1988


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BOOK REVIEWS


Reviewed by William J. Wagner**

On first perusal, some may suppose that the title of this magnificent new volume of jurisprudence contains a contradiction in terms. Most litigants, lawyers, and judges will acknowledge that American legal culture ordinarily does not consider the law a reality subject to "inner" experience. They know that when the legal culture refers to jurisprudence at all, it does not, as a rule, employ a framework that remotely can be termed "subjectivity." The title of this new work frames the question of law and jurisprudence in these terms.

Even a casual reading of this work allows the conclusion, however, that the author contradicts not himself, but only the notion that received attitudes and ideas in contemporary American legal culture are adequate. David Granfield's work, THE INNER EXPERIENCE OF LAW: A JURISPRUDENCE OF SUBJECTIVITY, challenges readers to reconsider their conception of law, and it delivers an impressive jurisprudential framework to assist them in doing so. Granfield's book belongs in every serious collection of American jurisprudence. Its contribution to the method and theory of law is of significant value for overcoming weaknesses in contemporary jurisprudence, and in the experience of law in American society.

The purpose of this review will be to introduce the reader to the content of Granfield's jurisprudence and briefly to explore its implications for legal thought and practice. THE INNER EXPERIENCE OF LAW: A JURISPRUDENCE OF SUBJECTIVITY is a unified work, but it makes contributions on four separate levels. These are as follows. The book offers a methodology which promises a renewed unitary foundation for jurisprudential debate among rival theories. It propounds a contemporary natural law theory of

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jurisprudence. It synthesizes a masterful historical overview of Western jurisprudential thought from the pre-socratics to the contemporary theories of Robert Nozick and John Rawls. And, it proposes what can be termed a kind of “spirituality” of law, as a medicine for the existential alienation of those experiencing law in contemporary society. This review will analyze the nature and significance of all four of Granfield’s contributions.

As a prelude to such analysis, it is helpful to begin by considering more fully the ordinary American experience of law which appears to exclude the “innerness” and “subjectivity” that are found in the book’s title, and are, as it will be seen, essential to its concept of law. Granfield makes the same contrast. He observes that the American legal culture often embodies a focal definition of law that is based on the individual’s experience of legal coercion, as an object fundamentally extrinsic to the world of personal meaning. Contemporary American jurisprudence usually understands itself, either as guarantee that the event of legal coercion is predictable or economically efficient, or as occasion for critically unmasking extrinsic interests which that event furthers. In each case, the meaning of law is measured by extrinsic uses of power, and tends to be discontinuous with personal moral experience.

Recent American literature is replete with illustrations of the way persons experience law from this extrinsicist understanding. An excellent example is Sherman McCoy, the beleaguered protagonist of Tom Wolfe’s telling new novel about contemporary American society, THE BONFIRE OF THE VANITIES. The protagonist is an irresponsible New York bond trader, who has a view from the top of the pyramid of status and material possessions. The character contemplates the prospect of an indictment consequent to a hit-and-run accident, as being an essentially absurd assault on his subjective world and personality. It is interesting to ask how, if at all, his perspective differs from that of Holmes’ “bad man.” In many respects, Wolfe depicts a prototypical contemporary American experience of law.

In Wolfe’s novel, the protagonist’s attitude towards law causes him con-
siderable subjective suffering and loss. He, of course, is on the receiving end of legal process and sanction. To learn that many lawyers, who are on the delivery end of legal process in our society, also suffer from a sense of meaninglessness and absurdity, one need only talk to representative law students, law firm associates, and even more established lawyers. This existential experience of law as absurd, whether from the perspective of “consumer” or “producer” of law or legal services, provides a starting point for Granfield’s development of his jurisprudence, within the present book.

By reference to Kafka’s novel The Trial, Granfield describes what may be the defendant’s perspective on the judicial process. From this vantage, the judicial process—as in the case of Sherman McCoy—is experienced as a nightmare offering no apparent possibility of meaningful resolution. With penetrating insight, Granfield pictures what absurdity looks like from the other side of the judge’s bench. He turns to the thought of Justice Oliver Wendell Holmes, Jr., probably the leading progenitor of contemporary American jurisprudential theory and judicial philosophy. Granfield shows that nihilism underlies the Holmesian penchant for generalization. Granfield considers Holmes’ nihilism a participation in the same meaninglessness that Kafka’s character experiences as a nightmare of entrapment.

Granfield seeks a jurisprudential basis for understanding and for transforming the contemporary experience of law. In this quest, he for the most part sets aside recent American jurisprudential schools as points of departure. Positivist heirs of Holmes, like Roscoe Pound, block the way out of the situation, by adopting a notion of law as “social engineering” and by manipulating people as though they were objects. Other positivists, like Kelsen and Hart, arbitrarily deny hermeneutical questions about meaning, and, in that way, also close the door to solving the problem.

