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BOOK NOTES

AMERICAN CONSTITUTIONAL LAW. By Berard Schwartz. Cambridge: The Cambridge University Press, 1955. 25 Shillings.

Professor Schwartz has presented something of a comparative treatise on American Constitutional Law. Professor Schwartz's well known conservatism is apparent in such subjects as the Bricker Amendment and judicial constitutional legislation. The book is too detailed for layman and perhaps too superficial for American legal scholars; it should be quite useful to foreign lawyers and teachers.

C. C. ALLOWAY

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI

BENEFIT OF CLERGY IN AMERICA. By George W. Dalzell. Winston-Salem, John F. Blair, 1955. \$4.50.

A little known subject is interestingly presented against both its early English and American background. Few people realize that benefit of clergy was a device used to ameliorate the harsh criminal law of England and that it had a direct effect upon the colonization of America. The author, who unfortunately died before publication of this work, has done a commendable service in organizing the materials on the subject and in giving it to the public in such a readable as well as informative fashion. A bibliography of source materials in the appendix and a complete index are most helpful.

HARRIET L. FRENCH

LAW LIBRARIAN
PROFESSOR OF LAW
UNIVERSITY OF MIAMI

COMMUNISM, CONFORMITY, AND CIVIL LIBERTIES. By Samuel A. Stauffer. New York: Doubleday & Company, 1955. Pp. 278. \$4.00.

Samuel A. Stauffer, Professor of Sociology at Harvard University, and Director of the Harvard Laboratory of Social Relations, interprets a meticulous statistical survey (conducted during, but before the conclusion of, the McCarthy hearings in the early summer of 1954) of American attitudes toward a limited group of political non-conformists. The survey demonstrates a significant correlation of tolerance to education, informal

as well as formal. Since community leaders are shown to be among the better informed and thus among the more tolerant, their possession of the educational media would seem an ultimate safeguard against any long continued public acceptance of totalitarian abuses in this civil rights area. That this power group has exercised its influence effectually is indicated by the rapid decline in McCarthyism which occurred following the televised hearings and after this survey. That the power group has not exercised its influence as completely as it might in the various areas of governmental action, suggests that its educators, the professional elite, have been deficient in promoting these cherished values.

JEANNETTE O. SMITH

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI

THE FEDERAL TAX SYSTEM OF THE UNITED STATES. A SURVEY OF LAW AND ADMINISTRATION. By Joseph B. Crockett. New York: Columbia University Press, 1955. Pp. 288. \$4.75.

The second part of this book is recommended as being very helpful to practitioners in that it surveys, clearly and accurately, the highly specialized subject matter of operational organization of the Internal Revenue Service. Included in the discussion is an explanation of the judicial review of tax determinations. Appendix B consists of a concise exposition of the legislative process that pertains to federal taxation.

The first part of the book is not recommended to practitioners. It contains an attempt to condense the technical provisions of the Internal Revenue Code into generalizations in the form of a sweeping survey of the entire Code. The result is not helpful to the practitioner in that the presentation (which, incidentally, was written before the 1954 revision of the Code) is altogether too elemental and general in its perspective. The attorney who, at this late date, has not been introduced to the basic substantive provisions of the Code should stop reading "introduction" books and start contemplating a more appropriate vocation.

RICHARD A. HAUSLER

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI

THE FORGOTTEN NINTH AMENDMENT. By Bennett B. Patterson. Indianapolis, Bobbs-Merrill Co., Inc. 1955. Pp. ix, 217. \$4.00.

The Ninth Amendment declares that "The Enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people". The author's thesis is that this clause

"could be the most significant and forceful clause in the entire Constitution", and yet it has been almost entirely overlooked because of the failure to recognize it as a broad declaration of right and not as a restrictive inhibition against the federal government. He contends that it is a basic statement of the natural and inherent rights of the individual that were not delegated by the people and are left to be defined and secured by the states.

The book has an impressive introduction by Roscoe Pound and a valuable appendix including, among other documents, a reprint of a part of the Annals of Congress containing the legislative debates on the first ten amendments to the Constitution. In a few short chapters the author has presented a thought provoking theory that should not be lightly dismissed in this age of threats to individual freedom.

HARRIET L. FRENCH

LAW LIBRARIAN
PROFESSOR OF LAW
UNIVERSITY OF MIAMI

HUE AND CRY, THE STORY OF HENRY AND JOHN FIELDING AND THEIR BOW STREET RUNNERS. By Pringle, Patrick. London: W. Morrow & Co., 1955. Pp. 230. \$4.00.

