to be pushed toward the corner. *A Democratic Manifesto* comes written out of this, our concrete situation. No wonder that the book is alive! The Christian faith, to be sure, is not considered the exclusive source of democracy nor is Marxist communism our only enemy. Dr. Stumpf is too much of a scholar thus to disregard the facts of the case. All the same, the underlying urgency of the book stems a good deal from the realism of an interpreter who beholds colossal forces of faith mounting higher and higher for decisive conflict.

Against such a background the author sets out "to restate some important aspects of democracy and to indicate the creative relation of religion to democratic philosophy" (viii); and declares his primary

concern to be to "make manifest what democracy is and what it takes to preserve it," even beyond the appraisal of the present communist challenge of democracy.

The leading challenge to democracy, Dr. Stumpf shows, lies in the realm of the spirit, in the enunciation of ideas and ideals. While we call communism materialistic, it not only promises to provide a better material basis for social life but also appeals to the world because of its claim staunchly to champion justice, as for instance in the case of colonialism or of race. Through a well articulated philosophy of history communism speaks to the world as "the heralds of freedom, justice and equality." Thus beyond the economic and military struggle there rages a titanic ideological conflict. Communism points its sharpest mental weapons against the most cherished positions of democracy: its view of man; its conception of law; and its claim to morality. Communism shows up the democratic claim to enact the spiritual nature and dignity of man by unmasking our actual economic man, caught forever in laws of supply and demand which demand conflict, whereas communism supposedly marches through the conflict of classes to plenty for all; our conception of law as actually based in the power of government controlled by the strong whereas in communist thought the state will wither away with the incoming of justice for all; our claim to morality in group relations as vitiated by our treatment of exploited people, from American Indians to Africans and Asiatics, whereas communism supposedly does to death exploitation and oppression whether by class, religion or race. Dr. Stumpf thus launches his book by showing that the communist challenge is not only materialistic and military but comes also strongly in the realm of ideas and ideals. Because we have in large measure failed our own ideals and because our guilt makes defense of democracy as such somewhat embarrassing, *A Democratic Manifesto* which roots the democratic way of life within a faith capable of producing repentance, re-examination of thought and life, and the actual power to practice our professions is as much needed as our situation is serious.

Whether or not democracy is basically possible depends upon human nature. Democracy has been built on the assumption of the dignity, goodness and responsible freedom of man. This faith in man has been sustained by the Christian faith, which teaches God's absolute concern for each individual and for all men collectively. Communism, in spite of its claims to freedom and democracy, in fact undermined the whole democratic view of man by making him a means to the welfare of the State, by reducing him to a cog in a materialistically determined history, and by repudiating the existence of God. If only this contrast between democracy and communism could stand as it is, but no! Dr. Stumpf points out how much of "scientific" thought among us has

actually also espoused social engineering, determinism, and atheism. Thus actual democratic thought is itself an unwholesome amalgam which obscures the Christian basis of democracy.

For the legal profession the section on The Role and Rule of Law is surely one of the most significant parts of the book. The author here shows how democracy is rooted in the supremacy of law. The Christian faith from the beginning was rooted in law, whether at first from its Jewish heritage or later from Stoic thought and Roman practice, but it was not, nevertheless, at first conscious of the implications for democracy of its own faith. Only the radicals of the Reformation saw how the Christian faith entailed the kind of equality which lies at the basis of democracy. The communists, of course, repudiated the democratic concept of law, which is supposed to be for the equal welfare of all, charging instead that actually Western law was nothing so much as the law of the rich and the strong.

I shall never forget what a bad time a high communist judge in Moscow gave me when I tried to prove that American law as a whole was genuinely focussed on the welfare of all, without regard to wealth or class. He knew his history of American jurisprudence better than I! He was particularly helped, I believe, by men like Oliver Wendell Holmes who quite frankly repudiated the theological or metaphysical basis of law, and accepted as foundation of it, instead, the power by any group to control actual sanctions. In this instance, skepticism, due to an erosion of faith in both religion and reason, prevented any clear argument between actual theory and practice on the part of communism and democracy. Dr. Stumpf exhibits how the teachings of John Dewey and Hans Kelsen, for instance, have been destructive of the very universals on which any democratic conception of law finally must rest.

