

Book Notes

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BOOK NOTES

JUSTICE OLIVER WENDELL HOLMES AND UTILITARIAN JURISPRUDENCE. By H. L. Pohlman. Harvard University Press, 1984. 223 pp.

In this punchy volume, H. L. Pohlman, a professor of political science, offers a revised and mildly iconoclastic account of Holmes' legal theory. With considerable evidence and analysis, he explains how Holmes' seemingly disparate ideas are tied together by a strong thread of utilitarian logic and justice. In challenging some of the traditional characterizations of Holmes' ideas, Pohlman is at his best when tracing the historical and intellectual roots of Holmesian jurisprudence. However, in the latter stages of the book, his ambition overstretches his reach; he attempts to defend Holmes' utilitarianism as a valid descriptive account and prescriptive model for the contemporary adjudicative process. Pohlman's notes are too impressionistic and unsupported to be convincing. Nonetheless, the book makes for easy reading with its uncluttered style and its restrained controversiality.

TOWARD A GENERAL THEORY OF SOCIAL CONTROL, VOL. 1 (FUNDAMENTALS) AND 2 (SELECTED PROBLEMS). Edited by Donald Black. Academic Press, Inc., 1984. 363 and 310 pp.

This eclectic collection of twenty-two essays by sociologists, lawyers, anthropologists and political economists addresses the whole range of social practices which define and control deviant behaviour. In the twentieth century, national communities have become lexocentric; little attention has been paid to the non-state forms of social control that flourish. The essays consider responses as varied as hostage-taking, negotiation, ostracism and restitution. If there is a thematic thread, it is that the adoption of particular modes of control is dependent on the politico-historical development of a society. A sub-theme is the marginality of law to social life and the indirect impact of legal regulation on patterns of social behaviour. It is a stimulating and provocative study of the soft underbelly of social control. It challenges and exposes some of the basic assumptions about the politics and sociology of law. It is iconoclastic scholarship at its most productive.

ON HISTORY AND OTHER ESSAYS. Michael Oakeshott. Oxford: Oxford University Press, 1983. 198 pp.

In this collection of original essays, Michael Oakeshott displays the full range of his "conservative" erudition and elegance. While his thoughts on the logic of historical understanding and the Tower of Babel myth are never less than stimulating, his reflective study of the Rule of Law ought to be of special interest to lawyers. In direct contrast to much contemporary writing, he rejects the tendency of writers like John Rawls, Bruce Ackerman and Ronald Dworkin to connect up the Rule of Law with an instrumental conception of substantive fairness. For him, it is a formal moral mode of human relationship: "the recognition of the authority of known, non-instrumental rules . . . which impose obligations to subscribe to adverbial conditions in the performance of the self-chosen actions of all who fall within their jurisdiction" (p. 136). In so far as Oakeshott's ideas resuscitate a style of Hayekian thinking on the correct form of constitutional government, but without any commitment to any Bill of Rights, this essay offers a thoughtful statement of "conservative liberalism".

COMPENSATION AND SUPPORT FOR ILLNESS AND INJURY. By Donald Harris *et al.* Oxford Socio-Legal Studies — Oxford Univ. Press, 1985. 412 pp.

Empirical studies in law are few and far between. Apologists and critics of the law alike are too often content to operate at an abstract level. The actual performance of the law and reform measures are neglected. In this thorough study, the members of the Oxford Centre for socio-legal studies have compiled, collated and critiqued a full set of data on the different systems of compensation and support for the injured and ill in England. The perspectives are varied and the conclusions are stimulating. The main proposals seem incontrovertible: the greater integration of the different systems and the abolition of the difference in response to the injured and the ill. Although the nature of the project means that the book is not effortlessly readable, the extra effort needed is worthwhile. On even a modest assessment, the book provokes a healthy dose of scepticism to counterbalance the unthinking, but widespread tendency to attribute to the law a natural and intended instrumentality.