The legal realists, including the recent critical legal studies movement, can also be said to descend from Holmes and are the major alternative to positivism on the contemporary scene. According to Granfield, this second perspective is stronger than that of positivism, to the degree that it acknowledges the existence of a problem. But, its efforts at a solution are derailed by ideological reductionism and the lack of adequate theory.

5. F. Kafka, The Trial (First Engl. Trans. 1937). Granfield relates that Kafka, who lived from 1883 - 1924, earned a doctor of laws degree and practiced law in Prague, before going into the insurance business. He was, therefore, personally well acquainted with the character of law, and his work is an apt choice for illustrating Granfield’s point.

6. Granfield develops his view of Holmes by reference both to his formal scholarly writing and to his personal correspondence and other communications. Granfield’s has an interest in Holmes primarily as an example of the existential quest for meaning which has been thwarted by absurdity, rather than as a theorist. The nature of this interest makes the personal material, including citations from a 90th birthday radio talk in 1931, particularly relevant.
Granfield does not believe that the revival of comprehensive philosophical theories of justice, by thinkers like Nozick and Rawls, succeeds any more than have the jurisprudential schools. Nozick's system suppresses the communal dimension of humanity and conceals the person behind a conceptualization; Rawls' subordinates the ideal of personal insight to a quest for institutional justifications.

Granfield's response to the impasse of the present situation is an original jurisprudence resting on the central insight that, whatever else may be the case with law, the law's appropriation, as subjectively meaningful, is a fundamental imperative. This recognition resonates with the deeper longings of every attorney starting practice. Granfield's project answers an existential need of the American lawyer. To explore the nature of Granfield's answer, it is most helpful to consider, separately in turn, its content on each of its several levels. Once its content in each area is in view, the broader implications of Granfield's book for the theory and practice of law in American society can be assessed.

I. GRANFIELD'S PROPOSAL OF A UNITARY METHODOLOGY

Because of contemporary jurisprudence's fragmented condition, general discussion cannot expect to commence with shared theoretical principles. As many have acknowledged, the meaningful discussion of jurisprudential proposals threatens to break down completely. Granfield's response, like that of Ronald Dworkin in his recent tome, Law's Empire,⁷ is to suggest that methodological agreement can provide needed common ground, even while thoroughgoing theoretical differences remain. At its most basic, Granfield's jurisprudential proposal is a methodological one. He suggests an open-ended set of conditions, which must be satisfied if any theory, his own included, is to be considered sound. He proposes that agreement on the relevance of these conditions can unite the discussion among theories as disparate as those held by "Positivists, Pragmatists, Naturalists, Idealists, Utilitarians and Existentialists."

Granfield's reasons for granting a paramount role to methodology are deeper than just pragmatic concern with contemporary theoretical fragmentation. For Granfield, how one thinks has a certain conceptual priority over what one thinks. Granfield gives a theoretical, as well as pragmatic justification for the primacy of method. His method and its justification are largely derived from Bernard Lonergan (1904-1984), a Canadian Jesuit theologian and philosopher. Granfield's reliance on Bernard Lonergan parallels Dworkin's reliance on Hans Georg Gadamer.

⁷. R. DWORKIN, LAW'S EMPIRE 45 (1986).
Positing method as a ground which can unify theory and theoretical debate is common to Gadamer and Lonergan. As an option, it can be related to larger patterns in contemporary philosophy. Lonergan's thought represents the option as it has been taken within the context of twentieth-century Catholic theological speculation. Lonergan's particular brand of Catholic theology is known as transcendental Thomism. The movement emerged in the 1920's, following the insight of Joseph Maréchal, a Belgian Jesuit, that the Kantian "turn towards the subject" could provide a foundation for a modern reappropriation of inherited Catholic notions about God, reason, and nature, and for the reaffirmation of a kind of rational knowledge about God. Bernard Lonergan, a leading exponent of the movement, made his special study the a priori structures of human knowing and deciding. In works such as INSIGHT, and METHOD IN THEOLOGY, Lonergan made his methodological proposal, advancing what he termed a "transcendental method."

Lonergan's method has profoundly influenced Roman Catholic theology, and it has had a creative impact in a number of other disciplines. In the present work, David Granfield is the first to apply the transcendental method to the task of reconstituting legal theory and jurisprudence. If Dworkin's recent application of hermeneutical method in Law's Empire is an indication of general inclination, theorists should be receptive to Granfield's use of Lonergan, and Granfield's choice can be expected to have a seminal effect. To grasp Granfield's application of the transcendental method, it is best to first consider the method and, then, to address Granfield's specification of the method for application within jurisprudence.