In a chapter on Democracy as a Moral Enterprise the author becomes specific with regard to actual conflicts as to the role of law in democracy. A research grant has enabled him to make use of material gathered on the relation between religious and moral theory and the actual decisions of our Supreme Court. He discusses the implications for democratic living of decisions concerning freedom, racial equality, property, civil liberties and economic security. In this connection Dr. Stumpf grapples with the problem of the bearing of man's sinfulness on democratic professions and practices. He then proceeds to show how Communism actually has cut away the limb of law from its tree of life. With determinism completely regnant in communist theory there can be no real distinction between any "ought" and "is." With telling effect he then turns back on ourselves to show how in actual practice we have accepted too much of a

philosophy of "get what we can" and "get away with what we can" to preach to the communists at this point.

For me, the central chapter of the book is *The Cumulative Heritage of Democracy*. With deftness the author traces the roots and rise of democracy within Greek philosophy and the Christian faith. Within a short passage of twenty pages he delineates the beginnings of democracy in Greece. This treatment is both lucid and fair, whether he discusses Pericles or Plato or whether he contrasts actual power structures in Greek society or differences in Aristotle's treatment of political theory in his *Ethics* or *Politics*. Again, to the best of my competence, I believe Dr. Stumpf to be adequate in his discussion of the bearing of the Christian faith on democracy, centering his attention on the inner nature of the faith and the slow process of saturation within political theory and practice on the part of Christian ideals, which came to full-blown expression in the Church Meeting of the English Independents. Actually Dr. Stumpf follows James Nichols in making the decisive event for democracy the resolution of Cromwell's soldiers not to disband until they had gained their rights.

The final chapter of *A Democratic Manifesto* concerns the motives for democracy. The author describes the purposes of society as order, freedom and security. He discards as inadequate to reach these objectives such destructive motives as fear, self-interest and desire and goes on to persuade us that Christian love alone can achieve the purposes of social good. Outgoing love, freely responsible concern, effects order, releases freedom and gives the kind of security which goes beyond the drives of conflict, whether for the self or for competitive groups. Within the forgiving love of God we are all made equal in our basic status and attitudes even while our invidious drives are done to death or at least checked, but beyond such producing of negative conditions for democracy, Christian love releases the creative concern which absorb man's natural frustrations within his more ultimate fulfillments.

In appraising this work it must be kept in mind that it is a *manifesto*. Dr. Stumpf makes no pretence that it is a scholarly work of definitive stature nor one which wrestles with the complexities of historic background or present decisions. As a manifesto it is a call, first of all, to decision, to become alert and active in the great contemporary struggle and then to drive deeper our tentpoles of democratic faith in the case of both theory and practice.

Is the book adequate, however, for its purposes? Obviously there is no full discussion of the Christian faith, but within the scope of the work I believe that Dr. Stumpf has the right to isolate the Christian stress on freedom, dignity of man, and love as definitely basic

elements of the faith which have also profound implications for social and political theory. His extractions I believe to be well done and completely relevant. Similarly his discussion of democracy is mostly a highlighting of ideals, but these ideals are part of the heart-beat of democratic faith. Communism, of course, is treated mostly in its power as an ideology to appeal to the world or in its denial as an ideology of central affirmations of the democratic faith. Personally, I should like to have seen included three succinct sections on the Christian faith, democracy and communism. Doing so might have made the book more academic, however, and less a rallying cry for democratic faith, but already the work is definitely for the thoughtful rather than for the general reader. The work would have ploughed a deeper furrow also if it had wrestled mightily with the relation between ideology and the actual historic causes and conditions which govern socio-political movements. Then, moreover, besides showing how a false scientism has sheared the democracies of their ideological power, it could have been demonstrated both how much actual communistic ideology springs out of the general, long-ranged skepticism of our modern age and how very easy it therefore was for communist theory to appear within our own thought either by being borrowed or because of similar tendencies within our democratic thinking. Reinhold Niebuhr, for instance, regrets the great extent to which he used Marxist ideology as a potent instrument of criticism of our capitalistic failures; even top pacifists like Dean Walter Muelder have held that political efficacy depends upon membership in power blocks, so that Christianity, for instance, to be politically effective cannot remain a superpressure group. Much of such thinking has at least been abetted by Marxist thought. The in's and out's of this inter-relationship of causes, conditions, and interactions, however, may be too complicated to include in a manifesto. Without such a discussion, on the other hand, ideological analysis seems somehow disconnected from the full struggle in actual history.

