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## Book Reviews

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## Book Reviews

THE LAW SCHOOL OF TOMORROW: THE PROJECTION OF AN IDEAL. Edited by *David Habert*† and *Julius Cohen*.‡ New Brunswick, New Jersey: Rutgers University Press, 1968. Pp. 240. \$10.00.

The symposium was the feature event of the ceremonies marking the opening of a new law building at Rutgers. It turned out to be a pretty spirited exchange of ideas—indeed, at times, of epithets. Controversy was engendered by the charge of the first speaker, Robert M. Hutchins, that some or all of the great or “standard” university law colleges are really no more than anachronistic trade schools.<sup>1</sup> This indictment, re-torted philosophy professor Sidney Hook, was “scandalously unjust.”<sup>2</sup> Dr. Hutchins, said Professor Hook, had called for an all-out war against such schools but, commented Hook, “as is usually the case in any all-out war, the first casualty tends to be the truth.”<sup>3</sup> Strong language for the halls of Academe! Professor Hook presented his own opinion that the character of legal education in university law schools during the half-century spanned by his own academic life, “has shown an impressive improvement in almost every respect” and that the “encouraging developments” in the administration of justice in recent years must be credited to the same legal education condemned by Hutchins.<sup>4</sup> (This reviewer, with decades of experience with law schools, courts and lawyers adds a loud “amen” to that.)

The distinguished author and educator, Paul Goodman, contributed a brilliant and witty paper which nowhere approached the practical problems of law teaching. Many many others then had their say—no fewer than forty in all—and in the end about every possible approach to legal education was explored. Much of it was vague to the point of dense fog. All of it is readable. Dr. Hutchins, given his chance to reply, defended himself somewhat weakly by reminding the audience that Rutgers law dean Heckel had set the question: “How do we shake the

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1. HABER AND COHEN, THE LAW SCHOOL OF TOMORROW: THE PROJECTION OF AN IDEAL 5 (1968).

2. *Id.* at 39.

3. *Id.*

4. *Id.* at 40.

law school out of its present how-to-do-it world?"<sup>5</sup> Hutchins tardily admitted that American law colleges "vary from explicit trade schools—some of them, I believe, in remote corners of the country, still run for profit—to schools in great universities that are really trying their best to escape from the how-to-do-it mold."<sup>6</sup> To be as charitable as possible, it seems that during the day Dr. Hutchins had forgotten the explicit charges he had earlier levelled at the great national schools.

Buried under the thousands of words of this symposium there are of course great and continuing problems of how to teach law. Certainly, the purpose of legal education is "to teach law," but that can be taken in a broad or narrow sense. Back in 1887 when Cornell law school was established, the then Cornell president wrote these noble words:

Our aim should be to keep its instruction strong, its standards high and so to send out, not swarms of hastily-prepared pettifoggers, but a fair number of well-trained, large-minded, morally based lawyers in the best sense, who, as they gain experience, may be classed as jurists and become a blessing to the country, at the bar, on the bench, and in various public bodies.

As to aim, that quotation says it all. As to methods, the doubts and difficulties multiply. The revered "case method" is under attack and all now agree that it has its limitations, that preoccupation with appellate decisions neglects trial court and administrative law problems and training in the essential office and courtroom skills of the lawyer. Happily, the present trend is to start the student off with casebooks but then to taper off and later on use more of the "Socratic" method of teaching plus actual skill teaching. The main difficulty is, as this reviewer sees it, that the corpus of the law itself grows at an alarming rate. How can the law school stick to its core curriculum and still find room for necessary "new" subjects, like, for a few instances, land use, Uniform Commercial Code, modern taxation, urban renewal, etc. etc.?

Cornell law professor Robert Pasley, in a paper delivered at Notre Dame's law school centennial convocation reminded his hearers of an article by the late Jerome Frank published as long ago as 1947. Judge Frank had recommended that law schools make more use of seminars conducted by law teachers who had some years of actual practice including trial practice and competent to give the students some familiarity with the skills and arts of the practitioner. Judge Frank, far ahead

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5. *Id.* at 77.

