a litigant to receive a hearing on the merits of a case without a cluttered record. On the other hand, Indiana still lacks co-ordination of the judicial system. Some of the rules of evidence are bad. Higher quality judges could be obtained by a different method of selection.

The administration of justice in Indiana can and should be much improved. The Judicial Council is now making a study of a bill to establish an administrator for the courts and a bill to provide for roving judges. If these two proposals receive legislative approval, it will give encouragement to those who are striving for improvement. "The task . . . can only be achieved state by state, and in each state by the people of that state. The battle against inertia or ignorance or misguided self-interest must be fought locally, . . . it is futile and against general experience to expect early and easy victories in this field, unless, of course, the bench, the bar and the public unite to promote judicial and procedural reform as a professional or patriotic duty."[50]

LOUDEN L. BOMBERGER†

LIVING LAW OF DEMOCRATIC SOCIETY. By Jerome Hall.* Indianapolis: Bobbs-Merrill Co., 1949. Pp. 146.

This deceptively slim volume contains packed very tight the mature thought of a serious student of legal philosophy. As such it makes quite formidable the task of a reviewer who would do more than report the contents of the book. The volume had its source in a series of lectures given by Professor Hall at Pacific University on the Isaac Hillman Lectureship in March, 1947. The lectures, three in number, comprise the book. They cover the most important issues in jurisprudence. The first is entitled Law and Legal Method; the second Law as Valuation; the third Law as Cultural Fact. The division of the subject matter thus is traditional. It corresponds to familiar relations of law to science, to ethics, and to society. Permeating the whole and forming its fundamental value system is the ethics of democracy.

The lecture on Law and Legal Method examines once again the question of the formal nature of law. Is the law might or right? Or rather, what is the relation of reason to force in the law? After disposing of the nominalists, for whom legal method is a mere study of words, Professor Hall takes exception to certain of Pound's discussions of the nature of positive law as confusing. Pound has written endlessly on the nature of law and a great deal of it is confusing (as is everyone else's writing on the nature of law including

50. P. xxx.

† Attorney at Law, Hammond, Indiana. A.B. 1900, LL.D. 1942, Valparaiso Law School. Member of the Judicial Council of Indiana since 1939; Director of the American Judicature Society since 1938; past president of the Indiana Bar Association. Author of *A Simplified Code of Appellate Procedure*, 9 IND. L. J. 551 (1934).

* Professor of Law, Indiana University School of Law.

my own and Professor Hall's.) Professor Hall says that "apparently [Pound] did not recognize that traditional or customary law also and equally has an 'imperative element'." Yet I find it impossible to believe that Pound did not know of this elementary fact although his statement in context was certainly confusing. The same comment goes for the remark that "Pound confuses 'positive law' with 'law' used in a wide sense to signify certain common features of moral principles, scientific generalizations, positive laws, etc."

Professor Hall also draws attention to the fact that "Plato is conspicuous in Pound's essay by his absence." This is true—but what of it? Pound's classical hero seems to be Lucretius. There has been no dearth of Plato lovers since antiquity. In modern times German scholars, with unexampled command of the ancient languages, have done many penetrating studies of the Platonic juristic texts.

The rest of the lecture on Legal Method is a critical examination of the attributes of positive law and an argument for clarity and cohesiveness in the essential components of the legal order. These components are many. Legal problems are first and last social problems. Against this context legal method includes "technical rules of procedure, logical analysis of authoritative materials, the interpretation of legal language under guidance of precedent, the drawing of factual conclusions from the evidence, and other components [previously] noted. It also includes the 'pressure of the norms,' the psychology of the forum, the prevailing philosophies, and the perspectives of the officials." This quotation shows that, for Professor Hall, legal method is very broadly conceived. This view is far removed from the notion that legal method is the formal as distinct from the material part of law, that legal method has to do primarily with logic. In a word, it denies the possibility that law can be an exact science. As Professor Hall says in concluding the above quotation, "Legal method, it follows, cannot be scientifically rigorous. It is only the more or less rational instrument of particular societies."[1]

In the lecture on Law as Valuation, Professor Hall raises many controversial issues. He opposes the logical positivists who assert that value judgments in law as elsewhere are meaningless except as disguised commands or expressions of interest or desire. This view of moral judgments Hall calls a naturalistic ethics. The term "naturalistic ethics" is widely used in current philosophical discussions and I am unable to determine whether Professor Hall employs it in its wider sense or simply as a synonym for the ethics of logical positivism. For after examining some of the conclusions to be drawn from this position, Hall says "These inconsistencies demonstrate that naturalistic ethics is invariably self-defeating." This statement if it is taken to include the whole field of naturalistic ethics is certainly too broad. Only a small sec-

1. P. 51.

tion of the followers of naturalistic ethics are also logical positivists and one who undertakes to demonstrate that naturalistic ethics is invariably self-defeating cannot do so merely by an examination of the foibles of logical positivism.