If this book is read as a manifesto, it is well done and should serve a useful purpose. It should be widely read by all concerned with anchoring democracy in reality and, more, with securing for it a truly dynamic basis. *A Democratic Manifesto* is well written, as well as argued. As a manufacturing job the book is a decided success, with print good to read, good paper, binding, cover and a most attractive jacket. The publisher has done well by Dr. Stumpf and the readers.

The real power of the book, for me, however, is its ability to show the relevance of the Christian faith to social and political questions. We live by faith of some kind or other. If a high and worthy faith becomes inoperative, it can be only either because it is not true or because it is not heeded. More and more we now see the need to find

the faith that can stand the tough tests of thought and life and to live this faith into effective community as well as into personal well-being. Before the communist wave can be stopped and democracy become a strong victor I believe that we shall have to approach the question of faith and life with a new depth of decision. It is the function of *A Democratic Manifesto* to call us to such a decision and to suggest dependable ways in which to move.

NELS F. S. FERRE*

MILITARY LAW. By Daniel Walker.

New York: Prentice-Hall, 1954. Pp. xiv, 748. \$9.75.

The new Military Law casebook compiled by Daniel Walker, a former commissioner of the United States Court of Military Appeals, enters an uncrowded field. While it has been preceded, it is not confronted with effective competition. Dean Wigmore published such a casebook during World War I, long before the Court of Military Appeals was conceived.¹ A Military Law casebook, first published by Professor Schiller in 1941, was revised in 1952, but does not include Court of Military Appeals decisions.²

Commencing in 1951, mimeographed cases and materials, utilizing both Court of Military Appeals and Board of Review decisions, were prepared under the direction of Major General Eugene M. Caffey, Army Judge Advocate General, who was then Third Army Judge Advocate. This material, and revisions thereof, although not published has been used in teaching full-length military law courses at the Georgia, Tennessee, North Carolina, Vanderbilt, Florida, Mississippi and Emory law schools.

The other item, heretofore available, is *Military Jurisprudence*.³ This is a complete collection of civil court cases, both state and federal, dealing with military legal problems down to 1951, its date of publication. It contains no Court of Military Appeals decisions and does not materially edit or evaluate the collected cases. This latter work has been used as a case assignment reference in military law courses at the North Carolina and George Washington law schools.

So much for the rather Spartan surroundings in which this new

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1. *A Source Book of Military Law and Wartime Legislation*, West Publishing Co., St. Paul, Minnesota (1919).

2. *Military Law*, West Publishing Co., St. Paul, Minn. (1952). It contains two of the earliest Court of Military Appeals decisions.

3. *Military Jurisprudence Cases and Materials*. The Lawyers Cooperative Publishing Co., Rochester, New York (1951).

casebook takes its place. Now to survey what Mr. Walker has done. The casebook commences auspiciously with a treatment of the constitutional and other sources of military law, using stalwart Supreme Court decisions for the purpose. From this same impeccable source the law governing the reserve components of the armed forces and the Selective Service System is presented. The student who masters this first hundred pages of material will be indelibly impressed with the basic constitutional foundation upon which American military law rests.

Chapter 3, in capsule form, whisks through the history of military criminal law from the Greeks to the Uniform Code. At this point the student finds himself confronted with a chapter entitled Offenses Under Military Law. Here one would expect to come to grips with the substantive law of the fifty-eight punitive Articles of the Uniform Code of Military Justice.⁴ Unfortunately this expectation is frustrated by a parsimonious presentation, limited to six cases, embracing a total of eleven different offenses, all compressed within twenty-five pages of a seven-hundred-page book. The Court of Military Appeals has pointed out there are "no less than forty-seven different offenses cognizable"⁵ under the general Article 134 alone. This, plus the fifty-seven other punitive articles, brings to more than one hundred the different criminal offenses triable by courts-martial. Only fourteen of these can be characterized as civilian type offenses which might be encountered in a standard criminal law course. This leaves some eighty essentially military offenses, many of which have been the subject of adjudication by the Court of Military Appeals, either relegated to incidental mention in other parts of the book or omitted entirely. It should be noted that the author characterized the cases in this chapter as "selective and demonstrative only."