6. *Id.*

of his time, looked forward to a day when the student would study not only appellate opinions but complete records and briefs showing the whole progress of a case, that there be frequent visits to the courts and that each school have a legal clinic where the student could do practical lawyer's work. All too little of this is being done but important starts have been made at Cornell and many other law schools. The trouble is, as Professor Pasley pointed out, that besides all this urgent demand for skills training, there is a growing realization of the need in our day for stronger programs in jurisprudence, legal history, comparative law and international law. Add to this the imperative: that students study thoroughly the new ideas as to confessions, interrogation, right to counsel, etc. The only answer seems to be a fourth year of law school and better selection of students (and what about channeling into the law schools more youths from poorer economic backgrounds?).

In a speech to a recent meeting of the American Law Institute, president Levi (formerly law dean) of the University of Chicago said: "Law itself, for better or worse, and including the public's view of its operations, is perhaps the chief educational force."<sup>7</sup> Law in view and operation, he seems to mean, has as its most important function the education of citizens to work for the common good, a function more than ever essential in our day of protests and disorder. Harking back to the Rutgers symposium, is it not something of a waste of time to debate tirelessly as to whether law school courses should be utilitarian or cultural? Let us rather insist on high standards for selection of faculty including teachers with law practice experience. Let us retain what is time-tested in our core curriculum, and add courses that are relevant to modern conditions. Let us insist that every law graduate have an understanding in a general way of the great legal systems of the world. And let us be not frightened off by sneers and patronizing attitudes when we try to give our students practical training in the law office and courtroom work of a lawyer.

*Charles S. Desmond\**

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7. Address by President Levi of the University of Chicago, *American Law Institute Annual Meeting*, May, 1969.

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SHOULD CHURCHES BE TAXED? By *D. B. Robertson*.† Philadelphia: Westminster Press, 1968. Pp. 288. \$6.50.

*Should Churches Be Taxed?* by D. B. Robertson, published in November, 1968, is well-timed. As Robertson discloses, the subject of exemption for churches has been a controversial topic in this country since colonial days, with the intensity of discussion rising and falling through the years. At present, there is a great deal of public interest in the over-all subject of exemption for non-profit and charitable institutions, of which the churches are a part, with a concentrated attack being launched on all tax exemptions.

The U.S. Congress, as part of its tax reform measures, is seriously considering removing or diluting many of the tax advantages presently enjoyed by exempt institutions, directly and indirectly, as a result of favorable provisions applicable to individuals and foundations. The proposed reforms include more stringent regulations on church-owned properties. Cities throughout the country are proposing various methods for removal of such exemptions. The May, 1969 issue of *Fortune* has an article entitled *Tax Exempt Property: Another Crushing Burden for the Cities*,<sup>1</sup> and the subhead under the title of the article states: "Erosion of the local tax base has reached scandalous proportions all across the nation. Now desperate public institutions are counterattacking in imaginative new ways."<sup>2</sup> Even the judiciary has joined the parade and the United States Supreme Court has now agreed to hear a case objecting to exemptions for churches as a violation of the U.S. Constitution.<sup>3</sup> Here in Pittsburgh, a furor was raised when the City in 1969 applied a tax of six mills on gross receipts of all charitable, eleemosynary and nonprofit institutions (exclusive of dues, contributions and governmental grants).<sup>4</sup>

The reasons for emphasis on the problem are obvious. The cities are hard-pressed by the increase in the amount of real estate and income exempted from all forms of taxation. The federal government is concerned about the growing power of charitable foundations and the in-

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1. Meyers, *Tax Exempt Property: Another Crushing Burden for the Cities*, LXXIX FORTUNE 76 (May, 1969).

2. *Id.*

3. *Walz v. New York City Tax Commission* (filed May 5, 1969), 89 S. Ct. 2105 (1969).

4. Pittsburgh, Pa., Ordinance 677 of 1968. Various hospitals have filed suit in Common Pleas Court of Allegheny County (8 April Term, 1969, Misc. Docket) to have the ordinance declared invalid.

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crease in business activities by charitable institutions and the charitable deductions now available to taxpayers.