Professor Hall rests his own ethical thinking upon theories which rely upon intuition and coherence. The detailed statement of this position is set forth in the balance of the lecture and the reader must judge for himself whether his intuitions and notions of coherence in matters of law as valuation coincide with those of the writer. For Professor Hall says "The only way to 'prove' the authenticity of intuitive knowledge is to get people to experience the same kind of situation."[2]

One point more about this lecture. After stating that his ethics rests on intuition and coherence, Professor Hall remarks that: "These terms, especially the former, are very unpalatable to some scholars, especially operationalists. But we may hazard the opinion that at some point, and probably at many crucial ones, these persons make various ultimate assumptions which they designate 'axioms,' 'postulates' or 'hypotheses,' but to which they attach some degree of validity, in brief, that intuition, whatever it be termed, is inescapable." This is a most extraordinary statement. If Professor Hall means by intuition, axioms, postulates or hypotheses (they are all very different, but let that pass) then experimentalists or scientists generally can accept his intuitions with perfect complacency provided they meet the tests laid down for formal presuppositions of scientific method. If he is talking of intuitions in general then of course operationalists have "intuitions," just as they have "feelings." Where operationalists part company with intuitionists such as Professor Hall is on the question of the *ultimacy* of his intuitions. It is true that operationalists regard axioms, postulates and hypotheses as assumptions but they do not regard them as *ultimate* assumptions. The present reviewer, no operationalist, nevertheless does make fundamental long-range ethical assumptions (postulates, not axioms or hypotheses) but he does not expect posterity to agree with him that they are ultimate. For him, intuitions are (or may well be) the starting points of inquiry. They are never ultimates.

The last lecture, Law as Cultural Fact, is easily the most rewarding in the book. It is polemical as are the others, but Professor Hall is best, paradoxically, where he handles the most complex of all legal relations—law and society. We are still grateful to him for *Theft, Law and Society,* and Law as Cultural Fact, especially after the attack on positivism and legal realism are out of the way, is richly rewarding.

The first two lectures I found rough going, the last lecture ended too soon. But it ended on a lofty proposal that scholars everywhere close ranks

2. P. 75.

and work co-operatively for the common purpose of truth-seeking. This final paragraph deserves quotation in full:

> So far as research is concerned, there is no reason to assume that epistemological differences are insuperable bars to collaboration. If we recall the disastrous results of ivory-tower aloofness in Europe, we may well conclude: Let all scholars, whatever their ultimate perspectives may be, join forces in research on the most challenging problems of our times! They already share the opinion that empirical knowledge is essential in any sound problem-solving. They would discover other areas of agreement if they joined in a common enterprise because of the necessity to solve urgent problems, here and now. Finally, the widely shared purpose to preserve and expand the law of democratic society encourages the hope that disagreement in the higher levels of theory will not prevent cooperation in vitally needed research.

Jerome Hall's jurisprudential writing makes difficult reading. But I should like to remind the reader who too lightly would give over the task of following Professor Hall's thought of the line with which Spinoza closed his treatise on Ethics: "Things excellent are as difficult as they are rare."

THOMAS A. COWAN†

THE VITAL CENTER. By Arthur M. Schlesinger, Jr.* Boston: Houghton Mifflin Company, 1949. Pp. x, 274. $3.00.

THE TWILIGHT OF WORLD CAPITALISM. By William Z. Foster.** New York: International Publishers, 1949. Pp. 168. $1.50.

The contemporaneous appearance of two books—Arthur M. Schlesinger, Jr.'s *Vital Center* and William Z. Foster's *Twilight of World Capitalism*—offers an unusual opportunity for comment on the contrasts between two fringe movements in American politics which epitomize the fundamental world political conflict of our time. Neither the redefined liberal calling himself a member of the non-Communist Left or of the Americans for Democratic Action, nor the Communist or fellow-traveler who follows the Moscow line, can expect to dominate American politics as a member of a numerically dominant party within the foreseeable future. Yet both liberals and Communists, because they exemplify poles of choice, exercise influence and command attention far beyond that bespoken by their numbers. Both movements urge their cause in the name of freedom: freedom from the brutality and dreary enforced uniformity of the totalitarian state on the one hand; freedom from the imputed chains of capitalist exploitation on the other.

Both books have a biographical origin and orientation. Schlesinger's book is formed by the experience of a young historian who grew up after the

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† Professor of Law, Wayne University School of Law.
* Professor of History, Harvard University.
** Labor leader and past national secretary of the Communist party.