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Hall: LIVING LAW OF DEMOCRATIC SOCIETY

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LIVING LAW OF DEMOCRATIC SOCIETY. By *Jerome Hall*. Indianapolis: Bobbs-Merrill. 1949. Pp. 146. \$2.50.

In this exposition of legal philosophy, Professor Hall seeks to discover the nature of positive law and, incidentally, to show the error of theories advanced by Legal Positivists. He commences with an examination of definitions which have been given the term "positive law" and finds that while in previous centuries it was regarded as embodying "right reason," it is now defined only in terms of form and the fact of power. This he attributes partly to the refusal or neglect of modern legal scholars to analyze past theories of jurisprudence in the light of history and the contemporaneous cultural and social situations. After pointing up the distinction between positive law and jurisprudence, the author proceeds to a discussion of legal method. He characterizes it as a specialized form of the wider field of social problem-solving based on analysis, analogy, and logic, and influenced to some extent by prevailing attitudes, pressures and philosophies. The writer insists that our law, involving the consent of the governed, has its basis in "moral experience" and asserts that legal changes show an advance in moral progress or social knowledge. Because the theories of the Stoics, Pragmatists, Positivists, and others do not incorporate or recognize these elements, he finds them inadequate. Supporting his assertion that morality is the basis of law, he explains both why and how the law itself is valuation. Except in so far as it summarizes, the final section of the book seems to contribute little to legal philosophy. Therein the author defines culture as the collective achievements of society and demonstrates that law in its existence, operation and influence is a significant part of this culture, a proposition which seems to be quite apparent. The attentive reader may conclude that Professor Hall's philosophy culminates in the recognition as positive law of only those norms which issue from or are enforced by a maximum power source, are ethically valid, and are both institutionalized and externalized fact. The book in its entirety is a scholarly contribution to the field of legal philosophy.