The 18th century London represented a city of "squalor, brutality, and misery," with coffee-houses and blood-sports for gentlemen and with public floggings, pillories and executions for the people from the gin-shops turning the city by night into a "hell of a place". With hold-ups in the dark streets ("Pay or strip") and prisons "in a sense of a criminal hotel", the thief takers paid by result were not enough. Justice being for sale, the mobs ruled the city and highwaymen the approaches to it.

Against this background Henry Fielding's efforts to create a police force outlined in his "Enquiry into the Causes of the Late Increase of Robberies, etc. with some Proposals for Remediying this Growing Evil" (1750), made history. His brother, John, the "Blind Beak" finally succeeded and the Bow Street patrols tie in with this far away past which we think we know better.

Pringle's book on the early history of the London police is not only a scholarly, well documented historical essay but with its broad background strokes, also offers a fascinating tableau. It is even excellent reading, opening the largest city's dark past, its streets and homes, and presenting its inhabitants, from Dr. Johnson and Boswell to the "devil Wilkins" and George III.

S. A. BAYTCH

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI

LABOR DISPUTES AND THEIR SETTLEMENT. By Kurt Braun. Baltimore, The John Hopkins Press, 1955. Pps. 343. \$6.00.

According to the author, labor disputes are "differences of opinion" between labor and management or within labor alone (p. 27). Such differences may arise in regard to "rights" or interests, an important distinction to be kept in mind (discussed *e.g.* in the Elgin, Joliet & Eastern Ry. case, 1945); or they may be individual or collective. Such disputes in the field of labor-management relations may be settled by one or another of the methods discussed by the author.

The first method, namely direct negotiation (p. 33) is only listed; however, it seems that the even more important duty, to bargain collectively, would deserve, at this point, a full discussion. A description of other methods, such as mediation (p. 53) and arbitration (p. 149) follows, taking into consideration federal as well as other systems. The last method, termed "litigation" (in the sense of adjudication), came out rather short since the author disposed of the quasi-judicial functions of the N.L.R.B. under the heading of "federal arbitration systems" (p. 228). This arrangement appears to be contrary to the accepted notion of arbitration; moreover, it seems to conflict with the author's own definition of arbitration (p. 149) since the Board acts as quasi-judicial tribunal and its decisions are reviewed as well as enforced by courts which bring into operation "members of a court of justice acting in their capacity as official judges" (*ibid*). Consequently, this part of the book deals mostly with labor courts in foreign countries, *e.g.* in France and particularly in Germany. It may be added that short comparative data is interspread also throughout the book (*e.g.* p. 34, 162).

The value of the book lies mainly in its survey type of presentation and numerous practical considerations of pros and cons based on the author's experience as adviser and arbitrator. This approach, as revealed in the introduction, makes it sufficiently clear that no precise treatise on the law of labor disputes is intended. In spite of this, or, maybe because of it, the reader will find the book an informative and stimulating introduction into methods of solving disputes between labor and management.

S. A. BAYTICH

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI

THE LAW OF DRUGS AND DRUGGISTS, Fourth Edition. By William R. Arthur. St. Paul, Minnesota: West Publishing Co., 1955. Pp. xxxi, 399. \$6.00.

The fourth edition was necessary due to the changes that have occurred during the seven year interval since the publication of the third edition. Pharmacy, today, is a dynamic science. The rapid development and

changing aspects of the modern day pharmaceutical industry require close attention to the changing needs for regulation.

This book contains a pot-pourri of statutes, regulations, case decisions, comments, readings, and questions arranged under various facets of the legal problems facing the manufacturing, wholesale and retail distribution of drug products and the regulation of pharmacists, apprentices and drug clerks.

From the author's presentation of the material it would seem that the book was designed more to provide a text for the teaching of pharmacy and drug laws to students of pharmacy, and as a guide to retail pharmacists and others connected with the distribution of drugs, than as a text or case book for law students taking specialized courses in this field. However, the book contains much useful reference material for the practicing attorney confronted with a special problem dealing with the regulation of drugs and druggists.

The author has combined text material, regulatory and statutory material, and condensed cases, followed by questions designed to focus the reader's attention on the significant points of the cases and material under consideration. Reference to additional cases, statutes, and legal periodicals are incorporated into the text of the book under sections entitled, "Readings".