Therefore, it is apparent why *Should Churches Be Taxed* is a timely book. Of course, the subject of exemption generally encompasses many institutions other than churches. However, the Church has probably had tax exemption as long as any other institution in the history of man. Church exemption has long been the subject of attack, far more than exemptions for such institutions as universities and hospitals; it probably arouses more emotional reaction among people, for various reasons, than does tax exemption for other institutions; and it probably is the most sensitive area from a political standpoint.<sup>5</sup>

Not only does *Should Churches Be Taxed* prove a timely book, it is also surprisingly comprehensive for only 242 pages and it has extensive references on the subject. The book is almost always interesting and relatively easy to read, with some refreshing light touches; it is a very good, concise history of the problem in our country; and the treatment of the subject is fair to both opponents and proponents of tax exemption for churches.

In its first and introductory chapter the book points out that the subject has been disturbing Americans since colonial days. The next three chapters deal with the transition from the principle of "establishment" to that of "separation of church and state." From the establishment of religion in colonial charters and constitutions, the nation proceeded to separation of church and state so that it then became necessary to grant tax exemption to church property. Opposition to such exemption emerged very early. As the book points out,<sup>6</sup> in 1811 President Madison vetoed a Congressional exemption for church property in Mississippi territory. There is also a very interesting portion of the chapter on the opposition to tax exemption for churches which deals with Pennsylvania, generally, and Philadelphia, specifically.

In Chapters 5 and 6, the author traces the growth of the different kinds of aid to the churches, a sort of Topsy-like growth, the extent of

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5. As pointed out in D. ROBERTSON, *SHOULD CHURCHES BE TAXED?* 34-35 (1968), as recently as several years ago, apparently an overwhelming percentage of the people favored exemption for property used for worship, although later polls showed more people are coming to believe that even this property should be taxed. However, a majority of the people believe that property bringing rent or profit to the church should be taxed. As one connected with government in both elective and non-elective positions for the past fifteen years, I can testify personally how skitterish public officials become when religious matters are involved. However, I believe the feeling is growing among the people generally, and therefore among political representatives, that some payment should be made by churches for services.

6. *Id.* at 60.

which is causing concern even among those not hostile to church exemption. Chapter 5 discusses governmental aids to churches with emphasis on the federal government. One omission in the book on this point is the subject of grants and aids to church-controlled schools, *e.g.*, lunches, textbooks, shared time, as well as direct grants such as were recently enacted in Pennsylvania and under attack in the courts.<sup>7</sup>

Chapter 6 holds the reader's attention perhaps more than any of the others. The chapter deals with financial maneuvers by churches to insulate businesses from taxation, including the "sale, lease-back" device. The chapter is also rather sobering to those who think the attack on tax exemption is motivated only by religious prejudices of one form or another.

In Chapter 7 the author deals with the wealth of the churches, giving the statistics which have been gathered on the subject. The author admits that the estimates are not too accurate, but even they disclose a tremendous growth in the property values and business interests of the various religious groups in this country.

A very interesting chapter to this reviewer was Chapter 8, which deals with suggested approaches to the problem by those who believe payments should be made by churches for governmental services. Since the City of Pittsburgh placed its tax on non-profit and charitable corporations in 1969,<sup>8</sup> there have been various discussions of how these institutions should be taxed, or how payments could be made in lieu of taxes. It is not too surprising to find that almost every idea that has been discussed this year by the city and the various institutions involved has been the subject of discussion in prior years by many others, including the one presently favored by this reviewer, which is taxation of land.

The last two chapters are devoted to the arguments for church exemption and the constitutional question which, because of the pending U.S. Supreme Court case, is particularly interesting at this time.

As indicated above, the book deals with all types of exemptions to churches as well as other governmental aids. So does the *Fortune* article referred to above.<sup>9</sup> So far as cities are concerned, the greatest problem is one of real estate tax exemption rather than exemption of business income or receipts. The *Fortune* article states that approximately 18% of exempted real estate is owned by the churches.

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7. Nonpublic Elementary and Secondary Education Act, PA. STAT. ANN. tit. 24, § 5601 *et seq.* (Supp. 1969).

