
Preface: Survey of Legal Literature

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SURVEY OF LEGAL LITERATURE

PREFACE

The concept of a comprehensive collection of essays critiquing the legal and legally-related literature of a particular year written by persons with insight and expertise in the area they are reviewing has culminated in this "Survey of Legal Literature." Since April of 1973, the Survey, through trial and error (and more than enough of both) has been filled out into what we feel to be a valuable service to the legal community and an exciting new venture for law reviews.

One area which can potentially be expanded in years to come is the cultivation of the participation and insights of persons who, though not imbued with "legal expertise," are intimately affected by the decisions and actions of the legal profession. Eddie Hogan's review of two books on the prison "system" is an excellent example of the potential of this idea.¹ The possibilities are fascinating and conceivably of great benefit to the profession both in its day-to-day activities and, perhaps more importantly, in its attempts to fulfill its duties as the arbiters and negotiators of society's conflicts which is the main function of all law.

In whatever form it takes, the Survey would seem to fill a gap. The literature of legal significance which is being published today is no longer within the capacity of one person to absorb.² While, for the most part,

1. Robert Roth, publisher of the *Chicago Reader*, in response to a request by the new editors of the *Chicago Journalism Review* to help them determine, after five and a half years of watchdog reporting over the journalism business in Chicago, what the purposes of the *Review* should be, responded: "If the goal is a radical analysis of the profession or perhaps the formulation of a new journalism then we need to reconsider the notion—which I understand to be the central idea on which CJR was founded—that the professional journalist is best able to criticize the profession because he knows it best. My hunch is that the professional is least able to criticize anything fundamentally defective in the profession precisely because he knows it too well." 7 CHICAGO JOURNALISM REVIEW 7 (March, 1974). Though Roth may have overstated the case, it is only through such additional input that we can determine the accuracy of his statement.

2. At one time, the study of law was limited in its resources. "The course [of canon law at Paris University in the Fourteenth century] followed closely that of

the books here being reviewed are what we consider to be the "wheat" of the 1973 crop, there was some chaff which, by all preliminary standards, should have been wheat. We felt that, in some cases, it might be just as valuable for the attorney to know about the latter as the former.

The legal profession owes society the duty to re-examine itself continuously. The better side of the profession must now make efforts to actively participate, not only in the negative, though vital, goal of rooting out the corruption, but in the positive one of guiding society in America, in the context of impending global realities, towards a more responsive and just state in the future which is rapidly approaching.³

Such a re-evaluation requires that we be in touch with and, to a certain degree, in tune with what is going on in the various aspects of society.⁴

Bologna: its basis was the study of Gratian's *Decretum*, the subsequent collections of canon law in the Decretals, together with certain books on the sacraments and the extensive literature of authoritative glosses. In that sense there was an affinity with theology in a canon of a few basic texts that afforded almost limitless scope for examination and commentary." G. LEFF, *PARIS AND OXFORD UNIVERSITIES IN THE THIRTEENTH AND FOURTEENTH CENTURIES: AN INSTITUTIONAL AND INTELLECTUAL HISTORY 178* (1968). This situation also obtained, to some degree, in colonial America where the texts depended on were few—mainly Blackstone and his interpreters. See, e.g., H.S. COMMANGER, *THE AMERICAN MIND: AN INTERPRETATION OF AMERICAN THOUGHT AND CHARACTER SINCE THE 1880's* at 359-60 (Yale, 1950).

3. The dynamics of what is required in such a reassessment were well noted by the playwright Peter Weiss through his character of the Marquis De Sade:

In the vast indifference I invent a meaning
I don't watch unmoved I intervene
and say this and this are wrong
and I work to alter them and improve them.
The important thing
is to pull yourself up by your own hair
to turn yourself inside out
and see the whole world with fresh eyes.

P. WEISS, *THE PERSECUTION AND ASSASSINATION OF JEAN-PAUL MARAT AS PERFORMED BY THE INMATES OF THE ASYLUM OF CHARENTON UNDER THE DIRECTION OF THE MARQUIS DE SADE* 46 (1966). *Contra*, M. BUENO & O. GEORGE, *LEADERS WITHOUT A HEAD: THE REIGN OF QUEEN WINOLA* 30 (1923).

4. This may require the reader to bring to his or her study an overview which can pull together the splintered research which is characteristic today. For an unfettered and imaginative investigation and examination of human nature as a whole as opposed to the dissected and pinned back specimens which are the subjects of most studies by the "helping professions," see W. CANNEL & J. MACKLIN, *THE HUMAN NATURE INDUSTRY: HOW HUMAN NATURE IS MANUFACTURED, DISTRIBUTED, ADVERTISED, AND CONSUMED IN THE UNITED STATES AND PARTS OF CANADA* (Anchor Books, 1973). One of the more fascinating and devastating portions of the book is contained in Chapter Two wherein Mr. Cannel, a newspaperman with no academic experience beyond a bachelor's degree, reprints "answers" by a variety of unnamed but "well-respected" professionals across the country to the seemingly simple question: "What is human nature?"

The following is typical:

The diversity of the materials presented here is offered in furtherance of that pursuit.

In order to fully appreciate the contents of the "Survey of Legal Literature," a subject index has been prepared since, upon examination, other organizational and search methods seemed inadequate. The index is really the key to the whole Survey. It is hoped that it is both simple and complete enough to serve in that capacity.

Being the first year of this venture we are especially interested in whether what is contained here is actually of any benefit "out there." We would greatly appreciate hearing any reactions and especially suggestions for improvements in next year's Survey. For all of the machinations and efforts made by law reviews boil down to one thing: serving the actual, and not just the perceived or narrow, needs of society and the legal profession. We hope this effort does so.

RICHARD J. MORIARTY
LEGAL LITERATURE SURVEY EDITOR

"Human nature?" The professor repeated the question. His speciality was philosophy of law. 'I don't think that question is allowable. At least not in that form. What do you mean by human nature? That's not a scientific term.'

"What did he mean by scientific?"

"That's your worry, not mine," he said. 'I'm not looking for the answer. You are. But you can't ask the question that way.'