The transcendental method postulates that the mind reasons in a way which is universally the same, regardless of individual theoretical commitments. By reflecting on the sequence of operations universal to rational thought, the mind can critically articulate standards of cogency for theoretical reasoning. According to Granfield/Lonergan, introspection confirms that sound reasoning always proceeds in the following ordered sequence of steps: awareness or experience of the data; understanding of intelligible patterns in the data (the insight or hypothesis); judgment of the truth of intelligible patterns (verification of the insight or hypothesis); and decision about the implications of the verified insight or hypothesis for values.

While these steps of reasoning can be consciously separated, Granfield/Lonergan see them as moments in a single unitary drive or tendency in human consciousness towards unrestricted knowledge and value. Insofar as

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8. B. LONERGAN, INSIGHT (1957); B. LONERGAN, METHOD IN THEOLOGY (2d Ed. 1972).

one knows, understands, and judges what is true, one moves towards an innate goal of unrestricted consciousness or "interiority." Insofar as one intends the good through decisions for value, one tends towards one's goal of unrestricted self-consciousness or "authenticity." Both kinds of goals are constitutive of human awareness. In order to make our pursuit of consciousness and self-consciousness (or interiority and authenticity) rational, we need only, critically, to subject the data of our own knowing and deciding to the operations of experiencing, understanding, judging, and deciding.

The transcendental method is intended as nothing other than systematically rational and critical consciousness and self-consciousness. The method employs precepts derived by introspection from the four stages of reasoning: experiencing, understanding, judging, deciding. These precepts can be stated as: Be attentive! Be intelligent! Be reasonable! And, be Responsible! For critical consciousness and self-consciousness, the data becomes, simultaneously, the data of the objective world and the data of subjective awareness of self in relation to objective circumstances. The transcendental precepts, which guide inquiry and decision with regard to both kinds of data, derive from a tendency implicit in the subject and their telos is subjective fulfillment. At the same time, they orient the subject to the objective world.

In evaluating any theory, the transcendental method requires that the theory account for how well it explains and facilitates experiencing, understanding, judging, and deciding. Adequacy on one or another level is not enough; theory may be invalidated for failing on just one plane. For instance, a theory, which functions well in purporting to explain an aspect of the objective situation, may be faulted for failing to guide authentic personal decision about values, when decision is called for by the verification of some factual hypothesis.

As Granfield develops the method for application to jurisprudence, he emphasizes the overarching normative importance of critical interiority and authenticity. Whatever virtues a theory has for attending to data, generating hypotheses, verifying hypotheses, and furthering decisions, it is methodologically unsound, if it cannot establish, in the larger picture, that it rationally furthers one's subjective interiority and authenticity. In an excellent section of his book called "The Interior Markings," Granfield moves well beyond Lonergan, developing support for this view from the writings of Kierkegaard, Newman, and Ortega y Gasset.10 He uses these methodological norms for a critique of the contemporary theories of Rawls and Nozick.

10. In this section, Granfield works primarily from the following sources: S. KIERKEGAARD, CONCLUDING SCIENTIFIC POSTSCRIPT (1846); J. NEWMAN, GRAMMAR OF ASSENT (1870); J. ORTEGA Y GASSET, Verdad y Perspectiva, in El Spectador I (1916); J. OTEGA Y GASSET, OBRAS COMPLETAS (1957 - 58).
For the sake of applying the transcendental method, as I have just described it, to jurisprudence, Granfield gives the method further original specification. Within the discipline of jurisprudence, data is generated by the given array of kinds of relationships which constitute subjective horizons of relevant meaning: relationship with self, with another subject, with the political community, and with the ground of existence. The application of the transcendental method to jurisprudence, then, is a matter of experiencing, understanding and judging the significance of, and making authentic decisions concerning, data flowing from each of these relationships. The specification of the transcendental method to track these fundamental given relationships is reflected in the division of Granfield’s book into sections on the monosphere (reflexive relationship), isosphere (intersubjective relationship), koinosphere (political relationship), and theosphere (ultimate relationship with meaning).

Within each sphere, Granfield develops this theoretical contribution to jurisprudence, attending to the requirements of the transcendental precepts. Given the focus of law on personal and communal decision, the matter of Granfield’s investigation within all spheres tends to be authenticity. His critical theory of law is developed through systematic investigation of the requirements of experiencing, understanding, and judging about personal and communal decisions, and decisions about how such decisions generally should be made.

II. GRANFIELD’S THEORY OF JURISPRUDENCE

The interplay between method and theory in Granfield’s work is subtle, and the separation of his methodological from his theoretical insights may require, at points, some arbitrary choice. Philosophical theory is, in Granfield and among transcendental Thomists generally, often conceived as the “thematization” of implicit data of consciousness. Since the methodological precepts being employed by these thinkers are themselves data of consciousness, it is not always possible or desirable to draw a clear line between propositions being advanced as methodological axioms and propositions substantively intended as theory. This is especially the case where the author’s stated purpose, as here, is to reduce rather than to heighten polarities within the jurisprudential debate. Nonetheless, the rich content of Granfield’s thought, as it coheres theoretically, can and should be considered aside from its methodological underpinnings.

