suitability of the judicial process for the settlement of water disputes on the basis of prevailing international law. However, he is of the opinion that "if no applicable rule of law exists in a particular international dispute, then it is much better that the parties themselves to the extent that they act as legislators on the international plane in concluding a treaty, should give these principles a concrete form in the treaty concluded, instead of appointing a dictator who dictates the treaty in the form of a judicial decision as though despairing of being able to create law by themselves" (p. 267).

The book is not a lawyer's plea in support of one party or the other, nor does it purport to be a guide for future disputants. It is a good treatise written by an erudite scholar. Professor Berber has thoroughly succeeded in his endeavour "to provide a particularly clear picture of the structure and intensity of the present stage of international law as evidenced by a new and sensitive problem". The book leaves the impression that the learned author belongs to a school of thought which believes in the existence of "gaps" in international law.

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"*Essays in Law*", Edited By T. K. Tope, Principal, Government Law College, Bombay, 1960. (pp. xxiv and 94. Price Rs. 5.)

This book contains essays specially written on four important topics in the field of Law on the occasion of the centenary celebration of the Government law College, Bombay, in September last year. At a time when organised legal research in India is not yet an accomplished fact as remarked by Shri A. K. Sen in his Presidential Address, any attempt in the direction of original work and research undertaken by the members of a Law Faculty should be particularly welcome.

Prof. M. J. Sethna throws a number of provoking suggestions in his essay on "A case for synthetic Jurisprudence in India". He describes it as "my synthetic Jurisprudence" which "involves *an abandonment of the different types or kinds* of jurisprudence and the having of nothing but one kind of jurisprudence, and that is *integrated* or *synthetic* jurisprudence which absorbs all the different kinds." As he himself acknowledges, this kind of approach resembles the one adopted by Professor Jerome Hall of the United States which is known as "integrative jurisprudence." The author proceeds to illustrate with some of the fruits of the synthetic method and they relate to the redefinition of

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the concepts of jurisprudence, civil law, negligence, corporate personality, crime and punishment, insanity. The author's redefinition of a crime may not be an improvement at all. While it is unnecessary at this day to describe crime as "sinful or sinless", to say that it is an aggrievement of the State is not at all happy in view of the recent trends in criminology. The author's suggestion that the question of partial irresponsibility should be considered in the light of modern developments in medical science and the law should be reformed accordingly deserves serious consideration.

Negligence is, in his new synthetic approach, " a *faulty behaviour* arising out of a *lethargy of the mind* or out of faulty thinking". This kind of compromise is fraught with mischief and would only confuse a clear understanding of the law of negligence which in essential fundamentals is fairly well settled. Negligence as a mental state has become insignificant and the modern tort of negligence has nothing to do whatever with it. It is a failure exhibited in conduct—to take as much care as the law expects of a reasonable man relative to the circumstances and social norms—and it does not depend on the particular attitude of mind of the wrongdoer at the revelant time nor upon the degree of skill of the particular individual.

Prof. Balsara's essay on "Liability of Government of India in Tort" is highly refreshing and thought-provoking. After a brief survey of some of the leading decisions, he has made a very good analysis of the three important trends of judicial opinion as to the principles laid down by Sir Barnes Peacock in the *Peninsular* case (5 Bom. H. C. R. App. 1), namely, (1) government is liable only for acts of a commercial nature (2) government is liable for all acts not being acts of State in the strict sense, and (3) while government is liable for acts of a commercial nature, it is immune from liability for all acts of a sovereign character. It is true that it is not possible to say with certainty what the law in India is at the present time and legislation is necessary. There is also a brief survey of the broad principles obtaining in England, France and the United States. The statement that " it is difficult to think of any governmental activity which is 'uniquely governmental' in the sense that activity of the same kind has not at one time or another been privately performed", does not seem to be correct. To quote but one authority in support of the objection, Prof. Davis says: "A large portion of the functions of governmental units have no private counterpart. Private parties do not draft men, administer prisons, conduct international relations on behalf of a general public, one other people's

property, enact statutes or ordinances, adjudicate cases, issue administrative orders or regulations that may have force of law, regulate economic life, or authoritatively determine policies that may be binding upon courts." (Administrative Law Treatise, 1958, Vol. 3, p. 501) The author, while heartily commending the proposals of the Law Commission, feels that they are conservative and expresses himself in favour of adopting the French system. If it is the author's suggestion that the *Peninsular* case is seriously upset by the Privy Council's *obiter* in *Venkatarao's* case (A. I. R. 1937 P. C. 31) it is not warranted by the context. He should have taken care to avoid the common mistake of saying that the Privy Council in *Venkatarao's* case observed that section 32 of the Government of India Act, 1919, *merely* related to parties and procedure. The word 'merely' is not to be found in the judgment. The author should have mentioned that the decision in the *Peninsular* case was endorsed by the Privy Council in *Moment's* case (40 Cal. 391).

Principal Tope's essay deals with "freedom of speech and expression and Privileges of Legislature". The principal provisions in the Constitution bearing on the subject have been cited and their significance assessed in the light of recent Supreme Court decisions. In doing so, he has spotlighted the areas wherein judicial trends are not altogether progressive or consistent. He has also drawn attention to the fact that the reconciliation of House privileges with the fundamental rights of the citizen is a matter of vital concern. A reassessment of the legal situation would be desirable in the interests of the freedom of the legislator inside and outside the House, as well as of the press and the people. The author has made comparisons in important areas with the law obtaining in England, U. S. A., Australia, and Canada; he has rightly pointed out that the problem is similar to the one in U. S. A. where alone there is an enunciation of fundamental rights and, as such, it is pertinent to ask whether it is not high time that the Parliament should define its privileges and not continue to take shelter under British parliamentary privileges.

Prof. Ranganatharao, in his essay on "Freedom of Expression and the Law of Sedition in India", brings out the difference of judicial opinion on the proper interpretation of the language used in section 124-A of the Indian Penal Code and its constitutional validity even after the First Amendment of the Constitution. To avoid any possible invalidation of the section by the Supreme Court the author suggests substitution of a new provision in the place of the present one in section 124-A. However, the insertion of the 'clear and present danger' and 'bad tendency'

tests into the Indian law, as suggested by the author, may not achieve the desired object. The suggestion that act also should be punishable as well as speech would go against the well-established view that sedition relates to "words spoken or written..."etc. In his view, speech and act having a tendency to distort public order should be punished, but an unsuccessful attempt to cause such danger or disorder may not be punished. It is difficult to make out the reason behind nor the distinction.

The book is moderately priced and the get-up is good, although one wishes that the binding were better. A more careful proof-reading would have gone a long way in avoiding a number of slips in punctuation, spelling and grammar.

It is hoped that the great interest evinced in making this effort on the happy eve of the centenary will be sustained.

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