

privity under the heading of "Parties to the Contract"?), and the consequences of illegality are given very short shrift with but half a page of text and no reference to any authorities at all, let alone to such cases as *St. John Shipping Corp. v. Rank*.<sup>2</sup> The doctrine of promissory or equitable estoppel stops short at *Combe v. Combe*,<sup>3</sup> and there is no reference to later developments or to any Australian authorities on the point. Indeed, it is regrettable that throughout the book there are so few Australian cases referred to, and after all, this book is primarily written for Australian students.

Other notable omissions include such cases as *Scruttons Ltd. v. Midland Silicones Ltd.*,<sup>4</sup> *Angel v. Jay*,<sup>5</sup> *Leaf v. International Galleries*<sup>6</sup> and *Ashford Shire Council v. Dependable Motors Pty. Ltd.*<sup>7</sup> (surely an excellent case for discussion). Again, it would have been helpful to the non-Victorian reader if Mr. Samek had indicated that no other Australian State had enacted legislation similar to the Frustrated Contracts Act, 1959 (Vic.), and that no market overt existed in New South Wales and Queensland.

The book is attractively presented and, apart from one error in the text on p. 74 and one on p. 125 and a wrong reference in a footnote on p. 106, the proof reader appears to have done an excellent job.

All in all, this book would appear to be most useful in the teaching of commercial law to commerce students. It will also be useful to the teacher engaged in seminar work in the university law schools, although it will need to be considerably supplemented. There is insufficient case-material and insufficient coverage of the various topics for the needs of the law student, although it will help him to have some of the more important statutory provisions used in his course available together and the section on Bills of Exchange will assist him in understanding a difficult branch of the law.

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*Motiv und Schuld*, by Professor Friedrich Stumpf. Vienna, Verlag Franz Deuticke, 1961. vii and 76 pp.

This book, small in size but dense in thought, is written by a distinguished Austrian psychiatrist who deals with problems of both juristic and psychiatric interest. It is reviewed here to draw attention also to the series of monographs which it initiates. In Anglo-American legal scholarship there must be very few indeed who would be capable of fully understanding and appreciating it, for the book makes an ample and uninhibited use of rather esoteric psychiatric terminology and of German philosophic parlance. Unfortunately it does not provide a glossary and a glossary is badly needed, especially by those who are strangers to the Continental fundamental thought and its expression. Nevertheless the leading ideas of the author can be traced by the general juristic or jurisprudential reader (in which class the reviewer places himself), who should be able to recognize the informative, illuminating, and thought-provoking value of the book, especially for those who are equipped with the tools of thought of Professor Stumpf's school of psychiatry.

In the editor's Preface, Professor R. Lange introduces the series of the monographs by pointing out the need not only for a better elaboration of old

<sup>2</sup> (1957) 1 Q.B. 267.

<sup>3</sup> (1951) 2 K.B. 215.

<sup>4</sup> (1962) A.C. 446.

<sup>5</sup> (1911) 1 K.B. 666.

<sup>6</sup> (1950) 2 K.B. 86.

<sup>7</sup> (1961) A.C. 336.

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thoughts in the field of intersection of law and psychiatry but also for drawing new lines in the area of various mental disorders of legal relevance (p. iii). There is a challenging question as to whether the image of man in our legal orders corresponds to the anthropological realities as seen in the light of contemporary psychiatry, psychology, and social science (p. iv). Professor Lange contends that "innumerable cases are wrongly decided today due to false posing of problems and false distribution of competences", observing also that bases requisite for proper communication of the psychiatrist with the lawyer do not yet exist (p. v). In view of this state of affairs he finds it timely to re-think the very foundations of the whole area of intersection of law and psychiatry in a series of monographs directed to psychiatric problems of legal pertinency. This, as it seems to me, is primarily required in order that the psychiatrists of different scholarly persuasions and habits of thinking themselves could efficiently communicate with each other on these problems. Further this is important also for creating conditions of proper communication between lawyers and psychiatrists so that they would be in a position to address each other with intelligible and meaningful questions about matters of their common concern and would sufficiently understand and make an intelligent use of the answers mutually given.

The main feature of the present book is a determined analytical effort to get a conceptual hold of the "microstructure" of mental disturbances of legal significance. Hence the extraordinary articulation of the author's conceptual equipment and the corresponding articulation and technicality of his terminology. The latter must seem a difficulty to any lawyer who does not happen to be well schooled in the science and philosophy of psychiatry. However, it is difficult to see how a discussion on the level attempted by the author can be carried out without these refinements.

As a reviewer who lacks expert knowledge of psychiatry, I feel diffident to enter into the discussion of details of some of the author's thoughts. All I can propose to do is to bring out and to comment on what appears to be the central thesis of the author and some of the salient thoughts emerging from his exposition.

The principal submission of Professor Stumpfl is that it is "possible to analyse the courses of human action as to their degrees of freedom and to gain standards for the capacity of guilt, which make it feasible even in difficult cases to help judicial decision-making through the reefs and shoals of human incalculabilities" (p. 3). In the psychological microcosmos, he contends, there are regularities which can be apprehended by means of appropriate psychiatric methods based on an anthropologically founded psychology of conation. This psychology reveals that there is a reciprocal founding of volition through its object and purpose in a texture of relations, in which "desiring and willing . . . are penetrated by forms and imprints of the *ordo rationalis*" (pp. 5-6). The task of the psychiatric inquirer in the service of the administration of law is to trace these connections in order to ascertain and to describe to lawyers requiring his services, precisely in what way and to what extent the capability of responsible action was affected in a person in the given case.