In sharp contrast to positivists who discover the concept of law in society’s extrinsic control over behavior manifested in the phenomenal world, Granfield’s theory posits that the paradigmatic meaning of law is discovered
in the *monosphere* of reflexive self-awareness. He illustrates this claim with the assistance of terms borrowed from Greek philosophy and myth, most notably from Plato. As a primitive fact of consciousness, Granfield asserts that subjects discover that they are constituted as such by a drive towards unlimited fulfillment through reality, described by the Greeks as *eros*. Subjects make the virtually simultaneous discovery that when *eros* propels them into actions out of conformity with the requirements of reality, they suffer what seems to be a kind of karmic retribution, termed by the Greeks *nemesis*.

From the experience of *nemesis*, the individual learns to distinguish flawed from right action. For Granfield, this experience is the primitive experience of law. The right use of freedom leads to authentic self-fulfillment; the wrong use of freedom to reality's "revenge." Granfield uses this thematization, of what he says is universal subjective experience, to ground his theory of law in all spheres, including those he terms the *isosphere*, *koinosphere*, and *theosphere*. This primary definitional referent distinguishes Granfield's approach to law from that of the positivists. It also distinguishes his approach to the meaning of freedom, from that of a thinker such as John Rawls. The difference between Granfield and Rawls corresponds roughly to the distinction between authenticity and autonomy, as primary ideals.

Granfield's paradigmatic meaning of law is, in a fundamental sense, in continuity with the natural law tradition of St. Thomas. For both St. Thomas and Granfield, law and morality are integrally related to one another. In both thinkers, law and morality receive their content through the use of *recta ratio* or right reason. The use of reason in the two thinkers differs to the extent that Granfield critically employs the transcendental method. In Granfield, reason no longer is grounded in the objective requirements of nature, as it is in St. Thomas, but, rather, is grounded in the "objective" requirements of subjective authenticity. To this same extent, Granfield's continuity with St. Thomas, although fundamental, has undergone a certain revision.

As a complement to his notion of law, Granfield delineates a theory of justice. Unlike his notion of law, Granfield's theory of justice is not developed within the *monosphere* of reflexive self-awareness, but is developed instead within the sphere of the subject's relationship with others, a sphere Granfield terms the *Isosphere*. He develops his theory of justice as a thematization of the data of intersubjectivity. He does so with the assistance of concepts taken from Aristotle (384 - 322 B.C.) and Giorgio Del Vecchio

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11. Granfield relies primarily on the *Symposium* and the *Laws*.
Del Vecchio was an Italian legal philosopher.

The subject’s encounter with other “selves” is a primary datum of human consciousness. The intersubjective encounter brings with it a simultaneous discovery that the subject’s own sense of authenticity depends on acknowledging other subjects as subjects. The dynamic of intersubjectivity necessarily has the character of conflict among claims, however, because each subject is constituted as such, by an unrestricted drive towards self-fulfillment. Authentic decisions in the intersubjective realm require that one acknowledge one’s own claims and the claims of other subjects, as morally equal. But, how can claims be equalized, which are, in one important sense, incommensurate, since each claim reflects an unrestricted and separate subjectivity?

Commensuration of one’s claims with those of other subjects, for the sake of subjectively appropriating their public or private resolution, is made possible by giving an independent value to justice, defined as reciprocal recognition of the equality of persons. In addition to valuing participation in the good at stake in the underlying dispute, authentic subjects also value justice, which Granfield calls “selves treating one another as selves.” For the sake of justice, two subjects can autonomously accept a commensuration of claims in conflict, without diminution of their subjective dignity. The goal of justice, for Granfield, is not as much an “objective” commutation of claims, as rather the subjective appropriation of a judgment by the two parties to a conflict, in a way furthering their reciprocal movement towards authenticity. In this vision, justice becomes almost an aesthetic ideal, akin to the harmony and balance characteristic of dance.

Granfield’s anthropology recognizes a certain innate tendency of persons to claim more than their just share of advantages and less than their just share of disadvantages. With Aristotle, Granfield terms this tendency pleonexia. From the perspective of individual subjectivity, this tendency represents an entropic tendency at odds with authentic fulfillment. From the perspective of communal order, this is a tendency, which requires the justification of mechanisms of enforcement.