Moving on, we find Chapters 5, 6, and 8 presenting representative coverage of problems arising out of courts-martial composition, pre-trial procedure and trial procedure, respectively. In the area of trial procedure, a temporary surprise is in store for the reader who consults the Table of Contents to find what treatment is given to the difficulties arising from the duty of the law officer to instruct the court-martial in each case. The Court of Military Appeals in numerous and lengthy opinions has elevated instruction of the court to a problem of prime magnitude, but the subject is not separately considered. A closer look discloses it to be tucked away under the heading Matters Relating to Findings and Sentence. The cases there set forth are undoubtedly adequate for student purposes even if not sufficiently exhaustive for the enlightenment of learned law officers.

4. Articles 77 to 134, inclusive, 50 U.S.C., §§ 671-728 (Supp. 1952).

5. United States v. Frantz, 2 USCMA 161, 163, 7 CMR 37, 39 (1953).

The important subject of Jurisdiction which appears in Chapter 7 is found between the treatments of pre-trial and trial procedure. Jurisdiction cannot be isolated chronologically to this point in the development of a court-martial proceeding and the United States Supreme Court has consistently held that procedural errors do not affect court-martial jurisdiction.⁶ It should be remembered, however, that sequence of subject matter is largely a matter of taste.

The reviewer is well aware of the difficulty encountered in endeavoring to separate discussions of courts-martial jurisdiction and military habeas corpus. While possessing different faces they are part of the same coin. Those who might feel that Chapter 7 affords scant coverage of jurisdiction should consider along with it the contents of Chapter 12 which presents a number of federal court military habeas corpus decisions dealing with jurisdictional issues. Furthermore, the problem of concurrent jurisdiction with civil courts is considered in a separate chapter, toward the end of the book, entitled Liability of Servicemen in Civilian Criminal Courts. Even so, in a statutory field, one might expect more than a thirteen-line treatment of jurisdiction of offenses, particularly since this subject has in a number of cases engaged the attention of the Court of Military Appeals. Also, some consideration of the jurisdictional conflicts arising in friendly foreign countries under Status of Forces agreements might be appropriate.

Many of the leading military habeas corpus cases are collected in the chapter entitled Court-Martial Review in Federal Courts. It includes a number of inferior federal court decisions and excludes the relatively recent and quite important Supreme Court opinions in *Humphrey v. Smith* and *Hyatt v. Brown*.⁷

The material used to present Rules of Evidence, while not exhaustive, is representative of the principal evidentiary problems arising in the trial of courts-martial cases. Adequate treatment is given in Review Procedures and Problems to the military appellate system before the Boards of Review and the Court of Military Appeals.

The chapters on Martial Law and Military Government and The Law of War and Military Tribunals present an unusually good exposition of this vast and little-understood domain of military commissions. There is no question that the cases here presented are indeed legal cornerstones. Some treatment of the development of the law of war crimes at Nuremberg and elsewhere since World War II would be desirable. However, since this field alone is worthy of extended international law seminar work, its drastic curtailment in a basic military law course is not to be criticized.

Enlistment, discharge and status of enlisted men, and the appoint-

6. *Humphrey v. Smith*, 336 U.S. 695 (1949); *Hyatt v. Brown*, 339 U.S. 103, 100 (1950); *Burns v. Wilson*, 346 U.S. 137 (1953).

7. 336 U.S. 695 (1949) and 339 U.S. 103 (1950).

ment, status and separation of officers, all have chapters devoted to them. This area, while of importance in specific cases, is subject to constant change by both legislation and departmental regulation.

Strictly civil aspects of military law are confined to the last two chapters. Chapter 18, in a novel and appropriate grouping, presents a number of interesting cases dealing with civil rights and liabilities of members of the armed forces arising out of their military service, as distinguished from purely personal activities. This chapter contains one case discussing the Federal Tort Claims Act. The final chapter deals with cases arising under the Soldiers' and Sailors' Civil Relief Act.