8. See note 4, *supra*.

9. See note 1, *supra*.

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On the subject of real estate tax exemption, we need go no further than our own City of Pittsburgh to point up the problem. In 1940 taxable land values in the City totalled \$513,117,520 and exempt assessed values totalled \$114,395,002. In 1969 the figures were respectively \$402,184,915 and \$206,225,517, a marked decrease in taxables and a marked increase in exempts. The total assessed valuation of lands and buildings is \$1,929,348,897, of which \$622,593,254 is exempt. In 1968, therefore, almost one-third of the total assessed real estate was exempt. However, not all exempt property is assessed realistically at today's values. Many of us in government close to the situation believe that if all land were valued properly, the exempt total would be closer to one-half.<sup>10</sup>

So far as property ownership is concerned, this reviewer has personally suggested taxation of land as the basis of taxing not only churches but all non-profit institutions.<sup>11</sup> This provides a simple method of paying for services. It does compensate somewhat for removing valuable land from tax-paying uses. It protects the non-profit institutions from being singled out by a political body, since a raise in millage rates or valuation percentages affects all taxpayers, and the courts are available for appeals on valuation. Taxing improvements on the land is, in most instances, unworkable, since the improvements are almost always designed for single-purpose uses with no real market value which is the basis for tax assessments. At the urging of the City, a bill removing tax exemption from land owned by churches, charities, etc. has been introduced in the Pennsylvania legislature.<sup>12</sup>

Tax exemption of all kinds is an important topic today and affects every taxpayer and most non-taxpayers as well. Exemptions to churches is an important part of this subject. Robertson's book gives to the reader an excellent view of this phase of tax exemption and one which can be easily understood by the layman who needs no legal or tax background to benefit from the author's work.

*Philip Baskin\**

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10. At the present time there is no figure on the total property exempted for churches, although the City hopes to be able to obtain such a figure upon completion of the present computer program.

11. In fact, this reviewer believes that in populated areas, at least, there should be no exemption on land for any user, including utilities and governmental bodies.

12. House Bill No. 1349 (1969 Sess.) referred to Committee on Local Government, June 24, 1969. Pittsburgh is not the only city supporting such a measure. Recently, the Pennsylvania League of Cities endorsed the proposal.

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CONSTITUTIONAL LAW FOR POLICE (Police Text Series). By *John C. Klotter*† and *Jacqueline R. Kanovitz*.‡ Cincinnati: William H. Anderson Company, 1968. Pp. xiii, 628. \$12.50.

*Constitutional Law for Police* is primarily a textbook designed to provide police officers with the legal instruction they need to properly and intelligently perform their duties. The book is divided into three parts: Part I is a textual discussion of the law relating to police; Part II contains the slightly edited opinions of twenty-six leading cases in the area of constitutional law; Part III is the United States Constitution.

This book is an attempt to objectively explain the present state of constitutional law as it applies to police. The authors disclaim any desire to criticize the courts or to editorialize on the present state of the law; however, they obviously believe that the courts should attempt to balance the interests and needs of society against the interests and needs of those charged with crimes. The authors' philosophy is stated in the Preface as follows:

While maintaining a system which assures adequate respect for the rights and dignity of those charged with crime is a fundamental goal of our society, it is certainly not the only goal. Those who do not violate the law, the great majority, the producers, also have rights. They have the right to use the streets of this nation free from the fear of bodily harm, the right to protection from the rapist, the thief, and even from automobile drivers who operate their vehicles without regard for the lives and safety of others. And perhaps most of all society has the right to establish reasonable procedures to solve the crime problems. There are some who feel that the Supreme Court has erred too much on the side of the law-breaker and has made the task of enforcement impossible. It is not the purpose of this book either to praise or condemn the Court for its record in recent years. In an area of enforcement where certainty is vital, it is more important that the dictates of the law be understood than that consensus be reached as to the wisdom or necessity of an announced rule.<sup>1</sup>

This book discusses in great detail virtually every area of the law dealing with police activity. The broad scope of the text is evident from the chapter titles: History and General Application of the Constitu-

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1. J. KLOTTER AND J. KANOVITZ, PREFACE TO CONSTITUTIONAL LAW FOR POLICE, at vi (1968).

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tional Provisions; Speech, Press and Assembly; Authority to Detain and Arrest; Search and Seizure; Wiretapping, Eavesdropping and Visual Surveillance; Interrogations and Confessions; Self-Incrimination; Assistance of Counsel; Multiple Prosecutions; The Right to a Fair Trial and Humane Punishment; Civil Rights and Civil Rights Legislation.

