

Book Review of William S. Pattee: “The Essential Nature of Law, or, The Ethical Basis of Jurisprudence.” (1909).

William Sullivan Pattee (1846-1911) was the first dean of the University of Minnesota College of Law, serving from its founding in 1888 to April 4, 1911, when he died at age sixty-four.

In 1909, his study of the myriad forms and understandings of law was published by Callaghan & Company of Chicago. In his Introduction he explains that his book aims “to emphasize and illustrate . . . the essential nature of law in its most general significance,” adding:

“I have prepared these chapters particularly for the graduate students in our college of law, with the hope that they may inspire the young members of the Bar to extend their investigations beyond the narrow limits of positive law, and to familiarize themselves with the fundamental truths of philosophy, and science, and civil government. To say that these principles are of little or no practical consequence to the practicing lawyer, is to underestimate their value and importance.”

Dean Pattee’s book was reviewed by W. E. Walz, Dean of the University of Maine College of Law, in the February 1910 issue of the “Maine Law Review”:

“It is not often in legal literature that a work of really great merit appears. We are inclined to rank Dean Pattee's book on “The Essential Nature of Law” as one of the notable productions of our day. It is an explanation, an interpretation, a criticism—all three—of the term law in its widest sense as applied in the physical, intellectual and moral world.

“In each of these worlds, and plainly so in the physical universe, there are universal, necessary, fixed and changeless laws, regulating mere power or force, primary principles of reason, self-evident truths, laws of thought as well as laws of physical force, axioms that cannot be denied; such as the great principles that every change must have a cause, that the same complex of causes always produces the same effect, that something cannot come from nothing (*ex nihilo nihil fit*), that with finite agents reception must precede production, that nothing can be and at the same

time not be, and that if equals be added to equals, the sum must be equal, as well as all the mathematical axioms on the acceptance of which each science rests as on a firm basis.

“There are also laws in a lower and secondary sense, as our author points out, generalized or orderly sequences, such as gravitation, the survival of the fittest, the laws of compensation, of use and disuse, of conformity and of reversion to type, as well as evolution itself, which, according to Huxley, is neither a controlling law nor a producing cause, but simply a description of a phenomenal order. The author points out, very beautifully, how in things physical this material universe of ours is a law to man when man is considered as a force in the world. Man can no more interrupt the course of either the stars or the seasons than he can make two and two equal five.

“In the intellectual world, in the realm of thought and knowledge, the author points out the existence, in a like manner, of these two classes of law. There are primary laws such as these, that the mind can acquire no knowledge unless there is some reality to be known, that whatever material object exists must exist in space and time as fundamental realities, that a thing either is or is not, and that whatever is predicated of a class of objects may be predicated of all that is contained in that class, an axiom called Aristotle's dictum, and that every attribute implies a substance of which it is an attribute. Besides these primary laws, you have your secondary laws, such as the laws of association, resemblance, contracts, contiguity, and others.

“Finally, in the moral world, in the realm of freedom, and choice, you have still law, and again law of this two-fold aspect. While in the intellectual world you have the laws of self-evident or primary truth, generally called pure reason, you have in the moral world practical reason, or conscience, with the first law of all laws; namely, that a reasonable, rational being ought to act reasonably and rationally, or as Professor Hibben so well puts it "Whatever is true to the reason becomes a law to the will." Upon these great principles is based the law of obligation and the authority of reason itself, with its seat in the bosom of God and in the constitution of things, and

a law to the eternal will itself. True authority is the right to declare and enforce law, and reason does this by its own inherent right.

“From God to man is but a short step, and we find the author, in dealing with this aspect of the question, at one with Kant, that men are ends in themselves, and not merely minds to be arbitrarily used by this or that will, not by the will of mighty Caesar or even that of God Almighty himself. In this connection the author quotes the beautiful words of Humboldt, "The fairest fruit the earth holds up to its Maker is man," and he refers to the truth expressed by Lowell, that "Democracy in itself is no more sacred than monarchy—it is man who is sacred," words strikingly similar to those of Christ when he said that the Sabbath was made for man not man for the Sabbath. The chief end of man, according to the author, is the perfection of man to be attained by man serving himself, and his neighbor as himself, and God supremely, the most certain means of success also in the pursuit of happiness.

“Men collectively, that is society as a whole, are ruled by the same great primary laws. Society itself cannot make something out of nothing, and even the American people, standing together and acting through Congress, cannot make dollars out of fifty cent pieces. In this sphere there are also secondary laws, such as Gresham's law, the laws of supply and demand, of production, of rent, of currency, and others.