A shortcoming perhaps inherent in this method of presentation is that to the unwary reader there seems to be an atmosphere of equivalency in which all pronouncements have a tendency to appear of the same weight and importance, whether it be a statute, regulation, or opinion rendered by an administrator or a supreme court justice. This criticism is intended to imply only that in the comingling of the various types of material presented that the unwary may fail to properly weigh the pronouncements. The law must be regarded both in depth and direction to gain a true perspective. Some additional material on the processes of administrative law and agencies involved would be helpful in placing the right light on the stained glass window of pharmacy law presented. Additional information on procedural aspects is needed to adapt this book for use by law students. It is also felt that insufficient attention has been devoted to sections covering the Prescription Drug Amendment to the Federal Food, Drug and Cosmetic Act, often referred to as the Humphrey-Durham Amendment, in the light of its recent adoption and the increasing regulatory activity of the Federal Government.

Regardless of a few suggestions for change in emphasis, this volume provides a useful, flexible text covering in a comprehensive manner the regulatory problems that face the pharmacist and the pharmaceutical industry.

CHARLES L. NELSON

LECTURER, FOOD DRUG AND COSMETIC LAW
UNIVERSITY OF MIAMI

LIFE AND LIMB—An Account of the Career of Melvin M. Belli, Personal-Injury Trial Lawyer. By Robert Wallace. New York: Doubleday & Co., 1955. 250 Pp. \$3.50.

Life and Limb is an intensely pertinent book, particularly in Florida because of public interest in the matter of injury awards versus insurance rates. There can be no doubt that Mr. Belli is adept in handling personal injury. His courtroom tactics are nothing less than spectacular.

However, this reader found the book anything but exciting. Elaborate definitions of slander, tort, negligence; the statistical resume of awards; lengthy case histories; and, no less, Mr. Belli's profits from his published works leave one with the feeling that Mr. Wallace would have produced a more readable volume if he had written more like the journalist that he is and less like a tape recording of Mr. Belli's views.

M. MINNETTE MASSEY

ASSISTANT PROFESSOR OF LAW
UNIVERSITY OF MIAMI

THE MORAL DECISION. By Edmond Cahn. Bloomington: Indiana University Press, 1955. Pp. 342. \$5.00.

In reviewing this book by Professor Cahn for the inter-American issue of the Miami Law Quarterly, certain limitations should be made explicit. It is beyond the province of the review and the competence of this reviewer to attempt an analysis in detail of the book's content, of its position in the general development of American legal philosophy, or of the ultimate worth to that development of Professor Cahn's contribution. This volume, together with its predecessor, *The Sense of Injustice*, represent an opportunity for American legal thought and a challenge to those of us who work in the inter-American legal area.

In the recent travels of this reviewer, numerous opportunities arose where judges, professors, and students criticized our legal system founded as it is upon the supremacy of the judicial power and the establishment of law by precedent. Some criticize from knowledge, seeing the technical difficulties involved; some criticize from ignorance or prejudice, seeing what their particular biases would lead them to say. A few, aware, perhaps, of some force other than pure materialism as motivating the American "way of life", have begun to look for the answers. This book, tying certain general jurisprudential principles to specific areas of case law, can serve as a useful guide. It would be a wise thing for those who wish to raise the level of understanding of our judicial process to see that this book is immediately translated into Spanish and Portuguese. There are many who will disagree with the premises on which Cahn's philosophy is based, just as there are many who will see in its new version of the natural law, things familiar to all. However, the insight which this

work gives to a sense of order in the decisional process—to the marking out of proper limits between the powers of the state vis-a-vis each other, as well as vis-a-vis the people, in general, a fine counter statement to the over emphasis on the pragmatic which has always characterized America in the eyes of the Latin Americans—is of great value.

The emergence of Calm's book in Hispanic America would accomplish one other mission. It would show, in an area where this particular source of law has not been given its due, the vital report of a full appreciation of the richness of the Judaeo-Grecian tradition. There is no other writer who handles with equal comprehension and delicacy the fine spirit of the Talmudic tradition. It is to be hoped that in translation both this latter, particularly, and Professor Calm's elegance of style, in general, will not suffer.

DAVID S. STERN

PROFESSOR OF LAW
UNIVERSITY OF MIAMI

ON THE NATURE OF MAN. By Dagobert D. Runes, New York Philosophical Library, 1956. Pp. 105. \$3.00.