In analysing the causal connections preceding the criminal act, the author subscribes to the conception that the "road" of human life "is not an actual road with a beginning and an aim but consists of many crossroads . . . in which every point is a possible point of departure for infinite possibilities" (p. 10). Hence to trace all that, far more than a mere clinical diagnosis is required. It is essential to strive for the apprehension of the totality of the personality of the agent, among other things, his professional, his marital, and his fantasy life. On principle, the author believes, this can be done (p. 11). On this point I would like to remark that I do not quite share the author's optimism (see also pp. 21, 70) as to the practicability of the task to apprehend the

totality of the personality of the criminal in the contexts of criminal process. Criminal law, to be workable, must operate (as all law) with schematisations falling considerably short of what may be relevant for the psychiatrist to understand concrete human beings in their mental distress and of what may be necessary to know for relieving their suffering and for curing them. Law can afford to ask only limited questions about the mental condition of the accused, which may strike the contemporary psychiatric expert as not psychiatric questions at all. He has to see what sense he can make out of these questions, how to bring his psychiatric knowledge to bear on them, and what to say that would be helpful to the defence, prosecution, the judges, and the jurors.

In opening the chapter on the capability of guilt, the author submits that "guilt in the sense of criminal law is personal reproach" and as such is characterised by the circumstances that "the corresponding act ought not to have been illegal whilst it could have been legal" (p. 15). This leads to the heart of the problem of the different standards that exist for law and for psychiatry for judging what the author calls "the suction of the unwilling" and about which he reminds the reader of St. Paul in Romans 7, 19-20:

The good which I want to do, I fail to do; but what I do is the wrong which is against my will, and if what I do is against my will, clearly it is no longer I who am the agent, but sin that has its lodging in me.

It is a striking fact that in the contemporary situation of learning there is an extreme disparity of approaches and attitudes for judging aberrations of human behaviour. The lawyer, the moralist, the theologian, the metaphysician, the scientist, and others tend to view the same phenomenon differently. For most scientists, there is a "suction of causation" bringing all events, physical and mental, under inexorable laws of determination; for Christian theologians, there is a "suction of sin", differently conceived and handled by different creeds; for metaphysicians of the existentialist inspiration there is a "suction of being" drawing the existents into non-existence through modes of inauthenticity; for moralists there is a "suction of evil" pulling man from the right road of life.

The lawyer may view these and other conceptions with wonder, but he is not committed to accept any of them. His primary concern is not the truth-value of an ethical doctrine but its instrumental value in the service of law's function to assure peace, security, and minimum justice in society. An ethical doctrine that is cognitively wrong may be conatively right in providing requisite springs of action in motivating human behaviour to be such as we want it to be. The same holds for psychiatric conceptions of human behaviour. Law may take notice of them wherever and to whatever extent this is required, but it may also discard them, setting up standards of human behaviour which don't look at all like pieces of psychiatric knowledge. However, since "man is a social being who is co-determined also from the side of law" (editor's Preface, p. iv), legal provisions addressed to him are not only norms by which his behaviour is directed and judged but also facts which may play decisive role in the causation of law-conform behaviour.

In his discussion of manic-depressive and schizophrenic psychoses, the author seeks to formulate criteria by recourse to which decisive elements of the process of motivation of human behaviour could be isolated. He points out that the act itself does not show whether it was performed by a schizophrenic, a neurotic, a moron, or a desperate (pp. 36-37). Even a madman's deed can be meritorious or heroic. As to the complex strings of thought, the details of which could be an object of study only for psychiatric experts, the author pulls them together in certain generalisations of which the following may be mentioned here: He says that in case of manic-depressive psychoses and schizophrenia (the so-called endogene psychoses) the "self-determination of the agent is excluded even as a possibility". This loss of the real possibility

and of the individual capacity of self-determination is called by the author "the barring of volition" (p. 41). The distinction between psychotic and neurotic disturbances is seen by the author in that "whilst with the endogene psychoses there is primarily a not-being-able-to-will, the neurotic disturbances are characterised primarily by a not-willing-to-be-able, which only secondarily as with extraordinarily grave core-neuroses can turn into the former" (p. 46). This fact, in my opinion, still shows the relative insignificance of whether a criminal act is a result of what is classified as a psychotic or as a neurotic disturbance and raises the question as to whether even the term "mental disease"<sup>1</sup> offers a useful concept for legal purposes.

The effort and acumen which the author has spent to get a scholarly hold of the microstructure of volition is noteworthy not only to psychiatrists who are called to help courts to judge cases of human misbehaviour. It is also a matter of interest to criminal lawyers, criminologists, penologists, law reformers, and generally to all men concerned with administration and creation of workable and respectable law. The psychiatrists' and the lawyers' points of view do differ in essential respects in this area, but where they differ, the lawyer can afford to dismiss psychiatric knowledge and ways of thinking only if he fully understands what he dismisses and for what reasons he does it. It may therefore be hoped that the series of monographs which the present book initiates will bring forth further writings not only noteworthy and useful to forensic psychiatrists but also helpful and enlightening to lawyers concerned with psychiatric aspects of human affairs, who badly need reliable information as to what is reality or theory, common ground or mere brainwave, fact or fancy, up-to-date or obsolescent in this controversy-ridden but advancing science of matters of the deepest human concern.

ILMAR TAMMELO\*

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<sup>1</sup> See *Durham v. United States* 214 F. 2d. 862 at 871-875 and The American Law Institute, *Model Penal Code, Tentative Draft No. 4* (25th April, 1955) Art. 4, 4.01(1).

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