In order to elaborate a theory legitimating the use of legal force in furtherance of justice, Granfield shifts the discussion from the data of the isosphere to that of third sphere, the sphere of participation in the political enterprise. He names this the koinosphere. Like the positivists, Granfield stresses the importance for society of a structured framework of offices and roles for administering and maintaining the rule of law. But, unlike them, Granfield

insists that the positive power of law and legal process has not been validated, until it is shown how these can be appropriated subjectively as meaningful.

For Granfield, the force of law can, in fact, be grounded in two key subjective values. These are love, in the form of political friendship, and knowledge, in the form of political communion in an idea. Whereas positivists must rely on ancillary extrinsic social pressure to explain compliance with law,\textsuperscript{14} Granfield posits inner acceptance of legal obligation, as subjectively meaningful. True legal duty, subject to such subjective appropriation, is imposed by power that conforms to the expectations of the people and the dictates of reason. So conformed, power has the character of authority.

Granfield posits that the subject discovers meaning not only in relation to self, the other, and the community, but in relation also to the whole. Granfield terms this relation the theosphere. In this sphere, the subject grapples with rationality itself, apart from its particular applications. It is against this horizon, that Granfield elaborates the possibility of thematizing primary analytical and specifying secondary synthetic principles of moral reasoning. These principles are theoretical, although they rest on the postulates of the transcendental method. Their theoretical content provide a basis for normative judgments about the morality of human actions.

In keeping with his decision in the present work to pursue primarily methodological rather than theoretical questions, Granfield devotes his attention to the cognitional process of appropriating and applying such norms under the circumstances of existence, rather than to developing his own extended statement of their theoretical content. On one level, he explores the practical reasoning necessary to decide the scope of the norm’s application. Here he inquires into the meaning of interpretation, dispensation, and epikeia. On a second level, he provides the cognitional theory necessary to understand the subject’s application of norms in concrete cases and explores the meaning of deliberation, evaluation, and decision, as stages in practical reasoning.

This section of Granfield’s book provides a helpful survey of late-twentieth century natural law theory. There can be no question that Granfield’s theory places him in the natural law tradition. In this section, the reader learns to distinguish the characteristics of contemporary natural law approaches, including Granfield’s, from the pre-modern and scholastic approaches of another era. Conservative revisions, such as that of John Finnis, are analyzed;\textsuperscript{15} as also are less fettered revisions, such as Josef Fuchs’ and


\textsuperscript{15} Granfield cites J. Finnis, Natural Law and Natural Rights (1980); J. Finnis, Fundamentals of Ethics (1983).
Richard McCormick's.\textsuperscript{16}

Granfield also introduces the reader to the proportionalist controversy which has, in recent years, rent Roman Catholic ethics. He understands the split between proportionalists and their opponents, as the result of a divided Catholic response to a "paradigm shift"\textsuperscript{17} in contemporary culture from "classical" to "empirical" consciousness. Although Granfield refrains from conclusive judgment on the ultimate cogency of the proportionalist-revisionist response, he notes that, in respects, it mirrors the direction of Lonergan's transcendental method.

As a controversy within Catholicism, proportionalism cannot be evaluated without reference to its treatment of faith and the authority of Scripture and the Magisterium, issues which Granfield rightly considers beyond the scope of the present work. Within the scope of the discussion as he frames it, however, the author may give an overly irenic interpretation to the "revisionist" position. In the work of the authors he cites, "proportionate reason," as a mode of reasoning, may actually have less content and may have less continuity in its conclusions with the natural law tradition, than Granfield's own statement of the hypothetical "moderate revisionist" position fully indicates. Granfield wishes to highlight the features which keep these theories within the natural law framework. Others see them as closer to utilitarianism or emotivism.

The phenomenon of proportionalism illustrates a danger of the misdirection which can flow from the application of transcendental Thomism to ethics. Transcendental Thomism's stress on the subjective may lead to gnostic "self-creation" as an ideal, rather than to authenticity won through respect for reality both transcending the subject and constituting it in relation to objective circumstances. In order to make fruitful use of the transcendental method, while avoiding this false direction, natural law theory must give adequate theoretical content to the difference between right and flawed action, posited by Granfield as the primitive experience of law. "Proportionate reason," as it is defined by the proportionalists, does not seem to be an adequate explanation of this difference, either in its account of the requirements of reality or in its account of the practical wisdom needed to make responsive decisions. As Granfield describes them, the self-evident goods of John Finnis, a natural law theorist critical of proportionalism, appear to be the more satisfactory explanation.


\textsuperscript{17} Granfield refers to the well-known concept developed by Thomas Kuhn. See T. Kuhn, \textit{The Structure of Scientific Revolutions} (1962).
Granfield moves from a general inquiry into rationality and the theoretical principles that can be grounded in it, to the more specific question of God. He notes that modernity, beginning with Grotius' "impious hypothesis," has tended to exclude God from jurisprudence. Still, Granfield posits that the subject's "noetic" or "hermeneutic" experience is, at ground, an experience of God as the ultimate horizon of meaning, value, and existence. The experience of law, too, when taken to the depth dimension includes an encounter with God understood in this sense. Granfield proposes reciprocally that one can learn about law by thinking about God and that one can learn about God by thinking about the experience of law.