Ramblings of an eminent philosopher sub-titled "An Essay In Primitive Philosophy."

HARRIET L. FRENCH

LIBRARIAN
PROFESSOR OF LAW
UNIVERSITY OF MIAMI

THE OPPENHEIMER CASE. By Charles P. Curtis. New York: Simon and Schuster. \$4.00.

The Oppenheimer hearing debacle receives the very opinionated attention of Mr. Curtis. I found the record testimony type eye-tiring, but was fascinated by the implication of the Security Board's opinion. Mr. Curtis writes in his usual unsophisticated lay style.

C. C. ALLOWAY

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI

PROBLEMS IN CRIMINAL LAW. By Curtis Bok. Lincoln, University of Nebraska Press, 1955. Pp. 79. \$2.00 (Roscoe Pound Lectureship Series).

Collected in one small volume are three lectures on problems in criminal law delivered by Judge Bok. Without committing himself specifically to any one view, he points out a number of problems and proposed remedies. Trial by jury in his opinion is an archaic adversary

proceeding having little to do with the investigation of truth. The ideal proceeding would be one in which motive, guilt, responsibility, and treatment could be established.

In dealing with substantive law, the judge suggests that the criminal codes of most states are obsolete and that our entire concept of criminality should be re-examined in the light of our past unhappy experience in reforming criminals.

The third and final lecture presents the problems connected with penology and treatment and suggests means of rehabilitation of prisoners and their return to society.

GEORGE W. PRETTYMAN

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI

PREFACE TO JURISPRUDENCE: TEXT AND CASES. By Orvill C. Snyder. Indianapolis: Bobbs-Merrill Co., Inc., 1954. Pp. xvi, 882. \$10.00.

The purpose of this book is the examination of the meaning of words of large import, like *law*, *sovereignty*, *right*, *duty*, *power*, *privilege*, *liability*, etc., as these words are used in deciding cases. The book is structurally impressive: each chapter begins with an explanatory, sometimes searching, text on some word or idea, followed by current cases and other materials to illustrate the relationship of the idea or topic to law.

A substantial obstacle to the effective fulfillment of the author's purpose is his failure to integrate the positive law with the rational and social sciences. But then, his very approach—that of analytical jurisprudence—creates its own strait-jacket and contradictions—by preserving the illusion of a discipline immune from external pressures and by failing to escape from the power (or might makes right) conclusion to which analytical jurisprudence leads.

All who read this book will be pleased with its structural excellence. All those who hold to analytical jurisprudence will be more than pleased with the substance of this book in that it will preserve their illusions, ignore their contradictions, and strengthen their shell—keeping them free of the permanent values which reason and experience require in social sciences.

RICHARD A. HAUSLER

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI SCHOOL OF LAW

PUBLIC POLICY AND THE DEAD HAND. By Lewis M. Simes. Ann Arbor: University of Michigan Law School, 1955. Pp. xxii, 163.

Written by the scholar without a peer in the field of Future Interests, "Public Policy and the Dead Hand" is a lucid exposition of that lawyer's

nightmare, the Rule Against Perpetuities, and related topics. Delivered as five lectures at the University of Michigan,¹ this little book grapples with basic ideas and happily omits the myriad rules and technicalities commonly encountered in similar articles. The contents consist of one lecture on freedom of testation, two on perpetuities, one on accumulations, and one on charitable trusts, each significantly entitled as follows:

- I. Should the Dead Hand Distribute: Free Will vs. Family;
- II. The Policy Against Perpetuities: Dead Hand vs. Alienability;
- III. The Policy Against Perpetuities: Dead Hand v. Living Hand;
- IV. Should the Dead Hand Increase Its Grasp: The Policy Against Accumulations;
- V. The Dead Hand Achieves Immortality: Gifts to Charity.

Considering the brevity of the material,² these lectures contain a remarkable amount of history, comparative law and policy considerations, all interspersed with interesting and noteworthy examples.³ For those who would like to know not only the present status of these rules, but also whence they came and whither their probable destiny, this little book is indispensable.

Prepared for easy listening, the lectures are even more valuable in the printed form as none of the ideas, facts or citations are lost by distraction or inadequate notetaking. The book is wholeheartedly recommended as an invaluable aid and guide in dealing with these most difficult rules in the law of Future Interests.