If time permitted, it would be desirable to include in a military law casebook some treatment of the large number of Federal Tort Claims Act cases resulting from the activities of the armed forces, an exposition of the regulations and administrative procedures by which tort claims are processed, and a consideration of the procurement regulations, and the Board of Contract Appeals and Court of Claims decisions arising out of government contract disputes. Perhaps Mr. Walker felt that time did not permit and, no doubt, student readers will agree with him.

Any reviewer does well to remember the old adage, "Those who can, do; those who can't, criticize." Mr. Walker is to be congratulated for "doing" in a field where doing was urgently needed. In the world of today, young men graduating from law school are normally confronted with a problem of timing as to which will come first, their fulfilment of the requirements for admission to the bar or their induction into the service. Those admitted prior to induction usually seek reserve Judge Advocate General Corps commissions. All find themselves living under military law and wishing they had taken a military law course while in law school. Many a young lawyer is presently undergoing his baptism of trial fire before courts-martial. Many older lawyers find an appreciable portion of their clients are members of, or are connected or do business with, the armed services, and have military legal problems. In spite of the previous scarcity of instructional material, many law schools are already giving courses in military law. This demand will continue and it is hoped that the publication of Mr. Walker's casebook will enable more schools to offer military law courses and more students to add a knowledge of military law to their professional legal arsenal. Those who master the material presented in this casebook will accomplish that laudable purpose.

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BAR ASSOCIATION ORGANIZATION AND ACTIVITIES. By Glenn R. Winters.
Ann Arbor: American Judicature Society. Pp. xx, 229. \$4.00.

For many years the legal profession, and Bar Associations and their officers in particular, have been handicapped by the lack of a handbook for guidance and inspiration in bar association work. Glenn R. Winters, Secretary of the American Judicature Society, consultant to the Conference of Bar Association Presidents, and an honorary member of the Bar Association of Tennessee, has filled this need and performed a magnificent service in writing and publishing such a book.

During this reviewer's term of office as President of the Bar Association of Tennessee, he had the benefit of a preliminary draft of this book and it was extremely helpful in conducting the affairs of the Association. It also provided material assistance to those officers and members concerned with setting up a permanent headquarters and staff for the Association in Nashville, a task which was accomplished in 1952.

In the foreword Howard L. Barkdull, former President of the American Bar Association, said: "Every officer of a bar association will find this handbook to be a veritable Man Friday, a gold mine of valuable information and suggestions."

The author presents a broad discussion of bar association organization and activities. He emphasizes subjects of current and particular interest to lawyers, whether officers of a bar association or not, especially improvement of the standards of legal education and admission to the Bar, and the continuing fight against unauthorized practice of law. There is an interesting and challenging discussion of the nation-wide effort to establish adequate legal protection to the needy by either legal aid to the indigent or lawyer reference services to those of low income; also the responsibility of the legal profession in connection with the program on American citizenship and the duties of the members of the bar to exercise public leadership in this field.

The comprehensive scope of this book is indicated by the following chapter headings: Organization and Government; Membership, Finances and Office Management; Meetings and Programs; Bar Association Publications; The Bar and Legal Education; Services to Members; Legal Services for All; Ethics, Grievances and Unauthorized Practice; Legislative Activities; Promoting the Administration of Justice; and Public Relations.

Of special interest at this time, especially in view of the present controversy in the Bar Association of Tennessee and its pending referendum, is the discussion of integration of the Bar. The author presents arguments for and against integration, methods of integration, and historical data and statistics with reference to the twenty-five states having integrated bar organizations. A lengthy quotation from

this book in support of the argument for a unified bar appears in the Fall Issue, 1954, of *The Tennessee Lawyer*, published by the Bar Association of Tennessee.

Mr. Winters has provided material which when used should enable bar association officials and committees to enlarge their fields of activities and lend efficiency to present operations and endeavors. His book contains copious illustrations, pictures of forms and charts, and extensive footnote references to other publications on bar association work and activities.

The individual lawyer would be especially benefited by a study of the chapters on Ethics, Grievances and Unauthorized Practice and Public Relations. Proper conduct and allegiance to our profession as well as improved relations with the public are impressively discussed by the author.

There is a great need for intensified interest in Bar Associations, whether integrated or voluntary, and this book, which is highly recommended, should be accepted as an official bar association handbook.

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