Granfield traces the reference to the divine found in jurisprudence, from the time of the pre-Socratics to the beginning of the modern era. In agreement with Voegelin, he sees a deformative tendency beginning with the Stoics and accompanying the tradition, which tends to "split the symbol" from the noetic experience of insight which underlies it. This deformative tendency accounts for some undue formalism and rigidity found in the natural law tradition. His own theological referent is intended as a retrieval of the subjective noetic experience. In a modern context, this places Granfield with Gadamer and Lonergan in calling for an attitude of unrestricted openness to the possibility of meaning. Granfield names Sartrean atheism as the antithesis of this desired attitude.

III. HISTORICAL OVERVIEW OF WESTERN JURISPRUDENCE

Quite in addition to its significant contributions on the level of theory and method, this volume is an invaluable reference work. THE INNER EXPERIENCE OF LAW: A JURISPRUDENCE OF SUBJECTIVITY contains several extended historical sections, introducing the reader to the decisive figures, schools, ideas, and themes in the history of jurisprudence. Among the many virtues in Granfield's historical treatment, one would wish to mention his effortless and graceful style and erudition, his comprehensiveness, and his extraordinary economy. Although serving a somewhat different and more specialized goal, Granfield's historical discussion easily compares in quality to the historical sections of the first part of Alisdair McIntyre's After Virtue.

With relative brevity, Granfield covers enormous ground. He manages

18. The so-called "impious hypothesis" is that "[e]ven if we concede that which cannot be conceded without the utmost wickedness, that there is no God or that the affairs of men are of no concern to him" the natural law retains its validity (as quoted by Granfield). H. GROTIEUS, DE JURI BELLII AC PACIS PROLOGOMENA (1646).
this deed by describing truly salient ideas with simple elegance, and by placing ideas in clear relationship to their antecedents. Granfield explains more in a sentence, than Carl Friedrich often does in several paragraphs of The Philosophy of Law in Historical Perspective. His book will be useful to readers desiring succinct, understandable, and reliable descriptions of the elements of an intellectual history of jurisprudence. It gives deft and reliable guidance about past thinkers more or less closely related to jurisprudence, from Heraclitus to Wittgenstein. It does the same with respect to contemporary theorists, such as Hart, Unger, Nozick, Rawls, Finnis and McDougal.

The book provides enlightenment about the particular positions associated with jurisprudential schools such as the Historical School, Positivism, Natural Law, Legal Realism, and Critical Legal Studies. It gives substantial assistance in mapping the treatment which individual thinkers and schools have given to basic themes, whether the fact/value problem, the meaning of power and authority, the nature of rights, the issue of justice, or the relationship of law to morality.

Although Granfield’s book, as a whole, gives a fairly continuous survey of jurisprudence from antiquity to the present, he does not describe this history in a unilinear or chronological fashion, which is an advantage for meaningful assimilation by the reader. Granfield marshals his historical material in several different segments. In each case, he does so as background for understanding themes and problems in contemporary jurisprudence. Granfield asks questions of the ancients and moderns alike, which the reader finds meaningful. Granfield has a refreshingly light touch which brings his historical narrative to life.

One reason Granfield’s history comes to life is that it is geschichtlich; it tells a story. The story that Granfield’s historical account tells is how the contemporary extrinsicist pass, described above, was reached. In approaching this question, Granfield chooses a narrower canvas (strictly the jurisprudential problem) and, one might add, a more scholarly approach, than did Allan Bloom in a similar inquiry into modernity in the recent popular work, The Closing of the American Mind, although clearly there is a relationship between the separate problems which concern Bloom and Granfield. One of several important substantive differences between Granfield and Bloom is that Granfield sees opportunities, as well as losses, in the philosophical developments underlying later modernity.

Granfield begins his historical narrative not at the beginning, but in *medias res*, with the Cartesian turn in the seventeenth century. He traces the consequences of this development forward into our own time, and he also translates the pre-Cartesian history of jurisprudence into terms modern readers can more clearly assimilate, by reading it through the frame of the transcendental method. As a result, the reader easily absorbs and accurately retains a grasp of intellectual history which would otherwise remain, for many, nearly opaque. Granfield is exceptionally sensitive to the specific differences of the various philosophical approaches to be found in the history of jurisprudence. He can be so because the unity of his own focus, aims, and method allow him to coordinate with ease the whole of the narrative.