RALPH E. BOYER

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI

REGULATORY BUSINESS BY INDEPENDENT COMMISSION. By Marvin H. Bernstein. Princeton, Princeton University Press, 1955. Pp. xi, 306. \$5.00.

A very enlightening intellectual development of the regulatory movement. The book is particularly valuable for the historical developments of the social, economic and political considerations motivating regulation of business. The author's meticulous consideration of detail combined with commendable completeness in 297 pages, render the book a valuable source of background material for the students of the law of Federal Trade Regulations.

THOMAS A. THOMAS

PROFESSOR OF LAW
UNIVERSITY OF MIAMI

1. These lectures, sixth in the series of the Thomas M. Cooley lectures, were delivered on February 7, 8, 9, 14 and 15, 1955.

2. The text consists of only 140 pages.

3. The story behind the Thellusson Case, p. 83, one of the trusts in Franklin's will, p. 128, and "the Sailors' Snug Harbor" trust, p. 136, are a few examples.

RIGHT TO COUNSEL. By William M. Beane. Ann Arbor: University of Michigan Press, 1955. \$4.50.

Mr. Beane has written, comprehensively, about the right to counsel in English and early American law, under the Sixth amendment, under state law, as a concern of due process and the federal courts, and from a practical administration standpoint. The book is excellent; it is very readable, quite factual, and moderate in value judgments. Mr. Beane has probably obviated the necessity for broad research-writing in this constitutional field for many years.

C. C. ALLOWAY

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI

RULES OF THE AIR, Second Revised Edition. Edited by John Dohm. North Hollywood, Calif.: Pan American Navigation Service, 1955. Pp. x, 186. \$2.00.

Although this manual is primarily designed to unify in one publication all of the aviation regulations, laws, and procedures for the benefit of student, private, commercial and instrument pilots, it may be used (with profit) by lawyers in the preparation and trial of aircraft negligence cases where pilot "error" may be in issue.

DANIEL E. MURRAY

LECTURER IN LAW
UNIVERSITY OF MIAMI

SECURITY THROUGH FREEDOM. By Alpheus T. Mason. New York: Cornell University Press, 1955, \$2.90.

This interesting, 232 page book has been written by a very literate author on the problem of accommodating political security and intellectual freedoms. Dealt with in somewhat superficial fashion is the impact of power drives, both governmental and private, on the social structure—with the place of the Supreme Court in government discussed and evaluated. The author, the reviewer believes, would ordinarily be characterized as "liberal" in his general approach to the "security" crisis.

C. C. ALLOWAY

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI

35TH ANNUAL REPORT, CLEARING THE MAIN CHANNELS. By American Civil Liberties Union, New York. Paper, 50c copy.

The remarkable American Civil Liberties Union has recently published its 35th Annual Report, entitled "Clearing the Main Channels."

Legal activity (legislative, administrative and judicial) affecting Ameri-

can "civil liberties" has been detailed in almost monotonous comprehensiveness. The reviewer recommends to *any* citizen—lawyer, law teacher, legislator, judge, or layman—this report on the state of "civil liberties" from July 1, 1954 to June 30, 1955.

C. C. ALLOWAY

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI

THE TRIAL OF JOHN THOMAS STRAFFEN, By Letitia Fairfield and Eric P. Fullbrook, editors. London: William Hodge and Company, Ltd., 1954. \$3.25.

One of the Notable British Trial Series, of particular interest to those who are concerned with problems of mental deficiencies and crime. The editors have performed a real service in compiling the medical history and background of the defendant, a mentally deficient person, charged with murder.

HARRIET L. FRENCH

LAW LIBRARIAN
PROFESSOR OF LAW
UNIVERSITY OF MIAMI

YOU MAY TAKE THE WITNESS. By Clinton Giddings Brown. Austin: University of Texas Press, 1955. Pp. 223. \$3.95.

The author, a retired trial lawyer who for many years represented big business, principally as defendants before juries, gives a delightful account of some of his experiences before the bar. The chapter on "The Jim Wheat Murder Case" in which for personal reasons he defended a colored man for murder is worth the price of this book. His stories are told with humor and ease. The many points that he makes in showing how to deal with juries and how not to deal with them will offer any attorney valuable suggestions. This is one of those rare books that one wants to recommend to law students and practitioners alike, not only for enjoyment but even more for the sound common sense instruction they will inevitably gain from it.

HARRIET L. FRENCH

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