Each chapter begins with an outline of the historical development of the law in the area being discussed. It is obvious that the authors want police officers to know not only the legal principles which apply to them but to understand also how and why these principles were formulated. In order to achieve this, the authors lay great stress on carefully explaining the facts involved in every court case discussed.

Besides an accurate and readable analysis of the law, the book is brimming with advice for police officers. For the most part the advice is very practical: how to avoid civil prosecution for false arrest and false imprisonment; how to avoid a ten-year prison term under the criminal provisions of the 1964 Civil Rights Act;<sup>2</sup> how to avoid terminology that has been associated with duress. For example, police should "talk with" a suspect, not "interrogate" him, and information gathered from a suspect should be called a "statement," a "remark" or a "comment," but not a "confession." One of the most important suggestions is the following:

. . . Before halting a speaker or group of demonstrators, the enforcement officer should carefully scrutinize his own motives. If he is undertaking the arrest because the individual is a Jehovah's Witness, a Communist, or a Negro, the conviction will not stand. A police officer must erase from his mind who the group is, or what philosophy or goals the members embrace, and focus entirely on what their conduct is on this particular occasion. . . . The officer, in his official conduct, must be able to put aside his personal prejudices and enforce one law for all groups alike.<sup>3</sup>

Although the authors do not directly criticize the United States Supreme Court, they obviously do not agree with all of its pronouncements. They seem particularly disturbed by the exclusionary rule which has been adopted to prevent unreasonable searches and seizures. Under this rule, evidence obtained in violation of the Fourth Amendment is excluded from the defendant's trial.<sup>4</sup> The authors point out that this

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2. The text of the act may be found at 28 U.S.C. § 1447(d) (1964); 42 U.S.C. §§ 1971, 1975a to 1975d, 2000a *et seq.* (1964).

3. J. KLOTTER AND J. KANOVITZ, *CONSTITUTIONAL LAW FOR POLICE*, at 40 (1968).

4. *Mapp v. Ohio*, 367 U.S. 643 (1961). The Court has recently extended the power of the police to conduct unreasonable searches and seizures in *Chimel v. California*, 89 S. Ct.

rule has been rejected in Canada, Great Britain and "various other nations whose system of law is based upon Anglo-Saxon sources."<sup>5</sup> They quote the following language from an English judge who refused to apply the rule:

I think it would be a dangerous obstacle to the administration of justice if we were to hold (that) because evidence was obtained by illegal means, it could not be used against a party charged with an offense. It therefore seems to me that the interest of the state must excuse the seizures of documents, which seizure would otherwise be unlawful, if it appears in fact that such documents were evidence of a crime committed by anyone.<sup>6</sup>

The authors come very close to overtly criticizing the Court in their discussion of the case of *Mallory v. United States*.<sup>7</sup> In this case, the defendant had been convicted of a brutal rape and sentenced to death. The defendant's confession was admitted at the trial. On appeal, the Supreme Court reversed because the defendant had not been arraigned until the morning after his arrest. The authors discuss Mallory's subsequent career in a footnote as follows:

It is interesting to note that Mallory was not reprosecuted on this charge as there was little evidence without the confession. However, in May, 1960, he was prosecuted in Philadelphia on a charge of rape and burglary, found guilty of burglary and aggravated assault. He was sentenced to serve twenty years on the burglary charge and eighteen months on the assault count, with sentences to run consecutively.<sup>8</sup>

For the most part, this book is very accurate, readable, and objective. The authors succeed in translating complicated legal principles into an understandable and workable guide for police officers. This book should be read by every attorney, whether or not he is engaged in the practice of criminal law, and by anyone who has an interest in law enforcement. It will give the reader a better insight into the tremendous complexities which surround police practice in our country. Certainly, those who

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2034 (1969) where the Court held that a warrantless search, incident to a lawful arrest, can only extend to the defendant's person and the area which he might obtain either a weapon or something that can be used as evidence against him.

5. J. KLOTTER AND J. KANOVITZ, *CONSTITUTIONAL LAW FOR POLICE* at 95 (1968).

6. *Id.*

7. 354 U.S. 449 (1957).

8. J. KLOTTER AND J. KANOVITZ, *CONSTITUTIONAL LAW FOR POLICE*, n.13 at 187 (1968).

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blindly criticize the police should read this book; it will at least force them to concede that the men they criticize have a difficult job.

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