Granfield traces the genesis of the extrinsicist impasse to certain philosophical options taken in the wake of the Cartesian turn. Cartesian rationalism and the jurisprudence inspired by it were impoverished by a loss of continuity with the categories of pre-modern natural law reasoning. The empiricism of Hume, Hobbes and Locke introduced an anti-metaphysical bias to thinking about law. After Kant’s “copernican revolution” shifted the quest for epistemological certainty from objective nature to the subjective *a priori*, Cartesian rationalism had lost its foundations. Empiricism then tended to prevail, and with it the assumption that reason’s proper focus is fact not value.

In jurisprudence, one response was the historical school of Friedrich Carl von Savigny, which focused empirically on what the law was, within a cultural tradition. Another was the positivism of Auguste Comte, which focused on what the law is, as an instrument of social control. In England, where it is known as the analytical school, positivism has had an ascendency, dating to John Austin’s early nineteenth century jurisprudence. H.L.A. Hart is a contemporary exponent. In America, positivism has also had a strong influence, through the influence of such thinkers as Oliver Wendell Holmes, Jr. and Roscoe Pound. In its more pragmatic form, it engendered legal realism.

By separating the fact of law from value and by severing the realm of subjective meaning from that of objective social control of behavior, positivism in its various forms has, Granfield believes, led to the present unsatisfactory situation. Together with larger correlated elements in modern philosophical history, it has led to a diminished subject, nihilism, and irreducible pluralism. Granfield’s narrative study of recent jurisprudential history by no means, however, sees only harm flowing from modernity. He considers that modernity contains, as it were, the opportunity for its own “redemption.” The subject/object problem, which gave rise to the harms of
positivism, provides the possibility of the new foundation and normative direction represented by the transcendental method.

Granfield suggests that a number of patterns in the post-Kantian intellectual history of jurisprudence provide support for the direction he proposes. Generally, he sees the German idealism of, say, Hegel, as supportive of his proposal, as also the existentialism of a Soren Kierkegaard or Martin Buber. Granfield sees attractive features in the Neo-Kantianism of Rudolph Stamm- ler and the Neo-Hegelianism of Josef Kohler. In the more recent and specifically American past, he gravitates to the natural law approaches of Lon Fuller and John Noonan.

Within a modern framework, recommitted to value, Granfield is able to undertake a renewed appropriation of the pre-modern and Eastern history of jurisprudence. Thus, he is able to draw effectively and persuasively on the historical contributions of Aristotle, Plato, and even the Bhagvad Gita.

IV. GRANFIELD'S "SPIRITUALITY" OF LAW

David Granfield's book concludes with a chapter entitled "The Vision of Law." In this final chapter, the author elaborates on the meaning of his jurisprudence as "an inner experience of law." This is experience of "the tension, whereby free actions guided by law can lead to the paradoxical goal of self-fulfillment through self-transcendence." Granfield both gives content to the idea of "self-transcending self-fulfillment" and adumbrates the existential process through which the law contributes to reaching this condition, named by Granfield authenticity.

In many respects, Granfield's concluding chapter will remind the reader of the writings of Aristotle and St. Thomas, on the nature and source of a virtuous character.23 Where St. Thomas' treatment of virtue may seem remote to some modern readers, Granfield's ideal has an immediate appeal, and will inspire many. Clearly, Granfield's book will be read and studied by academics, but it should also be read by practicing lawyers and judges, for Granfield gives an answer to the perennial question, "How can I be a good lawyer and at the same time a good human being?" Granfield offers his ideal not as an abstraction, but as an existential goal presented with guidance on how it may gradually be attained. By putting into practice what the author proposes, the lawyer can hope not just to admire, but actually to become the ideal. It seems appropriate to refer to Granfield's contribution on this level, as a "spirituality" of law.

One of the overarching normative values of Granfield's method and the-

23. ARISTOTLE, NICOMACHEAN ETHICS; T. AQUINAS, SUMMA THEOLOGIAE I-II, 55-70; II-II, 1-170.
ory is, it will be recalled, authenticity, or a character shaped by right to decisions. More specifically, Granfield envisions this character as open to meaning and value, committed to meaning and value, unified by its awareness of meaning and value, and, luminous because transparent to transcendent meaning and value.

Granfield suggests that each of these virtues can be attained through participation in the meaning and value of law and the legal process. The most basic kind of participation is, he proposes, in the conforming of our actions to our knowledge. This often means changing actions to benefit from the knowledge that flows from mistakes. A second mode of participation is through an appropriate attitude towards the law, depending on our role in a given conflict. The appropriate attitude will vary, for example, depending on whether we are transgressors or victims. A third mode of participation is in the adjustment of attitude and action depending on the sphere. For instance, law in the sphere of positive or civil law is a different matter than in the sphere of personal morality. In the sphere of the positive law, the koinosphere, law should be understood as action about actions which involve relationships that give rise to obligations. Litigants should not, then, view themselves as spectators, but rather as participants in these actions. A fourth mode of participation is through self-consciousness in all modes and at all levels of one's participation in law. Such self-consciousness entails the experience of the particular legal event as "a conscious event experienced in a continuum of authentic decisions." This is the experience of what Granfield terms interiority. Ultimately, interiority attained through participation in law can be an experience of transcendence.

