

relevant provisions of Commonwealth and State death duty legislation. Finally, the book does not mention that in some States partnership agreements require stamping.

The following misprints are noted by the reviewer: 'brought' instead of 'bought' (second-last paragraph on page 93), 'ths' instead of 'the' (last paragraph on page 102), 'orginally' instead of 'originally' (second paragraph on page 134, and 'Latham J.' instead of 'Latham C.J.' (second paragraph on page 283). It should also be noted that since the publication of this book the Australian Capital Territory has introduced its own partnership legislation which appears now in the Partnership Ordinance 1963.

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*Les Forces Creatrices du Droit* by GEORGES RIPERT. (Librairie Generale de Droit et de Jurisprudence—R. Pichon et R. Durand—Auzias, Paris, 1955. pp. 1-431.

The keynote of this book is a phrase which the author quotes from Ihering: 'Law is formed amidst struggles, but peace is the aim it pursues.' Professor Ripert, after 40 years of teaching law, wants to reassure his colleagues about the 'value of the law they are teaching or applying'. These forty years have seen tremendous changes in politics and lawmaking in France—the combat between those who want to keep too much of the past and those who would destroy all of it. We in the common law systems have discussed at length the dilemma that Pound proposed long ago: how law can change and yet stand still. It is interesting to see the same sort of anxious debate in a country where 'lawmaking' is much more a process of legislation, the work of politicians. The finished statute represents the calm after the storm. The innovating legislators hand over the product to the lawyers, who are by instinct and training conservative. So existing law tends to be static: jurists, practitioners and judges are keenly aware of the value of stability. Professor Ripert frequently recalls the work of the great Gény, who expounded the role of the lawyers' techniques in balancing change and tradition. But today the forces making for change are dominant: law, he believes, has been too much recently the creature of Power.

Professor Ripert who, like most French jurists, has been well trained in political science, discusses at length the practical elements which help to 'create law'. They are moral and religious influences, the struggle about material property, and the rival economic demands of social groups: employers versus workers, city folk versus farmers, administrative bodies versus private citizens. All look to the law to give them justice. Therefore the legislator, even when endowed with Power, must respect 'juridical principles' as well as 'commonsense techniques'. In this pluralist society he must not press his legal authority too far: some of his laws must necessarily represent compromises.

The author sees other dangers in this incessant law-making to meet everybody's claims. The State organizes everything, protects the citizen against everything—but at the price of total submission (p. 414). It invents its own 'morality', so that the worst sin becomes disobedience of a positive rule (p. 179); and the test of good actions becomes, not the

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good intention of the actor, but strict adherence to a formula. The law-maker needs, then, to possess sound techniques of drafting; yet he must also consider the reception of the rules he makes. All will depend on how these are 'accepted' and handled by officials, judges, law teachers and social groups. To achieve success they must embody justice. It is true, he points out, that people do not agree on a definition of justice; nevertheless (as Edmond Cahn pointed out) they can all recognize—and resent—an 'unjust law'.

So the task of the jurist, he maintains, is to keep a balance between traditional and radical opinions; for the purpose of law is primarily 'to establish peaceful relationships between men' (p. 415). Power must not be content merely to control human relationships by regulating economic life but must also educate men morally. There is nothing necessarily 'creative' in passing a series of statutes—this is only like nailing one paling after another to a fence (p. 133). Our civilization could be destroyed by the ideological concept of indefinite progress and social equality brought about by the almighty power of the state. The role of the jurist is to teach respect for the human person, as well as to assist the legislator to make efficient rules.

It would be a mistake to conclude that Professor Ripert's work is principally a politico-social tract: rather is it a detailed study of actual laws and their impact on practical problems. As the statutory enactment replaces our common law process of developing principles by the courts, and through the cases, we must look closely at the European experience in order to be prepared in advance to make the best use of the creative forces in our own society. This book provides a clear window through which to examine the criteria of useful legislation.

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