“All these laws, whether manifest in the physical, intellectual, moral or social world, constitute, when taken together, the nature of things, or the will of God. Conformity to these laws is right; non-conformity is wrong. Right and wrong both alike imply law.

“If law is thus as universal as the sense of right and wrong, what then is the domain of that law that is known as jurisprudence, the sphere at once of the lawyer, the judge, and the jurist. It is justice, practical benevolence, veracity, three things but in reality only one, best defined as service on behalf of humanity in the sacred cause of jurisprudence. It is justice, both subjective justice defined by the Romans as the constant and perpetual will to render everyone his due, as well as objective justice, or the purely

outward adjustment of moral rights and duties made legal rights and duties by virtue of their enforcement through the courts. The law enforces justice between creditors and debtors, secures practical benevolence towards the poor, the unfortunate, the sick, the injured and the young in need of aid and education, and provides for veracity in the courts by enforcing it upon witnesses and litigants by its most solemn sanctions. In accord with the maxim *lex spectat ordinem naturae* [the law regards the order of nature], jurisprudence recognizes the whole system of primary and secondary truth, and the judges take judicial notice of the material, intellectual and moral order of the universe, a point well illustrated by reference to a number of adjudicated cases.

“The work under review is a fine specimen of the expository style. As is usual in this way of expressing scientific thought, its analysis ends with a definition more or less complete. In such cases an effort is made at completeness of definition, yet the ideal is never attained. A writer does well if his definition fairly serves his immediate purpose and is in general harmony with the tenor of his argument. Our author defines positive law as "a rule of external human action enforceable by state authority," and thus finds himself in substantial agreement with Professor Clark's definition, who holds that the law of the state is "the aggregate of rules administered mediately or immediately by the state's supreme authority." The natural trend of the author's argument, however, the emphasis which he lays on the necessary, irreversible, and changeless truths of reason, and his quotation occupying the whole of the page immediately before the preface, of Cicero's famous saying that law is right reason, universal, unchangeable, eternal, not one at Rome and another at Athens, one thing to-day and another to-morrow, but in all times and nations, a universal law, living forever, eternal and imperishable, with God Himself as its author, promulgator and enforcer—all this has led us to expect a definition along more idealistic lines and more in general agreement with those of Cicero or Coke or Aquinas or Milton.

“When it comes, however, to defining so vast a branch of human knowledge as law, no definition is wholly wrong and no definition is wholly right. The best is always that which, on the whole, satisfies author and

reader best, and in their work law teachers and students alike should have in mind some such definition. As regards this question, the writer's point of view was expressed by him, some years ago, as follows: "What is the law, then, in its very soul and essence? There are definitions almost as many as there are men that have given thought to the subject. Let me give you my own, one that after many years of reflection has more nearly satisfied me than any other, one that is not yet wholly satisfactory, not even to him that made it, for it is a man's destiny, not perhaps to be exactly dissatisfied, but ever to be unsatisfied with the work of his own hands. Law, to me, is reason, natural, political, logical reason, but at all times and in all its parts practical reason, always in contact with the facts of life and ever subject to the test of experience, represented in this its threefold aspect by the differing but closely interwoven activities of the jury, the legislature, and the courts, applied by the courts to the varying (non-contentious) and conflicting (contentious) interests of men, enforced by the sovereign state as the representative of the people, this trinity of the law finding its highest unity in that universal reason in which we live, and move, and have our being." \* [\*footnote citing "From "The Obligations of the University of Maine," Maine Bulletin, Vol. IX, No. 8, June, 1907, p. 18.]

"In concluding the author discusses the great variety of human law, the rules followed by individuals for their own improvement, those regulating the external conduct of each member of society, the social customs of society with no sanction other than that of public disapproval, and last not least, the rules enforced by the authority of the state, and under which the author includes both constitutional and international law.

"A copious and most logically arranged bibliography of theories of knowledge, including Absolute Being, Cosmos, and the Soul, as well as questions on Ethics and the State, concludes the volume, and the reader lays down the book with the conviction that he has read a work of true worth, great excellence, and lasting merit. No student, no practitioner should fail to add to his library "The Essential Nature of Law," as a work to be consulted, cherished and drawn upon for inspiration, pure and undefiled, in the midst of the troubles and perplexities of professional life."

W. E. Walz.

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