Granfield offers his ideal vision of growth in authenticity and interiority through law, especially:

to those in the legal profession who have a special stake in the successful resolution of this human problem. Judges, lawyers, professors, and even law students develop a characteristic mentality. Law transforms them for better or worse. If it remains simply a job, a prestigious way of making a living, a sophisticated, dialectical skill, or a springboard to a position of power and influence, it splits their life into uncoordinated personal and professional compartments. The result is that one may become worldly wise without being truly wise.

Legal educators will welcome the contribution to the humanistic formation of young lawyers represented by The Inner Experience of Law: A Jurisprudence of Subjectivity. This book has the potential for changing lives and transforming careers. It belongs not just in the law school jurispru-
dence curriculum, but also in the law school course on professional responsibility.

V. THE IMPLICATIONS OF GRANFIELD'S WORK FOR THE THEORY AND PRACTICE OF LAW IN AMERICAN SOCIETY

Granfield's substantial and multivalent contributions to jurisprudence have clear implications for the theory and practice of law in American society. With respect to theory, Granfield's generic principles and axioms have implications for nearly every legal specialty. Granfield himself finds an opportunity in the course of the volume to apply his general theoretical and methodological framework to the solution of problems in one of his own specialties, criminal law. Because Granfield's jurisprudence pioneers a new methodology, the possibilities of its application to specific problems in various legal specialties are enormously promising. One area which Granfield's theory of justice could fruitfully address is the reform of the adversarial system. In this area, his framework also has special relevance to both procedural and remedial questions. It also has implications for law and medicine, both with respect to the doctrine of informed consent and the just resolution of conflicting claims to scarce medical resources.

At the present, considerable controversy exists between the proponents of critical legal studies and the faculty majorities, at more than one major American law school.24 Granfield's method and theory can be of immediate assistance in adding to the light and reducing the heat of this disagreement. As the discussion in this review has shown, Granfield's proposals tend to recognize and embody values promoted by both sides of the battle. They may represent a common ground that will have a constructive effect on repairing the rift. Granfield's subjective/transcendental method is intended to unify just such theoretically fragmented debate—As Granfield states in his introduction, "Theories separate; subjectivities unite."

On the level of practice, Granfield's jurisprudence also has significant implications. The transformation which Granfield's jurisprudence would work in lawyers and others who participate in law and legal process would be dramatic, to say the least, if they were to follow its lead. The net result would be a legal system more clearly in the service of authentic individuals striving to form more genuine communities, both among lawyers and in society as a whole.

24. The character of the dispute is evident in the exchange that began with the publication of Paul D. Carrington's Of Law and the River, 34 J. LEGAL EDUC. 222 (1984). This correspondence was printed in the Journal of Legal Education. 35 J. LEGAL EDUC. 1 (1985). Harvard Law School is the center of the most publicized CLS-engendered faculty split. Trillin, A Reporter at Large: Harvard Law, THE NEW YORKER, March 26, 1984, at 53.
This very fine volume of jurisprudence has implications for all who participate in the theory or practice of law. It should be read by everyone. In a refreshing way, this book is itself a convincing illustration of the ideal its author proposes, since it is "open," "committed," "unified," and, indeed, even "luminous." In order to understand what the author means by "authenticity" and "interiority," attend not just to what this book says, but to the beauty and humanity with which the author says it.


Reviewed by Raymond B. Marcin.*

In LAW, BEHAVIOR, AND MENTAL HEALTH: POLICY AND PRACTICE, Professors Smith and Meyer have managed to paint a very broad canvas with a very fine brush. Their book is no slapdash survey of a few timely topics. It is a meticulously researched and documented analysis of a very large and comprehensive field, a reference work well worth having in one's library.

Smith and Meyer get a handle on their broad and somewhat unwieldy topic by dividing it into three parts: (1) the law and mental health practice (2) human behavior and the courtroom, and (3) behavioral science and social-legal policy. A fourth part in the form of a brief conclusionary analysis of the themes in law and the behavioral sciences is added.

The first part, examining the law and mental health practice, is necessarily somewhat ranging. But the subtitle of the book holds it together: it deals with the practical as well as the policy aspects of the interactions between the law and the mental health profession and the concerns of both. The practical issues dealt with involve licensing and regulation of the mental health care delivery systems, and the authors delve deeply into professional ethics, confidentiality, privilege, privacy, as well as malpractice liability. The policy issues taken up in part one include the legal issues involved in psycho-

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